IN THE SUPREME COURT OF IOWA
Supreme Court No. 19–0267

STATE OF IOWA,
Plaintiff–Appellee,

vs.

JASMAINE R. WARREN,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE SCOTT ROSENBERG, JUDGE

# APPELLEE'S BRIEF

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## ROUTING STATEMENT

The State agrees with Warren's routing statement. This case can be decided based on existing legal principles; thus, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

## STATEMENT OF THE CASE

### Nature of the Case

Following a bench trial, Jasmaine Warren, was found guilty of operating while intoxicated (second offense) and driving while license is denied or revoked. *See* OWOM085044 Findings of Fact, Conclusions of Law, & Verdict (11/14/2018); App.6–11. She now appeals asserting two grounds of error. First, she states that the district court rendered a general verdict because substantial evidence did not support the finding that she operated a motor vehicle while any amount of a controlled substance was present in her person as measured by her blood or urine. Next, she contends that counsel was ineffective for failing to argue for suppression on grounds that (1) her seizure lacked probable cause (2) the officer unlawfully extended the duration of her traffic stop.

The Honorable Scott Rosenberg presided over the bench trial and sentencing.

**Facts & Course of Proceedings**

On the night of May 4, 2018, Des Moines police officer Jeremy Engle began to follow defendant Jasmine Warren's vehicle after he saw it rapidly accelerate. Trial Tr. p. 10, lines 10–16. He continued following the vehicle into Corning Avenue and observed the vehicle pull into a driveway and park. *Id.* At this point, Officer Engle noticed that the vehicle was illegally parked: the vehicle's front half was on the driveway while the rear half was straddling the roadway—in violation of a "no parking" sign. Trial Tr. p. 10, lines 10–p. 11, lines 12.

Before Officer Engle could make a stop for the observed violation, a different police officer drove behind Warren's illegally parked vehicle and initiated a traffic stop. Trial Tr. p. 11, lines 2–4. Officer Engle stopped his patrol car behind that of the other officer and activated the back lights of his patrol car. Trial Tr. p. 11, lines 2–6. He then made contact with Warren; and immediately observed that Warren wanted to get out of her vehicle and quickly get inside the residence. Trial Tr. p. 10, lines 11–p. 12, lines 7. Officer Engle advised Warren that she was illegally parked; he then requested her

driver's license, registration, and proof of insurance. Trial Tr. p. 11, lines 5–12.

As Warren opened her driver's side door to retrieve the requested documents, Officer Engle smelled "a strong odor of marijuana" wafting from the vehicle. Trial Tr. p. 11, lines 7–16. He asked Warren why her vehicle smelled like marijuana. Trial Tr. p. 12, lines 11–14. She stated she had been smoking marijuana earlier at work. *Id.* Officer Engle then observed that Warren's eyes were bloodshot and watery and her eyelids were droopy. Trial Tr. p. 12, lines 17–20. He further noted that Warren exhibited a wave of emotions: giggling about her prospects of being arrested at one moment and then being upset the next moment. Trial Tr. p. 14, lines –22. Additionally, Officer Engle detected the smell of marijuana as well "as a faint odor of alcohol" emanating from her. Trial Tr. p. 12, lines 17–p. 13, lines 25. Officer Engle requested Warren perform field sobriety tests. she refused. Trial Tr. p. 15, lines 1–14. Believing that Warren was intoxicated, Officer Engle placed her under arrest for operating a vehicle while intoxicated. Trial Tr. p. 15, lines 1–p. 16, lines 9. At the station, Warren refused to submit a urine specimen. *Id.* She stated because of the amount of marijuana she had ingested,

her urine would test positive for the presence of marijuana. Trial Tr. p. 16, lines 17–22.

On June 8, 2018, the State charged Warren by trial information with operating while intoxicated—second offense, an aggravated misdemeanor, in violation of Iowa Code sections 321J.2 and driving while license is denied or revoked, also an aggravated misdemeanor, in violation of Iowa Code sections 321J.2 and 321J.21 (2018). Trial Information (OWOM085044); App.4–5. Of significance, the trial information did not delineate the specific subsection under section 321J.2 that was allegedly violated. Instead, it alleged Warren operated a motor vehicle:

> While under the influence of an alcoholic beverage or other drug, or a combination of such substances, or while having eight hundredths (0.08) or more alcoholic concentration or while any amount of controlled substances is present in the person as measured in the person's blood or urine.

Trial Information (OWOM085044); App.4–5.

The case proceeded to a bench trial on October 15, 2018. On November 14, 2018, the court entered written finding of facts stating that trial testimony established beyond a reasonable doubt Warren committed all the elements of OWI in violation of Iowa Code section 321J.2. However, the court did not designate the specific subsection

of Iowa Code 321J.2 that was violated. *See* 11/14/2018 Findings of Facts, Conclusions of Law & Verdict; App. 6–11. The court also found Warren guilty of driving while license is suspended or revoked. *Id.*

At sentencing, the court imposed a two–year indeterminate term of incarceration for the OWI charge and a one–year term of incarceration on the driving while license is revoked. *See* 2/13/2019 OWI Sentencing Order; 2/13/2019 Sentencing order–Driving While License is Revoked; App.12–16; 17–20. The court also ordered a fine of $1,875 in the OWI charge and a fine of $1,000 in the charge for driving while license is suspended or revoked. *Id.* Warren filed a timely notice of appeal. Notice of Appeal (2/14/19); App.21.

## ARGUMENT

### I. This Court Should not Reverse Warren's OWI Conviction: Newly Enacted Iowa Code Section 814.28 Legislatively Repeals Iowa's Common Law Rule That Reversed Claims Arising From General Verdicts. Section 814.28 Applies to all Pending Appeals.

#### Preservation of Error

Because this case was tried to the court, error preservation would ordinarily not bar Warren's sufficiency challenge. *See State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997).

**Standard of Review**

Sufficiency of evidence claims are reviewed for a correction of errors at law. *See State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012).

Any ruling that interprets the new provisions enacted by Senate File 589 would be reviewed for errors at law. *See State v. Anspach*, 627 N.W.2d 227, 231 (Iowa 2001).

**Merits**

Warren argues that substantial evidence did not support her conviction for operating while intoxicated under Iowa Code section 321J.2(1)(c) because there was no testing done to show the presence of any controlled substances in her blood or urine. Appellant's Br. at 10–13. She does not dispute the State presented sufficient evidence to support a guilty verdict under the other argued alternative—Iowa Code section 321J.2(1)(a). Her only contention is because the district court failed to specify which subsection she violated, and given that evidence supporting the *per se* theory of culpability was insufficient, a general verdict resulted. Appellant's Br. at 13.

The State agrees that the evidence was insufficient to establish Warren violated section 321J.2(1)(c) beyond a reasonable doubt; there was no testing done of her urine or blood specimen because she

declined to submit to a test. The State further agrees that by failing to designate the specific subsection supporting its verdict, the district court rendered a general verdict. Nevertheless, the State submits that reversal of Warren's conviction on such grounds is forbidden by the newly enacted Iowa Code section 814.28.

Iowa Code section 814.28—which became effective on July 1, 2019—provides:

> When the prosecution relies on multiple or alternative theories to prove the commission of a public offense, a jury may return a general verdict. If the jury returns a general verdict, an appellate court shall not set aside or reverse such a verdict on the basis of a defective or insufficient theory if one or more of the theories presented and described in the complaint, information, indictment, or jury instruction is sufficient to sustain the verdict on at least one count.

*See* Iowa Code § 814.28. Section 814.28 overturns Iowa Supreme Court's rule of "sound judicial administration" in which Iowa appellate courts reversed otherwise valid convictions because not all theories of guilt presented to the jury were supported by sufficient evidence. *See State v. Hogrefe*, 557 N.W.2d 871, 881 (Iowa 1996); *see also State v. Tyler*, 873 N.W.2d 741, 754 (Iowa 2016) (rejecting State's request to abandon *Hogrefe* and characterizing the decision as

"a matter of sound judicial administration"). The State argues that section 814.28 is a remedial statute, as such it is eligible for retroactive application to all pending cases on appeal.

"A remedial statute intends to correct 'existing law or redress an existing grievance.'" *Iowa Beta Chapter of Phi Delta Theta Fraternity v. State, Univ. of Iowa*, 763 N.W.2d 250, 266 (Iowa 2009) (quoting *Baldwin v. City of Waterloo*, 372 N.W.2d 486, 491 (Iowa 1985)). Procedural or remedial statutes may be granted retroactive application. *See State ex rel. Buechler v. Vinsand*, 318 N.W.2d 208, 210 (Iowa 1982) (observing procedural and remedial statutes may be applied to pending proceedings on the date the statute became effective). Iowa courts apply a three–part analysis for whether a remedial statute is applicable retrospectively:

> First, we look to the language of the new legislation; second, we consider the evil to be remedied; and third, we consider whether there was any previously existing statute governing or limiting the mischief which the new legislation was intended to remedy.

*Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil. Co.*, 606 N.W.2d 370, 374 (Iowa 2000) (quoting *Emmet Cnty. State Bank v. Reutter*, 439 N.W.2d 651, 654 (Iowa

1989)). Applying this three–part test to section 814.28 supports retroactive application.

First, the text of section 814.28 provides reason to believe the legislature intended retroactive application. It provides a rule for appellate courts to follow when confronted with the problem of a directed verdict and directs that an appellate court "shall not set aside or reverse such a verdict on the basis of a defective or insufficient theory if one or more of the theories presented. . . is sufficient to sustain the verdict on at least one count." *See* Iowa Code § 814.28. Because the plain reading of the language explicitly dictates what Iowa appellate courts should do when resolving general verdicts, it should apply to every appeal resolved after it became effective, and it should not matter when the verdict was rendered.

Second, section 814.28 is undoubtedly a legislative attempt to remedy appellate court decisions where though evidence supporting a guilty verdict was sufficient under one of the theories presented, a retrial was still granted because evidence was insufficient under an alternative theory presented. The reversal of valid verdicts on such grounds often result in the expenditure of judicial resources on unnecessary retrials. Section 814.28 remedies that evil; it allows the

affirmance on the factually adequate theory. As such, it should apply to all appeals resolved on or after its effective date, irrespective of the date of the conviction.

Third, because there is no statute governing or limiting the issue, a retrospective application of section 814.28 "would not be repugnant to any existing statute." *See Bainbridge*, 749 N.W.2d at 251. In enacting section 814.28, the legislature unambiguously intended to remedy Iowa's "general verdict" precedent. Prior to its enactment, there was no statute controlling on the question of general verdicts. Given that the legislature sought to stop cases on appeal being reversed and remanded on such grounds, it makes sense to apply this legislative directive to all appeals in the same manner rather than on piecemeal basis. *See generally Bd. of Trustees of Mun. Fire & Police Retirement Sys. v. City of West Des Moines*, 587 N.W.2d 227, 32 (Iowa 1998). The absence of a conflict with another statute or a previous version therefore weighs in favor of applying section 814.28 retrospectively. In summation, because the application of the three–part test—of retroactivity of remedial statutes—weighs in favor of applying section 814.28 retrospectively, this Court should hold it applies in this case and affirm.

In the event this Court finds section 814.28 does not apply retroactively, one suggested remedy would be for the Court to vacate the judgment on operating while intoxicated and remand the case for the district court to consider and rule on the existing record whether the facts support a conviction under section 321J.2(1)(a). This would be appropriate as a remedy given this was a bench trial rather than trial to a jury. Accordingly, the trial judge can consider Warren's guilt and make specified factual findings under section 321J.2(1)(a) alternative given that evidence was sufficient to support a conviction on that theory. *See State v. Irvin*, 334 N.W.2d 312, 315–16 (Iowa Ct. App. 1983).

Alternatively, this Court should reverse Warren's conviction for operating while intoxicated and remand for a new trial. *See Tyler*, 873 N.W.2d at 755 (reversing and remanding for new trial defendant's conviction because the jury returned a general verdict).

## II. Statutory Changes to Iowa Code Section 814.7 Bars This Court From Considering Warren's Ineffective Assistance of Counsel Claim on Direct Appeal. However, if This Court Decides to Address the Merits of her Claim on Direct Appeal, it Should Find that Counsel was not Ineffective.

### Preservation of Error

Statutory amendments to Iowa Code section 814.7 also preclude this Court from addressing Warren's claim of ineffective assistance of counsel on direct appeal. Section 31 of Senate File 589 amends Iowa Code section 814.7 to provide that claims of ineffective assistance of counsel "shall not be decided on direct appeal from the criminal proceedings," and shall instead be brought in postconviction relief actions. *See* Iowa Code § 814.7 (July 1, 2019).

Generally, "[i]f a procedural statute is amended, the rule is that the amendment applies to pending proceedings as well as those instituted after the amendment." *Smith v. Korf, Diehl, Clayton and Cleverley*, 302 N.W.2d 137, 138–39 (Iowa 1981) (quoting comment to Uniform Statutory Construction Act, now codified in Iowa Code § 4.5); *accord Dolezal v. Bockes*, 602 N.W.2d 348, 351–52 (Iowa 1999) ("In contrast to substantive legislation, procedural legislation applies to all actions—those that have accrued or are pending and future actions.").

In *Hannan v.* State, 732 N.W.2d 35 (Iowa 2007), the Iowa Supreme Court classified the 2004 amendments to section 814.7 (which eliminated the need to raise ineffective–assistance claims first on direct appeal) as procedural and retrospective because the amendment changed the procedure of raising ineffective–assistance claims without creating or extinguishing the claim itself. *Hannan* 732 N.W.2d at 50–51. The Court stated that the amendment to section 814.7, just like the original enactment "remedies the evil that occurs when litigants must raise ineffective assistance of counsel claims without an adequate record" on appeal. *Id.* at 51. The same analysis applies with equal force to this amendment which also sets a procedure for asserting and deciding ineffective assistance of counsel claims. *See id.*; *accord* S.F. 589, 88th General Assembly, § 31 (preserving the portion of section 814.7 that states: "[a]n ineffective assistance of counsel claim in a criminal case shall be determined by filing an application for postconviction relief pursuant to chapter 822"). Moreover, applying the amendments in this way will not result in Warren forfeiting her ineffective assistance claim. Warren can still proceed with this identical claim in a postconviction relief action pursuant to chapter 822, where she will have an opportunity to build

a factual record that might support her claim. In the meantime, however, Warren is unable to assert an ineffective assistance claim on direct appeal. She must first raise her claim, if at all, in a postconviction relief action.

In the event this Court finds that Senate File 589 does not apply to Warren's claim, ineffective assistance of counsel will not be a bar to the general rule of error reservation. *See State v. Lucas*, 323 N.W.2d 228, 232 (Iowa 1982).

**Standard of Review**

Ineffective assistance of counsel claims are grounded in the Sixth Amendment to the United States Constitution. *See State v. Albright*, 925 N.W.2d 144, 151 (Iowa 2019). Review is de novo. *Id.*

**Merits**

Warren contends her trial counsel was ineffective by failing to make a pre–trial motion to suppress on grounds that her seizure violated the Fourth and Fourteenth Amendments, and article 1, section 8 of the Iowa Constitution. Appellant's Br. at 15–23. She argues she was seized absent probable cause or reasonable suspicion. And adds that her seizure was impermissibly extended beyond its stated purpose. *Id.*

To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel failed to perform an essential duty and that prejudice resulted. *See Strickland v. Washington*, 466 U.S. 668, 687, 692 (1984). Both elements must be proven, and failure to prove a single element defeats the claim. *Ledzema v. State*, 626 N.W.2d 134, 142 (Iowa 2001). For breach of an essential duty, Warren must show her counsel "made errors so serious that counsel was not functioning as the counsel guaranteed by the Sixth Amendment." *Albright*, 925 N.W.2d at 151. Counsel is presumed competent, and their conduct is measured "against the standard of a reasonably competent practitioner." *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). Trial counsel does not breach an essential duty for declining to pursue a meritless issue. *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011); *see also State v. Schaer*, 757 N.W.2d 630, 637 (Iowa 2008). The second prong—prejudice—results when "there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's unprofessional errors." *Albright*, 925 N.W.2d at 151. Prejudice is shown when "the probability of a different result is 'sufficient to undermine confidence

in the outcome.' " *Id.* at 152 (quoting *Bowman v. State*, 710 N.W.2d 200, 206 (Iowa 2006)).

### A. Counsel did not Breach an Essential Duty Because Probable Cause Existed to Conduct a Traffic Stop.

A seizure must be reasonable to comply with the Fourth Amendment of the United States Constitution. *See Whren v. United States*, 517 U.S. 806, 810 (1996). Generally, a peace officer's observation of a traffic violation, however minor, provides probable cause to stop the motorist. *See State v. Tyler*, 830 N.W.2d 288, 293 (Iowa 2013). The same standard applies when officers reasonably suspect a parking violation. *See United States v. Johnson*, 874 F.3d 571, 573–74, (7 th Cir. 2017) (holding that a suspected parking violation justifies an investigative seizure). *See also United States v. Choudhry*, 461 F.3d 1097, 1104 (9 th Cir. 2006); *Flores v. City of Palacios*, 381 F.3d 391, 402–03 (5 th Circ. 2004); *United States v. Copeland*, 321 F.3d 582, 593–94 (6 th Cir. 2003) (all cases holding that trivial infractions including parking violations justify investigative seizures).

Application of the above principles establishes that Officer Engle had probable cause for his initial approach and temporary seizure of Warren. Officer Engle observed Warren illegally parking

her vehicle. Iowa law generally prohibits a person to "stop, stand, or park a vehicle, . . . at any place where official signs prohibit stopping or parking." Iowa Code § 321.358 (13) (2018). Warren does not contest her violation of the aforementioned code section. She also does not disagree that Officer Engle witnessed her committing the traffic violation. Appellant's Br. at 18. Therefore, under the established Fourth Amendment principles, Warren's traffic stop was justified. Nonetheless, Warren still argues that there was no legal basis for the stop. She claims her traffic violation was a "completed parking infraction" instead of a "moving violation" and says that since her parking violation was already "completed," it was unnecessary to seize her to enforce the violation. Appellant's Br. at 18–20.

In support of her argument, Warren directs this Court to two rulings from Ohio and Minnesota. Appellant's Br. at 19–20. In the Ohio case, *State v. Medlar*, 638 N.E.2d 1105–06 (Ohio Ct. App. 1994), a police officer saw an illegally parked vehicle which was unoccupied. However, instead of writing a ticket and leaving it on the vehicle, the officer waited for the driver to show up so that he could personally serve him with the citation. When the driver returned to the illegally parked vehicle and began to drive away, the officer

pursued him, pulled him over, administered field sobriety tests, and arrested him for driving while under the influence of alcohol. *Id.* at 1106. The driver challenged his stop arguing that the parking violation did not justify the officer's *Terry* stop. The Ohio Court of Appeals agreed. It held that under these circumstances, the stop was illegal. *Id.* at 1110. The court reasoned that the officer's waiting for the driver to return to issue a parking violation, permitting the driver to enter his vehicle and drive away, then pursuing and stopping the driver under the pretext of issuing a parking violation without articulable facts demonstrating that the driver's driving was impaired, and administering sobriety tests without being able to articulate specific facts justifying the stop, was unreasonable under the totality of the circumstances test and therefore violated both the Fourth Amendment to the United States Constitution and Ohio Constitution. *Id.*

Warren's reliance on *Medlar* is misplaced. Here, although it is true that the reason for seizing Warren was a parking violation, Officer Engle—unlike the officer in *Medlar*—did not wait for Warren to show up to personally serve her a ticket, nor did he wait for her to drive away before initiating a stop to issue a parking ticket. Instead,

Warren's seizure was made concomitantly with the observed traffic violation. *Medlar* is therefore not applicable here because the facts are fairly distinguishable.

Warren also relies on a case from Minnesota: *State v. Holmes*, 569 N.W.2d 181, 185 (Minn. 1997). *Holmes* is also easily distinguishable. In *Holmes*, the Minnesota Supreme Court determined that reasonable suspicion of a parking violation did not justify the seizure of the defendant, after a parking monitor "already had *enforced*" the parking violation "by issuing [a] ticket and ordering [a] tow." *Id.* at 185. (Emphasis in the original). *Holmes* involved a situation in which a parking–enforcement monitor had approached an unoccupied vehicle, issued a ticket, ordered a tow, and positioned her vehicle so that the car could not leave, before the defendant arrived on the scene. *Id.* at 182–183. When the defendant did arrive, an assisting police officer patted down the driver and discovered a cartridge magazine in his pocket. *Id.* at 183. The Minnesota Supreme court held that the search was unreasonable and therefore unconstitutional because the officer did not stop the driver for the purpose of enforcing the known violation, which was the parking infraction. *Id.* at 185.

This case, by contrast, concerns the propriety of approaching and temporarily detaining the driver of a car in order to enforce the parking laws in the first instance. Here, unlike in *Holmes*, Officer Engle had not had a chance to enforce the traffic violation prior to making the stop. Indeed, *Holmes* itself recognizes that a police officer may stop a person for a parking violation, on probable cause, "if the stop is necessary to enforce the violation." *Id*. at 185. Officer Engle did just that. Warren therefore cannot show she would prevail if this case arose in the Minnesota courts because the *Holmes* court's reasoning undermines, rather than supports her claim.

Lastly, Warren claims without citing to any authority that in enforcing the parking violation, it was unnecessary for Officer Engle to ask for her license, registration, and insurance. Appellant's Br.at 20. But Warren's contention conflicts with a well recognized distinction in both Iowa and Federal caselaw that permits a license check in such situations. *See Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015) (finding that the mission of any lawful traffic stop includes routine measures like checking driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance) *see*

*also State v. Coleman*, 890 N.W.2d 284, 299 (Iowa 2017) (recognizing that when there is a valid ongoing traffic stop, officers may properly seek driver's identification, registration, and insurance information). Warren presents no argument to overrule such precedent. Applying the directives of *Rodriguez* and *Coleman*, Officer Engle could permissibly inquire into Warren's driver's identification, registration, and insurance information because these were reasonable and ordinary inquiries made during a lawful ongoing traffic stop.

Because Officer Engle had probable cause to stop Warren for a traffic violation and because checking a driver's license during an otherwise lawful traffic stop constitutes a permissible inquiry, any objection by trial counsel would have been meritless. Counsel therefore was not ineffective.

### B. The Stop was not Unlawfully Extended Because Before any Delay had Occurred, Officer Engle saw Signs That Warren had Been Driving Drunk. At This Point, the Officer had Reasonable Suspicion to Extend the Traffic Stop to Investigate and Eventually Arrest Warren for Drunk Driving.

Warren next makes an argument that bears some similarity to that in the preceding discussion: she claims her stop was impermissibly extended, as such, counsel was deficient for failing to

argue a motion to suppress. Appellant's Br. at 21–22. She proffers *Rodriguez* and *Coleman* to support her contention that because the basis for her traffic stop was a parking violation, the officer's interaction with her impermissibly extended the scope of the stop. Appellant's Br. at 22.

*Rodriguez* and *Coleman* are both unhelpful to Warren's argument. *Rodriguez* addresses situations where police action prolongs the length of a stop beyond the principal reason that warranted the stop. *See* 135 S. Ct. at 1614–1615. In *Rodriguez* the Court found that waiting for a drug–sniffing dog to arrive unconstitutionally prolonged the stop because all the business related to the traffic stop had been completed. It explained that "the tolerable duration of police inquiries in the traffic–stop context is determined by the seizure's 'mission.'" *Id.* at 1614. That "mission" includes investigating the offense that led to the stop as well as "ordinary inquiries" such as asking for a driver's license. *Id.* at 1615. *Rodriguez* is thus distinguishable from the facts in this case.

*Coleman* also does not apply under these facts. In *Coleman*, a post–*Rodriguez* case, a sharply divided Iowa Supreme Court held—based on the Iowa Constitution—that an officer cannot conduct the

ordinary inquiries such as requesting a license and proof of registration, if reasonable suspicion for the stop dispels after the lawful stop. *Coleman*, 890 N.W.2d at 301. The concern in *Coleman* was that the inquiry was unrelated to the initial detention because the underlying reason for the stop had already been resolved and there was no other basis for reasonable suspicion. *Id.*

Warren's contention therefore overlooks the fact that *beyond* the traffic violation, Officer Engle's investigation quickly morphed from a parking violation to one of operating while intoxicated based on his reasonable suspicion or probable cause that she was operating while intoxicated. Here, there is no dispute that the basis for the stop had not been resolved when Officer Engle developed reasonable suspicion that Warren was driving while intoxicated. At the time Officer Engle developed his reasonable suspicion, he had not yet terminated the stop by issuing a ticket; rather, he was in the process of conducting the ordinary inquiries that are lawful under both *Coleman* and *Rodriguez*—so long as the reasonable suspicion for the stop has not dissipated. Officer Engle observed signs that Warren was intoxicated: admissions to smoking marijuana, bloodshot eyes, droopy eyelids, giggling at one moment and crying at the next. Trial

Tr. p. 12, lines 11–p. 14, lines 22. Given such observations Officer Engle's reasonable suspicion that Warren was driving drunk arose before any delay had occurred. Consequently, Officer Engle did not expand the scope of the stop because his observations were made in the context of the initial stop. Moreover, nothing in the record suggests that Officer Engle slothed through his mission to fish for wrongdoing. In sum, Warren's temporary detention lasted no longer than was necessary to effectuate the stop before the basis for another reasonable suspicion arose. To the extent that Warren argues that Officer Engle should have simply written a citation, placed it on her vehicle, and then turned and walked away; such a reaction is neither practical nor required. Here Officer Engle reasonably needed to complete the traffic stop by speaking with the driver to ascertain the identity of the person violating the traffic code, documenting a name for the officer's reporting requirements, and providing the stopped driver with the courtesy of an explanation for the seizure. Under these facts and the case law, a motion to suppress would have had no merit; therefore, counsel was not ineffective.

## CONCLUSION

Based on all the foregoing reasons, this Court should affirm Warren's conviction.

## REQUEST FOR NONORAL SUBMISSION

Oral argument is not necessary to resolve these issues. In the event that argument is scheduled, the State requests 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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