

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 23-1786  
Scott County No. SRCR426545

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STATE OF IOWA,  
Plaintiff–Appellee,

vs.

VANESSA GALE,  
Defendant–Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR SCOTT COUNTY  
THE HONORABLE CHRISTINE DALTON (MOTION TO SUPPRESS) AND  
PHILLIP J. TABOR (BENCH TRIAL), JUDGES

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**BRIEF FOR APPELLEE**

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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

- I. Whether Gale was unconstitutionally seized when officers approached her already parked car based on the passenger's criminal behavior.**
  
- II. Whether Gale was illegally sentenced with habitual-offender enhancements under Iowa Code section 124.401.**

## **ROUTING STATEMENT**

Transfer to the Court of Appeals is appropriate because this case can be decided based on existing legal principles. Iowa R. App. P. 6.1101(3).

## **NATURE OF THE CASE**

Vanessa Gale appeals the denial of her motion to suppress and her subsequent conviction for possession of a controlled substance—methamphetamine, second offense and possession of a controlled substance—marijuana, second offense. But, because she was not seized when the officers approached—the moment she challenges as unconstitutional—the district court appropriately denied her motion to suppress. And, even if she was seized, the officers had reasonable suspicion to do so.

Gale also argues the court imposed an illegal sentence. Because she does not have the necessary predicate offense to support the habitual offender enhancement, the case should be remanded for resentencing.

## **STATEMENT OF THE FACTS**

In the early morning hours of November 27, 2022, Davenport Police Detective Emily Rasche was surveilling a Davenport business and observed Romaro Houston walk away from a disturbance, urinate in front of his car, and drive away. D0062 (SR426545), Motion to Suppress Transcript (09/07/2023) at 4:24–5:18 (11/21/2023). Detective Rasche knew Houston

from a prior drug investigation and asked Detective Cory Hughes and Officer Joshua Derner to run his driving status; they confirmed he did not have an active license. D0062 (SRCR426545) at 5:19–24; D0010 (SRCR426545), Minutes of Testimony at 7 (01/02/2023). Detective Rasche followed Houston, but because she was in a plain car and street clothes, she asked Detective Hughes and Officer Derner to conduct a traffic stop on Houston. D0062 (SRCR426545) at 5:25–6:4; 9:15–18. Before they could stop Houston, he pulled into a gas station and went inside. D0062 (SRCR426545) at 6:4–6. Houston eventually walked out of the gas station with Vanessa Gale and the two got into her car and drove around the gas pumps toward Houston’s car. D0062 (SRCR426545) at 11:23–12:13; D0010 (SRCR426545) at 7. When Gale stopped, Detective Hughes pulled his squad car up behind her and activated his emergency lights. D0045 (SRCR426545), Exhibit 1 Hughes 0–7.40 video (flashdrive) at 00:27–00:37 (09/13/2023) (hereinafter “Hughes”).

Gale rolled down her window when Detective Hughes approached; Officer Derner stood on the passenger side. D0045 (SRCR426545) Hughes at 00:42–00:47, 01:07–01:20. Houston was holding a fanned stack of cash and the smell of raw marijuana emanated from the car. D0010 (SRCR426545) at 5, 11; D0062 (SRCR426545) at 22:1–6. Detective Hughes

immediately informed Gale he was there to talk to Houston and addressed Houston specifically about his license and his public urination. D0047 (SRCR426545) Hughes at 00:45–01:20. Detective Hughes then asked Gale for her name and if she had marijuana in the car. D0047 (SRCR426545) Hughes at 01:25–01:36. Gale denied having marijuana in the car. D0047 (SRCR426545) Hughes at 01:33–01:36. Detective Hughes asked Gale to get out of the car; as she did, her purse fell, and a packet of Raw blunt rolling paper spilled on the ground. D0010 (SRCR426545) at 11; D0047 (SRCR426545) Hughes at 01:42–02:47; D0062 (SRCR426545) at 22:18–23. Detective Hughes explained that based on the marijuana odor, the cash, and her rolling papers, he believed Houston and Gale were completing a drug transaction. D0047 (SRCR426545) Hughes at 02:30–02:50.

Detective Hughes took Gale to the front of his squad car and asked Detective Rasche to come search her. D0047 (SRCR426545) Hughes at 05:47–06:02, 07:32–07:40; D0010 (SRCR426545) at 11. As Detective Rasche arrived to search Gale, she saw Gale take something out of her pocket and put it into her purse. D0045 (SRCR426545), Exhibit 1 Rasche Bodycam 0–4.00 video (flashdrive) at 00:00–00:25 (09/13/2023) (hereinafter “Rasche”); D0045 (SRCR426545), Exhibit 1 Squad Cam Search



video (flashdrive) at 01:00–01:05 (09/13/2023) (hereinafter “Dash”); D0010 (SRCR426545) at 7. Detective Rasche placed Gale in handcuffs. D0045 (SRCR426545) Dash at 01:03–01:12; D0010 (SRCR426545) at 7.

After searching Gale’s purse, Detective Rasche found four tablets that tested positive for methamphetamine. D0010 (SRCR426545) at 8. In Gale’s car, Detective Hughes found a small baggie of marijuana and a larger baggie of marijuana, a small stack of money, and an open container of vodka. D0010 (SRCR426545) at 11–12; *see generally* D0023 (SRCR426545), Additional Minutes of Testimony (03/16/2023).

The State charged Gale with possession of methamphetamine, second offense, and possession of marijuana, second offense. D0009 (SRCR426545), Trial Information at 1 (01/02/2023). Gale moved to suppress evidence stemming from Detective Hughes’s stop, arguing he lacked reasonable suspicion. D0034 (SRCR426545), Motion to Suppress at 2–6 (04/24/2023). The district court found the officer’s “hunch” that a drug transaction was occurring inside the car alone could not amount to reasonable suspicion to stop Ms. Gale’s car. D0046 (SRCR426545), Order Motion to Suppress at 3 (09/14/2023). But, once the officers approached to detain Houston, smelled marijuana, and saw rolling papers, it found the

officers had probable cause to investigate Gale. D0046 (SRCR426545) at 3. It denied Gale’s motion.

Gale agreed to a trial on the minutes. D0061 (SRCR426545), Bench Trial and Sentencing Transcript (10/31/2023) at 6:14–7:24 (11/21/23). The minutes maintained Gale had a previous possession of a controlled substance charge in Cedar County case SRCR023967—after reviewing the minutes, Gale made no objection to the district court considering them. D0048 (SRCR426545), Additional Minutes of Testimony at 2 (10/30/2023); D0061 (SRCR426545) at 8:16–9:24. The district court found Gale guilty on both counts. D0051 (SRCR426545), Order Trial on the Minutes at 1 (10/31/2023).

## ARGUMENT

- I. **Police did not seize Gale by walking up to her car and, when she was seized, had reasonable suspicion to do so. But, even if she was seized, it was constitutionally permissible.**

### **Preservation of Error**

Gale preserved error by moving to suppress the evidence stemming from the stop of her car and receiving a ruling denying the motion. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”).

## **Standard of Review**

“When a defendant challenges a district court’s denial of a motion to suppress based upon the deprivation of a state or federal constitutional right, our standard of review is de novo.” *State v. Cyrus*, 997 N.W.2d 671, 676 (Iowa 2023) (citation omitted).

## **Merits**

Gale argues Detective Hughes and Officer Derner unlawfully seized Gale, and so any evidence stemming from their interaction should be suppressed. Apt Br. 9–21; *State v. McMickle*, 3 N.W.3d 518, 521 (Iowa 2024) (“The ‘exclusionary rule requires the suppression of evidence discovered as a result of illegal government activity.’ The exclusionary rule also requires the suppression of additional evidence tainted by the original illegality.” (internal citations omitted)). Gale argues she was seized in violation of both the United States and Iowa constitutions but does not ask for a different analysis under one or the other—so, the two can be analyzed simultaneously. *Cyrus*, 997 N.W.2d at 676.

**A. Gale was not seized when Detective Hughes approached her parked car explicitly to speak with Houston.**

The necessary starting point of the analysis is to recognize exactly when Gale was seized.<sup>1</sup> Here, by simply walking up to the parked car, Detective Hughes did not seize Gale.

To determine if someone is seized, appellate courts look at the totality of the circumstances. *State v. Fogg*, 936 N.W.2d 664, 668 (Iowa 2019). “The defendant has the burden of proof as to whether a seizure occurred.” *Id.* To satisfy her burden, Gale must show “objective indices of police coercion . . . to convert an encounter between police and citizens into a seizure.” *Id.* (citation omitted). “The element of coercion is not established by ordinary indicia of police authority.” *Id.* (citation omitted). The Iowa Supreme Court has recognized that “[w]hile most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response.” *State v. Wilkes*, 756 N.W.2d 838, 848 (Iowa 2008) (citing *INS v. Delgado*, 466 U.S. 210, 216 (1984)). “[I]noffensive contact between a

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<sup>1</sup> The State conceded in its resistance that officer seized Gale before her car was searched. D0037, Resistance to Motion to Suppress at 5 (06/06/2023).

member of the public and the police cannot, as a matter of law, amount to a seizure of that person.” *Id.* at 843.

Courts consider various indicia in the seizure analysis:

“Factors that might suggest a seizure include ‘the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.’” *Wilkes*, 756 N.W.2d at 842–43 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)). “The use of sirens, flashing lights or other signals to pull a moving vehicle to the side of the road might also constitute a show of authority that is a seizure.” *State v. Harlan*, 301 N.W.2d 717, 720 (Iowa 1981).

*Cyrus*, 997 N.W.2d at 677.

Here, the totality of the circumstances does not point to Gale’s seizure when Detective Hughes and Officer Derner approached. It is true that Detective Hughes turned on his emergency lights. D0045 (SR426545), Hughes at 00:27–00:37. But this alone is not dispositive. *See State v. White*, 887 N.W.2d 172, 176 (Iowa 2016) (recognizing emergency lights are not *per se* coercive enough to convert any encounter into a seizure); *State v. Ivankovic*, No. 15-0622, 2016 WL 3269627, at \*3–4 (Iowa Ct. App. June 15, 2016) (“While *Harlan*, does state that a display of flashing lights ‘might also constitute a show of authority that is a seizure,’ 301 N.W.2d at 720,

under the totality of the circumstances presented here, Deputy Barber did not restrain Ivankovic’s liberty in any way prior to rousing him.”).

Weighing against a seizure, Gale’s car was already parked when officers approached—they did not stop her. *See Harlan*, 301 N.W.2d at 720 (differentiating between stopping a car—“obviously a seizure”—and approaching a stopped car). Gale rolled the window down before Detective Hughes approached rather than at his direction. *See id.* (noting that when “[p]rior to observing defendant’s intoxicated state, there is no indication that [the officer] spoke or gestured to [the defendant],” it weighs against a seizure); *see also California v. Hodari D.*, 499 U.S. 621, 627–29 (1991) (noting a seizure occurs only after a defendant submits to the necessary show of authority); *Ivankovic*, 2016 WL 3269627 at \*3 (“A submission to a ‘show of authority’ is required for a seizure to occur.”). Detective Hughes immediately told her he was not there to talk to her, but to Houston. *Cyrus*, 997 N.W.2d at 680 (finding an officer’s “nonthreatening and conversational” statements weighed against seizure). The car had a clear exit out of the parking lot. *Fogg*, 936 N.W.2d at 670 (weighing if a defendant’s path to leave the scene is blocked off in determining seizure).

Considering the totality of the circumstances, the officers here did not seize Gale by walking up to her already parked car.

**B. Officers had reasonable suspicion to convert the encounter into a seizure after approaching the car, seeing the cash in Houston’s lap, and smelling marijuana.**

Without a warrant, “[a]n officer can stop an individual or vehicle for investigatory purposes for a brief detention based only on a reasonable suspicion that a criminal act has occurred or is occurring.” *State v. Baker*, 925 N.W.2d 602, 610 (Iowa 2019). “To justify an investigatory stop, the State must prove by a preponderance of the evidence that the stopping officer had ‘specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant[ed] that intrusion.’” *Id.* at 611 (alteration in original) (citation omitted). To support a warrantless search, officers must have probable cause.

After officers approached, they could see cash fanned in Houston’s hand that he seemed to be counting and smelled marijuana emanating from the car. DO010 (SRCR426545) at 5, 11; DO062 (SRCR426545) at 22:1–6. Officers were well within rights to look through the window and make these observations. *U.S. v. Bynum*, 508 F.3d 1134, 1137 (8th Cir. 2007) (because “[t]he act of looking through a car window is not a search for Fourth Amendment purposes,” “[n]either probable cause nor reasonable suspicion is necessary for an officer to look through a window (or open door) of a vehicle so long as he or she has a right to be in close proximity to the

vehicle”); *State v. Lowe*, 812 N.W.2d 554, 568–69 (Iowa 2012) (“The police are free to observe areas they may not constitutionally enter without a warrant or some other recognized exception to the warrant requirement. Officers entering areas that are open to the public do not wear a blindfold. So long as officers make their observations from a location where they have a right to be, they have ‘a right to see what [is] visible from that position.’” (citations omitted)). What they saw and smelled provided reasonable suspicion for officers to detain Gale by asking her to get out of the car. *See Wilkes*, 756 N.W.2d at 844 (“Once [the officer] smelled the alcohol, he had a reasonable and articulable suspicion of criminal activity to detain Wilkes and administer sobriety tests.”); *cf. State v. Warren*, 955 N.W.2d 848, 866 (Iowa 2021) (“We have previously held the odor of marijuana drifting from a vehicle provides probable cause to search the vehicle, so it logically follows that the same circumstances provide reasonable suspicion to continue a valid ongoing traffic stop.”). Additionally, under the automobile exception, officers could search the vehicle without a warrant because they had “probable cause to believe [the vehicle] contain[ed] contraband.” *State v. Rincon*, 970 N.W.2d 275, 280 (Iowa 2022); *see also State v. Eubanks*, 355 N.W.2d 57, 59 (Iowa 1984) (“The odor of that controlled substance in



the automobile gave the patrolman reasonable cause to conduct a comprehensive search of the car.”).

With a proper understanding of when Gale was seized, there is no question officers innocuously approached her car and only converted that encounter into a seizure after they had reasonable suspicion of drug activity. As such, the district court properly denied the motion to suppress.

**C. Even if Gale was seized when Detective Hughes walked up to her car, police had reasonable suspicion to do so because Houston was a passenger.**

Even if this court finds Gale was seized from the moment police began their approach, the encounter fell into a recognized exception to the warrant requirement which “allows an officer to stop an individual or vehicle for investigatory purposes for a brief detention based only on a reasonable suspicion that a criminal act has occurred or is occurring.” *Baker*, 925 N.W.2d at 610.

The passenger’s criminal activity can provide justification for the stop. In *State v. Kreps*, 650 N.W.2d 636, 647 (Iowa 2002), the supreme court evaluated a case where the driver was not violating any traffic law when stopped. The driver seemed to be evading the officer behind him, but their actions alone did not rise to reasonable suspicion. *Id.* at 648. But the car pulled over and “the passenger exited the vehicle while it was still

moving and ran from the vehicle between houses. At the point where the vehicle stopped, the officer activated his red lights.” *Id.* In evaluating if the officer was justified in stopping the car, the court held:

The fact that it was the passenger rather than the driver who fled does not change our conclusion. . . . [T]he fact that [the officer] did not have reasonable suspicion concerning every occupant of the vehicle he was following does not render his investigatory stop invalid. Because [the officer] had reason to suspect that the passenger was involved in criminal activity occurring within the car, or involving the car itself, such fact serves as a basis for a reasonable suspicion that the driver—Kreps—may have been a participant in that activity. At this point, the Fourth Amendment did not require [the officer] to merely “shrug his shoulders” and let criminal conduct occur or a criminal to escape. He was allowed to take the intermediate course—stop, investigate, and resolve the ambiguity.

*Id.* Similarly here, the officers could stop the car based on reasonable suspicion of the Houston’s criminal activity rather than Gale’s. *See State v. Flanagan*, No. 20-0652, 2021 WL 4593222, at \*3 (Iowa Ct. App. Oct. 6, 2021) (allowing a traffic stop for the passenger’s seat belt infraction); *State v. Murillo*, No. 17-1025, 2018 WL 3302202, at \*3 (Iowa Ct. App. July 5, 2018) (sanctioning an initial traffic stop to arrest a passenger known to have an outstanding warrant); *U.S. v. Cardenas-Celestino*, 510 F.3d 830, 833 (8th Cir. 2008) (“When probable cause to arrest exists, police are authorized to stop a vehicle containing the subject.”). Based on the officer’s

knowledge that Houston drove without a valid license, they had reasonable suspicion to stop the car.

## **II. The district court imposed an illegal sentence.**

### **Preservation of Error**

Because Gale challenges an illegal sentence, the State does not contest error preservation. *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000).

### **Standard of Review**

“A challenge to an illegal sentence is reviewed for correction of legal errors.” *State v. Ragland*, 836 N.W.2d 107, 113 (Iowa 2013). “An illegal sentence is one that is not permitted by statute.” *Woody*, 613 N.W.2d at 217.

### **Merits**

Gale argues that she received an illegal sentence under Iowa Code section 124.401(5) because she did not have the necessary predicate conviction. Section 124.401 reads:

- a. 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. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this chapter or chapter 124B or 453B, or chapter 124A as it existed prior to July 1, 2017, is guilty of a class “D” felony.

b. 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”. If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

It is true that if defendant receives a recidivist sentencing enhancement without the necessary prior offenses, it is an illegal sentence. *Woody*, 613 N.W.2d at 217 (“This is because habitual-offender statutes do not charge a separate offense; they only provide for enhanced punishment on the current offense. . . . What we have here, therefore, is an illegal sentence if the habitual-offender statutes do not apply. An illegal sentence is one that is not permitted by statute.”); *State v. Freeman*, 705 N.W.2d

286, 291 (Iowa 2005) (interpreting 124.401(5) as a habitual offender enhancement).

Gale is correct that the Cedar County conviction in SRCR023967 listed in the minutes of testimony was a violation of 155A.21, possession of a prescription drug—oxycodone—without a prescription. D0032 (SRCR023967), Order for Disposition at 1 (04/22/2016); D0048 (SRCR426545) at 2. Because 155A is not one of the enumerated chapters in 124.401(5), it does not satisfy the prerequisite offense for the enhancement. As such, the case should be remanded for resentencing. *Freeman*, 705 N.W.2d at 291–92.

### **CONCLUSION**

Because the officers did not seize Gale by approaching her car, the district court correctly denied her motion to suppress. Even if she was seized, reasonable suspicion supported the seizure. But, because Gale does not have the necessary predicate sentence to support the habitual offender enhancement, the case should be remanded for resentencing.

## REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g) and 6.903(1)(i)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,470** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

Dated: May 8, 2024



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