IN THE SUPREME COURT OF IOWA
Supreme Court No. 18–0481

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TIMOTHY DOUGLAS SEILS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WARREN COUNTY
THE HON. KEVIN PARKER, JUDGE (SUPPRESSION),
& THE HON. RICHARD CLOGG, JUDGE (TRIAL/SENTENCING)

APPELLEE'S AMENDED BRIEF

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ROUTING STATEMENT

The State concurs with Seils' routing statement: this case calls for application of established legal principles. *See* Def's Br. at 22. As such, transfer to the Iowa Court of Appeals would be appropriate. *See* Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Timothy Douglas Seils was charged with OWI (third offense), a Class D felony, in violation of Iowa Code section 321J.2 (2017). Seils filed a motion to suppress that raised two arguments: (1) the search of Seils' vehicle, which was parked in his open garage, was in violation of Article I, Section 8 of the Iowa Constitution; and (2) implied consent was invoked without meeting any of the statutory prerequisites set out in section 321J.6. *See* MTS (3/23/17); App. 7. The State resisted. The trial court overruled Seils' motion to suppress. *See* MTS Ruling (10/19/17); App. 45. Subsequently, Seils was tried before a jury, which found him guilty of OWI. Seils stipulated to his prior OWIs, and he was sentenced to a five-year term of incarceration. *See* Judgment (3/19/18); Order Nunc Pro Tunc (3/19/18); App. 57, 63.

In this direct appeal, Seils renews both arguments he made in his motion to suppress.

Course of Proceedings

Beyond the proceedings already described, the State generally accepts Seils' description of the relevant proceedings. *See* Iowa R. App. P. 6.903(3); Def's Br. at 10–11.

Facts

At about 11:00 p.m. on January 28, 2017, Iowa State Patrol Trooper Jonathan Salesberry was out on general patrol, just south of Des Moines on I-35. He heard a broadcast about a white Chevrolet with a possibly impaired driver who was reportedly "having a problem maintaining their lane, maintaining their speed." MTS Tr. p.11,ln.19–p.13,ln.5. Trooper Salesberry soon located a vehicle that matched the description from dispatch, and he started to follow it.

> As I got in behind him, he was exiting the interstate at St. Charles, the St. Charles interchange. When he got to the top of the hill, he made a stop at the stop sign. When he made a right turn, he veered almost completely into the oncoming lane, at which point I pushed the button on my recorder and still captured him basically straddling the center line. And at that point, about ten seconds down the road, he started to signal that he was going to pull into a driveway, so I activated my emergency lights.

MTS Tr. p.13,ln.6–23. While Trooper Salesberry followed the vehicle with his emergency lights flashing, the vehicle "drove all the way to the end of the driveway and then made a turn into a garage"—and the driveway was "probably three times the length of a city driveway." *See*

MTS Tr. p.13,ln.24–p.14,ln.18. As soon as it pulled into that garage, Trooper Salesberry parked his patrol vehicle behind it, just outside the garage. Trooper Salesberry exited his vehicle. Seils exited from the driver's side of the target vehicle. There were no passengers present. *See* MTS Tr. p.14,ln.19–p.17,ln.11. Seils was clearly intoxicated:

> [H]e seemed unsteady on his feet when we were walking; he had a very strong odor of an alcoholic beverage coming from him; and his speech was definitely slurred.

See MTS Tr. p.17,ln.23–p.18,ln.3. Trooper Salesberry did not know whether this was Seils' residence. *See* MTS Tr. p.31,ln.17–25.

Iowa State Patrol Trooper Darren Flaherty was called in to help with the OWI investigation. When Trooper Flaherty arrived, Seils was already standing in the driveway with Trooper Salesberry. *See* MTS Tr. p.39,ln.2–13. At that point, Trooper Flaherty did not know whether this was Seils' residence. *See* MTS Tr. p.39,ln.14–p.41,ln.6.

Trooper Flaherty noticed the same indicia of Seils' intoxication. *See* MTS Tr. p.41,ln.5–25. Trooper Flaherty also observed that Seils' might have "spilled something on his pants," because "they were wet." *See* MTS Tr. p.42,ln.1–9. Trooper Flaherty asked Seils where he had just come from, and Seils said "the East Village"—but he repeatedly refused to specify where. *See* MTS Tr. p.43,ln.6–21.

Trooper Flaherty asked Seils to perform field sobriety tests. Seils said "he was not going to do any of [Trooper Flaherty's] tests." *See* MTS Tr. p.43,ln.22–p.44,ln.13. Before Trooper Flaherty could ask Seils if he would consent to a preliminary breath test, this happened:

> After I had asked him to do a field sobriety test and he refused, I went back to my patrol car to put my book back in my car. I noticed that he was walking towards the house. I asked — I told him not to go in the house twice. After I said it the second time, he ran towards the front door. I ran after him. He got inside the little porch area. I reached around and grabbed him and didn't allow him to go inside. I assisted him to the ground, placed him in handcuffs.

See MTS Tr. p.44,ln.17–p.45,ln.21. Trooper Flaherty informed Seils that he was under arrest. Seils said he wanted to speak to his lawyer. Trooper Flaherty told Seils he could speak to his lawyer when they arrived at the jail. *See* MTS Tr. p.45,ln.22–p.46,ln.10. At that point, Seils was under arrest "[f]or interference and OWI." *See* MTS Tr. p.47,ln.11–22. Then, Trooper Flaherty placed Seils in his vehicle and transported Seils to the Madison County Sheriff's Office to continue the OWI investigation, because it was closer to their location than the Warren County Sheriff's Office. *See* MTS Tr. p.52,ln.6–p.55,ln.22. Once they arrived, Trooper Flaherty invoked implied consent and read Seils the implied consent advisory. *See* MTS Tr. p.56,ln.5–19.

Trooper Flaherty acknowledged that his testimony had been different at the license revocation hearing. He stated it was because he had not watched the relevant video footage before he testified at that license revocation hearing, but had watched it since. *See* MTS Tr. p.72,ln.17–p.73,ln.11.

Iowa State Patrol Trooper Deborah Stine was also nearby and also responded to Trooper Salesberry's request for assistance with the OWI investigation. *See* MTS Tr. p.76,ln.4–p.77,ln.22. She stated that she "investigated by going to the truck and looking in the window to see if there was any alcohol." *See* MTS Tr. p.77,ln.23–p.78,ln.8. Before she could conduct that search, she was distracted by the sound of Trooper Flaherty's altercation with Seils. *See* MTS Tr. p.78,ln.15–p.79,ln.14. Trooper Stine believed Seils was being arrested for both "OWI and resisting arrest, or interference." *See* MTS Tr. p.80,ln.3–15. Trooper Stine did not know whether this was Seils' residence. *See* MTS Tr. p.82,ln.6–10. Later, at some point after Seils was arrested, Trooper Stine looked through the passenger-side window of Seils' white Chevrolet and noticed a six-pack of Budweiser on the floor of the vehicle—there were three unopened bottles, and one open bottle that still had liquid inside it. *See* TrialTr.V2 p.119,ln.7–21.

At the hearing on the motion to suppress, the State argued that the officers could conduct a search of the vehicle:

> Officers were operating under the assumption that this evidence could possibly be destroyed. They were in hot pursuit of a defendant. They didn't know if this defendant was at his home, at another person's home, if there was somebody else there, if there was someone else in the garage. Officers had no way to know under the circumstances. And, frankly, if the defendant had just stopped on the road, I don't think we would be having this discussion.

See MTS Tr. p.95,ln.20–p.96,ln.4. The trial court subsequently issued a ruling that denied the motion to suppress—it found that the search of the vehicle was not unconstitutional and that Trooper Flaherty's invocation of implied consent before Seils was arrested for OWI was not a meaningful deviation from the statutorily prescribed procedure. *See* MTS Ruling (10/19/17) at 2–3; App. 46–47.

Additional facts will be discussed when relevant.

ARGUMENT

I. Evidence of Seils' Refusal to Provide a Breath Sample Was Admissible, and the Trial Court Was Correct to Deny Seils' Motion to Suppress That Evidence.

Preservation of Error

Seils raised this argument below, and the trial court ruled on it. *See* MTS (3/23/17) at 3–5; App. 9–11; MTS Ruling (10/19/17) at 2–3; App. 46–47. Thus, error was preserved. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

"Because the district court's ruling turns on its interpretation of chapter 321J, we review for correction of errors of law." *See State v. Lindeman*, 555 N.W.2d 693, 695 (Iowa 1996) (citing *State v. Palmer*, 554 N.W.2d 859, 864 (Iowa 1996)).

Merits

Seils argues that accepting Trooper Flaherty's testimony that his view of events changed after reviewing the relevant video footage "is to condone perjury by law enforcement." *See* Def's Br. at 27–28. But the trial court may make credibility determinations based on its own firsthand observations of witness credibility—and it adopted Trooper Flaherty's narrative in its findings of fact, which means it found Trooper Flaherty's testimony and explanation were credible.

See MTS Ruling (10/19/17) at 1; App. 45. The same relevant fact was present in Trooper Stine's testimony. *See* MTS Tr. p.80,ln.3–15. As a general rule, Iowa appellate courts "defer to the fact finder's determinations concerning witness credibility." *See State v. Wells*, 629 N.W.2d 346, 356 (Iowa 2001); *accord State v. Brandon*, 755 N.W.2d 548, 550 (Iowa Ct. App. 2008) (citing *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001)). Seils may disagree with the court's assessment of Trooper Flaherty's credibility, but that does not mean the trial court was foreclosed from believing the explanation that Trooper Flaherty provided. *See State v. Simpson*, 528 N.W.2d 627, 634 (Iowa 1995), *overruled on other grounds by State v. Webb*, 648 N.W.2d 72 (Iowa 2002) ("Although the evidence is contradictory about what Sheets and Wray told Oster, the district court accepted Oster's testimony when it denied the motion to suppress. We defer to the trial court on matters of credibility of witnesses."). And it makes sense that review of the file would remind Trooper Flaherty that he *did* arrest Seils for OWI before invoking implied consent. *See* TrialTr.V2 p.4,ln.17–p.8,ln.20.

In determining whether one of the conditions in section 321J.6 was triggered and sustains a challenged invocation of implied consent,

"substantial compliance with section 321J.6 is sufficient if the purposes underlying the requirements of that section 'were not compromised.'" *Lindeman*, 555 N.W.2d at 696 (quoting *State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994)). Here, Trooper Flaherty substantially complied with section 321J.6, and the purposes underlying those requirements were not compromised. Seils argues that "[i]t is not for the court to speculate as to the probable legislative intent apart from the wording used in the statute." *See* Def's Br. at 30 (quoting *LeMars Mutual Ins. Co. of Iowa v. Bonnecroy*, 304 N.W.2d 422, 424 (Iowa 1981)). While that statement is usually correct, it does not apply in specific contexts where Iowa courts have held that substantial compliance will suffice: in those contexts, Iowa courts must dig deeper to assess whether the statute "has been followed sufficiently so as to carry out the intent for which it was adopted." *See Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483, 488 (Iowa 2008) (quoting *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988)). This is because "substantial compliance" means "compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *See Robinson v. State*, 687 N.W.2d 591, 595 (Iowa 2004) (quoting *Superior/Ideal, Inc. v. Bd. of Review*, 419 N.W.2d 405, 407

(Iowa 1988)). Because this Court must assess whether "the purposes underlying the requirements of that section 'were not compromised,'" that inquiry necessarily focuses on legislative intent. *See Lindeman*, 555 N.W.2d at 696 (quoting *Satern*, 516 N.W.2d at 841).

"Underlying the procedural requirements of section 321J.6 is a threefold purpose: to protect the health of the person being tested, to guarantee accuracy of test results used in judicial proceedings, and to prevent citizens from indiscriminate testing or harassment." *Satern*, 516 N.W.2d at 841 (citing *State v. Hopkins*, 465 N.W.2d 894, 896 (Iowa 1991)); *see also State v. Schlemme*, 302 N.W.2d 721, 723–24 (Iowa 1981) (noting that, in applying requirements in chapter 321J, Iowa courts "have adhered to the general purposes of the chapter and allowed admission of evidence when objections based upon specific lack of foundation requirements did not endanger the defendant's health or did not endanger the accuracy of the test"). Seils focuses on arguing that Trooper Flaherty did not intend to arrest Seils for OWI until after Seils refused the chemical test—but Seils never identifies how any of the purposes of section 321J.6 might have been sabotaged by delaying the actual arrest for OWI until after Seils refused the test. *See* Def's Br. at 30–37. Seils does not claim Trooper Flaherty did not

have probable cause to make an arrest for OWI—and he cannot do so, because the troopers' observations provided ample grounds for arrest. *See, e.g.*, MTS Tr. p.17,ln.23–p.18,ln.3; MTS Tr. p.41,ln.5–p.42,ln.9; MTS Tr. p.77,ln.7–22. In light of that, the State cannot identify how any delay in placing Seils under arrest for OWI or any failure to make an arrest before offering Seils an opportunity to take the chemical test could have undermined the functioning of chapter 321J.6 in protecting Iowans' health, promoting accuracy of test results, or ensuring that Iowans are not subjected to indiscriminate/frivolous chemical testing. *See Schlemme*, 301 N.W.2d at 724 (rejecting formalistic challenge that demanded suppression remedy for non-compliance with procedural requirement of implied consent statute because "[w]e fail to perceive any gain or protection that would be provided by such a ritual").

If implied consent had been invoked without probable cause for an OWI arrest, Seils would have a stronger argument—he would have a better claim that a violation of the statute undermined its purpose and left him without protection against suspicionless test requests. *See, e.g.*, *State v. Palmer*, 554 N.W.2d 859, 867 (holding arrest made by de facto trooper, who was outside of definition of "peace officer," did not substantially comply with implied consent procedures—but

substantial compliance would have been achieved if a peace officer "independently assessed, based on his personal observations or tests that he administered, whether there were reasonable grounds to believe the defendant was intoxicated" and invoke implied consent). Likewise, if a chemical sample had been extracted against Seils' will or without Seils' consent, his argument would be stronger because of the clear legislative concern surrounding the "sensitive and unique nature of any procedures involving intrusions into the human body." *See State v. LaForge*, No. 08–1660, 2009 WL 1708843, at *4 (Iowa Ct. App. June 17, 2009) (quoting *State v. Christianson*, 627 N.W.2d 910, 913 (Iowa 2001)); *accord* Def's Br. at 31 (citing *LaForge*, 2009 WL 1708843, at *5). But here, under the facts presented in this case, nothing about this sequence of events illustrates any problem with the implied consent procedure that could have negatively impacted the "threefold purpose" that section 321J.6 advances. The trial court was correct that Seils was raising "objections based upon specific lack of foundation requirements [that] did not endanger the defendant's health or did not endanger the accuracy of the test"—and, as a result, did not undermine substantial compliance with section 321J.6 and did not require suppression of the ensuing refusal. *See* MTS Ruling

(10/19/17) at 3; App. 47 (quoting *Schlemme*, 301 N.W.2d at 723); *accord Lindeman*, 555 N.W.2d at 696; *Satern*, 516 N.W.2d at 841; *Hopkins*, 465 N.W.2d at 896. Therefore, even if Seils had not been arrested for OWI before implied consent, his claim would still fail.

Alternatively, any error in admission of evidence of the refusal of chemical testing under implied consent was harmless because it was almost wholly cumulative. Seils refused all sobriety testing and chemical testing without waiting for explanations of specific tests. *See* TrialTr.V1 p.256,ln.20–p.257,ln.11; TrialTr.V1 p.260,ln.13–24. Thus, there was already nearly identical evidence in the record to support the same inference that would be raised by refusal to consent to the chemical test that Trooper Flaherty requested under implied consent. Generally, improperly admitted evidence "will not be considered prejudicial if substantially the same evidence is properly in the record" and was properly admitted—cumulative evidence is usually sufficient to dispel the presumption of prejudice that otherwise accompanies the erroneous admission of relevant evidence. *See State v. Newell*, 710 N.W.2d 6, 19 (Iowa 2006) (citing *State v. Hildreth*, 582 N.W.2d 167, 170 (Iowa 1998); *see also State v. Williams*, 574 N.W.2d 293, 298 (Iowa 1998) (finding admission of DNA evidence without key context

was harmless error because it "was cumulative evidence that did not injuriously affect Williams' rights"). Similar evidence that supported inferences from refusal was already present through evidence of Seils' refusal to take *any* sobriety tests, so such an error would be harmless.

II. The Evidence of Open Beer Bottles in Seils' Vehicle Was Inadmissible, But Its Admission at Trial Was Harmless Error and Did Not Affect the Result.

Preservation of Error

Seils raised this argument below, and the trial court ruled on it. *See* MTS (3/23/17) at 3–5; App. 9–11; MTS Ruling (10/19/17) at 2–3; App. 48–49. Error was preserved. *See Lamasters*, 821 N.W.2d at 864.

Standard of Review

"Constitutional issues are reviewed de novo, but when there is no factual dispute, review is for correction of errors at law." *State v. Young*, 863 N.W.2d 249, 252 (Iowa 2015). "We give deference to the district court's fact findings due to its opportunity to assess the credibility of the witnesses, but we are not bound by those findings." *State v. Storm*, 898 N.W.2d 140, 144 (Iowa 2017) (quoting *State v. Brown*, 890 N.W.2d 315, 321 (Iowa 2017)).

Merits

The trial court denied Seils' motion to suppress the evidence from his vehicle by characterizing those observations and actions as a

search incident to arrest. MTS Ruling (10/19/17) at 2–3; App. 46–47. The State cannot defend admission of that evidence on those grounds. *See State v. Gaskins*, 866 N.W.2d 1, 13–16 (Iowa 2015). And although similar evidence of the open beer bottles in Seils' vehicle could have been admissible under the "plain view exception," that would require that officers were "rightfully in the place that allows them to make the observation." *See State v. McGrane*, 733 N.W.2d 671, 680 (Iowa 2007) (quoting *State v. Kubit*, 627 N.W.2d 914, 918 (Iowa 2001)). Once Seils parked his car in the garage and exited the garage, officers had no real justification for entering the garage (which would qualify as curtilage) without a warrant—the inherent mobility of a vehicle does not justify warrantless entry onto curtilage for warrantless searches of vehicles parked there. *See Collins v. Virginia*, 138 S.Ct. 1663, 1670–75 (2018). This result feels inequitable, because "[s]ociety has an interest in not rewarding the evasion of lawful police authority by allowing suspects who make it to their homes steps ahead of law enforcement officers to claim sanctuary." *See State v. Legg*, 633 N.W.2d 763, 772 (Iowa 2001). But while the "hot pursuit" exigency allowed officers to pursue Seils, it could not permit them to enter the garage to gather more evidence related to the pursuit that was already over. *See State v. Naujoks*, 637

N.W.2d 101, 109 (Iowa 2001). The constitutionally permissible course of action would have been to post an officer nearby to prevent anyone from interacting with the vehicle while another officer applied for a search warrant to enter the garage and search the vehicle for evidence related to the OWI offense (and it would have been possible to charge Seils with eluding for failing to stop and driving up his long driveway). *See* Iowa Code § 321.279; *Gaskins*, 866 N.W.2d at 15–16. As a result, the State is unable to defend the denial of the motion to suppress and the admission of Trooper Stine's observations of the open bottles on the merits. *See* TrialTr. p.119,ln.7–21; Iowa R. Prof'l Conduct 32:3.1.

However, admission of this evidence at trial was harmless error, such that "the guilty verdict actually rendered in *this* trial was surely unattributable to the error." *See State v. Peterson*, 663 N.W.2d 417, 431 (Iowa 2003). The evidence in this case starts with Erin Goering, who rode in the passenger seat as her husband was driving their family from Des Moines to St. Charles, observed Seils driving erratically on the highway, became profoundly concerned, and called 911 to report it.

> We were on Highway 5 just visiting as a family. My husband swerved over and was looking in his rearview mirror and said oh, my gosh. And, of course, all of us were like, what's happening? And he said, here comes a car, hold on — or a truck. And he saw a truck; he was swerving to the side of the road, passing us at a very fast speed.

> [. . .]
>
> I saw the driver on the shoulder of the road going very fast. And then as we got closer to the interstate exit, he was still on the passing lane; and he swerved clear over the — to the lane to get onto the exit.

See TrialTr.V1 p.153,ln.12–p.157,ln.9. Goering said the vehicle was even swerving into the grass, beyond the shoulder. *See* TrialTr.V1 p.157,ln.6–23. Goering "was concerned that at the rate of speed and the way he was jerking that he would lose control of the vehicle"—and her husband agreed they should call 911. *See* TrialTr.V1 p.157,ln.24–p.159,ln.2. Goering also stated that, from her observations over the course of about five minutes, it appeared that the driver's swerving was unintentional and indicated an inability to control the vehicle. *See* TrialTr.V1 p.158,ln.3–p.159,ln.9. As they watched the vehicle approach the exit ramp onto I-35, Goering said it was traveling at such an excessive rate of speed that she was "afraid he would just go right over" the ramp and go off the road—she "asked [her] husband to stay back, because [she] didn't want to endanger [their] lives," in case the vehicle "hit the guardrail and went out of control." *See* TrialTr.V1 p.159,ln.19–p.161,ln.18. The vehicle was moving at speeds "[o]ver 90." *See* TrialTr.V1 p.163,ln.15–17. But Goering's vehicle was keeping up because the other vehicle would brake abruptly, without a discernable

reason for abrupt braking. *See* TrialTr.V1 p.163,ln.15–p.164,ln.6. And while Goering was watching, Seils "had almost hit another car." *See* TrialTr.V1 p.164,ln.9–21. Goering's husband needed to slow down and hit the rumble strips on the side of the road to avoid a collision. *See* TrialTr.V1 p.164,ln.22–p.165,ln.12. At multiple points during the 911 call, Goering exclaimed: "Oh, God." *See* State's Ex. 15 at 1:10, 1:35. That was because Seils was "swerving over on the road," and Goering "was afraid he would go through the median into oncoming traffic." *See* TrialTr.V1 p.165,ln.15–p.166,ln.7. This happened "[n]umerous" times while Goering had the vehicle in eyeshot—she lost count. *See* TrialTr.V1 p.166,ln.8–p.167,ln.9. In more than 25 years of driving, Goering had never seen anything like this before and had never felt compelled to call 911 to report dangerous driving before—but this was qualitatively different, and Goering "really truly believed that someone could have been killed." *See* TrialTr.V1 p.171,ln.3–p.172,ln.1; TrialTr.V1 p.181,ln.21–p.182,ln.4. Goering made the connection clear as day:

> Well, when I've seen someone intoxicated, they stumble, they cannot walk in a straight line; and this person could not drive in a straight line.

See TrialTr.V1 p.182,ln.5–16. And Goering's family was not alone in noticing this dangerous driving—another vehicle was "bright lighting

their lights on bright trying to get the person to pull over." TrialTr.V1 p.179,ln.18–p.180,ln.9; TrialTr.V1 p.182,ln.21–p.183,ln.8. There is no conceivable way that a jury could hear this testimony, supplemented by the contemporaneous recording of Goering's 911 call, and reject an obvious conclusion that Seils had "lost control of bodily actions" while driving that vehicle. *See* Jury Instr. 17; App. 55; *State v. Deimerly*, No. 15–1304, 2016 WL 3275828, at *4 n.3 (Iowa Ct. App. June 15, 2016) (noting that erroneous admission of breath test result when evidence, including the fact that vehicle "had been driven into the ditch after going off the road at a T-intersection," overwhelmingly established "the 'under the influence' alternative to operating while intoxicated").

Trooper Salesberry caught up with Seils' vehicle and observed his "wide turn" that veered into the lane for oncoming traffic—which was concerning, because a driver can usually "get the vehicle inside the lane without taking over the oncoming lane" while turning right. *See* TrialTr.V1 p.189,ln.6–p.191,ln.3. Trooper Salesberry activated his emergency lights to initiate a traffic stop—but Seils continued driving and "drove the entire length of the driveway with [Trooper Salesberry] behind him with [his] lights going and then pulled into a garage." *See* TrialTr.V1 p.191,ln.4–p.192,ln.25. In the short time he followed Seils,

Trooper Salesberry noted the same swerving and abrupt braking that Goering had seen—and the jury could observe it for themselves. *See* TrialTr.V1 p.193,ln.1–p.197,ln.16; State's Ex. 10.

Trooper Salesberry testified there was no discernible reason why Seils would refuse to stop until he reached the garage, and it was immediately obvious to Trooper Salesberry that Seils was "trying to get away." *See* TrialTr.V1 p.197,ln.1–p.198,ln.16. As Seils exited from the vehicle, he was "having problems maintaining his balance." *See* TrialTr.V1 p.199,ln.1–p.200,ln.20. Trooper Salesberry made other important observations, as well:

> I noticed he had bloodshot and watery eyes. He definitely had an odor of alcoholic beverage coming from him. He had to lean on my car for balance a few times when he was standing there.

See TrialTr.V1 p.202,ln.23–p.204,ln.7. Trooper Flaherty observed that Seils dropped his driver's license; he noted the loss of dexterity and impaired motor control was potential sign of intoxication. *See* TrialTr. p.245,ln.19–p.246,ln.7. Trooper Flaherty made a number of observations that corroborated Trooper Salesberry's descriptions of Seils' unsteady balance, the scent of intoxication, and the fact that Seils "had bloodshot and watery eyes." *See* TrialTr.V1 p.248,ln.2–p.251,ln.4. Additionally, Trooper Flaherty had noticed that Seils was

extremely evasive in explaining where he had been, which was typical of impairment in the context of OWI investigations. *See* TrialTr.V1 p.251,ln.9–20. And when confronted with the reason for the stop—that another motorist called and reported that "he couldn't maintain his lane on the interstate"—Seils replied with a facially implausible explanation about adjusting his radio, which was impossible to credit because of the observed duration of his reckless driving behavior. *See* TrialTr.V1 p.253,ln.10–p.254,ln.7. And when Trooper Flaherty offered Seils an opportunity to attribute the "strong alcoholic odor coming from his breath or his person" to a home brewery in his garage, Seils initially denied that any such odor existed—and then started to agree that he had a brewery in his garage, before thinking better of it. *See* TrialTr.V1 p.254,ln.14–p.256,ln.18. Obvious lies and obfuscation are unequivocal indicators that Seils was aware that he was intoxicated and could not give explanations that were consistent with sobriety unless he fabricated them. *See State v. Odem*, 322 N.W.2d 43, 47 (Iowa 1982) ("A false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt.").

Additionally, Seils flatly refused all sobriety testing and chemical testing without waiting for explanations of specific tests. *See*

TrialTr.V1 p.256,ln.20–p.257,ln.11; TrialTr.V1 p.260,ln.13–24. This was probative evidence that Seils knew he was intoxicated, and knew he would have no chance of passing any conceivable sobriety test. *See State v. Royer*, No. 16–1206, 2017 WL 4570431, at *1–2 (Iowa Ct. App. Oct. 11, 2017) ("The jury was free to infer from Royer's refusal to take the PBTs that he knew he was intoxicated."); *State v. Smidl*, No. 12–2182, 2014 WL 69751, at *2 & n.1 (Iowa Ct. App. Jan. 9, 2014) (explaining that "[a]dmissions may be implied by the conduct of a defendant subsequent to a crime when such conduct indicates a consciousness of guilt," and collecting cases that treat "evidence of a person's refusal to submit to a field sobriety test, including a PBT, as consciousness of guilt and substantive evidence of guilt"); *accord* Jury Instr. 20; App. 56. On cross-examination of Trooper Flaherty, Seils elicited evidence about the existence of penalties that Seils faced because he decided to refuse chemical testing under implied consent. *See* TrialTr.V2 p.84,ln.19–p.85,ln.21. The jury would naturally infer that Seils would not accept those penalties unless providing consent to a chemical test would have been *more* costly—and that means he must have believed he was intoxicated. *See Jones v. Commonwealth*, 688 S.E.2d 269, 272–73 (Va. 2010) ("[T]he driver's refusal to perform

field sobriety tests is circumstantial evidence tending to show the driver's awareness that his consumption of alcohol would affect his ability to perform such tests."). This was the only plausible inference.

Perhaps the very strongest evidence that Seils had lost control of his bodily actions and that his mental ability had been affected was that Trooper Stine testified that, on top of observations mentioned by the other troopers, "it appeared that [Seils] had urinated in his jeans." *See* TrialTr.V2 p.113,ln.22–p.114,ln.9. Trooper Flaherty had vaguely remembered Seils having wet pants, as if he had "spilled something." *See* MTS Tr. p.42,ln.1–9; *see also* TrialTr.v2 p.43,ln.1–p.44,ln.18; TrialTr.V2 p.103,ln.25–p.104,ln.10. Trooper Stine, on the other hand, distinctly remembered specific observations that made it obvious that this was from Seils urinating on himself, not from spilling anything:

> Like I didn't see any area that — anything, any kind of liquid had pooled. And it's just – just from experience, that's what I see where I see a darker color on the material and it goes from the crotch area down the inside of the legs is what I saw.

TrialTr.V2 p.114,ln.10–16. And Trooper Stine confirmed liquid had run down both of his legs, along the inside seam—which would be inconsistent with a spill. *See* TrialTr.V2 p.114,ln.17–p.115,ln.7. This was direct evidence of loss of control of bodily functions that would be

intuitively sufficient to prove intoxication, absent another explanation. *See, e.g.*, *State v. Tubbs*, 690 N.W.2d 911, 916 (Iowa 2005) (outlining strong evidence of intoxication, including uncontrolled urination).

On top of all that, Seils made a break for his front door while Trooper Flaherty was returning his field sobriety test booklet to his patrol vehicle. Seils "started running towards his house," and did not stop when instructed to do so. *See* TrialTr.V1 p.262,ln.5–p.263,ln.11. Seils confirmed that he had heard those directives. *See* TrialTr.V1 p.264,ln.14–p.265,ln.10. And Seils' explanation—that he was just trying to retrieve his cell phone—was clearly false, given that he tried to close the front door in Trooper Flaherty's face to forcibly expel him, instead of explaining that he was retrieving his phone. *See* TrialTr.V2 p.11,ln.4–23; TrialTr.V2 p.18,ln.13–p.20,ln.25. Trooper Flaherty testified that interference and refusal to comply with clear directives from police officers was not typical behavior and would demonstrate impaired judgment. *See* TrialTr.V2 p.11,ln.24–p.12,ln.22. Similarly, Trooper Salesberry also explained that subjects interfere with officers and disregard instructions during an OWI investigation "[m]ore often when they are impaired" and "they're trying to hide something." *See* TrialTr.V1 p.209,ln.23–p.211,ln.5. Trooper Stine also concurred; she

noted that attempted flight from an OWI investigation was something she had never seen from a sober motorist. *See* TrialTr. p.116,ln.15–25. The jury would naturally draw that same common-sense conclusion. *See State v. Hamilton*, No. 16–1568, 2017 WL 5185429, at *2 (Iowa Ct. App. Nov. 8, 2017) (noting that "our case law allows the fact finder to infer impaired judgment from a driver's decision to evade police," and jury was also entitled to consider and weigh "the possible reasons why he would refuse testing in deciding whether he was under the influence"); *accord State v. Wilson*, 878 N.W.2d 203, 211–16 (Iowa 2016) ("It is well-settled law that the act of avoiding law enforcement after a crime has been committed may constitute circumstantial evidence of consciousness of guilt that is probative of guilt itself.").

Even before Trooper Flaherty knew about the open containers in Seils' vehicle, he was already convinced that Seils was intoxicated—and he explained the basis for that conclusion to the jury:

> [H]e was driving that truck as he pulled into the garage; smell of alcohol coming from him; bloodshot watery eyes; the quiet talking; the leaning on the car.

See TrialTr.V1 p.258,ln.11–p.259,ln.5; TrialTr.V2 p.24,ln.19–p.26,ln.2; *see also* TrialTr.V2 p.12,ln.24–p.13,ln.10 (noting that Seils had been slurring his words, speaking repetitively, and confusing his words);

TrialTr.V2 p.120,ln.4–p.121,ln.3 (Trooper Stine stating that Seils was "severely impaired" and explaining facts that impacted her assessment, without making any reference to open containers found in his vehicle). Trooper Flaherty did not even need to perform field sobriety testing to reach that conclusion—and no rational jury could have arrived at any other conclusion, especially in light of Seils' subsequent refusal to perform field sobriety tests and his attempt to run into his house and shut Trooper Flaherty out, disobeying their clear directives to stop. *See* TrialTr.V1 p.259,ln.6–12; TrialTr.V1 p.262,ln.5–p.263,ln.11; TrialTr.V2 p.11,ln.4–23. Iowa courts have not hesitated to apply harmless error in OWI contexts, where evidence of intoxication is unambiguous. *See State v. Garrity*, 765 N.W.2d 592, 597–98 (Iowa 2009) (finding that erroneous admission of test refusal evidence was harmless because of clear video footage of defendant's intoxicated behavior). Moreover, when the State delivered its closing argument and reviewed the four alternative ways to establish that Seils was "under the influence," it did not reference the open containers *at all*—the State focused its intoxication-related arguments on the other evidence. *See* TrialTr.V3 p.32,ln.5–p.35,ln.23. Because the evidence of Seils' intoxication from Goering's observations on the highway, the trooper's observations of

Seils' behavior and condition, and Seils' adamant refusal of all testing was overwhelmingly strong, this Court should find the court's error was harmless beyond a reasonable doubt and affirm the conviction.

CONCLUSION

The State respectfully requests that this Court reject these challenges and affirm Seils' conviction.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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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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