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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff–Appellee, v. CALVIN ORLANDO HOSKINS, Defendant–Appellant.	BLACK HAWK COUNTY COURT NO. FECR258584 SUPREME COURT NO. 25-0603

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE JOEL A. DALRYMPLE, JUDGE (SUPPRESSION);
THE HONORABLE ANDREA J. DRYER, JUDGE (DISPOSITION)

APPELLANT'S REPLY BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

The district court erred in denying Hoskins' motion to suppress, because the contraband was not in plain view and therefore its warrantless seizure was conducted in violation of the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution.

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 brief filed on or about September 19, 2025. 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

The district court erred in denying Hoskins' motion to suppress, because the contraband was not in plain view and therefore its warrantless seizure was conducted in violation of the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution.

At the outset, a point of clarification. The State includes in its recitation of the plain-view test that discovery of the item at issue must have been inadvertent. Appellee's Brief pp. 12, 14–15. Inadvertence has not been a requirement of the plain-view exception for 35 years. Horton v. California, 496 U.S. 128, 141 (1990); State v. Hunt, 974 N.W.2d 493, 502 (Iowa 2022) (Appel, J., dissenting) ("[T]he Supreme Court abandoned the inadvertence

requirement in *Horton v. California* . . . thereby eliminating one of the protections against pretextual searches.").

The State makes excuses for Officer Blackburn's inaccurate testimony, writing off his errors as memory problems rather than dishonesty. But this distinction makes no particular difference; the bottom line is that Blackburn's testimony—upon which the State relies for establishing the plain-view exception applies—was inaccurate in numerous respects. Whether due to a poor memory or dishonesty, this means his testimony was not reliable for establishing that the plain-view requirements were met.

Blackburn's question "[w]hat's in your pocket right here" is strong evidence the baggie was not in plain view. D0038 Exhibit C Blackburn Body Camera at 01:43:47–01:43:51 (1/30/2025). The baggie was not in Hoskins' pocket; it was in his waistband. Blackburn's question would nonetheless make sense, if what he saw was a bulge in Hoskins' pants, near his pocket, rather than a baggie sticking from his waistband like he testified. Instead, Blackburn claimed he "misspoke." D0067 p. 30 L. 17–18. But the

circumstances suggest he did not misspeak; shining a flashlight toward Hoskins' pocket and asking what was in it suggests Blackburn saw something he could not identify, in what he believed was Hoskins' pocket. An unidentifiable lump is not enough for the plain-view exception to apply, because it does not give rise to probable cause. See State v. Ragsdale, 720 N.W.2d 194 (Iowa Ct. App. 2006). The State's comment that "the simplest explanation for Blackburn's spontaneous question and flashlight usage is that he saw something worth asking about *and viewing*" is apt. Appellee's Brief p. 16 (emphasis added). Blackburn saw a bulge, and wanted to see more. That is not plain view.

The video evidence supports the conclusion the baggie was not in plain view. True, Hoskins is very briefly out of frame in Blackburn's body-camera footage after Blackburn asked what was in his pocket. But he is visible, with his waistband completely covered by his shirt, immediately before that. D0038 at 01:43:48–01:43:49. He is visible for the entire encounter, albeit from a further distance, in the car-camera footage, as is Blackburn

grabbing his shirt and raising it from Hoskins' waistband after asking what is in his pocket. D0037 Exhibit B Blackburn Squad Car Camera at 01:43:45–01:44:01 (1/30/2025). No baggie, nor Hoskins' waistband, is ever visible until Blackburn grabs and lifts Hoskins' shirt.

On this subject, the State's claim Blackburn accurately testified the baggie was visible in the video because he meant it was visible *after* lifting Hoskins' shirt—even though the focus of the entire hearing, and the immediately preceding questions, was the plain-view exception—is not helpful to its case. See Appellee's Brief pp. 18–19. The focus was, and is, on what an officer in Blackburn's position would have seen and known *prior* to the search and seizure, not after. If the State is correct that Blackburn was testifying the baggie was visible in the video after he lifted Hoskins' shirt, that means at best Blackburn's testimony on this point was irrelevant, and at worst it was misleading by technicality.

The State makes a similar claim to justify the discrepancy between Blackburn writing Hoskins drove by at a "high rate of

speed" in his report and the complaint, then describing the speed as "regular" and approximately at the speed limit during testimony. Appellee's Brief p. 17. Even if Blackburn thought "high rate of speed" and "regular" speed are not mutually exclusive, this does not explain why he used the former phrase in his report and the latter in his testimony. It is not necessary that this Court conclude Blackburn testified with "nefarious intent"; if it views this as one of numerous "misrememberance[s]" pervading his versions of events, the result is the same. See Appellee's Brief p. 17.

Blackburn claimed he removed Hoskins from his vehicle in order to investigate whether he was intoxicated. D0062 p. 14 L. 14–p. 15 L. 21. But he made no mention of that suspicion in his report, conducted no investigation to that effect, and claimed his suspicion was triggered because his partner said a bottle on Hoskins' back seat was "open" even though the officer did not actually say that. Compare D0067 p. 14 L. 2–5 with D0038 at 01:43:18–01:43:37. The State brushes this omission away, suggesting Blackburn may have simply determined Hoskins was

not intoxicated and so moved on. Appellee's Brief p. 18. But that misses the point. The purported intoxication suspicion is just another post-hoc explanation Blackburn came up with to justify his actions. Blackburn was not required to continue his investigation whether Hoskins was intoxicated, and may well have concluded he was not and moved on. But making no mention of it until the hearing is suspicious, and suggests he was not testifying accurately and instead was trying to prevent the suppression of evidence after the fact.

Blackburn's description of what happened immediately before he seized the baggie is also contrary to both logic and what he wrote in his reports. At the hearing, Blackburn claimed he saw the baggie sticking out of Hoskins' waistband, and immediately recognized it as containing a controlled substance. D0067 p. 17 L. 22–p. 18 L. 3, p. 20 L. 14–23. Despite this claim, he also said he was not going to seize the baggie, and only did so when Hoskins reached for it. D0067 p. 30 L. 2–6. Once again, Blackburn described the incident differently in his police report. In his report, he wrote that he

"reached towards the bag" first, and Hoskins reacted. D0016 Minutes p. 12 (11/6/2024). Again, the point is not that who reached first is legally significant in and of itself, but that Blackburn's differing, contradictory version of events show his testimony does not deserve deference on appeal.

Finally, even though Blackburn's statement at the scene that Hoskins' name "sounds familiar" indicates Blackburn did not recall the purported morning briefing where Hoskins' name came up, the State argues Blackburn nonetheless suspected Hoskins of "criminality" which should factor into the probable cause evaluation. Appellee's Brief p. 22. That is incorrect. All of the in-video statements the State relies on for that point occurred after the seizure had occurred, and so are not a particularly good source of information about what Blackburn knew beforehand. It is apparent generally that neither officer was familiar with Hoskins and had not encountered him before. And the content of those statements add nothing to the probable cause evaluation. That Blackburn expressed surprise Hoskins had a valid driver's license does not

move that needle at all. Similarly, even if the State is correct that the officers were discussing "pull[ing]" records after they arrested Hoskins—which is speculative at best—that adds nothing to the probable cause evaluation. See Appellee's Brief pp. 21–22. That officers might consider looking up information about someone they have arrested is not remarkable, and does not equate to the officers knowing anything in particular. To the contrary, the totality of the evidence indicates the purported briefing information, at most, came to Blackburn after the fact rather than on the night of the incident. It is another post-hoc attempt to justify what the officers did, not information known to the officers at the time which could weigh in favor of probable cause.

It is not particularly relevant whether Blackburn was dishonest or if he, as the State suggests, misremembered numerous details. Either way his testimony, upon which the State relies and the district court relied, was not credible and failed to establish the facts necessary for application of the plain-view exception to the warrant requirement. In addition to Blackburn's numerous

misstatements, omissions, and contradictions, the video evidence lays his lack of credibility bare because it establishes the baggie was not visible until Blackburn grabbed and lifted Hoskins' shirt, contrary to his testimony. The district court erred in denying Hoskins' motion to suppress.

Conclusion

The district court erred in denying Hoskins' motion to suppress. The baggie was not visible sticking out of Hoskins' waistband prior to police manipulation, and even if it was that is insufficient to give rise to probable cause. Hoskins' conviction should be vacated, all evidence stemming from the unconstitutional search and seizure should be suppressed, and the case should be remanded for further proceedings.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

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 1,562 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).



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