IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-0736

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BION INGRAM,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR JASPER COUNTY
THE HONORABLE STEVEN J. HOLWERDA, JUDGE

APPELLEE'S BRIEF

THOMAS J. MILLER
Attorney General of Iowa

KYLE HANSON
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
kyle.hanson@iowa.gov

MICHAEL K. JACOBSEN
Jasper County Attorney

KELLY T. BENNETT
Assistant County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE

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ROUTING STATEMENT

Although the defendant raises some issues of first impression, the circumstances of his case counsel against making any broad-sweeping judgments. His first claimed issue of first impression seeks an Iowa constitutional rule to prohibit police from opening closed containers during impound inventories, but the record contains no proof that the officer had to open any container to observe the contraband inside. Also, he did not preserve the broader issue concerning whether the Iowa Constitution forbids impound inventories altogether. The defendant's second issue of first impression argues a field test should not be sufficient proof of the presence of a controlled substance, but he overlooks that the field test results were part of the record to which he stipulated for his trial on the minutes. These unique circumstances weigh in favor of a narrow ruling, so the Supreme Court should not use this case as a vehicle to announce new principles of law.

Because this case could be decided with the application of existing legal principles, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

Defendant Bion Ingram appeals his conviction for possession of methamphetamine following the denial of his motion to suppress and a stipulated bench trial on the minutes.

Course of Proceedings

The State accepts the defendant's statement of the course of proceedings as substantially correct.

The State also notes that the district court found Ingram guilty of possession of drug paraphernalia. Verdict at 2; App. 37. Ingram's appeal does not address the paraphernalia charge. *See* Def. Br. at 92 (seeking reversal of the drug possession charge only). Additionally, the paraphernalia charge is a simple misdemeanor for which Ingram has no right to appeal. *See* Iowa Code §§ 124.414(3) (stating possession of drug paraphernalia is a simple misdemeanor); 814.6(1)(a) (granting the right to appeal a final judgment of sentence "except in case of simple misdemeanor or ordinance violation convictions").

Facts

At 6:39 a.m. on October 30, 2015, defendant Bion Ingram was driving a car in Newton without a functioning tag light. Suppr. Tr. p.

4, line 18 – p. 5, line 23. Police had been looking for the car based on a report of reckless driving. Minutes (Eckert report); App. 14. Deputy Jeremy Burdt stopped Ingram. Suppr. Tr. p. 5, line 24 – p. 6, line 4. A license plate check revealed that the car's registration was expired and that a current-year registration sticker belonging to a different vehicle had been affixed to the plate. Suppr. Tr. p. 6, line 5 – p. 7, line 4. The car did not belong to Ingram, and the owner was not present. Suppr. Tr. p. 30, line 25 – p. 31, line 3. Ingram could not produce a copy of the registration card or proof of insurance. Suppr. Tr. p. 10, lines 6–13.

Deputy Burdt determined the car had to be towed due to the improper registration. Suppr. Tr. p. 9, lines 5–13. The Jasper County Sheriff has a written policy for inventorying towed vehicles. Suppr. Tr. p. 9, lines 14–20. The policy requires a report to document the vehicle and its contents as well as where the vehicle is being towed. Suppr. Tr. p. 21, line 8 – p. 22, line 4. Before the tow service takes the vehicle, deputies complete an inventory and fill out the corresponding paperwork. Suppr. Tr. p. 22, lines 5–15.

Ingram sat in the front seat of the patrol car and used his cell phone to arrange a ride to work. Suppr. Tr. p. 7, line 5 – p. 9, line 4.

Deputy Burdt wrote citations for Ingram and called a wrecker from "Barney's" to tow the vehicle. Suppr. Tr. p. 10, lines 3–21. Ingram asked the deputy if he could remove his "stuff" before the car was towed. Suppr. Tr. p. 27, line 18 – p. 28, line 3. Deputy Burdt responded that Ingram could remove his work-related items from the car after the citations were finished. Suppr. Tr. p. 10, line 22 – p. 11, line 14. Ingram denied that there was anything of "high value" in the vehicle. Suppr. Tr. p. 18, lines 7–19.

Officer Bernard Eckert arrived partway through the stop. Suppr. Tr. p. 11, line 15 – p. 12, line 6. Deputy Burdt asked Officer Eckert to remove the vehicle's registration plates and complete an inventory. Suppr. Tr. p. 12, lines 7–20. Officer Eckert filled out a written form noting the condition of the vehicle and items of value it contained, including a power converter and various tools. Suppr. Ex. 3 (Inventory report); App. 26. During the inventory, Officer Eckert located a black cloth bag on the driver's side floorboard near the gas pedal. Suppr. Tr. p. 12, line 21 – p. 14, line 21, Minutes (Eckert report); App. ___. The cloth bag was large enough to contain valuables such as coins or jewelry. Suppr. Tr. p. 16, line 15 – p. 17, line 8. Officer Eckert picked up the cloth bag and observed a glass

pipe with white residue. Minutes (Eckert report); App. 14. He emptied the cloth bag and found several plastic baggies, including one that contained a white crystal substance. Minutes (Eckert report), Suppr. Ex. 1–2 (photos); App. 14, 24–25.

Deputy Burdt arrested Ingram. Minutes (Eckert report); App. 14. Ingram denied knowledge of the contraband. Minutes (Eckert report); App. 14. At the police station, Officer Eckert photographed, weighed, and tested the substance. Minutes (Eckert report); App. 14. A field test returned a positive result for methamphetamine. Minutes (Eckert report); App. 14.

Ingram had a previous offense for possession of a controlled substance. Minutes (Eckert report); App. 14.

ARGUMENT

I. The District Court Properly Rejected Ingram's Fourth Amendment Claim Because the Deputy Reasonably Decided to Impound and Inventory the Car.

Preservation of Error

Ingram did not preserve error to the extent he challenges the deputy's decision that his vehicle "should be impounded, as opposed to left on the side of the road or driven off from the scene." Def. Br. at 37–39. Ingram's motion to suppress focused on whether officers can open closed containers. Motion to Suppress at 1–2; App. 22–23. At

most, the motion contained a throwaway line stating that "[i]t was not necessary for law enforcement to impound the vehicle based on the citations that were given." Motion at 2; App. 23. However, the district court's ruling reflects that it did not believe Ingram was challenging the decision to impound the car: "The authority of the deputy to stop the Defendant and subsequently impound the car was not challenged." Ruling at 2; App. 32.

"It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Ingram's one-line "necessity" assertion was too vague to alert the State and the district court that he was challenging the existence of standardized criteria to impound the vehicle. And even if Ingram's one-line assertion sufficed to raise an impoundment challenge, the district court's ruling did not analyze the standards for impoundment. If the district court was wrong in concluding that "The authority of the deputy to . . . impound the car was not challenged" (Ruling at 2; App. 32), then the rules of error preservation required Ingram to file a motion to enlarge the ruling. *See Meier*, 641 N.W.2d at 537 ("When a district court fails to rule on

an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal."). Ingram never filed a motion to enlarge, so he failed to preserve error concerning the deputy's decision to impound the car.

Standard of Review

"We review constitutional issues de novo." *State v. Vance*, 790 N.W.2d 775, 780 (Iowa 2010).

Discussion

The impound inventory did not violate Ingram's Fourth Amendment rights. First, the fraudulent registration and lack of insurance provided non-investigatory purposes to impound the vehicle. Second, the cloth bag on the floorboard fell within the proper scope of the inventory. Therefore, the district court correctly approved the inventory.

"One well-recognized exception to the warrant clause is a vehicle inventory search." *State v. Huisman*, 544 N.W.2d 433, 436 (Iowa 1996) (citing *Colorado v. Bertine*, 479 U.S. 367, 371 (1987); *South Dakota v. Opperman*, 428 U.S. 364, 369–71 (1976)). "This exception responds to the practical problems arising when police remove a vehicle's operator and are then left to care for that vehicle.

In such circumstances, police act in a caretaking capacity rather than as criminal investigators." *Id.* (citations omitted). "The legality of an inventory search depends on two overlapping inquiries: the validity of the impoundment and the scope of the inventory." *Id.*

A. Deputy Burdt validly impounded the car.

Police had valid, non-investigatory reasons to impound the car Ingram was driving. The record on this issue is thin because Ingram's motion did not seem to challenge the impoundment decision. *See* Suppr. Ruling at 2; App. 32 ("The authority of the deputy to . . . impound the car was not challenged."). However, even the undeveloped record discloses that impoundment was necessary because the car was not legal to drive. It had fraudulent registration and no proof of insurance, so Deputy Burdt properly chose to remove it from the road.

"[P]olice may lawfully choose to impound a vehicle so long as that decision is made 'according to standardized criteria and on the basis of something other than suspicion of evidence of criminal activity.'" *Id.* at 437 (quoting *Bertine*, 479 U.S. at 375). "[W]e look for the existence of reasonable standardized procedures and a purpose other than the investigation of criminal activity." *Id.* The

standardized criteria "need not be exclusively written." *Id.* "[A]n investigatory purpose invalidates an inventory search only if the search is conducted for the sole purpose of investigation." *Id.* at 439 (citations omitted). "We do not analyze the subjective motivations of the officers." *Id.*at 440.

The registration violations provided grounds to impound the car. After stopping Ingram, Deputy Burdt discovered that the car's registration was expired and that a current-year registration sticker belonging to a different vehicle had been affixed to the plate. Suppr. Tr. p. 6, line 5 – p. 7, line 4. Ingram did not produce a registration card. Suppr. Tr. p. 10, lines 6–13. Operating a motor vehicle without proper registration is a simple misdemeanor. Iowa Code §§ 321.17 (misdemeanor to violate registration provisions), 321.98 (operation without registration). Likewise, it is illegal to alter a plate with a registration sticker belonging to another vehicle. *Id.* §§ 321.99 (fraudulent use of registration), 321.100 (false evidence of registration). These registration violations led Deputy Burdt to impound the vehicle. Suppr. Tr. p. 9, lines 5–13.

This case is analogous to *State v. Aderholdt*, 545 N.W.2d 559 (Iowa 1996). In *Aderholdt*, a trooper chose to impound an illegally

unregistered car that he had a "hunch" contained narcotics. *Id.* at 564. The department's procedural manual left "much" of the decision to impound "to individual trooper discretion," and the trooper had rarely towed cars for registration violations in the past. *Id.* at 564–65. The Court recognized the "dilemma" that "the trooper could not lawfully permit an unregistered vehicle to be driven." *Id.* at 565 (citing various registration statutes from Chapter 321). Even though the trooper exercised discretion to impound the car, the Court approved the impoundment because his decision "was consistent with a reasonable interpretation of departmental regulations and state statutes." *Id.* Just as in *Aderholdt*, Deputy Burdt had a lawful, non-investigatory reason to impound the car because it was illegal for Ingram to operate it without proper registration.

Similarly, the lack of insurance provided a non-investigatory reason to impound the car. Ingram could not produce proof that the vehicle was insured. Suppr. Tr. p. 10, lines 6–13. Iowa's financial responsibility statute grants authority for officers to impound a vehicle when the driver is unable to provide proof of insurance. Iowa Code § 321.20B(4)(a)(4). Thus, Ingram's failure to produce proof of insurance justified the impoundment. *See State v. Bitker*, No. 13-

0520, 2014 WL 468228, at *3 (Iowa Ct. App. Feb. 5, 2014) ("Because our statute allows for impoundment where a driver cannot produce proof of insurance, we find that when viewed objectively, the officer was allowed to impound Bitker's vehicle.").

Next, Ingram places undue weight on other options such as the deputy allowing the car to be "left on the side of the road or driven off from the scene." Def. Br. at 37. First, the Fourth Amendment "does not require that the police seek less invasive alternatives to impoundment . . ." *Huisman*, 544 N.W.2d at 439. Second, the less intrusive means that Ingram suggests were not reasonable under the circumstances. Deputy Burdt could not just park the vehicle on the main highway through Newton—in fact, traffic safety concerns led him to offer to take Ingram to a gas station rather than having someone pick him up along the highway. Suppr. Tr. p. 8, lines 18–24. And Deputy Burdt could not permit Ingram to drive the car with fraudulent registration, just as the trooper in *Aderholdt* "could not lawfully permit an unregistered vehicle to be driven." *Aderholdt*, 545 N.W.2d at 565. Consequently, the Fourth Amendment did not require Deputy Burdt to select a less intrusive alternative to impoundment.

Even assuming Ingram adequately preserved error on this issue, the record supports Deputy Burdt's decision to impound the car. The fraudulent registration and lack of insurance provided non-investigatory reasons to remove the car from the road. Therefore, the deputy's conduct satisfied the threshold inquiry because the impoundment itself was proper.

B. The cloth bag containing drugs was within the proper scope of the inventory.

Officer Eckert did not exceed the lawful scope of the inventory. First, the inventory was required by departmental policy. Second, inspecting the cloth bag fulfilled the acceptable purposes of an inventory because it was large enough to contain valuables. Third, there is no indication that the inspection of the cloth bag violated any prohibition against opening closed containers.

Once police take control of the car, they can inventory it according to standardized criteria. *Huisman*, 544 N.W.2d at 440. "[I]nventory procedures serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." *Bertine*, 479 U.S. at 372; *see also State v. Jackson*, 542 N.W.2d 842, 845 (Iowa 1996) ("Inventory searches are justified for three 'safe

keeping' purposes: (1) to protect the owner's property while the vehicle is in police custody; (2) to protect the police officer who performs the inventory search against claims or disputes over the property; and (3) to protect the police officer from potential danger.").

Officers can open closed containers during the inventory. In *Bertine*, the Court rejected a rule requiring "that police, before inventorying a container, weigh the strength of the individual's privacy interest in the container against the possibility that the container might serve as a repository for dangerous or valuable items." *Bertine*, 479 U.S. at 374; *see also Florida v. Wells*, 495 U.S. 1, 4 (1990) (stating a department's inventory policy can be constitutional even if it grants individual officers "sufficient latitude to determine whether a particular container should or should not be opened . . ."). Similarly, the Iowa Supreme Court has rejected the "less intrusive manner" argument that an officer "could have adequately inventoried the contents of [the defendant's] vehicle without opening all closed containers." *Jackson*, 542 N.W.2d at 845–46.

Jasper County has a policy that required an inventory of the car Ingram was driving. The sheriff's office standard operating procedure (SOP) manual includes a policy for inventorying towed cars. Suppr. Tr. p. 9, lines 14–20, p. 21, lines 8–16. The policy requires a report to document the vehicle and its contents as well as where the vehicle is being towed. Suppr. Tr. p. 21, line 8 – p. 22, line 4. Admittedly this Court's review would be simpler if the district court had received a copy of the county's inventory policy. But even without the written policy, the deputy's testimony at the suppression hearing established that inventorying the car was required by departmental standards.

Contrary to Ingram's argument, this case does not present "the same issue" as *Wells*. *See* Def. Br. at 40. The *Wells* Court invalidated an inventory because "the Florida Highway Patrol had no policy whatever with respect to the opening of closed containers . . ." *Wells*, 495 U.S. at 4. Even though the district court did not have a copy of Jasper County's inventory policy, Deputy Burdt's testimony establishes that the county has such a policy. Permitting the opening of closed containers is the only way that policy could fulfill the three purposes for the inventory exception. Professor LaFave notes,

> At least one court has concluded that a policy which lacks such specificity but declares that the purpose of regular inventories is to protect owners' property and to protect the police from claims also suffices, for the reason that such objectives can be achieved only if the contents of all containers are examined.

3 Wayne R. LaFave, *Search & Seizure* § 7.4(a) (5th ed., Westlaw 2016) (citing *United States v. Frank*, 864 F.2d 992 (3d Cir. 1988)). Thus, the Court should not presume that any opening of closed containers violated the county's policy.

Next, the cloth bag fell within the lawful scope of the inventory. The bag was large enough to contain valuables such as coins or jewelry. Suppr. Tr. p. 16, line 15 – p. 17, line 8. The interests of preserving the owner's property and protecting police and their agents against claims justified inspecting the bag.

Of particular significance, the record does not support Ingram's main complaint concerning "whether a law enforcement officer could open a closed container during an inventory search." Def. Br. at 40. There was no proof that the cloth bag was closed or that Officer Eckert opened it. Photos of the bag depict an open drawstring at the top (Suppr. Ex. 1–2; App. 24–25), and there is no indication that the drawstring was ever closed. Officer Eckert's report stated, "I

observed a black cloth bag lying on the driver's side floor board next to the gas pedal. I picked up the bag and observed a glass pipe with white residue." Minutes (Eckert report); App. 14. This description suggests the officer was able to see the contraband just by picking up the bag, not opening it. And once he had observed the methamphetamine pipe inside the bag, he had probable cause for further inspection. *See* Minutes (Eckert report); App. 14 (stating that after observing the glass pipe with white residue, "I emptied the contents of the bag . . .").

Officer Eckert did not exceed the scope of a lawful inventory. He acted at the direction of Deputy Burdt, whose departmental policy required an inventory before the impounded car was towed away. Inspecting the cloth bag fulfilled the purpose of locating any valuable property contained in the car. And even assuming the department's policy prohibited opening closed containers, there is no proof that Officer Eckert had to open the drawstring to observe the contraband inside. Accordingly, the district court properly rejected Ingram's Fourth Amendment challenge.

II. Ingram Fails to Justify a Different Rule Under the Iowa Constitution Because There Is No Persuasive Reason to Depart from the Fourth Amendment's Treatment of Impound Inventories.

Preservation of Error

Ingram only preserved error for the limited issue of whether the Iowa Constitution forbids the opening of closed containers during an impound inventory. In the district court, he argued that "[t]he search of the black bag and other portions of the vehicle not open to view" violated Article I, section. 8. Motion to Suppress at 2; App. 23. But he did not contend that the Iowa Constitution prohibits all inventories, and he conceded that police inventorying an impounded vehicle should at least be allowed "a cursory view of the contents of the vehicle so that the items in it can be identified in the event that some are missing later." Def. Memo. at 3; App. 29. And he analogized *State v. Gaskins*, 866 N.W.2d 1 (Iowa 2015), which concerned the opening of a locked safe during a search incident to arrest. *See* Motion to Suppress at 2; App. 23 ("The black bag would be equivalent to the safe in *Gaskins*. Law enforcement does not need to inspect the contents of the black bag to inventory the vehicle. A note of the black bag itself was sufficient."). Similarly, the district court confined its Iowa constitutional analysis to whether *Gaskins*

controlled the opening of closed containers. Suppr. Ruling at 2–3; App. 32–33.

This Court should restrict Ingram's appellate challenge to the bounds he set in the district court. Although much of his appellate brief focuses on the narrow issue of opening closed containers, it does include some broad assertions that seem to attack the constitutional legitimacy of all impound inventories. *See, e.g.*, Def. Br. at 43 ("A warrantless inventory search also violates Ingram's rights under article I, section 8 of the Iowa Constitution."); Def. Br. at 58 (seeking relief "regardless of which rule the Court adopts"). Because Ingram did not make a wholesale attack in the district court, the rules of error preservation preclude him from doing so for the first time on appeal. *See State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) ("Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us that was not first sung in trial court."). Therefore, this Court should confine its analysis to the narrow issue of whether the Iowa Constitution prohibits police from opening closed containers.

Standard of Review

"We review constitutional issues de novo." *State v. Vance*, 790 N.W.2d 775, 780 (Iowa 2010).

Discussion

The Court should decline Ingram's invitation for a unique interpretation under the Iowa Constitution's search and seizure provision. Opening closed containers is necessary to accomplish the three non-law-enforcement purposes of impound inventories. Because there is no persuasive reason to depart from the United States Supreme Court's decision in *Bertine*, this Court should affirm the denial of Ingram's motion to suppress.

A. The Court should hesitate to reach the Iowa Constitution issue in this case.

The circumstances of this case caution against making any broad-sweeping judgment about impound inventories under the Iowa Constitution. First, the doctrine of constitutional avoidance counsels against reaching the Iowa constitutional challenge if other issues are dispositive. Second, Ingram only preserved error on the issue of opening closed containers, so the Court should not consider the validity of the impound inventory exception itself. Third, factual

infirmities in the record make it unwise to use this case as a vehicle to change the bounds of the impound inventory exception.

The Iowa Constitution challenge is the last issue the Court should consider in this case. "[W]e are constrained by our principles of self-restraint, including the longstanding rule that we will not decide constitutional questions when a case can be resolved on other grounds." *State v. Williams*, 695 N.W.2d 23, 30 (Iowa 2005); *see also State v. Young*, 863 N.W.2d 249, 282 (Iowa 2015) (Mansfield, J., concurring) ("Time and again, in recent years, we have proclaimed our adherence to the doctrine of constitutional avoidance."). If the Court finds insufficient evidence to support Ingram's conviction or if it concludes police violated his Fourth Amendment rights, then it should not reach the validity of the impound inventory under the Iowa Constitution.

Next, the manner in which Ingram presented his case in the district court limits the breadth of the Court's review. As discussed above, the district court only ruled on the narrow issue of whether opening closed containers violates the Iowa Constitution. If Ingram had mounted an all-out attack on impound inventories, the State would have had the opportunity to develop a record to back up the

three traditional justifications for the impound inventory exception. The lack of error preservation on the broader question means the Court should confine its review to the closed container issue.

Finally, the current record does not establish the factual foundation of Ingram's main complaint. He contends the article I, section 8 should prohibit police from opening closed containers during an inventory. Def. Br. at 58. But there was no proof that Officer Eckert opened the black bag that contained Ingram's drugs. Photos of the bag depict a drawstring on the top (Suppr. Ex. 1–2; App. 24–25), but nothing establishes that the drawstring was closed. And Officer Eckert's report—which was the only record describing the inventory—stated, "I picked up the bag and observed a glass pipe with white residue." Minutes (Eckert report); App. 14. This description suggests he was able to see the contraband just by picking up the bag, not opening it. The Court should decline enunciating a rule prohibiting inspection of closed containers when the record does not even establish that police inspected a closed container.

All these reasons weigh against reaching the Iowa constitutional issue presented in this case. The decision whether to adopt a radical departure from established federal law should be approached with

judicial temperance. The Court should wait for a case that requires reaching the Iowa constitutional question, that has fully preserved error, and that has a factual record supporting the proposed rule.

B. Ingram presents no persuasive reason to prohibit police from inventorying closed containers.

Opening closed containers is an essential part of any effective impound inventory. The United States Supreme Court recognizes that "inventory procedures serve [1] to protect an owner's property while it is in the custody of the police, [2] to insure against claims of lost, stolen, or vandalized property, and [3] to guard the police from danger." *Bertine*, 479 U.S. at 372. However, these "strong governmental interests" cannot be fulfilled without knowledge of the contents of closed containers. *See id.* at 373 ("Knowledge of the precise nature of the property help[s] guard against claims of theft, vandalism, or negligence. Such knowledge also help[s] to avert any danger to police or others that may have been posed by the property."). Opening a closed container is the only method to gain "knowledge of the precise nature of the property" it contains, so police procedures permitting container inspections are consistent with reasonable search and seizure principles.

Under the long-existing and widely followed federal standard, opening closed containers remains constitutional even though other means might accomplish the same purposes. Police do not need to ponder "alternative less intrusive means" to opening closed containers because "the real question is not what 'could have been achieved,' but whether the Fourth Amendment requires such steps . . ." *Id.* at 374 (quoting *Illinois v. Lafayette*, 462 U.S. 640, 647 (1983)). And rather than forcing officers "to make fine and subtle distinctions in deciding which containers or items may be searched and which must be sealed as a unit," the interest of following "a single familiar standard" reflects the reality that police in the field have limited time and expertise compared to a court judging their actions in hindsight. *Id.* at 375.

This Court should not exercise its independent authority to reach a different conclusion under its interpretation of article I, section 8. Even though the Fourth Amendment has only one difference in punctuation, "we reserve the right to apply the principles differently under the state constitution compared to its federal counterpart." *State v. Gaskins*, 866 N.W.2d 1, 6 (Iowa 2015). Contrary to criticism that an "ad hoc approach seems result-oriented

and unprincipled," *id.* at 53 (Waterman, J., dissenting), the Court has refused to adopt neutral interpretative criteria when contemplating a departure from established federal law. *Id.* at 7 n.4 (majority) (citing *State v. Short*, 851 N.W.2d 474, 490–91 (Iowa 2014)). Instead, the interpretation of similarly (or identically) worded Iowa constitutional provisions turns on whether this Court finds the federal precedent persuasive. *See State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010) ("The degree to which we follow United States Supreme Court precedent, or any other precedent, depends solely upon its ability to persuade us with the reasoning of the decision.") *But see Gaskins*, 866 N.W.2d at 7 ("Of course, 'our independent authority to construe the Iowa Constitution does not mean that we generally refuse to follow the United States Supreme Court decisions." (quoting *Short*, 851 N.W.2d at 490)). Applying this current interpretive rubric, the Court should not prohibit police from opening closed containers during impound inventories because there is no persuasive reason to depart from the United States Supreme Court's decision in *Bertine*.

1. Opening closed containers is vital to safeguard the owner's property.

An inventory policy cannot fulfill its purpose of protecting the owner's property without officers opening closed containers. People

regularly carry their valuables inside containers such as suitcases, purses, or backpacks, so thieves are more likely to target such containers and their contents. *See In re One 1965 Econoline*, 511 P.2d 168, 171 (Ariz. 1973) ("[I]t is illogical to prohibit law enforcement officials from searching those areas wherein valuables are most likely to be placed."); *see also* Anthony E. Kaplan, Note, *Drawing Lines Around the Fourth Amendment:* Robbins v. California *and* New York v. Belton, 10 Hofstra L. Rev. 483 (1982) (arguing "the case for inventories may be more compelling considering the ease with which many containers could be removed by thieves"). Consequently, police taking custody of an impounded car have a heightened interest to check whether containers hold valuable property so they can take appropriate steps to protect that property from theft or loss. Thieves will not hesitate to open closed containers, so police should not be so constrained when attempting to safeguard property. *See* Nicholas B. Stampfli, *After Thirty Years, Is It Time to Change the Vehicle Inventory Search Doctrine?*, 30 Seattle U. L. Rev. 1031 (2007) ("This policy can hardly be accomplished if law enforcement officials cannot search everywhere a thief can.").

Simply listing a container as a whole does not adequately protect its contents from theft. *See, e.g.*, *Autran v. State*, 887 S.W.2d 31, 42 (Tex. Ct. Crim. App. 1994) ("The officers interest in the protection of appellant's property . . . can be satisfied by recording the existence of and describing and/or photographing the closed or locked container."). It is unlikely that people who suffer an impound-yard theft would find any relief in such a procedure—their property is gone, and the police officer who listed or photographed the container did nothing to prevent it. Rather, the interest in securing a motorist's property is strong enough to permit officers to inspect closed containers and make appropriate arrangements to safeguard any valuables found inside.

Similarly, police cannot just ignore containers inside impounded vehicles. *See, e.g.*, *Mozzetti v. Superior Court*, 484 P.2d 84, 89 (Cal. 1971) ("[I]tems of value left in an automobile to be stored by the police may be adequately protected merely by rolling up the windows, locking the vehicle doors and returning the keys to the owner. The owner himself, if required to leave his car temporarily, could do no more to protect his property."). The fact that some owners may feel comfortable leaving containers and valuables inside

their cars for a short time in well lighted public parking lots does not reflect the same security concerns as police leaving a car and its contents unattended for a lengthy period in a remote impound lot. *See Opperman*, 428 U.S. at 379 (Powell, J. concurring) ("[M]any owners might leave valuables in their automobile temporarily that they would not leave there unattended for the several days that police custody may last. There is thus a substantial gain in security if automobiles were inventoried and valuable items removed for storage.").

Next, eliminating container inventories would create unreasonable demands for securing impound lots. An impound inventory streamlines the safekeeping function—after inspecting a car's contents, police can act to secure the valuables they find. "[W]hile the same security could be attained by posting a guard at the storage lot, that alternative may be prohibitively expensive, especially for smaller jurisdictions." *Id.* Iowa's cities and counties cannot afford to operate police-managed impound yards guarded around the clock by armed officers. As a result, a vast majority of jurisdictions contract with private businesses to tow and store impounded cars, including Jasper County which had Ingram's car towed by a private

business called "Barney's." Suppr. Tr. p. 10, lines 3–21. The Iowa Constitution does not require placing an unreasonable security burden on police when impound inventories can fulfill the same community caretaking function more efficiently.

Ingram suggests that "if the owner was present [then] he could be questioned if there were any valuable items in the vehicle . . ." Def. Br. at 48. The rationale behind this alternative is that "[s]urely the property owner is an adequate judge of the treatment of the property that would most benefit him." Def. Br. at 49 (quoting *State v. Sawyer*, 571 P.2d 1131, 1333 (Wyo. 1977), *overruled on other grounds by State v. Long*, 700 P.2d 153 (Wyo. 1985)); *see also State v. Williams*, 689 P.2d 1065, 1071 (Wash. 1984) ("[I]t is doubtful that the police could have conducted a routine inventory search without asking petitioner if he wanted one done."). But Ingram was not the car's owner—it was registered to a woman who was not present during the traffic stop. Suppr. Tr. p. 29, lines 20–24. Such circumstances present a likelihood that Ingram would sacrifice the security of the absent owner's property to prevent the police from discovering his drugs during an inventory.

The alternative of asking the driver would not adequately protect property in all circumstances. Police cannot assume a driver who is borrowing the vehicle—like Ingram—knows whether the owner has stored valuable property in a container out of plain view. In other cases, police cannot rely on the driver to accurately account for valuables in the vehicle, such as a drunk driver whose intoxication precludes accurate recall or an unruly arrestee who is more keen to resist officers than cooperate with securing the vehicle. Thus, in many cases officers would face great uncertainty if they were forced to consider whether the driver is capable of adequately protecting the vehicle's contents.

Likewise, it would be impractical if officers had to allow drivers to "make arrangements" for the care of valuables. *See* Def. Br. at 48. If the driver has been arrested, police could face a lengthy wait on the side of the highway until a friend or relative arrives to retrieve property from the car. Waiting also risks the dissipation of fleeting evidence, such as in an OWI investigation when the two-hour window for a chemical test could close while the arrestee attempts to make arrangements for safeguarding property. Allowing arrestees to make their own arrangements could also expose police to danger, such as a

violent arrestee summoning a confederate to retrieve a gun that could be used against officers. In balance, these impracticalities outweigh any benefit to permitting drivers to make their own arrangements.

Ingram presents no persuasive reason undermining the safekeeping function of the inventory exception. First, police cannot adequately protect property if they are not allowed to open the very containers where owners are most likely to store valuables. Second, alternative means might work in some circumstances, but compelling officers to consider less intrusive means injects a great deal of officer discretion into a procedure that is supposed to minimize officer discretion. *Bertine*'s approval of opening all containers provides the soundest approach to protect property while also limiting officer discretion, so this Court should not depart from its holding.

2. Opening closed containers is necessary to prevent false claims of loss or theft.

Like the interest in protecting property from theft, preventing false claims against police and their agents requires opening closed containers. "The risk of civil actions for damages against police officials in connection with the impoundment of vehicles is not remote or academic." *State v. Roberge*, 642 S.W.2d 716, 720 (Tenn. 1982) (citations omitted). If police cannot inventory closed

containers, then dishonest claimants will gain a significant advantage by asserting valuables were taken from a suitcase, box, or knapsack that police did not inspect. *See State v. Roth*, 305 N.W.2d 501, 506 (Iowa 1981) ("[A] car owner inclined to make a false claim could be expected to base the claim on property missing from an area the police were not permitted to search." (quoting *State v. Prober*, 297 N.W.2d 1, 6 (Wis. 1980))); *Hamby v. Commonwealth*, 279 S.E.2d 163, 166 (Va. 1981) ("Without a record of the contents of such luggage, police are bereft of any means to verify what property was actually present at the time of its taking.").

Ingram is too quick to question "[w]hether an inventory search actually prevents or lessens claims of theft." Def. Br. at 49. "Even though the inventory is not a completely effective means of preventing such claims (because items can be taken before the inventory or the inventory can itself be falsified), the existence of the practice tends to discourage the fraudulent assertion of claims for lost or stolen property." *State v. Atkinson*, 688 P.2d 832, 836 (Or. 1984). An officer's roadside inventory can prevent claims that property went missing later at the impound yard. And when a private company takes custody of the impounded car—as happened in Ingram's case—a

police inventory would be especially helpful to dispel claims that the tow truck driver stole something.

Ingram's argument fails to account for idiosyncrasies in other state's laws that affect their constitutional analysis. For instance, he relies on a Montana case that found the interest in protecting police against false claims "bears little weight" due to a Montana statute that required police (as a "gratuitous depositary") to exercise only "slight care" to preserve property in an impounded car. *Sawyer*, 571 P.2d at 517, cited in Def. Br. at 49. Iowa's law is not so deferential to bailees—even a gratuitous bailee (like the impounding police officer) is liable for the omission of "reasonable care." *See In re Estate of Martin*, No. 11-0690, 2012 WL 1431490, at *5 (Iowa Ct. App. Apr. 25, 2012) (citations omitted). And because the tow yard entrusted with an impounded vehicle generally charges the owner a storage fee, the arrangement might create a mutual-benefit bailment in which the bailee is presumed liable for any loss. *See id.* The risk of Iowa officers or their agents facing civil liability for false claims weighs in favor of police being allowed to "make a realistic and meaningful inventory" by opening closed containers. *See Roberge*, 642 S.W.2d at 720.

Finally, less intrusive alternatives would not protect officers in all situations. At least one commentator has suggested that police should seek waivers rather than perform impound inventories. *See* Jennifer Kirby-McLemore, Note, *Finishing What* Gant *Started: Protecting Motorists' Privacy Rights by Restricting Vehicle Impoundments and Inventory Searches*, 84 Miss. L.J. 179 (2014) ("[T]he officer should have presented the motorists with an option to waive the search by signing a waiver relieving police from liability while the car and its contents remained in impound."). Similarly, Ingram suggests that a driver who refuses to consent to an inventory "assumes the risk for lost property or theft stemming from the impoundment." Def. Br. at 49–50 (citing *State v. Mangold*, 414 A.2d 1312, 1318 (N.J. 1980)). But Ingram was not the owner of the car (Suppr. Tr. p. 29, lines 20–24), and nothing suggests he had the authority to waive liability or assume the risk on behalf of the absent owner.

No persuasive reason justifies departing from *Bertine*'s recognition that container inventories provide necessary protection from false claims. Police cannot shelter themselves or their agents without documenting the presence or absence of valuable property

inside closed containers. And forcing officers to weigh whether a driver has authority to waive an inventory or assume the risk on behalf of an absent owner creates too much uncertainty in the shadow of civil liability. Therefore, the Iowa Constitution should not forbid officers from inventorying the contents of closed containers.

3. Opening closed containers guards police and the public from danger.

Ingram does not present a persuasive reason to discount or discard the interest in protecting police and the public from danger. He suggests that he presented no danger to police because he "was confined within the officer's vehicle when the inventory search as conducted." Def. Br. at 50. But unlike the search-incident-to-arrest exception, the danger justification for an impound inventory does not necessarily focus on a possibility of harm perpetrated by the arrested individual. Rather, the United States Supreme Court has focused on dangers that could arise during storage of the impounded vehicle. *See, e.g.*, *Cady v. Dombrowski*, 413 U.S. 433, 443 (1973) (approving an impound inventory intended "to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands"); *Bertine*, 479 U.S. at 742 & n.5 (noting police had

found dangerous items such as explosives during impound inventories).

Cars offer a convenient repository for dangerous items, and inventorying closed containers reduces the chance of harm. Drivers can legally transport firearms "inside a closed and fastened container" (Iowa Code § 724.4(4)(f)), so police have a higher interest in searching such containers. Aside from protecting the public from stolen weapons, impound inventories can uncover noxious chemicals. Iowa's methamphetamine epidemic brings with it the possibility of a motorist transporting chemicals like anhydrous ammonia in an altered container or a "one-pot" meth lab in a backpack—which could explode and injure a tow truck driver securing the vehicle.

These dangers should not be dismissed as too remote or rare. "[T]he occasional danger that may exist cannot be discounted entirely. The harmful consequences in those rare cases may be great, and there does not appear to be any effective way of identifying in advance those circumstances or classes of automobile impoundments which represent a greater risk." *Opperman*, 428 U.S. at 378 (Powell, J., concurring). Dangers like guns and meth labs are not uncommon in the state, and their threat to safety is great. Police should not be

forced to guess which containers hold dangerous items or what circumstances qualify as "exigent," so opening closed containers advances the inventory exception's purpose of protecting officers and the public.

4. The Court should not reinstate its previous mistaken attempt to interpret the Fourth Amendment.

Before the United States Supreme Court decided *Bertine*, many state supreme courts attempted to predict whether inventorying closed containers violated the Fourth Amendment. The Iowa Supreme Court did so in *State v. Roth*, 305 N.W.2d 501 (Iowa 1981). In *Roth*, a deputy inventorying an impounded car discovered two pounds of marijuana inside a paper bag in the car's trunk. *Id.* at 504. The Court approved the search of the trunk, reasoning that an impound inventory cannot fulfill its three purposes unless police can inspect the areas most likely to contain valuable property or dangerous items. *Id.* at 506 (quoting *Prober*, 297 N.W.2d at 6–7). Although the *Roth* Court did not "try to anticipate the outer limits which the United States Supreme Court may impose on the inventory exception," it acknowledged Wisconsin's now-overruled *Prober*

decision[1] that found a higher expectation of privacy in certain closed containers. *Id.* at 507. The *Roth* Court drew a line based on what level of privacy a person expects in the type of container involved: "A person normally expects privacy when placing items in a suitcase, briefcase, or travel trunk, but hardly so when merely placing them in a paper bag." *Id.* at 508.

Roth deserves no precedential weight because it incorrectly guessed how the United States Supreme Court would handle container inventories. While *Roth* created an unpredictable system allowing inventories of some containers, *Bertine* favored a more uniform approach. *See Bertine*, 479 U.S. at 375 ("'A single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" (quoting *Lafayette*, 462 U.S., at 648)). After *Bertine*, the Iowa Supreme Court has recognized that *Roth* was wrongly decided. *See Jackson*, 542 N.W.2d at 846 ("[W]e note that any language in *Roth* contrary to the rationale we employ today is no longer controlling.

[1] After *Bertine*, the Wisconsin Supreme overruled *Prober* and now approves inventories of closed containers under both the Fourth Amendment and the equivalent provision of the Wisconsin Constitution. *State v. Weide*, 455 N.W.2d 899, 903–04 (Wis. 1990).

Roth was decided prior to the *Bertine* and *Wells* cases on which we rely in the present case.").

To the extent *Roth* relied on the Iowa Constitution, the abandonment of the lockstep approach counsels against following a lockstep case. After analyzing the Fourth Amendment question, the *Roth* Court saw "no reason to impose a different rule under the state constitution." *Roth*, 305 N.W.2d at 507. But this sort of lockstep ruling does not fit the Court's current interpretative method, which rejects the lockstep approach. *See Ochoa*, 792 N.W.2d at 267. Thus, it seems *Roth* should hold no value unless its reasoning persuades the Court.

Roth's rule on container inventories presents problems with workability and utility. It prohibits police from inventorying containers like suitcases, briefcases, and travel trunks to which people normally attach a higher expectation of privacy. *Roth*, 305 N.W.2d at 508. But police have the highest interest in inventorying those types of containers because they are more likely to hold valuable property. *See* Anthony E. Kaplan, Note, *Drawing Lines Around the Fourth Amendment:* Robbins v. California *and* New York v. Belton, 10 Hofstra L. Rev. 483 (1982) (recognizing that "those containers most

likely to contain personal effects are also most likely to contain valuables"). The *Roth* rule also leaves a lot of gray area concerning which types of containers deserve a higher expectation of privacy. Even assuming courts are able to make that sort of complex, values-based judgment after the fact, it places unreasonable burdens on police officers to make those decisions in the moment on the side of a busy highway while monitoring an arrested motorist.

Finally, Ingram would not benefit from following *Roth*. He complains of the inventory of a small, cloth bag police found on the floor of the vehicle. Minutes (Eckert report); App. 14. Such a container—like a paper bag—is unlikely to contain highly personal effects. However, the bag was large enough to contain valuables such as money or jewelry. Suppr. Tr. p. 16, line 15 – p. 17, line 8. Therefore, *Roth* would not have prohibited police from opening it during an impound inventory.

There is no persuasive reason to follow *Roth* in this case. *Roth* represents a misapplication of the Fourth Amendment and a lockstep adoption under article I, section 8. Its treatment of container inventories is unworkable, ineffective, and does not benefit Ingram.

Accordingly, it provides no persuasive reason to depart from the United States Supreme Court's holding in *Bertine*.

5. Gaskins *provides no persuasive guidance for inventories of closed containers.*

Ingram's briefs—both in the district court and on appeal—cite to the recent decision in *State v. Gaskins*, 866 N.W.2d 1 (Iowa 2015). In *Gaskins*, police arrested a motorist for marijuana possession and placed him in a squad car before initiating a search of his vehicle. *Id.* at 3. Officers opened a locked safe and found marijuana, drug paraphernalia, and a gun. *Id.* The *Gaskins* Court considered whether article I, section 8 would recognize the evidence-gathering prong of the search-incident-to-arrest rule articulated by the United States Supreme Court in *Gant*. *Id.* at 10 ("*Gant* authorizes officers to search a suspect's vehicle incident to the suspect's arrest 'only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.'" (quoting *Arizona v. Gant*, 566 U.S. 332, 351 (2009))). The *Gaskins* majority concluded, "the *Gant* evidence-gathering rationale is divorced from the underlying [search incident to arrest] justifications and is repugnant to article I, section 8 of the Iowa Constitution." *Id.* at 14.

Gaskins does not answer the closed-container question presented in this case. Ingram only preserved the issue of opening closed containers, not the broader question of whether the Iowa Constitution prohibits all impound inventories. Although Ingram argued "[t]he black bag would be equivalent to the safe in *Gaskins*" (Motion to Suppress at 1; App. 22), the *Gaskins* Court avoided this "very narrow spatial question" and made clear that "the safe's locked status does not control our decision." *Gaskins*, 866 N.W.2d at 15. Thus, *Gaskins* provides no help on the narrow question of whether officers can inventory closed containers.

Next, *Gaskins* does not account for the non-law-enforcement motives behind impound inventories. Rather than general rummaging for evidence of criminal activity, an impound inventory is targeted at safeguarding the owner's property, preventing false claims, and protecting the police and public from danger. The Court has approved warrantless searches conducted for reasons other than law enforcement. *See State v. King*, 867 N.W.2d 106, 122 (Iowa 2015) ("A distinction exists between searches to pursue the purposes of law enforcement and those to pursue the purposes of carrying out the mission of parole."); *State v. Brooks*, ___ N.W.2d ___, 2016 WL

7421323, at *7 (Iowa 2016) (approving a warrantless probation search and noting, "Critically, as in *King*, this was not an entry for law enforcement purposes."). Just as in *King* and *Brooks*, officers inventoried Ingram's car for reasons other than general law enforcement.

Finally, the holding from *Gaskins* does not work with impound inventories. *Gaskins* only expressed a warrant preference. *Gaskins*, 866 N.W.2d at 16 ("Of course, our holding that the warrantless search of the van was not justified under article I, section 8 as a [search incident to arrest] does not mean the van was immune from search; our holding 'is instead that a warrant is generally required before such a search.'" (quotation omitted)). But such a warrant preference has no place in impound inventories because there is no method to get a search warrant other than probable cause of a criminal violation. *See* Iowa Const. art. I, § 8 (". . . no warrant shall issue but on probable cause . . ."); *see also* Iowa Code § 808.2 (authorizing search warrants only for evidence or proceeds of criminal activity). Thus, *Gaskins* provides little usable guidance in the context of impound inventories.

Neither *Gaskins* nor any other case provides a persuasive reason to depart from the United States Supreme Court's decision in

Bertine. Opening closed containers is essential to fulfill the three long-accepted, non-law-enforcement purposes for impound inventories. Consequently, this Court should find that police may inspect closed containers during impound inventories without offending article I, section 8 of the Iowa Constitution.

III. The District Court Properly Found Ingram Guilty Because the Trial on the Minutes Proved He Possessed Methamphetamine.

Preservation of Error

"[W]hen a criminal case is tried to the court, a defendant may challenge the sufficiency of the evidence on appeal irrespective of whether a motion for judgment of acquittal was previously made." *State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997).

Standard of Review

"Challenges to the sufficiency of the evidence are reviewed for errors at law." *State v. Hansen*, 750 N.W.2d 111, 112 (Iowa 2008) (citation omitted). "The district court's findings of guilt are binding on appeal if supported by substantial evidence." *Id.* "Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions that can fairly and reasonably be deduced from the

record. *State v. Biddle*, 652 N.W.2d 191, 197 (Iowa 2002). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.904(3)(p).

Discussion

Sufficient evidence supports the district court's finding that Ingram possessed a controlled substance. First, the court could presume Ingram possessed the drugs because he had exclusive possession of the vehicle. Second, the reliability of a field test is best analyzed as an issue of admissibility, and Ingram waived any admissibility challenge by stipulating to a trial on the minutes. Consequently, this Court should affirm his conviction.

A. Ingram possessed the drugs found on the driver's side of the car he was driving.

Ingram stipulated to a trial on the minutes of testimony. The minutes indicate police stopped Ingram for traffic violations and impounded his car. Minutes (Eckert report, Burdt report); App. 14, 15. He claimed that he was just borrowing the car and that his girlfriend also drove it. Minutes (Burdt report); App. 15. During the impound inventory, Officer Eckert located a black cloth bag on the driver's side floorboard near the gas pedal. Minutes (Eckert report); App. 14. He picked up the bag and observed a glass pipe with white

residue. Minutes (Eckert report); App. 14. He emptied the black bag and discovered a container that held several plastic baggies, one of which contained a crystal substance. Minutes (Eckert report); App. 14. Ingram stated "he did not know anything was in the vehicle" and asked "where it was and how much." Minutes (Burdt report); App. 14. He said "he wouldn't know it was there as he does not look at the floor board. He just gets in the vehicle and drives." Minutes (Burdt report); App. 15.

The State can establish guilt by proving Ingram had actual or constructive possession of a controlled substance. *State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014). "[A]n individual has actual possession when the contraband is found on his or her person *or* when substantial evidence supports a finding it was on his or her person 'at one time.'" *Id.* (quoting *State v. Vance*, 790 N.W.2d 775, 784 (Iowa 2010)). "'Actual possession may be shown by direct or circumstantial evidence.'" *Id.*

"Constructive possession occurs when the defendant has knowledge of the presence of the controlled substance and has the authority or right to maintain control of it." *State v. Carter*, 696 N.W.2d 31, 38–39 (Iowa 2005) (quoting *State v. Bash*, 670 N.W.2d

135, 137 (Iowa 2003)). "[T]he doctrine of constructive possession allows the defendant's possession of contraband to be inferred based on the location of the contraband and other circumstances." *Thomas*, 847 N.W.2d at 443. "When drugs are found on premises in the exclusive possession of the accused, that may be enough to sustain a conviction." *Id.* (citations omitted); *see also Carter*, 696 N.W.2d at 39 ("[P]ossession may be imputed when the [controlled substance] is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another." (quoting *State v. Reeves*, 209 N.W.2d 18, 22 (Iowa 1973))).

Even if the defendant was not in exclusive possession of the premises, the State can still prove constructive possession with factors including:

> (1) incriminating statements made by the accused, (2) incriminating actions of the accused upon the police's discovery of a controlled substance among or near the accused's personal belongings, (3) the accused's fingerprints on the packages containing the controlled substance, and (4) any other circumstances linking the accused to the controlled substance.

Id. (citing *State v. Webb*, 648 N.W.2d 72, 79 (Iowa 2002)). When a motor vehicle is involved, the court can also consider:

> (1) was the contraband in plain view, (2) was it with the accused's personal effects, (3) was it found on the same side of the car seat as the accused or immediately next to him, (4) was the accused the owner of the vehicle, and (5) was there suspicious activity by the accused.

Id. (citing *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004)). "[A]ll of these factors are only a guide in determining whether the State has established constructive possession. *Id.*

The district court properly found Ingram guilty based on "the location of the bag and the fact that the Defendant was driving the vehicle and its sole occupant at the time of the stop . . ." Verdict at 2; App. 37. Ingram was the only person in the car, so his exclusive possession of the car creates a strong inference that he had knowledge, dominion, and control of its contents. The location of the contraband (on the driver's side by the gas pedal) also provided strong proof of his constructive possession because it is not reasonable to surmise that he was unaware of and could not exercise control over the bag that threatened to interfere with his operation of the car.

Ingram's circumstances share similarities with the facts found sufficient in previous cases. In *State v. Kemp*, 688 N.W.2d 785 (Iowa 2004), the Court found sufficient evidence that the defendant possessed marijuana under the driver's seat. The Court noted factors including that the defendant was the owner of the vehicle, that he was the most recent driver, and that a smaller bag of marijuana was in plain view. *Id.* at 790. Similarly, the Court found sufficient evidence of possession in *State v. Maxwell*, 743 N.W.2d 185 (Iowa 2008). The Court noted factors including that the defendant was the only person in the car, that the cigarette pack containing drugs was in plain view, that the drugs were found "immediately next to" the defendant, and that the defendant was the most recent driver of the vehicle. *Id.* at 194–95. Like *Kemp* and *Maxwell*, Ingram was the only person in the car, and the black bag was in the open on the floorboard in immediate proximity to him. These similarities support the finding of guilt.

Ingram's argument relies on the long-abandoned circumstantial evidence rule. *See* Def. Br. at 71–72 (arguing circumstantial evidence must be "entirely consistent with [the] defendant's guilt [and] wholly inconsistent with any rational hypothesis of his innocence . . ."). In 1979, the Court determined that its limitation on the use of

circumstantial evidence was not in accord with federal courts and a growing number of state courts. *State v. O'Connell*, 275 N.W.2d 197, 204 (Iowa 1979). It concluded that "Instructions should permit a juror to view the merits of the particular circumstantial evidence presented without the restriction based on an outmoded generality. For purposes of proving guilt beyond a reasonable doubt, direct and circumstantial evidence are equally probative." *Id.*at 205. Today, it is axiomatic that direct and circumstantial evidence are equally probative. The concept is so well established that parties need not cite authority to support it in appellate briefs. See Iowa R. App. P. 6.904(3)(p). Therefore, this Court should ignore Ingram's reliance on the old circumstantial evidence rule.

Ingram's exclusive possession of the vehicle was sufficient to prove he possessed the drugs. Nobody else was present in the car, the drugs by the gas pedal were open to anyone operating the vehicle, and the finder of fact was not required to accept Ingram's story that he "just gets in the vehicle and drives" without noticing what was on the driver's side floorboard. Because the stipulated evidence presented at the trial-on-the-minutes was minimally sufficient to prove Ingram possessed the drugs, this Court should affirm his conviction.

B. The positive field test and the proximity to drug paraphernalia proved the substance was methamphetamine.

Officer Eckert found a small cloth bag in the car. Minutes (Eckert report); App. 14. That bag held a glass pipe with white residue and an Icebreakers mint container with several plastic baggies inside. Minutes (Eckert report); App. 14. One of the baggies contained a crystal substance, leading police to arrest Ingram for possession of a controlled substance. Minutes (Eckert report); App. 14. A subsequent field test indicated a positive result for methamphetamine. Minutes (Ecker report); App. 14.

The field test of Ingram's methamphetamine was more than required by Iowa law. "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." *State v. Brubaker*, 805 N.W.2d 164, 172 (Iowa 2011). "The finder of fact is free to use circumstantial evidence to find that the substance is an illegal drug," and in some cases "circumstantial evidence may be more persuasive than direct evidence." *Id.* In *Brubaker*, the Court found insufficient evidence when the criminalist performed no chemical testing and only testified that the pills seized from the defendant were "consistent in

appearance with a pharmaceutical preparation containing [C]lonazepam." *Id.* at 170. The evidence presented at Ingram's trial on the minutes contained proof of chemical testing, making it stronger than the "appearance" evidence found insufficient in *Brubaker*.

Ingram's argument relies on an attempt to undermine the reliability of field tests. He argues at length that some states have found field tests lack reliability due to the possibility of false positives. *See* Def. Br. at 74–82. Not all states agree with that rule. *See, e.g.*, *People v. Hagberg*, 733 N.E.2d 1271, 1273 (Ill. 2000) ("[T]his court has never held that a field test is insufficient to identify the substance as a narcotic simply because the test was a field test."); *Collins v. State*, 628 S.E.2d 148, 149 (Ga. Ct. App. 2006) ("Positive field test results are alone sufficient to sustain a conviction for selling or possessing cocaine. Positive test results from the State crime lab are not required."(citations omitted)).

More fundamentally, Ingram's criticisms are misplaced given that he chose a bench trial on a stipulated record. Issues like the officer's training, the possibility of false positives, or the scientific soundness of a particular identification procedure bear on the

reliability of field tests. Reliability, in turn, bears on the admissibility of the evidence. *See, e.g.*, *Olson v. Nieman's, Ltd.*, 579 N.W.2d 299, 306 (Iowa 1998) (stating unreliable scientific evidence is inadmissible because it does not assist the trier of fact). But Ingram's stipulation to a trial on the minutes relieved the State of the burden to lay foundation for the admissibility or reliability of the field test evidence. And after being admitted by stipulation, the positive field test result went unchallenged with cross examination or other evidence to undermine its reliability. The district court properly based its verdict on the unchallenged and unrebutted field test result notwithstanding the reliability challenges Ingram could have presented had he chosen a jury trial.

Next, Ingram incorrectly argues that the positive field test was "[t]he only information in the record that indicates the substance was methamphetamine." Def. Br. at 74. The crystal substance that field tested positive was found in the same small cloth bag as a glass pipe with white residue. Minutes (Eckert report); App. 14. The substance's close proximity to a smoking device provided strong circumstantial proof that it was a controlled substance. Ingram likens his case to *Brubaker*, in which the Court found no evidentiary

significance to the pipe and syringe found with the pills because "[t]he State did not put on any testimony that a person could crush, dissolve, and use Clonazepam by smoking it or injecting it into his or her body." *Brubaker*, 805 N.W.2d at 173, *cited in* Def. Br. at 83. But unlike the relative unfamiliarity of the methods to abuse Clonazepam, there is an obvious link between methamphetamine and a glass pipe covered in white residue. The court was not required to ignore such an obvious inference, so the close proximity of the drug pipe confirmed the field test results.

Substantial evidence supports the district court's verdict. The unchallenged and unrebutted field test results to which Ingram stipulated proved the substance he possessed was methamphetamine. Additionally, the close proximity to a glass pipe with white residue confirmed the substance's illicit nature. Accordingly, this Court should affirm Ingram's conviction for possession of a controlled substance.

IV. Ingram Fails to Prove Ineffective Assistance Concerning Trial Counsel Not Objecting to the Stipulated Evidence at the Trial on the Minutes.

Preservation of Error

Ineffective assistance is an exception to the normal error preservation rules. *State v. Begey*, 672 N.W.2d 747, 749 (Iowa 2003).

Standard of Review

Claims of ineffective assistance of counsel are reviewed de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). A defendant claiming ineffective assistance must prove both that counsel's performance was deficient and that prejudice resulted. *Id.* at 687.

Under the first prong, the defendant must show counsel's representation fell below an objective standard of reasonableness. *Id.* at 687–88. The reviewing court must be highly deferential to counsel's performance, avoid judging in hindsight, and "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. To prove the

second prong, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

Defendants can raise claims of ineffective assistance on direct appeal "if the party has reasonable grounds to believe that the record is adequate to address the claim on direct appeal." Iowa Code § 814.7(2) (2015). "[I]f a defendant wishes to have an ineffective-assistance claim resolved on direct appeal, the defendant will be required to establish an adequate record to allow the appellate court to address the issue." *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010). "If, however, the court determines the claim cannot be addressed on appeal, the court must preserve it for a postconviction-relief proceeding, regardless of the court's view of the potential viability of the claim." *Id.*

Discussion

The current record is adequate to reject Ingram's ineffective assistance claim. He cannot prove that counsel had a duty to object to

the admission of the field test results, and there is no reasonable likelihood that such an objection would have benefited his defense.

Ingram cannot prove that "counsel had a duty to object to the inclusion of the field testing results as evidence in the bench trial." Def. Br. at 91. Ingram agreed to a trial on the minutes, which is a common method to preserve a suppression issue for appeal without undergoing the time and expense of a full jury trial. But if counsel had objected to the admissibility of the field test, then the State never would have agreed to a stipulated trial on the minutes. Counsel had no duty to subject Ingram to the time and expense of a jury trial when his intended strategy was to challenge the suppression issue rather than the sufficiency of the evidence.

Likewise, Ingram cannot prove a reasonable likelihood that objecting to the admissibility of the field test would have resulted in acquittal. The minutes of testimony referenced a DCI lab technician and gave notice that she would testify "in accordance with any D.C.I. Criminalistics Laboratory report that will be provided to defendant . . ." Minutes; App. 11. This entry suggests that had Ingram not stipulated to the results of the field test at his trial on the minutes, then the State would have had the drugs tested at the DCI lab and

would have presented those results to the jury. Rather that resulting in acquittal, objecting to the field test likely would have prompted the State to secure stronger evidence of guilt through laboratory testing.

Ingram fails to prove either prong of his ineffective assistance claim, so this Court should affirm his conviction.

CONCLUSION

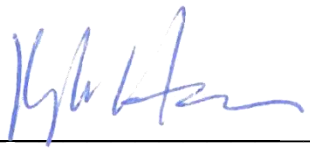
The Court should affirm Bion Ingram's conviction and sentence.

REQUEST FOR ORAL SUBMISSION

If the Supreme Court retains this case to address the Iowa Constitution challenge, then oral argument would likely be of assistance to the Court.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



KYLE HANSON
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kyle.hanson@iowa.gov

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KYLE HANSON
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kyle.hanson@iowa.gov