IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. EDNA JEAN WILSON, Defendant-Appellant.	)	S.CT. NO. 20-0371

APPEAL FROM THE IOWA DISTRICT COURT
FOR STORY COUNTY
HONORABLE STEVEN P. VAN MAREL, JUDGE

APPELLANT'S APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED MARCH 17, 2021

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CERTIFICATE OF SERVICE

On the 2nd day of April, 2021, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Edna Wilson, 1211 Lincoln Way, Apt. #3, Ames, IA 50010.

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QUESTIONS PRESENTED FOR REVIEW

Does the "new crime" exception to suppression of fruit from an illegal search apply to conduct that – while discouraged – is not a crime? Should this Court re-examine the "new crime" exception?

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STATEMENT IN SUPPORT OF FURTHER REVIEW

COMES NOW Defendant-Appellant and pursuant to Iowa R. App. P. 6.1103 requests further review of the March 17, 2021, decision in State of Iowa v. Edna Jean Wilson, Supreme Court No. 20-0371.

1. The Court of Appeals erred in affirming Wilson's conviction and sentence for Interference with Official Acts, a simple misdemeanor in violation of Iowa Code section 719.1 (2019), and Possession of Cocaine – Second Offense, an aggravated misdemeanor in violation of Iowa Code section 124.401(5) (2019).

2. The Court of Appeals assumed for the sake of argument that Ames police officers conducted an illegal, warrantless entry into Wilson's apartment when they placed their hands and feet in her door despite her protests and later pushed their way into her apartment. Opinion p. 9. The Court of Appeals affirmed Wilson's conviction, however, finding the "new crime" exception to the exclusionary rule

applied when Wilson "resisted" arrest under Iowa Code section 804.12. Opinion pp. 8-10 (citing State v. Dawdy, 533 N.W.2d 551, 555–56 (Iowa 1995)).

3. The Court of Appeals erred in the application of the new crime exception, as Iowa Code section 804.12 does not create a substantive crime and any resistance by Wilson did not amount to Interference with Official Acts under Iowa Code section 719.1(1)(a) (2017).

4. This Court should re-examine application of the new crime exception. Broad application of the exception eviscerates the attenuation doctrine and the deterrent effect of the exclusionary rule, imperils the sanctity of the home, and encourages future misconduct by officers. Other courts have been hesitant to recognize the exception when the new crime is resisting arrest. Iowa R. App. P. 6.1103(1)(b)(3)-(4) (2021).

WHEREFORE, Wilson respectfully requests this Court grant further review of the Court of Appeals' decision in his case.

STATEMENT OF THE CASE

Nature of the Case: This is an appeal by Defendant-Appellant Edna Wilson from her conviction, sentence, and judgment for Interference with Official Acts, a simple misdemeanor in violation of Iowa Code section 719.1 (2019), and Possession of Cocaine – Second Offense, an aggravated misdemeanor in violation of Iowa Code section 124.401(5) (2019), entered in Story County District Court following a bench trial in the minutes of testimony.

Course of Proceedings: On July 15, 2019, the State filed a trial information in Story County District Court charging Defendant-Appellant Edna Wilson with: Interference with Official Acts Causing Bodily Injury, a serious misdemeanor in violation of Iowa Code sections 719.1(1)(a) and 719.1(1)(c) (2019) (Count I); Possession of Marijuana – Second Offense, a serious misdemeanor in violation of Iowa Code section 124.401(5) (2019) (Count II); and Possession of Cocaine – First Offense, a serious misdemeanor in violation of

Iowa Code section 124.401(5) (2019) (Count III). (Information) (App. pp. 4-6). Wilson pleaded not guilty and waived her right to a speedy trial. (Written Arraignment; Waiver of Speedy Trial)(App. pp. 7-8, 12-13).

Wilson filed a motion to suppress on September 4, 2019, alleging officers made an illegal warrantless entry into her home and then used the information obtained from their illegal entry to obtain a search warrant. (Motion to Suppress) (App. pp. 9-11). The State filed a resistance. (State's Resistance)(App. pp. 14-17). The District Court denied the motion on October 21, 2019, following a hearing. (Supp. Tr. p. 1 L.1-25, p. 48 L.19-p. 54 L.14; 10/21/19 Order)(App. pp. 18-19).

On January 8, 2020, the District Court allowed the State to amend the trial information to allege Count III as a second offense. (Motion to Amend; Order Amending Charge; Amended Trial Information)(App. pp. 20-25).

Wilson appeared in open court on January 29, 2020, to submit to a bench trial on the minutes of testimony pursuant to an agreement with the State. (Tr. p. 1 L.1-25, p. 3 L.1-19). The State amended Count I to Interference with Official Acts, a simple misdemeanor under Iowa Code section 719.1(1)(a), and agreed to dismiss Count II. (1/29/19 Motion to Amend; Tr. p. 3 L.20-p. 4 L.3)(App. p. 27). Wilson waived her right to a jury trial and agreed to a trial on the minutes of testimony on the remaining charges. (Tr. p. 4 L.3-11; Waiver of Jury Trial)(App. p. 26). The District Court found Wilson guilty under both counts. (Tr. p. 6 L.7-p. 7 L.7; Findings of Fact)(App. pp. 28-33).

The parties made a joint recommendation as to the sentence. (Tr. p. 9 L.17-p. 11 L.21). Pursuant to the parties' agreement, the District Court sentenced Wilson to an indeterminate term of imprisonment not to exceed two years on Count III, but suspended the sentence and placed Wilson on probation for 18 months. (Tr. p. 12 L.7-p. 13 L.5; Findings

of Fact – Verdict §§ 5, 7)(App. pp. 30-31). The court imposed a $625 fine, a $10 DARE surcharge and a $125 Law Enforcement Initiative surcharge, but waived repayment of costs and attorney fees. (Tr. p. 12 L.7-17, p. 14 L.22-24; Findings of Fact – Verdict §6) (App. p. 30). The court sentenced Wilson to two days in jail on Count I with credit for 2 days served and ordered her to pay a fine of $250. (Sent. Tr. p. 13 L.6-13; Findings of Fact – Verdict §§ 2-3)(App. p. 30).

Wilson filed a timely notice of appeal on February 28, 2020. (Notice)(App. pp. 36-37). On July 6, 2020, the Iowa Supreme Court granted Wilson's request to treat her notice of appeal as an application for discretionary review of her simple misdemeanor conviction under Count I. (7/6/20 Iowa Supreme Court Order)(App. pp. 38-40).

Facts: On July 5, 2019, Ames police officer Jamie Miller was dispatched to 1211 Lincoln Way apartment 3 for a noise complaint. (Supp. Tr. p. 4 L.2-p. 5 L.10, p. 13 L.20-p. 14 L.14). Once he arrived, he could hear the noise while he was

in the common hallway, though he never measured it. (Supp. Tr. p. 5 L.11-16, p. 14 L.11-p. 15 L.24).

Miller knocked on the door to apartment 3, and a woman opened it partially but remained inside. (Supp. Tr. p. 5 L.19-p. 7 L.3, p. 15 L.25-p. 16 L.5). Miller, who was in uniform, identified himself as a police officer, explained why he was there, and asked the woman for identification. (Supp. Tr. p. 6 L.1-18). The woman told Miller she did not have to provide a name. (Supp. Tr. p. 6 L.19-24). Miller repeated his request, and eventually she provided the name Ebony. (Supp Tr. p. 6 L.24-p. 7 L.3).

Miller continued to press for identification, and he could hear music and loud voices coming from the apartment. (Supp. Tr. p. 7 L.4-16). Miller described the conversation with Ebony as argumentative, and she attempted to shut the door. (Supp. Tr. p. 8 L.11-19). In response, Miller put his left hand on the doorway and his foot across the threshold to prevent her from shutting the door. (Supp. Tr. p. 8 L.11-p. 9

L.1, p. 16 L.9-p. 18 L.7, p. 20 L.7-18). After Miller did so, the woman gave him a different name – Destiny Miller. (Supp. Tr. p. 7 L.4-16, p. 20 L.14-p. 21 L.2).

Officers were not able to find any information for Destiny Miller in their database using the birthdate the woman provided. (Supp. Tr. p. 7 L.20-p. 8 L.10). Officer Adam McPherson was eventually able to determine the woman was Edna Wilson by checking the utilities account for the residence. (Supp. Tr. p. 9 L.2-21). Wilson confirmed that was her name. (Supp. Tr. p. 9 L.22-23). At that point, Miller decided to arrest Wilson for providing a false name. (Supp. Tr. p. 10 L.3-12, p. 24 L.18-23).

Miller advised Wilson she was under arrest, stepped further into the apartment, and tried to place her in handcuffs. (Supp. Tr. p. 10 L.13-17, p. 24 L.22-24). McPherson saw her throw an object from her hand. (Supp. Tr. p. 10 L.18-p. 11 L.9, p. 26 L.1-14, p. 34 L.8-14). Officers later observed a white powdery residue on the floor and a

small vial. (Supp. Tr. p. 11 L.2-16, p. 26 L.8-17, p. 34 L.15-17). Officers also located a marijuana cigarette and a baggie containing two grams of marijuana. (Supp. Tr. p. 11 L.2-16, p. 12 L.4-24; 7/15/19 Minutes – Attachment p. 4)(Conf. App. p. 12). Miller suffered a cut and scrape to his left arm as a result of his attempt to handcuff Wilson. (Supp. Tr. p. 13 L.10-12).

McPherson applied for a search warrant for the apartment based upon what officers observed inside the apartment. (Supp. Tr. p. 12 L.1-3, p. 28 L.8-18, p. 29 L.5-12, p. 30 L.7-21, p. 34 L.18-20). The white substance in the vial later tested as 0.6 grams of cocaine salt. (Supp. Tr. p. 13 L.4-9; 1/14/20 Minutes - Attachment)(Conf. App. p. 25).

Miller admitted that when he put his foot in the door to the apartment, he was worried about Wilson shutting the door and the fact that noise was still coming from the apartment. (Supp. Tr. p. 21 L.21-p. 22 L.18). He admitted he had no

reason to suspect she had weapons or was engaged in drug activity at that time. (Supp. Tr. p. 21 L.3-16, p. 22 L.19-23).

Miller acknowledged that he did not have an arrest warrant for Wilson or a search warrant for the apartment when he entered it for the purpose of arresting Wilson. (Supp. Tr. p. 24 L.22-p. 25 L.9). He testified he could enter her apartment without a warrant to arrest her because she committed the offense of providing false information in his presence. (Supp. Tr. p. 25 L.5-20).

Videos taken from the officers' body cameras were entered as exhibits at the hearing. (Ex. B – Miller video, McPherson video).

ARGUMENT

The "new crime" exception to suppression of fruit from an illegal search does not apply to conduct that – while discouraged – is not a crime. This Court should re-examine the "new crime" exception.

Preservation of Error: Error was preserved by the District Court's denial of Defendant-Appellant Edna Wilson's motion to suppress. (Motion to Suppress; Supp. Tr. p. 48 L.19-p. 54 L.15)(App. 9-11). The State argued and the Court of Appeals determined the new crime exception allowed admission of evidence discovered by officers following their warrantless entry into Wilson's apartment. (State's Resistance to Def.'s Motion to Suppress § III)(App. p. 16). State's Brief pp. 27-29; Opinion pp. 8-10.

Scope of Review: Constitutional questions are reviewed de novo. State v. Coffman, 914 N.W.2d 240, 244 (Iowa 2018)(citations omitted); State v. Bumpus, 459 N.W.2d 619, 622 (Iowa 1990); State v. Showalter, 427 N.W.2d 166, 168 (Iowa 1988); Taylor v. State, 352 N.W.2d 683, 684 (Iowa 1984).

Merits: The Court of Appeals assumed for the sake of

argument that Ames police officers conducted an illegal, warrantless entry into Edna Wilson's apartment. Opinion p. 9. Ultimately the Court determined Wilson committed a new crime when she resisted the officers' attempt to arrest her, and therefore the "new crimes" exception to the exclusionary rule applied. Opinion pp. 8-10. The Court of Appeals erred in its application of the exception, and even if it did not this Court should re-examine the exception.

In the trial court, the State contended that Wilson committed the offense of Interference with Official Acts. (Supp. Tr. p. 46 L.25-p. 48 L.4). The relevant statute provides:

> A person commits interference with official acts when the person knowingly resists or obstructs anyone known by the person to be a peace officer, jailer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, or a person performing bailiff duties pursuant to section 602.1303, subsection 3, in the performance of any act which is within the scope of the lawful duty or authority of that officer, jailer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, or a person performing bailiff duties pursuant to section

> 602.1303, subsection 3, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court.

Iowa Code § 719.1(1)(a) (2017).

First, the plain language of the statute requires resistance to an act "which is within the scope of the lawful duty or authority" of the arresting officer. Id. The officers were not performing a lawful duty when they entered Wilson's apartment to arrest her for providing a false name. They had no arrest warrant, and even having probable cause to arrest would not justify their warrantless entry into the apartment as discussed above. Accordingly, they were not performing a "lawful duty" and any "resistance" by Wilson would not have fallen under the terms of the statute. Cf. State v. Hauan, 361 N.W.2d 336, 339-40 (Iowa Ct. App. 1994)(defendant not guilty of interference where he simply refused to identify himself when he was not obligated to do so).

Wilson recognizes the common law privilege to reasonably resist an unlawful arrest has been abrogated for

some time. State v. Thomas, 262 N.W.2d 607, 610-12 (Iowa 1978). Nonetheless, the Iowa legislature has defined what it means to interfere with official acts by resisting an arrest. Iowa Code § 719.1(1)(a) (2017). The actions of the officer that are being resisted must be lawful. In this case, they were not, and therefore there was no probable cause to arrest Wilson for interference.

Furthermore, the record lacks any substantial evidence that Wilson resisted or obstructed her arrest. The statute prohibits the use of actual or constructive force in resisting an officer, though the use of force is not an essential element. Davis v. City of Albia, 434 F.Supp.2d 692, 704 (S.D. Iowa 2006). "The key question is whether the officer's actions were hindered." Lawyer v. City of Council Bluffs, 361 F.3d 1099, 1107 (8th Cir. 2004).

Miller testified that Wilson was physically resisting their attempts to place Wilson's hands in handcuffs behind her back. (Supp. Tr. p. 10 L.13-p. 11 L.1). Yet the video of the

arrest shows Miller immediately entering the apartment, forcefully pushing Wilson against the wall, and twisting her arms behind her back. (Ex. B – Miller video 8:00-8:30). Wilson may well have been "yelling and screaming," but [s]imply 'object[ing]' or even passively 'failing to cooperate' with law enforcement officers does not provide arguable probable cause under Iowa Code section 719.1(1); the statute requires proof that the defendant 'active[ly] interfer[ed]' with the law enforcement officer." McCabe v. Maccauley, 515 F.Supp.2d 944, 971 (N.D. Iowa 2007). Section 719.3 excludes verbal harassment from the scope of the interference statute unless "accompanied by a present ability and apparent intention to execute a verbal threat physically". Small v. McCrystal, 708 F.3d 997, 1004 (8th Cir. 2013). See also State v. Donner, 243 N.W.2d 850, 854 (Iowa 1976)(a person interferes when he or she is in "actual opposition to the officer through the use of actual or constructive force making it reasonably necessary for the officer to use force to carry out his duty.")

Notably, the Court of Appeals found Wilson violated Iowa Code section 804.12, which provides:

> "A person is not authorized to use force to resist an arrest, either of the person's self, or another which the person knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if the person believes that the arrest is unlawful or the arrest is in fact unlawful."

Iowa Code § 804.12 (2017). Section 804.12 is not a substantive, stand-alone crime – a person cannot be "charged" with a violation of Section 804.12. The applicable crime for resisting arrest would be Interference with Official Acts, which did not apply to Wilson's case as described above.

Application of the "new crime" exception in cases similar to Wilson's has come under criticism. See generally Joline Desruisseaux, Nurturing Poisonous Trees: How The "New & Distinct Crime" Exception Destroys The Essence Of Exclusion, 9 Va. J. Crim. L. 87 (2020)(discussing broad application of the exception and its inconsistency with U.S. Supreme Court precedent). A number of courts have refused to apply the

exception to cases involving resistance by a suspect, essentially characterizing the use of the exception in such cases as "bootstrapping":

> The purpose behind the rule that resisting even an illegal arrest constitutes a crime is to foster the effective administration of justice, to deter resistance to arrest and to provide for the safety both of peace officers and the citizens of Delaware. In our view, this purpose cannot be used to allow an officer, lacking reasonable suspicion to effect a stop or search that leads to an illegal arrest, to contend that evidence seized incident to that illegal arrest is admissible. That would be a result reached by bootstrap analysis.

Jones v. State, 745 A.2d 856, 873 (Del. 1999). Accord State v. Beauchesne, 868 A.2d 972, 816-19 (N.H. 2005).

More broadly, the new crimes exception is inconsistent with precedent. When police officers act illegally, courts would normally apply the attenuation doctrine to determine if the resulting arrest was a product of the illegal police activity. Brown v. Illinois, 422 U.S. 590, 602-04 (1975); State v. Lane, 726 N.W.2d 371, 382 (Iowa 2007). A court would normally consider "[t]he temporal proximity" of the police misconduct

and the response, the "presence of intervening circumstances," and the purpose and flagrancy of the official misconduct." Brown v. Illinois, 422 U.S. at 603-04 (citing Wong Sun v. United States, 371 U.S. 471, 491(1963)); State v. Lane, 726 N.W.2d. at 383.

The application of the new crime exception in cases such as Wilson's undercuts the attenuation doctrine. There is no question in this case that Wilson's reaction was a direct, immediate, and quite frankly not unexpected response to the officers' illegal warrantless intrusion into her home. A person has a significant expectation of privacy and security in their home, and an unauthorized, warrantless entry into the home is recognized as an egregious violation of a person's rights under both the Fourth Amendment and Article I Section 8 of the Iowa Constitution. Payton v. New York, 445 U.S. 573, 585-86 (1980); State v. Ochoa, 792 N.W.2d 260, 284-85 (Iowa 2010).

Application of the new crimes exception in this case

eviscerates the attenuation doctrine. Police officers may now reap the fruits of illegally entering someone's home should the resident put up the slightest resistance. The new crimes exception fails to deter police misconduct and may actually encourage officers to escalate their interactions with suspects to provoke a response that will allow them to conduct a subsequent arrest and search. Cf. State v. Beauchesne, 868 A.2d 972, 818-19 (N.H. 2005)(outlining purposes of exclusionary rule and holding failure to apply it would encourage unlawful conduct by officers).

In many cases, the deterrent effect of exclusionary rule may be the only adequate safeguard against police misconduct. A defendant may have a civil cause of action against an offending officer under 42 U.S.C. Section 1983, but the officer would likely claim qualified immunity. See Jackson D. Wagner, Stop and Exploit: What Remains of the Constitutional Right Against Unreasonable Searches and Seizures After Strieff, 56 Washburn L.J. 383, 394-06

(2017)(discussing civil actions for deprivation of rights). Qualified immunity is a hard defense to overcome, as it "protects all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). Iowa law also places significant hurdles upon a person seeking redress for illegal actions by police. See Iowa Code ch. 669 (2021) (Iowa Tort Claims Act); id. §§ 669.14(1), (4) (exceptions relating to police conduct); Iowa Code ch. 670 (Municipal Tort Claims Act); id. § 670.4(1)(c) (exceptions for discretionary functions). See generally Baldwin v. City of Estherville, 915 N.W.2d 259 (Iowa 2018)(discussing tort claims for officers).

The Court of Appeals erred in finding the new crimes exception applied to render the fruit of officers' illegal entry into Wilson's home admissible. Wilson did not commit a new crime and her reaction to the illegal entry of her home was both expected and provoked by the officers' misconduct. The failure to suppress the evidence obtained as a result of the

officers' illegal conduct will only encourage future misconduct by police – including illegal, warrantless intrusions into the home, as in this case.

The sanctity of the home is given special status in both federal and state constitutional analysis:

> Notwithstanding a generally case-by-case approach, it is well established that persons have a legitimate expectation of privacy in their homes. See Schmerber, 384 U.S. at 770, 86 S.Ct. at 1835, 16 L.Ed.2d at 919 ("Search warrants are ordinarily required for searches of dwellings...."). Indeed, the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." United States v. U.S. Dist. Ct., 407 U.S. 297, 313, 92 S.Ct. 2125, 2134, 32 L.Ed.2d 752, 764 (1972).

State v. Legg, 633 N.W.2d 763, 767 (Iowa 2001). See also State v. Ochoa, 792 N.W.2d 260, 287 (Iowa 2010)("To the extent Iowa search and seizure cases rely upon the Fourth Amendment, there is no question that the cases regarding the sanctity of the home express a preference for warrants and a requirement of particularity.").

Officers are held to the highest standards when seeking to conduct an entry into and search of a home. Officers must either have a warrant or a properly supported exception to the warrant requirement to enter a person's home. State v. Reinier, 628 N.W.2d 460, 464 (Iowa 2001). The officers who entered Wilson's apartment did not have a warrant. (Supp. Tr. p. 24 L.25-p. 25 L.9).

No exceptions to the warrant requirement justified the officers' warrantless intrusion.

Consent is one exception to the warrant requirement, but it must be given voluntarily, without duress or coercion. Id. at 464-65. The existence of illegal police action prior to the granting of any consent is a factor in the voluntariness analysis. Id. "The act of opening a door in response to a knock could under certain circumstances constitute consent." Id. at 467. Wilson's act of opening the door does not establish voluntary consent. She opened the door to a knock – just as one might expect any reasonable person to do. Based upon

the video, it is unclear that she would have realized that an officer was at her door, as Miller was standing to the side of the door's peephole when he knocked. (Ex. B – Miller video 1:40). Wilson opened the door part way, never opened it wide as though inviting entry, and never came outside of her apartment. (Ex. B – Miller video 1:40-3:00). About three minutes into their conversation, Miller placed his hand on the door and his feet in the entryway to her apartment. (Ex. B. – Miller video 3:00). Wilson tells him to move his feet repeatedly, but Miller refuses. (Ex. B – Miller video 3:05, 5:40). Wilson did not consent to Miller's entry. See Cummings v. City of Akron, 418 F.3d 676, 685 (6th Cir. 2005)(resident who only partially opened door for police and would have closed the door but for the officer having his foot in the doorway terminated any consensual encounter).

Probable cause with exigent circumstances is another exception to the warrant requirement. State v. Lewis, 675 N.W.2d 516, 522 (Iowa 2004). Probable cause is established

when "a person of reasonable prudence would believe a crime was committed on the premises to be searched or evidence of a crime could be located there." State v. Weir, 414 N.W.2d 327, 329 (Iowa 1987). Exigent circumstances are determined by considering several factors: "danger of violence and injury to the officers; risk of the subject's escape; or the probability that, unless immediately seized, evidence will be concealed or destroyed." State v. Naujoks, 637 N.W.2d at 108. Officers must have "specific, articulable grounds to justify a finding of exigency", and the reasonableness of the search is determined using an objective standard. Id. at 109.

Officers did not have probable cause or exigent circumstances at the time Miller positioned his body inside the threshold to Wilson's apartment. When Miller initially approached the apartment, the only offense he was investigating was a noise complaint. (Supp. Tr. p. 5 L.2-16). He confirmed the noise was coming from the apartment and described it as loud, but did not attempt to measure it to see if

it violated the requirements of the municipal code. (Supp. Tr. p. 5 L.11-16, p. 14 L.15-p. 15 L.24). At best, Miller may have had a reasonable suspicion that Wilson was in violation, but not probable cause.

Even if Miller had probable cause regarding the noise complaint, there were no exigent circumstances justifying his entry into Wilson's doorway. A noise complaint does not involve any danger of violence and injury to the officers, risk of the subject's escape, or the probability that evidence will be concealed or destroyed. Id. The noise complaint simply did not provide probable cause and exigent circumstances to enter ant portion of Wilson's apartment.

The fact that Wilson initially provided the name Ebony likewise did not provide probable cause or exigent circumstances for Miller to place his hands and feet in the doorway. Initially Wilson did not want to provide her name, but upon urging by Miller ended up saying her name was Ebony. (Supp. Tr. p. 6 L.19-p. 7 L. 3). At the time Wilson

provided this name, Miller would have had no basis for knowing it was false – he wanted her name because he did not have it. (Supp. Tr. p. 6 L.1-p. 7 L.3).

Miller may have had probable cause to believe Wilson was providing or had provided a false name when she gave him the second name of Destiny Miller, but Miller had already placed his hand and feet inside Wilson's doorway by this time. (Ex. B – Miller video 3:00-4:10). Furthermore, there were no exigent circumstances that would have justified Miller's entry once he realized she had provided a false name. Again, providing a false name does not involve any danger of violence and injury to the officers, risk of the subject's escape, or the probability that evidence will be concealed or destroyed. Id.

Providing a false name to an officer who is engaging in an investigation of a noise complaint is, at most, a simple misdemeanor offense. See Iowa Code section 719.1A (2017). As discussed above, courts frown upon making a warrantless entry into a home for the purpose of making an arrest for a

minor offense. Welsh v. Wisconsin, 466 U.S. 740, 750 (1984); State v. Ness, No. 15-0133, 2016 WL 1130321 at *3 (Iowa Ct. App. Mar. 23, 2016).

The concept of "hot pursuit" does not justify the warrantless entry. "Typically, hot pursuit involves a situation where a suspect commits a crime, flees and thereby exposes himself to the public, attempts to evade capture by entering a dwelling, and the emergency nature of the situation necessitates immediate police action to apprehend the suspect." Cummings v. City of Akron, 418 F.3d 676, 686 (6th Cir. 2005)(citing Warden v. Hayden, 387 U.S. 294, 298-99 (1967)).[1] As in Cummings, Wilson never fully exposed herself to police, opened the door very slightly at the request of police,

1. On February 24, 2021, the United States Supreme Court heard oral arguments regarding the hot pursuit doctrine in a case involving warrantless entry into a home on a misdemeanor charge. See Lange v. California, No. 20-18, available at https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-18.html.

and there was no emergency warranting immediate action. Id.

The intrusion on Wilson's expectation of privacy in the doorway of her apartment was unreasonable. (Supp. Tr. p. 53 L.13-p. 54 L.10). All evidence obtained from the illegal search and seizure should be suppressed. State v. McCoy, 692 N.W.2d 6, 15, 23-25 (Iowa 2005)(exclusionary rule bars use of fruit obtained from violation of search and seizure provisions of constitution).

"'An unlawful search taints all evidence obtained in the search or through leads uncovered by that search and bars its subsequent use,'" including any attempt to use the evidence to establish probable cause for a subsequent search warrant. State v. Naujoks, 637 N.W.2d 101, 111 (Iowa 2001)(quoting State v. Ahart, 324 N.W.2d 317, 318 (Iowa 1982)). Miller acknowledged McPherson applied for the search warrant on the basis of the contraband found in the apartment. (Supp. Tr. p. 28 L.8-18).

Wilson's convictions, sentence and judgment should be vacated and her case remanded for further proceedings without the use of any tainted evidence.

CONCLUSION

For all of the reasons discussed above, Defendant-Appellant Edna Wilson respectfully requests this Court vacate the decision of the Court of Appeals, vacate her convictions, sentence, and judgment, and remand her case to the District Court for further proceedings.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was $2.59, and that amount has been paid in full by the Office of the Appellate Defender.

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

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 4,765 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

/s/ Theresa R. Wilson Dated: 4/02/21

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