IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-1218
Black Hawk County No. FECR246668

STATE OF IOWA,
Plaintiff–Appellee,

vs.

PATRICK WAYMAN SCULLARK, JR.,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE LINDA M. FANGMAN, JUDGE

APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals Decision: August 21, 2024)

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QUESTIONS PRESENTED FOR FURTHER REVIEW

United States v. Robinson, 414 U.S. 218 (1973) holds that officers may search items on a person when police arrest them. Did the two-judge majority err when it disregarded _Robinson_ to find a search of a bag on Scullark's person at the time of his arrest was unlawful?

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STATEMENT SUPPORTING FURTHER REVIEW

On August 21, 2024, a two-judge majority of the Iowa Court of Appeals panel reversed and remanded the district court's suppression ruling. *State v. Scullark*, No. 23-1218, 2024 WL 3886203 (Iowa Ct. App. Aug. 21, 2024) (hereafter "Slip.Op."). In construing *Arizona v. Gant*, 556 U.S. 332 (2009) and *State v. Gaskins*, 866 N.W.2d 1 (Iowa 2015) to narrow the search-incident-to-arrest exception ("SITA"), the majority found officers unreasonably searched a fanny pack on Scullark's person that he attempted to pass off as Officer Bolstad arrested him. Slip.Op. at 10–11, 14–17. Its decision conflicts with United States Supreme Court precedent of *Riley v. California*, 573 U.S. 373 (2014), *United States v. Robinson*, 414 U.S. 218 (1973), *Gustafson v. Florida*, 414 U.S. 260 (1973), and with Iowa's own decisions: *State v. Shane*, 255 N.W.2d 324 (Iowa 1977); *State v. Hershey*, 371 N.W.2d 190 (Iowa Ct. App. 1985), *State v. Schiebout*, No. 18-1662, 2019 WL 4309062, at *2–3 (Iowa Ct. App. Sept. 11, 2019); *State v. Saxton*, No. 14-0124, 2014 WL 7343522, at *3 (Iowa Ct. App. Dec. 24, 2014); *State v. Allen*, No. 06-1770, 2007 WL 2964316, at *3 (Iowa Ct. App. Oct. 12, 2007); *State v. Jones*, No. 02-1972, 2003 WL 22699655, at *1 (Iowa Ct. App. Nov. 17, 2003). *See* Iowa R. App. P. 6.1103(b)(1).

In ruling as it did, the majority flattened the SITA exception to misapply inapposite automobile SITA cases and adopted a new "time-of-search" standard under the Iowa Constitution. *Compare* Slip.Op. at 12–14, 16–17. Those questions—whether *Gant* modified *Chimel* and searches of items based on the "time-of-arrest" or the "time-of-search"—have divided other jurisdictions. *Compare United States v. Knapp*, 917 F.3d 1161, 1168–69 (10th Cir. 2019); *State v. Ortiz*, 539 P.3d 262, 268 (N.M. 2023) *with United States v. Perez*, 89 F.4th 247, 258–261 (1st Cir. 2023); *Price v. State*, 662 S.W.3d 428, 438 (Tex. Crim. App. 2020); *Greene v. State*, 585 S.W.3d 800, 806–08 (Mo. 2019); *State v. Mercier*, 883 N.W.2d 478, 493 (N.D. 2016). And whether *Gaskins* altered the Iowa Constitution's SITA exception outside the automobile context required the majority to expand this Court's precedent. This means the majority erroneously answered a substantial question of constitutional law; one this Court should vacate and settle. Iowa R. App. P. 6.1103(b)(2).

And what is more, the majority erroneously inquired into the officers' subjective beliefs to strike down the search in question, again, in conflict with this Court's and the United States Supreme Court's precedent. *See Robinson*, 414 U.S. at 234–35, *Gustafson*, 414 U.S. at 266; *State v. Griffin*, 691 N.W.2d 734, 736–37 (Iowa 2005); *State v. Naujoks*, 637 N.W.2d 101,

109 (Iowa 2001) ("[T]he legality of a warrantless search is not determined by the officers' subjective beliefs."); Slip.Op. at 16–17; Iowa R. App. P. 6.1103(b)(1).

One judge dissented from the majority opinion, identifying these errors and the practical implications of the ruling. Slip.Op. at 18-20, 27–28.

Thus, this case presents dual opportunities. The first is for this Court to remedy the court of appeals' errors; the second, to clarify the present state of SITA law in Iowa. It should grant review and clarify that searches of an arrestee include the items "immediately associated" with an arrestee's person at the time of the arrest. That rule is consistent with the history and tradition of our constitutions. It sensibly protects the privacy interests of Iowans—as well as their safety. The need for clarity in this field could not be more evident: searches incident to arrest are one of—if not *the*—most-commonly conducted searches. *See Riley*, 573 U.S. at 382 ("Indeed, the label 'exception' is something of a misnomer in this context, as warrantless searches incident to arrest occur with far greater frequency than searches conducted pursuant to a warrant."). This Court should grant review, vacate the court of appeals' opinion, and affirm the district court.

STATEMENT OF THE CASE

NATURE OF THE CASE

Scullark was charged with possession of methamphetamine and an associated tax stamp violation. The district court ruled that the search of a bag on his person was reasonable under the SITA exception. *See* D0056, Supp.Tr. 17:2–19:15 (3/24/2023); D0035, Order Denying Suppr. At 2–3 (4/20/2023). Scullark challenged that ruling on appeal, and two judges of the panel assigned to the case agreed. *See* Slip.Op. 7–17. One judge dissented. Slip.Op. 18–30 (Buller, J., dissenting). The State seeks further review.

STATEMENT OF THE FACTS

On April 12, 2022, law enforcement in Black Hawk County responded to a call from a woman injured in a confrontation with Scullark. D0056 at 5:1-20. Officer Bolstad was the first to arrive, finding Scullark sitting on the back of a truck and talking on the phone outside a residence. D0056 at 7:19–8:1. Scullark was agitated; he said he "didn't do anything" and he "did not want to go back to jail." D0056 at 8:2–6. Despite Bolstad's contrary demand, Scullark "decided to bolt" into the residence. D0056 at 8:7–13; *see also* State's Exh.A DVD at 01:35–01:55. The officer followed Scullark and arrested him for domestic assault. D0056 at 8:14–9:9. At the time he arrested Scullark, Bosltad was the only officer; three other persons

were inside the residence with more outside. *See* Exh.A at 01:35–02:00; 04:00–06:25.

When he was told he was under arrest, Scullark had a fanny pack attached to his waist. D0056 at 9:17–10:11. The bag was large enough to conceal a small firearm or knife. D0056 at 10:5–11. After he had fled into the residence, a "very agitated" Scullark tried to hand off the bag to one of the other persons present, a woman. D0056 at 8:23–9:9, 10:12–21, 11:9–14; Exh.A at 04:39–06:25. The woman took a few steps with the bag before the officer told her to stop and set it down. D0056 at 14:23–15:3. Bolstad then attempted to approach the bag as Scullark was "continuing to lament—'I can't go back to jail bro.'" Slip.Op. 3. The officer handcuffed Scullark, grabbed the bag, and brought both out of the residence. D0056 at 11:9–25; 15:4–7. Other officers arrived on the scene and searched the bag before Bolstad completed placing Scullark in his service vehicle. D0056 at 12:4–18; 16:1–10; Exh.A at 06:20–07:00; 08:20–10:45. That officer found methamphetamine and a large amount of money in the bag. Slip.Op. 4.

ARGUMENT

I. The Supreme Court should find that a search incident to arrest includes the seizure and contemporaneous search of items "immediately associated" with the arrested person.

Search-incident-to-arrest is not just one exception to the warrant requirement—it is *multiple*, applying differently based on the context. The majority erred when it flattened these nuances and then misapplied a distinct SITA context to rule this search unlawful.

A. Not all searches and seizures under the SITA exception are identical. Context matters.

First formally articulated in *Chimel v. California*, 395 U.S. 752 (1969), the United States Supreme Court explained that

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

Chimel, 395 U.S. at 762. Thus, the exception serves two core interests: the safety of those in the arrest's proximity and to prevent the loss of evidence. *Id.* Post-*Chimel* cases explained how this exception to the warrant requirement applied differently based on the surrounding context.

The first context was a search of the person and items "immediately associated" with their person.[1] *See Robinson*, 414 U.S. at 235; *United States v. Chadwick*, 433 U.S. 1, 14–16 (1977). These searches are *always* reasonable, regardless of "the probability in a particular arrest situation that weapons or evidence would in fact be found." *Robinson*, 414 U.S. at 235. They draw on the common law, untethered to case-by-case analysis of whether exception serves these interests:

> A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search. The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. *A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment.*

[1] Robinson involved the search of cigarette container taken from him during arrest. *Robinson*, 414 U.S. at 220–23.

Robinson, 414 U.S. at 235 (emphasis added); *accord Riley*, 573 U.S. at 383–84; *see Birchfield v. North Dakota*, 579 U.S. 438, 458 (2016) ("One Fourth Amendment historian has observed that, prior to American independence, '[a]nyone arrested could expect that not only his surface clothing but his body, *luggage, and saddlebags would be searched* and, perhaps, his shoes, socks, and mouth as well.'" (quoting W. Cuddihy, *The Fourth Amendment: Origins and Original Meaning: 602–1791*, p. 420 (2009) (emphasis added)). "[T]he search of Robinson was reasonable even though there was no concern about the loss of evidence, and the arresting officer had no specific concern that Robinson might be armed." *Riley*, 573 U.S. at 384.

Critical here, there is no distinction between a container on the person at the time of the arrest and the person: "Having in the course of a lawful search come upon the crumpled package of cigarettes, [the officer] was entitled to inspect it." *Id.* (quoting *Robinson* 414 U.S. at 236). Nor is it relevant that the search occurs after securing the arrestee. *Id.*; *see United States v. Edwards*, 415 U.S. 800, 808–09 (1974) (seizure and analysis of shirt worn the defendant wore at time of arrest occurring ten hours after that arrest lawful: "While the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a

reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence"). Likewise, the fact that the defendant has been secured and there no longer is any subjective fear or suspicion the arrestee is armed at the time of the search is immaterial to its validity. *Gustafson*, 414 U.S. at 262, 262 n.2, 265–66.

The second context is those cases in which police search an item within or the area where the arrest occurred. *See Price*, 662 S.W.3d at 433–34; *Shane*, 255 N.W.2d at 327–28; *State v. Canas*, 597 N.W.2d 488, 492–93 (Iowa 1999). Here, the interests underlying SITA come into sharper focus. Once officers search an area or item long after it is secured and the arrest is complete, or the search's scope expands beyond what was within the arrestee's reach, then that search is no longer supported by a need to prevent the destruction of evidence or for officer security. *See Canas*, 597 N.W.2d at 492–93. Which is to say, if officers conduct it without a warrant, it is not reasonable. *Chimel* was such a case—fears of evidence destruction could not justify the complete search of Chimel's three-floor residence. *Chimel*, 395 U.S. at 763–64, 768. Likewise, police could not search a locked heavy footlocker the defendant was transporting ninety minutes after his arrest. *Chadwick*, 433 U.S. at 4, 14–16.

The final context is the search of automobiles incident to arrest, as well as containers within that automobile. Out of brevity, it is enough to say that officers may search within a vehicle incident to arrest, but only that area within reaching distance of the passenger compartment and only when the arrestee is unsecured at the time of the search, or if it was "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *See Arizona v. Gant*, 556 U.S. 332, 343 (2009). The United States Supreme Court has clarified that automobiles present a "unique" context—indeed there already existed an entirely independent warrant exception to search them where probable cause existed. *Gant*, 556 U.S. at 343; *see also Riley*, 573 U.S. at 385. The rule *Gant* announced was distinct from *Chimel* and left it and *Robinson* unchanged. *Id.* And automobile SITA searches are further circumscribed under the Iowa Constitution. *See Gaskins*, 886 N.W.2d at 15–16.

To conclude, there are not one but three SITA contexts. The majority erred when it flattened these distinctions to apply the wrong one to this search.

B. The majority ignored the relevant contexts and applied *Gant's* automobile SITA reasoning to find this contemporaneous *Robinson* search of Scullark's person and an item "immediately associated" with him unlawful.

Treating all SITA searches the same, the majority found that because Scullark's fanny pack had been seized and removed from his reach, it could no longer be searched. Slip.Op. 13–16. It found that record did not show the search was necessary for Bolstad's safety or to prevent Scullark from destroying evidence. Slip.Op. 14–15. In doing so, it found that *Gant* had modified *Chimel*, and likewise that *Gaskins* altered the Iowa Constitution's SITA exception. Slip.Op. 9–11, 12–13. Each of these errors requires this Court's intervention.

Addressing these errors in the reverse order and already discussed, the SITA exception applies differently based on context. A search of a person and items "immediately associated" with them are one, automobiles are another. *Riley*, 573 U.S. at 385. Thus, the majority's observation that *Gant* modified *New York v. Belton*, 434, U.S. 454 (1981) was true, but irrelevant to *this* search. *Gant* did not alter the analysis for a police search

of items associated with the person at the time of arrest or within the area of their immediate reach.[2] Slip.Op. 9–11, 14. *Riley* confirmed this:

> *Robinson*'s categorical rule strikes the appropriate balance in the context of physical objects . . . . On the government interest side, *Robinson* concluded that the two risks identified in *Chimel*—harm to officers and destruction of evidence—are present in all custodial arrests. . . . In addition, *Robinson* regarded any privacy interests retained by an individual after arrest as significantly diminished by the fact of the arrest itself.
>
> . . .
>
> Once an officer gained control of the pack, it was unlikely that Robinson could have accessed the pack's contents. But unknown physical objects may always pose risks, no matter how slight, during the tense atmosphere of a custodial arrest.

Riley, 573 U.S. at 385, 386, 387. *Gaskins's* modification of the automobile SITA standard under the Iowa Constitution is no different—it had no effect on searches of persons and their immediate effects it addressed SITA automobile searches. *Gaskin*, 866 N.W.2d at 13–15. Other jurisdictions recognize the distinction. *See Mercier*, 883 N.W.2d at 487–90; *Price*, 662 S.W.3d at 436–38; *Greene*, 585 S.W.3d at 806–08; *People v. Marshall*,

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[2] The majority alleged in a footnote the State did not allege this was a search of Scullark's person. Slip.Op. 14 n.7. The State has consistently maintained this was a search incident to arrest—it even cited the court to *Robinson*. D0056 at 17:2–19:15. It was the district court who concluded this was a lawful search under *Chimel* after it reviewed Iowa precedent. *See* D0035, Order Denying Suppr. At 2–3 (4/20/2023).

289 P.3d 27, 30–31 (Colo. 2012); Slip.Op. 24, 26–27, 28–29 (Buller, J., dissenting).

Again, contemporaneous searches of arrestee's items on their person are reasonable regardless of whether there is reason to believe a weapon is present or evidence might be lost. *Riley*, 573 U.S. at 387. The majority erred when it inquired whether the circumstances of the search supported the SITA's interests—to say nothing of its ultimate answer to that inquiry. *See* Slip.Op. 15 ("[N]othing in our record shows that the search of Scullark's fanny pack was necessary for their safety or to prevent him from destroying evidence of the assault."); 16–17 ("[T]he safety of the offices was not endangered by the contents of an item that the arrestee could not realistically access."). The fact Bolstad was arresting Scullark authorized the search. *Robinson*, 414 U.S. at 235; *Mercier*, 883 N.W.2d at 489–90; *see* Slip.Op. 19–20 (Buller, J., dissenting).

What is more, when misapplying *Gant* and *Gaskins* the majority erroneously disavowed its own past precedent. Slip.Op. 8–10, 14–16. This Court should correct that destabilizing error as well.

C. To reach its outcome, the majority erroneously jettisoned the court of appeals' past, correctly decided cases. If this Court concludes Bolstad searched an area "within Scullark's immediate control" it should retain the "time-of-arrest" formulation for personal items searched under *Chimel*.

Accepting for a moment this Court concluded that Scullark's fanny pack was not so associated with him to fall under *Robinson*, it should still vacate the court of appeals and affirm the district court. That is because the panel majority broke with this Court's past cases and erroneously disavowed its own to do so. In addition to being valid under *Robinson*, this search also fell under the *Chimel* SITA context of an area previously within Scullark's "immediate control" at the time of his arrest.

This Court's precedent authorizes those searches too, even where the defendant has already been secured. *See Shane*, 255 N.W.2d at 327–28 (upholding "substantially contemporaneous" warrantless search of a hotel bed resulting in the seizure of two guns where defendant was arrested and already handcuffed, "There is no rule which demands the suspect be given a sporting chance to get to destructible evidence or deadly weapons before the officer is able to find them. We hold the police may see to the safe custody of suspects first and then make the limited search which the circumstances of the particular case permit"); *accord State v. Canada*, 212 N.W.2d 432, 433–34 (Iowa 1973). These searches were lawful because they

occurred within the defendant's immediate area of control at the *time of arrest*. The majority overlooked this precedent and was wrong to find the fact Scullark was restrained meant this search was unlawful. *Compare* Slip.Op. 16–17 *with Shane*, 255 N.W.2d at 327–28.

And before the majority disavowed them, several Iowa cases correctly applied the logic of *Shane* and *Chimel* to approve searches of personal items within the defendant's immediate area of control at the time of arrest. *Compare* Slip.Op. 8–10, 14–16 *with Hershey*, 371 N.W.2d at 191–92 (defendant's purse which she clutched at time of arrest was within her "immediate control"); *Schiebout*, 2019 WL 4309062, at *2–3 (seizure of purse authorized under SITA exception: "we find the purse was in the immediately surrounding area—as demonstrated by her ability to grab the purse and hand it to her mother"); *Saxton*, 2014 WL 7343522, at *2 (search of backpack lawful, "It was within his wingspan at the time of arrest"); *Allen*, 2007 WL 2964316, at *3–4 ("The search was limited to the immediate vicinity of the arrest or the defendant's "grab area. Officers may search any containers located in the defendant's grab area upon the defendant's arrest." (citation omitted)); *Jones*, 2003 WL 22699655, at *1 (finding search lawful under *Chimel* and concluding backpack on defendant's person was within his "immediate control" at time of arrest); *cf.*

Canas, 597 N.W.2d at 492–93 (search of bag inside defendant's motel room unreasonable where defendant was arrested outside the room "If a search of a residence is to be upheld as a search incident to an arrest, that arrest must take place within the residence, not somewhere outside").

The district court correctly found they authorized the search here. D0035 at 2–3. The bag was within Scullark's immediate control at the time Bolstad arrested him. Exh.A at 03:10–05:20. Critically overlooked by the majority, Scullark had not been secured when the bag was seized and searched—the search occurred as he stood next to Bolstad's service vehicle alongside two associates. *See* Exh.A 06:30–10:45. He was actively trying to direct officers what items should and should not be handed to them. *Id.* Meaning the search was contemporaneous to Scullark's arrest while the bag was within his wingspan (even though he was handcuffed). The district court correctly found it was lawful. *Compare* D0035 at 2–3 *with Shane*, 255 N.W.2d at 327–28.

The majority did cite cases suppressing searches of personal items after arrest. Slip.Op. 12–13. But many of these authorities made the same mistake of applying *Gant* outside the automobile context to officers' search of an item associated with the arrestee's person or within their reach. *See* Slip.Op. 11–13. And as the dissenting judge pointed out, the issue has

divided jurisdictions. Slip.Op. 21–25 (Buller, J., dissenting) (collecting cases); *compare State v. Adams*, 45 N.E.3d 127, 159 (Ohio 2015); *State v. Byrd*, 310 P.3d 793, 798–99 (Wash. 2013); *United States v. McLaughlin*, 739 F. App'x 270, 275–76 (5th Cir. 2018); *with United States v. Davis*, 997 F.3d 191, 197 (4th Cir. 2021) (search of arrestee's backpack while he was "face-down on the ground with his hands behind his back" unlawful); *with United States v. Cook*, 808 F.3d 1195, 1198–99 (9th Cir. 2015) (finding *Gant* modified *Chimel* but upholding search of arrestee's backpack).

Given that division of authority, this Court should still vacate the court of appeals to clarify that Iowa's past cases applying *Chimel* remain good law even if it does not believe that this search was of an item immediately associated with Scullark under *Robinson*. They authorize searches of personal items within an arrestee's immediate reach at the time of arrest. The "time of arrest" rule adheres to Iowa's past cases and with all United States Supreme Court precedent in this arena. Slip.Op. at 24 (Buller, J., dissenting); *see also* 3 Wayne LaFave, *Search & Seizure: A Treatise on the Fourth Amendment*, § 5.5(a) n.4 (6th ed. 2024). And addressed below, the "time of arrest" rule is equal parts practical and preferable.

D. Permitting suspects to pass-off weapons and contraband to confederates disserves officers' and the public's safety.

Other reasons require this Court to take review and vacate the majority: clarity and common sense. Officers should not have to weigh when and where to search a bag recently on an arrestee's person—especially one that could contain a weapon. *See Shane*, 255 N.W.2d at 327–28. Nor should they suffer for preventing an arrestee from tossing off a container to their confederates. Here, Bolstad was in an emotionally charged encounter as Scullark's associates stood beside him. Had Officer Bolstad permitted the woman to receive Scullark's bag, he might have quickly found himself outmanned *and* outgunned. *See* Slip.Op. 27–28; Exh.A at 01:10–01:55, 02:20–04:15.

When police search a personal item under either the *Robinson* or a "time-of-arrest" *Chimel* rule, they must make spit-second calculations with deadly consequences. They should be permitted to "rely on the bright-line categorical rule that items and containers in the suspect's possession at time of arrest are subject to search—whether the search happens before or immediately after the suspect is safely restrained and no longer an immediate threat." Slip.Op. 27–28 (Buller, J., dissenting). These searches are consistent with the historical tradition of arrest searches, consistent

with this Court's past cases, and its repeated statements that the "timing of the formal arrest is not fatal to the search," so long as it is "substantially contemporaneous" with arrest. *See State v. Horton*, 625 N.W.2d 362, 364 (Iowa 2001); *State v. Peterson*, 515 N.W.2d 23, 25 (Iowa 1994); *State v. Hassan*, 128 N.W. 960, 963 (Iowa 1910) ("When defendants were arrested it was the duty of the sheriff to take and care for their property, and if perchance any of the property so taken in itself or when considered with other circumstances bore some evidence of defendants' guilt, this was their misfortune."). Again, officers searched Scullark's pack before they had even placed him in the vehicle. Exh.A at 06:25–10:45.

In addition to being both clear to follow and faithful to the exception's origins, the State's proposed standards preserve Iowans' privacy interests. Existing Iowa and federal caselaw already circumscribes these searches. For *Robinson* searches, the State bears the burden of showing the item was indeed associated with the defendant's person when the officer arrests them. This does little violence to Iowan's privacy rights. Such searches have been lawful since the founding. And often an arrestee's items must accompany him to the place of detention—they must be searched. *State v. Entsminger*, 160 N.W.2d 480, 484 (Iowa 1968).

And for *Chimel* searches within the arrestee's area of immediate control, the State will have the burden of establishing its search did not stray beyond those confines and was substantially contemporaneous with arrest. *See Shane*, 255 N.W.2d at 327–28. This too does little violence to Iowan's rights; it reflects almost a century of precedent. *See Agnello v. United States*, 269 U.S. 20, 30 (1925) ("The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody is not to be doubted.").

Clarity in this area of law is paramount. Arrest searches are one of the most common police perform. *Riley*, 573 U.S. at 382. Officers must know how much they can do to protect themselves without unwittingly releasing an arrestee from later accountability. And in an additional wrinkle, an Iowan arrested and charged in federal court would not have prevailed on this suppression motion. *See United States v. Perdoma*, 621 F.3d 745, 750–53 (8th Cir. 2010) (affirming search of bag after the defendant was handcuffed and an officer "had taken control of the bag"). While not binding on this Court, if there is to be an undesirable reality in which an

Iowan officer's search is lawful or unlawful based on which entity ultimately prosecutes the crime, this Court should be the one to announce it.

E. The State made the decision not to challenge jurisdiction in this case; there was no need for the majority to construe Iowa Code § 814.6(3).

One final reason remains to vacate the court of appeals—the majority's unnecessary gloss of Iowa Code section 814.6(3). The majority adopted the defendant's construction of the statute and determined that "adjudication of [a] suppression issue is in the interest of justice. . . . Because it is 'fair and right' that we decide the reserved issue, we have jurisdiction to proceed." Slip.Op. 5–6. But there was no need to construe the statute because the State did not contest jurisdiction. *See* Appellee's Br. 6–7. That decision was made because of its advocacy below. *See* D0060, Plea and Sent. Tr. at 2:18–4:6 (7/20/2023). The court should police its jurisdiction, but the majority did not need to accept Scullark's gloss for section 814.6(3) to do so. *Crowell v. State Public Defender*, 845 N.W.2d 676, 681 (Iowa 2014); Appellant's Br. 13–16. It needed only to accept the State's concession and go no further. *See State v. Sampson*, No. 23-1348, 2024 WL 3688526, at *1 n.2 (Iowa Ct. App. Aug. 7, 2024) ("On these facts, without resistance from the State, we determine the reservation of the right to challenge the preemption of the city ordinances by state law satisfies the

statute, resulting in our court having jurisdiction to hear Sampson's appeal."). Any interpretation of Iowa Code section 814.6(3) must wait until a case with adversarial briefing on the topic presents itself. *See Haskenhoff v. Homeland Energy Sols., LLC*, 897 N.W.2d 553, 614–15 (Iowa 2017) (Appel, J., concurring specially) ("An uncontested statement of law is not entitled to stare decisis.").

CONCLUSION

The two-judge majority in this case misapplied the United States Supreme Court's opinions, overlooked this Court's cases, and disavowed its own precedent to rule an arrestee may prevent police's search for a weapon or evidence by simply handing it to a confederate. That rule conflicts with this Court's precedent, lacks tether to established law, and will have adverse results for the safety of officers and the public. Left intact, the majority's disavowal of past opinions will have a further destabilizing effect. Its gloss over Iowa Code section 814.6(3) was unnecessary.

The State asks this Court to grant further review, vacate the court of appeals' decision, and affirm the district court's common-sense conclusion the search of a bag attached to Scullark's person at the time of his arrest—*that he attempted to pass off*—was lawful.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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