

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 19-1614

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

STEVEN EDWARD STRUVE,  
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR CLINTON COUNTY  
THE HONORABLE MARLITA A. GREVE, JUDGE

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**APPELLEE'S BRIEF**

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## STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

### I. **Whether the District Court Properly Denied the Motion to Suppress When Officers Reasonably Suspected the Defendant Was Illegally Using His Mobile Device While Driving.**

#### *Authorities*

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*Illinois v. Wardlow*, 528 U.S. 119 (2000)  
*Navarette v. California*, 572 U.S. 393 (2014)  
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*State v. Kreps*, 650 N.W.2d 636 (Iowa 2002)  
*State v. Morsette*, 924 N.W.2d 434 (N.D. 2019)  
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4 Wayne R. LaFare, *Search and Seizure* § 9.4(b) (3d ed.1996)  
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U.S. Dep't of Transp., Nat'l Highway Traffic Safety Admin.,  
Distracted Driving 2015 (March 2017),  
[https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812\\_381\\_distracteddriving2015.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812_381_distracteddriving2015.pdf)

## ROUTING STATEMENT

The defendant seeks retention by alleging his case presents “a substantial question of first impression.” Def. Proof Br. at 8. The State agrees to the extent that this case may require interpretation of Iowa Code section 321.276, which prohibits many uses of hand-held communication devices while driving. *See* Section I(D), pp. 22–30. However, some factors weigh against retention. First, both parties agree this case calls for an application of the familiar reasonable-suspicion standard, albeit to a previously uninterpreted provision. Second, any interpretation of the current version of section 321.276 might be short-lived—both the Senate and the House are considering amendments to section 321.276 that would require “hands free” operation of mobile devices while driving. *See* S.F. 76, S.F. 2248, H.F. 2119, H.F. 2375 (88th Gen. Assemb.). Accordingly, transfer to the Court of Appeals may be appropriate to decide the reasonable-suspicion issue based on existing legal principles. Iowa R. App. P. 6.1101(3).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

Defendant Steven Struve appeals his conviction and sentence for possession with intent to deliver methamphetamine following the denial of his motion to suppress.

### **Course of Proceedings**

The State accepts the defendant's statement of the course of proceedings as substantially correct.

Additionally, the State notes that Struve does not appeal the probation revocation in FECR073310. *See* Notice of Appeal (9/26/2019); App. 44 (only appealing the judgment entered in FECR076297). For that probation revocation in the un-appealed case, the district court imposed a 10-year sentence consecutive to his sentence in the present case. Sentencing Order (9/26/2019) at 2; App. 40.

### **Facts**

Defendant Struve drove a car while holding a mobile phone in front of his face and moving his thumb across the lit screen. *Suppr.* Tr. 3:6–20, 21:4–17.

That night, at around 9 p.m., Clinton Police Officers Roger Schumacher and Curtis Blake were driving down Camanche Avenue,

a divided highway with three lanes in each direction. Suppr. Tr. 2:7–22, 20:20–21:3. In the darkness, they noticed the light of an illuminated phone screen in the car next to them. Suppr. Tr. 2:23–3:17, 21:4–11. The driver was holding the illuminated phone in front of his face. Suppr. Tr. 3:18–4:7, 10:18–25, 21:18–24, 27:22–28:3. He was moving his thumb or finger around the screen. Suppr. Tr. 11:1–7, 28:10–23. Officers could not see what was on the screen. Suppr. Tr. 5:24–25. The car was “bouncing around, back and forth” in its own lane. Suppr Tr. 28:4–9. The driver continued to hold the illuminated screen in front of his face for approximately 10 seconds before officers decided to stop him. Suppr. Tr. 21:11–17.

Struve was still manipulating the phone in his hand when officers approached the car. Suppr. Tr. 4:8–14. Officer Schumacher explained they stopped the car because it is illegal to text and drive. Suppr. Tr. 4:15–19. Struve responded that he did not know it was illegal in Iowa, and he claimed that he was going through his phone’s gallery and showing photos to his passenger. Suppr. Tr. 4:19–22.

The squad car and each officer had a video camera. The car camera recorded the light of a mobile phone screen held at approximately eye level in Struve’s car. State’s Ex. 3 (car video) at

T01:50:45. The light from the phone remained visible for 10 seconds, until the camera lost its angle as the squad car slowed. State's Ex. 3 (car camera) at T01:50:45–01:50:56. Officer Schumacher's body camera recorded Struve holding the illuminated phone in his hand when officers walked up to the car. State's Ex. 1 (Schumacher video) at T01:51:20. Struve told Officer Schumacher that he did not know it was illegal in Iowa to use a phone while driving, and he admitted that he was showing photos to his passenger. State's Ex. 1 (Schumacher video) at T01:51:20–01:52:40. Later, Officer Blake's camera recorded Struve repeating that he did not know Iowa prohibited using a phone while driving. State's Ex. 2 (Blake video) at T01:56:15.

While Officer Schumacher spoke with Struve at the driver's window, Officer Blake spoke with the female passenger. Suppr. Tr. 22:2–6. Officer Blake then spotted a methamphetamine pipe protruding from a bag in the back seat, which gave officers probable cause to search the vehicle. Suppr. Tr. 22:7–15. Officers found paperwork bearing Struve's name inside the same bag as the methamphetamine pipe. Suppr. Tr. 24:6–23. And while checking the center console next to the driver's seat, officers discovered that the tray inside was not screwed down. Suppr. Tr. 6:23–7:8. Underneath

the tray were two digital scales and a plastic bag containing methamphetamine. Suppr. Tr. 7:8–10.

Struve was arrested and searched. Minutes (Curtis report at 5); Conf. App. 16. Struve had \$419, mostly in \$20s and \$50s. Minutes (Complaint at 2); Conf. App. 8. During the arrest process, Struve asked to retrieve a phone number from his cell phone. Minutes (Blake report at 5); App. 16. To prevent Struve from deleting evidence, Officer Blake handled the phone while Struve directed him how to find the number. Minutes (Blake report at 5); Conf. App. 16. Officer Blake noticed Struve had 25 unread messages in one application and 8 unread messages in Facebook Messenger. Minutes (Blake report at 5); Conf. App. 16. In total, officers seized 3 phones from Struve and the vehicle. Minutes (Blake report at 5); Conf. App. 16.

Lab testing confirmed the plastic bag from the center console contained methamphetamine weighing 22.99 grams. Add'l Minutes (DCI lab report); Conf. App. 34.

## ARGUMENT

### I. **The District Court Properly Denied the Motion to Suppress Because Officers Reasonably Suspected Struve Was Illegally Using His Mobile Device While Driving.**

#### **Preservation of Error**

Struve preserved error by raising his challenge in a motion to suppress and receiving an adverse ruling in the district court. Ruling (6/5/2019); App. 20.

#### **Standard of Review**

“We review constitutional issues de novo, under the totality of the circumstances.” *State v. Kreps*, 650 N.W.2d 636, 640 (Iowa 2002).

#### **Discussion**

Police did not violate Struve’s constitutional rights by conducting a brief investigatory stop. Struve’s conduct of holding a lit phone in front of his face and manipulating the screen with his finger provided reasonable suspicion that he was committing a traffic violation. The circumstances suggested he was not using his phone in a legal manner, and officers were allowed to clear up any ambiguity with a stop and reasonable questioning. Finally, Iowa’s so-called “texting while driving” statute prohibits a wider variety of mobile-

device uses than other states, so Struve’s reliance on foreign case law is not persuasive. Accordingly, this Court should affirm the denial of his motion to suppress.

**A. The reasonable-suspicion standard does not require certainty.**

A police officer may “stop an individual or vehicle for investigatory purposes based on a reasonable suspicion that a criminal act has occurred or is occurring.” *Kreps*, 650 N.W.2d at 641; accord *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968)). “Generally, a traffic stop is reasonable when the police have probable cause or reasonable suspicion to believe that the motorist violated a traffic law.” *State v. Brown*, 930 N.W.2d 840, 845 (Iowa 2019) (citing *Navarette v. California*, 572 U.S. 393, 401–02 (2014)).

“To justify an investigatory stop, the officer must be able to point to ‘specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *Kreps*, 650 N.W.2d at 641 (quotation omitted)).

“Whether reasonable suspicion exists for an investigatory stop must be determined in light of the totality of the circumstances confronting a police officer, including all information available to the officer at the time the decision to stop is made.” *Id.* at 642 (citing *United States v.*

*Arvizu*, 534 U.S. 266, 273 (2002)). “The circumstances under which the officer acted must be viewed ‘through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training.’” *Id.* (quotation omitted).

“[R]easonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence...” *Id.* (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). “[T]he Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause for arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.” *Id.* at 643 (quoting *Adams v. Williams*, 407 U.S. 143, 145 (1972)). One expert has commented that the *Terry*’s reasonable-suspicion standard is satisfied with a “substantial possibility that criminal conduct has occurred, is occurring, or is about to occur.” *Id.* at 642 (quoting 4 Wayne R. LaFave, *Search and Seizure* § 9.4(b), at 146 (3d ed.1996)).

“[R]easonable cause may exist to investigate conduct which is subject to a legitimate explanation and turns out to be wholly lawful.” *Id.* (quoting *State v. Richardson*, 501 N.W.2d 495, 497 (Iowa 1993)).

“The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot.” *Id.*

[P]olice officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.... [S]uspicious conduct by its very nature is ambiguous, and the principle function of the investigative stop is to quickly resolve that ambiguity. Therefore, if any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.

*Id.* at 643 (quoting *State v. Anderson*, 454 N.W.2d 763, 765 (Wis. 1990)). “The purpose of an investigatory stop is to allow a police officer to confirm or dispel suspicions of criminal activity through reasonable questioning.” *Id.* at 641.

**B. Officers had reasonable suspicion that Struve was violating the statute by using his phone while driving.**

Iowa law prohibits many uses of mobile phones while driving. “A person shall not use a hand-held electronic communication device to write, send, or view an electronic message while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway.” Iowa Code § 321.176(2). “Electronic message” is specially defined as “images visible on the screen of a

hand-held electronic communication device” and includes “a text-based message, an instant message, a portion of electronic mail, an internet site, a social media application, or a game.” *Id.* § 321.176(1)(a).

Police stopped Struve after observing an apparent violation of this statute. As Struve drove down a divided highway, officers noticed the light of an illuminated phone screen shining from his vehicle. Suppr. Tr. 2:7–3:17, 21:4–11. Struve was holding the illuminated phone in front of his face. Suppr. Tr. 3:18–4:7, 10:18–25, 21:18–24, 27:22–28:3. And he was moving his thumb or finger around the screen. Suppr. Tr. 11:1–7, 28:10–23. He continued holding and manipulating the lit phone for at least ten seconds. Suppr. Tr. 21:11–17. A video from the squad car confirmed that he held the lit phone at eye level for ten seconds. State’s Ex. 3 (car camera) at T01:50:45–01:50:56.

Based on these observations, the officers held a reasonable suspicion that Struve was violating section 321.276. The position of the phone in front of this face and the movement of his finger across the lit screen would lead a reasonably cautious person to suspect he was writing or viewing a message. Although officers could not see

exactly what was on his screen (Suppr. Tr. 5:24–25), they did not have to “simply shrug [their] shoulders and allow a crime to occur or a criminal to escape.” *Kreps*, 650 N.W.2d at 643 (quoting *Adams*, 407 U.S. at 145). Officers did not have to be certain that Struve was violating the statute; rather, they needed “considerably less” than a fifty-fifty chance of a violation. *See id.* at 642 (quoting *Wardlow*, 528 U.S. at 123) (“[R]easonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence...”).

Given the facts known to officers, they acted reasonably to intervene and stop the potential danger of Struve’s distracted driving. “A good test of such a founded suspicion is that ‘the possibility of criminal conduct was strong enough that, upon an objective appraisal of the situation, we would be critical of the officers had they let the event pass without investigation.’” *Id.* at 642–43 (quoting *LaFave*, § 9.4(b), at 148). Distracted driving causes thousands of highway deaths and hundreds of thousands of injuries each year. *See* U.S. Dep’t of Transp., Nat’l Highway Traffic Safety Admin., *Distracted*

Driving 2015, at 1 (March 2017)<sup>1</sup> (indicating that in 2015, 3,477 people died and an estimated 391,000 people were injured in crashes involving distracted drivers). Struve in particular exhibited symptoms of distracted driving—his car was “bouncing around, back and forth” in its own lane. Suppr. Tr. 28:4–9. Therefore, officers had a heightened interest to investigate Struve to ensure he was not creating a danger by using his phone in a prohibited manner while driving.

Officers acted reasonably. They observed Struve driving while manipulating a lit phone in front of his face. Certainty of a violation was not required—they could act with reasonable suspicion and conduct a brief stop to investigate the circumstances. And given the danger of distracted driving, officers could intervene to determine whether Struve’s phone use interfered with his ability to drive without “bouncing” back and forth in traffic. Because reasonable suspicion justified the stop, the district court properly denied the motion to suppress.

<sup>1</sup> Available at [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812\\_381\\_distracteddriving2015.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812_381_distracteddriving2015.pdf) (last visited Apr. 20, 2020).

**C. The circumstances dispel Struve’s suggestion that he might have been using the phone for a lawful purpose.**

Struve’s position would demand a higher burden than reasonable suspicion. The crux of his argument is that officers “could point to no articulable fact to support an objectively reasonable belief Struve was using/manipulating the phone *for a prohibited purpose* rather than for a purpose lawful under the statute.” Def. Proof Br. at 33. But the circumstances known to officers diminished any reasonable likelihood that Struve was using his phone for a lawful purpose while driving. And more fundamentally, the reasonable-suspicion standard did not require officers to eliminate every possible innocent explanation before initiating a brief investigatory stop.

Section 321.176 permits some uses of mobile devices while driving, but circumstances dispelled any likelihood that Struve’s conduct fell under those exceptions.

- The facts did not suggest that Struve was “using a global positioning system or navigation system...” See Iowa Code § 321.176(2)(a). Officers saw him holding the phone up in front of his face and touching the screen (Suppr. Tr. 10:18–11:7, 27:22–

28:23), which was not consistent with a motorist following turn-by-turn directions while driving.

- The facts did not suggest that Struve was manipulating his phone “for the purpose of engaging in a call...” *See* Iowa Code § 321.276(2)(a). Officers observed Struve holding the phone at eye level and touching the screen for at least 10 seconds (Suppr. Tr. 10:18–11:7, 21:11–17, 27:22–28:23), but he never placed the phone to his ear as if he was placing a phone call.
- The facts did not suggest that Struve was “receiving safety-related information including emergency, traffic, or weather alerts.” *See* Iowa Code § 321.276(2)(b)(3). The video of the stop showed that traffic was sparse and the weather was clear (State’s Ex. 3 – squad car video), so there would be no reason to think he was checking for emergency, traffic, or weather alerts.
- And it was obvious that Struve was neither “[a] member of a public safety agency ... performing official duties” nor “[a] health care professional in the course of an emergency situation.” *See* Iowa Code § 321.176(2)(b)(1)–(2).

Because the circumstances known to officers diminished any likelihood that Struve was using his phone for one of these lawful

purposes, their observations solidified their reasonable suspicion that he was violating the statute.

Even if there might have a legitimate explanation for Struve’s use of a mobile device while driving, the officers were “not required to rule out the possibility of innocent behavior before initiating a brief stop.” *Kreps*, 650 N.W.2d at 643. The reasonable-suspicion standard permitted them to investigate Struve’s phone use even if that conduct was “subject to a legitimate explanation and turn[ed] out to be wholly lawful.” *Id.* at 642. In fact, the very purpose of the reasonable-suspicion standard was to permit the officers “to confirm or dispel suspicions of [Struve’s] criminal activity through reasonable questioning” and “resolve the ambiguity as to whether criminal activity [was] afoot.” *Id.* at 641, 642.

The record confirms that officers properly used the traffic stop to investigate whether Struve’s phone use was lawful. After stopping him, officers found he was still manipulating the phone in his hand. Suppr. Tr. 4:8–14. They explained that the purpose of the stop was to investigate whether Struve was texting while driving. Suppr. Tr. 4:15–19. And in response, Struve admitted that he was using his

phone for the unlawful purpose of browsing his photo gallery and showing pictures to his passenger. Suppr. Tr. 4:19–22.

The traffic stop was reasonable even if it were possible that Struve had not violated section 321.276. The circumstances known to officers weighed against any likelihood that he was engaged in a lawful use of his mobile phone while driving. And police were allowed to clear up any ambiguity by making a brief stop and engaging Struve with reasonable questioning.

**D. Struve misplaces reliance on out-of-state cases applying narrower “texting while driving” statutes.**

Although sometimes called Iowa’s “texting while driving” statute, section 321.276 prohibits a much broader range of mobile-device functions. The base prohibition states, “A person shall not use a hand-held electronic communication device to write, send, or view an electronic message while driving a motor vehicle...” Iowa Code § 321.276(2). But the legislature acted as its own lexicographer to assign broader meanings to those terms. *See, e.g., State v. Fischer*, 785 N.W.2d 697, 702 (Iowa 2010) (“We recognize the legislature ‘may act as its own lexicographer.’” (quotation omitted)). “Electronic message” is defined as “images visible on the screen of a hand-held

electronic communication device.” Iowa Code § 321.276(1)(a). The definition lists some examples of typical electronic messages, such as text messages, instant messages, and emails. *Id.* But it also lists additional mobile-device functions such as internet sites, social media applications, and games. *Id.* Similarly, the terms “write,” “send,” and “view” are given broader meanings that encompass “playing, browsing, or accessing” electronic messages. *Id.* § 321.276(1)(d).

The statute’s plain language supports a broad interpretation of the prohibited use of mobile devices while driving. “When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms.” *State v. Anderson*, 782 N.W.2d 155, 158 (Iowa 2010). The legislature could have written the statute narrowly to prohibit only texting while driving. Instead, it broadly defined “electronic message” to cover any “images visible on the screen” and specifically listed non-messaging examples such as browsing the internet, checking social media, and playing games. *See* Iowa Code § 321.276(1)(a). This plain language makes clear the legislature’s intent to ban all mobile-phone use except the limited exceptions in section 321.276(2).

Statutory history reflects the legislature’s intent to prohibit more uses and to allow more investigatory stops for violations of section 321.276. When Iowa first addressed the subject in 2010, the statute only prohibited writing, reading, or sending a “text message,” and “text message” was narrowly defined as “a text-based message, an instant message, and electronic mail.” 2010 Iowa Acts. Ch. 1105, § 6 (codified as Iowa Code § 321.176(1)(c), (2) (2011)). Additionally, the 2010 statute made enforcing the texting-while-driving ban a “secondary action.” Officers could not make traffic stops “solely for a suspected violation of this section”; instead, enforcement was only possible if the driver had already been stopped for another violation. *Id.* (codified as Iowa Code § 321.276(5)(a) (2011)). But in 2017, the legislature amended section 321.276 to make two important changes. First, it expanded the scope of the prohibition by changing “text message” to the broader term “electronic message,” and by changing “read” to the broader term “view.” 2017 Iowa Acts ch. 75, § 1(c), (d). Second, it struck the “secondary action” limitation, allowing officers to enforce the prohibition as a “primary offense” and make stops without the need to first observe a separate traffic violation. *See id.* § 5 (striking subsection 5). With those changes, section 321.276 now

prohibits a wider range of mobile-device usage while driving and permits more traffic stops to enforce the prohibition. Thus, the changes reflect the legislature’s intent to strengthen enforcement efforts.

The societal need to minimize distracted driving supports the legislature’s enactment of a broad prohibition with robust enforcement. In 2015, distracted driving killed 3,477 people and injured an estimated 391,000 others. U.S. Dep’t of Transp., Nat’l Highway Traffic Safety Admin., *Distracted Driving 2015*, at 1 (March 2017).<sup>2</sup> Analysis of crash data for commercial vehicles indicates that drivers are “23.2 times more likely to be involved in a safety-critical event while text messaging,” compared to 1.04 times more likely while talking on a hand-held phone. U.S. Dep’t of Transp., Fed. Motor Carrier Safety Admin., *Driver Distraction in Commercial Vehicle Operations*, at 43–44 (Sept. 2009).<sup>3</sup> Consequently, section 321.276’s broad prohibition of texting and other mobile-phone uses will save

<sup>2</sup> Available at [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812\\_381\\_distracteddriving2015.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812_381_distracteddriving2015.pdf) (last visited Apr. 20, 2020).

<sup>3</sup> Available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/FMCSA-RRR-09-042.pdf> (last visited Apr. 20, 2020).

lives by reducing distracted driving—but only if the statute is enforced with traffic stops.

Proper statutory interpretation informs the reasonable-suspicion inquiry, as illustrated by two cases from Oregon. In *State v. Rabanales-Ramos*, 359 P.3d 250, 253–56 (Or. Ct. App. 2015), the court interpreted Oregon’s statute as prohibiting “talking and texting on a mobile communication device, but not *all* activities that can be performed using such a device...” Based on that interpretation, the court determined a trooper did not have probable cause<sup>4</sup> to stop a driver for looking at an illuminated device without seeing the driver pushing any buttons or holding the phone up to her ear. *Id.* at 256. But the same court distinguished *Rabanales* in *State v. Nguyen Ngoc Pham*, 433 P.3d 745, 747 (Or. Ct. App. 2018). In that case, “[t]he officers saw defendant looking at his phone and pressing buttons on the screen while he was driving,” so it was reasonable for officers to infer he was violating the Oregon statute that prohibits voice and text

<sup>4</sup> The Oregon Constitution’s probable-cause standard has been interpreted to require a “more likely than not” standard. *See, e.g., State v. Williams*, 35 P.3d 1088, 1092 (Or. Ct. App. 2001). In contrast, Iowa’s reasonable-suspicion standard “requires a showing considerably less than preponderance of the evidence.” *Kreps*, 650 N.W.2d at 642 (quoting *Arvizu*, 534 U.S. at 273).

communications. *Id.* These two cases show that determining the constitutionality of a traffic stop may turn on questions of statutory interpretation.

Struve’s argument relies on cases from other states with narrower statutes. He discusses *United States v. Paniagua-Garcia*, 813 F.3d 1013, 1013 (7th Cir. 2016) and *State v. Morsette*, 924 N.W.2d 434 (N.D. 2019). Def. Br. at 30–33. But those cases are distinguishable after reviewing the more limited prohibitions in their “texting while driving” statutes.

The *Paniagua-Garcia* case involved a statute that only prohibits texting while driving. The Indiana statute “forbids drivers to use a telecommunications device (normally a cellphone) to type, transmit, or read a text message or an electronic-mail message.” *Paniagua-Garcia*, 813 F.3d at 1013 (citing Ind. Code § 9-21-8-59(a)). Aside from “texting,” under the statute “All other uses of cellphones by drivers are allowed”—including “making and receiving phone calls, inputting addresses, reading driving directions and maps with GPS applications, reading news and weather programs, retrieving and playing music or audio books, surfing the Internet, playing video games—even watching movies or television.” *Id.* Because there were

so many possible legal uses, the court reasoned “the most plausible inference from seeing a driver fiddling with his cellphone is that he is *not* texting.” *Id.* at 1013–14. The court concluded the officer lacked probable cause for a stop because he “hadn’t seen any texting; what he had seen was consistent with any one of a number of lawful uses of cellphones.” *Id.* at 1014.

Similarly, the *Morsette* case only involved a no-texting statute. North Dakota’s prohibition defines “electronic message” as “a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices....” *Morsette*, 924 N.W.2d at 437 (quoting N.D. St. § 39-08-23(2)(a)). The court noted, “Both proscribed and permitted activities appear to encompass actions that may require finger-to-phone tapping...” *Id.* at 438. The court summarized the parties’ arguments, but then embarked on tangents about tinted windows and mistakes of fact. *Id.* at 438–41. It found that although the officer had observed the defendant tapping the illuminated screen for 2 seconds, “there is absent a link between those observations and an objectively reasonable basis to suspect a violation.” *Id.* at 440. In dissent, the Chief Justice chided the majority for “substantially reduc[ing], if not eliminat[ing], the

effective enforcement of the statute.” *Id.* at 441 (VandeWalle, J., dissenting).

The broader prohibition in Iowa’s statute leads to a different result. Unlike the “texting while driving” statutes in *Paniagua-Garcia* and *Morsette*, Iowa Code section 321.276 prohibits more than just texting. Iowa’s definition of “electronic message” includes “images visible on the screen” and includes non-messaging purposes such as viewing internet sites, checking social media applications, and playing games. Iowa Code § 321.276(1)(a). Although Iowa’s statute permits a limited number of mobile-device uses while driving, most other functions—texting, emailing, instant-messaging, checking Facebook, playing games, viewing photos, watching movies—are prohibited.

Struve’s conduct provided reasonable suspicion under the broader prohibitions in section 321.276. He held a lit phone in front of his face for at least 10 seconds while he moved his thumb across the screen. Suppr. Tr. 10:18–11:7, 21:11–17, 27:22–28:23. The circumstances known to officers did not suggest he was using a phone for one of the limited permissible uses, such as following GPS directions, dialing a phone number, or receiving an emergency

message. And when officers conducted an investigatory stop, they confirmed their well-founded suspicions—Struve admitted he was scrolling through his phone’s photo gallery to show pictures to his passenger. Suppr. Tr. 4:8–22.

Struve’s traffic stop was reasonable. The legislature intended to reduce the carnage of distracted driving by enacting a broad statute that prohibits most uses of hand-held communication devices while driving. Struve’s position—requiring officers to actually see what was on his phone screen—would prevent reasonable enforcement efforts and would demand certainty of a violation before authorizing a stop. Rather than applying that unworkable and unreasonably restrictive standard, the Court should apply the reasonable-suspicion standard that permits investigation even if the officers’ initial beliefs end up being wrong. Struve’s conduct showed the telltale signs of a driver distracted from the road by a mobile device, so officers did not violate his rights by initiating a brief investigatory stop to confirm or dispel their suspicions.

## **CONCLUSION**

The Court should affirm Steven Struve’s conviction and sentence.

## **REQUEST FOR NONORAL SUBMISSION**

This case invites an application of the familiar reasonable-suspicion standard, so it could be resolved without oral argument.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

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