

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

v.

YALE STEVENS,

Defendant-Appellant.

SUPREME COURT
NO. 20-1393

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

APPELLANT'S REPLY BRIEF AND ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

MELINDA J. NYE
Assistant Appellate Defender
mnye@spd.state.ia.us
appellatedefender@spd.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

CERTIFICATE OF SERVICE

On the 19th day of July, 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 Yale Stevens, 1129 Oak Street, Sioux City, IA 51105.

APPELLATE DEFENDER'S OFFICE



Melinda J. Nye

Assistant Appellate Defender
Appellant Defender Office
Fourth Floor Lucas Building
Des Moines, IA 50319
(515) 281-8841
(515) 281-7281 (FAX)
mnye@spd.state.ia.us
appellatedefender@spd.state.ia.us

MN/sm/7/21

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| Certificate of Service..... | 2 |
| Table of Authorities | 4 |
| Statement of the Issues Presented for Review | 5 |
| Statement of the Case | 6 |
| Argument | |
| I. The dog’s signal on the driver’s side of an empty car provided an insufficient nexus to search Stevens, a former passenger in the car, and the search violated Stevens’ rights under the Fourth Amendment and article I, section 8..... | 6 |
| Conclusion..... | 12 |
| Attorney's Cost Certificate | 13 |
| Certificate of Compliance..... | 13 |

TABLE OF AUTHORITIES

| <u>Cases:</u> | <u>Page:</u> |
|---|--------------|
| Maryland v. Pringle, 540 U.S. 366, 124 S.Ct. 795 (2003)..... | 6-7 |
| State v. Griffin, 949 So. 2d 309 (Fla. Dist. Ct. App. 2007)..... | 9-10 |
| State v. Lelm, No. 20200236, 2021 WL 2834553 (ND filed July 8, 2021)..... | 10-12 |
| State v. Ofori, 906 A.2d 1089 (Md. App. 2006)..... | 10 |
| United States v. Baez, 983 F.3d 1029 (8th Cir. 2020) | 8 |
| United States v. Di Re, 332 U.S. 581, 68 S.Ct. 222 (1948)..... | 7 |
| United States v. Klinginsmith, 25 F.3d 1507 (10th Cir. 1994)..... | 8 |
| United States v. Stone, 866 F.2d 359 (10th Cir.1989).... | 8-9 |
| Wallace v. State, 791 A.2d 968 (Md. Ct. Spec. App. 2002)..... | 9 |

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the dog's signal on the driver's side of an empty car provided an insufficient nexus to search Stevens, a former passenger in the car, and the search violated Stevens' rights under the Fourth Amendment and article I, section 8?

Authorities

Maryland v. Pringle, 540 U.S. 366, 371-72, 124 S.Ct. 795, 800-01 (2003)

United States v. Di Re, 332 U.S. 581, 68 S.Ct. 222 (1948)

United States v. Baez, 983 F.3d 1029, 1042 (8th Cir. 2020)

United States v. Klingensmith, 25 F.3d 1507, 1510 (10th Cir. 1994)

United States v. Stone, 866 F.2d 359, 364 (10th Cir.1989)

Wallace v. State, 791 A.2d 968, 981-84 (Md. Ct. Spec. App. 2002)

State v. Griffin, 949 So. 2d 309, 311 (Fla. Dist. Ct. App. 2007)

State v. Ofori, 906 A.2d 1089, 1093 (Md. App. 2006)

State v. Lelm, No. 20200236, 2021 WL 2834553 (ND filed July 8, 2021)

STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on or about March 18, 2020. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. The dog's signal on the driver's side of an empty car provided an insufficient nexus to search Stevens, a former passenger in the car, and the search violated Stevens' rights under the Fourth Amendment and article I, section 8.

Maryland v. Pringle and its progeny are not applicable to the facts of this case. In Pringle, the United States Supreme Court concluded the officers had probable cause to arrest Pringle after cocaine was found in a passenger car in a location accessible to all three passengers, a large amount of cash was found in the glove box directly in front of Pringle, and none of the three passengers offered any information about ownership of either drugs or the money. Maryland v. Pringle, 540 U.S.

366, 371-72, 124 S.Ct. 795, 800-01 (2003). Pringle distinguished United States v. Di Re, 332 U.S. 581, 68 S.Ct. 222 (1948), on its facts and did not overrule it, directly or indirectly. See Pringle, 540 U.S. at 373-74, 124 S.Ct. 801.

Pringle did not involve a dog sniff and did not address the probable cause created by a drug dog's alert on a car. Rather Pringle involved the level of probable cause created when drugs and cash were actually discovered by police and whether an officer could reasonably infer "that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine. Thus, a reasonable officer could conclude that there was probable cause to believe Pringle committed the crime of possession of cocaine, either solely or jointly." Pringle, 540 U.S. at 372, 124 S.Ct. at 800-01.

Similarly, United States v. Baez does not involve a dog sniff but instead merely applies Pringle in a different setting—a hotel room. The court concluded that police had probable cause to arrest when Baez and one other person were found in a hotel

room that “contained a methamphetamine pipe and keys to a car in which a canine unit had indicated drugs were present. In addition, the suite was reserved under the name of someone who had just been stopped in a car with a fake DEA badge, dryer sheets, numerous credit cards in different names, and large wads of cash.” United States v. Baez, 983 F.3d 1029, 1042 (8th Cir. 2020).

Although the Tenth Circuit Court of Appeals concluded a drug dog alert on a car provides “probable cause *to arrest [both driver and passenger]* and *to search the vehicle* without a warrant under the automobile exception even had there been no prior consent,” the decision was not based on Pringle and, in fact, relies on a case that does not support such a broad proposition. United States v. Klinginsmith, 25 F.3d 1507, 1510 (10th Cir. 1994) (emphasis added). Klinginsmith cites United States v. Stone, 866 F.2d 359, 364 (10th Cir.1989), to support this conclusion that a positive dog alert provides probable cause to arrest everyone inside the vehicle. However,

Stone asserts nothing of the sort. Instead Stone holds only upon a drug dog's alert, "the police had probable cause to believe the automobile contained narcotics." United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989). It says nothing about the level of suspicion a dog alert on a car provides against people either inside or outside the car. See id. See also Wallace v. State, 791 A.2d 968, 981–84 (Md. Ct. Spec. App. 2002) (discussing at length the flaws in the reasoning of Klinginsmith).

As well, although the court in State v. Griffin thought Klinginsmith applied in that case, the facts are significantly different from either Klinginsmith or the case at bar: Griffin was the sole occupant of the car and was inside the car when the dog alerted. See State v. Griffin, 949 So. 2d 309, 311 (Fla. Dist. Ct. App. 2007). Further, the car was searched and nothing was found *before* the officers searched Griffin. Griffin, 949 So. 2d at 314. ("When the dog alerted, there was probable cause that contraband was in the car; once the car was cleared, by the

process of elimination, probable cause then existed to search Appellee.). The actual holding in Griffin was narrow:

Appellee was alone in the vehicle, was sitting in the area where the dog alerted during the walk around, and admitted to being the primary driver of the vehicle. Under Pringle and related cases, *we would find that a trained dog alert provides probable cause to search a driver who is the sole occupant of the car.*

State v. Griffin, 949 So.2d at 313 (emphasis added).

State v. Ofori also purports to apply the broader holding of Klinginsmith, but again, involved an entirely distinguishable factual scenario: the court approved the immediate de facto arrest of the driver of a car who was *inside* the car when the dog alerted. State v. Ofori, 906 A.2d 1089, 1093 (Md. App. 2006). Because of the significant factual differences, the reasoning of Ofori is not persuasive in the case at bar.

More compelling is the recent decision of the North Dakota Supreme Court in State v. Lelm, No. 20200236, 2021 WL 2834553 (ND filed July 8, 2021). In Lelm, a vehicle with two occupants was stopped by police. The driver was arrested on outstanding warrants, while the passenger, Lelm, remained in

the car with a backpack on his lap. Lelm, slip op at ¶2. Lelm was removed from the vehicle for a K9 sniff of the car. When he got out, he took his backpack with him and set it on the ground. Lelm was patted down and placed in the patrol car. Lelm, slip op at ¶3.

The canine positively alerted on the front passenger door prompting a search of the vehicle. During the search the officers found drugs in the center console, a gun on the passenger floorboard, and glass pipes in a grocery bag near the gun.

While on the scene, the canine paid no attention to the backpack. Upon completing the search of the vehicle, the officers searched the backpack and discovered drug paraphernalia and marijuana.

Lelm, slip op. at ¶¶ 4-5

The North Dakota Supreme Court found the search of the backpack unreasonable and a violation of the Fourth Amendment and article I, section 8 of the North Dakota Constitution.

Once the drug-detection canine indicated the presence of a controlled substance in the vehicle, officers had probable cause to search the vehicle and any containers within the vehicle that may have concealed a controlled substance. The probable cause established by the canine's indication to the vehicle limited the search for potential illegal

contraband within the vehicle and present at the time the sniff was conducted. Because the backpack was not within the vehicle at the time of the canine deployment, officers did not have probable cause to search the backpack and the automobile exception did not apply.

Lelm, slip op. at ¶12. The court ultimately concluded no other exceptions applied, rendering the search of the backpack unconstitutional and affirming the suppression of the evidence found inside. Lelm, slip at ¶14-24. The same rationale applies in this case.

CONCLUSION

For the reasons argued above and in the opening brief, the search of Stevens' person based on the K9's signal on the empty car was conducted without probable cause and therefore was arbitrary and impermissible under the Fourth Amendment and article I, section 8 of the Iowa Constitution. Stevens' conviction should be vacated, and his case remanded for further proceedings.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$1.32, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

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 1,303 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Melinda J. Nye

Dated: 7/19/21

MELINDA J. NYE

Assistant Appellate Defender

Appellate Defender Office

Lucas Bldg., 4th Floor

321 E. 12th Street

Des Moines, IA 50319

(515) 281-8841

mnye@spd.state.ia.us

appellatedefender@spd.state.ia.us