ELECTRONICALLY FILED OCT 30, 2020 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

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

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

APPELLANT'S BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 30th day of October, 2020, 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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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Did the District Court err in denying Wilson's motion to suppress? Officers conducted an improper warrantless entry into her apartment in violation of the state and federal constitutions. The subsequent search warrant issued for her apartment was based upon the warrantless search and also constitutionally defective.

Authorities

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ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a) (2020).

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. The Honorable Steven P. Van Marel presided over all relevant proceedings.

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).

Wilson waived her right to a delay before sentencing and her right to file a motion in arrest of judgment. (Tr. p. 7 L.8-p. 9 L.11). 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).

Using their database, officers were not able to find any information for Destiny Miller 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 District Court erred in denying Wilson's motion to suppress. Officers conducted an improper warrantless entry into her apartment in violation of the state and federal constitutions. The subsequent search warrant issued for her apartment was based upon the warrantless search and also constitutionally defective.

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). Wilson alleged officers made a warrantless entry into her apartment that was not authorized by any exception to the warrant requirement under the state and federal constitutions and that the subsequent search warrant was tainted by the results of the illegal entry. (Motion to Suppress)(App. p. 9-11).

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 District Court erred in overruling Defendant-Appellant Edna Wilson's motion to suppress. Ames police officer Jaime Miller conducted a warrantless entry into Wilson's home when he placed his hand on the door and his foot in the doorway to prevent Wilson from closing the door as he spoke with her. His intrusion into her home was not justified by any exception to the warrant requirement. All evidence obtained from the warrantless entry must be suppressed, including all evidence obtained from the subsequent search warrant derived from the illegal entry.

In the District Court, Wilson argued that she had a reasonable expectation of privacy in her home. (Supp. Tr. p. 36 L.30-p. 37 L.23). She said that Miller entered her apartment by placing his hand and feet in her doorway, and did so without a warrant, probable cause for arrest, exigent

circumstances, hot pursuit, or consent. (Motion to Suppress § I; Supp. Tr. p. 37 L.24-p. 41 L.6, p. 43 L.20-p. 44 L.15)(App. pp. 9-10). The fact she was ultimately arrested did not justify the intrusion, she argued, because the officers' illegal entry led to her arrest. (Supp. Tr. p. 40 L.12-p. 42 L.15). With the evidence obtained from the illegal entry excluded, there was no probable cause for issuing a search warrant for her residence. (Motion to Suppress § II; Supp. Tr. p. 41 L.6-p. 42 L.9)(App. pp. 11-12).

The State filed a resistance arguing that Wilson did not have an expectation of privacy as she was standing in the open doorway to her apartment and the officer's intrusion was minimal. (State's Resistance § II; Supp. Tr. p. 44 L.24-p. 45 L.11, 21-p. 46 L.7)(App. pp. 15-16). The State also argued that the officers had probable cause to arrest Wilson for harassment after she initially provided the false name of Ebony. (State's Resistance § III; Supp. Tr. p. 45 L.12-p. 46 L.24)(App. p. 16). Finally, the State contended that – even if

the initial intrusion was in violation of Wilson's constitutional rights – Wilson created additional probable cause by resisting arrest after officers entered her apartment and this permitted officers to conduct a search incident to arrest. (State's Resistance § III; Supp. Tr. p. 46 L.25-p. 48 L.4)(App. p. 16).

After hearing the testimony of Officer Jaime Miller and the arguments of counsel, the District Court issued a ruling consistent with the State's position. (Supp. Tr. p. 48 L.19-p. 54 L.14). The court found the officers were present at the apartment on a valid noise complaint and "had the right to go knock on the door, talk to her, and attempt to investigate this offense." (Supp. Tr. p. 51 L.6-22). The court mentioned the potential offense was ongoing, as officers heard the loud music and voices while they were speaking with Wilson. (Supp. Tr. p. 51 L.23-p. 52 L.8).

The court held that officers did not unreasonably invade any legitimate expectation of privacy where the doorway was open while the potential initial offense was ongoing, and while

Wilson was providing a false name. (Supp. Tr. p. 52 L.9-p. 53 L.15). The court determined that once Wilson gave a false name, the officers had the right to arrest her for harassment of a public official. (Supp. Tr. p. 53 L.13-p. 54 L.4). Because the drug evidence was in plain view, its discovery was legal and could serve as the basis for the subsequent search warrant. (Supp. Tr. p. 54 L.4-14).

The District Court erred.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The Fourth Amendment is made applicable to the states under the Fourteenth Amendment to the Federal Constitution. Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081, 1090 (1961); State v. Heminover, 619 N.W.2d 353, 357 (Iowa 2000) abrogated on other grounds by State v. Turner, 630 N.W.2d 601, 606 n.2 (Iowa 2001).

"[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable." Wilson v. Arkansas, 514 U.S. 927, 931, 115 S.Ct. 1914, 1916, 131 L.Ed.2d 976, 980 (1995). It requires a warrant to particularly describe the persons or places to be searched and things to be seized and forbids the use of general warrants. State v. Thomas, 540 N.W.2d 658, 662 (Iowa 1995).

The search and seizure clause of the Iowa Constitution is substantially identical in language to the Fourth Amendment. Iowa Const. art. I § 8. Given the similar wording of the Fourth Amendment and Iowa's search and seizure clause, these provisions have generally been considered to be "identical in scope, import, and purpose." State v. Beckett, 532 N.W.2d 751, 755 (Iowa 1995). "On the other hand, there is no principle of law that requires this court to interpret the Iowa Constitution in line with the United States Constitution, as long as our interpretation does not violate any provision of the federal constitution." State v. Cline, 617 N.W.2d 277,

284-85 (Iowa 2000), abrogated on other grounds by State v. Turner, 630 N.W.2d 601, 606 n.2 (Iowa 2001).

In order to challenge a search, a defendant must establish he or she had a legitimate expectation of privacy in the premises searched. State v. Naujoks, 637 N.W.2d 101, 106 (Iowa 2001); State v. Nitcher, 720 N.W.2d 547, 553-54 (Iowa 2006). Whether a person has a legitimate expectation of privacy is decided on a case-by-case basis. State v. Naujoks, 637 N.W.2d at 106. Nonetheless, 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."). Accordingly, Wilson had an expectation of privacy in her home.

To the extent the District Court relied on United States v. Santana and State v. Legg to find Wilson may not have had a legitimate expectation of privacy in her doorway, those cases are distinguishable. Santana was a Fourth Amendment case in which the United States Supreme Court recognized that the threshold of a dwelling is generally considered a private place under common law, but Santana was in her open doorway when police officers observed her. United States v. Santana, 427 U.S. 38 (1976). Accordingly, she was exposing herself to public view in the same way as had she been outside her house and had no reasonable expectation of privacy in her

open doorway. Id. When officers, with probable cause, decided to follow Santana as she retreated into her house, their warrantless entry was permissible as a "hot pursuit." Id. at 42-43.

Wilson, of course, was not standing in her open doorway when officers initially approached her apartment. They knocked on the door and she opened it to the extent necessary to speak to officers. (Supp. Tr. p. 5 L.19-p. 6 L.7; Ex. B – Miller video 1:00-8:00).[1] She did not step foot outside of her apartment. (Supp. Tr. p. 15 L.25-p. 16 L.5; Ex. B – Miller video 1:00-8:00). This is not a situation where Wilson would have been just as exposed to public view as had she been standing outside.

In State v. Legg, the Iowa Supreme Court acknowledged a person has a legitimate expectation of privacy in their home that extended to the curtilage of the house, including attached and closed garages. State v. Legg, 633 N.W.2d 763, 767-68

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[1]. All times listed on video exhibits are approximate.

(Iowa 2001). When the officer followed Legg into her garage after she failed to stop for him after a traffic violation, the officer unreasonably invaded her protected privacy interests. Id. at 768. Nonetheless, the officer's warrantless entry was not unreasonable because he had probable cause to arrest her for a serious misdemeanor OWI he observed her make in a public place. Id. at 773. This probable cause was coupled with exigent circumstance justifying hot pursuit, given that Legg could have accessed alcohol inside the house to alter any test results. Id.

Legg supports Wilson's contention that she had a legitimate expectation of privacy in her home, including the doorway, and that Miller unreasonably invaded that privacy interest when he placed his hand and feet in the threshold. Id. at 767-68.

More importantly, the United States Supreme Court has provided further guidance on the limited ability of an officer to make a warrantless entry into a person's home:

> Our hesitation in finding exigent circumstances, especially when warrantless arrests in the home are at issue, is particularly appropriate when the underlying offense for which there is probable cause to arrest is relatively minor. Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. See Payton v. New York, supra, 445 U.S., at 586, 100 S.Ct., at 1380. When the government's interest is only to arrest for a minor offense, that presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate.

Welsh v. Wisconsin, 466 U.S. 740, 750 (1984). According to the Court, an important circumstance in deciding whether exigency exists to justify a warrantless entry into a home is the gravity of the offense. Id. at 753. "[A]pplication of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense, such as the kind at issue in this case, has been committed." Id. The officers' warrantless, nighttime entry into Welsh's home to arrest him

for a civil traffic offense was not permissible under the Fourth Amendment. Id. at 754.

Illinois v. McArthur, meanwhile, involved the temporary restraint of a person outside of his residence while officers were attempting to obtain a search warrant for the premises, which they eventually did. Illinois v. McArthur, 531 U.S. 326, 331-33 (2001). The Court found the restriction to be reasonable, noting that "temporarily keeping a person from entering his home, a consequence whenever police stop a person on the street, is considerably less intrusive than police entry into the home itself in order to make a warrantless arrest or conduct a search." Id. at 336.

The Court's discussion in King v. Kentucky is instructive:

> When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak. Cf. Florida v. Royer, 460 U.S. 491, 497–498, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) ("[H]e may decline to listen to the questions at all and may go on his way"). When the police knock on

> a door but the occupants choose not to respond or to speak, "the investigation will have reached a conspicuously low point," and the occupants "will have the kind of warning that even the most elaborate security system cannot provide." Chambers, 395 F.3d, at 577 (Sutton, J., dissenting). And even if an occupant chooses to open the door and speak with the officers, the occupant need not allow the officers to enter the premises and may refuse to answer any questions at any time.

Kentucky v. King, 563 U.S. 452, 469-70 (2011).

It is a concept recognized by the Iowa Supreme Court more than a century ago:

> The right of the citizen to occupy and enjoy his home, however mean or humble, free from arbitrary invasion and search, has for centuries been protected with the most solicitous care by every court in the English-speaking world, from Magna Charta down to the present, and is embodied in every bill of rights defining the limits of governmental power in our own republic.
>
> The mere fact that a man is an officer, whether of high or low degree, gives him no more right than is possessed by the ordinary private citizen to break in upon the privacy of a home and subject its occupants to the indignity of a search for the evidences of crime, without a legal warrant procured for that purpose. No amount of incriminating evidence, whatever its source, will supply the place of such warrant. At the closed door of the home, be it palace or hovel, even bloodhounds must wait till the law, by authoritative process, bids it open.

McClurg v. Brenton, 123 Iowa 368, 371–72, 98 N.W. 881, 882 (1904).

Expectations of privacy aside, this case law recognizes that 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). Nor did any exceptions to the warrant requirement exist to justify the officers' warrantless intrusion.

Consent is one exception to the warrant requirement. Id. at 464-65. Consent must be given voluntarily, without duress or coercion. Id. at 465. The existence of illegal police action prior to the granting of any consent is a factor in the voluntariness analysis. Id.

In discussing police "knock and talk" encounters, the Iowa Supreme Court has acknowledged that "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). If a warrantless search is not supported by probable cause and exigent circumstances, the search is unreasonable. State v. Naujoks, 637 N.W.2d 101, 107-08 (Iowa 2001).

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)). As in Cummings, Wilson never fully exposed herself to police, opened the door very slightly at the request of police, and there was no emergency warranting immediate action. Id.

Although the District Court did not reach the argument, the State argued that Wilson's subsequent acts provided probable cause for an arrest inside of her apartment and seizure of any items found incident to arrest even if the initial entry was invalid. (Supp. Tr. p. 46 L.25-p. 48 L.18). "Even though an initial arrest is unlawful, a defendant has no right to resist the arrest. If the defendant does so, probable cause exists for a second arrest for resisting. A search incident to the second arrest is lawful." State v. Dawdy, 533 N.W.2d 551, 555 (Iowa 1995). See also State v. Pranschke, No. 16-1104, 2017 WL 2461556 at *5-6 (Iowa Ct. App. June 7, 2017).

The State contended that Wilson committed the offense of Interference with Official Acts by resisting arrest. (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 verbal agitation not involving threats of conduct cannot serve as the basis for an interference charge. See, e.g., McCabe v. Maccauley, 515 F.Supp.2d 944, 971 (N.D. Iowa 2007)("Simply '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."); Small v. McCrystal, 708 F.3d 997, 1004 (8th Cir. 2013)(noting Iowa Code 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"); 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.") There is no evidence Wilson actively or constructively used force against the officers during the arrest. Iowa Code § 804.12 (2017).

The District Court erred in finding the officers' actions in this case were a reasonable intrusion on Wilson's expectation of privacy in the doorway of her apartment. (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 her convictions, sentence, and judgment, and remand her case to the District Court for further proceedings without the use of any excluded evidence.

REQUEST FOR NONORAL SUBMISSION

Counsel requests not to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $4.12, 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 BRIEFS

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

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/s/ Theresa R. Wilson Dated: *10/30/20*

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