

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 (MOTION TO SUPPRESS)
AND PHILLIP J. TABOR (BENCH TRIAL), JUDGES

APPELLANT'S REPLY BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. Ms. Gale was seized by Hughes when he approached her and leaned into her vehicle to speak to Houston.**
- II. Hughes did not have reasonable suspicion to search Ms. Gale's vehicle because Hughes was trespassing into her car.**
- III. Police did not have reasonable suspicion to seize Ms. Gale based on the probable cause to arrest Houston.**

NATURE OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on or about May 8, 2024. While the Appellant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. Ms. Gale was seized by Hughes when he approached her and leaned into her vehicle to speak to Houston.

When evaluating whether an individual was seized by police, appellate courts review the totality of the circumstances for “objective indices of police coercion...to convert an encounter between police and citizens into a seizure.” State v. Fogg, 936 N.W.2d 664, 668 (Iowa 2019) (citation omitted). When reviewing whether an individual was seized, an appellate court reviews multiple factors including the threatening presence of several officers, display of a weapon by an officer, if an officer physically touches a citizen, language or tone that indicates an officer is

compelling a person to act, or flashing lights or other signals to pull a moving vehicle to the side of the road. State v. Cyrus, 997 N.W.2d 671, 677 (Iowa 2023) (internal citations omitted). See also U.S. v. Mendenhall, 446 U.S. 544, 554 (1980) (noting that an individual does not need to attempt to leave for a seizure to occur under those circumstances). A seizure does not occur if a reasonable person would feel free to leave. Cyrus, 997 N.W.2d at 677. In the district court, the State conceded that “[p]rior to the search of the Chevy Impala [Ms. Gale’s car], the officers had only seized Vanessa Gale.” (D0037, State’s Resistance to MTS at 5 pt. 8, 6/6/23) (emphasis added).

Here, the objective facts demonstrate that Ms. Gale was seized before Officer Hughes smelled marijuana and a reasonable person would not feel free to leave. Hughes activated his lights and sirens, drove up to Ms. Gale’s vehicle, and parked his marked vehicle behind her parked car. (D044, State’s Ex. 1 - Beginning Squad Video – 0:30-0:40, 9/13/23). After parking, Hughes walked over to the driver’s side of the vehicle knowing that Houston was in the

passenger's seat. (D0062, Suppression Hearing, 6:11-14 (9/7/23)). (D044, State's Ex. 1 - Hughes 0-7.40, 0:40-0:47. 9/13/23). When Hughes reached the back of the driver's side of the vehicle, Ms. Gale began to roll her window down. (D044, State's Ex. 1 - Hughes 0-7.40, 0:40-0:47). While Ms. Gale rolled the window down without Hughes directing her to do so, it was obvious Hughes wanted to speak with her after activating his lights and walking towards her.

There was no reason for Hughes to approach Ms. Gale instead of Houston. There were no parked cars near Houston and there did not appear to be any other cars driving near the Chevy Impala. (D044, State's Ex. 1 - Hughes 0-7.40, 0:40-0:50). When Hughes approached Ms. Gale, he told her that he was not here to arrest her and spoke to her in a calm and non-threatening manner. (D044, State's Ex. 1 - Hughes 0-7.40, 0:47-0:50). However, Hughes' body posturing was aggressive. When Hughes informed Ms. Gale he wanted to speak to Houston, he placed his forearms onto Ms. Gale's window frame, leaned over into her car, and put his hands and part of his forearms inside her vehicle. (D044, State's Ex. 1 - Hughes 0-

7.40, 0:47-0:50). His arms remained inside her vehicle for approximately 40 seconds. (D044, State's Ex. 1 - Hughes 0-7.40, 0:50-1:40).

Because of the position of the body camera, it is unclear if Hughes touched Ms. Gale and there was no testimony regarding this at the suppression hearing. Hughes appears to be very close to Ms. Gale and his right hand is clearly inside her vehicle over the window frame threshold near the steering wheel. (D044, State's Ex. 1 - Hughes 0-7.40, 1:39). He is also holding a lit flashlight with his right hand. (D044, State's Ex. 1 - Hughes 0-7.40, 1:18-1:20; 1:38-1:40). Hughes' left hand is resting on the window frame and his fingers were resting on the inside of her vehicle. (D044, State's Ex. 1 - Hughes 0-7.40, 1:39). When Hughes physically intruded into Ms. Gale's vehicle, this created a threatening presence from which a reasonable person would not feel free to disregard.

Furthermore, Hughes wholly blocked Ms. Gale's ability to leave her vehicle or drive away. (Hughes 0-7.40, 0:50-1:40). While no car was parked directly in front of Ms. Gale's car, Hughes physical

presence completely restricted her ability to leave. (Hughes 0-7.40, 0:50-1:40). Hughes' physical presence made it impossible for Ms. Gale to exit her vehicle. In order for her to exit her car, Hughes would have needed to stand up, remove his arms from inside her vehicle, and step away. This also prevented Ms. Gale from driving away from Hughes because he was partially inside her car.

While no factor alone is dispositive, the use of the siren and lights on the police car, Hughes' posturing and physical intrusion into Ms. Gale's vehicle, Hughes' use of his flashlight inside of Ms. Gale's vehicle, and Hughes' position that prevented Ms. Gale from driving away or physically leaving her car created an unlawful seizure without reasonable articulable suspicion or probable cause. Hughes' actions were particularly unreasonable because there was nothing preventing him from walking to the passenger door where he knew Houston was sitting. As a result, Ms. Gale was unlawfully seized and all results from the search should be suppressed. State v. Vance, 790 N.W.2d 775, 781 (Iowa 2010).

II. Hughes did not have reasonable suspicion to search Ms. Gale’s vehicle because Hughes was trespassing into her car.

While officers are able to look through car windows without violating the Fourth Amendment under the plain view exception, it is another matter entirely when those observations are made from a location officers do not have a right to be. “Items in plain view within a car, viewed by police officers standing outside the car where they have a right to be, can furnish probable cause for a subsequent search of the car.” State v. Cullor, 315 N.W.2d 808, 811 (Iowa 1982) (emphasis added). Officer Hughes did not make his observations from outside Ms. Gale’s vehicle. Officer Hughes committed a physical trespass of Ms. Gale’s car when he leaned inside of her vehicle and attempted to speak to Houston. State v. Wright, 961 N.W.2d 396, 413-14 (Iowa 2021) (holding “[a] constitutional search occurs whenever the government commits a physical trespass against property, even where de minimis, conjoined with ‘an attempt to find something or to obtain information.’” (citations omitted)). Article I, section 8 of the Iowa

Constitution recognizes that Iowans enjoy a strong privacy interest in their effects, including their cars. See State v. Ingram, 914 N.W.2d 794, 816–17 (Iowa 2018).

Here, when Hughes put his forearms and hands inside Ms. Gale’s vehicle, it constituted a physical trespass because he did not have a right to be inside her vehicle. (Hughes 0-7.40, 0:50-1:40). State v. Wilson, 968 N.W.2d 903, 916-17 (Iowa 2022) (holding officers committed an unlawful trespass when placing his foot past the threshold of a home and his hand on the door). While Hughes was inside Ms. Gale’s vehicle, Hughes was using a flashlight with his right hand and was speaking to Houston, who he knew to be within the vehicle and with whom he had probable cause to arrest. (D044, State’s Ex. 1 - Hughes 0-7.40, 0:50-1:40). Hughes was also aware that another officer suspected that Houston was dealing drugs. (D0062, Suppression Hearing, 20:17-22; 30:8-14).

After Hughes finished speaking to Houston, Hughes started talking to Ms. Gale and noted he believed a drug deal occurred because he saw money in the vehicle and smelled marijuana.

(D044, State's Ex. 1 - Hughes 0-7.40, 2:15-2:40). As the District Court noted, Hughes had a hunch that a drug deal was occurring and did not have probable cause or reasonable articulable suspicion for Ms. Gale personally. (D0046, Order Denying MTS, at 3 (9/14/23)).

When Hughes approached Ms. Gale, there was no probable cause or reasonable articulable suspicion to detain her for even a brief moment. Hughes leaned into Ms. Gale's vehicle with his flashlight and made his observations while he was inside the vehicle, where he had no right to be. (Hughes 0-7.40, 0:50-1:40). As a result, his observations could not furnish the basis for probable cause under the plain view exception. Cullor, 315 N.W.2d at 811.

III. Police did not have reasonable suspicion to seize Ms. Gale based on the probable cause to arrest Houston.

Ms. Gale was unlawfully seized from the moment police pulled in behind her with lights activated. The District Court found there was not probable cause or reasonable articulable suspicion to detain Ms. Gale and instead found there was probable cause to seize Houston. (D0046, Order Denying MTS, at 3). While appellate

courts have held that a passenger's criminal activity can provide grounds for a stop, those cases are distinguishable to the facts at hand.

Kreps, Murillo, and Flanagan are not similar to the underlying facts because Hughes could have arrested Houston without detaining Ms. Gale unlike the defendants in the other cases. State v. Kreps, 650 N.W.2d 636, 647-648 (holding both the driver and the passenger's behaviors together constituted reasonable articulable suspicion to pull over the car). State v. Flanagan, No. 20-0652, 2021 WL 4593222, at *1 (Iowa Ct. App. Oct. 6, 2021) (acknowledging the issue of probable cause to detain the driver based on the passenger's actions was uncontested). State v. Murillo, No. 17-1025, 2018 WL 3302202, at *3 (Iowa Ct. App. July 5, 2018) (acknowledging the issue of probable cause to detain the driver based on the passenger's actions was uncontested).¹

¹ Cardenas-Celestino is not relevant. Officers in Missouri were driving to execute a warrant for Marquez and his residence based upon probable cause for selling narcotics. U.S. v. Cardenas-Celestino, 510 F.3d 830, 831 (8th Cir. 2008). As officers were driving up to the house, they saw Marquez exiting the residence with the defendant, Cardenas-Celestino, in a vehicle. Id. Officers

In Murillo and Flanagan, the officers, by necessity, had to pull the driver over as well as the passenger because the vehicle was moving. State v. Murillo, No. 17-1025, 2018 WL 3302202, at *1 (Iowa Ct. App. July 5, 2018). State v. Flanagan, No. 20-0652, 2021 WL 4593222, at *1 (Iowa Ct. App. Oct. 6, 2021). Ms. Gale was in a lawfully parked vehicle and did not violate any traffic laws while officers observed her. (D0046, Order Denying MTS, at 3).

Additionally, both officers in Murillo and Flanagan approached the passengers, who they had probable cause to arrest or issue a citation. State v. Murillo, No. 17-1025, 2018 WL 3302202, at *1 (Iowa Ct. App. July 5, 2018). State v. Flanagan, No. 20-0652, 2021 WL 4593222, at *1 (Iowa Ct. App. Oct. 6, 2021). Here, Hughes approached Ms. Gale when he did not have probable cause or

pulled over Cardenas-Celestino, who was driving the vehicle, arrested Marquez, and asked the defendant if they could search his house too. Id. 831-32. The defendant consented to a search of his house. Id. at 832. The issue at trial was about the defendant's consent for officers to search his house. Id. The issue on appeal was whether the traffic stop was valid, but that issue was not raised below and the Federal court found there was no plain error. Id. at 832-34.

reasonable articulable suspicion to detain her individually. (D0046, Order Denying MTS, at 3).

Kreps is distinguishable because both the driver and the passenger were engaging in suspicious behavior and evasive conduct. Kreps, 650 N.W.2d at 647-648. The defendant in Kreps did not violate any traffic laws, but was driving quickly and drove in a circle to attempt to evade the officer. Id. The passenger fled the car while it was moving and the Iowa Supreme Court explained that both parties' conduct when taken together constituted reasonable articulable suspicion. Id.

Here, the actions of the Ms. Gale, as the driver, did not rise to either probable cause or reasonable articulable suspicion. Officers could have arrested Houston several minutes earlier and chose not to. (D0062, Suppression Hearing, 21:2-8; 22:24-23:23 (9/7/23)). Officers chose to detain Ms. Gale based on a hunch in violation of the Fourth Amendment and Iowa Constitution.

Hughes waiting to arrest Houston is analogous to an officer prolonging a stop. The District Court noted that officers had a

hunch that further criminal activity was occurring or would occur, but that it did not rise to reasonable articulable suspicion. This is similar to Flanagan where the officer prolonged the stop to pursue and unrelated investigation beyond the scope of the initial stop. In that case, the Iowa Court of Appeals found that the officer's questions extended the duration of the initial traffic stop and all evidence after the stop were suppressed as a result. State v. Flanagan, No. 20-0652, 2021 WL 4593222, at *6 (Iowa Ct. App. Oct. 6, 2021). Similarly, officers had the opportunity to arrest Houston without detaining Ms. Gale and detained her in an attempt to investigate an unrelated hunch beyond the scope of the initial stop.

Because Hughes failed to approach Houston before he got into Ms. Gale's car, Hughes failed to approach Houston when conducting the stop, and waited to detain Ms. Gale based on a hunch that criminal activity was occurring, the probable cause to detain Houston cannot extend to Ms. Gale. As a result, all evidence from the stop should be suppressed.

CONCLUSION

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

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)(g)(1) and 6.903(1)(i)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 2,278 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

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