IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff–Appellee, v. DESTINY BROWN, Defendant–Appellant.	)	S.CT. NO. 18–0747

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

APPELLANT'S BRIEF AND ARGUMENT

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FINAL

CERTIFICATE OF SERVICE

On the 15th day of November, 2018, the undersigned states she is unable to serve a copy upon the Defendant–Appellant. Counsel refers the Court to the affidavit filed on November 5, 2018, regarding the attempted service of the Defendant–Appellant. Counsel has not obtained any new contact information since the filing of that affidavit.

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TABLE OF CONTENTS

Page

Certificate of Service 2

Table of Authorities..... 4

Statement of the Issue Presented for Review 8

Routing Statement.....12

Statement of the Case.....12

Argument.....22

Conclusion.....47

Request for Oral Argument 47

Attorney's Cost Certificate.....47

Certificate of Compliance 48

TABLE OF AUTHORITIES

Cases: Page:

Florida v. Royer, 460 U.S. 491 (1983).....33, 35

Lamasters v. State, 821 N.W.2d 856 (Iowa 2012) 44–45

People v. McQuown, 943 N.E.2d 1242 (Ill. App. Ct. 2011).....35

People v. Redinger, 906 P.2d 81 (Colo. 1995).....30

State v. Ambrose, 861 N.W.2d 550 (Iowa 2015).....45

State v. Baldon, 829 N.W.2d 785 (Iowa 2013).....39, 41–42

State v. Brown, 905 N.W.2d 846 (Iowa 2018) 41

State v. Brothern, 832 N.W.2d 187 (Iowa 2013).....45

State v. Bruegger, 773 N.W.2d 862 (Iowa 2009) 38-39

State v. Clay, 824 N.W.2d 488 (Iowa 2012).....45–46

State v. Cline, 617 N.W.2d 277 (Iowa 2000) 39, 41–42

State v. Coleman, 890 N.W.2d 284 (Iowa 2017) 25–26, 28, 30, 33, 35, 37, 40–43

State v. Fleming, 790 N.W.2d 560 (Iowa 2010) 41

State v. Freeman, 705 N.W.2d 293 (Iowa 2005).....23–24

State v. Hilpipre, 242 N.W.2d 306 (Iowa 1976) 22

State v. Hoskins, 711 N.W.2d 720 (Iowa 2006).....23–24

State v. Howard, 509 N.W.2d 764 (Iowa 1993).....23

State v. Hrbek, 336 N.W.2d 431 (Iowa 1983).....46

State v. Ingram, 914 N.W.2d 794 (Iowa 2018) 40

State v. Lane, 726 N.W.2d 371 (Iowa 2007).....23

State v. Leckington, 713 N.W.2d 208 (Iowa 2006).....46

State v. Louwrens, 792 N.W.2d 649 (Iowa 2010) 28, 31

State v. Lyman, 776 N.W.2d 865 (Iowa 2010).....46

State v. Maxwell, 743 N.W.2d 185 (Iowa 2008).....45

State v. Melohn, 516 N.W.2d 24 (Iowa 1994).....34

State v. Murrillo, No. 17–1025, 2018 WL 3302202
(Iowa Ct. App. July 5, 2018).....28, 31

State v. Naujoks, 637 N.W.2d 101 (Iowa 2001).....24, 44

State v. Ochoa, 792 N.W.2d 260 (Iowa 2010).....39, 41

State v. Pals, 805 N.W.2d 767 (Iowa 2011).....32, 43

State v. Paredes, 775 N.W.2d 554 (Iowa 2009) 44

State v. Predka, 555 N.W.2d 202 (Iowa 1996).....24

State v. Scheffert, 910 N.W.2d 577 (Iowa 2018).....28, 31

State v. Short, 851 N.W.2d 474 (Iowa 2014).....40

State v. Tague, 676 N.W.2d 197 (Iowa 2004) 41

State v. Thorpe, 754 S.E.2d 213 (N.C. Ct. App. 2014) 36

State v. Tobin, 333 N.W.2d 842 (Iowa 1983).....23

State v. Tyler, 830 N.W.2d 288 (Iowa 2013).....28, 31

State v. Turner, 630 N.W.2d 601 (Iowa 2001).....23, 39

State v. Vance, 790 N.W.2d 775 (Iowa 2010).....25

State v. Wilkes, 756 N.W.2d 838 (Iowa 2008).....24

State v. Williams, 695 N.W.2d 23 (Iowa 2005).....44

State v. Wright, 441 N.W.2d 364 (Iowa 1989).....22

Strickland v. Washington, 466 U.S. 668 (1984).....46

Terry v. Ohio, 392 U.S. 1 (1968).....25

United States v. Edgerton, 438 F.3d 1043
(10th Cir. 2006).....30

United States v. Valadez, 267 F.3d 395
(5th Cir. 2001).....30

Whren v. United States, 517 U.S. 806 (1996).....24

Constitutional Provisions:

U.S. Const. amend. IV.....24

U.S. Const. amend. VI.....45

U.S. Const. amend. XIV.....45

Iowa Const. art. I, § 8.....24

Iowa Const. art. I, § 10.....45

Other Authorities:

3 Wayne LaFave, Search and Seizure § 9.3(b), at 432 (1987) 34

Donald P. Racheter, The Iowa Constitution: Rights over Mechanics, in The Constitutionalism of American States 479, 479 (George E. Connor & Christopher W. Hammons eds., 2008) 39-40

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

WHETHER THE DISTRICT COURT ERRED BY DENYING THE DEFENDANT'S MOTION TO SUPPRESS?

Authorities

State v. Wright, 441 N.W.2d 364, 366 (Iowa 1989)

State v. Hilpipre, 242 N.W.2d 306, 309 (Iowa 1976)

State v. Tobin, 333 N.W.2d 842, 844 (Iowa 1983)

State v. Hoskins, 711 N.W.2d 720, 725 (Iowa 2006)

State v. Freeman, 705 N.W.2d 293, 297 (Iowa 2005)

State v. Turner, 630 N.W.2d 601, 606 (Iowa 2001)

State v. Howard, 509 N.W.2d 764, 767 (Iowa 1993)

State v. Lane, 726 N.W.2d 371, 377 (Iowa 2007)

U.S. Const. amend. IV

Iowa Const. art. I, § 8

State v. Naujoks, 637 N.W.2d 101, 107 (Iowa 2001)

State v. Wilkes, 756 N.W.2d 838 (Iowa 2008)

State v. Predka, 555 N.W.2d 202, 205 (Iowa 1996)

Whren v. United States, 517 U.S. 806, 810 (1996)

State v. Coleman, 890 N.W.2d 284, 287–88 (Iowa 2017)

State v. Vance, 790 N.W.2d 775, 781 (Iowa 2010)

Terry v. Ohio, 392 U.S. 1, 21 (1968)

1. State's failure to meet its burden of proof

State v. Scheffert, 910 N.W.2d 577, 585 (Iowa 2018)

State v. Tyler, 830 N.W.2d 288, 294–96, 298 (Iowa 2013)

State v. Murrillo, No. 17–1025, 2018 WL 3302202, at *3 (Iowa Ct. App. July 5, 2018) (unpublished table decision)

State v. Louwrens, 792 N.W.2d 649, 651–52 (Iowa 2010)

State v. Coleman, 890 N.W.2d 284, 301 (Iowa 2017)

United States v. Edgerton, 438 F.3d 1043, 1051 (10th Cir. 2006)

United States v. Valadez, 267 F.3d 395, 398 (5th Cir. 2001)

People v. Redinger, 906 P.2d 81, 85–86 (Colo. 1995)

2. The officer's failure to diligently and reasonably investigate the reasonable suspicion for the traffic stop

State v. Pals, 805 N.W.2d 767, 774 (Iowa 2011)

State v. Coleman, 890 N.W.2d 284, 288 (Iowa 2017)

Florida v. Royer, 460 U.S. 491, 500 (1983)

State v. Melohn, 516 N.W.2d 24, 25 (Iowa 1994)

3 Wayne LaFave, Search and Seizure § 9.3(b), at 432 (1987)

People v. McQuown, 943 N.E.2d 1242, 1248–49 (Ill. App. Ct. 2011)

State v. Thorpe, 754 S.E.2d 213, 221 (N.C. Ct. App. 2014)

State v. Bruegger, 773 N.W.2d 862, 883 (Iowa 2009)

State v. Cline, 617 N.W.2d 277, 285 (Iowa 2000)

State v. Turner, 630 N.W.2d 601 (Iowa 2001)

State v. Ochoa, 792 N.W.2d 260, 273 (Iowa 2010)

State v. Baldon, 829 N.W.2d 785, 809–10 (Iowa 2013)

Donald P. Racheter, The Iowa Constitution: Rights over Mechanics, in The Constitutionalism of American States 479, 479 (George E. Connor & Christopher W. Hammons eds., 2008)

State v. Short, 851 N.W.2d 474, 482 (Iowa 2014)

State v. Ingram, 914 N.W.2d 794, 799 (Iowa 2018)

State v. Fleming, 790 N.W.2d 560, 567–68 (Iowa 2010)

State v. Tague, 676 N.W.2d 197, 206 (Iowa 2004)

State v. Brown, 905 N.W.2d 846, 847 (Iowa 2018)

3. To the extent error was not preserved, counsel was ineffective

Lamasters v. State, 821 N.W.2d 856, 864 (Iowa 2012)

State v. Paredes, 775 N.W.2d 554, 561 (Iowa 2009)

State v. Williams, 695 N.W.2d 23, 27–28 (Iowa 2005)

U.S. Const. amends. VI, XIV

Iowa Const. art. I, § 10

State v. Ambrose, 861 N.W.2d 550, 555 (Iowa 2015)

State v. Brothern, 832 N.W.2d 187, 192 (Iowa 2013)

State v. Maxwell, 743 N.W.2d 185, 195 (Iowa 2008)

State v. Clay, 824 N.W.2d 488, 495 (Iowa 2012)

State v. Lyman, 776 N.W.2d 865, 878 (Iowa 2010)

State v. Hrbek, 336 N.W.2d 431, 435–36 (Iowa 1983)

State v. Leckington, 713 N.W.2d 208, 218 (Iowa 2006)

Strickland v. Washington, 466 U.S. 668, 694 (1984)

ROUTING STATEMENT

The Court should transfer this case to the Court of Appeals because it raises issues that involve the application of existing legal principles. Iowa R. App. P. 6.903(2)(d) & 6.1101(3)(a) (2017).

STATEMENT OF THE CASE

Nature of the Case: Defendant–Appellant Destiny Brown appeals her convictions, sentences, and judgment following a bench trial and verdict finding her guilty of Possession of a Controlled Substance (Methamphetamine), Second Offense, and Possession of a Controlled Substance (Tramadol), Second Offense, both aggravated misdemeanors, in violation of Iowa Code section 124.401(5) (2017).

Course of Proceedings: On January 11, 2018, the State charged Brown with Carrying Weapons, an aggravated misdemeanor, in violation of Iowa Code 724.2(1) (2017); Possession of a Controlled Substance (Methamphetamine), Second Offense, an aggravated misdemeanor, in violation of Iowa Code section 124.401(5) (2017); Possession of a

Controlled Substance (Cocaine), Second Offense, an aggravated misdemeanor, in violation of Iowa Code section 124.401(5) (2017); and Possession of a Controlled Substance (Tramadol), Second Offense, an aggravated misdemeanor, in violation of Iowa Code section 124.401(5) (2017). (Trial Information) (App. pp. 4–6). The State alleged Brown had a prior conviction for Possession of a Controlled Substance (Marijuana) in Black Hawk County Case No. SRCR202410, on August 18, 2015, thereby enhancing the possession charges to second offenses. (Trial Information) (App. pp. 4–6) (Mins. Test. p.4) (Confidential App. p. 7). Brown entered a plea of not guilty to all charges on January 24, 2018. (Arraignment Order) (App. pp. 7–9).

On February 2, 2018, Brown filed a motion to suppress seeking to exclude evidence obtained during the search of her vehicle on January 4, 2018. (Mot. Suppress) (App. pp. 10–11). The court heard the motion to suppress on February 21, 2018. (Suppress. Tr. p.1 L.1–12). During the hearing, the State presented testimony from the police officer who initiated the

traffic stop, Waterloo Police Officer Nicholas Weber. (Suppress. Tr. p.5 L.9–p.20 L.21). Additionally, the State admitted Exhibit A, which included two dvds with several of law enforcement's videos from the stop and subsequent search. (Suppress. Tr. p.8 L.10–p.9 L.2) (Ex. A). On March 29, 2018, the district court issued a written ruling denying Brown's motion to suppress. (Suppress. Ruling) (App. pp. 12–17).

A pretrial conference was set the same day as the district court's issuance of the suppression ruling, and the parties agreed to proceed to trial immediately. (Trial Tr. p.1 L.10–19). Brown waived her right to a jury trial[1] and stipulated to a bench trial on the minutes of testimony and the exhibit submitted at the suppression hearing. (Trial Tr. p.6 L.18–p.7 L.16, p.11 L.22–25) (Trial Ruling) (App. p. 18). Before the submission of the evidence to the judge, the State moved to

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[1] The record indicates Brown executed a waiver of her right to a trial by jury in writing, but no written waiver was ever filed in accordance with Iowa Rule of Criminal Procedure 2.17(1). (Trial Tr. p.5 L.25–p.6 L.7) (Trial Ruling) (App. p. 18). The court did conduct an in-court colloquy with Brown regarding the waiver. (Trial Tr. p.2 L.20–p.6 L.16).

dismiss Count III: Possession of a Controlled Substance (Cocaine), Second Offense because it lacked sufficient evidence to prove the charge. (Trial Tr. p.8 L.14–21) (Trial Ruling) (App. p. 18). At the bench trial, Brown also stipulated that she had a previous conviction for a controlled substance. (Trial Tr. p.9 L.6–p.11 L.19) (Trial Ruling) (App. pp. 18, 21). The court took the matter under advisement and subsequently issued written verdict finding Brown guilty of Count II: Possession of a Controlled Substance (Methamphetamine), Second Offense and Count IV: Possession of a Controlled Substance (Tramadol), Second Offense, both in violation of Iowa Code section 124.401(5), on April 23, 2018. (Trial Tr. p.11 L.22–p.12 L.9) (Trial Ruling) (App. pp. 18–22). The district court found Brown not guilty of Count I: Carrying Weapons. (Trial Ruling) (App. pp. 19–21).

On April 27, 2018, Brown waived her right to a fifteen day period between the verdict and sentencing, and she requested to be sentenced immediately. (Sentencing Tr. p.3 L.10–p.4 L.9). After hearing the parties' recommendations, the

district court sentenced Brown to a term of incarceration not to exceed two years on each count. (Sentencing Tr. p.4 L.7–p.12 L.9) (Sentencing Order) (App. pp. 23–24). The court ordered the sentences to run concurrent with one another, but consecutive to Brown's parole revocation in a separate case. (Sentencing Tr. p.12 L.9–22, p.13 L.14–19) (Sentencing Order) (App. p. 24). The district court also imposed a fine of $625 for each count, but immediately suspended them. (Sentencing Tr. p.13 L.3–5) (Sentencing Order) (App. p. 24). In addition, the court imposed the $125 Law Enforcement Initiative surcharge and the $10 Drug Abuse Resistance Education surcharge for each charge, and it ordered Brown to pay court costs. (Sentencing Tr. p.13 L.7–9) (Sentencing Order) (App. p. 24). However, the court found Brown was unable to pay her attorney fees. (Sentencing Order) (App. p. 24). Lastly, the district court ordered the Department of Transportation to revoke Brown's driver's license for one hundred and eighty days pursuant to Iowa Code section 901.5(10), and the court

ordered Brown to submit a DNA sample under section 81.2(1). (Sentencing Tr. p.13 L.10–11) (Sentencing Order) (App. p. 24).

Brown timely filed a notice of appeal on April 30, 2018. (Notice Appeal) (App. p. 27).

Facts:

Trial on the Minutes: For the bench trial, the parties stipulated to the minutes of testimony, additional minutes, and Exhibit A from the suppression hearing, which support the following facts:

At approximately 2:52 a.m., on January 4, 2018, Waterloo Police Officer Nicholas Weber initiated a traffic stop on a vehicle for a registration violation. (Additional Mins. Test. 02/05/18 p. 2) (Confidential App. p. 35) (Ex. A Weber 709 02:52:26–02:53:45). Officer Weber identified Destiny Brown as the vehicle's driver. (Additional Mins. Test. 02/05/18 p. 2) (Confidential App. p. 35). Brown told Officer Weber she did not have a valid driver's license; further investigation established her license was suspended for nonpayment of fines, and there was a warrant out for her arrest for a parole

violation. (Additional Mins. Test. 02/05/18 p. 2) (Confidential App. p. 35) (Ex. A Weber 709 02:53:45–02:54:10, 03:00:40–03:01:00; Ex. A Weber HDBW39 03:08:15–03:08:40). Another officer responded to the stop with a K-9. (Mins. Test. p. 17; Additional Mins. Test. 02/05/18 p. 2) (Confidential App. pp. 20, 35). That officer walked the K-9 around the vehicle, and the K-9 alerted on the vehicle, indicating the presence of a controlled substance. (Mins. Test. p. 17) (Confidential App. p. 20) (Ex. A Weber 709 03:00:40–03:02:00, Ex. A Ehlers 03:02:40–03:04:035). Brown also admitted to Officer Weber that she might have a marijuana pipe in the vehicle, but she denied having any drugs in the vehicle. (Additional Mins. Test. 02/05/18 p. 2) (Confidential App. p. 35) (Ex. A Weber 709 03:01:30–03:2:15; Ex. A Weber HDBW39 03:02:55–03:03:15).

Pursuant to the positive K-9 alert, officers searched the vehicle. (Mins. Test. p. 17; Additional Mins. Test. 01/24/18 p. 2) (Confidential App. pp. 20, 33) (Ex. A Weber 709 03:02:50–03:09:40; Ex. A Ehlers 03:02:40–03:11:10). Officers found a working stun gun laying in plain view on top of the center

console near the gear shift, a glass pipe with methamphetamine in a duffle bag in the trunk, methamphetamine[2] in Brown's purse, eight tramadol prescription pills in Brown's purse, and various drug paraphernalia. (Mins. Test. pp. 6, 8, 12, 17; Additional Mins. Test. 01/18/18 p. 4; Additional Mins. Test. 01/24/18 p. 2) (Confidential App. pp. 9, 11, 15, 20, 27, 33) (Ex. A Scarbrough HDBW30 03:04:50–03:07:45, 03:09:30–03:10:10).

Law enforcement sent the controlled substances to the Division of Criminal Investigation for testing. (Additional Mins. Test. 03/26/18 pp. 1–2) (Confidential App. p. 37–38). Testing at the laboratory confirmed the white powdery substance found in Brown's purse and the duffle bag was methamphetamine. (Additional Mins. Test. 03/26/18 p. 4) (Confidential App. p. 40). The criminalist also found the white

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[2] Officers initially identified the controlled substance as cocaine, and the State charged it in the trial information accordingly. (Trial Information) (App. pp. 4–6); (Mins. Test. p. 10) (Confidential App. p. 13). However, laboratory testing established the substance was actually methamphetamine. (Additional Mins. Test. 03/26/2018 p. 4) (Confidential App. p. 40).

pills located in Brown's purse were "consistent in appearance with a pharmaceutical preparation containing tramadol, Schedule IV." (Additional Mins. Test. 03/26/18 p. 4) (Confidential App. p. 40). Moreover, the criminalist's report indicated that "[v]isual examination of the [pills] is based on manufacturer's unique markings[3] required by the United States Food and Drug Administration regulations, which in conjunction with the product's size, shape, and color, permits the unique identification of the drug product." (Additional Mins. Test. 03/26/18 p. 4) (Confidential App. p. 40).

Brown was previously convicted of Possession of a Controlled Substance (Marijuana) in Black Hawk County Case No. SRCR202410, on August 18, 2015. (Mins. Test. pp. 4–5, 17) (Confidential App. pp. 7–8, 20).

Suppression Hearing: At the suppression hearing, Officer Weber testified that he stopped the vehicle for failing to have a valid license plate on the back bumper; he could only see a paper plate identifying the car dealer on the rear

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[3] The pills were labeled with the numerals "319". (Additional Mins. Test. 03/26/18 p. 4) (Confidential App. p. 40).

bumper. (Suppress. Tr. p.6 L.8–3, p.14 L.14–17). Officer Weber testified that at the time he turned on his lights and made the stop, he did not see the temporary plate hanging in the back window. (Suppress. p.7 L.4–5). On Exhibit A, a temporary plate is visible in the top left corner of the vehicle's back windshield. See, e.g., (Ex. A Weber 709 02:53:25–02:53:36, Ex. A Weber HDBW39 02:55:31–02:55:34, 03:01:32–03:01:36, 03:10:45–03:10:50; Ex. A Scarbrough HDBW30 03:00:58–03:02:15). Weber testified sometime during the stop he did notice the temporary plate, but he did not recall when he noticed it. (Suppress. Tr. p.11 L.11–14, p.16 L.24–p.17 L.8, p.19 L.14–24). He further testified that he could not recall ever identifying the date listed on the temporary registration, and he did not check to see when the temporary registration expired. (Suppress. Tr. p.11 L.15–17, p.17 L.14–16).

Any other relevant facts will be discussed below.

ARGUMENT

THE DISTRICT COURT ERRED BY DENYING THE DEFENDANT'S MOTION TO SUPPRESS.

A. Preservation of Error: Brown filed a motion to suppress, seeking the exclusion of the evidence found in the vehicle under the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution. (Mot. Suppress) (App. pp. 10–11). At the suppression hearing, defense counsel clarified the challenge was to the continued detention of Brown after the initial traffic stop. (Suppress. Tr. p.3 L.15–p.5 L.6). Therefore, Brown preserved error by filing the motion to suppress and the district court's denial of the motion. (Mot. Suppress; Suppress. Ruling) (App. pp. 10–17). See State v. Wright, 441 N.W.2d 364, 366 (Iowa 1989) (quoting State v. Hilpipre, 242 N.W.2d 306, 309 (Iowa 1976)) ("The rule is well settled that 'an adverse ruling on pretrial suppression motion will suffice to preserve error for appellate review even though'" the defendant stipulates to trial based on minutes of testimony).

To the extent this Court concludes error was not properly preserved for any reason, Brown respectfully requests that this issue be considered under the Court's familiar ineffective-assistance-of-counsel framework. See State v. Tobin, 333 N.W.2d 842, 844 (Iowa 1983).

B. Standard of Review: The Court reviews alleged violations of constitutional rights de novo. State v. Hoskins, 711 N.W.2d 720, 725 (Iowa 2006) (citing State v. Freeman, 705 N.W.2d 293, 297 (Iowa 2005)). The Court makes "'an independent evaluation of the totality of the circumstances as shown by the entire record.'" State v. Turner, 630 N.W.2d 601, 606 (Iowa 2001) (quoting State v. Howard, 509 N.W.2d 764, 767 (Iowa 1993)). The Court may give deference to the district court's factual findings "due to its opportunity to evaluate the credibility of the witnesses," but it is not bound by the findings. State v. Lane, 726 N.W.2d 371, 377 (Iowa 2007).

C. Discussion: The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa

Constitution both protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Iowa Const. art. I, § 8; see also State v. Naujoks, 637 N.W.2d 101, 107 (Iowa 2001) (citation omitted). The Fourth Amendment of the U.S. Constitution applies to the states through incorporation by the Fourteenth Amendment. State v. Wilkes, 756 N.W.2d 838 (Iowa 2008) (citation omitted). "When the police stop a car and temporarily detain an individual, the temporary detention is a 'seizure'" which is subject to the requirement of constitutional reasonableness. State v. Predka, 555 N.W.2d 202, 205 (Iowa 1996) (citing Whren v. United States, 517 U.S. 806, 810 (1996)); State v. Coleman, 890 N.W.2d 284, 287–88 (Iowa 2017) (citation omitted).

Unless an exception to the warrant requirement exists, warrantless searches and seizures are per se unreasonable. Hoskins, 711 N.W.2d at 726 (citing Freeman, 705 N.W.2d at 297). The State bears the burden of proving by a preponderance of the evidence that such an exception applies. Hoskins, 711 N.W.2d at 726 (citation omitted). "One well-

established 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." State v. Vance, 790 N.W.2d 775, 781 (Iowa 2010) (citations omitted). Reasonable suspicion exists when law enforcement has "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 (Iowa 2010) (citing Terry v. Ohio, 392 U.S. 1, 21 (1968)).

In this case, Brown argued State v. Coleman and the principles outlined within required suppression of the evidence. (Suppress. Tr. p.4 L.8–p.5 L.1, p.27 L.14–p.31 L.18). In State v. Coleman, the Iowa Supreme Court considered "whether a law enforcement officer, after making a valid traffic stop supported by reasonable suspicion that an offense may be being committed, must terminate the stop when the underlying reason for the stop is no longer present." Coleman,

890 N.W.2d at 285. After canvassing nationwide precedent, the 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. Moreover, the Coleman court indicated whether the Fourth Amendment required a similar conclusion was uncertain, but many various state and federal jurisdictions had found continued detentions when the reasonable suspicion has dissipated violated the federal constitution as well. See Coleman, 890 N.W.2d at 287–96.

In the instant case, the State argued and the district court concluded that Officer Weber had reasonable suspicion to believe there was an ongoing traffic offense related to the vehicle's registration both when the officer initially pulled over the vehicle Brown was driving[4] and when he approached

[4] At the suppression hearing, Brown's counsel candidly agreed that the initial stop could potentially be justified by Weber's mistake of fact and noted the challenge was the continued detention of Brown, not the initial stop. (Suppress. Tr. p.4 L.8–p.5 L.1, p.27 L.14–21).

Brown and asked for her license, proof of purchase, and insurance information. (Suppress. Tr. p.25 L.7–p.27 L.12) (Suppression Ruling) (App. p. 13). On its de novo review of the record below, this Court should find the State did not meet its burden of proof of showing that the continued detention after the initial traffic stop was valid under both the state and federal constitution. Furthermore, this Court should hold that Officer Weber had a duty to pursue a diligent investigation of the purported reasonable suspicion related to the registration violation by looking for it in the window prior to approaching the vehicle and his failure to do so made his request of Brown's documents and her continued detention unconstitutional. For these reasons, the district court erred in denying the motion to suppress.

2. State's failure to meet its burden of proof

When a defendant moves to suppress evidence based on a violation of the Fourth Amendment or article I, section 8, the State bears the burden of proving the traffic stop and resulting seizure and/or search did not violate the constitutions. See

State v. Scheffert, 910 N.W.2d 577, 585 (Iowa 2018) (citing State v. Tyler, 830 N.W.2d 288, 294–96, 298 (Iowa 2013)); State v. Murrillo, No. 17–1025, 2018 WL 3302202, at *3 (Iowa Ct. App. July 5, 2018) (unpublished table decision) (citation omitted) ("It is the State's burden to prove by a preponderance of the evidence that the officer had the requisite level of suspicion necessary to continue the stop."). If the State fails to meet the burden by a preponderance of the evidence, the court must order the evidence suppressed. State v. Louwrens, 792 N.W.2d 649, 651–52 (Iowa 2010) (citation omitted).

In this case, the district court found: "The testimony established that Officer Weber made contact with the defendant ***before*** noticing the temporary paper plate affixed to the rear window." (Suppress. Ruling) (App. p. 14) (emphasis in original). Therefore, the district court concluded that State v. Coleman was inapplicable because there was still reasonable suspicion for the stop when Officer Weber approached Brown and questioned her about her driver's license status. (Suppress. Ruling) (App. p. 14). This finding by the district

court that the testimony established Officer Weber approached Brown and asked for her information prior to noticing the temporary plate is erroneous and is not supported by the record.

During the suppression hearing, Officer Weber was questioned several times about when he noticed that the vehicle actually had a temporary paper registration plate in its window. He repeatedly confirmed that he had seen the plate sometime during the stop, but that he did not know when he had observed it. (Suppress. Tr. p.11 L.11–14) ("I don't recall when I noticed that there was a temporary registration plate."); (Suppress. Tr. p.17 L.3–5) ("In this instance I don't know when it was that I noticed the temporary registration in the window."); (Suppress. Tr. p.19 L.19–21) ("I don't know when it was that I noticed the registration was even there, that the temporary registration was even there."). Thus, directly contrary to the district court's finding, there was no testimony that Officer Weber noticed the temporary plate only after

approaching Brown and asking for her license, proof of purchase, and insurance information.

If Officer Weber noticed the temporary plate prior to approaching Brown's vehicle, then his request for her license, proof of purchase, and insurance unconstitutionally extended the traffic stop under article I, section 8 of the Iowa Constitution. See Coleman, 890 N.W.2d at 301 ("We conclude 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."). As discussed in Coleman, further detention in these circumstances also violates the Fourth Amendment to the U.S. Constitution as well. See id. (discussing various jurisdictions and cases); see, e.g., United States v. Edgerton, 438 F.3d 1043, 1051 (10th Cir. 2006) (requiring a similar result under the Fourth Amendment); United States v. Valadez, 267 F.3d 395, 398 (5th Cir. 2001) (same); People v. Redinger, 906 P.2d 81, 85–86 (Colo. 1995) (same).

At the hearing, the State offered no other explanation for the stop and continued detention other than the potential registration violation. Therefore, the State had the burden of proving that Officer Weber had continued reasonable suspicion of an ongoing crime, in this case the registration violation, when he approached the vehicle and asked for Brown's information. See Scheffert, 910 N.W.2d at 585 (citing Tyler, 830 N.W.2d at 294–96, 298; Murrillo, 2018 WL 3302202, at *3. As outlined above, Officer Weber's testimony at the suppression hearing clearly does not meet the State's burden of showing the continued detention of Brown was constitutional. By failing to establish Officer Weber did not observe the temporary plate before approaching the vehicle and further detaining Brown, the State did not show there was a valid constitutional basis for the ongoing seizure and detention of Brown and her vehicle. As such, the district court erred in failing to grant the motion to suppress. See Louwrens, 792 N.W.2d at 651–52.

2. The officer's failure to diligently and reasonably investigate the reasonable suspicion for the traffic stop

Brown also challenged the continued detention, arguing that Officer Weber had a duty to investigate the reason for the alleged stop and his failure to do so before approaching the vehicle could not justify the further detention of Brown under either the federal and state constitution. See (Suppress. Tr. p.28 L.10–14) ("If you are going to stop a vehicle based on registration, that . . . is your reasonable suspicion, you need to make sure that there is actually a reason to continue the stop. The purpose of *Coleman* was not to allow officers to put on a blinder . . . ."). This Court should find that the district court also erred in rejecting this argument.

"Under Terry [v. Ohio], police may stop a moving automobile in the absence of probable cause to investigate a reasonable suspicion that its occupants are involved in criminal activity." State v. Pals, 805 N.W.2d 767, 774 (Iowa 2011). As the Iowa Supreme Court has noted, "[t]he scope of an investigatory stop 'must be carefully tailored to its

underlying justification' and 'last no longer than is necessary to effectuate the purpose of the stop.'" Coleman, 890 N.W.2d at 288 (citing Florida v. Royer, 460 U.S. 491, 500 (1983)). In addition, "the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." Royer, 460 U.S. at 500 (citations omitted).

Under the circumstances of this case, Officer Weber had a duty under both the Fourth Amendment and article I, section 8 to look for the temporary registration plate in the back window of the vehicle prior to approaching the vehicle and ordering Brown to produce her license, proof of purchase, and insurance information. In this case, it is clear that the temporary plate hanging in the back windshield was visible to the officer after he pulled over Brown and prior to him approaching her and asking for her license, proof of purchase, and insurance information. (Ex. A Weber 709 02:53:25–02:53:36; Ex. A Weber HDBW 39 02:55:31–02:55:34). Furthermore, the officer acknowledged that he had in fact seen

the temporary registration plate during the traffic stop, and the plate was visible. (Suppress. Tr. p.11 L.11–14; p.17 L.3–5; p.19 L.19–21). Moreover, the record heavily suggests the stop was pretextual, as officers were looking for the vehicle after it was driving around in "high drug areas."[5] (Suppress. Tr. p.18 L.15–p.19 L.7) (Additional Mins. Test. 01/18/18 p. 6) (Confidential App. p. 29) (Ex. A Scarbrough 02:58:45–02:29:30; Ex. A Ehlers HDBW28 03:05:15–03:05:30, 03:10:35–03:11:20).

If "the principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot," then it is nonsensical to allow law enforcement to circumvent an individual's constitutional protections by avoiding the most obvious investigation possible in order to determine whether there is in fact criminal activity afoot. See State v. Melohn, 516 N.W.2d 24, 25 (Iowa 1994) (citing 3 Wayne LaFave, Search and Seizure § 9.3(b), at 432 (1987)). Such a conclusion is

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[5] While the record suggests the traffic stop was pretextual, this issue was not raised below, and therefore, not pursued in this appeal.

antithetical to the purpose of the search and seizure provisions of both constitutions. Rather, both the state and federal constitutions require the officer reasonably investigate to resolve any ambiguity.

In addition, the U.S. Supreme Court's decision in Royer also supports the conclusion that the officer must look to see if the temporary plate is hanging in the window prior to approaching the vehicle, as it is the "least intrusive means reasonably available to dispel or verify the officer's suspicion." See Royer, 460 U.S. at 500. Simply looking in the window for the actual plate is the most diligent way "to effectuate the purpose of the stop." See Coleman, 890 N.W.2d at 288; see also People v. McQuown, 943 N.E.2d 1242, 1248–49 (Ill. App. Ct. 2011) ("The State bears the burden of showing that a seizure based on reasonable suspicion was sufficiently limited in scope and duration and in assessing whether a detention is too long in duration to be justified as an investigatory stop, *we must consider whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions*

quickly." (internal quotation marks and citations omitted) (emphasis added)); State v. Thorpe, 754 S.E. 213, 221 (N.C. Ct. App. 2014) (citation omitted) ("To assess whether a seizure under Terry is excessive, the court must decide whether the police could have 'minimized the intrusion' by more diligently pursuing their investigation through other means.").

Thus, Officer Weber failed to diligently and reasonably pursue his investigation by looking for the plate prior to approaching Brown. For these reasons, to the extent the district court found the officer did not have to look at the window for the existence of a temporary registration plate, this Court should find the district court erred and the failure of Officer Weber to use the least intrusive means and diligently and reasonably pursue his investigation of the potential registration violation by simply looking for the plate prior to approaching the vehicle rendered the continued seizure and detention of Brown unconstitutional.

Furthermore, to the extent the district court justified Officer Weber's failure to examine the back window under the

claim of officer safety, such is not a valid justification in this case. There is nothing in the record to indicate Officer Weber had any particularized safety concerns in this stop; rather, he simply testified that he was always cautious and watched the driver for furtive movements because "traffic stops are sort of volatile." (Suppress. Tr. p.16 L.20–23). "While in most extended traffic-stop cases an officer safety claim has not been asserted, in cases where officer safety has been raised, the courts have repeatedly rejected generalized, unsubstantiated claims related to officer safety for extending a traffic stop." Coleman, 890 N.W.2d at 301 (citations omitted). As in Coleman, requiring the officer to check the temporary plate for its validity prior to approaching the vehicle lessens the risks of harm to officers rather than increases it. Id. If the officer discovers the temporary plate is valid, he or she needs only to give the driver "[a] brief gesture, an announcement from the back of the vehicle, or [have] a brief conversation at the driver's window." Id.

Moreover, even if the Court concludes that the Fourth Amendment does not require an officer to diligently investigate the purpose of the stop by looking for the temporary license plate prior to making contact with the driver, the Court should find such a requirement necessary under article I, section 8 of the Iowa Constitution. Counsel's argument made it clear she believed Coleman, decided under the Iowa Constitution, required the officer to look for the temporary plate prior to approaching the vehicle. See, e.g., (Suppress. Tr. p.28 L.10–14). However, even where a party has not advanced a different standard for interpreting a state constitutional provision, the Court may apply the standard more stringently than federal case law. State v. Bruegger, 773 N.W.2d 862, 883 (Iowa 2009).

While article I, section 8 uses nearly identical language as the Fourth Amendment and was generally designed with the same scope, import and purpose, the Iowa Supreme Court jealously protects its authority to follow an independent approach under the Iowa Constitution. Id. (citations omitted).

This Court's approach to independently construing provisions of the Iowa Constitution that are nearly identical to the federal counterpart is supported by Iowa's case law. See, e.g., id.; State v. Cline, 617 N.W.2d 277, 285 (Iowa 2000), abrogated on other grounds by State v. Turner, 630 N.W.2d 601 (Iowa 2001). The Iowa Supreme Court has held: "The linguistic and historical materials suggest the framers of the Fourth Amendment, and by implication the framer of article I, section 8 of the Iowa Constitution intended to provide a limit on arbitrary searches and seizures." State v. Ochoa, 792 N.W.2d 260, 273 (Iowa 2010). "As a general matter, the drafters of the Iowa Constitution placed the Iowa Bill of Rights at the beginning of the constitution, for apparent emphasis." Id. at 274. "This priority placement has led one observer to declare that, more than the United States Constitution, the Iowa Constitution 'emphasizes rights over mechanics.'" State v. Baldon, 829 N.W.2d 785, 809–10 (Iowa 2013) (Appel, J., concurring) (quoting Donald P. Racheter, The Iowa Constitution: Rights over Mechanics, in The Constitutionalism

of American States 479, 479 (George E. Connor & Christopher W. Hammons eds., 2008)). Accordingly, the Court construes article I, section 8 "in a broad and liberal spirit." Coleman, 890 N.W.2d at 286 (citation omitted) (internal quotation marks omitted).

The Iowa Constitution has a "strong emphasis on individual rights." State v. Short, 851 N.W.2d 474, 482 (Iowa 2014). The Court has repeatedly determined the Iowa Constitution provides significant individual rights in the context of warrantless seizures and searches, even more so than those provided under the Fourth Amendment to the U.S. Constitution. See State v. Ingram, 914 N.W.2d 794, 799 (Iowa 2018) (internal citations omitted) ("[O]ur recent case law under the search and seizure provision of the Iowa Constitution has emphasized the robust character of its protections. We have repeatedly declined to follow the approach of the United States Supreme Court in its interpretation of what one commentator has referred to as an ever-shrinking Fourth Amendment); see also, e.g., Short, 851 N.W.2d at 506 (holding a valid warrant is

required for law enforcement's search of a home under the Iowa Constitution); Cline, 617 N.W.2d at 292–93 (holding the good faith exception is incompatible with the Iowa Constitution); State v. Fleming, 790 N.W.2d 560, 567–68 (Iowa 2010) (finding the search of a rented room violated the Iowa Constitution when the warrant for that area was not supported by probable cause); Baldon, 829 N.W.2d at 802 (finding a parole agreement containing a prospective search provision was insufficient to establish voluntary consent); Ochoa, 792 N.W.2d at 291 (holding the warrantless search of a parolee's room by a general law enforcement officer without particularized suspicion violated the state constitution); State v. Tague, 676 N.W.2d 197, 206 (Iowa 2004) (finding a traffic stop did not meet the reasonableness test of article I, section 8); Coleman, 890 N.W.2d at 285 (finding article I, section 8 required law enforcement to terminate a valid traffic stop once the reasonable suspicion that an offense was being committed no longer existed); State v. Brown, 905 N.W.2d 846, 847 (Iowa 2018) (finding the search of a purse belonging to person not

named in the warrant for the premise violated the Iowa Constitution). The application of the Iowa Constitution to the present case will provide Iowa citizens a "fundamental guarantee" of protection against unreasonable searches and seizures. See Cline, 617 N.W.2d at 292.

The randomness and arbitrariness of allowing a police officer to seize a vehicle by effectuating a traffic stop based upon reasonable suspicion, but leaving it to the officer's individual discretion on whether to complete the simplest means of investigation, which could dispel or confirm the officer's suspicion, prior to approaching the driver, is inconsistent with Iowa law. See Coleman, 890 N.W.2d at 287 (citation omitted) ("Generalized police discretion to engage in search and seizure is antithetical to search and seizure law."); see also Baldon, 829 N.W.2d at 823 (Appel, J. concurring) ("[W]e have sought to develop an Iowa search and seizure jurisprudence that prevents arbitrary exercise of government power in a realistic way in today's world."). The Supreme Court has recognized "our constitutional limitations on search

and seizures by law enforcement protect fundamental values of liberty and human dignity and are a bulwark against arbitrary governmental intrusions into the lives of citizens." Pals, 805 N.W.2d at 773. In Coleman, the Supreme Court stated:

> [C]abining official discretion to conduct searches is designed to prevent arbitrary use of police power. Limiting both the scope and duration of warrantless stops on the highway provides important means of fulfilling the constitutional purpose behind article I, section 8, namely, ensuring that government power is exercised in a carefully limited manner.

Id. at 299. The Court then pointed to "our recent traffic-stop cases [which] have evinced an awareness of the potential for arbitrary government action on the state's roads and highways." Id.

The Court should find that the Iowa Constitution required Officer Weber to diligently and reasonably investigate the reasonable suspicion that formed the basis of the stop prior to approaching the driver under the circumstances of this case. This approach adequately balances the protections given to an individual by the constitution with the needs of law

enforcement executing a traffic stop. See Naujoks, 637 N.W.2d at 107 (citations omitted). It also provides a workable rule for law enforcement, without any undue burden, requiring an officer only to reasonably and diligently pursue any investigation that may verify or dispel the officer's suspicion that supported the stop prior to making contact with the driver and further detaining the vehicle and its occupants.

3. To the extent error was not preserved, counsel was ineffective

Brown asserts the previous arguments are preserved. See Lamasters v. State, 821 N.W.2d 856, 864 (Iowa 2012) (citations omitted) ("If the court's ruling indicates the court *considered* the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved."); see also State v. Paredes, 775 N.W.2d 554, 561 (Iowa 2009) (citing State v. Williams, 695 N.W.2d 23, 27–28 (Iowa 2005)) ("We have previously held that where a question is obvious and ruled upon by the district court, the issue is

adequately preserved."). However, if the Court concludes error was not preserved for any reason, counsel was ineffective.

The U.S. Constitution and the Iowa Constitution both guarantee defendants of criminal cases the right to effective assistance of counsel. U.S. Const. amends. VI, XIV; Iowa Const. art. I, § 10; State v. Ambrose, 861 N.W.2d 550, 555 (Iowa 2015). To prevail on an ineffective-assistance-of-counsel claim, a defendant must establish (1) counsel failed to perform an essential duty and (2) the defense was prejudiced as a result. State v. Brothern, 832 N.W.2d 187, 192 (Iowa 2013) (quoting Lamasters, 821 N.W.2d at 866). The defendant must show both elements by a preponderance of the evidence. State v. Maxwell, 743 N.W.2d 185, 195 (Iowa 2008) (citation omitted).

The Court examines whether counsel breached a duty by measuring the attorney's "'performance against the standard of a reasonably competent practitioner.'" State v. Clay, 824 N.W.2d 488, 495 (Iowa 2012) (quoting Maxwell, 743 N.W.2d at 195). The Court examines the attorney's performance by

objectively determining whether his actions were reasonable under the prevailing professional norms. State v. Lyman, 776 N.W.2d 865, 878 (Iowa 2010). Counsel has a duty to adequately preserve error, know the law, and alert the district court to the correct standards and lack of evidence established by the State in the suppression hearing. See Clay, 824 N.W.2d at 496; State v. Hrbek, 336 N.W.2d 431, 435–36 (Iowa 1983) (citation omitted) (noting the failure to preserve error may constitute ineffective assistance of counsel). As discussed above, the issue is meritorious; thus, the court should have granted the motion to suppress if properly preserved and argued. Therefore, Brown was prejudiced by counsel's breach of duty. See State v. Leckington, 713 N.W.2d 208, 218 (Iowa 2006) (citing Strickland v. Washington, 466 U.S. 668, 694 (1984)) (finding prejudice if "'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'").

CONCLUSION

Defendant–Appellant Destiny Brown respectfully requests this Court vacate her convictions and remand the case to district court for suppression of all evidence flowing from the stop.

REQUEST FOR NONORAL SUBMISSION

Counsel requests this case be submitted without oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $4.83, and that amount has been paid in full by the Office of the Appellate Defender.

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