

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 18-0747

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

DESTINY BROWN,  
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR BLACK HAWK COUNTY  
THE HONORABLE BROOK K. JACOBSEN, JUDGE

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**APPELLEE'S BRIEF**

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FINAL

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## STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

### **I. The Vehicle Stop Was not Impermissibly Extended, as the Police Officer did not Immediately Observe the Temporary Paper Plate in the Vehicle and his Investigation Regarding Vehicle Registration was not Resolved Until He Spoke with the Defendant.**

#### Authorities

*Florida v. Royer*, 460 U.S. 191, 103 S.Ct. 1319, 75 L. Ed. 2d 229 (1980)  
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Wayne R. LaFave, 4 *Search and Seizure: A Treatise on the Fourth Amendment*, sec. 9.2 (f) (4<sup>th</sup> ed. 2004)

## **ROUTING STATEMENT**

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

## **STATEMENT OF THE CASE**

### **Nature of the Case**

Defendant-appellant Destiny Brown sought suppression of evidence police found in her vehicle after it was stopped to investigate a traffic violation. After the defendant's motion to suppress was denied, the case proceeded to a stipulated bench trial on the minutes of testimony. The court convicted her of two drug crimes: (1) possession of a controlled substance (methamphetamine), second offense; and (2) possession of a controlled substance (tramadol), second offense. The Honorable Brook K. Jacobsen presided at the

suppression hearing and the stipulated bench trial, as well as at the later sentencing proceeding.

The defendant urges on appeal her two convictions must be reversed because evidence of those crimes was the fruit of an illegal investigatory detention following a police stop of her vehicle.

### **Course of Proceedings**

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

### **Facts**

The defendant moved to suppress evidence discovered during a police search of her vehicle, asserting the search violated both the Fourth Amendment of the United States Constitution and article I, section 8 of the Iowa Constitution. Motion to Suppress; App. 10-11. That motion came up for hearing on February 21, 2018. Ruling on Motion to Suppress (hereafter Ruling) unnumbered page 1; App. 12. In developing the circumstances surrounding the stop, the State discusses some of the minutes of testimony later submitted at the stipulated bench trial, as well as the testimony at the suppression hearing.

Waterloo police officer Nicholas Weber was on routine patrol on January 4, 2018, when he initiated a traffic stop of a black Volkswagen. That vehicle was being driven by the defendant. Minutes of Testimony (attached report of Nicholas Weber); Additional Minutes of Testimony filed 2/5/18 (attached report of Officer Weber); Confidential App. 9,35; Ruling unnumbered p. 1; App. 12. Officer Weber testified at the suppression hearing that he stopped the defendant's vehicle because, as he drove behind it, he saw that there was no permanent metal registration (or license) plate on the car's rear bumper, but only a paper car dealer plate. Suppression Tr. p. 6, line 18 – p. 7, line 3; p. 13, lines 22 – 24; p. 14, lines 14 – 17. At that time he did not observe any temporary paper license plate on the vehicle. Suppression Tr. p. 7, lines 4 – 5; p. 16, lines 4 – 8. Based on these matters, the officer stopped the defendant to investigate the question of her vehicle's registration. Suppression Tr. p. 13, lines 18 – 21. As the officer testified at suppression, a temporary registration plate is required to be displayed on a vehicle until a permanent metal license plate is obtained. Suppression Tr. p. 13, lines 9 – 17. Such temporary plate is to be placed in the rear of the vehicle, so that it is "clearly visible." Suppression Tr. p. 16, lines 4 – 8.

Upon stopping behind the defendant's vehicle, Officer Weber walked up to the driver's side to speak with her. Suppression Tr. p. 7, lines 6 – 14; p. 16, lines 1 – 3. The police officer testified he did not recall seeing a temporary paper plate in the vehicle's window as he walked up to talk with the defendant. Suppression Tr. p. 19, lines 14 – 24. Upon reaching the defendant, the officer began to question her about the vehicle's registration and asked to see any paperwork she had regarding its purchase. Suppression Tr. p. 11, line 21 –p. 12, line 4. During his investigation the officer learned defendant did not then have a driver's license with her and that her driving privileges had been suspended. At that point he decided to arrest the defendant. Suppression Tr. p. 13, line 25 –p. 14, line 8. Ruling unnumbered p. 2; App. 13. Other officers arrived, it was learned that there was an outstanding warrant for the defendant's arrest, and search of her vehicle led to discovery of methamphetamine and tramadol. Minutes of Testimony (attached report of Officer Jordan Ehlers); Confidential App. 20.

While the defendant was being detained following initiation of the stop, Officer Weber learned at some point that her vehicle indeed had a temporary paper plate in the window. Suppression Tr. p. 11,

lines 11 – 14; p. 16, line 24 – p. 17, line 8. However, he did not recall seeing one initially when he walked up to the vehicle after initiating the stop. Suppression Tr. p. 19, lines 22 – 24. The officer testified that when he walks up to a stopped vehicle he is “cautious on [his] approach” and focuses his attention on the driver, watching for any furtive movements because “traffic stops are sort of volatile.”

Suppression Tr. p. 16, lines 20 – 23. Furthermore, the defendant’s vehicle was painted black and the record shows that it’s exterior body and windows were dirty at the time of the stop. Suppression Tr. p. 10, lines 5 – 11. Also, the back window of defendant’s vehicle was dark due to tinting, which can make it difficult to see a temporary plate. Suppression Tr. p. 15, lines 9 – 19; p. 19, lines 8 – 13.

Besides the testimony of Officer Weber, State's Exhibit A was introduced into evidence. Suppression Tr. p. 8, lines 10 – p. 9, line 2. That video exhibit includes dash cam and body cam recordings of the officers involved in defendant's stop and later arrest. Suppression Tr. p. 21, lines 5 – 19.

The defense conceded at the suppression hearing it was not challenging the stop itself, or the later search of the defendant's vehicle. Instead, the defense only challenged the detention of the

defendant following the stop, when Officer Weber walked up to her vehicle and spoke with her. Suppression Tr. p. 3, line 15 – p. 5, line 1. The defense argued that Weber either saw the temporary registration plate in the vehicle’s back window before he walked up to speak with defendant, or he should have acted more diligently and discovered it before approaching the defendant. According to the defense, either way the ruling in *State v. Coleman*, 890 N.W. 2d 284 (Iowa 2017), was violated because a stop may last no longer than needed to investigate and resolve the basis for it. Suppression Tr. p. 3, line 15 – p. 5, line 1; p. 27, line 14 – p. 28, line 16; p. 30, line 24 – 31, line 4.

The district court denied the motion to suppress. Ruling unnumbered p.5; App. 16. The defendant later submitted to a trial on the minutes of testimony and was convicted of two drug crimes: (1) possession of a controlled substance (methamphetamine), second offense; and (2) possession of a controlled substance (tramadol), second offense. Findings of Fact, Conclusions of Law, Decision and Order; App. 18-21.

Further facts will be discussed below when relevant to the State’s argument.

## ARGUMENT

### **I. The Vehicle Stop Was not Impermissibly Extended, as the Police Officer did not Immediately Observe the Temporary Paper Plate in the Vehicle and his Investigation Regarding Vehicle Registration was not Resolved Until He Spoke with the Defendant.**

#### **Preservation of Error**

In *State v. Coleman*, 890 N.W. 2d 284 (Iowa 2017), the Iowa Supreme Court held that “when the reason for a traffic stop is resolved and there is no other basis for reasonable suspicion, article I, section 8 of the Iowa Constitution requires that the driver must be allowed to go his or her way without further ado.” *Id.* at 301. The Court overruled prior case law which allowed police inquiries of a driver regarding driver’s license, vehicle registration, and proof of insurance, even after the basis for the stop has been resolved. *Id.*

In this case, the defendant argues the rule in *Coleman* was violated. She initially argues the State failed to carry its burden to show the detention of the defendant did not violate *Coleman*. Her argument is apparently premised on a claim that Officer Nicholas Weber lied about when he first observed the temporary registration plate, as police video evidence regarding the stop and detention allegedly demonstrate that the plate was readily observable in the back window of defendant’s vehicle. Because the officer had seen the

plate, according to defendant, when he walked up to the defendant's vehicle, his questioning of her was unlawful under *Coleman* – the reason for the stop would evaporate upon observing the temporary plate. Defendant's Brief at 27 – 31, 32. While the main thrust of this argument appears to rest on *Coleman* and the Iowa Constitution, the defendant also asserts a violation of the Fourth Amendment. Defendant's Brief at 30.

The State agrees these claims have been preserved. However, because the defendant does not urge a different standard under the state constitution, the same standards should be applied as to both cases. *See State v Lowe*, 812 N.W. 2d 554, 566 (Iowa 2012).

Second, the defendant argues the officer had a duty to diligently and reasonably investigate the cited reason for the stop. Because, defendant argues, the officer did not perform a reasonable and diligent investigation before approaching the vehicle to speak with the defendant, her detention while Officer Weber spoke with her was illegal. In other words, he should have looked further for a temporary plate in the vehicle's back window before approaching the defendant. The defendant asserts this claim under both federal and state constitutions, but further argues that if the Fourth Amendment does

not impose a duty of reasonable diligence in investigating a traffic violation, then this Court should find such a duty under the Iowa Constitution. Defendant's Brief at 32 – 33, 36, 38. Because the defendant failed to urge in the district court a different standard under the state constitution, this claim on appeal has been waived. *State v. Prusha*, 874 N.W. 2d 627, 629 – 30 (Iowa 2016).

Finally, the State addresses the defendant's suggestion that the vehicle stop was pretextual. She claims in her brief that the record suggests it was pretextual because police targeted her vehicle after it was seen driving in "high drug areas." This claim is made in a summary fashion, comprised of only one sentence, and no case law to support it is cited in the defendant's brief. Defendant's Brief at 34. However, in a footnote the defendant recognizes a claim of pretext was not raised in the district court, and so affirmatively states she does not pursue it in this appeal. Defendant's Brief at 34, n. 5. The State agrees that any claim of pretext has been waived for failure to raise it in the district court, as well as for failure to argue it on appeal. *See State v. Tyler*, 867 N.W. 2d 136, 166 n. 4 (Iowa 2015) (finding State waived on appeal any harmless error argument because its brief only made a passing reference to it); *State v. Crone*, 545 N.W. 2d

267, 270 (Iowa 1996) (sufficiency-of-evidence claim not preserved for appeal because it was not made in the district court).

Lastly, the defendant argues that “[t]o the extent this Court concludes error was not properly preserved for any reason,” then the Court should review the matter under ineffective assistance principles. Defendant’s Brief at 23. Of course, a claim of ineffective assistance of trial counsel may be raised for the first time on appeal. *State v. Fountain*, 786 N.W. 2d 260, 263 (Iowa 2010).

### **Standard of Review**

Search and seizure claims are reviewed de novo. *State v. Shanahan*, 712 N.W. 2d 121, 131 (Iowa 2006). Although the appellate court is not bound by the trial court’s factual findings in a suppression case, it nevertheless gives deference to those findings because of the trial court’s ability to assess witness credibility. *Id.*

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

### **Merits**

The Fourth Amendment provides for the “right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.” U.S. Const. amend IV.

Typically, the Fourth Amendment requires a warrant supported by probable cause to support a search or seizure. Yet, an investigatory stop is a well-established exception to the warrant requirement.

*Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 – 81, 20 L. Ed. 2d 889 (1968); *State v. Vance*, 790 N.W.2d 775, 780 (Iowa 2010).

This exception “allows an officer to briefly stop an individual or vehicle for investigatory purposes when the officer has a reasonable, articulable suspicion that a criminal act has occurred, is occurring, or is about to occur.” *Vance*, 790 N.W.2d at 780. Reasonable suspicion may exist even when there is no probable cause for arrest. *Terry*, 392 U.S. at 22; *Vance*, 790 N.W.2d at 781; *State v. Donnell*, 239 N.W.2d 575, 577 (Iowa 1976). In fact, an investigatory stop requires “‘considerably less than proof of wrongdoing by a preponderance of the evidence.’” *State v. Richardson*, 501 N.W.2d 495, 496-97 (Iowa 1993) (quoting *United States v. Sokolow*, 490 U.S. 1, 8 (1989)). The purpose of an investigatory stop is “to resolve the ambiguity as to whether criminal activity is afoot.” *Richardson*, 501 N.W.2d at 497. Thus, to uphold a stop a court must find that “the officer had specific and articulable facts that, taken together with rational inferences from those facts, would lead the officer to reasonably believe criminal

activity is afoot.” *Vance*, 790 N.W. 2d at 781. Moreover, a traffic stop may rest on probable cause – and not just reasonable suspicion – when a police officer has observed a traffic offense. *State v. Harrison*, 846 N.W. 2d 362, 365 (Iowa 2014). Regardless whether it is reasonable suspicion or probable cause at issue, hindsight is irrelevant; determining whether a stop is lawful is judged by the totality of the circumstances known to the officer at the time of the stop. *State v. Tague*, 676 N.W. 2d 197, 204 (Iowa 2004); *United States v. Mendoza*, 691 F. 3d 954, 959 (8<sup>th</sup> Cir. 2012), *cert. denied*, 568 U.S. 1137, 133 S.Ct. 966, 184 L. Ed. 2d 750 (2013).

Iowa Code section 321.37 (1) (2017) provides that registration plates that have been issued for a motor vehicle must be attached to both the front and rear of the vehicle. However, the vehicle may be operated up to 45 days after purchase without permanent registration plates if a “card bearing the words ‘registration applied for’ is attached on the rear of the vehicle.” Iowa Code section 321.25 (2017). A vehicle may be stopped based on probable cause when an officer observes there is no permanent license or registration plate on the back of the vehicle, and the officer does not see a proper temporary card or plate in the back. Such circumstances support probable cause

to believe that section 321.37 (1) has been violated. *See State v. Andrews*, 705 N.W. 2d 493, 495 – 97 (Iowa 2005); *State v. Lloyd*, 701 N. W. 2d 678, 679 – 81 (Iowa 2005). Even when the officer discovers a proper temporary plate after the stop is made, a reasonable mistake of fact does not negate the reasonable suspicion or probable cause supporting the stop. *State v. Tyler*, 830 N.W. 2d 288, 292 (Iowa 2013); *State v. Lloyd*, 701 N.W. 2d at 680 – 82.

The defendant in this case does not contest the lawfulness of the vehicle stop; she apparently concedes a legitimate mistake of fact occurred because Officer Weber could not see a temporary plate in the vehicle's back window prior to stopping the vehicle. Suppression Tr. p. 3, line 15 – p. 5, line 1; p. 27, lines 14 – 21; Defendant's Brief at 26, n. 4. Instead, the defendant contests the detention which ensued after her vehicle was stopped, contending the officer either actually saw the temporary plate in the back window before speaking with her, or he should have acted more diligently and discovered it before approaching the defendant. According to the defendant, *State v. Coleman*, was violated either way because the stop lasted longer than needed to resolve the traffic matter at issue. Defendant's Brief at 12 – 13.

The district court upheld the detention and questioning of the defendant as lawful, supported by probable cause and/or reasonable suspicion. Officer Weber's failure to detect or discover the temporary plate before speaking with defendant was an objectively reasonable mistake of fact. Not until the officer spoke with the defendant was the basis for the stop resolved, and so the rule in *Coleman* was not violated. Ruling on Motion to Suppress (hereafter Ruling) unnumbered pp. 4-5; App.15-16. The district court's denial of suppression should be affirmed.

**A. The defendant's burden of proof claim.**

The State agrees it has the burden of proof to establish by a preponderance of the evidence that the stop, as well as the detention, was lawful. *See State v. Louwrens*, 792 N.W. 2d 649, 650 (Iowa 2010). The district court ruled that the decision in *Coleman*, was not violated. Although evidence at suppression indicated that, at some point, during the stop Officer Nicholas Weber noticed the temporary registration card in the vehicle's back window, the court found he had not done so before speaking with the defendant. It was only then that the officer resolved the registration question, as well as learning that

the defendant did not have a driver's license. Ruling unnumbered pp. 1 – 3; App. 12-14.

The defendant argues the court's finding that the officer did not see the temporary plate before he spoke with her is not supported by the record. Defendant's Brief at 29. She asserts the court's factual finding is undermined by the officer's testimony at various points in the hearing that he did not "recall" or "know" when it was that he noticed a temporary plate. Suppression Tr. p. 11, lines 11 – 14; p. 17, lines 3 – 5; p. 19, lines 14 – 21. Defendant's Brief at 29.

It is true that the officer never expressly testified that he "did not see a temporary plate" after leaving his squad car and walking up to defendant. However, his testimony did reflect that he did not recall seeing a temporary plate as he approached the vehicle. Suppression Tr. p. 19, lines 14 – 24. Furthermore, the officer's failure to see a temporary plate is corroborated by the nature of his questioning of the defendant. Because the vehicle did not have a current valid registration plate on the rear bumper he asked about the vehicle's registration status, and if she had any paperwork regarding its purchase. Suppression Tr. p. 11, line 18 – p. 12, line 4. During that conversation he learned the vehicle did have a valid registration, and

that there should have been a metal license plate on the rear bumper. Suppression Tr. p. 11, line 21 – p. 12, line 13. Thus, the question of whether the vehicle was being lawfully driven was not resolved until the police officer spoke with the defendant. Suppression Tr. p. 12, line 21 – p. 13, line 5. There was no logical reason for the officer to question the defendant about the vehicle’s registration if he had, in fact, seen a temporary plate before speaking with her.

The defendant disputes the court’s finding, claiming police video evidence of the scene shows a temporary plate hanging in the back window of her vehicle, which would have been evident to Officer Weber. Defendant’s Brief at 33. The State disagrees. After reviewing the police video evidence, the district court concluded that Officer Weber’s failure to see the plate before approaching the defendant was objectively reasonable. As the court correctly observed: “The stop of defendant’s vehicle occurred at nearly 3:00 a.m. under challenging lighting conditions.” Ruling unnumbered p. 4; App. 15. The rear window of the vehicle was darkly tinted. Suppression Tr. p. 15, lines 9 – 19; p. 19, lines 8 – 13. Ruling unnumbered p. 4; App. 15. Furthermore, the vehicle was painted black and its windows were dirty, including the back window. Suppression Tr. p. 10, lines 5 – 11.

The court found this dirt “reflected the light from Officer Weber’s headlights and flashlight, exacerbating the problem.” Ruling unnumbered p. 4; App. 15. And, fumes leaving the vehicle’s exhaust “billow[ed] up from the rear driver’s side, directly below where the temporary plate was located.” Ruling unnumbered p. 4; App. 15. Consequently, the district court concluded that Officer Weber did not see the temporary paper plate in the back window. It found that the officer’s testimony in that regard was supported by video taken at the scene. The State submits that the relevant portions of the video evidence support all of the court’s factual findings on the matter at issue. State’s Exhibit A, Disc 1, Weber Video 709 – 02:52:26 – 02:52:41; 02:52:38 – 02:53:36; Weber Video HDBW 39 – 02:55:27 – 02:55: 35.

Finally, Officer Weber indicated at suppression that while he may take note of a temporary license plate when clearly visible after he leaves his car during a traffic stop, his focus is nevertheless on the driver. He is “cautious on [his] approach” and watches for any furtive movements because “traffic stops are sort of volatile.” Suppression Tr. p. 16, lines 11 – 23; p. 17, line 24 – p. 18, line 9.

All of these circumstances support the district court’s finding that Officer Weber’s failed to see the temporary plate in the vehicle’s back window before speaking with the defendant. *See Pennsylvania v. Mimms*, 434 U.S. 106, 110, 98 S.Ct. 330, 333, 54 L.Ed. 2d 331, 336 – 37 (1977) (per curiam) (in recognizing officer safety as a “legitimate and weighty” concern in traffic stops, Court notes a significant percentage of murders of police officers occurs during traffic stops); *State v. Lloyd*, 701 N.W. 2d at 681 (in upholding stop at 2:20 a.m. for lack of permanent license plate, Court found it “certainly understandable how the deputy could have missed the temporary plate” given the darkness); *United States v. Mendoza*, 691 F.3d 954, 956, 958 – 59 (8<sup>th</sup> Cir. 2012) (in upholding stop for possible improper temporary plate, as observed by officer when following the car, Court accepted as not implausible officer’s testimony that because of safety concerns she focused on the car’s occupants, and not the temporary plate, as she walked up to it ).

In sum, the evidence before the district court supports its conclusion that the police officer did not see the temporary license plate as he walked up to the defendant’s vehicle, and so the stop was

not impermissibly extended under *Coleman* – further investigation was warranted.

**B. The defendant’s reasonable diligence claim.**

The defendant also argues that Officer Weber had a duty to diligently and reasonably investigate the reason for the stop – the absence of a permanent license plate. She concedes he did not see a temporary plate in the back window as he followed her vehicle in his patrol car. But she urges, apparently, that if the officer did not initially see it when he got out of his car, he had a duty to diligently and reasonably investigate “by looking for the plate prior to approaching [the defendant].” Defendant’s Brief at 36. Defendant argues that such a duty exists under both the Fourth Amendment and article I, section 8 of the Iowa Constitution. However, the defendant also asserts that if this Court finds the Fourth Amendment does not require such a duty, it should hold it is required by the Iowa Constitution. Defendant’s Brief at 32 – 33, 36, 38. There is no need for this Court to entertain the defendant’s state constitutional claim. As previously argued, this claim has been waived.

Moreover, this question need not be considered because the State does not dispute that a police officer who is investigating a

traffic offense should act with reasonable diligence. *Rodriguez v. United States*, 575 U.S. \_\_\_, \_\_\_, 135 S. Ct. 1609, 1614, 1616, 191 L.Ed. 2d 492, (2015); *In re Property Seized from Pardee*, 872 N.W. 2d 384, 392 – 93 (Iowa 2015).

However, in urging a rule of reasonable diligence, the defendant also cites language from the plurality opinion in *Florida v. Royer*, 460 U.S. 191, 103 S.Ct. 1319, 75 L. Ed. 2d 229 (1980). Specifically, she refers to that part of the opinion where the Court states police should use “the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” Defendant’s Brief at 33, 36; *Royer*, 460 U.S. at 550, 103 S.Ct. at 1319. However, the vitality of this language is seriously in doubt. In *United States v. Sharpe*, 470 U.S. 675, 686 – 87, 105 S. Ct. 1568, 1575 – 76, 84 L. Ed. 2d 605 (1985), the Court declined to apply the “least intrusive means” test, noting that police failure to follow an arguably lesser alternative does not, by itself, render unlawful the action police ultimately take. As the Court observed: “The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.” *Id.* at 687, 105 S. Ct. at 1576. *See also United States v. Dixon*, 51 F. 3d 1376, 1380 n. 3 (8<sup>th</sup> Cir.

1995) (citing *Sharpe*, the Court of Appeals questions the continued vitality of the “least intrusive means” test); Wayne R. LaFare, 4 *Search and Seizure: A Treatise on the Fourth Amendment*, sec. 9.2 (f) at 341-46 (4<sup>th</sup> ed. 2004) (same questioning).

Moreover, because of various egregious characteristics of the airport detention of the defendant in *Royer* by narcotics officers, the plurality found that “[a]s a practical matter, Royer was under arrest.” 460 U.S. at 503, 103 S. Ct. at 1327. The same cannot be concluded of the very short detention of the defendant here, as less than a minute passed between the stop of her vehicle and her admission to the officer that she did not have a driver’s license. State’s Exhibit A, Disc 1, Weber Video 709 – 02: 53: 15 – 02: 53: 48; Ruling unnumbered p. 2; App. 13.

The State submits that Officer Weber acted with reasonable diligence during the investigation. He understandably did not initially see the temporary plate in the vehicle’s back window, as earlier explained in this brief. Given legitimate safety concerns, it was reasonable *and* diligent to speak with the driver. A short inquiry of the driver could resolve the matter, as it did in this case. Peering closely through the darkly-tinted back window without making

contact with the driver could, however, pose an unnecessary risk to the police officer. Because of safety concerns, the officer's conduct did not violate the *Royer* phraseology, as the "least intrusive means" nevertheless must be "reasonably available," and the officer here followed the reasonable course.

**C. The defendant's ineffective assistance claim.**

As noted earlier this brief, an independent state claim regarding reasonable diligence was waived for failure to raise it in the district court. However, given the State's position that police officers should act with reasonable diligence when investigating a traffic infraction, there is no need to consider the question of ineffective assistance of counsel. Furthermore, the officer in this case acted with reasonable diligence, as previously explained. Trial counsel cannot be found ineffective for failing to assert a meritless claim. *State v. Brubaker*, 805 N.W. 2d 164, 171 (Iowa 2011).

For all the foregoing reasons, this Court should affirm the denial of suppression of evidence.

## CONCLUSION

The State respectfully asks this Court to affirm the district court's denial of suppression, as well as the defendant's drug convictions.

## REQUEST FOR NONORAL SUBMISSION

The defendant has requested nonoral submission. The State also believes that oral argument is unnecessary, as the issues are fully addressed in the briefs and can be decided without further elaboration. In the event the Court grants the defendant argument, however, the State asks to be heard as well.

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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