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 SCOTT COUNTY
THE HONORABLE BROOK JACOBSEN, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

MARK C. SMITH
State Appellate Defender

MARY K. CONROY
Assistant Appellate Defender
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

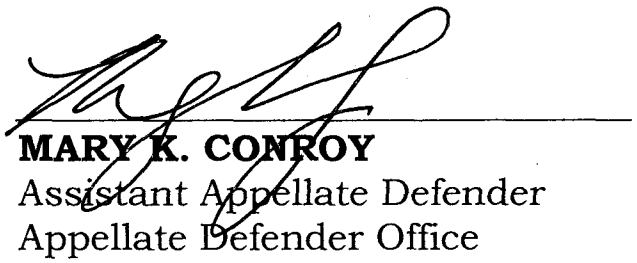
ATTORNEYS FOR DEFENDANT–APPELLANT

FINAL

CERTIFICATE OF SERVICE

On the 14th 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.

STATE APPELLATE DEFENDER



MARY K. CONROY
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us

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STATEMENT OF THE CASE

COMES NOW the Defendant–Appellant Destiny Brown, pursuant to Iowa Rule of Appellate Procedure 6.903(4), and hereby submits the following argument in reply to the State's brief filed on or about October 26, 2018. While the Defendant–Appellant's Brief and Argument adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

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

A. Error Preservation: To the extent the State questions error preservation, the Iowa Supreme Court has recognized that a citation to article I, section 8 minimally preserves a state constitutional claim. State v. Ingram, 914 N.W.2d 794, 800 (Iowa 2018). Therefore, it is not necessary for trial counsel to specifically urge the district court to apply a different standard under the state constitution in order to preserve the state constitutional claim. See id. Furthermore,

the Court has stated that 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. Pals, 805 N.W.2d 767, 771–72 (Iowa 2011) (citation omitted).

The State cites State v. Prusha, 874 N.W.2d 627 (Iowa 2016), for the proposition that a defendant who fails to urge a different standard under the state constitution waives the claim on appeal. (State's Br. p. 14). This is a misinterpretation of that decision. In State v. Prusha, the motion to suppress contended the search violated the statutes of the State of Iowa and the U.S. Constitution; it did not mention the Iowa Constitution. State v. Prusha, 874 N.W.2d 627, 629 (Iowa 2016). The Iowa Supreme Court ultimately found that, while the appellate brief argued for a different standard under the Iowa Constitution, the state constitutional issue was not preserved because the defendant never alerted the district court that he believed the search violated the Iowa Constitution, nor could the Supreme Court conclude the district court ruled on

the state constitutional claim. Id. at 630; see also State v. Coleman, 890 N.W.2d 284, 286 (Iowa 2017) (citing Prusha, 874 N.W.2d at 630)) ("We have held that when a defendant in the trial court *only identifies the Fourth Amendment* as the basis for a search and seizure claim, the state constitutional claim has not been preserved at the district court." (emphasis added)). Accordingly, the Iowa Supreme Court only addressed the defendant's claims under the Fourth Amendment. Prusha, 874 N.W.2d at 629; see also Ingram, 914 N.W.2d at 800 (citing id. at 629–30) ("[T]rial court records often reveal counsel had not raised an independent state constitutional argument at all. . . . When a double-barreled preservation problem occurs, namely, where the state constitutional issue is not raised in the district court and the failure to do so is not presented as an ineffective-assistance-of-counsel claim on appeal, we decline to reach the state constitutional issues.").

In this case, Brown specifically cited to both the U.S. Constitution and the Iowa Constitution in her motion to suppress. (Mot. Suppress) (App. p. 10). Moreover, the trial

court's ruling on the motion to suppress also notes that Brown contended her rights were violated under both the federal and state constitutions. (Mot. Suppress) (App. p. 12). Additionally, counsel clearly made her argument under the Iowa Constitution and State v. Coleman, which interpreted the protections of the state constitution:

> . . . I would point out that the case [the prosecutor] directs the court to, *Lloyd*, I believe was decided only under the federal constitution. *State v. Coleman* specifically says that since 2013 they have extended the protections of the Fourth Amendment and Section 1 of the Iowa Constitution because they normally hold it more strict and that consistently the court has been strengthening the protections under the Iowa Constitution.
>
> As the court points out in *Coleman* on page 299, limiting both the scope and duration of warrantless searches on the highways provides important -- important means of fulfilling the constitutional purpose behind Article I Section 8, namely, ensuring that government power is exercised in a carefully limited manner. Caselaw repeatedly emphasizes that even de minimis extensions of traffic stops are not acceptable.
>
> . . .
>
> . . . When the reason for the traffic stop is resolved, 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 on his or her own way. You cannot even de minimisly stop or continue the entire interaction.

> To say that because there is a dark tint on the window or that because it is dirty, like every other car during winter, is disingenuous at best. I think that gives law enforcement across the state a carte blanche ability to pull over a car and create the slippery slope that I just didn't see it, so we're going to have to continue and we're going to use that as a *reason for an investigative search.*
>
> That is ridiculous. That is a slippery slope. That is not what clearly the Iowa Supreme Court intends with this decision in *Coleman* and with the previous decisions since 2013 under the Iowa Constitution, in *Pals* and *Vance* and *Tyler.* All of those are strengthening the Iowa Constitution. We cannot give law enforcement a carte blanche ability to pull over a car, not do their job reasonably and then continue the search.

(Suppress. Tr. p.29 L.8–p.31 L.18).

Because Brown cited and argued the Iowa Constitution in her motion, the State had the chance to respond to her arguments, and the district court clearly considered the issue under the Iowa Constitution when ruling, the issue is adequately preserved for appeal. 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."); State v. Ambrose, 861 N.W.2d 550, 555 (Iowa 2015) (noting the principles of error preservation are based upon fairness and giving an opportunity to the district court to correctly rule on an issue).

Lastly, even if the Court concludes the issue was not adequately preserved in the trial court, it was alternatively raised as an ineffective-assistance-of-counsel claim. See (Def.'s Br. p. 44–46). Ineffective-assistance-of-counsel claims are not subject to the usual rules of issue preservation; therefore, the claim is not waived and is properly before the Court to consider. See State v. Ondayog, 722 N.W.2d 778, 784 (Iowa 2006) (citation omitted); see also Ingram, 914 N.W.2d at 799 (citations omitted) ("In his appellate briefing, Ingram has specifically urged us to follow a different approach . . . under the Iowa Constitution than has been employed by recent cases of

the United States Supreme Court and, to the extent the claim was not preserved in the district court, has raised an ineffective-assistance claim. We will proceed to consider the state constitutional issues.").

B. Merits: The State argues that it met its burden of proof. (State's Br. pp. 19–24). In doing so, it relies on the officer's testimony that he did not recall seeing a temporary plate before approaching the vehicle and asking for Brown's license, purchase paper work, and insurance information. (State's Br. pp. 20). However, the record is clear that the officer could not testify to when he saw the temporary plate. (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."). Therefore, the fact that the officer did not recall identifying the plate immediately on approach does not support

the conclusion that he did not see it until after the approach. Based on the record, the officer would have also testified that he did not recall identifying the plate *after* he had already approached the vehicle; the record is clear that he simply could not testify to when he identified the car had a temporary plate—whether that was before or after approaching the vehicle.

In addition, the State's reliance of the officer's questioning of Brown regarding the purchase paperwork for the vehicle as supportive that he did not see the temporary plate prior to approaching the vehicle is also misplaced. Rather, the officer's testimony suggests that when a car has a temporary plate, rather than a metal license plate, it is his policy to request the purchase paperwork, not the registration because the driver would not have registration paperwork yet. See (Suppress. Tr. p.11 L.23–25). The officer's testimony does not support the conclusion that he did not see a temporary plate prior to approaching the vehicle, only that he knew the car did not have a metal license plate attached to its rear bumper.

The State failed to meet its burden of proof in establishing

that the officer had continued reasonable suspicion of an ongoing crime when he approached the vehicle and asked for Brown's information. 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."). It failed to do so. Therefore, this Court should suppress the evidence stemming from the continued detention of the vehicle and subsequent search. See State v. Louwrens, 792 N.W.2d 649, 651–52 (Iowa 2010) (citation omitted).

CONCLUSION

For the reasons above and in the original Brief and Argument, Defendant–Appellant Destiny Brown respectfully requests the Court reverse her convictions and remand to the district court for suppression of all evidence flowing from the traffic stop and the subsequent search.

ATTORNEY'S COST CERTIFICATE

The undersigned hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $1.69, and that amount has been paid in full by the Office of the Appellate Defender.

MARK C. SMITH
State Appellate Defender

MARY K. CONROY
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1,736 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: 11.08.2018

MARY K. CONROY
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
mconroy@spd.state.ia.us
appellatedefender@spd.state.ia.us