IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. VANESSA GALE, Defendant-Appellant.	Scott County SRCR426545 Supreme Court No. 23-1786

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
HONORABLE CHRISTINE DALTON, JUDGE

APPELLANT'S BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Officer Hughes unlawfully detained Ms. Gale without probable cause or reasonable articulable suspicion. The District Court found that there was no reasonable articulable suspicion or probable cause to stop Ms. Gale. The District Court erroneously found that probable cause to stop the passenger in Ms. Gale's vehicle, allowed officers to lawfully detain Ms. Gale.

II. The District Court imposed an illegal sentence because Ms. Gale was not previously convicted of an offense under Iowa Code § 124.401.

ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve the application of existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

Nature of the Case:

The Defendant-Appellant, Vanessa Gale, appeals her conviction for one count of possession of a controlled substance, methamphetamine 2nd offense in violation of Iowa Code § 124.401(5) (2022) and one count of possession of a controlled substance – marijuana 2nd offense in violation of Iowa Code § 124.401(5) (2022). (D0051, Order for Trial on the Minutes at 1, 10/31/23). A motion to suppress was filed, a hearing was held, and it was denied. (D0034, MTS at 2-6, 4/24/23). (D00046, Order Denying MTS at 3, 9/14/23). Ms. Gale was convicted of both counts after a bench trial on the minutes. (D0051, Order for Trial on the Minutes at 1, 10/31/23).

For Count 1, the District Court sentenced Ms. Gale to 120 days in the Scott County jail, suspended the sentence, and placed Ms. Gale on a term of probation. (D0052, Judgment and Sentence at 2, 10/31/23). For Count 2, the District Court sentenced Ms. Gale to 120 days in the Scott County jail, suspended the sentence, and placed Ms. Gale on a term of probation. (D0052, Judgment and Sentence at 2, 10/31/23). The District Court ordered the sentences run concurrently. (D0052, Judgment and Sentence at 2, 10/31/23). With regard to the fines, Ms. Gale was ordered to pay $855 for Count 1 with a 15 percent surcharge and $430 for Count 2 with a 15 percent surcharge. (D0052, Judgment and Sentence at 2, 10/31/23). Ms. Gale appeals the conviction, judgment, and sentence imposed by the Iowa District Court in Scott County following a bench trial on the minutes.

Ms. Gale challenges the District Court's finding that officers were able to detain her based upon probable cause to

arrest a passenger in her parked vehicle. Ms. Gale also asserts that the District Court imposed an illegal sentence because she was not previously convicted of an offense under Iowa Code § 124.401.

Statement of the Facts:

The minutes reflect that officer Emily Rasche conducted a search of Ms. Gale's purse without her consent and located four ecstasy tablets that tested positive for methamphetamine. (D0010, Minutes at 8, 1/2/23). Officer Cory Hughes searched her vehicle after smelling marijuana and found marijuana inside the car. (D0010, Minutes at 8, 1/2/23). The District Court found Ms. Gale had a prior conviction for possession of a controlled substance. (D0051, Order for Trial on the Minutes at 1, 10/31/23). (D0010, Minutes at 13-16, 1/2/23).

ARGUMENT

I. Officer Hughes unlawfully detained Ms. Gale without probable cause or reasonable articulable suspicion.

Preservation of Error:

Error was preserved. State v. Naujoks, 637 N.W.2d 101, 106 (Iowa 2001) (holding an adverse ruling on a motion to suppress will preserve the error for review). Ms. Gale alleged that officers did not have probable cause or reasonable suspicion to stop her vehicle in violation of both the federal and state constitutions. (D0034, MTS at 2-6, 4/24/23). Evidence was adduced on this matter and the District Court denied the motion. (D0046, Order Denying MTS at 3-4, 9/14/23).

Standard of Review:

On appeal, the standard of review of a motion to suppress on federal and state constitutional grounds is de novo. State v. Pals, 805 N.W.2d 767, 771 (Iowa 2011). "This review requires 'an independent evaluation of the totality of

the circumstance as shown by the entire record.'" Id. (citing State v. Turner, 630 N.W.2d 601, 606 (Iowa 2001)). "[D]eference [is given] to the factual findings of the district court due to its opportunity to evaluate the credibility of the witnesses, but [appellate courts are] not bound by such findings." Pals, 805 N.W.2d at 771 (citation and internal quotation marks omitted).

Merits:

Rasche was a police officer with the Davenport Police Department. (D00062, Suppression Hearing, 3:25-4:6 (9/7/23)). She was working overnight on November 27, 2022, in a covert capacity. (D00062, Suppression Hearing, 5:21-5:4 (9/7/23)). Rasche was in a plain car and street clothes. (D00062, Suppression Hearing, 9:15-18 (9/7/23)). She was conducting surveillance on a business. (D00062, Suppression Hearing, 5:6-14 (9/7/23)). That night Rasche observed Romaro Houston leave the business and drive away in his car. (D00062, Suppression Hearing, 5:16-18 (9/7/23)). Rasche

followed him and called and asked another officer to check his driving status. (D00062, Suppression Hearing, 5:21-24 (9/7/23)). Rasche learned that Houston did not have a valid license. (D00062, Suppression Hearing, 5:21-24 (9/7/23)).

Rasche followed Houston for several blocks and requested that another officer conduct a traffic stop, but other officers were en route and unable to stop him before Houston parked by a gas pump at a Kwik Star. (D00062, Suppression Hearing, 6:1-6; 10:14-16 (9/7/23)). Houston walked into the gas station. (D00062, Suppression Hearing, 10:17-21 (9/7/23)). Rasche continued to surveil Houston while he was at the gas station. (D00062, Suppression Hearing, 6:1-8 (9/7/23)). She did not approach Houston because she was undercover. (D00062, Suppression Hearing, 11:13-17 (9/7/23)).

Hughes was a police officer for the city of Davenport, Iowa. (D00062, Suppression Hearing, 19:17-21 (9/7/23)). Hughes responded to Rasche's call and did not see Houston

until he was walking out of the Kwik Star. (D00062, Suppression Hearing, 21:2-8 (9/7/23)). Houston left the gas station building with Ms. Gale and got into the front passenger side of her vehicle. (D00062, Suppression Hearing, 6:11-14 (9/7/23)). Ms. Gale drove Houston to his car, which was parked at one of the gas pumps. (D00062, Suppression Hearing, 16:3-6 (9/7/23)). Hughes waited approximately 30 seconds before he parked behind Ms. Gale's vehicle with his lights on and detained the two while they were in her car. (D00062, Suppression Hearing, 22:24-23:23 (9/7/23)). Hughes testified that they were initially waiting for Houston to go back into his car before arresting him and ultimately decided to stop him while in Ms. Gale's car because Hughes believed it was less of a flight risk. (D00062, Suppression Hearing, 23:9-23 (9/7/23)).

Hughes walked up to the driver's side and Ms. Gale rolled down her window. (D00062, Suppression Hearing, 22:1-2 (9/7/23)). Hughes testified he smelled marijuana when Ms.

Gale rolled her window down. (D00062, Suppression Hearing, 22:1-6 (9/7/23)). Hughes asked Ms. Gale and Houston to exit the vehicle so he could conduct a search. (D00062, Suppression Hearing, 22:14-17 (9/7/23)). While Ms. Gale was standing near Hughes' police car, Rasche observed Ms. Gale remove an item from her coat and put it in her purse. (D00062, Suppression Hearing, 6:22-7:3 (9/7/23)). Rasche conducted a search of Ms. Gale's person and her purse. (D00062, Suppression Hearing, 7:4-6 (9/7/23)). Officers found methamphetamine in Ms. Gale's purse and marijuana in her vehicle. (D0010, Minutes at 8, 1/2/23). Officers indicated that Ms. Gale did not engage in any traffic violations. (D00062, Suppression Hearing, 15:13-16; 30:1-4; 35:9-10 (9/7/23)).

When ruling on the motion to suppress, the District Court noted that

> Both officers Rasche and Det. Hughes had a hunch Mr. Houston hopped into Ms. Gale's car to do a drug transaction. Given what they observed, it was a good hunch, but not reasonable suspicion. Had that been the reason to stop Ms. Gale's car then the motion would have

> a completely different outcome because a hunch doesn't rise to probable cause or even reasonable suspicion.

(D0046, Order Denying MTS, at 3 (9/14/23)) (emphasis added). The District Court found that the probable cause to arrest Houston allowed officers to detain Ms. Gale. (D0046, Order Denying MTS at 3, 9/14/23).

The Fourth Amendment to the United States Constitution and Article I Section 8 of the Iowa Constitution prohibit unreasonable searches and seizures by the government. State v. Kinkead, 570 N.W.2d 97, 100 (Iowa 1997). When both federal and state constitutional claims are raised but there is no argument for an approach different from the federal standard, appellate courts "ordinarily apply the substantive federal standards but reserve the right to apply the standard in a fashion different from federal precedent." State v. Tyler, 830 N.W.2d 288, 291-292 (Iowa 2013) (citing State v. Bruegger, 773 N.W.2d 862, 883 (Iowa 2009)).

A traffic stop is a seizure under the Fourth Amendment. Tyler, 830 N.W.2d at 292. "The '[t]emporary detention of

individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of' the Fourth Amendment." State v. Warren, 955 N.W.2d 848, 859 (Iowa 2021) (internal citation omitted.) For an officer to lawfully perform a warrantless traffic stop, they must have reasonable suspicion or probable cause. Tyler, 830 N.W.2d at 192. The purpose of a stop based on reasonable suspicion is to investigate a crime, otherwise known as an investigatory stop. Tyler, 830 N.W.2d at 293. "The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot." State v. Richardson, 501 N.W.2d 495, 497 (Iowa 1993).

For an investigatory stop to comply with the Fourth Amendment, the State must prove by a preponderance of the evidence the officer had specific and articulable facts that, taken together with rational inferences from those facts, would lead the officer to reasonably believe criminal activity is afoot.

Terry v. Ohio, 392 U.S. 1, 21 (1968). State v. Vance, 790 N.W.2d 775, 781 (Iowa 2010). Whether reasonable suspicion exists is reviewed in light of the totality of the circumstances confronting a police officer. Id. If the State fails to prove reasonable articulable suspicion exists by a preponderance of the evidence, then all evidence from the stop is suppressed. Id.

For an officer to have probable cause to stop a vehicle, that individual being stopped must have already committed a crime. State v. Tague, 676 N.W.2d 197, 204 (Iowa 2004). Here, officers did not allege that Ms. Gale committed any traffic violations. (D00062, Suppression Hearing, 15:13-16; 30:1-4; 35:9-10 (9/7/23)). Meaning, there was no probable cause to stop Ms. Gale. For the stop to be lawful, officers would need reasonable articulable suspicion that criminal activity was afoot. Terry, 392 U.S. at 21. However, the District Court explicitly found that officers did not have reasonable articulable suspicion to stop Ms. Gale because they had a "hunch" about a drug deal that did not amount to reasonable

articulable suspicion. (D0046, Order Denying MTS at 3, 9/14/23).

However, the District Court erroneously found that the probable cause to arrest Houston allowed officers to detain both Houston and Ms. Gale, when there was no probable cause or reasonable articulable suspicion to detain Ms. Gale. Both Iowa and Federal case law clearly state:

> a search or seizure of a person must be supported by cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be.

State v. Gogg, 561 N.W.2d 360, 368 (Iowa 1997) (quoting Ybarra v. Illinois, 444 U.S. 85, 91 (1979)) (emphasis added). Courts are also clear that "belief of guilt must be particularized with respect to the person to be searched or seized." State v. Stevens, 970 N.W.2d 598, 605 (Iowa 2022) (quoting Maryland v. Pringle, 504 U.S. 366, 371 (2003).

Here, there was no particularized component to search Ms. Gale. Officers acknowledged that Ms. Gale did not engage

in any traffic violations and there was not probable cause for them to detain her. (D00062, Suppression Hearing, 15:13-16; 30:1-4 (9/7/23)). The District Court also found that officers had a hunch that did not amount to reasonable articulable suspicion. (D0046, Order Denying MTS at 3, 9/14/23). Without more, there was no basis to detain Ms. Gale for even a brief moment.

This case is distinguishable from other automobile searches and seizures of drivers and passengers because the initial stop was invalid. Ordinarily when appellate courts evaluate traffic stops for Fourth Amendment violations, the driver commits a traffic violation which provides officers with probable cause to stop the vehicle and seize both the driver and the passengers. State v. Price-Williams, 973 N.W.2d 556, 558-562 (Iowa 2022). See Pringle, 504 U.S. at 368. See also State v. Smith, 683 N.W.2d 542, 544 (Iowa 2004). However, it is clear that Ms. Gale did not commit any traffic violations that would warrant her being detained.

This case is analogous to Ybarra. In that case Illinois police officers had a valid search warrant for a bartender at a specific bar. Ybarra, 444 U.S. at 87-88. Ybarra was present at the time the search warrant was executed at the bar and officers searched Ybarra when there was no probable cause or reasonable articulable suspicion to do so. Id. at 91. The Supreme Court held "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." Id. Here, the probable cause to stop Houston for his earlier traffic violation did not give officers probable cause or reasonable articulable suspicion to seize Ms. Gale. Id.

Officers could have easily waited to detain Houston after he left Ms. Gale's vehicle. There was no mention of an exigent circumstance that would warrant detaining Ms. Gale in addition to Houston. Officers did not mention that they were scared for their safety, that they believed he was a flight risk, that they feared evidence would be destroyed or that they were

in hot pursuit creating exigent circumstances to detain her. State v. Naujoks, 637 N.W.2d 101 109-110 (Iowa 2001). While Hughes indicated that stopping Houston in Ms. Gale's vehicle decreased the "likelihood of flight," his actions did not demonstrate that they considered Houston a flight risk. (D00062, Suppression Hearing, 23:17-23 (9/7/23)).

Officers parked after Houston entered the Kwik Star and were able to arrest him as he was walking out but chose not to. (D00062, Suppression Hearing, 21:2-18 (9/7/23)). Officers did not immediately respond when Ms. Gale drove Mr. Houston to his vehicle. (D00062, Suppression Hearing, 22:24-23:16 (9/7/23)). (State's Ex. 1, Beginning Squad Video). (State's Ex. 1, Hughes 0-7.40, 0:00-0:30). Hughes did not approach Houston and the passenger side of the car and instead approached the driver's side to stop Ms. Gale. (State's Ex. 1, Hughes 0-7.40, 0:30-0:49). This demonstrates that officers went out of their way to seize Ms. Gale without probable cause or reasonable articulable suspicion.

"Terry is based in part upon the proposition that the right to freedom from arbitrary government intrusion is as valuable on the street as it is at home." State v. Kreps, 650 N.W.2d 636, 643 (Iowa 2002) (quoting Royer, 460 U.S. at 498). Ms. Gale was the victim of an arbitrary government intrusion and as such, all evidence from this stop should have been suppressed. Vance, 790 N.W.2d at 781. Ms. Gale asks that this Court reverse the District Court's ruling denying the motion to suppress and remand the case for further proceedings. Tyler, 830 N.W.2d at 298.

II. The District Court imposed an illegal sentence by sentencing Ms. Gale for 2nd or subsequent offenses when she was not previously convicted of an offense under Iowa Code § 124.401.

Preservation of Error:

The general rule of error preservation is not applicable to void, illegal or procedurally defective sentences. Anderson v. Iowa Dist. Ct., 989 N.W.2d 179, 181 (Iowa 2022). A defendant can challenge an "illegal sentence[s] at any time." Id. (citing State v. Lopez, 907 N.W.2d 112, 122 (Iowa 2018)).

"An illegal sentence is a sentence that could not have been lawfully imposed for the defendant's conviction or convictions." Iowa Rule of Criminal Procedure 2.24(5)(b). Ms. Gale asserts that her sentence was itself illegal and not authorized by statute because she did not meet the preconditions for second offenses. Anderson, 989 N.W.2d at 182. Therefore, this issue is preserved for appellate review.

Standard of Review:

A review of challenges to the illegality of a sentence is for errors at law. State v. Carstens, 594 N.W.2d 436, 437 (Iowa 1999). Tindell v. State, 692 N.W.2d 357, 359 (Iowa 2001).

Merits:

Ms. Gale's convictions for second subsequent offenses were unlawful because she did not have a previous conviction under Iowa Code § 124.401. The State charged Ms. Gale with one count of possession of a controlled substance, methamphetamine 2nd offense in violation of Iowa Code § 124.401(5) (2022) and one count of possession of a controlled

substance – marijuana 2nd offense in violation of Iowa Code § 124.401(5) (2022). (D0009, Trial Information at 1, 1/2/2023). (D0051, Order for Trial on the Minutes at 1, 10/31/23). The parties agreed to a bench trial on the minutes and the District Court found her guilty of both counts. (D0051, Order for Trial on the Minutes at 1, 10/31/23). Ms. Gale did not testify as to her previous conviction.

The minutes reflect that Ms. Gale had a prior conviction under Iowa Code 124.441(5). (D0010, Minutes at 14, 1/2/23). The minutes list her prior possession conviction with a case number of SRCR023967. (D0010, Minutes at 14, 1/2/23). A review of that case number on Iowa Courts Online demonstrates that Ms. Gale did not have prior convictions under 124.401(5).

Iowa courts may take judicial notice for adjudicative facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned" at any stage of the proceeding. Iowa R. Evid. 5.201(a)-(b) and (d). "Iowa

Courts Online provides adjudicative facts, the accuracy of which cannot reasonably be questioned." State v. Hopper, No. 15-1855, 2017 WL 936085, at *3 (Iowa Ct. App. Mar. 8, 2017). A conviction falls squarely within the category of an adjudicative fact. While it is generally improper to take judicial notice of records from a different proceeding without the agreement of the parties, because the parties agreed to the Court's reliance on the minutes of testimony which identified her prior conviction, this information is properly before the Court. State v. Jones, No. 22-1506, 2023 WL 2909074, at footnote 3 (Iowa Ct. App. Apr. 12, 2023).

A review of case number SRCR023967 provides that Ms. Gale pled guilty pursuant to a plea agreement for possession of prescription drug – Oxycodone - without prescription, in violation of Iowa Code § 155A.21 (2015). (D0032, SRCR023967, Cedar County, Case #07161, Order for Disposition at 1-2, (04/22/2016)). This conviction does not qualify as a prior conviction under Iowa Code Chapter 124.

Iowa Code § 124.401 details prohibited acts as related to possession, use, manufacturing, and delivery of controlled substances and their corresponding penalties. Iowa Code § 124.401(5)(a) (2022) states that

> It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this chapter or chapter 124B or 453B, or chapter 124A as it existed prior to July 1, 2017, is guilty of an aggravated misdemeanor.

(emphasis added). Ms. Gale was not convicted of violating Chapter 124, 124A, 124B, or 453B. (D0032, SRCR023967, Order for Disposition, at 1-2, (04/22/2016)). Therefore, she could not be convicted of a second offense under this subsection for possession of methamphetamine.

Similarly, Iowa Code § 124.401(5)(b) (2022) states that:

> If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one

> thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b".

(emphasis added). Ms. Gale was not previously convicted of violating Iowa Code § 124.401(5)(b). (D0032, SRCR023967, Order for Disposition, at 1-2, (04/22/2016)). Because Ms. Gale's prior conviction for possession of oxycodone was under Iowa Code § 155A.21, she cannot be convicted and sentenced for a second subsequent offense under Iowa Code §§ 124.401(5)(a) and (b) (2022).

Therefore, because neither of Ms. Gale's convictions in this case qualified as second or subsequent offenses, her sentences were illegal. Her sentences should be vacated and her case remanded for resentencing. Anderson, 989 N.W.2d at 182.

CONCLUSION

For the reasons stated above, Ms. Gale respectfully requests this Court to remand this case to the lower court for further proceedings.

NONORAL SUBMISSION

Counsel does not request to be heard in oral argument.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

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