IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. MYRANDA MARIE RINCON, Defendant-Appellant.	S.CT. NO. 20-1300

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE SAMANTHA GRONEWALD, JUDGE

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

RACHEL C. REGENOLD
Assistant Appellate Defender
rregenold@spd.state.ia.us
appellatedefender@state.ia.us

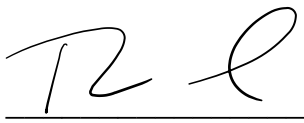
STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT-APPELLANT FINAL

CERTIFICATE OF SERVICE

On the 11th day of June, 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 Myranda Rincon, 1411 Osceola Avenue, Des Moines, IA 50316.

APPELLATE DEFENDER'S OFFICE



Rachel C. Regenold
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
rregenold@spd.state.ia.us
appellatedefender@spd.state.ia.us

RCR/sm/3/21
RCR/sm/5/21

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions:

Other Authorities:

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. The State must provide an exception to the warrant requirement to justify the warrantless search of an individual's effects. Rincon was the passenger in a vehicle who exited with her backpack when the driver was detained because the vehicle was stolen. Officers observed drugs and an open container in plain view on the driver's side. Do plain view, search incident to arrest, or the automobile exception justify the warrantless search of Rincon's backpack?

Authorities

State v. Breuer, 577 N.W.2d 41, 44 (Iowa 1998)

Johnson Equip. Corp. v. Indus. Indem., 489 N.W.2d 13 (Iowa 1992)

State v. Hoskins, 711 N.W.2d 720, 725 (Iowa 2006)

State v. Turner, 630 N.W.2d 601, 606 (Iowa 2001)

State v. Howard, 509 N.W.2d 764, 767 (Iowa 1993)

State v. Lane, 726 N.W.2d 371, 377 (Iowa 2007)

A. Rincon has standing to challenge the warrantless search of her backpack.

U.S. Const. amend. IV

U.S. Const. amend. XIV

Iowa Const. art. I, § 8

State v. Lewis, 675 N.W.2d 516, 522-23 (Iowa 2004)

State v. Lovig, 675 N.W.2d 557, 562 (Iowa 2004)

State v. Pettijohn, 899 N.W.2d 1, 19 (Iowa 2017)

State v. Ochoa, 792 N.W.2d 260, 267 (Iowa 2010)

State v. Cline, 617 N.W.2d 277 (Iowa 2000)

State v. Pals, 805 N.W.2d 767 (2011)

State v. Gaskins, 866 N.W.2d 1 (Iowa 2015)

State v. Baldon, 829 N.W.2d 785, 820-23 (Iowa 2013)

Rakas v. Illinois, 439 U.S. 128, 140 (1978)

State v. Halliburton, 539 N.W.2d 339, 341-42 (Iowa 1995)

Albert W. Alschuler, Interpersonal Privacy and the Fourth Amendment, 4 Northern Ill. Univ. L. Rev. 1, 12 (1983)

Bond v. United States, 529 U.S. 334, 338 (2000)

United States v. Chadwick, 433 U.S. 1, 13 (1977)

Wyoming v. Houghton, 526 U.S. 295 (1999) (No. 98-184), https://www.supremecourt.gov/pdfs/transcripts/1998/98-184_01-12-1999.pdf

State v. Arellano, No. 14, 0051, 2015 WL 1054978, at *1 (Iowa Ct. App. March 11, 2015)

B. No exception to the warrant requirement justified the warrantless search of Rincon's backpack.

Arizona v. Gant, 556 U.S. 332, 338 (2009)

State v. McGrane, 733 N.W.2d 671, 676 (Iowa 2007)

State v. Cline, 617 N.W.2d 277, 282 (Iowa 2000), overruled on other grounds by State v. Turner, 630 N.W.2d 601, 611 n.2 (Iowa 2001)

1. The plain-view exception only justified the seizure of contraband found in plain view in the Malibu, not the warrantless search of Rincon's backpack.

State v. Oliver, 341 N.W.2d 744, 745-46 (Iowa 1983)

Horton v. California, 496 U.S. 128, 133 (1990)

Coolidge v. New Hampshire, 403 U.S. 443, 466 (1971)

State v. Cullor, 315 N.W.2d 808, 811 (Iowa 1982)

2. The district court correctly found the Des Moines Police lacked probable cause to justify a warrantless search of Rincon's backpack.

State v. Lewis, 675 N.W.2d 516, 522 (Iowa 2004)

State v. Naujoks, 637 N.W.2d 101, 107-08 (Iowa 2001)

Maryland v. Pringle, 540 U.S. 366, 370-71 (2003)

State v. Cashen, 666 N.W.2d 566, 569 (Iowa 2003)

State v. Reed, 875 N.W.2d 693, 705 (Iowa 2016)

State v. Ceron, 573 N.W.2d 587, 588, 593 (Iowa 1997)

State v. Horton, 625 N.W.2d 362, 367 (Iowa 2001)

United States v. Di Re, 332 U.S. 581, 583 (1948)

3. The district court properly ruled that the search of Rincon's backpack was not a valid search incident to arrest (SITA).

State v. Freeman, 705 N.W.2d 293, 298 (Iowa 2005)

State v. Ceron, 573 N.W.2d 587, 589 (Iowa 1997)

State v. Bradford, 620 N.W.2d 503, 508 (Iowa 2000)

United States v. Robinson, 414 U.S. 218, 235 (1973)

State v. Horton, 625 N.W.2d 362, 364 (Iowa 2001)

Rawlings v. Kentucky, 448 U.S. 98, 111 (1980)

Chimel v. California, 395 U.S. 752, 762-63 (1969)

State v. McGrane, 733 N.W.2d 671, 676 (Iowa 2007)

Arizona v. Gant, 556 U.S. 332, 338 (2009)

United States v. Knapp, 917 F.3d 1161, 1168-69 (10th Cir. 2019)

United States v. Cook, 808 F.3d 1195, 1199-00 (9th Cir. 2015)

4. The automobile exception does not apply to the search of Rincon's backpack.

No Authorities

a. Rincon did not have a reduced expectation of privacy in her backpack because it was outside the vehicle.

Wyoming v. Houghton, 526 U.S. 295, 303 (1999)

Tracey Maclin, Cops and Cars: How the Automobile Drove Fourth Amendment Law, 99 Boston Univ. L. Rev. 2317, 2354-55 (2019)

3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 7.2(d) (6th ed. Sept. 2020 Update)

United States v. Chadwick, 433 U.S. 1, 13 (1977)

Arkansas v. Sanders, 442 U.S. 753 (1979)

California v. Acevedo, 500 U.S. 565 (1991)

United States v. Ross, 456 U.S. 798, 812 (1982)

b. The automobile exception only applies to containers and effects inside the automobile.

Carroll v. United States, 267 U.S. 132, 153 (1925)

Chambers v. Maroney, 399 U.S. 42, 47-48 (1970)

State v. Storm, 898 N.W.2d 140, 146 (Iowa 2017)

Maryland v. Dyson, 527 U.S. 465, 466 (1999)

United States v. Di Re, 332 U.S. 581, 587 (1948)

Wyoming v. Houghton, 526 U.S. 295, 303 (1999)

3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 7.2(d) (6th ed. Sept. 2020 Update)

United States v. Ross, 456 U.S. 798, 799-00 (1982)

State v. Boyd, 64 P.3d 419, 427 (Kan. 2003)

Antonin Scalia and Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 54, 69 (Thompson/West 2012)

Inside, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/inside

Within, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/within

James L. Buchwalter, Annotation, Application of Fourth Amendment to Automobile Searches—Supreme Court Cases, 47 A.L.R. Fed. 2d 197, §§ 19-20 (2010)

State v. Lewis, 611 A.2d 69 (Maine 1992)

State v. Eubanks, 355 N.W.2d 57 (Iowa 1984)

State v. Warren, No.19-0267, ___ N.W.2d ___, 2021 WL 833551, at *12 (Iowa Mar. 5, 2021)

California v. Acevedo, 500 U.S. 565, 580 (1991)

Chimel v. California, 395 U.S. 752, 768 (1969)

Arizona v. Gant, 556 U.S. 332, 343 (2009)

State v. Gaskins, 866 N.W.2d 1, 13 (Iowa 2015)

Tracey Maclin, Cops and Cars: How the Automobile Drove Fourth Amendment Law, 99 Boston Univ. L. Rev. 2317, 2346-49 (2019)

Whren v. United States, 517 U.S. 806 (1996)

Carol A. Chase, Privacy Takes a Back Seat: Putting the Automobile Exception Back on Track After Several Wrong Turns, 41 Boston College L. Rev. 71, 93-4 (Dec. 1999)

Coolidge v. New Hampshire, 403 U.S. 433, 461-2 (1971)

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issues raised involve substantial questions of enunciating or changing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(2)(f). Does the automobile exception to the warrant requirement allow law enforcement to search a passenger's backpack when she exited the vehicle with it? In Wyoming v. Houghton, the Court held that "[P]olice officers with probable cause to search a car may inspect passengers' belongings found *in the car* that are capable of concealing the object of the search." 526 U.S. 295, 307 (1999) (emphasis added). Prior to Houghton, this Court held that the automobile exception justified the search of the driver's purse even though she exited the vehicle with her purse in hand. State v. Eubanks, 355 N.W.2d 57, 60 (Iowa 1984). Other state courts have interpreted the automobile exception differently. Compare State v. Eubanks, 355 N.W.2d 57 (Iowa 1984) with State v. Boyd, 64 P.3d 419, 427 (Kan. 2003) (holding a search

of the passenger's purse violated the Fourth Amendment when she attempted to exit the vehicle with it but was ordered to leave it in the vehicle by law enforcement), and State v. Lewis, 611 A.2d 69, 71 (Maine 1992) (holding the automobile exception did not apply to a search of brown bags within the driver's carry-on that had been removed from the vehicle). The Court's interpretation of the automobile exception in Eubanks requires another look.

STATEMENT OF THE CASE

Nature of the Case: This is an appeal by Defendant-Appellant Myranda Rincon from the judgment, conviction, and sentence for Possession of Marijuana as a second or subsequent offense, an aggravated misdemeanor in violation of Iowa Code section 124.401(5) (2019), following a stipulated trial on the minutes in Polk County District Court.

Course of Proceedings: The State charged Rincon with two counts of Possession of a Controlled Substance as a second or subsequent offense, an aggravated misdemeanor, in

violation of Iowa Code section 124.401(5) (2019). (Information 2/3/20) (App. pp. 10-12). One count was for marijuana and another count was for methamphetamine. (Information 2/3/20) (App. pp. 10-12).

Rincon entered a plea of not guilty at arraignment. (Arraignment Order 2/13/20) (App. pp. 13-15). Her attorney filed a motion to suppress the evidence on March 26, 2020. (MTS) (App. pp. 16-17). The State filed a resistance on March 30, 2020, and the defense filed a brief in support of its motion the following day. (MTS Resistance; MTS Brief) (App. pp. 18-33).

A hearing was held on the motion to suppress on April 7, 2020. (MTS Tr. p.1 L.1-25). The parties did not make arguments or offer testimony; instead, both parties offered exhibits, which included body camera and dashboard camera footage. (MTS Tr. p.3 L.1-p.7 L.4).

The district court issued a ruling on April 15, 2020, granting Rincon's motion to suppress. (Ruling 4/15/20) (App.

pp. 34-39). The State filed a motion to reconsider on April 15, 2020, which the defense resisted the same day. (Reconsideration Motion; Resistance to Reconsideration) (App. pp. 40-44).

A hearing was held on the motion to reconsider on April 29, 2020. (Reconsideration Tr. p.1 L.1-25). The district court granted the State's motion to reconsider, thereby denying Rincon's motion to suppress, on June 16, 2020. (Ruling 6/16/20) (App. pp. 45-48).

Rincon waived a jury trial and stipulated to a prior offense and a trial on the minutes. (Waiver 8/24/20; Stipulation 8/31/20) (App. pp. 49-52). The district court found Rincon guilty of possessing a controlled substance as a second or subsequent offender. (Findings 9/25/20) (App. pp. 53-56). Rincon was given a suspended sentence and probation on October 8, 2020. (Judgment) (App. pp. 57-60). She filed a timely notice of appeal the same day. (Notice) (App. p. 61).

Facts: Myranda Rincon was the front seat passenger of a gray Chevrolet Malibu driven by Clifton Melton on December 24, 2019. (Minutes, pp.1-2) (Conf. App. pp. 4-5). Lorena Martinez, Antonio Villa Magana, and Robert Meadows, Jr. were seated in the backseat. (Minutes, p.2) (Conf. App. p. 5). At approximately 2:45 a.m. Des Moines Police Department Officer Cole Johnson observed the Chevrolet Malibu parked in front of an apartment complex at 3519 University Avenue. Johnson ran the plate as he passed by, paused to speak to officers in another vehicle, and then turned around when the Malibu came back as stolen. (Minutes, p.1) (Conf. App. p. 4).

A man in a hooded sweatshirt, later identified as Clifton Melton, had been at the apartment complex door and was approaching the driver's side of the Malibu when Johnson pulled up behind the car. When asked, Melton denied the car was his, saying it belonged to his "homegirl," and pointing toward the apartment building. (Exh. A 00:00:55) (Minutes, p.1) (Conf. App. p. 4). Johnson handcuffed Melton and told

him he was being detained. When Melton asked what he'd done, Johnson said, "We'll get to that." Officer Jordan Ulin patted Melton down and placed him in the back of the patrol car as Johnson approached the Malibu. Johnson shone a flashlight into the car and observed four passengers and an open container of alcohol on the driver's seat. (Exh. A 00:01:20).

Johnson called in the stop, then opened the driver's door, turned off the vehicle, and tossed the keys on the dash. Rincon informed him that she just got picked up at a friend's house and was going home. "We're not being detained, are we?" she asked. Johnson informed the passengers that the vehicle was stolen and they were all being detained. He then asked for everyone's identification. Rincon informed him that she never would've gotten into the car if she'd known it was stolen because she'd just gotten out of jail. She provided him with her identifying information since she didn't have ID. (Exh. A 00:02:13).

Ulin spoke with Meadows at the rear passenger side door as Johnson opened the rear driver's side door to talk with Martinez. The vehicle occupants grumbled in response to the requests for identification, asserting that they knew their rights. Spying an open container in Villa Magana's hand, Johnson said he could take them all to jail for open containers. "We're trying to be cool, man, but you guys are giving us a reason not to be," Johnson told them. (Exh. A 00:04:14). When asked if there was anything else the officers needed to know about in the car, the passengers said no. (Exh. A 00:05:12).

One of the male passengers asked if they could get out of the car. Johnson said yes. (Exh. A 00:05:55). Ulin told Meadows to step out and face the car. (Exh. A 00:06:20). Meanwhile, Officers Ryan Steinkamp and Brian Minnehan arrived on scene. Steinkamp approached the passenger side of the vehicle, where Ulin was talking with Meadows by the rear passenger door. Rincon had exited the front passenger

seat with her backpack and was talking on the phone. Steinkamp ordered, "Ma'am—ma'am! Get off the phone! Put yourself back in the car!" (Exh. B 00:01:30).

Rincon said she thought she was told she could get out. Ulin told her he meant the rear seat passenger. Rincon picked up her backpack as she began getting back into the car and apologizing to Ulin. Steinkamp directed Rincon away from the Malibu, telling her, "Back here, back here . . . not putting up with this shit." (Exh. B 00:01:30). Steinkamp led Rincon to Johnson's patrol car, setting Rincon's backpack on top of the hood. Rincon told him she didn't do anything wrong, that she was just getting a ride home and didn't even know these people. Steinkamp informed Rincon that she was being detained and handcuffed her hands behind her back. (Exh. B 00:01:30). Rincon swore. Steinkamp directed the other officers to put everyone in handcuffs. They complied. (Exh. B 00:01:49).

Melton was still handcuffed in the rear of the patrol vehicle. Martinez, Villa Magana, Meadows, and Rincon were now all cuffed with hands behind their backs by the front bumper of Johnson's patrol car, several feet from the Malibu. (Exh. B 00:01:53).

Steinkamp took a look in the driver's side of the Malibu and called out to the other officers, "You got dope right here in the door!" (Exh. B 00:02:20). There were two baggies of what was later determined to be methamphetamine near the driver's door handle. (Minutes, p.1) (Conf. App. p. 4). Johnson returned to the Malibu to see for himself, then muttered, "Can of worms," as he walked back to his patrol car. (Exh. A 00:08:26).

Minnehan found a baggie of 3.45 grams of marijuana and a baggie of .21 grams of methamphetamine in the front pocket of Rincon's backpack. (Exh. B 00:02:50) (Minutes, p.2; Additional Minutes 8/24/20, p.3) (Conf. App. pp. 5, 12). A female officer was called to the scene to pat down Rincon and

Martinez; she found nothing. (Exh. B 00:02:45; Exh. B 00:12:05).

During a search of the area between the car and the apartment building, Officer Ulin found a Family Dollar bag containing three individual baggies of methamphetamine weighing approximately 27 grams each under a tree not far from the building where Melton had been seen initially. (Exh. B 00:11:45; Exh. B 00:15:40) (Additional Minutes 8/24/20, p.3) (Conf. App. p. 12). After Johnson confirmed the car was stolen through LENCIR, he Mirandized and spoke with each occupant of the vehicle individually. (Exh. A 00:15:40).

Melton denied knowledge of the methamphetamine in the car and under the tree, and that the vehicle was stolen. He had rented the car from an older woman at Oakridge Terrace, he said. Regarding the meth in the vehicle, Melton said, "I'm sure when you pulled up, they threw everything on my side." He also denied he was in the car, saying that officers never saw him in the car. (Exh. A 00:26:16) (Minutes, p.3) (Conf.

App. p. 6). The other occupants all identified Melton as the driver that night. (Exh. A 00:41:00; Exh. A 00:48:00; Exh. A 00:56:00; Exh. A 01:02:35) (Minutes, pp.2-3) (Conf. App. pp. 5-6). The Malibu had to be impounded because the owner couldn't be located. (Minutes, p.3) (Conf. App. p. 6).

Melton was charged with possession with intent, in addition to theft for the stolen vehicle.[1] (Information) (App. pp. 10-12). He also had outstanding warrants for his arrest for a parole violation and driving under suspension. (Exh. A 00:09:50).

Villa Magana and Martinez said they were friends and had come to Des Moines from Marshalltown to have a fun night. Melton was planning to take them back to Marshalltown. They denied knowledge of the drugs or that the vehicle was stolen. (Exh. A 00:48:00; Exh. A 00:56:00) (Minutes, p.2) (Conf. App. p. 5). Villa Magana had a warrant for his arrest. (Minutes, p.2) (Conf. App. p. 5).

---

[1] Melton was charged with Theft in the Second Degree by separate trial information in Polk County FECR334415.

Martinez said she and Villa Magana were already in the car when Melton picked up Rincon and Meadows. She didn't know Rincon or Meadows. (Exh. A 01:00:00) (Minutes, p.2) (Conf. App. p. 5). The driver was drinking out of the bottle. (Exh. A 01:01:00). Martinez was not charged with anything in connection with the night's events. (Minutes, p.2) (Conf. App. p. 5).

Meadows said he'd gotten picked up at Kum & Go and was just getting a ride. He only knew the driver. (Exh. A 00:41:00) (Minutes, pp.2-3) (Conf. App. pp. 5-6). He denied being in possession of drugs. (Exh. A 00:42:30). A baggie of methamphetamine was found on the rear passenger floorboard, near where Meadows' foot would've been. He was charged with possession of a controlled substance. (Information) (App. pp. 10-12) (Minutes, pp.2-3) (Conf. App. pp. 5-6).

Rincon said she'd gone to see her sister that night. She needed a ride home to get up for work in the morning. Her

sister said her friend “Shawn” could give Rincon a ride. Rincon understood the driver’s name to be “Shawn.” He was going to drop her off at her house before taking the others to Marshalltown. (Exh. A 01:02:35) (Minutes, p.2) (Conf. App. p. 5). She admitted she had done meth before but had been clean except for using weed. She had met the driver twice, and knew that he sold drugs to her sister, but didn’t know what was going on tonight. (Exh. A 01:07:40). Rincon was arrested for possession of the marijuana and methamphetamine found in her backpack. (Exh. A 01:12:30) (Information) (App. pp. 10-12).

ARGUMENT

I. The State must provide an exception to the warrant requirement to justify the warrantless search of an individual's effects. Rincon was the passenger in a vehicle who exited with her backpack when the driver was detained because the vehicle was stolen. Officers observed drugs and an open container in plain view on the driver's side. Do plain view, search incident to arrest, or the automobile exception justify the warrantless search of Rincon's backpack?

Preservation of Error: An adverse ruling on a motion to suppress preserves the issue for appellate review. See State v. Breuer, 577 N.W.2d 41, 44 (Iowa 1998). In this case, trial counsel filed a motion to suppress, seeking the exclusion of the evidence found in Rincon's backpack under the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution. (MTS) (App. pp. 16-17). The State resisted. (MTS Resistance) (App. pp. 18-26). The district court granted the motion initially, and then denied it upon the State's motion to reconsider. (Ruling 4/15/20; Motion to Reconsider; Ruling 6/16/20) (App. pp. 34-42, 45-48). Error has therefore been preserved on Rincon's claims.

However, the State did not cross-appeal or object to the district court's April 15, 2020 ruling finding the State did not meet its burden that there was probable cause to search Rincon or that it was a valid search incident to arrest. As the unsuccessful party on those issues, the State had to appeal to preserve error. Johnson Equip. Corp. v. Indus. Indem., 489 N.W.2d 13 (Iowa 1992) (finding the preservation requirement ordinarily only applies to the unsuccessful party). The State failed to preserve error related to these issues. Any argument to the contrary should be rejected.

Standard of Review: The appellate court reviews alleged violations of constitutional rights de novo. State v. Hoskins, 711 N.W.2d 720, 725 (Iowa 2006). The court makes "'an independent evaluation of the totality of the circumstances as shown by the entire record.'" State v. Turner, 630 N.W.2d 601, 606 (Iowa 2001) (quoting State v. Howard, 509 N.W.2d 764, 767 (Iowa 1993)). The court also considers "both the evidence presented during the suppression hearing and that

introduced at trial." State v. Breuer, 577 N.W.2d 41, 44 (Iowa 1998). Deference is given to the district court's factual findings "due to its opportunity to evaluate the credibility of the witnesses," but these findings are not binding on the reviewing court. State v. Lane, 726 N.W.2d 371, 377 (Iowa 2007).

Merits: Rincon challenged the search of her backpack by filing a motion to suppress, arguing there was no justification for the search. (MTS) (App. pp. 16-17). The State resisted on the grounds that Rincon lacked standing to challenge the search of the vehicle, and that exceptions to the warrant justified the search, including: plain view, search incident to arrest, and the automobile exception. (MTS Resistance) (App. pp. 18-26). Defense counsel's brief in support refuted the State's arguments. (MTS Brief) (App. pp. 27-33).

The parties submitted video footage as exhibits, but there were no witnesses or arguments at the initial suppression hearing. (MTS Tr. p.3 L.1-p.7 L.4). In its first ruling, the

district court found that the State did not meet its burden in proving that either search incident to arrest or probable cause with exigent circumstances justified the warrantless search of Rincon's backpack. (Ruling 4/15/20) (App. pp. 34-39).

The State filed a motion to reconsider, urging the court to address its contention that Rincon lacked standing to challenge the search of the vehicle. (Reconsideration Motion, ¶¶ 9-15) (App. pp. 41-42). In response, defense counsel reiterated that the challenge was to the search of Rincon's backpack, not the vehicle. (Resistance to Reconsideration) (App. pp. 43-44).

At the reconsideration hearing, the State initially indicated that it was only challenging standing, and that it was not seeking to revisit the court's prior ruling on the exceptions to the warrant requirement. (Reconsideration Tr. p.3 L.6-p.4 L.25). Defense counsel argued that the State was missing the point because Rincon had a legitimate expectation of privacy in her own backpack that she had in her possession

when she exited the vehicle. Defense counsel argued further that law enforcement needed a warrant before searching Rincon's backpack. (Reconsideration Tr. p.6 L.14-p.10 L.10).

In response to a question from the court, and in reply to defense counsel's argument, the State essentially renewed its automobile-exception argument but with a caveat. (Reconsideration Tr. p.5 L.1-7; p.10 L.11-p.12 L.15). In an exchange with the court:

> THE COURT: . . . So is it the State's position that Ms. Rincon's purse [sic] was essentially part of the vehicle because it was inside the vehicle at the time that it was stopped? What's the nexus there?
>
> [PROSECUTOR]: Yes, Your Honor. It would be everything that's inside the vehicle.

(Reconsideration Tr. p.5 L.1-7).

A short while later, in response to defense counsel's argument, the prosecution stated to the court:

> I understand that there are cases that talk about when a person takes something out of the car with them, and the officers search the car, and whether or not the officers have cause to search the item that people took with them, that's a completely

> different analysis than what we're talking about here. The fact pattern is different.

(Reconsideration Tr. p.12 L.1-6).[2]

In its ruling on the State's motion to reconsider, the court stated:

> The Court's Ruling on Defendant's Motion for Suppression focused on whether the exceptions of "probable cause and exigent circumstance" and/or "search conducted incident to lawful arrest" applied to the search of Rincon's backpack. In narrowing its analysis to those two issues, the Court failed to address the State of Iowa's argument that Rincon lacked standing to challenge the search of the stolen vehicle and its contents which included Rincon's backpack. In doing so, the Court reached the incorrect conclusion that the contraband recovered from Rincon's backpack must be suppressed. Having now analyzed the State of Iowa's standing argument, the Court finds that the State of Iowa's Motion to Reconsider must be granted and Defendant's Motion for Suppression must be denied.
>
> It is undisputed that Rincon was nothing more than a passenger in the vehicle detained by law enforcement on December 24, 2019 and a passenger with neither a possessory nor a property interest in a vehicle does not have a legitimate expectation of privacy in the vehicle. State v. Halliburton, 539 N.W.2d 339, 342 (Iowa 1995).

---

[2] The State described the exact fact pattern in the instant case.

> Even if Rincon did have some expectation of privacy in the detained vehicle, such expectation may not survive if probable cause is given to believe the vehicle is transporting contraband. United States v. Ross, 456 U.S. 798 at 823, 102 S.Ct. 2157 at 2171, 72 L.Ed.2d 572 at 592-93 (1982); See also State v. Eubanks, 355 N.W.2d 57 (1984). Here, prior to the search of Rincon's backpack, law enforcement had probable cause to believe the detained vehicle was transporting contraband. Accordingly, Rincon had no expectation of privacy that would have precluded law enforcement from searching the containers within the detained vehicle, which included her backpack.

(Ruling 6/16/20, pp.2-3) (App. pp. 46-47).

The district court's ruling was erroneous and not supported by the federal or state constitution. A thorough unpacking of this constitutional "can of worms" reveals why.

A. Rincon has standing to challenge the warrantless search of her backpack.

Rincon had the right to be free from an unreasonable and warrantless search of her effects. The Fourth and Fourteenth Amendments of the United States Constitution and article I, section 8 of the Iowa Constitution protect against unreasonable searches and seizures. U.S. Const. amends. IV, XIV; Iowa Const. art. I, § 8; State v. Lewis, 675 N.W.2d 516,

522-23 (Iowa 2004). The purpose is to impose a standard of reasonableness on the exercise of discretion by government officials in order to safeguard the privacy and security of individuals against arbitrary invasion. State v. Lovig, 675 N.W.2d 557, 562 (Iowa 2004).

The search and seizure clause of the Iowa Constitution is substantially identical in language to the Fourth Amendment. Iowa Const. art. I, § 8. The scope of the protection afforded, however, is not. State v. Pettijohn, 899 N.W.2d 1, 19 (Iowa 2017). "We jealously guard our right to construe our state constitution differently than its federal counterpart." Id. The Iowa Supreme Court reserves the right to apply a corollary federal standard more stringently than provided for under federal case law, even when a party has not advanced a different standard under the Iowa Constitution. Id.

The extent to which the Iowa Supreme Court will adopt federal precedent in interpreting article I, section 8 of the Iowa Constitution will depend "solely upon its ability to persuade us

with the reasoning of the decision." State v. Ochoa, 792 N.W.2d 260, 267 (Iowa 2010). The Iowa Supreme Court has been particularly engaged in applying the state search and seizure provisions in a more exacting manner. See, e.g., State v. Cline, 617 N.W.2d 277 (Iowa 2000) (good faith exception); State v. Ochoa, 792 N.W.2d 260 (Iowa 2010) (parole searches); State v. Pals, 805 N.W.2d 767 (2011) (consent searches); State v. Gaskins, 866 N.W.2d 1 (Iowa 2015) (vehicle search incident to arrest); see also State v. Baldon, 829 N.W.2d 785, 820-23 (Iowa 2013) (Appel, J., concurring) (discussing Iowa's independent approach to various constitutional provisions). Defense counsel and the district court cited to the Iowa Constitution, but a different analysis was not argued or applied. (MTS Brief, p.4; Ruling 4/15/20, p.2) (App. pp. 30, 35).

Rincon lacked standing to challenge the search of the stolen Malibu. Standing turns on whether the search violated the rights of the person seeking to exclude the evidence and

whether the rights infringed upon are protected by the Fourth Amendment. Rakas v. Illinois, 439 U.S. 128, 140 (1978). Claiming the Constitution's protection requires the person to have "a legitimate expectation of privacy in the invaded place." Id. at 143. Passengers do not have a legitimate expectation of privacy in a vehicle belonging to another when they have "asserted neither a property nor a possessory interest in the automobile, nor an interest in the property seized."[3] Id. at

[3] The petitioners in Rakas did not claim ownership of the rifle shells found in the locked glove compartment or the sawed-off rifle under the front passenger seat, or even a possessory interest in the vehicle. Rakas, 439 U.S. at 130. In Halliburton, the defendant failed to preserve a challenge to the search of the passenger compartment and his jacket within it; only the search of the trunk of his mother's vehicle, which yielded a sawed-off shotgun, was decided. State v. Halliburton, 539 N.W.2d 339, 341-42 (Iowa 1995). At least one scholar has questioned whether passengers actually lack standing when they have the owner's permission. Albert W. Alschuler, *Interpersonal Privacy and the Fourth Amendment*, 4 Northern Ill. Univ. L. Rev. 1, 12 (1983) ("In all but the rarest circumstances, a person who stores property in an automobile's locked glove compartment with the automobile owner's permission has a reasonable expectation that the property will remain private in that compartment. Cultural expectations of privacy are changing and uncertain, but not so uncertain as to make a denial of that proposition anything but silly.").

148-49; State v. Halliburton, 539 N.W.2d 339, 342-43 (Iowa 1995) (citing Rakas, 439 U.S. at 129). Rincon did not challenge the search of the Malibu in the instant case. There is no dispute that Rincon lacked standing to challenge the search of the Malibu as she asserted no possessory or ownership interest in the stolen vehicle.

Rincon does have a legitimate expectation of privacy in her own backpack. The first question regarding standing is whether an individual has "exhibited an actual expectation of privacy." Bond v. United States, 529 U.S. 334, 338 (2000). The second is whether the individual's expectation is one society is "prepared to recognize as reasonable." Id. Rincon exhibited an expectation of privacy in her backpack by keeping it at her feet in the car and taking it with her when she exited the vehicle. (Exh. A 00:02:13; Exh. B 00:01:30). Also, the U.S. Supreme Court has recognized the expectation of privacy in one's belongings. See Bond, 529 U.S. at 336 ("A traveler's personal luggage is clearly an 'effect' protected by the [Fourth]

Amendment."); United States v. Chadwick, 433 U.S. 1, 13 (1977) ("[A] person's expectations of privacy in personal luggage are substantially greater than in an automobile."). Indeed, in the case of Wyoming v. Houghton, 526 U.S. 295 (1999), the issue of a passenger's standing to challenge the search of her purse during a vehicle search wasn't even addressed in the opinion. It was, however, discussed during oral argument, at which time the Government conceded that she had a right to challenge the search of her purse. Transcript of Oral Argument at 10-12, Wyoming v. Houghton, 526 U.S. 295 (1999) (No. 98-184), https://www.supremecourt.gov/pdfs/transcripts/1998/98-184_01-12-1999.pdf.

In the district court, the State relied heavily on State v. Arellano, No. 14, 0051, 2015 WL 1054978, at *1 (Iowa Ct. App. March 11, 2015). (Reconsideration Tr. p.5 L.1-p.6 L.10; p.10 L.12-p.11 L.5). This reliance is misplaced, however, as Arellano is both unpublished and inapposite. Even though

Arellano involves a backpack containing drugs in a car, Arellano was challenging an inventory search of the vehicle. Id. at *1. There was some confusion as to whether he had standing because even though it was clear he was a passenger, he may have also been the owner of the vehicle; the majority found that he had standing. Id. at **1-2.

Rincon challenged the search of her backpack, not the car, and defense counsel made that clear in pleadings and at the reconsideration hearing. (Reconsideration Tr. p.6 L.14-p.10 L.10) (MTS; MTS Brief; Resistance to Reconsideration) (App. pp. 16-17, 27-33, 43-44). She exhibited a legitimate expectation of privacy in her personal effects by keeping it at her feet in the car and removing the backpack from the vehicle when she exited. Our courts have recognized this expectation as legitimate. Rincon therefore has standing to challenge the warrantless search of her backpack.[4]

[4] The district court's finding that Rincon had a reduced expectation of privacy in her backpack because it was within the vehicle is addressed under the automobile exception in Section B.4 below.

B. No exception to the warrant requirement justified the warrantless search of Rincon's backpack.

The State's arguments that plain view, search incident to arrest, and the automobile exception justify the search in this case lack merit. A search or seizure conducted without a valid warrant is per se unreasonable unless one of the exceptions to the warrant requirement applies. Arizona v. Gant, 556 U.S. 332, 338 (2009); State v. McGrane, 733 N.W.2d 671, 676 (Iowa 2007). When a warrantless search is challenged, the State must show by a preponderance of the evidence that an exception to the warrant requirement applies. State v. Cline, 617 N.W.2d 277, 282 (Iowa 2000), overruled on other grounds by State v. Turner, 630 N.W.2d 601, 611 n.2 (Iowa 2001).

Rincon argued below that the search of her backpack violated the Fourth Amendment and article I, section 8 of the Iowa Constitution, and that no exceptions justified the warrantless intrusion. (MTS; MTS Brief) (App. pp. 16-17, 27-33). The State responded that the Des Moines Police were justified in searching Rincon's backpack based on the

following exceptions: plain view, search incident to arrest, and the automobile exception. (MTS Resistance) (App. pp. 18-26). The district court interpreted the dispute to be whether the probable-cause-with-exigent-circumstances and search-incident-to-arrest exceptions applied. (Ruling 4/15/20, p.2) (App. p. 35). The court initially ruled that neither probable cause with exigency or search incident to arrest justified the search of Rincon's backpack. (Ruling 4/15/20) (App. pp. 34-39).

In its ruling after reconsideration, the district court stated it was evaluating Rincon's standing to challenge the search of the car, but reads as if the court was addressing the automobile exception first raised in the State's resistance to the motion to suppress. (MTS Resistance, ¶¶10-11; Ruling 6/16/20, pp.2-3) (App. pp. 21-22, 46-47). The district court's question of the State at the reconsideration hearing also indicates that it was the automobile exception—not Rincon's standing—that was of concern. (Reconsideration Tr. p.5 L.1-

7). Rincon addresses each exception in turn while maintaining her argument that the State waived its arguments regarding probable cause and search-incident-to-arrest exceptions by not preserving error, as discussed above.

1. The plain-view exception only justified the seizure of contraband found in plain view in the Malibu, not the warrantless search of Rincon's backpack. The State argued below that the officers observed an open container of alcohol and two baggies of methamphetamine in plain view. (MTS Resistance, ¶¶6-9) (App. pp. 20-21). The district court found that an open container of alcohol and two plastic baggies containing methamphetamine were located "in the front of the vehicle on the driver's side." They were in plain view of law enforcement, the court concluded. (Ruling 4/15/20, p.1) (App. p. 34).

The prerequisites were met to justify a seizure of the contraband in the Malibu under the plain-view exception. To satisfy the seizure of evidence in plain view, the State bears

the burden to show that: (1) the intrusion into a protected area was justified; (2) the discovery was inadvertent; and (3) the object's incriminating nature was immediately apparent. State v. Oliver, 341 N.W.2d 744, 745-46 (Iowa 1983). "If an article is already in plain view, neither its observation nor its seizure would involve any invasion of privacy." Horton v. California, 496 U.S. 128, 133 (1990). The officers had reasonable suspicion to approach the Malibu because of the report that it was stolen. After securing the driver, Officer Johnson observed an open container of alcohol in the driver's seat. (Exh. A 00:02:50). Once all the passengers were out of the vehicle, Officer Steinkamp observed drugs in the driver's door of the Malibu. (Exh. B 00:02:20). Both officers made their observations from outside the vehicle. The Des Moines Police therefore observed the open container and methamphetamine in plain view and were justified in seizing the drugs and open container.

The plain-view doctrine does not justify a search of Rincon's closed backpack. When there is a lawful justification for an officer's presence, the seizure of contraband within plain view is justified; however, this doctrine does not allow a general exploratory search. Coolidge v. New Hampshire, 403 U.S. 443, 466 (1971). "Items in plain view within a car, viewed by police officers standing outside the car where they have a right to be, can furnish probable cause for a subsequent search of the car." State v. Cullor, 315 N.W.2d 808, 811 (Iowa 1982). While they were justified in seizing the drugs and open container in plain view in the Malibu, the search of Rincon's backpack was not justified as an extension of the plain-view doctrine. Probable cause was required, which is addressed in the following subsections.

2. The district court correctly found the Des Moines Police lacked probable cause to justify a warrantless search of Rincon's backpack. The State argued below that there was probable cause to detain the Malibu due to the

report that it was stolen, as well as to search Rincon's backpack. (MTS Resistance, ¶¶3-5, 24) (App. pp. 18-19, 25). The defense argued there was no probable cause. (MTS Brief, p.6) (App. p. 32). The district court ruled as follows:

> Turning to the first disputed issue, the State also argues that probable cause existed to search Rincon's backpack. In support of its argument, the State preliminarily argues law enforcement had probable cause to detain the vehicle in which Rincon was a passenger. Appreciating that the vehicle was reportedly stolen, the Court agrees. In further support of its argument, the State argues that "Officers were armed with probable cause to associate the vehicle with the defendant. In addition, officers were armed with probable cause to associate the defendant with other criminal activity based upon the ongoing drug investigation." Resistance, p. 8. The Court disagrees.
>
> "Probable cause exists when the facts and circumstances within the arresting officer's knowledge would warrant a person of reasonable caution to believe that an offense is being committed." State v. Ceron, 573 N.W.2d 587, 592 (Iowa 1997) (internal citation omitted). Here, again, based upon the evidence presented, other than her presence as a passenger, there is nothing that associates Rincon with the vehicle. The driver of the vehicle claimed association with the vehicle when he stated it was his "homegirl's." In contrast, Rincon stated she had just been picked up and knew nothing about it. Further, there is nothing that ties

> Rincon to "other criminal activity based upon the ongoing drug investigation." The Court assumes the "ongoing drug investigation" is in reference to the two baggies located in the pocket of the front driver's side door. There is nothing to suggest that Rincon was within reaching distance of the baggies or that she even knew of their existence. Absent some articulable suspicion concerning a violation of law by Rincon, the Court cannot conclude the search of her backpack was reasonable. See State v. Becker, 458 N.W.2d 604, 607 (Iowa 1990). Accordingly, the Court concludes the warrantless search of Rincon's backpack does not fall within the "probable cause and exigent circumstance" exception.

(Ruling 4/15/20, pp.4-5) (App. pp. 37-38).

The State lacked probable cause that Rincon was engaged in criminal activity. Probable cause with exigent circumstances is one 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). The U.S. Supreme Court provides the following definition:

> [P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual

> contexts—not readily, or even usefully to a neat set of legal rules. The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances. We have stated, however, that '[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt,' and that the belief of guilt must be particularized with respect to the person to be searched or seized.

Maryland v. Pringle, 540 U.S. 366, 370-71 (2003) (internal citations omitted).

In Pringle, drugs and money were found in a car occupied by three men, who all denied knowledge of the contraband. Id. at 367-69. Pringle argued the government lacked probable cause to arrest him on drug charges. Id. at 369. The Court found there was a reasonable inference that Pringle—either solely or jointly—exercised "dominion and control" over the cocaine. Id. at 372. The Court considered the definition of possession under Maryland law, which included actual and constructive possession. Id. at 370, n.1.

Under Iowa law, possession can also be actual or constructive. State v. Cashen, 666 N.W.2d 566, 569 (Iowa

2003). Actual possession involves "direct physical control," while constructive possession means the defendant has knowledge of the presence of the drugs, as well as "the authority or right to maintain control of them." Id. Proximity to the contraband is not enough to show "control and dominion." State v. Reed, 875 N.W.2d 693, 705 (Iowa 2016). Probable cause for constructive possession in a car occupied by more than one person might include not only proximity to the contraband but physical indicators of recent drug use (such as red, watery eyes), furtive movements, an officer's knowledge of the suspect's past drug or gang involvement and criminal history, as well as the officer's level of experience. State v. Ceron, 573 N.W.2d 587, 588, 593 (Iowa 1997) (finding probable cause to search the passenger based on all of these factors after the officer found cigarette rolling papers between the console and passenger seat); but see State v. Horton, 625 N.W.2d 362, 367 (Iowa 2001) (finding probable cause to search passenger based on marijuana roaches in plain view in an

ashtray between driver and passenger without anything more).

In the instant case, the district court properly found that the State lacked probable cause that Rincon had committed an offense. Her mere presence as a passenger within a stolen vehicle does not rise to probable cause. Rincon informed Officer Johnson that she was just getting a ride home from Melton, which Martinez substantiated. (Exh. A 00:02:13; 01:00:00; Exh. B 00:01:49). There was nothing to connect her with the vehicle, and Melton told Johnson that he was the one who rented the vehicle from a woman he met at Oakridge Terrace. (Exh. A 00:26:16).

Furthermore, the methamphetamine wasn't observed by officers until all passengers had exited the vehicle. (Exh. B 00:02:20). The drugs were in the driver's door, and the State did not prove they were either visible or accessible to Rincon, let alone that she had the authority or right to maintain control over them. Additionally, the open container was on the driver's seat, and Martinez confirmed it was Melton who was

drinking from it. (Exh. A 00:01:20; 01:01:00).

Also, there was no indication that there were furtive movements by the passengers when the patrol car approached or that officers were familiar with Rincon or her arrest history. Yet it was clear that Officer Johnson was familiar with Melton because he called him by name before getting his identification. (Exh. A 00:01:20). And even if Rincon knew that Melton was dealing drugs, that did not rise to the level of probable cause for constructive possession because she did not have dominion or control of the drugs, which were beyond her reach on the driver's side. Moreover, there was no evidence presented regarding the officers' level of experience or any indication that they believed Rincon showed signs of recent drug or alcohol use.

In addition, all the passengers identified Melton as the driver of the stolen Malibu and the one in possession of contraband. The Pringle Court distinguished its probable cause analysis from United States v. Di Re, 332 U.S. 581, 583

(1948), in which an informant implicated the driver in counterfeiting ration coupons, but not the passenger. Pringle, 540 U.S. at 373-74. In Pringle, none of the three vehicle occupants informed on the others until they were arrested, then Pringle confessed to being the one who placed the money and drugs in the car. Id. In the instant case, all four vehicle passengers pointed the finger at Melton as the one who was driving the stolen vehicle; they also denied knowledge of the drugs in the car. (Exh. A 00:41:00; 00:48:00; 00:56:00; 01:02:35) (Minutes, pp.2-3) (Conf. App. pp. 5-6). Melton was the one found outside the car when officers approached; the driver's seat was the only position unoccupied in the car, corroborating that he was the driver. (Exh. A 00:00:55). Officers also found three baggies of methamphetamine inside a grocery sack in between the apartment building and the vehicle—the path which officers observed Melton traverse. (Exh. B 00:11:45; 00:15:40) (Minutes, p.2) (Conf. App. p. 5). Probable cause certainly supported the inference that Melton

was in possession of the stolen vehicle and contraband, but it did not support such an inference for Rincon. See Di Re, 332 U.S. at 594 ("Moreover, whatever suspicion might result from Di Re's mere presence seems diminished, if not destroyed, when Reed, present as the informer, pointed out [the driver], and [the driver] only, as a guilty party."). Therefore, no probable cause existed to believe Rincon was engaged in criminal activity.

The district court did not indicate there were any exigent circumstances involved, nor did the State allege any. However, in addition to lacking probable cause as addressed above, the officers also lacked exigent circumstances justifying the search. Exigent circumstances are determined by considering several factors: "danger or 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 101, 108 (Iowa 2001). 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. As discussed below in Section B.3 regarding search incident to arrest, there was no opportunity for Rincon to escape or conceal or destroy evidence as she was handcuffed, under the observation of officers, and her backpack was removed from her reach by officers. Therefore, no exigency existed.

The fact that Rincon was "associated with the vehicle," which contained contraband, as argued by the State below, is insufficient to support probable cause. Moreover, the State failed to argue or prove that exigent circumstances existed. Therefore, probable cause with exigent circumstances was lacking, and the district court's ruling on this exception must stand.

3. The district court properly ruled that the search of Rincon's backpack was not a valid search incident to arrest (SITA). The State claimed that search incident to arrest justified the warrantless search of Rincon's backpack.

(Resistance, ¶¶17-22) (App. pp. 23-24). The defense argued this exception did not apply. (MTS Brief, pp.6-7) (App. pp. 32-33). The district court stated in its ruling:

> Under the Fourth Amendment, the Supreme Court has long recognized the lawful custodial arrest of a person justifies the contemporaneous search of the person arrested and of the immediately surrounding area, meaning the area from which the person might gain possession of a weapon or destructible evidence. Chimel v. California, 395 U.S. 752, 762–63 (1969). The Supreme Court created this exception to the warrant requirement to serve the dual purposes of protecting arresting officers and safeguarding any evidence the arrestee may seek to conceal or destroy. Id. The Iowa Supreme Court has stated, "The search-incident-to-arrest exception to the warrant requirement must be narrowly construed and limited to accommodating only those interests it was created to serve." State v. McGrane, 733 N.W.2d 671, 677 (Iowa 2007).
>
> Here, the State argues that because Rincon could have been arrested for Possession of an Open Container, Possession of a Controlled Substance, and Theft in the Second Degree, the search of her backpack was proper. Simply because Rincon could have been arrested for these crimes, however, does not make the search of her backpack permissible. To make such a finding would run afoul of the Supreme Court's pronouncements that exceptions to the warrant requirement are "jealously and carefully drawn." Coolidge v. New Hampshire, 403

> U.S. 443, 455 (1971); see also State v. Lee, 498 S.W.3d 442, 452 (Mo. Ct. App. 2016) (holding that warrantless search incident to arrest is not authorized when officers express no intention to arrest suspect); People v. Evans, 371 N.E.2d 528, 531 (N.Y. 1977) (holding that an actual arrest is a requirement to a search incident to arrest). At the time Rincon's backpack was searched, there was no indication Rincon was going to be arrested for the crimes noted by the State. Further, because all occupants had been removed from the vehicle and handcuffed, there was no indication that law enforcement's safety was jeopardized or that there was the potential for the destruction of any evidence. Finally, based on the evidence presented to the Court, there is nothing to reasonably suggest that a search of Rincon's backpack would have uncovered "evidence of the offense of arrest." See Arizona v. Gant, 556 U.S. 332, 351 (2009). For these reasons, the Court concludes the warrantless search of Rincon's backpack does not fall within the "search conducted incident to lawful arrest" exception.

(Ruling 4/15/20, pp.2-4) (App. pp. 35-37).

Law enforcement lacked probable cause to arrest Rincon. First, an arrest requires probable cause. State v. Freeman, 705 N.W.2d 293, 298 (Iowa 2005); State v. Ceron, 573 N.W.2d 587, 589 (Iowa 1997). It is sufficient that probable cause existed for an offense for which the arrestee isn't ultimately

charged. State v. Bradford, 620 N.W.2d 503, 508 (Iowa 2000) (finding probable cause existed that Bradford was aiding and abetting harassment even though he was only arrested for the marijuana found in his pockets during a pat down). Rincon incorporates herein the argument that the State lacked probable cause from Section B.2 above. Because there was no probable cause to support Rincon's warrantless arrest at the time her backpack was searched—nor was there an arrest even contemplated at the time of the search of Rincon's bag—there can be no valid search incident to arrest.

Even if this Court finds that probable cause to arrest existed, for this exception to apply, there must be a valid custodial arrest. A lawful custodial arrest justifies the search incident to arrest. United States v. Robinson, 414 U.S. 218, 235 (1973). The arrest must be substantially contemporaneous to the search. State v. Horton, 625 N.W.2d 362, 364 (Iowa 2001). The formal arrest must "follow[] quickly on the heels of the challenged search." Id. (citing Rawlings v.

Kentucky, 448 U.S. 98, 111 (1980)). Formal arrest did not occur quickly in this case. Indeed, over an hour passed after the drugs were found in Rincon's backpack before Officer Johnson informed her she was going to jail. (Exh. A 00:08:00; 01:12:00). The search of Rincon's backpack was not substantially contemporaneous to an arrest. See Rawlings, 448 U.S. at 101, 111 (finding valid SITA where officer found money and a knife on Rawlings right after placing him under arrest for controlled substances); see also Horton, 625 N.W.2d at 363-64 (finding search justified as SITA where passenger produced marijuana when officer ordered her to empty her pockets and thereafter arrested her). Therefore, the search of Rincon was not justified as a search incident to arrest because it was not substantially contemporaneous to the arrest.

The backpack was not within Rincon's "grab area" to justify search incident to arrest. In an arrest situation, officers may search the arrestee's person and the area within the arrestee's immediate control. Chimel v. California, 395

U.S. 752, 762-63 (1969); State v. McGrane, 733 N.W.2d 671, 676 (Iowa 2007). The purpose is to prevent an arrestee from destroying evidence or gaining possession of a weapon that may be used to harm officers. Arizona v. Gant, 556 U.S. 332, 338 (2009); McGrane, 733 N.W.2d at 676. It is limited to the arrestee's "grab" area. McGrane, 733 N.W.2d at 676 (citing Chimel, 395 U.S. at 763). The Tenth Circuit has considered several factors to determine what is within an arrestee's grab area: "(1) whether the arrestee is handcuffed; (2) the relative number of arrestees and officers present; (3) the relative positions of the arrestees, officers, and the place to be searched; and (4) the ease or difficulty with which the arrestee could gain access to the searched area." United States v. Knapp, 917 F.3d 1161, 1168-69 (10th Cir. 2019) (holding that a purse on the hood of a patrol car was not within the grab area of a handcuffed arrestee who was under the supervision of three officers that had no suspicion she was dangerous). Other factors include whether the arrestee is dangerous or

associated with weapons, and the possibility that a co-conspirator or crowd might intervene. United States v. Cook, 808 F.3d 1195, 1199-00 (9th Cir. 2015) (finding SITA of defendant's backpack valid even though he was face down and handcuffed because the backpack was right next to him, the search was limited to a cursory look for weapons, weapons had been seized from co-conspirators, and a crowd had formed).

Rincon's hands were cuffed behind her back while her backpack was on top of the hood of a DMPD SUV. She is 5'1" tall and stood next to the front of the bumper of the SUV, except when Officer Johnson escorted her to the front of the Malibu to question her. (Exh. A 01:02:35) (Complaint, p.2) (App. p. 5). There were one to three other handcuffed detainees in her immediate area before they were removed to patrol cars, and they were under the supervision of two—if not three or four—officers at a time. There was no indication that Rincon was dangerous or that weapons had been found in

connection with this incident. Finally, it was the wee hours of Christmas Eve morning, and no one else was about except one resident of the apartment building, who came outside to speak to the officers because she knew the driver. (Exh. B 01:07:00) (Minutes, p.3) (Conf. App. p. 6). The district court correctly ruled Rincon was not a threat to officer safety or able to destroy evidence. (Ruling 4/15/20, p.3) (App. p. 36).

Search incident to arrest did not justify the search of Rincon's backpack. First, the officers lacked probable cause to arrest Rincon. Second, even if there was probable cause, the search was not substantially contemporaneous with the arrest, taking place over an hour after finding the drugs in her backpack. Finally, the purposes for the exception were not met because Rincon was handcuffed, under the supervision of officers, and not physically able to reach the evidence, nor was she a threat to officers. The district court's ruling on this exception must stand.

4. The automobile exception does not apply to the search of Rincon's backpack. The State argued that the automobile exception justified the search of Rincon's backpack. (MTS Resistance, ¶¶10-11) (App. pp. 21-22). The defense disagreed. (MTS Brief, pp.5-6) (App. pp. 31-32). The district court did not rule on this exception in its first ruling; however, it was addressed in its reconsideration ruling:

> The Court's Ruling on Defendant's Motion for Suppression focused on whether the exceptions of "probable cause and exigent circumstance" and/or "search conducted incident to lawful arrest" applied to the search of Rincon's backpack. In narrowing its analysis to those two issues, the Court failed to address the State of Iowa's argument that Rincon lacked standing to challenge the search of the stolen vehicle and its contents which included Rincon's backpack. In doing so, the Court reached the incorrect conclusion that the contraband recovered from Rincon's backpack must be suppressed. Having now analyzed the State of Iowa's standing argument, the Court finds that the State of Iowa's Motion to Reconsider must be granted and Defendant's Motion for Suppression must be denied.
>
> It is undisputed that Rincon was nothing more than a passenger in the vehicle detained by law enforcement on December 24, 2019 and a passenger with neither a possessory nor a property

> interest in a vehicle does not have a legitimate expectation of privacy in the vehicle. State v. Halliburton, 539 N.W.2d 339, 342 (Iowa 1995). Even if Rincon did have some expectation of privacy in the detained vehicle, such expectation may not survive if probable cause is given to believe the vehicle is transporting contraband. United States v. Ross, 456 U.S. 798 at 823, 102 S.Ct. 2157 at 2171, 72 L.Ed.2d 572 at 592-93 (1982); See also State v. Eubanks, 355 N.W.2d 57 (1984). Here, prior to the search of Rincon's backpack, law enforcement had probable cause to believe the detained vehicle was transporting contraband. Accordingly, Rincon had no expectation of privacy that would have precluded law enforcement from searching the containers within the detained vehicle, which included her backpack.

(Ruling 6/16/20, pp.2-3) (App. pp. 46-47).

The district court's ruling that Rincon had a reduced expectation of privacy in her backpack was erroneous. Further, the automobile exception does not apply to containers or effects that are outside the automobile.

a. Rincon did not have a reduced expectation of privacy in her backpack because it was outside the vehicle. The high court has long held that vehicular occupants have a reduced expectation of privacy in their

belongings within an automobile. Wyoming v. Houghton, 526 U.S. 295, 303 (1999). In Houghton, the Court extended this reduced expectation to passengers' belongings, which has brought sharp criticism, such as Professor Tracey Maclin's:

> Who believes this? People routinely place property and effects—such as wallets, purses, knapsacks, and envelopes—fully expecting that those items will remain private. Purses and knapsacks often contain a passenger's (and driver's) most intimate and private items, and there is no everyday type of regulation of vehicular traffic that calls for routine inspection of a passenger's purse or knapsack.

Tracey Maclin, *Cops and Cars: How the Automobile Drove Fourth Amendment Law*, 99 Boston Univ. L. Rev. 2317, 2354-55 (2019) (internal citation omitted); accord 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 7.2(d) (6th ed. Sept. 2020 Update) [hereinafter LaFave] (opining that the Houghton majority's assertion that passengers have a reduced expectation of privacy in the containers they transport in cars "rings rather hollow").

While citizens and justices of the high court may disagree on the privacy interest we have in the contents of our vehicles, it is clear that containers *outside* the vehicle maintain their Fourth Amendment protection. In United States v. Chadwick, the Court held that luggage cannot be searched without a warrant, even if probable exists to believe it contains evidence of a crime. 433 U.S. 1, 13 (1977). The government had information that a double-locked footlocker contained marijuana, and seized it as soon as it was placed within the trunk of an automobile. Id. at 3-4. A warrantless search revealed it did contain marijuana. Id. at 4-5. The government did not claim that the automobile exception applied, arguing instead that only probable cause was required to search "movable personalty" seized in a public place. Id. at 6, 11-12. The Court disagreed, stating:

> The factors which diminish the privacy aspects of an automobile do not apply to respondents' footlocker. Luggage contents are not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a

> continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile.

Chadwick, 433 U.S. at 13.[5] "[T]he Court in Chadwick declined to extend the rationale of the 'automobile exception' to permit a warrantless search of any moveable container found within a public place." United States v. Ross, 456 U.S. 798, 812 (1982). Members of the Court have acknowledged the anomaly that a briefcase in a car can be searched without a warrant but a briefcase on the public street cannot. Acevedo, 500 U.S.

---

[5] Defense counsel relied on both Chadwick and Arkansas v. Sanders, 442 U.S. 753 (1979), in support of Rincon's arguments below. (Reconsideration Tr. p.7 L.11-p.8 L.22) (MTS Brief, p.5) (App. p. 31). Despite some sources indicating that Chadwick was abrogated by California v. Acevedo, 500 U.S. 565 (1991), Chadwick remains good law because it is not an automobile-exception case. LaFave at § 7.2(d) ("Indeed, so long as Chadwick remains good law, it can be said that the difficulty in transporting containers not so easily seized, such as the 200 pound footlocker in that case, is not an exigent circumstance sufficient to justify an immediate warrantless search of the container."). Arkansas v. Sanders, 442 U.S. 753 (1979), however, was explicitly overruled. Acevedo, 500 U.S. at 579.

at 581 (Scalia, J., concurring); id. at 598 (Stevens, J., dissenting). In the instant case, even if Rincon's backpack once was in the vehicle with a reduced expectation of privacy, its full privacy expectation was restored when she stepped onto the street with backpack in hand. Therefore, the district court erred in finding Rincon had a reduced expectation of privacy in her backpack.

b. The automobile exception only applies to containers and effects inside the automobile. When it is not practical to obtain a warrant because of the moveable nature of the vessel, the Fourth Amendment permits an exception to the warrant requirement to allow the vehicle to be searched. Carroll v. United States, 267 U.S. 132, 153 (1925). Probable cause to believe the automobile contains contraband is required. Id. at 156 (probable cause to find bootleg liquor); Chambers v. Maroney, 399 U.S. 42, 47-48 (1970) (probable cause to find guns and evidence of a robbery). Exigency is not a requirement of the automobile exception. State v. Storm,

898 N.W.2d 140, 146 (Iowa 2017) (citing Maryland v. Dyson, 527 U.S. 465, 466 (1999) (per curiam)). When officers approached the parked Malibu, they had an initial report that the vehicle was stolen. This was confirmed through a LENCIR check. (Exh. A 00:15:40) (Minutes, p.2) (Conf. App. p. 5). Additionally, after the four passengers exited the vehicle and were detained, Officer Steinkamp observed two baggies of methamphetamine in the pocket of the driver's door. (Exh. B 00:02:20). These factors supported probable cause to search the Malibu—but not the passengers or the effects they carried with them—for evidence of a crime under the automobile exception.

Heightened protection is afforded to a search of the person. Someone who is merely present in a suspected car does not lose immunity from a search of the person. United States v. Di Re, 332 U.S. 581, 587 (1948). Body searches are afforded "significantly heightened protection" not applicable to personal property. Houghton, 526 U.S. at 303. The Houghton

decision affirms Di Re in this regard. LaFave at § 7.2(d). Thus, the automobile exception does not extend to a search of the passengers in the Malibu.

The containers and effects *within* the Malibu that could have concealed the contraband could legally be searched under the automobile exception. In United States v. Ross, the high court addressed the scope of the exception first adopted in Carroll. United States v. Ross, 456 U.S. 798, 799-00 (1982). "In this case, we consider the extent to which police officers—who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it—may conduct a probing search of compartments and containers *within the vehicle* whose contents are not in plain view." Id. at 800 (emphasis added). The Ross Court rejected any distinction based on the nature of the container that had applied in previous cases, and held that probable cause to search the vehicle "justifies the search of every part of the vehicle and its contents that may conceal

the object of the search." Id. at 824-25. The officers in the instant case had probable cause to search the Malibu. They were also justified in searching the containers *within the vehicle* that could have concealed objects of the search, including the glove compartment, under the seats, and inside the trunk. See id. at 823. But the problem here is that Rincon exited the vehicle with her backpack; it was not left behind to be searched with the Malibu and its contents.

Containers that were not *within* the Malibu, including Rincon's backpack, were not subject to the automobile exception. In the United States Supreme Court decision closest to the circumstances here, the justices considered whether probable cause to search the vehicle based on the driver's conduct justified the warrantless search of a passenger's purse left behind in the vehicle when the occupants were ordered to exit. Wyoming v. Houghton, 526 U.S. 295, 297-98 (1999). Justice Scalia, for the majority, framed the issue as: "This case presents the question whether

police officers violate the Fourth Amendment when they search a passenger's personal belongings *inside an automobile* that they have probable cause to believe contains contraband." Id. at 297 (emphasis added). During a traffic stop, an officer observed a hypodermic syringe sticking out of the driver's shirt pocket, which the driver admitted using to take drugs. Id. at 297-98. The male driver and two female occupants were ordered out of the vehicle to allow a vehicle search, during which Houghton's purse was found on the backseat. Inside the purse, the officer found identification indicating that Houghton had lied about her name, in addition to drug paraphernalia and methamphetamine. Id. at 298.

The Houghton Court first turned to an examination of whether this action would've been unlawful at common law, and then evaluated it under "traditional standards of

reasonableness."[6] Id. at 299-00. In the majority's analysis, the Framers would have supported a warrantless search—supported by probable cause—of "containers *within* an automobile," based on early laws authorizing warrantless searches of vessels. Id. at 300 (emphasis in original) (citing Ross, 456 U.S. at 820, n.26). Ross did not involve a passenger, but no limitation on the search of containers based on ownership was imposed. Id. at 301-02. Furthermore, "[a] passenger's personal belongings, just like the driver's belongings or containers attached to the car like a glove compartment are 'in' the car, and the officer has probable case to search for contraband *in* the car." Id. at 302 (emphasis in original). The Court thus rejected any distinction based on

---

[6] This two-step approach is not without its critics. See, e.g., LaFave at § 7.2(d) ("There were three dissenters in Houghton, which is not surprising, as there is much in the majority opinion to dislike, starting with the very approach taken to the problem. . . . Perhaps the history does show that warrantless search of conveyances on probable cause was permissible, and that the same was true of containers located within those conveyances, but that hardly tells us anything about the issue presented in Houghton."). Nonetheless, Houghton is the prevailing law.

ownership between a driver's belongings and a passenger's that are within the vehicle. Id.

Balancing the interests, the Court found that the passenger's privacy "with regard to the property that they transport in cars" is diminished along with the driver's, in contrast with the substantial governmental interests at stake. Id. at 303-04. Additionally, it found the passenger could be engaged in "a common enterprise" with the driver, and rejected the Wyoming Supreme Court's test to determine if there was such an enterprise, or if the driver had the opportunity to conceal contraband in the passenger's belongings. Id. at 305. Ultimately, the Court concluded, "We hold that police officers with probable cause to search a car may inspect passenger's belongings found *in the car* that are capable of concealing the object of the search." Id. at 306 (emphasis added).

Justice Breyer's concurrence pointed out two limitations on the majority opinion: (1) it only applies to automobile searches; and (2) it only applies to containers found *within*

automobiles.[7] Id. at 307-08 (Breyer, J., concurring) (emphasis added). This is consistent with the majority opinion, in which Justice Scalia chose the words "in," "inside," or "within" the automobile throughout, sometimes even emphasizing the words with quotation marks or italics. Id. at 297 ("This case presents the question whether police officers violate the Fourth Amendment when they search a passenger's personal belongings inside an automobile that they have probable cause to believe contains contraband."); id. at 300 ("We have furthermore read the historical evidence to show that the Framers would have regarded as reasonable (if there was probable cause) the warrantless search of containers *within* an automobile.") (emphasis in original); id. at 301 ("Ross has characterized it as applying broadly to *all* containers within a

---

[7] Justice Breyer's concurrence also raised the question whether the search of a purse as a "special container" might be treated as a search of the person. Id. at 308. Scholars have debated this question, as have lower courts. LaFave at § 7.2(d); State v. Boyd, 64 P.3d 419, 427 (Kan. 2003) (finding the passenger's purse "was entitled to the same increased protection from search and seizure as afforded to her person"). This issue was not raised below, nor is it raised here.

car, without qualification as to ownership.") (emphasis in original); id. at 302 ("A passenger's personal belongings, just like the driver's belongings or containers attached to the car like a glove compartment, are 'in' the car, and the officer has probable cause to search for contraband *in* the car.") (emphasis in original); id. at 304 ("Effective law enforcement would be appreciably impaired without the ability to search a passenger's personal belongings when there is reason to believe contraband or evidence of criminal wrongdoing is hidden in the car."); id. at 304 ("The sensible rule (and the one supported by history and case law) is that such a package may be searched, whether or not its owner is present as a passenger or otherwise, because it may contain the contraband that the officer has reason to believe is in the car."); id. ("We hold that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search.").

Because "[l]awyers argue about plain and unambiguous language all the time," it is of note that Justice Scalia advises in another context that, "Interpreters should not be required to divine arcane nuances or to discover hidden meanings." Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 54, 69 (Thompson/West 2012) (discussing the ordinary-meaning canon as applied to constitutions, statutes, rules, and private instruments) (hereinafter Scalia & Garner]. Inside is defined as "an interior or internal part or place: the part within." *Inside*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/inside (accessed March 8, 2021). Within means: "in or into the interior." *Within*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/within (accessed March 8, 2021). Moreover, a perusal of the first several pages of the introduction to *Reading Law* indicates that Justice Scalia and his co-author regularly used italics and quotation marks to

emphasize words of importance. Scalia & Garner at 1-5. It is evident then that Justice Scalia's intent when writing for the majority in Houghton was to limit the scope of the automobile exception to effects and containers located *in, inside, or within* the vehicle. Indeed, no United States Supreme Court case has found a warrantless search of a container located *outside* the automobile is justified under the automobile exception. See James L. Buchwalter, Annotation, *Application of Fourth Amendment to Automobile Searches—Supreme Court Cases*, 47 A.L.R. Fed. 2d 197, §§ 19-20 (2010). And respected scholar Professor Wayne LaFave has also avowed that for the automobile exception to apply, the container must be in the vehicle. LaFave at § 7.2(d), n.187 (citing State v. Lewis, 611 A.2d 69 (Maine 1992)).

With that in mind, the Iowa Supreme Court's 1984 misinterpretation of the automobile exception to the warrant requirement must be revisited. While the automobile exception has been in existence since 1925 under the Fourth

Amendment, Iowa first adopted it under its own constitution in 1980. State v. Storm, 898 N.W.2d 140, 148 (Iowa 2017). This Court has followed the federal exception for decades, and more recently elected to retain it under the Iowa Constitution. Id. at 156. Expressing a preference for easy-to-apply, bright-line rules, this Court indicated that civil liberties are protected because the very nature of the automobile exception cabins police power by confining the search to a specific vehicle. Id. at 155-56.

Yet, in State v. Eubanks, the automobile exception escaped the confines of the vehicle under the Iowa Supreme Court's analysis of the Fourth Amendment. 355 N.W.2d 57 (Iowa 1984). Approaching the car during a traffic stop, an officer smelled marijuana from the interior; the driver "reluctantly complied" when asked to exit the vehicle, taking her purse with her. Id. at 58. During a search of Eubanks' car, the officer found a small marijuana cigarette in the ashtray of the vehicle but no other evidence. Id. The driver

initially refused a search of her purse but then "relinquished" the purse when a second officer arrived, and marijuana was found in a makeup case. Id. The officer issued a citation but did not arrest Eubanks. Id. After the district court granted the defendant's motion to suppress, the State argued in a discretionary appeal that the purse search was justified under the automobile exception and search incident to arrest,[8] pursuant to the Fourth Amendment. Id.

The Iowa Supreme Court found that the officer had probable cause to search the vehicle and contents. Id. at 59. Citing United States v. Ross, it held that the search lawfully extended to containers within the automobile, including the defendant's purse, stating:

> Once the patrolman lawfully stopped the car and had probable cause to search it for contraband, in this case marijuana, he could lawfully open and examine all containers within the vehicle from the time probable cause appeared. The exigency inherent in the vehicle search cases is not necessarily dependent on whether the driver or passenger remains in or exits from the car before or

[8] The Court did not address the SITA exception. Eubanks, 355 N.W.2d at 60.

> during the search. Once the patrolman lawfully stopped the car and had probable cause to search for contraband, all containers within the car when it was stopped were fair game for the search. Defendant had no right to insulate her purse or any other container from a lawful warrantless search by the simple expedient of physically removing the purse and its contents from the car while the search was in progress.

Id. at 60.

Eubanks was wrongly decided and must be overruled.[9] The United States Supreme Court has emphasized two components in its analysis of the automobile exception's applicability to containers: (1) "the object of the search and the places in which there is probable cause to believe that it may be found," as discussed in Ross, 456 U.S. at 824; and (2) that the exception applies to those containers found *within* the vehicle. Houghton, 526 U.S. at 307 ("We hold that police officers with probable cause to search a car may inspect

---

[9] Eubanks is regularly cited for the separate and distinct proposition that the odor of marijuana supports probable cause. See, e.g., State v. Warren, No.19-0267, ___ N.W.2d ___, 2021 WL 833551, at *12 (Iowa Mar. 5, 2021). That issue has not arisen here and Rincon is not suggesting Eubanks be overruled on those grounds.

passengers' belongings found in the car that are capable of concealing the object of the search."); California v. Acevedo, 500 U.S. 565, 580 (1991) ("We therefore interpret Carroll as providing one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained."). The Eubanks Court rejected the notion that the defendant's exit from the vehicle with purse in hand insulated her purse from a search under the automobile exception. Eubanks, 355 N.W.2d at 60. The decision erroneously allowed the automobile exception to escape the confines of the automobile in violation of the Fourth Amendment. Eubanks must be overruled.

In a similar case, the Maine Supreme Court rejected the idea that the automobile exception applied to a carry-on bag that had been removed from the car. State v. Lewis, 611 A.2d 69 (Maine 1992). The officer arrested Lewis for operating while under the influence, then released him on personal

recognizance. Id. at 70. After offering to drive Lewis to a motel for the night, the officer allowed Lewis to obtain a bag from the car; Lewis agreed to open the bag for a weapons check but did not consent to opening the brown bags within his carry-on. Yet, the officer opened the brown bags without Lewis' consent and found marijuana. Id. Concluding that the lower court's reliance on California v. Acevedo was misplaced, the court stated:

> On the present facts, at the time defendant's carry-on bag was inside his automobile, the police did not have any probable cause to believe that defendant possessed any contraband at all, in the car or otherwise. Between the time that the trooper did obtain probable cause to believe the brown bags contained marijuana and the time of his warrantless search, those bags were never inside an automobile. Contrary to the Superior Court's reasoning, the fact that the bags came from the car and were in the process of being returned to the car does not trigger the automobile exception.

Id. at 71.

The Kansas Supreme Court distinguished Houghton in State v. Boyd, 64 P.3d 419 (Kan. 2003). Officers conducted a stop of a vehicle for a traffic violation after it left a house that

was under surveillance for drug activity. Id. at 421. When the driver consented to a search of the vehicle, Boyd, the passenger, was asked to exit the vehicle. Id. Boyd attempted to take her purse with her but was instructed to leave it; she refused consent to search her purse. Id. Another officer found a crack pipe in the vehicle's center console ashtray, and then found a bag of crack cocaine in Boyd's purse, which was on the floorboard. Id. The Kansas Supreme Court agreed that once an officer found the crack pipe, probable cause existed to believe that drugs were in the car. Id. at 423. The court stated, "The question for the court is whether Boyd's attempt to take her purse with her when she got out of the vehicle, which was before the officers had probable cause to search the vehicle, separates this case from Houghton so as to indicate a different result." Id. The court found that Boyd's purse was entitled to the same protection as her person, as suggested in Justice Breyer's concurrence in Houghton. Id. at 427;

Houghton, 526 U.S. at 308 (Breyer, J., concurring).

Furthermore, the court stated:

> Here the officer found no drugs on [the driver] and had no probable cause to believe illegal drugs were in the car when Boyd was told by the officer to get out of the car. Thus, at that point, the officer did not have probable cause to search Boyd or her purse. The officer had no right to order her to leave her purse in the car. The State conceded at oral argument that if Boyd would have been allowed to take her purse with her the officer could not have lawfully searched her or her purse. If we hold an officer can lawfully order a passenger to leave her purse in the car and thereby make it subject to search, then what prevents the officer from ordering the passenger to remain in the car, thus subjecting her to be subsequently searched along with the car. The protection of the Fourth Amendment cannot be defined at the discretion of a law enforcement officer. The heightened privacy interest and expectation in the present case is sufficient to tip the balance from governmental interest in effective law enforcement, which outweighed the privacy interest in Houghton where the purse was voluntarily left in the back seat unclaimed. We hold that where a passenger is told by a police officer to get out of a lawfully stopped vehicle and in response to the officer's order to leave her purse in the vehicle, puts the purse down and exits the vehicle, a subsequent search of the purse as part of a search of the vehicle violates the passenger's Fourth Amendment right against unreasonable search and seizure.

Boyd, 64 P.3d at 427.

Both Lewis and Boyd demonstrate the limits of the automobile exception. It cannot apply to a container or effect removed from the vehicle, or even one a passenger attempted to remove but was thwarted in the attempt by police. Even the State acknowledged in the district court that the analysis is different if the vehicle occupant exits with the container in hand. (Reconsideration Tr. p.12 L.1-6).

Allowing the automobile exception to apply to searches of containers located *outside* the vehicle nullifies the protection of the Fourth Amendment and article I, section 8 of the Iowa Constitution. In the SITA context, the U.S. Supreme Court has limited searches when it became clear law enforcement was utilizing the exception to search the entire home while making an arrest—including the garage, workshop, and attic—without a search warrant. Chimel v. California, 395 U.S. 752, 768 (1969). The Court found that the scope of the search exceeded the exception. Id. "Under such an unconfined

analysis, Fourth Amendment protection in this area would approach the evaporation point." Id. at 765. The high court also reigned in the SITA exception in the automobile context in Arizona v. Gant, curtailing the practice of searching the entire passenger compartment when the occupants were secured and not within reaching distance of the vehicle. 556 U.S. 332, 343 (2009). "If it is clear that a practice is unlawful, individuals' interest in its discontinuance clearly outweighs any law enforcement 'entitlement' to its persistence." Id. at 349. This Court rejected Gant's second prong allowing SITA of a vehicle to locate evidence of the arrest because it "would permit the SITA exception to swallow completely the fundamental textual rule in article I, section 8 that searches and seizures should be supported by a warrant." State v. Gaskins, 866 N.W.2d 1, 13 (Iowa 2015). Rincon urges this Court to also curtail the automobile exception by drawing a bright line around the automobile, limiting the exception's applicability to the vehicle and contents *within* it.

Two additional concerns need to be addressed. First, there was no evidence Rincon was engaged in a joint enterprise with the driver. One reason used to justify the search of the passenger's purse in Houghton is that the passenger and driver may be engaged in a "common enterprise," and law enforcement should not be required to sort out if there was time or motivation for an otherwise innocent passenger to be complicit in the driver's illegal conduct. Houghton, 526 U.S. at 304-05. As one scholar noted, the assertion that passengers are "often" participating in joint wrongdoing was made with "not a whit of empirical evidence . . . in support." LaFave at § 7.2(d). In the instant case, the district court found there was no indication that Rincon was engaged in wrongdoing with the driver, or that she had any knowledge of the drugs found in the car. (Ruling 4/15/20, p.4) (App. p. 37). In fact, Rincon was just getting a ride from Melton. (Ruling 4/15/20, p.4) (App. p. 37). Therefore, there was no indication of a common enterprise

giving rise to probable cause that would have justified the search of Rincon's backpack.

The second concern regarding allowing the automobile exception to apply to effects and containers located outside the vehicle is that it will increase discriminatory and abusive policing. Our country has a long history of abusive law enforcement practices that target Black and Brown people.[10] See Maclin at 2346-49 (noting Whren v. United States, 517 U.S. 806 (1996), is "a constitutional disgrace"); see also State v. Warren, No.19-0267, ___ N.W.2d ___, 2021 WL 833551, at *18 (Iowa Mar. 5, 2021) (Appel, J, dissenting) (listing sources that discuss arbitrary and discriminatory law enforcement). One professor gives two examples of attorneys—one African American and one Latino—whose vehicles were subjected to searches under the automobile exception despite the

[10] The driver is white, but the passengers are all people of color. (Exh. A 00:43:30). Meadows is Black. Martinez and Villa Magana are Latino. Rincon is described in the complaint as white. (Complaint, p.2) (App. p. 5). Upon information and belief, she is Latina.

attorneys' protests. Carol A. Chase, *Privacy Takes a Back Seat: Putting the Automobile Exception Back on Track After Several Wrong Turns*, 41 Boston College L. Rev. 71, 93-4 (Dec. 1999). Most people, whether drivers or passengers, will not have the knowledge or means to complain or challenge unjustified and abusive searches, unlike the two attorneys. Id. at 94-5. Racism and implicit bias in policing is a problem that cannot be ignored. Warren, 2021 WL 833551, at *16 (Iowa Mar. 5, 2021) (Mansfield, J., concurring). Limiting the reach of the automobile exception will prevent additional and potentially discriminatory searches of hapless passengers on the side of the road.

In the instant case, the scope of the search exceeded the automobile exception. The district court erroneously ruled that the Des Moines Police were justified in their warrantless search of Rincon's backpack. (Ruling 6/16/20) (App. pp. 45-48). Even if law enforcement had probable cause to believe contraband was within the Malibu, the automobile exception's

scope did not extend to Rincon's backpack, which she kept in her possession when she exited the vehicle. A bright line must be drawn around the automobile for the automobile exception to apply, and State v. Eubanks, 355 N.W.2d 57 (Iowa 1984), must be overruled. To do otherwise is to extend the automobile exception to the point that it is meaningless. See Coolidge v. New Hampshire, 403 U.S. 433, 461-2 (1971) (stating that the "word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."). While Rincon's backpack was a container capable of concealing contraband, and did in fact contain marijuana and methamphetamine, it was not *within* the vehicle. Once Rincon removed the backpack from the vehicle when she exited, another exception needed to apply to justify the search of its contents, or the Des Moines Police Department had to obtain a search warrant. The police did not obtain a warrant, and as discussed above, none of the

other exceptions apply. Therefore, the contents of Rincon's backpack must be suppressed.

Having reviewed each exception to the warrant requirement, the State has failed to meet its burden that any of the exceptions justified the warrantless search of Rincon's backpack. The district court erred in denying Rincon's motion to suppress. The proper remedy is to reverse her conviction and remand for further proceedings. See State v. Gaskins, 866 N.W.2d 1, 16-17 (Iowa 2015). Accordingly, Rincon's conviction must be reversed for the district court to grant her motion to suppress.

CONCLUSION

For all of the reasons discussed above, Defendant-Appellant Rincon respectfully requests this Court to reverse the suppression ruling and remand this case to the Polk County District Court for further proceedings.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

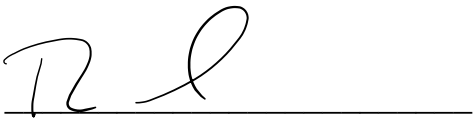
ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $6.72, 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:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 13,664 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Dated: 6/11/21

Rachel C. Regenold
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
rregenold@spd.state.ia.us
appellatedefender@spd.state.ia.us