IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-1393

STATE OF IOWA,
Plaintiff-Appellee,

vs.

YALE E. STEVENS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE JOHN C. NELSON, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

Because this case can be decided based on existing legal principles transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, Yale Stevens, appeals from the district court's entry of judgment and sentence following a bench trial on a stipulated record finding him guilty of possession of methamphetamine, a serious misdemeanor offense. *See* Iowa Code § 124.401(5). On appeal Stevens argues that the district court erred in overruling his motion to suppress challenging evidence seized from his person following a drug dog alert inside a vehicle in which he was a passenger, and that there was insufficient evidence to establish the substance in his possession was in fact methamphetamine.

Course of Proceedings

The State accepts the defendant's summary of the proceedings below. Iowa R. App. P. 6.903(3).

Facts

The suppression record includes the testimony of three Sioux City officers and one officer's dash cam video. *See generally* Suppr.

Tr.; State's Exh.1 (DVD). Around 1:00 a.m. on February 26, 2020, Sioux City Officer Brian Clausen was on patrol performing routine checks on "known drug houses" when he observed a tan Audi leaving what he believed to be a known drug house. Suppr. Tr.p.3, lines 5-23, p.4, lines 4-25. Officer Clausen began to follow the Audi and contacted a uniformed officer in a marked squad car to perform a traffic stop upon observing the vehicle's middle brake light was out. Tr.p.5, lines 4-16,22-25, p.6, lines 1-4, p.31, line 4-p.32, line 5.

A few minutes later, Officer Nicholas Thompson stopped the Audi observing two occupants, identified as driver Kyle Stevens, and Kyle's brother defendant Yale Stevens who was sitting in the backseat. Tr.p.6, lines 5-23, p.32, lines 13-23. Officer Thompson also requested a K9 (canine) officer based on Clausen's report that the vehicle had left a known drug house. Tr.p.34, lines 13-22. Thompson explained the reason for the stop and requested license information from both men. Tr.p.33, lines 15-21, p.37, lines 12-20; Exh.1 (00:00-3:00)[1]. Kyle readily admitted he did not have a valid driver's license and thereafter was asked to exit the vehicle and placed under arrest. Tr.p.34, lines 1-5, p.36, lines 13-21; Exh.1 (8:30-9:30).

[1] Time citations to the video are approximate.

Upon arrival, Officer Clausen spoke to Stevens who explained the backseat was more comfortable for his bad back or hip. Suppr. Tr.p.8, lines 1-20. When Officer Michael Simons arrived with his certified drug sniffing dog, Aura, Clausen asked Stevens to step out of the car and Thompson also had Kyle exit. Tr.p.8, line 21-p.9, line 11, p.16,line 5-p.17, line 4; Exh.1 (7:00-9:00).[2] Stevens consented to a weapons pat-down and no safety concern was felt by Clausen. Tr.p.9, line 15-p.10, line 1.

Next, Officer Simons walked Aura around the Audi twice. Suppr. Tr.p.19, lines 13-18, p.20, lines 12-18, p.22, lines 7-23; Exh.1 (9:30-11:15). He testified Aura was a "passive" drug dog who indicates the presence of a controlled substance by sitting and her tail stops wagging. Tr.p.20, line 19-p.21, line 19. The squad car video shows the dog standing up to sniff at the car windows on both sides and barking excitedly. Exh.1 (9:30-10:30). Officer Simons next opened the driver's door and allowed his dog to get inside the car; Aura entered and exited the car twice.[3] Exh.1 (10:20-11:05). Upon

[2] Officer Clausen and Stevens are standing off camera on the remainder of the video and their conversation is mostly inaudible.

[3] The dog's specific movements inside the vehicle are not visible on the video.

exiting, Aura sat down outside the driver's door. Tr.p.22, line 24-p.23, line 25; Exh.1 (10:20-11:15).

Simons testified that he was "very concerned with the passenger side of it from her indication," and the length of time she spent on that side of car. Tr.p.24,line 2-p.25, line 9. Based on those observations he advised Clausen to search Stevens. Tr.p.10, lines 12-17, p.25, lines 10-14; Exh.1 (11:00-11:30). Also at this point, other officers began searching the interior of the vehicle. Exh.1 (12:00-18:00). No controlled substances were found in the Audi. Tr.p.25, line 12-p.27, line 9.

Acting on Officer Simons' report about Aura's indication, Clausen first asked Stevens if he knew why the dog would alert inside the car and Stevens said he did not know why. Suppr. Tr.p.10, lines 18-21. Clausen then asked if Stevens had anything illegal on him; Stevens did not answer but began to reach for his pockets. Tr.p.10, line 18-p.11, line 2, p.12, lines 2-12, p.14, line 11-p.15, line 6. The officer stopped Stevens who mumbled something again reaching toward a pocket before Clausen stopped him, reached into Stevens' right coat pocket, and pulled out a small "heat-sealed" baggie of a "crystal-like substance" that later field-tested positive for 0.51 grams

of methamphetamine. Tr.p.12, lines 2-23; Minutes at Loera report, Department case report; Conf.App. 12, 17. Stevens declined to talk about his source. Tr.p.12, line 24-p.13, line 2; Exh.1 (21:00-22:00); Minutes at Loera report; Conf.App. 12.

Officer Thompson thereafter searched Kyle's person and discovered a small heat-sealed baggie of "crystalline substance" in his coin pants pocket that also field-tested positive for methamphetamine and weighed 0.65 grams. Suppr. Tr.p.36, line 25-p.37, line 11; Exh.1 (12:15-18:00); Minutes at Niehus report, Thompson report, Department report; Conf.App. 10-11, 13-14, 17. When questioned, Kyle admitted it was meth and that he had an addiction. Exh.1 (18:00-20:00); Minutes at Niehus report; Conf.App. 10-11.

Additional relevant facts from the minutes of testimony and attached officer reports will be discussed as part of the State's argument.[4]

[4] The points out that "Sgt. Wagner" is mentioned on the first page of the minutes but that reference appears to be a typographical error and in fact refers to Sergeant Clausen's attached report. *See* Minutes; Conf.App. 4, 7-9.

ARGUMENT

I. The District Court Correctly Overruled the Defendant's Motion to Suppress Finding Probable Cause to Support the Search of Defendant's Person Considering the Totality of Circumstances, Including the Drug Dog Alert Inside the Vehicle in Which He Was a Passenger.

Preservation of Error

Defendant Stevens unsuccessfully moved to suppress the methamphetamine found on his person arguing the drug dog alert inside the vehicle in which he was a backseat passenger did not provide probable cause to search him. Motion to Suppress (3/30/20); Resistance (5/28/20); Suppr. Order (7/09/20); App. 7-19. Stevens did not challenge the presence of exigent circumstances based on the automobile exception to the warrant requirement. *State v. Storm,* 898 N.W.2d 140, 145-47, 156 (Iowa 2017) (retaining the automobile exception).

While Stevens generally cited to both the state and federal constitutions below, he did not argue for more protection or adoption of a different standard under the Iowa Constitution. *See generally* Motion to Suppress; App. 7-10; Suppr. Tr.pp.46-55; *see also State v. Effler*, 769 N.W.2d 880, 895 (Iowa 2009) (Appel, J., specially concurring, noting court's reluctance to consider independent state constitutional ground "on mere citation to the applicable state

constitutional provision"). Nor did the district court separately address case law under the Iowa Constitution. Suppr. Order at 3; App. 17.

Standards for Review

The Court's review of the district court's suppression ruling is *de novo*. *State v. Baker,* 925 N.W.2d 602, 609 (Iowa 2019); *State v. Kooima,* 833 N.W.2d 202, 205 (Iowa 2013); *State v. Watts,* 801 N.W.2d 845, 850 (Iowa 2011); *State v. Smith,* 683 N.W.2d 542, 544 (Iowa 2004).

The Court makes "an independent evaluation of the totality of the circumstances as shown by the entire record." *Watts,* 801 N.W.2d at 850; *see also Baker,* 925 N.W.2d at 609. The Court considers the unique circumstances, including evidence from the suppression hearing and the trial. *State v. Gaskins,* 866 N.W.2d 1, 5 (Iowa 2015); *State v. Kurth*, 813 N.W.2d 270, 277 (Iowa 2012); *State v. Kreps,* 650 N.W.2d 636, 640 (Iowa 2002). The Court gives deference to the factual findings of the district court but is not bound by those findings. *Baker,* 925 N.W.2d at 609; *Kreps,* 650 N.W.2d at 640.

The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect against

unreasonable searches and seizures. *Baker,* 925 N.W.2d at 610; *Kooima,* 833 N.W.2d at 206; W*atts,* 801 N.W.2d at 850. "The purpose of this protection is to safeguard the privacy and security of individuals against arbitrary intrusion by government officials." *State v. Crawford,* 659 N.W.2d 537, 541 (Iowa 2003) (citation omitted); *accord State v. Coleman,* 890 N.W.2d 284, 300 (Iowa 2017). The State must establish an exception to the warrant requirement by a preponderance of the evidence. *State v. Moriarty,* 566 N.W.2d 866, 868 (Iowa 1997). The inherent mobility of automobiles satisfies the exigent circumstances requirement. *Storm*, 898 N.W.2d at 156; *State v. Stone,* No.19-1429, 2020 WL 2988220, at *6 (Iowa Ct. App. June 3, 2020).

The Supreme Court has explained "the probable cause standard is a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act." *Maryland v. Pringle,* 540 U.S. 366, 370 (2003) (internal citations and quotations omitted). It is a "fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Id.* at 370-71 (citation omitted). Therefore,

probable cause cannot be precisely defined or quantified "into percentages because it deals with probabilities and depends on the totality of the circumstances." *Id.* at 371. In general, there must be a particularized suspicion of guilt as to the person to be searched or seized. *Id.; compare State v. Klimstra,* No.10-1504, 2011 WL 5867973, at *3-4 (Iowa Ct. App. Nov. 23, 2011) (visible baggie in suspect's coin pocket provided probable cause) *with State v. Campbell,* No.16-0640, 2017 WL 3283284, at *6 (Iowa Ct. App. Aug. 2, 2017) (no particularized suspicion passenger was committing a crime supported the search of her purse).

Probable cause to search a vehicle or one of its occupants requires more than mere suspicion but less than the standard required for conviction. *State v. Horton,* 625 N.W.2d 362, 365, 367 (Iowa 2001) (finding marijuana butts in ashtray supports reasonable belief passenger also possessed marijuana); *see also State v. Evans,* No.15-0616, 2016 WL 5408303, at *6 (Iowa Ct. App. Sept. 28, 2016) (odor of marijuana on defendant and visible corner of bag in coin pocket). The question is whether the facts and circumstances warrant a person of reasonable caution to believe a crime has been or is being

committed. *Horton*, 625 N.W.2d at 364-65; *Moriarty,* 566 N.W.2d at 868.

A trained drug dog alert or indication provides probable cause to search a vehicle for controlled substances. *State v. Bergmann,* 633 N.W.2d 328, 334 (Iowa 2001); *State v. Becker,* No.15-1840, 2016 WL 6902330, at *2-3 (Iowa Ct. App. Nov. 23, 2016). This Court has previously held that probable cause to search a vehicle for contraband does not, standing alone, also serve as probable cause to search the driver or passenger(s). *Horton*, 625 N.W.2d at 365 (relying on *United States v. DiRe*, 332 U.S. 581, 584-87 (1948)); *see also Wyoming v. Houghton,* 526 U.S. 295, 307-08 (1999) (Breyer, J., concurring); *State v. Merrill*, 538 N.W.2d 300, 301-02 (Iowa 1995) (noting odor of marijuana along with furtive movements of passenger provided probable cause).

Merits

Relying on *DiRe* and *Horton,* Stevens argues that the district court erred in overruling his motion to suppress the meth found on his person urging that a drug dog alert on an empty vehicle did not provide probable cause to search him under either the federal or state constitutions. Appellant's Brief pp.29-45. Stevens points out that the

record lacked details about any criminal history, the "known drug house," whether Aura signaled a final alert in the backseat of the car, and what Stevens mumbled when asked a second time whether he had anything illegal on his person. *Id.* Stevens also notes that searches of the vehicle and Kyle's person took place *after* Officer Clausen found the baggie of meth in his coat pocket. *See, e.g., Tedford v. State,* 307 So.23d 738, 746 (Fla. Ct. App. 2020) (drug dog alert on passenger side of vehicle then search of car supported the subsequent dog sniff and search of passenger). The State submits the court in this case correctly found the totality of circumstances provided probable cause to support the search of Stevens' person. Suppr. Order at 3-4 (7/09/20); App. 17-18.

Stevens' motion to suppress challenged the significance of the drug dog alert on the empty car. Motion to Suppress at 1-4 (3/30/20); App. 7-10; *see DiRe,* 332 U.S. at 584-87; *Horton,* 625 N.W.2d at 364-65. On appeal Stevens notes that the only canine alert (sit down) visible on the video is outside the driver's door where his brother had been sitting, and he cites to courts in other states holding that such a drug dog alert does not provide probable cause to search a former passenger. Appellant's Brief pp.27-29. As noted, Stevens was

searched before the car or his brother, who had already been arrested, were searched. *Cf. Becker,* 2016 WL 6902330 at *2-3 (search of passenger upheld after search of vehicle failed to locate any contraband following a drug dog alert). In addition, Stevens faults officers for failing to have the dog sniff either him or his brother. Appellant's Brief pp.36-37 (citing *People v. Fondia*, 740 N.E.2d 839, 842 (Ill. Ct. App. 2000) (holding officers placed themselves in a position of "willful ignorance" by failing to have the canine sniff the occupants). Notably, Stevens fails to provide any controlling authority that such an intrusion would not be deemed an illegal search of the person. *Compare Bergmann*, 633 N.W.2d at 334 (drug dog sniff outside vehicle deemed not a "search").

In *Maryland v. Pringle,* the Supreme Court found probable cause to arrest all three occupants of a vehicle following the discovery of a large amount of money in the glovebox and cocaine behind the backseat armrest and no offer of information as to the ownership of either the drugs or money. *Pringle,* 540 U.S. at 368-69. The Court explained under the circumstances it was reasonable to infer "that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine;" supporting officers' belief

that Pringle "committed the crime of possession of cocaine, either solely or jointly." *Id.* at 370-72. The Court distinguished *DiRe* noting that in *DiRe* officers had information singling out or focusing on one person while "none of the three men provided information with respect to the ownership of the cocaine or money" in Pringle's case. *Id.* at 373-74; *see also United States v. Chauncey,* 420 F.3d 864, 870-71 (8th Cir. 2005) (absent information singling out a guilty party it was reasonable to believe there was a common enterprise); *Richards v. State,* 7 N.E.3d 347, 349-50 (Ind. Ct. App. 2014) (finding it reasonable to infer any occupant had constructive possession of drugs following drug dog alert on vehicle).

Applying *Pringle*, several courts have held that a drug dog alert on a car provides probable cause to search or arrest all occupants based on the "close association" between contraband and the occupants in the absence of particularized suspicion as to one person or guilty party. *United States v. Baez*, 983 F.3d 1029, 1041-42 (8th Cir. 2020) (probable cause to believe everyone in car in which drug trafficking was occurring was involved); *United States v. Klinginsmith,* 25 F.3d 1507, 1509-10 (10th Cir. 1994) (canine alert on vehicle); *State v. Griffin*, 949 So.2d 309, 311-14 (Fla. Ct. App. 2007)

(recognizing *Pringle's* change of law and certifying question to state supreme court); *State v. Ofori,* 906 A.2d 1089, 1099-1101 (Md. Ct. App. 2006) (canine alert on vehicle provided probable cause to arrest).

This Court has not yet considered a factual scenario like the one presented in Stevens' case where probable cause to believe drugs were in the vehicle, based on the drug dog alert, reasonably implicated both the driver (Kyle) and passenger (Stevens). Although *Horton* was decided before the Supreme Court's decision in *Pringle*, its holding is consistent with that in *Pringle* and not inconsistent with *DiRe* or any Iowa case cited above. *Horton,* 625 N.W.2d at 367 (officers "could have reasonably believed the marijuana had been smoked by Horton, her companion, both, or perhaps neither" providing probable cause to arrest and search her). The district court reasonably applied a nontechnical, common sense evaluation of the totality of circumstances in finding the dog's alert provided probable cause to search the vehicle as well as Stevens. *Pringle,* 540 U.S. at 371-74; *Steck v. State,* 197 A.3d 531, 541-44 (Md. Ct. App. 2018) (agreeing probable cause is not precise or quantifiable).

In resisting the motion to suppress, the State pointed to Stevens' "behaviors" when asked by Clausen about the canine alert. Resistance at 2-3 (5/28/20); App. 12-13; *see, e.g., Merrill,* 538 N.W.2d at 301-02. In finding probable cause, the court noted the "known drug house" connection was not significant standing alone, but when combined with the dog's "signaling on the passenger side and the passenger rear of the vehicle," and Stevens' "behavior when questioned about contraband." Suppr. Order at 3; App. 17.

Officer Clausen testified that he was doing routine checks on "known drug houses" when he observed the Audi leaving one such location during early morning hours. Suppr. Tr.p.4, lines 10-25, p.34, lines 13-19; *see also* Minutes at Clausen report, Niehus report; Conf.App. 7-11. After the traffic stop and brief conversations, Stevens and Kyle were asked to step out of the vehicle when Officer Thompson and his drug sniffing dog arrived. Suppr. Tr.p.6, lines 11-23, p.8, lines 21-25; Exh.1 (8:00-9:00). Stevens agreed to a weapons pat-down and denied he had anything illegal on him. Tr.p.9, line 15-p.10, line 1; Minutes at Clausen report; Conf.App. 8.

Officer Simons testified that Aura indicates the presence of a controlled substance by sitting down. Suppr. Tr.p.20, line 19-p.21,

line 22, p.22, line 24-p.23, line 13. He noted that it was hard for a "passive dog" to sit down inside a vehicle but observed she was spending "the majority of her time" on the passenger side. Tr.p.24, lines 2-19, p.25, lines 3-9; Exh.1 (9:35-11:05). To the extent Stevens argues the record does not establish Aura gave a visible, final trained alert in the backseat, the State submits the dog exhibited behavior consistent with positive drug detection considering her movements and Officer Simon's credible testimony. *Steck,* 197 A.3d at 542-44 (discussing *United States v. Holleman,* 743 F.3d 1152, 1156 (8th Cir.), *cert. denied,* 573 U.S. 953 (2014) and *United States v. Parada,* 577 F.3d 1275, 1281-82 (2009), *cert. denied,* 560 U.S. 927 (2010) (where courts found probable cause despite the absence of a final canine alert).

After Aura completed her examination in the car, Simons reasonably advised Clausen to check the passenger. Tr.p.10, lines 12-17, p.25,lines 10-14; Exh.1 (11:00-11:30); Minutes at Clausen report; Conf.App. 8. Search of the vehicle's interior also began at this point. Exh.1 (12:00-18:00). Kyle had been arrested but was not searched until several minutes later at which time a small baggie of meth was

found in a pants pocket. Tr.p.36, line 25-p.37, line 11; Exh.1 (14:00-18:00); Minutes at Niehus report; Conf.App. 10-11.

Following completion of the dog sniff, Clausen immediately asked Stevens why the dog would alert in the car; Stevens said he did not know why. Suppr. Tr.p.10, lines 18-21; Minutes at Clausen report; Conf.App. 8. Clausen asked Stevens if he had anything illegal on him and Stevens just looked at Clausen without answering.[5] Tr.p.10, lines 18-24, p.12, lines 2-12, p.14, line 14-p.15, line 6; Minutes; Conf.App. 8. When Clausen advised Stevens he was going to search his person, Stevens moved his hands to his coat pockets.[6] Tr.p.10,line 18-p.11, line 2; Minutes; Conf.App. 8. Clausen told Stevens to stop reaching and again asked if he had anything illegal on him prompting Stevens to reach into his right coat pocket. Tr.p.12, lines 2-12; Minutes; Conf.App. 8. Clausen told Stevens to stop and pulled his hand out; Stevens "began to mumble that it was in there." Minutes; Conf.App. 8; Suppr. Order at 2-3; App. 16-17. The officer reasonably interpreted Stevens' statements, or lack thereof, and his

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[5] Stevens urges a suspect could choose to remain silent for a variety of reasons other than guilt. Appellant's Brief pp.38-39.

[6] Stevens also urges because the weather was very cold it is not significant he wanted to put his hands in his coat pockets. Appellant's Brief pp.39-40.

hand movements as admissions or indications of guilt. Suppr. Order at 2-3; App. 16-17.

While the court commented the suppression issue was a close call, it reasonably found the record as a whole sufficient to establish probable cause to search Stevens' person for drugs. Suppr. Order at 3-4; App. 17-18; Trial Tr.p.5, lines 19-24; Sent. Tr.p.4, line 15-p.5, line 1; *Pringle,* 540 U.S. at 373-74. This Court should agree the search of Stevens' person based on a certified drug dog behavior in the vehicle's passenger area along with Stevens' statements and movements did not violate his federal or state constitutional protections against unreasonable searches.

Stevens further argues this Court should afford more protection in this context under the Iowa Constitution. Appellant's Brief pp.42-45. In recent years, the Court has interpreted article I, section 8 to afford more protections in areas involving searches of persons in homes or rented rooms. *Id.* at 44-45. Yet, defendant Stevens fails to offer a persuasive reason for doing so in the context of automobile stops, drug dog sniffs, and searches of vehicle occupants. Appellant's Brief pp.42-45; *cf. Storm,* 898 N.W.2d at 156; *Bergmann,* 633 N.W.2d at 338; *Merrill,* 538 N.W.2d at 301-02; *Campbell,* 2017 WL

3283284, at *3-*6 *Becker,* 2016 WL 6902330, at *2-*3; *Klimstra,* 2011 WL 5867973, at *3-4. The Court should decline the defendant's invitation to do so here and affirm the denial of his motion to suppress.

II. Substantial Evidence Supports the Defendant's Conviction for Possession of Methamphetamine.

Preservation of Error

Defendant Stevens waived his right to a jury trial and opted for a bench trial on a stipulated record. Waiver (8/04/20); Verdict at 1 (9/16/20); App. 20-22; Trial Tr.p.2, line 1-p.3, line 17. In such cases, a motion for judgment of acquittal is not required to preserve error on a sufficiency of the evidence claim. *State v. Petithory,* 702 N.W.2d 854, 856 (Iowa 2005).

Standards for Review

The Court reviews sufficiency of the evidence claims for correction of errors at law. *State v. Folkers,* 941 N.W.2d 337, 338 (Iowa 2020); *State v. Thomas,* 847 N.W.2d 438, 442 (Iowa 2014) (citations omitted); *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011).

In reviewing sufficiency of the evidence challenges,

> courts consider all of the record evidence viewed in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence. [The Court] will uphold a verdict if substantial record evidence supports it. [The Court] will consider all the evidence presented, not just the inculpatory evidence. Evidence is considered substantial if, when viewed in the light most favorable to the State, it can convince a rational jury that the defendant is guilty beyond a reasonable doubt.

Thomas, 847 N.W.2d at 442 (citations and internal quotations omitted); *accord State v. Reed,* 875 N.W.2d 693, 704-05 (Iowa 2016); *State v. Showens*, 845 N.W.2d 436, 439-40 (Iowa 2014). Evidence is not insubstantial merely because it would also support contrary inferences. *State v. Sanford,* 814 N.W.2d 611, 615 (Iowa 2012); *State v. Frake*, 450 N.W.2d 817, 818-19 (Iowa 1990); *State v. Helm*, 504 N.W.2d 142, 146 (Iowa Ct. App. 1993).

Although "[d]irect and circumstantial evidence are equally probative," the evidence "must raise a fair inference of guilt" as to each element of the crime; "it must do more than create speculation, suspicion, or conjecture." *State v. Schrier*, 300 N.W.2d 305, 308 (Iowa 1981); *see also State v. Huser*, 894 N.W.2d 472, 491 (Iowa 2017); *Reed,* 875 N.W.2d at 705; *Thomas,* 847 N.W.2d at 447;

Brubaker, 805 N.W.2d at 171-72; *State v. Meyers,* 799 N.W.2d 132, 138 (Iowa 2011); Iowa R. App. P. 6.904(3)(p).

Merits

On this front Stevens argues that there is insufficient evidence to establish that the substance found in his pocket was in fact methamphetamine. Appellant's Brief pp.47-49. Specifically he urges in the absence of a confirmatory laboratory test field tests alone are unreliable, and other circumstantial evidence was inadequate to establish identification in this case. *Id.* at 49-62. The State disagrees. Substantial evidence supports the court's finding the substance found on Stevens' person was methamphetamine. Verdict at 2-3 (9/16/20); App. 23-24.

As noted, Stevens waived a jury trial and agreed to a bench trial on a stipulated record consisting of the trial information, minutes with attachments, and the video exhibit. Trial Tr.p.2, line 1-p.4, line 16. Although the record reflects that the crystalline substances seized from Stevens and his brother were sent to the DCI lab for analysis, no lab report was introduced at trial. *See* Minutes; Conf.App. 5-6; Verdict at 2 (9/16/20); App. 23. The substances were field tested,

weighed, and identified by officers as methamphetamine. Minutes at Niehus report, Loera report, Department report; Conf.App. 10,12, 17.

A. Field Test Result.

Stevens vigorously challenges the reliability of field tests on suspected controlled substances and cites to several states where courts have concluded they should only be used as a screening tool and not to support a conviction. Appellant's Brief pp.49-54. Whether those decisions represent the majority view or not, it is important to note that Stevens elected to stand trial on the minutes thereby relieving the State of laying the foundation for admission of the field test results. *State v. Pettyjohn,* No.17-1236, 2018 WL 3650335, at *3 (Iowa Ct. App. Aug. 1, 2018)[7] (citing *State v. Sayre,* 566 N.W.2d 193, 196 (Iowa 1997)).

Issues such as an officer's training, the possibility or frequency of false positives, or the scientific soundness of a particular procedure bear on the reliability of field tests. Reliability, in turn, goes to the admissibility of the evidence. *See Olson v. Nieman's, Ltd.*, 579 N.W.2d 299, 306 (Iowa 1998). The cited studies and articles on the

[7] This Court denied further review. *Pettyjohn,* No.17-1236, Order (9/28/18).

unreliability of drug field test evidence direct the Court to examine the reliability and thus admissibility of the State's field test evidence. That is an argument which should be first raised and presented in the district court where a record may be properly built, not an appellate court on a sufficiency challenge. *See People v. Mateo*, No.CRA15–036, 2017 WL 66929215, at *7–8 (Guam Dec. 28, 2017). Stevens raised no attack on the drug identification evidence prior to trial and he waived the ability to cross-examine witnesses and offer evidence at trial. Trial Tr.p.2, line 2-p.5, line 18. The district court properly based its verdict on the unchallenged and unrebutted field test results notwithstanding the reliability challenges Stevens could have presented had he chosen a jury trial and where no lab results were introduced.

B. Circumstantial Evidence.

In any regard, expert testimony identifying an illegal substance is not required for conviction. *Brubaker*, 805 N.W.2d at 172–73 ("We have always recognized that, for a person to be convicted of a drug offense, the State is not required to test the purported drug."). Rather, an Iowa court need only "determine whether the state produced sufficient evidence to support the proposition that the

substance was an illegal substance." *Id.* "The finder of fact is free to use circumstantial evidence to find that the substance is an illegal drug." *Id.* at 172.

The Court in *Brubaker* listed six factors relevant in determining "whether a substance is an illegal drug in lieu of expert testimony." *Id.* at 173 (citation omitted). That non-exclusive list includes the appearance of the substance, any expected effects on a person, the manner of its use, the cash price paid for the substance, the type of transaction involved, and the name used by the suspect. *Id.* The Court found insufficient evidence that the yellow pills seized were in fact Clonazepam by appearance alone noting it's similarity in size, shape, and consistency to other over-the-counter drugs. *Id.* at 173-74.

Here, the district court pointed to a number of facts leading to its conclusion that the substance found on Stevens' person was methamphetamine. Verdict at 1-3 (9/16/20); App. 22-24. The vehicle was seen leaving a suspected drug house, a short time later a drug dog indicated the presence of a controlled substance both inside and outside the car, and field tests on the crystalline substances indicated the presence of small amounts of meth. *Id.* at 1-2; App. 22-23; Minutes at Clausen report, Department report; Conf.App. 4, 7-9,

17. When asked if he had anything illegal on his person Stevens reached for his pocket. Minutes at Clausen report; Conf.App. 8; Verdict at 2; App. 23.

Stevens initially said he would be willing to talk to officers about the source of the drug but later declined to do so. Minutes at Clausen report, Loera report; Conf.App. 9,12. He told Clausen his brother also "had a bag of dope" and said it was "only like $30 worth of dope that he had purchased each of them." Minutes at Clausen report, Loera report; Conf.App. 9, 12; Verdict at 2; App. 23. Kyle also declined to talk about the source of the meth they possessed but admitted to using meth "for a very long time" indicating his familiarity with the substance in his possession. Minutes at Niehus report; Conf.App. 11.

The minutes of testimony, viewed in the light most favorable to the State with all the legitimate inferences and presumptions that accompany them, established that the substance found in defendant Stevens' possession was meth. Verdict at 3; App. 24. "The evidence presented does not leave any room for a 'reasonable' other conclusion." *Id.* The circumstantial evidence discussed above coupled with the previously unchallenged field test result was

sufficient to support the court's verdict. Accordingly, the defendant is not entitled to reversal of his conviction for possession of meth.

CONCLUSION

For the reasons discussed above, the State respectfully requests that this Court affirm the conviction and sentence imposed on defendant-appellant Yale Stevens.

REQUEST FOR NONORAL SUBMISSION

Appellant has requested oral argument on his challenge to the district court's suppression ruling. The State does not believe oral argument would be of material assistance in resolving the asserted constitutional challenges based on a stipulated record. Should the Court order oral argument, the State would request to also be heard.

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CERTIFICATE OF COMPLIANCE

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) or (2) because:

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