IN THE SUPREME COURT OF IOWA
Supreme Court No. 19–0283

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALAN JAMES KUUTTILA,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR STORY COUNTY
THE HON. STEVEN P. VAN MAREL, JUDGE (MTS & TRIAL)
& THE HON. JAMES B. MALLOY, JUDGE (SENTENCING)

APPELLEE'S BRIEF

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Authorities

Abel v. United States, 362 U.S. 217 (1960)
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Iowa Legal Aid, *Identity Theft* (updated Mar. 30, 2011), https://www.iowalegalaid.org/resource/identity-theft-2

II. A series of anonymous tips were corroborated by finding methamphetamine residue, marijuana shake, and used hypodermic needles in the trash that also contained Kuuttila's mail. Was there a substantial basis for the finding that the warrant application established probable cause for a search of Kuuttila's apartment?

Authorities

Illinois v. Gates, 462 U.S. 213 (1983)

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State v. Hess, 533 N.W.2d 525 (Iowa 1995)
State v. McMurry, 925 N.W.2d 592 (Iowa 2019)

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Authorities

State v. Albright, 925 N.W.2d 144 (Iowa 2019)
State v. McMurry, 925 N.W.2d 592 (Iowa 2019)

ROUTING STATEMENT

Kuuttila seeks retention for his claim that "trash rips" violate a constitutional right against unreasonable searches and seizures. *See* Def's Br. at 17. However, Iowa courts have repeatedly held that "the use of evidence obtained by searching the defendant's garbage [does] not intrude upon his legitimate expectation of privacy." *See State v. Henderson*, 435 N.W.2d 395–97 (Iowa Ct. App. 1988); *accord State v. Skola*, 634 N.W.2d 687, 690–91 (Iowa Ct. App. 2001) ("We refuse to depart from the explicit holding in *Henderson* that warrantless garbage searches do not violate our state constitution."). As such, this appeal may be resolved by applying established legal principles, and it fits the criteria for transfer to the Iowa Court of Appeals. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is Alan James Kuuttila's direct appeal from convictions for (1) possession of cannabidiol; (2) possession of methamphetamine; and (3) possession of marijuana. Each is a serious misdemeanor, in violation of Iowa Code section 124.401(5) (2017). He was sentenced to five days in jail on each offense, run consecutively, with credit for time already served. *See* Judgment & Sentence (2/14/19); App. 23.

Kuuttila filed a motion to suppress all of the evidence recovered from a search of his residence, pursuant to a search warrant. The court overruled his motion to suppress. Kuuttila renews his arguments from his motion to suppress in this appeal: (1) the warrantless seizure of his trash from the quadplex's trash cans violated his constitutional rights against unreasonable searches and seizures; and (2) even with facts discovered from that trash rip, the search warrant application did not establish probable cause to support issuance of that search warrant. Kuuttila also raises two additional issues relating to assessment of costs and fees at sentencing.

Course of Proceedings

The State generally accepts Kuuttila's description of the relevant course of proceedings. *See* Iowa R. App. P. 6.903(3); Def's Br. at 17–18.

Statement of Facts

Detective Andy Boeckman worked for the Story County Sheriff's Office and was part of the Central Iowa Drug Task Force. *See* MTS Tr. 4:16–5:15. The task force had "received several tips through [their] crime stopper tip line that the defendant was a drug dealer dealing in marijuana and methamphetamine, that he lived in a red house that had been split up into a [quad]plex in Nevada." *See* MTS Tr. 6:5–23.

Detective Boeckman made some drive-by observations of the residence and spotted Kuuttila's car; he verified that Kuuttila owned that vehicle by running a registration check. *See* MTS Tr. 6:24–7:5. After that, Detective Boeckman conducted "trash pulls," which meant seizing trash from receptacles where it had been placed for collection. *See* MTS Tr. 7:6–23. He described the location of these trash cans:

> So the house sits on the— I believe it's going to be the southwest corner of F Avenue and 5th. There's an alley way that runs parallel to it would be 5th Street that you can enter to, and right along that alley way to the west of the red house are four trash bins that are sitting basically on the grass, but right next to the alley way.

MTS Tr. 8:5–10:11; State's Ex. 1–4; App. 13–16. Detective Boeckman seized trash bags he found inside those trash bins on two occasions. One of those trash bags contain Kuuttila's mail, and it also contained waste that strongly suggested either drug use or drug trafficking:

> One of the bags I located mail addressed to the defendant. Also inside that bag I located two small baggies, one with a crystal substance in it and one with a green leafy substance in it, as well as paraphernalia. As far as the paraphernalia goes, I'm not sure right at this moment if it was meth paraphernalia or marijuana, but it was a paraphernalia used to use those controlled substances. I then tested the substances in the baggies, and they both field tested positive, one for meth, the other for marijuana.

MTS Tr. 10:18–11:10. Detective Boeckman included those facts in his application for a search warrant for the residence, which was granted.

Detective Boeckman affirmed that the trash cans were located in a space that was readily accessible to the public, and adjacent to an alley that is available for public use. *See* MTS Tr. 11:11–21. Moreover, he testified that "it's pretty common" for people to scavenge through trash cans that are placed out for collection. *See* MTS Tr. 13:20–14:8. The trash cans were placed next to a telephone pole, and there was a metal bar that encircled the trash cans "so they don't blow away." *See* MTS Tr. 15:19–24; State's Ex. 3; App. 15.

Kuuttila argued that he had a reasonable expectation of privacy in the trash bag that he placed in these trash cans, intending that it be collected for disposal. *See* MTS Tr. 16:13–17:10. The court disagreed:

> [W]hen I look at the State's exhibits, these trash cans are a long ways from the house. They're wide open. They're out by the alley. Obviously they are trash meant for the garbage men to pick up, and I find that defendant had no reasonable expectation in privacy in the garbage cans.
>
> I'm not willing to take the next step and expand the Fourth Amendment or Article 1 of Section 8 of the Iowa Constitution to be broader than what's already been ruled on both by the Iowa Supreme Court and the United States Supreme Court. Maybe that'll happen, I don't know, but at this stage the current state of the law is people do not have a reasonable expectation of privacy in their garbage, and so I'm not going to expand that.

MTS Tr. 21:15–23:4. Additional facts will be discussed when relevant.

ARGUMENT

I. Kuuttila had no legitimate expectation of privacy in the contents of this trash bag, which he abandoned when he placed it in the quadplex's trash cans for collection and for permanent disposal in a public waste stream.

Preservation of Error

Kuuttila raised this argument in his motion to suppress, and the trial court ruled on it. *See* MTS (11/5/18); App. 7; Reply (11/27/18); App. 9; MTS Tr. 16:13–17:10; MTS Tr. 21:15–23:4. This preserved error for the same argument on appeal. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

"Constitutional issues are reviewed de novo, but when there is no factual dispute, review is for correction of errors at law." *State v. Young*, 863 N.W.2d 249, 252 (Iowa 2015). Competing interpretations of provisions of the Iowa Constitution are evaluated through "exercise of our best, independent judgment of the proper parameters of state constitutional commands." *See State v. Short*, 851 N.W.2d 474, 490 (Iowa 2014). As the Iowa Supreme Court has rejected a criteria-based approach, the ultimate touchstone for resolving conflicts between two proposed interpretations of the Iowa Constitution is persuasiveness. *See id.*; *Young*, 863 N.W.2d at 257.

Merits

Kuuttila makes an argument that *California v. Greenwood* has lost validity as an articulation of Fourth Amendment principles. *See* Def's Br. at 22–31 (discussing *California v. Greenwood*, 486 U.S. 35 (1988)). Much of his argument depends on the *Greenwood* dissent. *See* Def's Br. at 24–26. That dissent was not enough to persuade the majority of the Court when *Greenwood* was decided—and that was before the majority opinion had acquired any precedential value. *See Gamble v. United States*, 139 S.Ct. 1960, 1969 (2019) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)) (explaining that stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process"). And only the United States Supreme Court may overrule *Greenwood*. Although there may be questions about the third-party doctrine after *Carpenter* (which will be discussed), *Greenwood* remains binding precedent for Fourth Amendment purposes—as Kuuttila candidly recognized below. *See* MTS Tr. 16:24–17:10 (urging the trial court to "extend the scope of Article I, Section 8, beyond what we acknowledge is pretty well settled United States Supreme Court precedent").

In *Greenwood*, the Court rejected a similar Fourth Amendment challenge to evidence from curbside trash. It started by observing that "warrantless search and seizure of the garbage bags left at the curb outside the Greenwood house would violate the Fourth Amendment only if respondents manifested a subjective expectation of privacy in their garbage that society accepts as objectively reasonable." *See Greenwood*, 486 U.S. at 39. The *Greenwood* Court assumed, for the sake of argument, that people who placed trash bags out for collection might still have a subjective expectation of privacy in their contents—but that "does not give rise to Fourth Amendment protection . . . unless society is prepared to accept that expectation as objectively reasonable." *See id.* at 39–40. The biggest problem was that the respondents had "placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector," and had no expectation of control over whether that third party "sorted through respondents' trash or permitted others, such as the police, to do so." *See id.* at 40. But it was not just garbage collectors who were known to have access to garbage that was placed out for collection—it was "common knowledge" that curbside trash is "readily accessible to animals, children, scavengers, snoops, and other members of the public." *See id.* (footnotes omitted).

Indeed, the garbage was removed from the house and placed outside "for the express purpose of having strangers take it"—which meant that any expectation of privacy in those garbage bags was necessarily forfeited or rendered unreasonable. *See id.* at 40–41 (quoting *United States v. Reicherter*, 647 F.2d 397, 399 (3d Cir. 1981)).

Understandably, Kuuttila's focus is on the Iowa Constitution. He urges the Iowa Supreme Court to hold that Article I, Section 8 of the Iowa Constitution prohibits police from seizing and inspecting trash that was put out for collection, because (in his view) it violates objectively reasonable expectations of privacy. *See* Def's Br. at 31–46. Kuuttila also argues that *Greenwood* has lost validity and "is ripe for reconsideration under the federal constitution." *See* Def's Br. at 24–31. The State will address all of Kuuttila's arguments together, because the real question is which approach has more "persuasive power" and exemplifies "the proper parameters of state constitutional commands." *See Short*, 851 N.W.2d at 481, 490.

For a claim under Article I, Section 8 of the Iowa Constitution, "an individual challenging the legality of a search has the burden of showing a legitimate expectation of privacy in the area searched" that is also "one that society considers reasonable." *See State v. Lowe*, 812

N.W.2d 554, 567 (Iowa 2012) (quoting *State v. Fleming*, 790 N.W.2d 560, 564 (Iowa 2010)). That contains two distinct inquiries: Kuuttila must establish "(1) a subjective expectation of privacy and (2) this expectation of privacy was [objectively] reasonable." *State v. Brooks*, 888 N.W.2d 406, 411 (Iowa 2016) (quoting *State v. Tyler*, 867 N.W.2d 136, 168 (Iowa 2015)). Kuuttila adopts this analytical framework and does not push for adoption of a different approach under Article I, Section 8. *See* Def's Br. at 30 (citing *Brooks*, 888 N.W.2d at 410–11).

Kuuttila cannot show a subjective expectation of privacy in the contents of the trash bag—he abandoned his garbage for disposal, and relinquished any privacy interest that he once had. That abandonment also diminishes the objective reasonableness of any subsequent claim to any expectation of privacy in the garbage that he placed at the curb for collection. Beyond abandonment, there are additional facts that illustrate why asserting any expectation of privacy in the contents of this trash bag would be unreasonable: (1) these curbside bins were accessible to the general public; (2) it is common sense that placing garbage out for collection is an irrevocable and permanent transfer to third parties, who acquire total control over it; and (3) regulations on waste disposal show that trash is a public concern, not a private one.

A. Kuuttila abandoned this property by placing it in the trash can. When he abandoned this property, he relinquished any expectation of privacy that he otherwise might have had.

An item is permanently abandoned when it is thrown away. This matters for intuitive reasons: a person has a diminished expectation of privacy in abandoned property, because anyone may take it. *See Greenwood*, 486 U.S. at 40–41 (quoting *Reicherter*, 647 F.2d at 399) (noting that expectation of privacy was either forfeited or rendered unreasonable when the garbage was placed "in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it"); *accord United States v. Dunkel*, 900 F.2d 105, 106–07 (7th Cir. 1990) ("Someone who tosses documents into a dumpster to which hundreds of people have ready access has no legitimate expectation of privacy in the dumpster or its contents."), *vacated on other grounds*, 498 U.S. 1043 (1991). Abandonment relinquishes any expectations of privacy.

The *Greenwood* dissent said that the majority opinion "rejects the State's attempt to distinguish trash searches from other searches on the theory that trash is abandoned and therefore not entitled to an expectation of privacy." *See id.* at 51 (Brennan, J., dissenting). But the majority opinion does no such thing. There is a footnote in the dissent

that criticizes the majority for citing cases that "rely entirely or almost entirely on an abandonment theory that, as noted *infra*, at 1629, the Court has discredited." *See id.* at 49 n.2. But nothing like that appears in the majority opinion—least of all at page 1629, where it states that "respondents could have had no reasonable expectation of privacy in the inculpatory items that they discarded." *Id.* at 41 (majority opinion); *see also United States v. Redmon*, 138 F.3d 1109, 1119 (7th Cir. 1998) (Coffey, J., concurring) (observing that *Greenwood* "never expressly, nor impliedly for that matter, rejected the abandonment theory," and that "[t]ry as one might, no one is able to point to a single passage in the *Greenwood* majority opinion that suggests otherwise"); *Redmon*, 138 F.3d at 1125–26 (Flaum, J., concurring) ("In fact, the page cited by Justice Brennan for this proposition demonstrates that abandonment was an important component of the [majority opinion]'s holding that Greenwood's garbage was readily accessible."); *United States v. Scott*, 975 F.2d 927, 930 n.1 (1st Cir. 1992). The key to *Greenwood*'s rationale is that police had seized and searched garbage that was (1) abandoned, and (2) in a publicly accessible space, where it was "common sense" that any needy vagabond or hungry animal could scrounge through it, once the owner had effectively disclaimed any interest in its contents.

See Greenwood, 486 U.S. at 41–42 (stating "conclusion" that "society would not accept as reasonable respondents' claim to an expectation of privacy in trash left for collection in an area accessible to the public").

The point that the *Greenwood* dissent wanted to make was that, by analyzing whether there was a reasonable expectation of privacy in abandoned items that were put in trash bags and put out for collection, the majority opinion implicitly concluded that abandonment *alone* is not enough to render the Fourth Amendment inapplicable, by its text; it rejects suggestions that "their . . . effects" should be read to require an ongoing possessory interest in the property. *See id.* at 51 (quoting *California v. Rooney*, 483 U.S. 307, 320 (1987) (White, J., dissenting)). But that is different from disclaiming the significance of abandonment in determining whether any subsequent assertion of privacy interests is authentic or reasonable. *See Rooney*, 483 U.S. at 322–23 (White, J., dissenting) (finding no reasonable expectation of privacy in property because respondent had "exposed his betting papers to the public by depositing them in a trash bin which was accessible to the public," and where "he no longer exercised control over them"). Putting trash out for collection in publicly accessible areas is a *unique* abandonment that forecloses any legitimate expectation of privacy in its contents.

See id. at 321–22 (noting "[i]t is common knowledge that trash bins and cans are commonly visited by animals, children, and scavengers looking for valuable items, such as recyclable cans and bottles, and serviceable clothing and household furnishings," which means that "any expectation of privacy respondent may have had in the contents of the trash bin was unreasonable"); *accord Greenwood*, 486 U.S. at 40–41 (majority opinion); *Henderson*, 435 N.W.2d at 396 (quoting and incorporating *Greenwood*'s discussion of "common knowledge").

Because abandonment of property is a critical ingredient in *Greenwood*'s holding, recent decisions on the third-party doctrine have limited relevance. *See, e.g.*, *Carpenter v. United States*, 138 S.Ct. 2206 (2018). Kuuttila relies on the *Greenwood* dissent's point that entrusting a letter to a postal carrier does not cause the sender to lose any reasonable expectation of privacy in the contents of the letter. *See* Def's Br. at 26 (quoting *Greenwood*, 486 U.S. at 54–55 (Brennan, J., dissenting)). But society has markedly different expectations for that mail carrier: it is reasonable to expect a postman to deliver a letter to its intended recipient without reading it (or letting anyone else read it), but there is no expectation that garbage collectors will maintain any privacy or confidentiality in the garbage that is "entrusted" to them.

Sending a letter does not abandon it—the sender seals the envelope, entrusts it to a mail carrier, and expects it to be opened by a recipient (and nobody else). Unsurprisingly, the United States Supreme Court has always recognized that letters in the mail are "intended to be kept free from inspection" and are "as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles." *See Ex parte Jackson*, 96 U.S. 727, 732–33 (1877); *accord United States v. Jacobsen*, 466 U.S. 109, 114 (1984) ("Letters and other sealed packages [in transit] are in the general class of effects in which the public at large has a legitimate expectation of privacy; warrantless searches of such effects are presumptively unreasonable."). But when a letter arrives, the sender loses any privacy interest in its contents, because they have given the letter away to the ultimate recipient. *See United States v. Dunning*, 312 F.3d 528, 531 (1st Cir. 2002) ("[I]f a letter is sent to another, the sender's expectation of privacy ordinarily terminates upon delivery."); Wayne R. LaFave, 6 *Search & Seizure* § 11.3(f), at n.441 (updated Oct. 2019) (collecting similar cases). Trash is already "given away" when placed at the curb for collection—unlike sealed letters, it is *abandoned* to third parties, not *entrusted* to them.

The chief problem with *Greenwood*'s dissent is that it ignores the critical distinction between a reasonable expectation of privacy in property that is *entrusted* to third parties for safekeeping or transfer to an intended recipient, and the common understanding that items lose their private character when *abandoned* to third parties as junk. The New Jersey Supreme Court made the same mistake in *Hempele*, which Kuuttila's brief quotes extensively. *See State v. Hempele*, 576 A.2d 793, 805–07, 810–12 (N.J. 1990). Other courts see it differently:

> When one "relinquishes possession" of mail to the postal service, it is with the implicit understanding that it will be delivered safely and unopened to the addressee or, if delivery cannot be effected, returned unopened to the sender. We are unaware of any custom or practice wherein citizens expect that their trash be returned to them in the event that the trash collector finds the landfill closed. While we could write pages pointing out the defects in the mail-garbage analogy, . . . we decline to join those who see no significant difference between the garbage and the mail.

People v. Stage, 785 N.E.2d 550, 552 (Ill. Ct. App. 2003); *see also State v. Ranken*, 25 A.3d 845, 860 (Del. Super. Ct. 2010) ("This Court declines to equate the protected contents of a federally protected mailbox to the contents of a garbage bag or can on the curb."), *aff'd sub nom. Ranken v. State*, 21 A.3d 597 (Del. 2011). And comparisons to expectations of privacy in the words spoken during telephone calls and contents of bank records have also been rejected as inapposite:

> Hillman urges this court to follow two distinct lines of authority interpreting article II, § 7, in the contexts of numbers dialed from a telephone and of bank records, wherein we recognized expectations of privacy in transactions involving third parties. . . . We find that these lines of authority are distinguishable and thus do not govern the instant case because individuals do not generally know that *members of the public* might inspect or snoop in and around their telephone or bank records.

People v. Hillman, 834 P.2d 1271, 1277 n.14 (Colo. 1992). Even after Colorado emphatically rejected the third-party doctrine under the analogous provision of its state constitution, that did not compel the Colorado Supreme Court to find a subjective or objectively reasonable expectation of privacy in garbage that had been left out for collection in publicly accessible spaces. *See id.* at 1276–77 & n.14. Property that is entrusted to another for safekeeping can potentially remain private, but property that is discarded in curbside garbage cans for collection is abandoned—in every sense of the word. *See State v. Schmalz*, 744 N.W.2d 734, 741 (N.D. 2008) (quoting *State v. Rydberg*, 519 N.W.2d 306, 310 (N.D. 1994)) ("By placing her garbage on or against the public alley, where it was exposed to the general public, and with the express purpose of abandoning it to the trash collector, Rydberg waived any privacy interest she may have had in the garbage."); *see also People v. Huddleston*, 347 N.E.2d 76, 80–81 (Ill. Ct. App. 1976)

("When defendant placed the trash at curbside for collection, he relinquished control and possession and abandoned it in the sense that he demonstrated an unequivocal intention to part with it forever.").

Abandonment matters because it is inconsistent with ongoing expectations of privacy. "Implicit in the concept of abandonment is a renunciation of any 'reasonable' expectation of privacy in the property abandoned." *See Huddleston*, 347 N.E.2d at 80 (quoting *United States v. Mustone*, 469 F.2d 970, 972 (1st Cir. 1972)). "When individuals voluntarily abandon property, they forfeit any expectation of privacy in it that they might have had." *See United States v. Thomas*, 864 F.3d 843, 645 (D.C. Cir. 1989) (quoting *United States v. Jones*, 707 F.2d 1169, 1172 (10th Cir. 1983)). Indeed, abandoning trash by taking it to the curb for collection is usually a renunciation of *any* expectations about what will happen to those specific items. There is a general lack of knowledge or concern about the identity of garbage collectors, the specific landfills where local trash is taken, and the sorting processes used before final disposal. "The owner wants and expects the trash to go away, and who removes it is normally a matter of indifference." *See Litchfield v. State*, 824 N.E.2d 356, 363 (Ind. 2005). Most courts find such abandonment relinquishes any remaining expectation of privacy.

See, e.g., *Abel v. United States*, 362 U.S. 217, 241 (1960) ("[P]etitioner had abandoned these articles. He had thrown them away. So far as he was concerned, they were bona vacantia. There can be nothing unlawful in the Government's appropriation of such abandoned property."); *United States v. Veatch*, 674 F.2d 1217, 1220 (9th Cir. 1981) ("[U]pon abandonment, the party loses a legitimate expectation of privacy in the property and thereby disclaims any concern about whether the property or its contents remain private."); *State v. Fassler*, 503 P.2d 807, 814 (Ariz. 1972) (quoting *United States v. Jackson*, 448 F.2d 963, 971 (9th Cir. 1971)) ("When defendants placed articles in this public trash can outside the room, they surrendered their privacy with regard to those articles."). The Wyoming Supreme Court said it plainly:

> Mr. Barekman placed the trash in the barrel for it to be taken away and deposited in the city landfill. Other than placing his trash in a bag as the collector required, Mr. Barekman took no precautions to keep his trash private. Under these circumstances, it is difficult for us to conclude that he had either an actual subjective expectation of privacy or a reasonable expectation of privacy that society is prepared to recognize. . . .
>
> [. . .]
>
> [O]nce Mr. Barekman placed his trash in the barrel at the curb on the public roadway for someone else to take it away, he evidenced the intent to relinquish any expectation of privacy he had in the contents.

Barekman v. State, 200 P.3d 802, 808–09 (Wyo. 2009).

In this case, abandonment is the only probative evidence of Kuuttila's subjective expectations. In the State's view, that is sufficient to foreclose any claim that he held a subjective expectation of privacy. Abandonment is also probative as to whether expectations of privacy in curbside trash would be objectively reasonable, by the same logic. "[S]ociety's experience with trash left at the alley or curb for collection is anything but consistent with an objective expectation of privacy." *State v. A Blue in Color, 1993 Chevrolet Pickup*, 116 P.3d 800, 804–05 (Mont. 2005). Shared attitudes and expectations about curbside trash are necessarily informed by the common understanding that garbage awaiting collection is abandoned. The rest of this argument discusses some of those common attitudes, and how they manifest in behaviors and arrangements that negate any expectations of privacy in garbage. In addition to foreclosing any expectations of privacy, these arguments also illustrate that shared understanding: everyone knows that trash is abandoned when it is left out for collection. That is why people leave their garbage bins unguarded in publicly accessible spaces; it is why people are unconcerned that third parties will collect their trash and will never return it or report back on its status; and it is why people accept that their garbage will be sorted and used for the public good.

B. These trash cans were put out for collection and were accessible to the public. Kuuttila had no reasonable expectation of privacy in any garbage that he placed into curbside trash cans, which anyone could access.

Courts applying *Greenwood* sometimes begin by determining whether the trash cans were located within the curtilage of the home. *See, e.g.*, *Commonwealth v. Ousley*, 393 S.W.3d 15, 33 (Ky. 2013). Upon finding an impermissible search occurred because garbage was seized from within the curtilage, *Ousley* advised Kentucky police to "wait for the trash to be placed for pick-up." *See id.* at 32–33. There is nothing wrong with crafting a rule that police may search garbage that has been put out for collection—after all, that is when it has truly been abandoned into a public waste stream. But *Ousley* creates issues when someone argues that trash is routinely collected from inside the curtilage of their home. It would probably be permissible to hold that any location used for public collection of garbage is *never* curtilage, by categorical rule. *See United States v. Dunn*, 480 U.S. 294, 301 (1987) (explaining four factors for analyzing curtilage, including "the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by"). But that may be overly simplistic, and it may have unintended consequences.

The better approach focuses on "whether the garbage was so readily accessible to the public that its contents were exposed to the public for Fourth Amendment purposes"—which happens whenever trash cans are put out for collection. *See State v. Fisher*, 154 P.3d 455, 472 (Kan. 2007) (citing *United States v. Hedrick*, 922 F.2d 396, 400 (7th Cir. 1991)); *see also United States v. Long*, 176 F.3d 1304, 1308 (10th Cir. 1999). The Seventh Circuit explained this intuitive notion:

> If the garbage is placed at the curb, the public has ready access to it from the street, and in fact can be expected to utilize that ability. On the other hand, garbage cans placed next to the house or the garage are not so accessible to the public that any privacy expectations are objectively unreasonable.

Hedrick, 922 F.2d at 400. The Maryland Court of Appeals noted that this approach has the benefit of affording some privacy in trash cans *until* they are placed in publicly accessible areas for pickup. *See State v. Sampson*, 765 A.2d 629, 635 (Md. 2001). But whenever "the trash is placed for collection at a place that is readily accessible, and thus exposed, to the public, the person has relinquished any reasonable expectation of privacy" to the point where "it matters not whether that area is technically within or without the boundary of the curtilage." *See id.* at 636. Any curtilage-based approach would ignore the reality that people place their garbage cans to *enable* public access, for collection:

> To suggest that the concept of curtilage has any meaning to people in the context of placing their trash for collection is absurd. They put their trash containers where they must put them if they wish the collector to take them. If there is no sidewalk or curb, the containers are likely to be placed on the lawn, close to the street or alley; if there is a strip between a sidewalk and the street, they are likely to be placed there; if the street immediately abuts a sidewalk, they may well be placed, as respondent did, on the lawn at the edge of the sidewalk, to avoid obstructing pedestrian traffic on the sidewalk. If there is a common area serving several residential units, they will be placed in that area. We have been referred to no empirical evidence that people have different privacy expectations depending on whether the place they put their trash for collection is within or without what, in hindsight, a court later finds to be the curtilage. Nor would it be reasonable to give credence to any such different expectations.

Id.; *accord Hillman*, 834 P.2d at 1277 (quoting *People v. Shorty*, 731 P.2d 679, 681 (Colo. 1987)) ("[T]he fact that a search occurs within the curtilage is not dispositive if the area's public accessibility dispels any reasonable expectation of privacy."). In reality, it does not matter where curtilage begins or ends. When garbage cans are placed out for collection, they are publicly accessible—they invite trash collectors to make whatever entry onto the property is necessary to access them. They also signal to the rest of the community that the space is used for waste disposal through community utilities, implying public access.

Kuuttila points to Nevada's ordinance that prohibits scavenging. *See* Def's Br. at 41 (citing Nevada, Iowa, Code of Ordinances § 105.10).

But Nevada's decision to prohibit scavenging as something distinct from trespassing and from theft is an indication that scavenging is a bird of a different feather: society views scavengers differently from how it views thieves, and it does not consider scavenging garbage to be equivalent to theft. *See* Nevada, Iowa, Code of Ordinances § 1.14 (providing standard penalty for violating ordinances: up to $500 fine, and up to thirty days in jail); Iowa Code § 714.2 (classifying degrees of theft by reasonable value of the property, with the lowest classification being a simple misdemeanor); Iowa Code § 903.1(a) (listing $625 fine and thirty days in jail as maximum sentence for simple misdemeanor, and prohibiting the court from suspending the fine). Indeed, the need for ordinances that forbid scavenging is further indication that society views curbside trash as abandoned by its prior owner—otherwise, it would be theft, and there would be no need for such ordinances. *See* Iowa Code § 714.1(1) (defining theft as taking "the property of another" and doing so "with the intent to deprive the other thereof"). And the fact that Nevada ordinances prohibit scavenging does not provide any heightened expectation of privacy in curbside garbage. Other courts have generally found that similar anti-scavenging ordinances do not create any additional expectation of privacy in curbside trash:

> The fact that an Essex ordinance allowed only licensed trash collectors to transport garbage does not make the defendant's subjective expectation of privacy any more reasonable. The licensed collectors may have rummaged through the defendant's garbage themselves. Secondly, once the defendant knew that the garbage would be picked up by licensed collectors and deposited at the local landfill, he should have known that others could gain access to the garbage.

Commonwealth v. Pratt, 555 N.E.2d 559, 567 (Mass. 1990); *see also Rikard v. State*, 123 S.W.3d 114, 121 (Ark. 2003) ("Without question, the Jonesboro city ordinances were not created to provide citizens with an expectation of privacy in their garbage. Rather, the intent of the ordinance undoubtedly was to provide a city-wide system for waste management and sanitation services, with an emphasis on cleanliness and preventing any scattering of that garbage."); *accord Commonwealth v. Minton*, 432 A.2d 212, 216–17 (Pa. Super. Ct. 1981).

Even with such an ordinance, abandonment still relinquishes expectations of privacy. *See United States v. Vahalik*, 606 F.2d 99, 100–01 (5th Cir. 1979); *United States v. Dzialak*, 441 F.2d 212, 215 (2d Cir. 1971). Indeed, Deputy Boeckman testified that scavenging still occurred: "people go through your trash for various reasons, cans, really anything they can make a buck off of, so it's pretty common." *See* MTS Tr. 13:20–14:8. It is not reasonable to expect otherwise. *See*

State v. McMurray, 860 N.W.2d 686, 695 (Minn. 2015) (holding that, under Article I, Section 10 of the Minnesota Constitution, "a person has no reasonable expectation of privacy in garbage set out for collection on the side of a public street because such garbage is readily accessible to scavengers and other members of the public" and rejecting argument that local anti-scavenging ordinances created any other expectation).

Even if Nevada's anti-scavenging ordinance were enforced and known to be effective, curbside garbage is vulnerable to a host of forces that may take or expose it, without concern for local ordinances:

> While garbage bags oftentimes remain intact until their contents are collected by a designated hauler, it is also common to see homeless people, stray pets and wildlife, curious children, and scavengers rummaging through trash set out for collection, in hope of finding food, salvageable scrap, or deserted treasure. The wind and the elements are also factors, particularly in Montana. Routinely, cans are knocked over, bags are exposed to the predations of dogs and raccoons, and garbage is found strewn across streets and alleyways.

A Blue Pickup, 116 P.3d at 804–05; *see also State v. Donato*, 20 P.3d 5, 8 (Idaho 2001) ("Whether in rural or suburban Idaho or New York City, garbage left at the curb for collection, outside the curtilage of a home, faces the same intrusion by neighbors, dogs, and children, and is turned over to a third party to be placed in a dump accessible to the public. The rural nature of Idaho does not change the analysis.");

accord Beltz v. State, 221 P.3d 328, 334 (Alaska 2009). Children are generally unconcerned with local ordinances; wildlife and weather are not subject to deterrence or prosecution. All of these wildcard factors are known to tip curbside garbage cans or otherwise expose trash to the public, so there can be no reasonable expectation that anything in a garbage can at a public curb will remain hidden from view.

Kuuttila seems to recognize this reality, but then argues: "[o]ne may accept the possibility that one's garbage is susceptible to invasion by raccoons or other scavengers, and yet at the same time reasonably expect that the government will not systematically examine one's trash bags in the hopes of finding evidence of criminal conduct." *See* Def's Br. at 44 (quoting *State v. Morris*, 680 A.2d 90, 98 (Vt. 1996)). But if common knowledge and experience forecloses any reasonable expectation of privacy in curbside garbage, and leads ordinary people to treat occasional scavenging or exposure as mundane occurrences, that ends the inquiry: the garbage is not private. Police need not wait around for a raccoon, a child, a gust of wind, a recycling enthusiast, or a student driver—the garbage bin is publicly accessible and is located in a publicly accessible place, so police may access it. Courts reject the premise that something can be public, except as to law enforcement:

> When the defendant placed his garbage at the curb in front of his house for collection by the garbage collector, a myriad of intruders, purposeful or errant, could legally have sorted through his garbage. . . . It is also a matter of common knowledge that garbage placed at the curb is subject to intrusion by a variety of people, with a variety of purposes, including bottle and coupon collecting, antique hunting, food searching and snooping. Finally, we regard it to be common knowledge among citizens of this state that dogs, raccoons, or other creatures may intrude upon and expose the contents of garbage that has been placed for collection in an accessible area.
>
> In light of our recognition of these potential intrusions on garbage placed at the curb for collection, the defendant's argument for state constitutional protection against police searches of his garbage devolves into an argument that a person may harbor different expectations of privacy, all of which are reasonable, as to different classes of intruders. We cannot countenance such a rule. A person's reasonable expectations as to a particular object cannot be compartmentalized so as to restrain the police from acting as others in society are permitted or suffered to act. . . . A person either has an objectively reasonable expectation of privacy or does not; what is objectively reasonable cannot, logically, depend on the source of the intrusion on his or her privacy.

State v. DeFusco, 620 A.2d 746, 751–53 (Conn. 1993). Other courts have noted that *Hempele*'s core argument—that people expect to be able to throw away trash without any exposure of sensitive contents—is out of step with modern reality. Today, citizens are cautioned not to rely on assumptions that their garbage is private, and to think carefully about what they discard to ensure that nobody acquires their sensitive personal information. This necessarily accepts scavenging as a reality.

> [T[he *Hempele* case was decided in 1990. That is long before it became known that people were taking items from trash in significant numbers to be used to commit crimes, particularly identity theft and fraudulent use of credit cards, now so rampant in our society. The media is replete with warnings to people not to put personal items in their trash such as bills, receipts, mailers from credit card companies, etc., which can be converted to forged credit cards, etc. Some of the media coverage and much advertising is not only to warn people not to do so but to instead shred such documents. This regrettable phenomenon over the last few years clearly emphasizes that reasonable people must or should have a lessened expectation of privacy in their trash. To put it differently, the expectation of privacy is no longer reasonable in this situation.

Ranken, 25 A.3d at 860; *see also McMurray*, 860 N.W.2d at 694 (observing "the introduction of digital media has been accompanied by corresponding changes in the way we dispose of sensitive items and information"); IOWA LEGAL AID, *Identity Theft* (updated Mar. 30, 2011), https://www.iowalegalaid.org/resource/identity-theft-2 (listing "[d]umpster diving" as common method for committing identity theft, and advising Iowans to "[s]hred financial documents and paperwork with personal information before you put them in the trash"). There is no reasonable expectation of privacy in the contents of garbage placed at the curb for collection—instead, there is an incompatible expectation of *vulnerability* in curbside trash because of the unavoidable reality of public access, which local ordinances cannot overcome by fiat.

Kuuttila's last effort to fight off the reality of public access to curbside trash is his argument that "[t]here is a privacy interest in opaque trash bags just as there is in any other closed container whose contents are not in plain view." *See* Def's Br. at 41 (quoting *Morris*, 680 A.2d at 95). Nothing in this record establishes that Kuuttila's garbage bags were opaque. More importantly, nobody learns to use trash bags in their homes to preserve their privacy—people use them as a convenient way to transfer garbage from indoor containers to outdoor receptacles without handling any unsavory contents, and without leaving residual garbage or "dumpster juice" behind. Even people who are indifferent to privacy concerns use trash bags, as the alternative to pungent, unsanitary bins that need regular cleaning:

> In terms of private garbage disposal, by mid-twentieth century, nearly everyone incinerated their garbage. . . .
>
> In addition to incineration, municipalities collected waste with garbage trucks. "Back then it was a filthy job and the trucks leaked garbage fluids down the streets!" one commentator remembers. Household garbage was stored in city-issued metal cans, collected weekly by sanitation workers. Many people threw garbage directly in the can; others used paper bags or paper liners, which quickly became wet and sloppy. Without plastic bags to store the garbage, the metal cans became filthy. "You had to wash out your kitchen trash cans and disinfect them every so often or you'd have a stinking trash can," says one commentator. Another recalls: "By pickup day, everyone's cans emitted an odor that was perceivable in the next county!"

The Trash Bag in History: Part II, PLASTICPLACE BLOG (last accessed Nov. 12, 2019), https://www.plasticplace.com/blog/the-trash-bag-in-history-part-ii. Coloring was added to trash bags as an afterthought, and never ranked high on lists of what users appreciated about them:

> How often do you steam-clean your garbage cans? When was the last time you wrapped your wet kitchen scraps in newspaper before taking them out to the curb?
>
> [. . .]
>
> It was against this backdrop that Toronto-based inventor Frank Plomp started making "the Garbag" out of clear polyethylene film in the late 1950s.
>
> [. . .]
>
> The Financial Post reported that residents liked how the bags sealed in odours and messes. Plomp thought if residents left the metal cans behind and just put their garbage out in Garbags, collection workers could save time (and their backs) and make less noise.

Chris Chang-Yen Phillips, *Canadians Invented the Garbage Bag. Can We Solve the Mess They Made*?, CBC RADIO CANADA (Mar. 16, 2017), https://www.cbc.ca/2017/canadians-invented-the-garbage-bag-can-we-solve-the-mess-they-made-1.4024908. Thus, widespread adoption and use of garbage bags does not signify any expectation of privacy in their contents. *Morris* relied upon a Note that asserted, without any semblance of attribution, that garbage bags are universally opaque because consumers refused to buy transparent or translucent ones, which means consumers harbor expectations of privacy. *See Morris*,

680 A.2d at 95 (citing Kevin E. Maldonado, Note, *California v. Greenwood: A Proposed Compromise to the Exploitation of the Objective Expectation of Privacy*, 38 BUFF. L. REV. 647, 663 (1990)). This assertion is undermined by the existence of clear trash liners. Moreover, opaque trash bags are typically marketed for *durability*; opacity is often both a by-product of multiple layering of materials and a signal to consumers that bags are thick enough to resist any strain or puncture. *See Hempele*, 576 A.2d at 818–19 (Garibaldi, J., dissenting) (noting that concerns about condition of garbage bags in curbside trash cans are "less, I suspect, for privacy reasons, than for the inconvenience of having the contents of their garbage strewn on the sidewalk in front of their residence."). Finally, abandoning trash inside a bag is *still* abandoning it, relinquishing all privacy interests.

> When plastic trash containers and their contents are picked up by the collector and carted to a public waste disposal area, common experience teaches that the former owner obtains no implicit assurance that the trash will remain inviolate or free from examination. Indeed, once the trash is discarded the former owner rarely has any further interest in it other than to be assured that it will not remain at his doorstep. . . . We do not view the mere use of taped opaque containers as indicating an intent to retain a privacy interest; these containers, apparently the most commonly-available type sold, are obviously designed to assure tidiness in appearance rather than privacy.

United States v. Terry, 702 F.2d 299, 309 (2d Cir. 1983).

Expectations of privacy are developed "either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Rakas v. Illinois*, 439 U.S. 128, 144 n.12 (1978). Curbside trash is known to be publicly accessible. As a result, "[t]he vast majority of courts have ruled that when garbage is located in a place accessible to the public, the individual who placed that garbage for collection either abandoned it or has no reasonable expectation of privacy therein, thus rendering any search and seizure of that trash lawful." *Rikard*, 123 S.W.3d at 120 (quoting Kimberly J. Winbush, *Searches and Seizures: Reasonable Expectation of Privacy in Contents of Garbage or Trash Receptacle*, 62 A.L.R. 5th 1 (1998)); *see also Barekman*, 200 P.3d at 808 & n.2 (collecting cases where "[a] majority of state courts have reached this conclusion under their own constitutions"); *accord Cooks v. State*, 699 P.2d 653, 656 (Okla. Ct. Crim. App. 1985) ("We join those other jurisdictions holding curbside trash is abandoned property, over which appellant has no reasonable expectation of privacy."). Kuuttila's trash was abandoned for pickup in a publicly accessible space, where anyone could view it, expose it to public view, scavenge through it, or seize it. As such, any expectation of privacy in its contents would be unreasonable.

C. Kuuttila, like most Iowans, gave all of his garbage to municipal employees or third parties, forfeiting control over where it would be taken, who would handle it, or who would look at its contents. That forecloses any reasonable expectation of privacy.

It is common sense that placing garbage out for collection is an irrevocable and permanent transfer to municipal employees or some other third parties, who acquire total control over it. *See Greenwood*, 486 U.S. at 40–41 (quoting *Reicherter*, 647 F.2d at 399) (noting that expectation of privacy was either forfeited or rendered unreasonable when Greenwood placed the garbage out for collection at the curbside, "for the express purpose of having strangers take it"). After collection, Iowans have no real expectations about who will handle or view their discarded trash—and they expect not to be contacted for permission to transfer their trash to other third parties, at any point down the line.

Kuuttila argues that Iowans expect that garbage collectors will act in specific ways that promote reasonable expectations of privacy in collected garbage, by ensuring that it is not examined "until the trash has lost its identity and meaning by becoming part of a large conglomeration of trash elsewhere." *See* Def's Br. at 40 (quoting *People v. Edwards*, 458 P.2d 713, 718 (Cal. 1969)). *People v. Edwards* dealt with a garbage can "within a few feet of the back door," in a backyard.

See Edwards, 458 P.2d at 714, 718. Suppression would be consistent with the view that expectations of privacy in garbage may persist until the point where it is placed out for collection through public utilities. Language about "conglomeration" of trash in *Edwards* is pure dicta.

Kuuttila also cites more recent decisions that described a right to "anonymous disposal of garbage." *See* Def's Br. at 42 (quoting *Morris*, 680 A.2d at 95); *accord State v. Crane*, 329 P.3d 689, 696 (N.M. 2014) (determining that "when one seals garbage in an opaque container, one exhibits a reasonable expectation that the contents of the sealed, opaque container will remain private until the garbage is inextricably commingled with other refuse"). According to this theory, there is an expectation of "privacy" through amalgamation of collected garbage with other collected garbage. The Oregon Supreme Court relied upon that theory in *State v. Lien*, where it suggested a shared expectation of what would have happened to Lien's trash if police did not request that collectors bring it in separately: "defendants' garbage would have been commingled with the garbage of hundreds of other households and dumped in a landfill, obscuring, as a practical matter, that [their] garbage in particular contained evidence of drug possession." *State v. Lien*, 441 P.3d 185, 193 (Or. 2019). This theory has three major flaws.

First, amalgamation of waste only occurs if trash collectors remove the trash from the curbside bin—which is not guaranteed. *Lien* argued that "most Oregonians would consider their garbage to be private and deem it highly improper for others—curious neighbors, ex-spouses, employers, opponents in a lawsuit, journalists, and government officials, to name a few—to take away their garbage bin and scrutinize its contents." *See Lien*, 441 P.3d at 191. That reference to journalists is not hypothetical: *Lien* remarked that an article in the *Willamette Week* had "catalogued items that its reporters had found by collecting the curbside garbage or recycling of three government officials in Portland then serving in law enforcement roles." *See id.* (citing Chris Lydgate & Nick Budnick, *Rubbish!*, WILLAMETTE WEEK (published Dec. 23, 2002), http://www.wweek.com/portland/article-1616-rubbish.html-2). While *Lien* crowed about negative reactions of two of those officials, it ignored the performative implication: neither of the journalists suffered consequences from their involvement, and so the readership (and the general public) could no longer expect that journalists would not look for newsworthy information in their trash, "in the hallowed tradition of muckraking." *See* Lydgate & Budnick; *cf.* Elise Herron, *A 16-Year-Old WW Article About Digging Through the*

Mayor's Trash Went Viral Over the Weekend, WILLAMETTE WEEK (Jan. 9, 2018), https://www.wweek.com/news/ 2018/01/09/a-16-year-old-ww-article-about-digging-through-the-mayors-trash-went-viral-over-the-weekend/ ("The current online dialogue around the article is almost unanimously positive—minus some grousing that a 16-year-old article is being discussed at all."). *Lien*'s reference to a common-law tort of invasion of privacy is confusing, in that context. *Lien* celebrates the journalists for turning the tables—but pages later, *Lien* implies that they are tortfeasors, liable for "damages consisting solely of mental suffering caused by the violation." *See Lien*, 441 P.3d at 191, 193. Rather than create nonsensical tort liability for scavengers, the better approach is to recognize the obvious reality: the journalists were able to write their article because those officials placed their trash in publicly accessible spaces for collection. *See DeFusco*, 620 A.2d at 751 ("When the defendant placed his garbage at the curb in front of his house for collection by the garbage collector, a myriad of intruders, purposeful or errant, could legally have sorted through his garbage."). Investigations into voluminous public material are primarily limited by staffing and willpower. Given enough of each, journalists can seize abandoned refuse before collection and sift through it—as can police.

Second, the idea that ordinary Iowans "expect" amalgamation of garbage after collection is a legal fiction. *Hempele* had no problem finding that police *seizure* of garbage bags was permissible, as long as the officers did not *search* the bags—which it explained like this:

> Although people have an interest in keeping the contents of their garbage private, their interest does not extend to the location of the garbage. So long as the contents remain private, it does not matter whether the trash bags are in the garbage truck, the landfill, or the police station. . . .
>
> . . . People who leave their garbage for collection do not care how long it takes the trash to reach the dump. Because people have no interest in preventing the seizure of trash bags left on the curb for collection, the police do not need cause to seize the bags. The arbitrary seizure of trash bags on the curb violates no interests protected by article I, paragraph 7.

Hempele, 576 A.2d at 811. But if there were significant expectations of timely amalgamation, that seizure would violate them—police would be interfering with expectations of prompt anonymization of garbage. *Hempele* stopped just short of the logical conclusion: if people do not care who collects their trash or where it goes, then all "expectations" are satisfied at the moment when it disappears from the curb.

> The department of sanitation started out in the public eye because it was such a remarkable difference: The before and after was stark. We're now very used to a certain presence and level of competence and waste management being very well done. One of the privileges of modern life is that we get to ignore it. . . .

> The entire project is made invisible, and you only notice it in the gap, in the absence. For example, if there's a missed pickup or, like in 1968, when there was a strike. Then you see it. But when they're out there every day, maintaining the illusion that there's an "away" to which we can throw things, then it's all sort of magic. It just goes "away."

Hunter Oatman-Stanford, *A Filthy History: When New Yorkers Lived Knee-Deep in Trash*, COLLECTORS WEEKLY (June 24, 2013), https://www.collectorsweekly.com/articles/when-new-yorkers-lived-knee-deep-in-trash/. This reflects our reality and lived experiences, far better than any legal fiction about expectations of amalgamation.

Finally, even if Iowans did expect their waste to be aggregated, subverting that specific expectation would not equate to subverting any reasonable expectation of privacy. Expectations of privacy do not survive permanent abandonment of property to an intended recipient.

> Defendants may have expected, however reasonably, that once their garbage was collected it would be quickly mixed with other garbage and taken forthwith to a landfill. But, as they completely and forever gave up control of that property, none of those expectations translated into the "privacy to which one has a *right*" . . . . The garbage collection company, at that point the rightful owner of the garbage, could, at will, decline to mix it, unmix it, have its own employees comb it for contraband, or hand the garbage over to the police. Investing such totally abandoned property with constitutional privacy rights would amount to a restriction upon the new owner—a denial of his right to authorize searches by the state. It should not be doubted that that right is valuable to many.

Lien, 441 P.3d at 205 (Kistler, S.J., dissenting); *see also Pratt*, 555 N.E.2d at 567 (holding defendant "abandoned his privacy interests in his garbage through the placement of his trash bags at the curb for collection," and that "[t]he licensed collectors may have rummaged through the defendant's garbage themselves"). This is different from the third-party doctrine because collected garbage is not just data that has been *disclosed* to another, nor has it been *entrusted* to another. Instead, it has been *abandoned* to garbage collectors—which means any expectations about what might happen after that abandonment may be subverted, at the discretion of its handlers.

Suppose that a killer disposes of the body and other evidence in a series of garbage bags. If some of that evidence was discovered in a garbage truck at the end of a pickup route, collectors could consent to a search of all other trash bags in the truck. Although the killer may not have expected that anyone would have found the victim's body or opened other bags containing relevant evidence, that is not the same as an expectation of privacy. Rather, that is a probabilistic expectation about what garbage collectors would do, after acquiring full rights to the abandoned property. There is still an obvious risk of inspection and discovery, which cannot be neutralized by choosing to ignore it:

> Perhaps the defendant did in fact believe that the incriminating evidence of his crime so disposed of would go undetected. If defendant did, we view it only as additional bad judgment on his part. In the real world to so view the status of one's discarded trash is totally unrealistic, unreasonable, and in complete disregard of the mechanics of its disposal. In our view the placing of trash in the garbage cans at the time and place for anticipated collection by public employees for hauling to a public dump signifies abandonment. Defendant may have decided to assume the risk, calculating no one would think to search in his garbage can, or he may have been careless, but whatever his reason he evidenced an intent in a convenient but risky way to permanently disassociate himself from the incriminating contents. The garbage cans cannot be equated to a safety deposit box. The contents of the cans could not reasonably be expected by defendant to be secure, nor entitled to respectful, confidential and careful handling on the way to the dump. Trash generally is not so highly regarded. Collectors do not bear some kind of fiduciary relationship with trash customers to make sure that their trash remains inviolate. The defendant could not reasonably have believed that the City Sanitation Department had any responsibility to help him dispose of the evidence of his crimes.

United States v. Shelby, 573 F.2d 971, 973 (7th Cir. 1978). Subverting Kuuttila's subjective expectations of what would happen to his trash is not the same as violating a reasonable expectation of privacy—he did not expect to shield any private property from public view. At best, Kuuttila expected to succeed at camouflaging evidence of crime within the public waste stream. But that cannot be an expectation of *privacy*, because it accepts that everything he discards will become public.

Kuuttila argues that people may discard items that they hope are never found, and that "[a] more pragmatic Emma Bovary might throw away the love letters from her Monsieur Léon to prevent her husband from discovering them in her rosewood desk." *See* Def's Br. at 43 (quoting *Hempele*, 576 A.2d at 809). But the desk belonged to Emma, and nobody else could find her letters there (while she lived). Alternatively, Emma could discard her letters in a public receptacle—anyone could recover and read them, but they would have been mixed in with other garbage, and would not have been attributable to Emma without some identifying data or contemporaneous sighting. The point is that it is absurd to equate the limited anonymity that Emma may gain by abandoning that property into any public waste stream with her paramount expectation of privacy in the contents of a locked drawer in her home. *See Hempele*, 576 A.2d at 819 (Garibaldi, J., dissenting). To remain private, an item must be kept private—so it must be kept. *See, e.g.*, *Schmalz*, 744 N.W.2d at 741 (quoting *Rydberg*, 519 N.W.2d at 310) (explaining that disposal of garbage through public collection "waived any privacy interest she may have had in the garbage."). But abandonment of trash for curbside collection effectively gives it away to the public and relinquishes any right to control what happens to it.

In a hypothetical situation where garbage collectors decided to consent to a search of their truck after pickup, all of the trash inside the garbage truck should be identically situated for analysis. None of the people whose garbage had been collected would have retained any lingering expectation of privacy in their garbage—they abandoned it. But Kuuttila proposes an approach where every garbage truck is full of private bags, still owned by people who threw out that property, who would need to authorize any search of their abandoned garbage that could jeopardize their anonymity. And that would extend to landfills:

> [C]arried to its logical conclusion, that standard would seem to foreclose warrantless searches of garbage even after the garbage bags have reached a landfill, and probably even after they have been long buried. Those examples illustrate that application of that standard ultimately turns on the defendant's subjective expectations, and effectively ignores the objective reasonableness of those expectations.

Beltz, 221 P.3d at 334; *accord Terry*, 702 F.2d at 309. The better view recognizes that garbage collectors gain total control over the garbage they collect. Any expectation of "anonymization" would be speculative and would not be objectively reasonable, nor could it equate to an expectation of privacy. This Court should reiterate that putting trash at the curb for collection is an irrevocable and permanent transfer of that property to others—which expectations of privacy cannot survive.

D. Local ordinances and state laws that regulate disposal of garbage eliminate any expectations of privacy in trash cans placed out for collection. Iowans do not expect that trash will be private; they treat disposal of garbage as a public concern.

Kuuttila takes two inconsistent positions on the significance of laws, ordinances, and regulations. He argues "[t]he reasonableness of this privacy expectation is demonstrated by local ordinances that prohibit the rummaging of another's trash." *See* Def's Br. at 41 (citing Nevada, Iowa, Code of Ordinances § 105.10). But at other points, he argues that he "was required by law to dispose of his waste as he did," and he cites other ordinances that envision public involvement in the disposal of solid waste. *See* Def's Br. at 30–31; *accord* Def's Br. at 42 (citing *Morris*, 680 A.2d at 95; *Crane*, 329 P.3d at 696; and *Boland*, 800 P.2d at 1117). *Crane*, in particular, takes the contradiction even further by asserting that "[c]onstitutional protections are not to be accorded such arbitrariness so as to be granted to those persons who have the wherewithal to privately control the disposal of their waste by, for instance, having their garbage personally taken to the landfill." *See Crane*, 329 P.3d at 696. Even standing alone, that statement is legally incorrect. Expectations of privacy are dispelled by actions that are inconsistent with privacy—like abandoning trash at the curbside.

What is remarkable and illustrative is that *Crane* recognized an available course of action that maintains some privacy—citizens could "privately control the disposal of their waste" by "having their garbage personally taken to the landfill"—but then *Crane* rejected the idea that laws and ordinances about public involvement in disposal of garbage diminished societal expectations of privacy, because "the government cannot force an individual to dispose of something she considers private, only to be able to then search through it without a warrant." *See id.* at 696–97. That is perplexing because, as *Crane* just noted, nobody is forced to use curbside trash pickup—they can bring trash directly to a landfill. And even without that option, *Crane* was wrong to minimize legislative enactments and their important dual role in both shaping and reflecting our prevailing expectations of privacy. The Connecticut Supreme Court took a better approach in *DeFusco*:

> [G]arbage collectors in Connecticut have a statutory duty to assist municipal authorities in identifying recycling violators. . . . This required assistance necessarily entails the authority to inspect the contents of garbage placed for collection. Moreover, the owner or operator of a solid waste facility or a resources recovery facility has the statutory obligation to conduct periodic unannounced inspections of loads delivered to the facility to assist municipalities and the commissioner of environmental protection in assessing recycling compliance.
>
> [. . .]

> It is not the state regulation per se that persuades us that the defendant had no reasonable expectation of privacy in garbage that he placed at the curb for collection. Rather, we consider the statutes regulating garbage collection, disposal and recycling to constitute one factor reflecting the Connecticut citizenry's attitudes and expectations regarding garbage. Those statutes are useful in our determination of whether the defendant's state constitutional right to be free of unreasonable searches and seizures was violated, because that determination turns, in this case, on whether the defendant's expectation of privacy in curbside garbage was one that Connecticut citizens would recognize as reasonable.

DeFusco, 620 A.2d at 751 & n.16; *accord State v. Bernier*, 717 A.2d 652, 657 (Conn. 1998) (explaining "a statutory scheme that represents the declared public policy of this state" is useful because it "informs our determination of [state] citizenry's attitudes and expectations regarding privacy interests"). Both *Crane* and Kuuttila are unable to escape two conclusions. First, citizens are not required to make use of curbside garbage pickup—the option of private transport to landfills means that government is not forcing citizens to waive their privacy. Second, as the Iowa Supreme Court has recognized in other contexts, legislative enactments are "the most reliable objective indicators of community standards." *See State v. Lyle*, 854 N.W.2d 378, 388 (Iowa 2014) (quoting *State v. Bruegger*, 773 N.W.2d 862, 873 (Iowa 2009)). Relevant enactments both shape and reflect prevailing expectations.

While Nevada's anti-scavenging ordinance is relevant, it does not necessarily prove "that there exists an objective expectation of privacy that society is willing to recognize as reasonable"—such an ordinance primarily serves "to maintain society's interest in sanitation." *See State v. Stevens*, 734 N.W.2d 344, 347–48 (S.D. 2007); *accord Rikard*, 123 S.W.3d at 121; *Pratt*, 555 N.E.2d at 567; *Minton*, 432 A.2d at 217. The real question is: what are Iowans' priorities and expectations for collective garbage collection and waste management, as given voice through legislative enactments? Section 455B.301A expresses a desire to promote "the health, safety, and welfare of Iowans" through this "waste management hierarchy in descending order of preference":

> a. Volume reduction at the source.
> b. Recycling and reuse.
> c. Waste conversion technologies.
> d. Combustion with energy recovery.
> e. Other approved techniques of solid waste management including but not limited to combustion for waste disposal and disposal in sanitary landfills.

Iowa Code § 455B.301A(1) (2019). Validating expectations of privacy by anonymizing waste is not on this list of objectives—and indeed, it directly conflicts with promoting "[v]olume reduction at the source," which necessarily envisions public involvement with private garbage "at the source" to help Iowans identify ways to reduce waste outputs.

Anyone who desires anonymity in disposal of any item "not exceeding ten pounds in weight or fifteen cubic feet in volume" can pursue it: those smaller items are "litter," and most public receptacles in public spaces may be used to dispose of litter. *See* Iowa Code §§ 455B.361(2), 455B.363. Alternatively, solid waste may be discarded in a private waste collection receptacle that someone else owns or uses, with their permission. *See* Iowa Code § 455B.307A(2). Solid waste can also be taken to a "citizen convenience center" which is "a permanent, fixed-location facility that has the primary purpose of receiving solid waste from citizens and small businesses that do not utilize solid waste collection vehicles or satellite solid waste collection vehicles." *See* Iowa Admin. Code r. 567–106.2. Those alternatives all involve the same abandonment of expectations of privacy in the actual garbage that always accompanies disposal of waste through a public utility. They also offer limited anonymity or instantaneous disposal, for those who want to de-link trash from their residence and avoid protracted abandonment on the curb. Even so, disposal of trash into public waste streams is *never* wholly private. That is by design—Iowans welcome public involvement in waste management to promote the public good and minimize negative externalities. *See* Iowa Code § 455B.301A(1).

As for the argument that Iowans expect garbage collectors to help conceal the contents of opaque trash bags, the opposite is true. Officials are empowered to "enter upon the premises of a sanitary disposal project" at any time, "in order to inspect the premises and monitor the operations and general administration of the project." *See* Iowa Code § 455B.302(2). And any disposal project "that includes incineration" must sort out "recyclable and reusable materials" and "hazardous or toxic materials" before burning anything—so Iowa law necessarily rejects any ongoing claim to privacy in collected trash. *See* Iowa Code § 455B.314. Opaque containers should be opened to ensure proper disposal of hazardous waste, *see* Iowa Code § 455B.301(23)(b); demanufacture of appliances, *see* Iowa Admin. Code r. 567–118.2(1); and recycling of batteries, *see* Iowa Code §§ 455D.10 & 455D.10A. And even a landfill cannot accept "baled" solid waste—Iowans will not tolerate attempts to prevent waste disposal utilities from performing essential disaggregation functions. *See* Iowa Code § 455D.9A. These enactments are expressions of the prevailing view on garbage in Iowa: waste disposal is inherently public, and potential negative externalities justify waste management policies that direct the flow of solid waste and foreclose any claim to privacy in the contents of a garbage bag.

> The nature of waste disposal today means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the groundwater supply. In addition, the nature of the waste and disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition.
>
> Wastes filling Iowa's landfills may, at best, represent a potential resource. However, without proper management, wastes are hazards to the environment and life itself.

Iowa Code § 455D.2(3)–(4). Thus, Kuuttila is wrong—Iowans do not recognize any reasonable expectation of privacy in discarded garbage. Rather, Iowans value extensive public involvement in waste disposal, and Iowa legislators have enacted policies and statements of priorities that are flatly incompatible with any expectation of privacy in garbage at any point after it is abandoned for collection at the curbside.

E. Without a legitimate expectation of privacy in garbage placed at the curbside for collection, a "trash rip" does not require a search warrant or reasonable suspicion.

Kuuttila's argument ends by asking this Court, in the alternative, to "adopt the approach of the Indiana and Alaska Supreme Courts and conclude a warrantless garbage search must be supported by individualized, articulable reasonable suspicion." *See* Def's Br. at 45–47 (citing *Litchfield*, 824 N.E.2d at 363–64, and *Beltz*, 221 P.3d at 335). But this is not compatible with Iowa's approach to Article I, Section 8, which Kuuttila has embraced. *See* Def's Br. at 36 (citing *Brooks*, 888

N.W.2d at 410–11). If there is a legitimate expectation of privacy in garbage placed at the curb for collection, then officers need a warrant to search it (or an applicable exception to the warrant requirement). But if there was no legitimate expectation of privacy, then inspecting that garbage cannot violate Kuuttila's rights under Article I, Section 8, and he "may not successfully rely on the Iowa Constitution's protection against unreasonable searches and seizures." *See State v. Halliburton*, 539 N.W.2d 339, 343 (Iowa 1995). That finding disposes of the claim.

Indiana is very different. Indiana courts had already "explicitly rejected the expectation of privacy as a test of the reasonableness of a search or seizure" before *Litchfield*, and it had held that "[t]he legality of a governmental search under the Indiana Constitution turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances." *See Litchfield*, 824 N.E.2d at 359 (citing *Moran v. State*, 644 N.E.2d 536, 539 (Ind. 1994). Other frameworks might scrutinize police conduct and determine "whether the investigation exceeded society's expectations for how the police would investigate a particular crime." *See* Orin S. Kerr, *The Mosaic Theory of the Fourth Amendment*, 111 MICH. L. REV. 311, 328 (2012). But in the absence of an expectation of privacy, there is no violation of Article I, Section 8.

Other courts with similar constitutional provisions have distinguished *Litchfield* on the same grounds. *See Schmalz*, 744 N.W.2d at 742–43 (rejecting *Litchfield*'s requirement of reasonable suspicion to support investigation of garbage and noting "[t]he extra limitations placed on warrantless garbage searches in Indiana can be attributed to its unique analysis of searches and seizures under its state constitution," which does not require any reasonable expectation of privacy); *Stevens*, 734 N.W.2d at 348 (noting "Indiana's state constitutional jurisprudence is distinctly different" and rejecting *Litchfield* because it concluded that garbage investigations were unreasonable "without dealing with the expectation of privacy question"). Unique constitutional language is also grounds to reject the similar requirement that Alaska adopted. *See Beltz*, 221 P.3d at 334–336 (discussing 1972 amendment to the Alaska Constitution enshrining right to privacy, noting "the privacy amendment affected our analysis of search and seizure protections," and concluding that "it is consistent with the privacy amendment and the prohibition against unreasonable searches and seizures to allow a warrantless search of garbage set out on or adjacent to a public street for routine collection only if police have a reasonable suspicion that the garbage contains evidence of a serious crime.").

Kuuttila also relies on *Boland*, which reached its holding under Article I, Section 7 of the Washington Constitution. But under that provision, "the focus is whether the 'private affairs' of an individual have been unreasonably violated rather than whether a person's expectation of privacy is reasonable." *See Boland*, 800 P.2d at 1116. "The Iowa Constitution lacks a separate privacy provision," so *Boland* is inapposite. *See State v. Storm*, 898 N.W.2d 140, 153 (Iowa 2017).[1] Unique constitutional language also distinguishes similar decisions from New Hampshire and Vermont. *See id.* Conversely, most states with constitutional provisions that parallel the Fourth Amendment have reached the same conclusion that the Iowa Court of Appeals already set out in *Henderson*: "searching the defendant's garbage did not intrude upon his legitimate expectation of privacy." *Henderson*, 435 N.W.2d at 396–97; *accord Barekman*, 200 P.3d at 808 & n.2. This Court should reach the same conclusion.

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[1] *Boland* is also hazardous because it draws distinctions between residents with single-household garbage cans that are "private affairs" and multi-unit housing residents who share curbside disposal units. *E.g.*, *State v. Rodriguez*, 828 P.2d 636, 642 (Wash. Ct. App. 1992); *contra Crane*, 329 P.3d at 697 ("[T]here is no purposeful distinction in the privacy expectations held by a person who disposes of trash in an individual receptacle from that of a person who places his or her refuse in a shared trash receptacle.").

Ultimately, the State's advocacy boils down to this: garbage that is placed out for collection is abandoned in a publicly accessible space, relinquishing any subjective expectations of privacy and precluding the existence of any objectively reasonable expectations of privacy. The trial court was correct to find that Detective Boeckman did not violate Kuuttila's constitutional rights by seizing and investigating this garbage, which was abandoned in publicly accessible trash cans for curbside collection. *See* MTS Tr. 8:5–10:14; MTS Tr. 11:11–21; MTS Tr. 22:4–23:4; *Henderson*, 435 N.W.2d at 396–97.

II. The warrant application established probable cause.

Preservation of Error

Kuuttila raised this argument below, and the court ruled on it. *See* MTS (11/5/18); App. 7; MTS Tr. 17:11–18:21; MTS Tr. 21:15–22:19. Thus, error was preserved. *See Lamasters*, 821 N.W.2d at 864.

Standard of Review

On constitutional issues where relevant facts are not in dispute, "review is for correction of errors at law." *Young*, 863 N.W.2d at 252.

Merits

Probable cause is established when "a person of reasonable prudence would believe a crime was committed on the premises to be searched or evidence of a crime could be located there." *State v. Gogg*,

561 N.W.2d 360, 363 (Iowa 1997) (quoting *State v. Weir*, 414 N.W.2d 327, 330 (Iowa 1987)). This requires "a probability determination" about the likelihood that "the items sought will be found in the place to be searched." *See State v. McNeal*, 867 N.W.2d 91, 99 (Iowa 2015) (quoting *Gogg*, 561 N.W.2d at 363).

Iowa courts strongly prefer warrants—and, as a result, "when police obtain a warrant, we do not strictly scrutinize the sufficiency of the underlying affidavit." *See id.* at 100 (citing *Illinois v. Gates*, 462 U.S. 213, 236 (1983)). Instead, when Iowa courts review issuance of a search warrant, they "do not independently determine probable cause" and will limit any such review to the question of "whether the issuing judge had a substantial basis for concluding probable cause existed." *See id.* (second excerpt quoting *Gogg*, 561 N.W.2d at 363). Moreover, reviewing courts will "draw all reasonable inferences to support the judge's finding of probable cause," and "[c]lose cases are decided in favor of upholding the validity of the warrant." *See id.* (quoting *Gogg*, 561 N.W.2d at 364). Here, the warrant survives that deferential review.

Detective Boeckman found "several small baggies commonly used by drug dealers to deliver usable amounts of narcotics to their clients" in Kuuttila's garbage. *See* Warrant Application, Exhibit B

(11/28/18) at 3; CApp. 10. One baggie "contained a green leafy substance that field tested positive for marijuana," and another contained "a clear crystal-like substance inside of it that field tested positive for [meth]amphetamine." *See id.*; CApp. 10. He also found "pipes commonly used to smoke controlled substances, and several hypodermic needles that looked to be previously used." *Id.*; CApp. 10. The same bag contained mail with Kuuttila's name. *See id.*; CApp. 10.

Kuuttila attacks the value of "numerous tips" described in the warrant application, which "stated that Mr. Kuuttila frequently deals [meth]amphetamine, marijuana, and heroine out of apartment #4 at 534 5th St. in Nevada IA." *See id.*; CApp. 10; Def's Br. at 52–54. It is true that, standing alone, these anonymous tips are minimally useful. *See, e.g.*, *State v. Kooima*, 833 N.W.2d 202, 205–12 (Iowa 2013). But finding small baggies, methamphetamine residue, marijuana shake, and used hypodermic needles in the trash from that residence was more than enough to corroborate them—that evidence covered all three drugs mentioned in those tips. *See McNeal*, 867 N.W.2d at 101 (finding anonymous tip was corroborated when police "*independently* verified three of the four components contained in the tip"). This was a substantial basis to support an inference that the tips were reliable.

Kuuttila's last argument is that the warrant application never stated that his mail was found in the same trash bag as the drugs. *See* Def's Br. at 54–55. But the warrant application never even mentioned multiple bags—there was no reason for a judge to infer that they were found in separate bags, because they were described as being part of the same "trash." *See* Warrant Application, Exhibit B (11/28/18) at 3; CApp. 10. For the record, they *were* in the same bag, so nothing about the affidavit would be misleading. *See* MTS Tr. 10:24–11:10. Moreover, because probable cause is a relatively low standard, and because the presence of by-products from *all three* of the drugs mentioned by the anonymous tips provided such strong corroborative evidence, this would be sufficient—even *without* mail containing Kuuttila's name. *See State v. Poulin*, 620 N.W.2d 287, 290 (Iowa 2000) ("The finding of marijuana residue in the trash behind defendant's apartment when considered with the other circumstances we have discussed was sufficient to establish probable cause for the issuance of the warrant notwithstanding the fact another tenant of the building also dumped trash at that location."). Kuuttila cannot show the tips were "nothing more than an unsubstantiated rumor" after this trash contained bits of all three drugs that the tips had described. *See* Def's Br. at 53–54.

The strong evidence corroborating these anonymous tips provided a substantial basis for the court's ruling that the warrant was supported by probable cause. *See* MTS Tr. 21:15–22:3. Therefore, Kuuttila's challenge fails.

III. Kuuttila's third challenge identifies an error. The sentence should be corrected by nunc pro tunc order.

Preservation of Error

Generally applicable rules of error preservation do not apply. The defendant may challenge a defective sentence for the first time on direct appeal. *State v. McMurry*, 925 N.W.2d 592, 601 (Iowa 2019).

Standard of Review

"When a party asserts that an inconsistency exists between an oral sentence and a written judgment entry," review is for correction of errors at law. *See State v. Hess*, 533 N.W.2d 525, 527 (Iowa 1995).

Merits

Kuuttila argues that he was assessed costs for a dismissed count which, from the oral pronouncement of sentence, should be assessed to the State. *See* Def's Br. at 56–57. He is right. *See* Sent.Tr. 8:15–9:4; Judgment & Sentence (2/14/19) at 3; App. 25. That can be remedied by entry of a nunc pro tunc order, to make the written order reflect the sentence that was actually pronounced. *See Hess*, 533 N.W.2d at 529.

IV. The court made a finding of reasonable ability to pay some of the minimal restitution it assessed.

Preservation of Error

Again, Kuuttila may challenge a defective sentence for the first time on direct appeal. *See McMurry*, 925 N.W.2d at 601.

Standard of Review

Restitution orders are reviewed for errors at law. *See id.* at 595.

Merits

Kuuttila argues that the sentencing court ordered him to pay restitution for court costs and attorney fees, but it "made no finding regarding [his] ability to pay." *See* Def's Br. at 58–60. But the order includes a statement that "the Court finds that the defendant is able to reimburse the State for court appointed attorney fees in the amount of $192.00." *See* Judgment & Sentence (2/14/19) at 2; App. 24. This finding of reasonable ability to pay is compliant with *State v. Albright*, 925 N.W.2d 144 (Iowa 2019), to a point. It was supported by the court's "colloquy with the offender" on his continuous full-time employment. *See Albright*, 925 N.W.2d at 162; Sent. Tr. 5:8–16; Sent. Tr. 6:21–7:12. After that, the court verbally approved the amount of attorney fees. *See* Sent. Tr. 8:1–14. That is enough to comply with *Albright*—the court knew the amount, and made an individualized ability-to-pay decision,

which it expressly stated in its written order. *See* Judgment & Sentence (2/14/19) at 2; App. 24. Kuuttila is wrong to argue "the court made no explicit findings on [his] reasonable ability to pay attorney fees." *See* Def's Br. at 58. And this finding impliedly contains the conclusion that Kuuttila can pay $192 without undue hardship, especially because Kuuttila already had full-time employment. *See* Sent. Tr. 6:21–7:12.

Kuuttila is correct that the sentencing order did not list the amount of court costs on the non-dismissed charges, but assessed them as restitution anyway. *See* Judgment & Sentence (2/14/19) at 2–3; App. 24–25. This violates *Albright*, because the court cannot order any restitution for an item without a reasonable-ability-to-pay finding, which requires knowing its amount. *See Albright*, 925 N.W.2d at 162. On remand, the district court should inquire into that exact amount, determine Kuuttila's present ability to pay, and impose restitution for court costs in compliance with *Albright*. *See id.* at 162 & n.3.

CONCLUSION

The State respectfully requests that this Court affirm Kuuttila's convictions, and remand for correction of the parts of his sentences identified in the argument.

REQUEST FOR NONORAL SUBMISSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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