No. 24-

In the Supreme Court of the United States

ASHLEE MARIE MUMFORD,
PETITIONER
v.
STATE OF IOWA,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE IOWA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a dog sniff of the interior of a lawfully stopped vehicle violates the Fourth Amendment absent consent to the sniff or probable cause to believe that the vehicle contains illegal drugs.

RELATED PROCEEDINGS

Iowa District Court

State of Iowa v. Mumford, No. SRCR109847, SMAC005298. Judgment entered June 9, 2023.

Iowa Supreme Court

State of Iowa v. Mumford, No. 23-1075, 14 N.W.3d 346 (2024). Judgment entered Dec. 6, 2024.

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PETITION FOR WRIT OF CERTIORARI

Ashlee Mumford respectfully petitions for a writ of certiorari to review the judgment of the Iowa Supreme Court in this case.

OPINIONS BELOW

The opinion of the Iowa Supreme Court is published at 14 N.W.3d 346 and is reproduced in the appendix at App. 13a–42a.

JURISDICTION

The Iowa Supreme Court issued its judgment on December 6, 2024. This Court has jurisdiction under 28 U.S.C. § 1257. On February 27 and April 3, 2025, Justice Kavanaugh granted Petitioner's applications for extension of time to file a petition for writ of certiorari, from March 6 to April 17, 2025.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath

> or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

This is a case about *Katz* and dogs. More specifically, it's about whether courts should exclusively apply the "reasonable expectation of privacy" analysis set forth in *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring), to dog sniffs inside a car, or whether they should also analyze the physical intrusion under the "property-based understanding" summarized in *Florida v. Jardines*, 569 U.S. 1, 11 (2013), and *United States v. Jones*, 565 U.S. 400, 406–07 & n.3 (2012). As both the majority and the dissent in the decision below acknowledged, the answer to that question has divided lower courts, with judges "com[ing] to different conclusions under a variety of rationales." App. 21a; App. 32a–33a (Oxley, J., dissenting).

Some courts, like the Idaho Supreme Court, the Fifth Circuit, and the Ninth Circuit, consider both the reasonable-expectation-of-privacy and property-based approaches in determining whether an interior sniff constitutes a search. These courts have generally held, consistent with *Illinois v. Caballes*, 543 U.S. 405 (2005), that when a police dog sniffs around the exterior of a car, there is no reasonable expectation of privacy. But when a police officer or an instrumentality thereof breaches a vehicle's interior, that is a trespass and, by extension, a Fourth Amendment search. *See, e.g.*, *State v. Randall*,

496 P.3d 844, 852–53 (Idaho 2021); *United States v. Ngumezi*, 980 F.3d 1285, 1289 (9th Cir. 2020).

Other courts, including the Third, Sixth, Seventh, Eighth, and Tenth Circuits, and now the Iowa Supreme Court, reject the property-based test's application to interior sniffs. Instead, these courts treat *Katz* or *Caballes* as "the controlling case" and sole barometer for determining whether the drug dog's entry constitutes a search. App. 22a; *see also, e.g.*, *Felders ex rel. Smedley v. Malcom*, 755 F.3d 870, 877 (10th Cir. 2014); *United States v. Munoz*, ___ F.4th ___, 2025 WL 1109418, at *2 (8th Cir. Apr. 15, 2025).

This latter approach can't be right. After all, *Katz* "did not narrow," "repudiate," or "erode the" traditional property-based approach to the Fourth Amendment. *Jones*, 565 U.S. at 407–08. Neither did *Caballes*, which did not involve a trespass and has since been described by this Court as merely an application of *Katz*. *See Jardines*, 569 U.S. at 10. All *Katz* and *Caballes* did was "add to" the Fourth Amendment's property-rights baseline. *Id.* at 5. But that baseline, as *Jones* and *Jardines* make clear, remains firmly in place. And under this baseline, "[w]hen the Government obtains information by physically intruding on persons, houses, papers, or effects, a search within the original meaning of the Fourth Amendment has undoubtedly occurred." *Jardines*, 569 U.S. at 5 (citing *Jones*, 565 U.S. at 406–07 n.3) (internal quotation marks omitted).

That's exactly what happened here. As the Iowa Supreme Court concedes, the drug dog in this case did not uncover anything from a walk around "the exterior of" Ashlee Mumford's car—i.e., the sort of exterior scan in

Caballes. App. 19a. It "alert[ed] to the presence of controlled substances" only after it "stood on its hind legs," "placed its front paws on the passenger door," and "entered the cabin of the vehicle" by sticking its "snout" across the "plane of the passenger window." App. 20a. In other words, the intrusion inside Mumford's vehicle was the *sine qua non* for obtaining the information necessary for her arrest and conviction. *Id.* No physical intrusion, no information.

The Iowa Supreme Court's decision is not only wrong. It also deepens an increasingly intractable and untenable split of authority. Had Ashlee Mumford been pulled over in Idaho rather than Iowa, her suppression motion would have been decided differently. So too if she had been stopped in the Ninth Circuit instead of the Eighth or Tenth Circuits next door. That result flouts the nature of a federal constitutional right. This case offers an excellent opportunity to tackle this important and recurring legal question. The Court should grant review and reverse.

STATEMENT OF THE CASE

A. Factual background

On March 5, 2022, officer Logan Camp stopped Ashlee Mumford's vehicle because two numbers on the car's license plate were obscured by dirt, which is a traffic violation under state law. App. 13a. After pulling Mumford over, Camp called the police department's canine handler, Christian Dekker, to the scene for assistance. App. 19a. Dekker arrived a few minutes later, and Camp and Dekker "asked Mumford and her

passenger to exit the vehicle." *Id.* Dekker proceeded "to conduct a dog sniff around the exterior of the vehicle." *Id.*

Dekker started "on the driver's side of the vehicle, proceeded to the rear of the vehicle, and then proceeded to the front passenger door." App. 20a. While in front of the passenger door, "[t]he dog stood on its hind legs and placed its front paws on the passenger door." *Id.* The dog's nose then "crossed the plane of the passenger window and entered the cabin of the vehicle," subsequently alerting to the presence of narcotics. *Id.* Based on that alert, Camp and Dekker searched the car and Mumford's purse. *Id.* They found methamphetamine in the glove compartment, and marijuana and a methamphetamine pipe in Mumford's purse. *Id.* Mumford was "arrest[ed] and charged with possession of methamphetamine, marijuana, and drug paraphernalia." App. 14a.

B. Proceedings below

On May 3, 2022, Mumford filed a motion to suppress. At a hearing on this motion, both Camp and Dekker testified that neither officer could smell marijuana or any other contraband at the scene. App. 52a, 60a. But a dog's sense of smell, according to Dekker, is "well above and beyond" a human's. App. 60a. Moreover, the dog here had been specially trained and working for Dekker for over a year before Mumford's arrest. App. 54a. Dekker further acknowledged that he was "always in control of" the dog, App. 59a; could have directed the dog to not touch or intrude on Mumford's vehicle, *id.*; and did not do so here because the dog "was doing what he was trained to do," App. 62a. Dekker also confirmed, on both direct and

cross-examination, that the dog's nose entered the interior of Mumford's vehicle. App. 54a–55a, 60a–61a.

The district court denied Mumford's motion to suppress. Following a bench trial, Mumford was acquitted on the methamphetamine possession charge but convicted on the marijuana and drug paraphernalia charges. App. 14a.

A divided Iowa Supreme Court affirmed. After finding that the officers conducted a lawful traffic stop, App. 16a, the court addressed "[t]he more contentious issue" in the case: whether the dog's extending its nose inside the passenger cabin of the vehicle transformed a constitutional police tactic into an unconstitutional search. App. 19a. With respect to the facts, the court accepted that the dog's nose had gone "inside the vehicle," App. 20a. But it also emphasized Dekker's description of the dog's behavior as "instinctual," with the officers having done "nothing to encourage it," and that the intrusion was "brief." *Id.* On the law, the court acknowledged that "[o]ther courts have addressed the issue of whether a K-9 unit's entry into the cabin of a vehicle constitute[s] an unconstitutional search" and "have come to different conclusions under a variety of rationales." App. 21a (citing cases).

Ultimately, the Iowa Supreme Court determined that *Caballes* was "the controlling case." App. 22a. In its view, "[a] dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment"—regardless of whether the sniff is of the vehicle's exterior (as in *Caballes*) or interior (as here). App. 22a (quoting *Caballes*

v. Illinois, 543 U.S. 405, 410 (2005)). The court further held that, even if the sniff here were unlawful, the exclusionary rule would not suppress the evidence. "To trigger the exclusionary rule, police conduct must be . . . sufficiently culpable that such deterrence is worth the price paid by the justice system." App. 22a (quoting *Herring v. United States*, 555 U.S. 135, 144 (2009)). Here, the majority concluded, the police officers did not engage in "deliberate, reckless, or grossly negligent conduct," and so "[t]he drug dog's fleeting touch of the passenger door and *de minimis* intrusion into the vehicle cabin through a window left open by a passenger does not justify the exclusion of evidence." App. 22a.

Justice Oxley, joined by Justice McDermott, dissented. App. 30a.[1] As to the facts, the dissenters noted that, "to the extent th[e] distinction" between instinctual and officer-facilitated action matters, the drug dog's actions in this case could not properly be considered "instinctual." App. 35a. Although the dissent acknowledged that Officer Dekker did at first try to characterize the dog's actions as instinctual, he later clarified on the stand that he gave the dog a command to conduct a "scan search," which is a general instruction to search everywhere on a vehicle. *Id.* This command gave the dog "full range to search Mumford's vehicle," without limitation, "including by jumping up on both sides of the vehicle and sticking its head into the open window as it was trained to do in performing a scan search." *Id.* Consistent with the dog's general training and the specific

[1] Justice McDermott also wrote a separate dissenting opinion concluding that the dog sniff violated the Iowa Constitution. App. 36a.

instruction that Dekker gave, the dog entered the vehicle and used its nose to find contraband.

As to the law, the dissent stated that "[r]ather than tackle th[e] question [presented], the majority here continues to hide behind *Caballes* even where federal courts do not." App. 32a–33a (citing cases). *Caballes*, the dissent noted, involved an exterior sniff of a lawfully stopped automobile, and did not address whether a dog sniff into that vehicle's interior is a Fourth Amendment search. App. 30a. Furthermore, *Caballes* itself is based on *Katz*'s "reasonable expectations of privacy" test. *Id.* That analysis, the dissenters noted, "is irrelevant to a property-based Fourth Amendment challenge." *Id.* (cleaned up). Such challenges are instead governed by the trespass analysis outlined in *Jones* and *Jardines*. *Id.* Under this analysis, there is no de minimis exception. "A constitutional search occurs whenever the government commits a physical trespass against property, even where de minimis, conjoined with an attempt to find something or to obtain information." App. 33a (quoting *State v. Wright*, 961 N.W. 2d 396, 413–14 (Iowa 2021)). Nor, according to the dissent, did the majority get it right "by suggesting [that] we are bound by" some carveout to the "exclusionary rule." App. 36a. Instead, "exclusion is proper" so long as "the drug dog acted on its training." *Id.* That is what happened here, because the dog "did as he was trained to do." *Id.*

REASONS FOR GRANTING THE PETITION

I. COURTS ARE SPLIT ON WHETHER A PROPERTY-BASED ANALYSIS APPLIES TO A DOG SNIFF INTO A VEHICLE'S INTERIOR.

A Fourth Amendment search occurs if one of two inquiries is met. *United States v. Jones*, 565 U.S. 400, 406–07 (2012). First, a search "undoubtedly" occurs where the government "obtains information by physically intruding" upon one's constitutionally protected space. *Id.* at 406–07 n.3. Second, a search takes place when police conduct invades one's "reasonable expectation of privacy." *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring).

This Court has, in prior cases, applied both principles to examine whether a dog sniff is a search. It has applied a property-based understanding to hold that a dog's trespass onto a home's curtilage is a search because it involves a physical invasion of a constitutionally protected space. *Florida v. Jardines*, 569 U.S. 1, 7, 9 (2013). And it has employed a reasonable-expectation-of-privacy analysis to hold that an exterior sniff of a vehicle during a traffic stop is not a search. *Illinois v. Caballes*, 543 U.S. 405, 408–09 (2005).

What this Court has not addressed—and where lower courts are split—is whether the property-based analysis applies to and complements a reasonable-expectation-of-privacy analysis when a drug dog enters a vehicle's interior.

A. In the Idaho Supreme Court, the Ninth Circuit, and the Fifth Circuit, the property-based and reasonable-expectation-of-privacy analysis complement one another.

1. The Idaho Supreme Court has held that "when a law enforcement drug dog intrudes, to any degree, into the interior space of a car during a drug sniff, without express or implied consent to do so, a search has occurred under the Fourth Amendment." *State v. Howard*, 496 P.3d 865, 868–69 (Idaho 2021). Acknowledging that "Fourth Amendment rights do not rise or fall with the *Katz* formulation," the Idaho Supreme Court has observed that "*Jones* and *Jardines* make clear that" a "trespass into a car during an exterior sniff converts what would be a non-search under *Caballes* into a search." *State v. Randall*, 496 P.3d 844, 852–53 (Idaho 2021) (quoting *Jones*, 565 U.S. at 406–07). In applying this "bright line rule," *Howard*, 496 P.3d at 868, the Idaho Supreme Court departs from the decision below in three notable respects.

First, unlike this case, the Idaho Supreme Court has held that a search occurs when a dog "place[s] his paws on [the defendant's] vehicle," *State v. Dorff*, 526 P.3d 988, 992 (Idaho 2023) (internal quotation marks omitted), and when a dog "leap[s] through an open window" into a vehicle, *Howard*, 496 P.3d at 868; *see also Randall*, 496 P.3d at 847.

Second, the Idaho Supreme Court has rejected a "de minimis exception to the test articulated in *Jones*," stating that a search occurs even when the dog's "nose enter[s] the car and the entry [is] momentary." *Howard*, 496 P.3d at 868. That is because, under a traditional trespass

analysis, "the right to exclude others from one's property is a fundamental tenet of property law," which makes "no room . . . for a de minimis exception." *Id.*

Third, the Idaho Supreme Court has rejected efforts to recast a dog sniff as instinctual. As it explains, asking whether "a drug dog's sniff through the open window of a vehicle [is] 'instinctual'—as opposed to facilitated or encouraged by the police"—is "inconsistent with" *Jones*. *Id.* at 867. Under *Jones*, a non-consensual intrusion is a search whenever the government seeks "to obtain information." *Id.* at 868. A dog sniff is "an activity that is self-evidently conducted for the purpose of obtaining information," *id.*, because drug dogs are "tools of law enforcement" that are "trained to seek out substances they have no natural inclination to seek, and then to respond to their presence with specific and predictable behaviors," *Randall*, 496 P.3d at 855–56.

2. The Ninth Circuit has taken a similar approach, holding that police conduct a search when there is "a physical intrusion into the interior of a car," *United States v. Ngumezi*, 980 F.3d 1285, 1288 (9th Cir. 2020), or "when [a] police dog enter[s] [the] vehicle during its drug-detection sniff," *United States v. Moore*, 2023 WL 6937414, at *3 (9th Cir. Oct. 20, 2023).

In *Ngumezi*, for instance, the officer opened the passenger door of a stopped vehicle and leaned into its interior. 980 F.3d at 1288. This "physical intrusion," the Ninth Circuit reasoned, was "constitutionally significant." *Id.* at 1289. The court rooted that determination in *New York v. Class*, 475 U.S. 106 (1986)—a case decided well before *Jones* and *Jardines*—where this Court held that "a car's interior as a whole is . . . subject to Fourth

Amendment protection from unreasonable intrusions by the police." *See Ngumezi*, 980 F.3d at 1288 (quoting *Class*, 475 U.S. at 114–15). *Jones* and *Jardines* buttress that holding. Because the officer in *Ngumezi* obtained information only after intruding upon a constitutionally protected area, "a search within the original meaning of the Fourth Amendment has undoubtedly occurred." *Id.* at 1289 (first citing *Jardines*, 569 U.S. at 5; and then citing *Jones*, 565 U.S. at 406–07 n.3) (internal quotation marks omitted).

Much like the Idaho Supreme Court, *Ngumezi* rejected any suggestion of a de minimis exception. As the Ninth Circuit noted, "the Supreme Court has never suggested that the magnitude of a physical intrusion is relevant to the Fourth Amendment analysis." *Id.* After all, in *Jones*, the police instrument was "a small, light object that [did] not interfere in any way with the car's operation." *Id.* (quoting 565 U.S. at 424–25 (Alito, J., concurring in the judgment)). And it would be challenging, to say the least, to "administer a test that would require" courts "to distinguish" between officers who "lean[] into" cars and officers who "crawl[] into the back of a car to look under the seats." *Id.* The better approach, the Ninth Circuit concluded, is to "apply a bright-line rule that opening a door and entering the interior space of a vehicle constitutes a Fourth Amendment search." *Id.* (citing *Class*, 475 U.S. at 115).

In a subsequent case, *Moore*, the Ninth Circuit applied these same principles to hold that a dog's entry into the interior of a car is a Fourth Amendment search. 2023 WL 6937414, at *3. But because the dog in *Moore* alerted to the presence of contraband before entering the car—a

fact absent here—the officers had probable cause to search before the dog's entry into the vehicle. *Id.*

3. The Fifth Circuit has charted a similar, albeit less clear, course. The court first held, on reasonable-expectation-of-privacy grounds, that an officer who "pierce[s] the airspace inside the vehicle" by leaning inside an open window and smelling marijuana engages in a Fourth Amendment search. *United States v. Ryles*, 988 F.2d 13, 15 (5th Cir. 1993).

It reaffirmed that holding in *United States v. Richmond*, 915 F.3d 352 (5th Cir. 2019), but under a property-based framework. There, an officer noticed the bolts on a stopped vehicle's tires "had been stripped as [if] they had been taken off numerous times." *Id.* at 354. The officer pushed on the tire with his hand to test if there was anything inside the tire other than air. *Id.* The Fifth Circuit, citing several of this Court's property-based cases, held that the officer conducted a search. *Id.* at 357–58 (describing *Jones* "as a sea change" and stating that "*Jones* thus requires us to consider the trespass test."). It explained that the officer's actions were a "physical intrusion" that was intended to collect information, regardless of "the limited nature of the intrusion." *Id.* at 358–59.

Most recently, in *United States v. Keller*, 123 F.4th 264 (5th Cir. 2024), the Fifth Circuit recognized and appeared to apply a different analysis when a dog "sniff[s]" around a "vehicle in" an immigration "inspection lane" versus when a dog "place[s] his paws on the rear bumper of the vehicle and sniff[s] near the back hatch." *Id.* at 266, 268. The first scenario is governed by *Caballes*, the second by

Jones.[2] *Id.* at 268. Even so, the Fifth Circuit held that a search did not occur under the latter scenario in *Keller*, because "a common law trespass by a government agent constitutes a Fourth Amendment search only when it is conjoined with an attempt to find something or obtain information." *Id.* (internal quotation marks omitted). According to the Fifth Circuit, the dog's "incidental contact" was not part of an intentional effort to gather information. *Id.*

B. The Iowa Supreme Court and four federal courts of appeals do not consider a property-based analysis.

1. The Iowa Supreme Court's reasoning in this case is emblematic of the view of courts on the other side of the split. When assessing whether a dog's "nose . . . br[eaking] the plane of a passenger window" was a Fourth Amendment search, App. 14a, the Iowa Supreme Court did not mention—much less cite or discuss—*Jones* or *Jardines*. It instead reasoned that *Caballes* was "the controlling case" and, under its reading of *Caballes*, "[a] dog sniff conducted during a concededly lawful traffic stop that reveals no information other than

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[2] In *United States v. Wilson*, 2024 WL 3634199, at *2 (5th Cir. Aug. 2, 2024), the Fifth Circuit held, in a single paragraph, that a "canine 'sniff' of [a] vehicle was not an unlawful search.'" But *Wilson* relied chiefly on a prior unpublished opinion, *United States v. Shen*, 749 F. App'x 256 (5th Cir. 2018), and a panel opinion where the police had probable cause *before* the dog entered the vehicle, *United States v. Powell*, 732 F.3d 361, 373 (5th Cir. 2013). Given those circumstances, along with *Wilson*'s non-precedential nature, the reasoning of *Richmond* and *Keller*—published decisions issued pre- and post-*Wilson*, respectively—governs.

the location of a substance that no individual has any right to possess does not violate the Fourth Amendment." App. 22a (quoting *Caballes*, 543 U.S. at 353). The dog's "breach into the cabin of a vehicle" thus holds no constitutional import. App. 22a.

To be sure, the decision below acknowledged that other "courts have come to different conclusions" on this question. App. 21a. And in an earlier case, the Iowa Supreme Court recognized a possible "tension between *Caballes* and the Supreme Court's subsequent Fourth Amendment jurisprudence as articulated in *Jones* and *Jardines*." *State v. Bauler*, 8 N.W.3d 892, 902 (Iowa 2024). But that tension is, according to the Iowa Supreme Court, "for the Supreme Court to resolve." *Id.*

2. The Tenth Circuit has similarly treated the reasonable-expectation-of-privacy approach as the exclusive means for examining dog sniffs around or inside a car. In *United States v. Stone*, 866 F.2d 359 (10th Cir. 1989), a pre-*Caballes* case, the district court rejected the argument that "the dog intruded upon [an] area where [the defendant] had a legitimate expectation or reasonable expectation of privacy." *Id.* at 363. The Tenth Circuit affirmed, "agree[ing] with the district judge that the dog's instinctive actions [do] not violate the Fourth Amendment." *Id.* at 364.

The Court has reiterated this understanding post-*Caballes*, by treating it and *Katz*—and not *Jones* and *Jardines*—as the relevant precedent governing an interior dog sniff. In *Felders ex rel. Smedley v. Malcom*, 755 F.3d 870 (10th Cir. 2014), for instance, the Tenth Circuit, citing *Caballes*, applied a privacy analysis to a defendant's claim that a dog's "jump[] in [her] vehicle

through [an] open . . . door" constitutes a Fourth Amendment search. *Id.* at 877, 880. The *Felders* court did not mention *Jones* or *Jardines* or engage in a property-based analysis. And in *United States v. Seybels*, 526 F. App'x 857 (10th Cir. 2013), the Tenth Circuit explicitly rejected *Jardines*'s applicability to a dog sniff during a traffic stop. *Id.* at 859 n.1. Because *Jardines* involved a home, the panel reasoned that it "was based on property rights not implicated in the traffic stop context and, hence, did not undermine *Caballes*." *Id.* at 859 n.1 (citing *Jardines*, 569 U.S. at 10–11). Subsequent Tenth Circuit decisions have continued to assess interior dog sniffs without referring to this Court's property-based approach. *See*, *e.g.*, *United States v. Moore*, 795 F.3d 1224, 1231–32 (10th Cir. 2015).

3. The Sixth Circuit has also cabined *Jones* and *Jardines*, declining to apply their reasoning to dog sniffs reaching inside lawfully stopped vehicles. Echoing the Tenth Circuit's language from *Stone*, the Sixth Circuit has held that it was "not a Fourth Amendment violation for a dog to jump into a car on its own volition and instinct when sniffing for drugs." *United States v. Sharp*, 689 F.3d 616, 620 (6th Cir. 2012). And paralleling the Tenth Circuit's reasoning in *Seybels*, the Sixth Circuit has observed that "*Jardines* is premised on a trespass rationale involving the special protection accorded to the home and, therefore . . . does not alter the analysis for traffic stops." *United States v. Winters*, 782 F.3d 289, 292 (6th Cir. 2015).

Most recently, in *United States v. Johnson*, 2024 WL 1956209 (6th Cir. May 3, 2024), the Sixth Circuit stressed that a dog's sniff of the interior of a vehicle were not a search. *Id.* at *3. The court again rejected the

defendant's property-based argument that "a drug detecting K9 passing through an open door, twice, into the interior of a vehicle constitutes a search." *Id.* Instead, the court offered up a broad rule for dog sniffs: "[A] canine sniff is not a search" so long as the police are lawfully present where the sniff occurs because "[a] sniff reveals only 'the location of a substance that no individual has any right to possess.'" *Id.* (first quoting *Sharp*, 689 F.3d at 618; and then quoting *Caballes*, 543 U.S. at 410).

4. The Eighth Circuit has also followed a *Katz* and *Caballes* approach. In two cases decided before *Jones* and *Jardines*, it applied a reasonable-expectation-of-privacy analysis to canine sniffs of personal property. In one, *United States v. Michael Lyons*, 957 F.2d 615, 616 (8th Cir. 1992), the dog "sniffed" packages in a room, "became agitated," and "tore [a] package in two." In the other, *United States v. Kelvin Lyons*, 486 F.3d 367, 373 (8th Cir. 2007), the dog "stuck his head through" a car "window." In both cases, the Eighth Circuit concluded that no search took place, citing the Tenth Circuit's holding in *Stone* and adding that "the instinctive actions of a trained canine do not violate the Fourth Amendment." *Id.*; *accord Michael Lyons*, 957 F.2d at 617.

In *United States v. Pulido-Ayala*, 892 F.3d 315 (8th Cir. 2018), the Eighth Circuit appeared to somewhat change tack, by casting "doubt" on the reasoning of the *Lyons* cases and recognizing that "a drug dog is an instrumentality of the police, and the actions of an instrument or agent of the government normally are governed by the Fourth Amendment." *Id.* at 318–19 (internal quotation marks omitted). But because of other intervening facts, the Eighth Circuit did not in *Pulido-*

Ayala have occasion to expressly overrule either *Lyons* decision.

And just this month, the Eighth Circuit clarified that the *Lyons* cases remain good law and that *Katz* and *Caballes*—rather than *Jones* and *Jardines*—govern dog sniffs at a lawful traffic stop. In *United States v. Munoz*, ___ F.4th ___, 2025 WL 1109418, *1 (8th Cir. Apr. 15, 2025), a drug-detection dog was instructed to "perform[] an open-air sniff"; during that sniff, the dog "made brief contact with the car's exterior." The Eighth Circuit rejected the argument that "the dog's contact with the car was an unlawful trespass." *Id.* at *2. Instead, the court read *Caballes* to hold that "[t]he use of a well-trained narcotics-detection dog during a lawful traffic stop[] generally does not implicate legitimate privacy interests," regardless of whether the dog intrudes into a vehicle's interior. *Id.* (citing *Caballes*, 543 U.S. at 409)) (ellipses removed). And it relied on *Kelvin Lyons* for the holding that a dog's "instinctive actions" do not give rise to a search and thus "do not violate the Fourth Amendment." *Id.*

5. In like manner, the Seventh Circuit has observed that "while using trained police dogs to investigate the home is a search within the meaning of the Fourth Amendment, dog sniffs conducted in public places are generally not." *United States v. Plancarte*, 105 F.4th 996, 1000 (7th Cir. 2024) (cleaned up) (first citing *Jardines*, 569 U.S. at 11–12; and then citing *Caballes*, 543 U.S. at 409). Instead, the court "focus[ed] on the privacy-based approach." *Id.* at 999.

In *United States v. Guidry*, 817 F.3d 997 (7th Cir. 2016), it applied that privacy-based approach—and solely

that approach—to circumstances largely indistinguishable from the facts here. That case, as here, involved a drug-detection dog who entered the defendant's car during an otherwise lawful exterior sniff. *Id.* at 1001–02. Sounding in the logic of *Jones* and *Jardines*, the defendant insisted that "the officers . . . violated his Fourth Amendment rights by allowing the dog to search the interior of his car." *Id.* at 1005. But the panel rejected that argument, stating that the facts instead "resemble[d] cases where no Fourth Amendment violation was found" because there was "no indication that the officers intended to facilitate the dog's entry into the car." *Id.* at 1006 (citing decisions from Third, Eighth, and Tenth Circuits).

6. The Third Circuit has similarly declined to employ a trespass analysis to analyze interior dog sniffs. In *United States v. Pierce*, 622 F.3d 209 (3d Cir. 2010), the court first observed that, under *Katz* and *Caballes*, "an *exterior* canine sniff of a car during a lawful traffic stop does *not* amount to a 'search.'" *Id.* at 213 (citing *Caballes*, 543 U.S. at 410). *Pierce* then extended that reasoning to the dog's entry *into* the vehicle, holding that such actions also do "not constitute a search" unless an officer "facilitate[s] or encourage[s] the dog's entry into the car." *Id.* at 214–15. Though *Pierce* was decided pre-*Jones* and -*Jardines*, courts within the Third Circuit have continued to cite and rely on *Pierce*—and have not applied a property-based analysis—when assessing traffic stop searches involving canines post-*Jones* and -*Jardines*. *See, e.g.*, *United States v. Humphries*, 504 F. Supp. 3d 464, 471–72 (W.D. Pa. 2020).

II. THE IOWA SUPREME COURT'S DECISION IS INCORRECT.

The Iowa Supreme Court erred in holding that "a drug dog's momentary breach into the cabin of a vehicle" is not a Fourth Amendment search. App. 21a–22a. Its reasoning conflicts with history, cannot be squared with precedent, and is unworkable.

A. The decision below conflicts with history and tradition.

Under the Fourth Amendment's property-based approach, this Court begins by looking to "whether the action in question would have constituted a 'search' within the original meaning of the Fourth Amendment." *United States v. Jones*, 565 U.S. 400, 406–07 n.3 (2012). That original meaning, as *Jones* observes, was "tru[ly] and ultimate[ly] express[ed]" in *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765). *Jones*, 565 U.S. at 405 (quoting *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989)). There, in connection with a messenger of the Crown's "breaking open" of the plaintiff's "boxes, chests, [and] drawers . . . in his house," Lord Camden explained that "[o]ur law holds the property of every man so sacred" that if a government agent enters one's property, "he is trespasser, though he does no damage at all." *Entick*, 95 Eng. Rep. at 807, 817.

These principles alone resolve this case. The government's physical intrusion into Mumford's vehicle for the purpose of obtaining information—regardless of whether minimal or momentary—would have been a Fourth Amendment search at the time of the Founding.

The common-law tradition confirms this point. "Under English common law, the traditional proposition [was] that the trespass to chattels, like its real property counterpart, [would be] actionable *per se* independent of any proof of actual damage." Shyamkrishna Balganesh, *Property Along the Tort Spectrum: Trespass to Chattels and the Anglo-American Doctrinal Divergence*, 35 COMMON L. WORLD REV. 135, 141 (2006). After all, Founding-era authorities increasingly "regard[ed] a man's personalty in a light nearly, if not quite, equal to his realty." 3 ST. GEORGE TUCKER, BLACKSTONE'S COMMENTARIES 385 (William Young Birch & Abraham Small eds. 1803) ("TUCKER'S BLACKSTONE"). And even when American courts imposed an actual-damages requirement in trespass to chattel cases six decades post-ratification, Balganesh, *supra*, at 142, they still treated "physical contact with [a] chattel" without privilege as a technical trespass. *See* Restatement (Second) of Torts § 217 cmt. e (1965).

That the government uses a drug-detection dog to effectuate its trespass does not change the analysis. At common law, "[a] man [was] answerable for not only his own trespass, but that of his cattle." 4 TUCKER'S BLACKSTONE 211. As this Court has acknowledged, an owner of cattle would be strictly liable for "trespasses committed by them upon the uninclosed lands of others." *Lazarus v. Phelps*, 152 U.S. 81, 84 (1894). Strict liability was the rule, authorities explain, because cattle had a propensity to "roam and do damage." W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 76, at 539 (5th ed. 1984).

That logic extends here. Both the majority and the dissent below acknowledged that drug-sniffing dogs have a propensity to intrude into a vehicle's interior. For the majority, that stemmed from the dog's "instinctual" behavior. App. 20a. On the dissent's telling, the dog acted as it was "trained to do." App. 35a–36a (Oxley, J., dissenting). But importantly, both roads lead to the same destination: The police "knew of [the dog's] . . . habit," meaning that under traditional common-law principles, they "must answer for the consequences." 4 TUCKER'S BLACKSTONE 154.

B. The decision below contravenes precedent.

Precedent tracks history and tradition. This Court's decisions establish that under a property-based approach, (1) a non-consensual physical intrusion into a constitutionally protected area to obtain information constitutes a search; (2) the interior of a car is a constitutionally protected space; and (3) a drug-detection dog's entry into a constitutionally protected space constitutes a trespass.

First, as *Jones* explains, a search "undoubtedly" occurs whenever the government "obtains information by physically intruding on a constitutionally protected area." 565 U.S. at 406–07 n.3.

Second, the Fourth Amendment expressly defines which spaces are constitutionally protected, by affording "[t]he right of the people to be secure in their persons, houses, papers, and effects." U.S. CONST. amend IV. "It is beyond dispute that a vehicle is an 'effect' as that term is used in the Amendment." *Jones*, 565 U.S. at 404 (citing *United States v. Chadwick*, 433 U.S. 1, 12 (1977)). Indeed,

"[a] car's interior as a whole is . . . subject to Fourth Amendment protection from unreasonable intrusions by the police . . . [and] intrusion into that space constitute[s] a 'search.'" *Class*, 475 U.S. at 114–15.

Third, a police dog is an "instrument" of the police. *Jardines*, 569 U.S. at 9 n.3; *id.* at 12 (Kagan, J., concurring); *id.* at 23 (Alito, J., dissenting). Such dogs are "super-sensitive," "highly trained," and "geared to respond in distinctive ways to specific scents so as to convey clear and reliable information to their human partners." *Id.* at 12–13 (Kagan, J., concurring). And when these trained law enforcement instruments obtain information by intruding without consent on an individual's property, that is a trespass, for "[i]t is not the dog that is the problem, but the behavior that . . . involved use of the dog." *Id.* at 9 n.3.

This Court can, in short, resolve the question presented through a straightforward application of *Jones* and *Jardines*. This case involves the same constitutionally protected space at issue in *Jones* and the same law enforcement instrument at issue in *Jardines*. And as in both cases, the law enforcement instrument intruded upon a constitutionally protected space to gather information. That gave rise to a search in both *Jones* and in *Jardines*. It does so here as well.

C. The decision below is unworkable.

"One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy." *Jardines*, 569 U.S. at 11. The converse is that the alternative approach—evaluating whether a particular action under a specific set of circumstances implicates a subjective and

objective reasonable expectation of privacy—often does not yield a straightforward answer and provides scant meaningful guidance to lower courts. The decision below starkly illustrates these shortcomings.

Consider the majority's claims (i) that "the dog's behavior was instinctual"; (ii) that Officer Dekker did "nothing to encourage" the dog's entry into Mumford's car; and (iii) that the dog's entry was "almost imperceptibl[e]" and only "momentary." App. 20a–21a, App. 24a. Several federal courts of appeals have similarly asked, as part of the *Katz* and *Caballes* analysis, whether the dog's actions were "instinctive," *Stone*, 866 F.2d at 364, and whether an officer "facilitate[d]" the dog's entry into a defendant's vehicle, *Guidry*, 817 F.3d at 1006.

But how can a court know when a dog behaves instinctively and when it doesn't? Dogs, after all, aren't born to detect contraband. *See Jardines*, 569 U.S. at 12 (Kagan, J., concurring). A dog must be trained to do so. And as the State concedes, a judge obviously "can't ask" the dog whether, in any particular case or situation, it was acting instinctively or according to its training. App. 57a. What that means in practice is that courts—like the Iowa Supreme Court—often take the officer's word for it, with liability thereby turning on what the officer thinks the dog thought. Yet that cannot possibly be a sound way to read the Fourth Amendment. As the Idaho Supreme Court observes, it makes little sense to "regard drug dogs as highly trained tools of law enforcement when their behavior is consistent with the limitations of the Fourth Amendment"—i.e., when they only sniff around a car's exterior—"and then regard them as mere dogs when their behavior runs afoul of it." *Randall*, 496 P.3d at 855.

By the same token, examining whether an officer encouraged certain behavior invites more questions than it answers. Does telling a dog to scan a car thoroughly for drugs qualify as encouragement or facilitation? Or must an officer specifically instruct the dog to intrude into a vehicle's interior, contrary to *Class*; and to sniff in order to obtain information, contrary to *Jones* and *Jardines*? Or to situate it into the facts here, does an officer facilitate and encourage when they acknowledge they (1) can stop the dog from intruding on a vehicle, but they in fact (2) do "nothing" when the dog "jump[s] up on the passenger side door" and sticks "its head" into the car because "he was doing what he was trained to do"? App. 59a, 62a.

Finally, a court would, under a reasonable-expectation-of-privacy approach, need to also address whether the dog's entry was "imperceptibl[e]" (or not) and whether the dog sniff was "momentary" (or not). App. 20a, 21a. Is a three-second sniff sufficiently momentary, or would such a sniff infringe upon one's reasonable expectation of privacy? What about a six-second intrusion, with the dog inserting its paws for the first four seconds and only managing to stick its nose in for two seconds? And does the answer change if the dog is particularly well-trained or highly experienced?

The benefit of a property-based understanding is that it avoids such difficult line-drawing exercises. There is no need, under such an approach, to reconstruct a dog's mens rea, or to delineate what constitutes facilitation, or to determine when a dog's intrusion goes from imperceptible to "almost imperceptibl[e]," to actually perceptible, App. 20a; *see, e.g.*, *Ngumezi*, 980 F.3d at 1289 ("Nor do we see how courts could administer a test that would require

them to distinguish between [an officer] leaning into the passenger-side area of [a] car and, say, an officer crawling into the back of a car to look under the seats."). Instead, when—as this Court has instructed—the reasonable-expectation-of-privacy and property-based approaches complement one another, the latter approach resolves matters like this one by "keep[ing] easy cases easy." *Jardines*, 569 U.S. at 11.

III. THIS CASE PRESENTS AN APPROPRIATE OPPORTUNITY TO ADDRESS AN IMPORTANT, RECURRING CONSTITUTIONAL QUESTION.

This case presents an issue ripe for this Court's consideration. It implicates a significant split among the federal courts of appeals and state courts of last resort on an important constitutional question. The critical facts—that a dog entered a vehicle's interior and only alerted to drugs after doing so—are undisputed. Finally, the decision below acknowledged the split, observing that "courts have come to different conclusions" on whether an interior dog sniff is a search. App. 21a. What is more, in an earlier opinion, the Iowa Supreme Court expressly noted that "we think the Idaho Supreme Court erred in its ultimate conclusion" as to the question presented. *State v. Bauler*, 8 N.W.3d 892, 905 (Iowa 2024).

The Iowa Supreme Court's decision to recognize and apply an exception to the exclusionary rule does not preclude review for two reasons.

First, its decision on exclusion was intertwined with its analysis of whether a sniff into a car's interior constitutes a search. As the majority itself put it, the "dog's fleeting

touch of the passenger door and *de minimis* intrusion into the vehicle cabin through a window left open by a passenger does not justify the exclusion of evidence." App. 22a. But as outlined above, these considerations—whether a dog's touch was fleeting, whether the dog acted instinctually, and whether the dog's intrusion was sufficiently minimal—matter only because a court is interrogating whether the dog's actions satisfied the reasonable-expectation-of-privacy framework. That is why the courts that embrace a property-based approach have declined to exclude evidence based on these same factors. *See, e.g.*, *State v. Howard*, 496 P.3d 865, 868 (Idaho 2021) ("[T]he right to exclude others from one's property is a fundamental tenet of property law, and we see no room in the *Jones* test for a de minimis exception."); *United States v. Richmond*, 915 F.3d 352, 359 (5th Cir. 2019) ("[T]he limited nature of the intrusion does not affect whether the physical examination . . . is deemed a search."); *United States v. Ngumezi*, 980 F.3d 1285, 1289 (9th Cir. 2020) (rejecting argument that no search occurs when trespass is "minimally intrusive"). Consequently, the Court may grant review, answer the question presented, and remand for the Iowa Supreme Court to resolve the exclusion issue, but without tying their exclusionary rule analysis to a *Katz/Caballes* approach.

Second, the Iowa Supreme Court misread and misapplied this Court's exclusionary-rule framework. As this Court has underscored, "inadmissibility of illegally obtained evidence must remain the rule, not the exception." *James v. Illinois*, 493 U.S. 307, 319 (1990). Doing so "deter[s] lawless conduct by" police officers and

"clos[es] the doors of the federal courts to any use of evidence unconstitutionally obtained." *Wong Sun v. United States*, 371 U.S. 471, 486 (1963). Thus, courts have suppressed evidence from an improper search unless an exception to exclusion applies. *Murray v. United States*, 487 U.S. 533, 536–37 (1988).

But courts have not recognized a de minimis proviso to the exclusionary rule, much less an open-ended, balancing-test-like inquiry for officer conduct that was not "deliberate, reckless, or grossly negligent." App. 22a; *see also Ngumezi*, 980 F.3d at 1291 ("[L]ack of flagrancy is not a freestanding basis for avoiding the application of the exclusionary rule."). Nor should they. When the Court has recognized exceptions to the exclusionary rule, such as independent source and inevitable discovery, it is because those exceptions comport with the purposes behind the rule. *See Murray*, 487 U.S. at 537; *Nix v. Williams*, 467 U.S. 431, 443 (1984). There is no need, in short, to deter when there is already an independent source for the evidence to come in or when the evidence would have been uncovered with or without an illegal search.

Yet that rationale does not apply for a dog sniff into a car's interior. If, as the officers concede, the dog was searching the vehicle as "I've told him to" and "was doing what he was trained to do," then there is an obvious basis for deterrence. App. 57a, 62a. Put simply, the dog "was trained" to "obtain[] information by physically intruding on a constitutionally protected area." *United States v. Jones*, 565 U.S. 400, 406–07 n.3 (2012); *Florida v. Jardines*, 569 U.S. 1, 11–12 (2013). Such facts gave rise to an unconstitutional search in *Jones* and in *Jardines*. The

resulting evidence was suppressed in both cases. *Id.* at 413; 569 U.S. at 11–12. So too here.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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April 17, 2025

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APPENDIX A

IN THE IOWA DISTRICT COURT
FOR MADISON COUNTY

STATE OF IOWA **Plaintiff,** **Vs.** **ASHLEE MARIE MUMFORD,** **Defendant.**	**CASE NO. SRCR109847, SMAC005298** **TRIAL TO THE COURT: FINDINGS OF FACT,** **CONCLUSIONS OF LAW AND VERDICT**

This matter came before the Court as a bench trial on March 27, 2023. The Court heard testimony from three witnesses and received State's Exhibits 1-9. The defendant thereafter waived the reading of the verdict in open court pursuant to Rule 2.17. Therefore, the Court now makes the following findings of facts and conclusions of law.

FINDINGS OF FACT

Officer Logan Camp of the Winterset Police Department was on duty on March 5, 2022. He pulled over a vehicle operated by the defendant for no registration. The defendant was identified as the driver of the vehicle by her driver's license. Shane Wells was identified as the passenger and owner of the vehicle. Camp testified the defendant was very nervous. While he went back to his vehicle to issue a citation, Camp called Officer Christian Dekker, Winterset Police Department, to assist him on the traffic stop. Dekker is a certified K9 handler and a Drug Recognition Expert.

As they had not been immediately able to produce the insurance for the vehicle, Camp testified that he went back to the defendant's vehicle to get the insurance and to ask

the occupants to step out. The defendant stepped out as requested and grabbed her purse when exiting the vehicle. Dekker then walked the K9 around the vehicle. He testified that the K9 alerted on the vehicle at the passenger front door.

The officers then conducted a probable cause search of the vehicle and the defendant's purse as it was recently inside the vehicle. In the passenger glove compartment, they found two baggies containing a white crystalline substance (Exhibit 5) which the officers believed was methamphetamine based on their training and experience. Officers also field tested the substance and the field test was positive for methamphetamine (Exhibit 6). These baggies were submitted to the DCI Laboratory for testing (Exhibit 7), and subsequently were confirmed as methamphetamine with a total net weight of 2.41 grams between the two baggies (Exhibit 8). Both the defendant and Wells denied ownership of the methamphetamine, though the defendant stated she had just been in the glove box earlier before they left home. Camp also searched the defendant's purse and Wells's person. In the defendant's purse Camp found a baggie of a green, leafy substance (Exhibit 4) and a pipe (Exhibit 3). Camp located some pills on Wells's person down the front of his pants. Wells admitted to possession of the pills, according to Camp's testimony, stating that the defendant handed him some marijuana to conceal and he put it in his groin. Both Camp and Dekker testified that the occupants appeared to be surprised by the methamphetamine discovery.

Camp testified that the pipe was consistent with a pipe designed for methamphetamine use. He testified about the distinguishing characteristics of meth pipe – that it is hollow, a user puts the methamphetamine in the round end, heats it up, and then smokes out the other end of the

tube. He testified that it is a distinct design that is different from a pipe used to smoke marijuana or other substances.

Camp admitted that he neither field tested the marijuana nor was it submitted for lab testing. He testified that he did field test the pipe, and it tested positive for methamphetamine, but he admitted that was not in his report and he was unsure if he took a photograph of the test results. Camp testified that the green leafy substance, based on his training and experience, was marijuana. Dekker also testified that the green leafy substance was consistent with marijuana based on his training and experience.

Wells also testified for the State. He testified that the vehicle was his. He admitted he was arrested as a result of this incident, and that he pled guilty to both possession of marijuana and the pills that were on his person. He admitted that he did not initially tell the officers the truth about the drugs on his person. He denied that the methamphetamine in the glove box was his and testified that he was surprised at the contents. He testified that he had been driving until approximately five minutes earlier when he got tired, so he and the defendant switched positions. He further testified that the defendant did not drive his vehicle regularly, as she had her own vehicle, but since he has a habit of falling asleep when he drives he asked her to take over.

CONCLUSIONS OF LAW

The Defendant is charged by Trial Information in SRCR109847 with 2 counts: Count 1 – Possession of a Controlled Substance (Methamphetamine) and Count 2 – Possession of a Controlled Substance (Marijuana). In

SMAC005298, the Defendant is charged by complaint with Possession of Drug Paraphernalia.

The State must prove both of the following elements of Possession of a Controlled Substance:

1. On or about the 5th day of March, 2022, the defendant knowingly or intentionally possessed a controlled substance: methamphetamine (Count 1) or marijuana (Count 2).
2. The defendant knew that the substance she possessed was methamphetamine (Count 1) or marijuana (Count 2).

If the State has proved both of the elements, the defendant is guilty. If the State has failed to prove either of the elements, the defendant is not guilty. Iowa Crim. Jury Instruction 2300.3. The standard of proof necessary is proof beyond a reasonable doubt. A reasonable doubt is one that "fairly and naturally arises from the evidence or lack of evidence produced by the State;" in order to find the defendant guilty, the Court must be "firmly convinced" of the defendant's guilt. *State v. Davis*, 975 N.W.2d 1, 10 (Iowa 2022).

Possession may be either actual or constructive. Iowa Criminal Jury Instruction 200.47 sets out the standard for possession:

> The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.
>
> A person who has direct physical control over a thing on her person is in actual possession of it.

> A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is in constructive possession of it. A person's mere presence at a place where a thing is found or proximity to the thing is not enough to support a conclusion that the person possessed the thing.
>
> If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.
>
> Whenever the word "possession" has been used in these instructions, it includes actual as well as constructive possession and sole as well as joint possession.

The Supreme Court has identified some "nonexclusive factors" to consider in determining whether a defendant is in constructive possession of items in a jointly occupied structure: "(1) incriminating statements made by a person; (2) incriminating actions of the person upon the police's discovery of a controlled substance among or near the person's personal belongings; (3) the person's fingerprints on the packages containing the controlled substance; and (4) any other circumstances linking the person to the controlled substance." *State v. Reed*, 875 N.W.2d 693, 706 (Iowa 2016) (citing *State v. Kern*, 831 N.W.2d 149, 161 (Iowa 2013)).

As to Count 1, the evidence is clear that the defendant was not in actual possession of the methamphetamine, as it was located in the vehicle's glove box. Therefore, the State must rely on the theory of constructive possession. The vehicle did not belong to the defendant, and she was

not in exclusive possession of the vehicle at the time it was stopped; in fact, the owner of the vehicle was in the vehicle with her. The defendant made no incriminating statements about the methamphetamine specifically, although she did admit to having "been in" the glove box earlier that day. Officers did not observe furtive movements after initiating the traffic stop, such that an inference could be made that the defendant was attempting to hide the drugs. The baggies were not fingerprinted. As to "any other circumstances" linking the defendant to the drugs, Wells denied that the methamphetamine was his but did plead to other controlled substances he possessed, which could support an inference that the methamphetamine in the glove box was not actually his. Further, another circumstance linking the defendant to the methamphetamine is the presence of a pipe used to smoke methamphetamine in the defendant's purse. However, to a certain degree, this circumstance also cuts against a finding of possession, as it is inconsistent to have the marijuana and methamphetamine pipe together and the methamphetamine itself in a different location. Why would the defendant move only the methamphetamine and not the other contraband items out of her purse? Overall, the Court cannot conclude that the State has proved beyond a reasonable [sic] defendant was in constructive possession of the methamphetamine based on all the factors identified in *Reed*.

As to Count 2, the evidence shows that the defendant was in actual possession of the marijuana. It was located in her purse, which she specifically took from the vehicle when asked to vacate the vehicle. The purse contained other personal items of the defendant's such as her wallet. The evidence shows that she had dominion and control

over the purse and the items inside it. Common sense further suggests that a female has knowledge of the items in her purse.

The defendant argued that there is no proof that the substance was actually marijuana. However, two experienced police officers, including one whose primary job duties include handling the drug K9 and being a Drug Recognition Expert, both testified that the substance was marijuana based on their training and experience. The Court finds that is sufficient proof beyond a reasonable doubt that the substance was marijuana.

As to the second element, which is that the defendant had knowledge that the substance was marijuana, the Court finds that a reasonable inference can be drawn from the evidence that the defendant knew the substance was marijuana. She was in possession of other drug paraphernalia, as will be discussed below. There is no evidence suggesting that the substance could possibly be identified as anything other than marijuana. The Court concludes that the State has also proven the second element of the charge of Possession of Marijuana. Therefore, the State has proved beyond a reasonable doubt that the defendant is guilty of Count 2.

For Possession of Drug Paraphernalia, the State must prove a single element:

1. On or about the 5th day of March, 2022, the defendant knowingly or intentionally possessed drug paraphernalia.

Iowa Crim. Jury Instruction 2330.1. Again, the burden of proof that the State must satisfy is beyond a reasonable doubt. "Drug paraphernalia" is equipment or materials that one intends to use, or knows is intended to be used, primarily for any of the following purposes:

1. To manufacture a controlled substance;
2. To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance;
3. To test the strength, effectiveness, or purity of a controlled substance;
4. To enhance the effect of a controlled substance.

However, drug paraphernalia does not include any equipment or material used in combination with the lawful use of a controlled substance, or the otherwise lawful use of that equipment or material. Iowa Crim. Jury Instruction 2330.2. The State alleges that the pipe found in the defendant's purse was drug paraphernalia under this definition.

Much as with the marijuana, the evidence shows that the defendant was in actual possession of the pipe. It was located in her purse, over which she had dominion and control. Camp testified that the pipe was unique and described its function and use as a pipe to ingest methamphetamine, including using a torch of the same kind that was also located in the defendant's purse. He did not testify that there were any lawful uses of the pipe. Wells testified that he had seen the defendant use methamphetamine before; that evidence helps prove her knowledge that the pipe was drug paraphernalia, and was not used for lawfully ingesting a controlled substance. Put another way, that evidence shows the lack of mistake or accident in having the pipe in her purse. The Court concludes that the State has proven beyond a reasonable doubt that the defendant knowingly or intentionally possessed drug paraphernalia.

VERDICT

SRCR Count 1: The Court finds the defendant not guilty of Possession of Methamphetamine.

SRCR Count 2: The Court finds the defendant guilty of Possession of Marijuana.

SMAC: The Court finds the defendant guilty of Possession of Drug Paraphernalia.

IT IS THEREFORE ORDERED that sentencing in the above-captioned matters shall be held on May 12, 2023 at 10:00 a.m. The defendant is ordered to be personally present.

CLERK OF DISTRICT COURT
STATE OF IOWA

State of Iowa Courts

Case Number	**Case Title**
SRCR109847	STATE OF IOWA VS MUMFORD, ASHLEE MARIE

Type: ORDER SETTING HEARING

So Ordered

/s/ Erica Crisp
Erica Crisp,
District Associate Judge
Fifth Judicial District of Iowa

Electronically signed on 2023-04-24 14:18:32

APPENDIX B

In the Iowa Supreme Court

No. 23–1075

Submitted October 10, 2024—Filed December 6, 2024

State of Iowa,

Appellee,

vs.

Ashlee Marie Mumford,

Appellant.

Appeal from the Iowa District Court for Madison County, Kevin Parker (motion to suppress) and Erica Crisp (bench trial), judges.

The defendant contends the district court erred in denying her motion to suppress evidence and challenges the sufficiency of the evidence supporting her conviction for possession of marijuana. **Affirmed.**

McDonald, J., delivered the opinion of the court, in which Christensen, C.J., and Waterman, Mansfield, and May, JJ., joined. Oxley, J., filed a dissenting opinion, in which McDermott, J., joined. McDermott, J., filed a dissenting opinion.

Colin C. Murphy of Gourley, Rehkemper & Lindholm, P.L.C., West Des Moines, for appellant.

Brenna Bird, Attorney General, and Joshua A. Duden, Assistant Attorney General, for appellee.

McDonald, Justice.

A police officer initiated a traffic stop of motorist Ashlee Mumford after the police officer was unable to read two of the numbers on the vehicle's dirt-and-grime-covered license plate. During the traffic stop, a second

officer used a drug detection dog to conduct a sniff around the exterior of the stopped vehicle. In the course of the sniff around the exterior of the vehicle, the dog's paws touched the passenger door, and the dog's nose momentarily, almost imperceptibly, broke the plane of the passenger window. The dog then alerted to the presence of controlled substances. The officers searched the vehicle and found two bags of methamphetamine in the glove compartment, and they searched Mumford's purse and found marijuana and a methamphetamine pipe. Mumford was placed under arrest and charged with possession of methamphetamine, marijuana, and drug paraphernalia. Following a bench trial, Mumford was acquitted of possession of methamphetamine but convicted of possession of marijuana and drug paraphernalia. On appeal, Mumford contends the district court erred in denying her motion to suppress evidence allegedly obtained in violation of her constitutional right to be free from unreasonable searches and seizures. She challenges the sufficiency of the evidence supporting her conviction for possession of marijuana. And she claims the district court erred in denying her motion in arrest of judgment. We affirm her convictions.

I.

In the district court, Mumford moved to suppress the evidence of contraband obtained from the traffic stop and subsequent search of the vehicle and her purse. She claimed that the traffic stop and the officers' use of the drug detection dog during the traffic stop violated her federal and state constitutional rights to be free from unreasonable seizures and searches. The district court denied the motion to suppress evidence. It concluded that the traffic stop was supported by probable cause and that use of the drug detection dog did not violate the Federal

or State Constitution. Mumford contends the district court erred in denying her motion to suppress evidence. Our review is de novo. *See State v. Bauler*, 8 N.W.3d 892, 897 (Iowa 2024).

A.

The Fourth Amendment to the Federal Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The Supreme Court holds that the Fourth Amendment applies to the states and state actors via the Due Process Clause of the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *State v. Pickett*, 573 N.W.2d 245, 247 (Iowa 1997). The text of article I, section 8 of the Iowa Constitution is materially indistinguishable from the text of the Fourth Amendment. "This fact however does not compel us to follow the construction placed on the language by the United States Supreme Court." *State ex rel. Kuble v. Bisignano*, 28 N.W.2d 504, 508 (Iowa 1947). Instead, "it is our duty to independently interpret [article I,] section 8 based on its words and history[, and] [d]epending on the issue, this inquiry may lead us to conclude that section 8 provides protections that are the same as, greater than, or less than the protections provided by the Fourth Amendment." *State v. Burns*, 988 N.W.2d 352, 365 (Iowa 2023).

B.

We first address the constitutionality of the traffic stop. The record reflects that Winterset Police Officer Logan Camp initially observed the vehicle parked at the residence of a man known to be involved in drug activity. Camp attempted to run the license plate at that time, but he could not read the last two digits of the license plate

because dirt and grime obscured them. Later that evening, Camp observed the same vehicle on a highway and pulled behind it. Camp still was unable to read the last two numbers on the license plate. Camp believed this was a violation of the law and initiated a traffic stop.

The " 'detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of' article I, section 8 and the Fourth Amendment." *Bauler*, 8 N.W.3d at 897 (plurality opinion) (quoting *State v. Warren*, 955 N.W.2d 848, 859 (Iowa 2021)). A traffic stop is constitutional "when supported by probable cause or reasonable suspicion of a crime." *State v. McIver*, 858 N.W.2d 699, 702 (Iowa 2015). "Probable cause exists if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed" and the detained person "committed or is committing it." *Bauler*, 8 N.W.3d at 897 (plurality opinion) (quoting *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004)). A peace officer's observation of a traffic violation, however minor, provides probable cause to stop a motorist. *Id.*

We conclude there was probable cause to stop the vehicle Mumford was driving. The Code provides that "[e]very registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued . . . in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible." Iowa Code § 321.38 (2022). Dirt and grime are "foreign materials" within the meaning of the statute, and if the dirt and grime render the information printed on the license plate not "clearly legible," the motorist has violated the statute. *See State v. Harrison*, 846 N.W.2d 362, 368 (Iowa 2014) ("Iowa Code

sections 321.38 and 321.388 demonstrate that the legislature intended that all information to be displayed on a license plate must remain readable."); *State v. McFadden*, No. 16–1184, 2017 WL 4315047, at *2 (Iowa Ct. App. Sept. 27, 2017) ("A dirty plate constitutes a traffic violation. The violation [of section 321.38] afforded the officers probable cause to stop the vehicle." (citation omitted)); *State v. Klinghammer*, No. 09–0577, 2010 WL 200058, at *3 (Iowa Ct. App. Jan. 22, 2010) (holding that snow accumulation provided probable cause to stop a vehicle for a section 321.38 violation because the license plate was not "clearly legible"); *State v. Miller*, No. 02–0965, 2003 WL 22015974, at *1 (Iowa Ct. App. Aug. 27, 2003) ("[W]e conclude the obscured license plate alone furnished probable cause for the vehicle stop.").

Mumford does not contest the legal conclusion, but she does contest the facts. She contends that the videos of the traffic stop and still photos taken from the videos show that the entirety of the rear license plate was clearly visible and clearly legible. We disagree. The videos and still shots are not clear, at all. Further, the videos and still shots taken from several feet away from the vehicle are not particularly relevant. The videos and photos show the vehicle "at close range at a dead stop." *State v. Griffin*, 997 N.W.2d 416, 420 (Iowa 2023). The videos and photos do not "show what the [vehicle] looked like at highway speeds" at night. *Id.* at 420–21. The videos do not show what Officer Camp "saw or could have seen when [he] made [his] decision to stop" Mumford. *Id.* at 421. Camp testified that he could not read the last two digits of the license plate from a couple of car lengths behind the vehicle. Like the district court, we credit his testimony and find he observed a violation of Iowa Code section 321.38 prior to initiating the traffic stop.

Even if Camp had probable cause to stop the vehicle, Mumford asserts that Camp's detention of her was nonetheless unlawful because Camp admittedly could read the last two digits of the license plate when he walked up to her vehicle and shined his flashlight on the license plate. According to Mumford, once Camp was able to read the last two digits on the license plate, Camp was obligated to walk away and let Mumford go without any further interaction. We recently rejected the same argument in *State v. Griffin*. *See id.* In that case, a peace officer initiated a traffic stop after observing a vehicle with a license plate cover that did not permit full view of the letters and numerals printed on the plate, in violation of Iowa Code section 321.37. *Id.* at 419. After initiating the stop, the officers were able to observe the letters and numerals printed on the plate. *Id.* at 421. The defendant contended the officers were then obligated to drive away without any further interaction. *Id.* We rejected the argument. *Id.* "The violation occurred" when the peace officers observed the violation from the road and "was complete well before Griffin's vehicle stopped." *Id.* At that point, the peace officers could have ticketed the motorist or issued a warning. *Id.* In either case, the peace officers "were fully justified in approaching the driver's-side door and talking with" the motorist. *Id.* The same holds true here. *See also State v. Peden*, No. 08–1039, 2009 WL 606236, at *1 (Iowa Ct. App. Mar. 11, 2009) ("A license plate that is legible only from certain angles does not comply with [section 321.38] requirements.").

Mumford suggests that the traffic stop nonetheless should be deemed unconstitutional because the traffic stop was merely a pretext for drug interdiction. She argues Officer Camp observed the vehicle parked at a known drug house and was merely looking for a reason to pull the

vehicle over and search for drugs. Even if this were Camp's true motivation, the true "motivation of the officer stopping the vehicle is not controlling in determining whether" probable cause existed. *State v. Brown*, 930 N.W.2d 840, 847 (Iowa 2019) (quoting *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002)). Instead, "[t]he existence of probable cause for a traffic stop is evaluated 'from the standpoint of an objectively reasonable police officer.' " *Id.* at 855 (quoting *State v. Tyler*, 830 N.W.2d 288, 293–94 (Iowa 2013)). An officer's "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis" or article I, section 8 analysis. *Id.* at 845 (alteration in original) (quoting *Whren v. United States*, 517 U.S. 806, 813 (1996)).

C.

The more contentious issue in this case is whether use of the drug dog to conduct an exterior sniff of a lawfully stopped vehicle was an unlawful search in violation of the Fourth Amendment or article I, section 8 of the Iowa Constitution. The record shows that around the same time Camp initiated the traffic stop, he contacted Winterset Police Officer Christian Dekker to assist. Dekker was the K-9 handler for the Winterset Police Department. Dekker arrived at the scene only shortly after Camp initiated the traffic stop. Camp and Dekker intended to conduct a dog sniff around the exterior of the vehicle, and they asked Mumford and her passenger to exit the vehicle for their own safety. Mumford and her passenger complied, although not without some objection. Mumford exited the vehicle with her purse in her possession. Mumford's passenger left the passenger window down when he exited the vehicle. Dekker walked the drug dog around the exterior of the vehicle. The entire examination lasted approximately fifteen to twenty seconds. Dekker started

on the driver's side of the vehicle, proceeded to the rear of the vehicle, and then proceeded to the front passenger door. The dog stood on its hind legs and placed its front paws on the passenger door. The dog's snout briefly, almost imperceptibly, crossed the plane of the passenger window and entered the cabin of the vehicle. Dekker admitted this at the hearing on the motion to suppress. He testified, "I believe his nose went inside the vehicle, yes, through an open window that the passenger had left open." Dekker maintained the dog's behavior was instinctual and that Dekker did nothing to encourage it. After the dog's nose entered the vehicle, the dog alerted to the presence of controlled substances. A subsequent search of the vehicle revealed two bags of methamphetamine in the glove compartment, and a search of Mumford's purse, which she had taken with her from the vehicle, revealed marijuana and a methamphetamine pipe. Mumford claims that the drug dog's brief touch of the passenger door and brief cross of the plane of the passenger window constituted a trespass and rendered the search unconstitutional.

State v. Bauler, 8 N.W.3d 892, largely controls our resolution of Mumford's claims. In that case, the majority of this court held that a drug dog's quick, incidental touch of the exterior of a vehicle in a public place during a lawful traffic stop did not violate the Fourth Amendment or article I, section 8. *See id.* at 902 (plurality opinion) ("We find the dog sniff of Bauler's vehicle did not violate the Fourth Amendment, notwithstanding the brief touching of the exterior of the vehicle."), *id.* at 907 (stating that "the dog sniff of Bauler's vehicle did not violate article I, section 8"); *id.* at 913 (McDonald, J., concurring specially) (stating that "momentary touching of Bauler's vehicle in a public place during a lawful traffic stop was not unlawful,

tortious, or otherwise prohibited under Iowa law" and that there was thus "no obligation to obtain a search warrant prior to conducting the search" under the Iowa Constitution and rejecting Fourth Amendment claim). The same rationales apply here with respect to the drug dog's placement of its paws on the passenger door.

The question not presented or answered in *Bauler* was whether it would make a difference if the drug dog's nose crossed the plane of an open window and entered the cabin of the vehicle. *See id.* at 907 n.8 (plurality opinion) ("We do not decide whether a dog sniff wherein a dog has been previously trained to put its head inside the car and in fact does so has violate[d] the Fourth Amendment or article I, section 8.").

Other courts have addressed the issue of whether a K-9 unit's entry into the cabin of a vehicle constituted an unconstitutional search. Those courts have come to different conclusions under a variety of rationales. *See, e.g.*, *United States v. Wilson*, No. 22–20100, 2024 WL 3634199, at *2 & n.1 (5th Cir. Aug. 2, 2024) (per curiam) (holding that there was no search where dog instinctively entered cabin without direction and collecting cases); *United States v. Pulido-Ayala*, 892 F.3d 315, 318–19 (8th Cir. 2018) (concluding that officers had probable cause to search the vehicle prior to K-9's entry into vehicle cabin); *United States v. Pierce*, 622 F.3d 209, 214–15 (3rd Cir. 2010) (finding no Fourth Amendment violation); *United States v. Handley*, No. 23–CR–57–CJW–MAR, 2024 WL 1536750, at *6–7 (N.D. Iowa Apr. 9, 2024) (discussing caselaw); *United States v. Corbett*, 718 F. Supp. 3d 537, 561 (S.D.W. Va. 2024) (same); *United States v. Buescher*, 691 F. Supp. 3d 924, 936–37 (N.D. Iowa 2023) (same).

After reviewing these cases and other relevant authorities, we conclude that a drug dog's momentary

breach into the cabin of a vehicle through an open window of a legally stopped vehicle does not require the suppression of evidence under either the Fourth Amendment or article I, section 8. With respect to the Fourth Amendment, *Illinois v. Caballes*, 543 U.S. 405 (2005), remains the controlling case. *See Bauler*, 8 N.W.3d at 902 (plurality opinion) (explaining that *Caballes* is controlling on the Fourth Amendment question). In *Caballes*, the Supreme Court held that "[a] dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment." 543 U.S. at 410. We are bound to follow *Caballes*.

We are also bound to follow the Supreme Court's jurisprudence regarding the federal exclusionary rule. "To trigger the exclusionary rule, police conduct must be . . . sufficiently culpable that such deterrence is worth the price paid by the justice system." *Herring v. United States*, 555 U.S. 135, 144 (2009). The exclusionary rule was intended to deter "deliberate, reckless, or grossly negligent conduct." *Id.* This case does not involve deliberate, reckless, or grossly negligent conduct. Here, the officers used a drug dog to conduct an exterior sniff of the vehicle, a practice which the Supreme Court explicitly approved in *Caballes*. *See* 543 U.S. at 410. The drug dog's fleeting touch of the passenger door and *de minimis* intrusion into the vehicle cabin through a window left open by a passenger does not justify the exclusion of evidence under the Supreme Court's Fourth Amendment jurisprudence. *See, e.g.*, *United States v. Lyons*, 486 F.3d 367, 373–74 (8th Cir. 2007) (affirming denial of motion to suppress where K-9 unit breached cabin of vehicle through open window and there was no evidence that peace officers

opened the window or directed the window to be opened); *Handley*, 2024 WL 1536750, at *9 (denying motion to suppress where K-9's head entered window and concluding that suppression was not required because "this conduct is not culpable enough to trigger the harsh sanction of exclusion").

On the state constitutional claim, the *de minimis* crossing of the drug dog's nose into the open window of the vehicle is of no constitutional import under either of the rationales that sustained the outcome in *Bauler*. *See* 8 N.W.3d at 906 (plurality opinion); *id.* at 911 (McDonald, J., concurring specially). The law affords less protection for intrusion into or upon vehicles on the road than intrusions into the home. *See Kyllo v. United States*, 533 U.S. 27, 31 (2001) (" 'At the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.' " (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961))); *California v. Carney*, 471 U.S. 386, 393 (1985) (noting a "reduced expectation of privacy" in vehicles); *State v. Reinier*, 628 N.W.2d 460, 464 (Iowa 2001) (en banc) ("It is axiomatic that the chief evil sought to be addressed by the Fourth Amendment was the physical entry of the home."). The drug dog's almost imperceptible entry into the open window of the vehicle cabin took place in the open air and did not go beyond the normal scope of a dog sniff. *See Bauler*, 8 N.W.3d at 906 (plurality opinion). Nor did it create any further intrusion into the motorist's expectation of privacy in the vehicle or any cognizable legal injury that required the legal justification of a search warrant. *See id.* at 911 (McDonald, J., concurring specially). The Iowa Constitution does not require the exclusion of evidence obtained as a result of a

fleeting entry of a drug dog's nose into the open cabin of a lawfully stopped vehicle.

D.

In sum, Camp had probable cause to initiate a traffic stop of the vehicle based on his observation of a completed violation of Iowa Code section 321.38. Upon making that traffic stop, Camp had continued authority to interact with Mumford; check for her license, registration, and proof of insurance; and process a citation or issue a warning. While Mumford was lawfully detained, Dekker used a drug dog to conduct a free air sniff around the exterior of the vehicle without a search warrant, which the Supreme Court and this court have deemed permissible. Neither the Fourth Amendment nor article I, section 8 requires the suppression of evidence obtained as a result of a vehicle search predicated on probable cause (established by the drug dog's alert to the presence of controlled substances), even where the drug dog fleetingly touched the vehicle and made a *de minimis* intrusion into the cabin of the vehicle through an open window. The district court did not err in denying Mumford's motion to suppress evidence.

II.

This case was tried to the district court rather than a jury. As noted above, the district court acquitted Mumford of possession of methamphetamine but convicted her of possession of marijuana and drug paraphernalia. Mumford challenges the sufficiency of the evidence supporting her conviction for possession of marijuana. Mumford does not contest that she was in possession of a green, leafy substance the officers identified as marijuana. Instead, she challenges whether there was sufficient evidence to show the green, leafy substance was in fact marijuana. She insists the State must introduce evidence

from a laboratory showing that the substance was in fact marijuana. She believes such evidence is required now because of recent changes to the law allowing the possession of hemp.

The primary case on which Mumford relies is *State v. Brubaker*, 805 N.W.2d 164 (Iowa 2011), *abrogated on other grounds by State v. Crawford*, 972 N.W.2d 189, 197–98 (Iowa 2022). In *Brubaker*, this court reversed a judgment for unlawful possession of a prescription drug, Clonazepam, for want of sufficient evidence of the identity of the drug. *Id.* at 174. In that case, the state did not test the pills found in the defendant's possession but instead relied on an expert to compare the pills found in the defendant's possession to pictures of Clonazepam. *Id.* at 172–73. We noted several deficiencies in the state's case. The expert did not testify that the pills were in fact Clonazepam but only that the pills were consistent in appearance with Clonazepam. *See id.* at 173–74. However, the pills bore no distinctive marks and were "similar in size, shape, and consistency to aspirin and other over-the-counter drugs readily available without a prescription." *Id.* at 173. The pills were found in a generic bottle with "no label or other indication of the identity of its contents." *Id.* We concluded that "[t]he fact that the pills appear to be Clonazepam and that the officers found them under the back seat is insufficient to establish they were, in fact, Clonazepam." *Id.*

Brubaker provides little support for Mumford's challenge to the sufficiency of the evidence here. Contra to Mumford's contention, *Brubaker* does not stand for the proposition that lab testing is always required to establish the identity of a controlled substance. It merely stands for the proposition that the state must present sufficient evidence to establish the identity of a controlled substance,

whether direct or circumstantial. *See id.* As we explained in *Brubaker*, "[w]e have always recognized that, for a person to be convicted of a drug offense, the State is not required to test the purported drug." *Id.* at 172 (citing *In re C.T.*, 521 N.W.2d 754, 757 (Iowa 1994)). "The identity of a substance as an illegal drug may be proved by circumstantial evidence." *In re C.T.*, 521 N.W.2d at 757. "The reason for this rule is that circumstantial evidence is not inferior to direct evidence." *Brubaker*, 805 N.W.2d at 172. In *Brubaker*, we then identified a variety of circumstances that would support a finding that a substance was an illegal drug in the absence of testing, including "the physical appearance of the substance involved in the transaction," "evidence that the substance was called by the name of the illegal narcotic by the defendant or others in [her] presence," and "whether the known odor of the substance identified it as an illegal drug." *Id.* at 173 (quoting *United States v. Dolan*, 544 F.2d 1219, 1221 (4th Cir. 1976)). However, those examples "[were] not exclusive, and the state is not required to prove all of these circumstances . . . to sustain a conviction." *Id.*

Unlike in *Brubaker*, the State did present sufficient circumstantial evidence to prove beyond a reasonable doubt that the substance in Mumford's possession was marijuana. Camp testified that he was a certified drug recognition officer. Mumford stipulated to Camp's credentials and qualifications. Camp testified that the substance found in Mumford's purse was marijuana. *See State v. Silva*, No. 11–1336, 2012 WL 3195994, at *4 (Iowa Ct. App. Aug. 8, 2012) (holding that evidence was sufficient to support conviction where officer testified he "recognized the green leafy substance in the baggie as raw marijuana"); *see also United States v. Durham*, 464 F.3d 976, 984–85 (9th Cir. 2006) (holding that the "government

need not introduce scientific evidence to prove the identity of a substance so long as there is sufficient lay testimony or circumstantial evidence from which a jury could find that a substance was identified beyond a reasonable [doubt]" and collecting cases (alteration in original)); *In re Ondrel M.*, 918 A.2d 543, 546 n.6 (Md. Ct. Spec. App. 2007) (stating that "there is authority, from both federal and state courts, that the testimony of a witness, who is familiar with marijuana through past experience, that the substance in question was marijuana, is admissible into evidence to support a finding that the accused was in possession of marijuana," and citing cases). Camp's testimony was confirmed in two respects by contemporaneous bodycam footage. First, the footage showed, at the time of the search, Camp quickly identified the green, leafy substance found in Mumford's purse as "weed," a common slang term for marijuana. Second, the substance itself was clearly visible and had the distinctive look of marijuana. *See Commonwealth v. Wilkins*, No. 621 MDA 2013, 2014 WL 11015648, at *4 (Pa. Super. Ct. Jan. 9, 2014) ("[T]he incriminating nature of the marijuana was immediately apparent.").

Mumford raises one final contention. She argues that there is insufficient evidence to support her conviction because the State failed to disprove the green, leafy substance found in her purse was legal hemp. We disagree. Mumford never raised this issue at trial, and, in any case, "the State is not required to negate any and all rational hypotheses of the defendant's innocence." *State v. Jones*, 967 N.W.2d 336, 342 (Iowa 2021). A federal circuit court recently rejected a similar argument:

> Contrary to Rivera's argument, the government did not need to prove this fact. By excluding hemp from the definition of marijuana, the Farm Bill carved out

> an *exception* to marijuana offenses: Someone with cannabis possesses marijuana *except* if the cannabis has a THC concentration of 0.3% or less. The government need not disprove an exception to a criminal offense unless a defendant produces evidence to put the exception at issue. Because Rivera did not put the hemp exception at issue, the government bore no burden to prove that it was inapplicable. We will therefore affirm the District Court's judgment of conviction.

United States v. Rivera, 74 F.4th 134, 136 (3d Cir. 2023) (footnote omitted). We agree with the analysis in *Rivera*.

In a criminal case tried to the district court rather than a jury, the district court's "findings of fact have the effect of a special verdict, *see* Iowa R. App. P. 6.907, and are binding on us if supported by substantial evidence." *State v. Fordyce*, 940 N.W.2d 419, 425 (Iowa 2020). In determining whether there is substantial evidence in support of the district court's findings and verdict, "we view the evidence in the light most favorable to the State." *Id.* Here, when the evidence is viewed in the light most favorable to the district court's findings and verdict, there is substantial evidence supporting Mumford's conviction for possession of marijuana.

III.

After the district court issued its findings and verdict, Mumford filed a motion in arrest of judgment. Her motion in arrest of judgment challenged the sufficiency of the evidence supporting her conviction for possession of marijuana on the same grounds discussed above. The district court denied the motion. Mumford contends the district court erred or abused its discretion in denying Mumford's motion in arrest of judgment. We disagree.

"A motion in arrest of judgment may not be used to challenge the sufficiency of evidence." *State v. Dallen*, 452 N.W.2d 398, 399 (Iowa 1990); *see also State v. Oldfather*, 306 N.W.2d 760, 762 (Iowa 1981) (stating that a motion in arrest of judgment cannot be used to challenge the sufficiency of the evidence); *State v. Moore*, No. 18–0755, 2019 WL 1486604, at *3 n.7 (Iowa Ct. App. Apr. 3, 2019) ("Iowa Rule of Criminal Procedure 2.24(3) does not permit a challenge to the sufficiency of the evidence in a motion in arrest of judgment."); *State v. Wetter*, No. 17–1418, 2018 WL 5839941, at *1 n.2 (Iowa Ct. App. Nov. 7, 2018) ("A motion in arrest of judgment may not be used to challenge the sufficiency of evidence." (quoting *Oldfather*, 306 N.W.2d at 762)); *State v. Howard*, No. 16–1990, 2017 WL 4049524, at *3 n.3 (Iowa Ct. App. Sept. 13, 2017) (stating the same). Accordingly, the district court did not err in denying the motion in arrest of judgment.

IV.

The district court did not err in denying Mumford's motion to suppress evidence. The evidence, when viewed in the light most favorable to the district court's verdict, is sufficient to establish Mumford was in possession of marijuana. The district court did not err in denying Mumford's motion in arrest of judgment challenging the sufficiency of the evidence.

Affirmed.

Christensen, C.J., and Waterman, Mansfield, and May, JJ., join this opinion. Oxley, J., files a dissenting opinion, in which McDermott, J., joins. McDermott, J., files a dissenting opinion.

Oxley, Justice (dissenting).

The majority continues to hide behind *Illinois v. Caballes*, 543 U.S. 405, 409 (2005), even though its *Katz*-based holding "is irrelevant to" a property-based Fourth Amendment challenge. *State v. Bauler*, 8 N.W.3d 892, 913 (Iowa 2024) (Oxley, J., dissenting); *see also Florida v. Jardines*, 569 U.S. 1, 11 (2013) ("The *Katz* reasonable-expectations test . . . is unnecessary to consider when the government gains evidence by physically intruding on constitutionally protected areas."); *United States v. Jones*, 565 U.S. 400, 409 (2012) ("[T]he *Katz* reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test." (alteration in original)).

Caballes has even less to say in this case where Orozco, the drug dog, did not alert until after breaking the plane of the passenger window and putting his nose *inside* the vehicle. *See State v. Randall*, 496 P.3d 844, 853 (Idaho 2021) ("Though the Supreme Court has not directly addressed the question, *Jones* and *Jardines* make clear that a drug dog's trespass into a car during an exterior sniff converts what would be a non-search under *Caballes* into a search."). *Caballes* did not involve the interior of a vehicle. Rather, it merely approved of a "free air sniff," which the Supreme Court has described as "an *exterior* sniff of an automobile [that] does not require entry into the car," where the dog "simply walks around a car." *City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000) (emphasis added) (describing a free air sniff used at a checkpoint found to be unconstitutional); *see also State v. Bergmann*, 633 N.W.2d 328, 334–35 (Iowa 2001) ("[W]e are persuaded by the following long-standing viewpoint. 'Having the

trained dog sniff the *perimeter* of [defendant's] vehicle . . . did not of itself constitute a search.' '[T]he airspace *around the car* is not an area protected by the Fourth Amendment.' " (second and third alteration in original) (emphasis added) (first quoting *United States v. Jeffus*, 22 F.3d 554, 557 (4th Cir. 1994); and then quoting *Casey v. State*, 542 S.E.2d 531, 535 (Ga. Ct. App. 2000))).

Even the State recognizes that this appeal "presents a distinct 'interior sniff' component of . . . Fourth Amendment jurisprudence." Nonetheless, the majority refuses to address the distinction between the interior and exterior of a vehicle. I respectfully dissent from its conclusion that Mumford's Fourth Amendment rights were not violated.

I.

In *State v. Bauler*, a majority of our court concluded that a drug dog's "[m]inimal contact with the exterior of a vehicle" does not violate the Fourth Amendment. 8 N.W.3d at 900 (plurality opinion); *id.* at 913 (McDonald, J., concurring specially). The plurality explicitly conditioned its Fourth Amendment holding: "so long as there was no entry into the private space inside the vehicle." *Id.* at 895. Faced with that exact scenario here, the majority now dismisses the property-based challenge by characterizing the drug dog's actions as involving an "almost imperceptible entry into the open window of the vehicle."

But that distinction is critical in Fourth Amendment jurisprudence. "The inside of a car . . . is typically a different story. Police ordinarily cannot search the interior of an automobile unless they have probable cause to believe that the vehicle contains contraband or other evidence of a crime." *United States v. Pulido-Ayala*, 892 F.3d 315, 317–19 (8th Cir. 2018) (concluding that probable

cause to search the vehicle existed "*before* the [drug] dog entered the interior" based on the drug dog "immediately" pulling the canine officer toward the open passenger door such that there was no unlawful search when the dog jumped into the defendant's vehicle); *see also United States v. Ngumezi*, 980 F.3d 1285, 1289 (9th Cir. 2020) ("Although the intrusion here may have been modest, the Supreme Court has never suggested that the magnitude of a physical intrusion is relevant to the Fourth Amendment analysis. . . . [W]e apply a bright-line rule that opening a door and entering the interior space of a vehicle constitutes a Fourth Amendment search.").

Rather than tackle that question, the majority here continues to hide behind *Caballes* even where federal courts do not. *See, e.g.*, *United States v. Newberry*, No. 24–CR–1026–LTS, 2024 WL 4590159, at *13–17 (N.D. Iowa Oct. 28, 2024) (finding that "the Government conducted a warrantless and unreasonable search of Defendant's vehicle" when a drug dog's nose and head entered the open driver's window); *United States v. Handley*, No. 23–CR–57–CJW–MAR, 2024 WL 1536750, at *6–7 (N.D. Iowa Apr. 9, 2024) (concluding that the defendant's Fourth Amendment rights were violated when a drug dog stuck its nose inside a vehicle—breaking the plane of the driver's window by four to six inches—before alerting, and noting the "important distinction between cases where the government has probable cause to search a vehicle *before* a dog enters the interior of a vehicle, based on the dog's strong reactions while outside the vehicle, and cases where the dog gives no strong reaction or final indication until *after* entering the interior of the vehicle," as discussed by the Eighth Circuit in *Pulido-Ayala*); *United States v. Buescher*, 691 F. Supp. 3d 924, 936 (N.D. Iowa 2023) ("While some courts have found no Fourth Amendment

violation when a drug-sniffing dog breaks the plane of an open window, those decisions were largely prior to *Jones* and *Jardines*."); *United States v. Joshua*, 564 F. Supp. 3d 860, 877 (D. Alaska 2021) ("[The] K-9 put her paws inside the door of the Porsche and extended the upper half of her body into the vehicle. The K-9 then alerted to the scent of controlled substances. The search exceeded the scope of a *Terry* stop and amounted to an illegal search."); *see also Randall*, 496 P.3d at 856 ("[T]hough an exterior sniff of a car is not a search under *Caballes*, it becomes a search under *Jones* when a drug dog trespasses into the car's interior."); *State v. Organ*, 697 S.W.3d 916, 919–21 (Tex. App. 2024) (holding that a drug dog's "interior sniff of [defendant's] car violated [his] Fourth Amendment rights" under a physical-intrusion analysis after recognizing that the "six federal appellate courts" that had "concluded that a dog's entry into a vehicle . . . did not implicate the Fourth Amendment" were either "decided before or did not discuss" *Jones* and *Jardines*); *State v. Campbell*, 5 N.W.3d 870, 876–79 (Wis. Ct. App. 2024) (applying *Jones* and *Jardines* to conclude that the defendant "had a property interest in the interior of her vehicle under the common-law trespassory test" and that her Fourth Amendment rights were violated when a drug dog alerted after entering her vehicle despite the Wisconsin Supreme Court's prior reliance on *Caballes* to conclude that an occupant of a vehicle has no expectation of privacy in the air space around a vehicle).

That Orozco's entry inside the vehicle here was "almost imperceptible" is of no moment. *See State v. Wright*, 961 N.W.2d 396, 413–14 (Iowa 2021) ("A constitutional search occurs whenever the government commits a physical trespass against property, even where de minimis, conjoined with 'an attempt to find something or to obtain

information.' " (quoting *Jones*, 565 U.S. at 408 n.5)). Officer Dekker testified that the drug dog's "nose went inside the vehicle . . . through an open window" on the passenger side, a point the State concedes on appeal. As the majority notes, it was not until "[a]fter the dog's nose entered the vehicle[that] the dog alerted to the presence of controlled substances." Officer Dekker could not have stuck his own head into the interior space of Mumford's vehicle to smell for drugs without violating the Fourth Amendment. *See, e.g.*, *United States v. Montes-Ramos*, 347 F. App'x 383, 388 (10th Cir. 2009) (holding that a police officer who leaned his head approximately two inches into the defendant's car and sniffed for marijuana engaged in a search even if it was minimal because "[t]he fact that the intrusion was minimal does not affect the analysis"); *United States v. Ryles*, 988 F.2d 13, 15 (5th Cir. 1993) (holding that an officer who "pierced the airspace inside the vehicle" when he leaned inside an open window and smelled burnt marijuana engaged in a search for Fourth Amendment purposes); *Buescher*, 691 F. Supp. 3d at 939 ("Kerr himself would not have been constitutionally permitted to enter the vehicle without a warrant. Similarly, K-9 Gus' entry into the open window was a trespass with an intent to obtain information." (citation omitted)); *United States v. Francisco Estrella*, 2021 WL 413513, at *13 (D. Conn. Feb. 5, 2021) ("Putting [the officer's] hand and arm inside Mr. Francisco-Estrella's vehicle to photograph its contents is no different than an officer putting his head inside a vehicle to smell its contents."); *see also State v. Petersen*, 994 N.W.2d 410, 416 (N.D. 2023) (holding that the officer engaged in an unreasonable search under the Fourth Amendment by "opening the semi door and stepping onto the running boards," where, "[f]rom this unlawful intrusion into Petersen's vehicle, the officers were able to obtain information they would not otherwise have been

able to obtain, such as the odor of alcohol emanating from Petersen and his bloodshot watery eyes"); *cf. United States v. Aguirre*, No. 1:23–CR–00187–DCN, 2024 WL 4434281, at *7 (D. Idaho Oct. 7, 2024) (concluding that a vehicle search was reasonable and constitutionally permissible because the officer did not break the plane of the car's interior and recognizing a distinction between an exterior search of a vehicle and "entering the interior space of a vehicle" as discussed by the Ninth Circuit in *Ngumezi* (emphasis omitted)). Orozco, as Officer Dekker's instrumentality, could not do what the officer could not do himself. *See Pulido-Ayala*, 892 F.3d at 318 ("A drug dog is an instrumentality of the police . . . .").

II.

Nor is this a case where the drug dog's actions could be considered "instinctual," to the extent that distinction matters. *See Randall*, 496 P.3d at 853–55 (discussing cases distinguishing between a drug dog being encouraged to enter a vehicle and instinctually doing so and holding "that [the drug dog's] motivation, instinctual or otherwise, is irrelevant[because t]he proper inquiry is whether [the officer] had probable cause to believe illegal drugs were in [the defendant's] car before [the drug dog] jumped through the window"). Officer Dekker gave Orozco a trained command to conduct a "scan search"—i.e., Officer Dekker encouraged the dog to search the entire vehicle, giving it full range to search Mumford's vehicle, including by jumping up on both sides of the vehicle and sticking its head into the open window as it was trained to do in performing a scan search. Indeed, while actively engaged in that pursuit, Orozco exhibited a "high final" alert in this case by "stand[ing] high and look[ing] at" Officer Dekker immediately *after* sticking his nose through the window

and while his feet were still on the side of the car. Orozco did as he was trained to do.

III.

Finally, the majority ducks the hard work by suggesting we are bound by the federal exclusionary rule in any event. But exclusion is proper under federal law if the drug dog acted on its training, as happened here. *See Handley*, 2024 WL 1536750, at *9 (distinguishing *Buescher*, which excluded evidence obtained following the dog's entry into the vehicle, on the basis that "the drug-sniffing dog in that case was trained to enter the open windows of vehicles"); *see also Jardines*, 569 U.S. at 5 (affirming the Florida Supreme Court's exclusion of evidence obtained by warrant determined to be invalid because it was based on a drug dog's alert at the defendant's front door, in violation of the Fourth Amendment). It is not a basis for avoiding the Fourth Amendment analysis.

I would hold that Mumford's Fourth Amendment rights were violated and that the district court erred in denying her motion to suppress evidence obtained following the drug dog's alert.

McDermott, J., joins this dissent.

#23–1075, *State v. Mumford*

McDermott, Justice (dissenting).

Mumford argues that her search-and-seizure protections under both the United States Constitution and the Iowa Constitution were violated when a police dog climbed onto the side of her vehicle and thrust its head into the passenger compartment to sniff for drugs. On the

challenge under the federal constitution, I join Justice Oxley's dissent and would hold that the search violated the Fourth Amendment. On the challenge under our state constitution, which Justice Oxley does not address, I would hold that the search also violated article I, section 8 of the Iowa Constitution.

We interpret the Iowa Constitution independent of the Supreme Court's interpretation of the United States Constitution, even when provisions of the two constitutions contain nearly identical language. *State v. Brown*, 890 N.W.2d 315, 322 (Iowa 2017). As a result, provisions in the Iowa Constitution may offer greater or lesser protection than comparable provisions in the United States Constitution. *State v. Wright*, 961 N.W.2d 396, 403–04 (Iowa 2021). On questions involving the Iowa Constitution, the supreme court in Iowa, not Washington, has the final word on its interpretation. *See McClure v. Owen*, 26 Iowa 243, 249 (1868).

Article I, section 8 of the Iowa Constitution states:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

This language divides the analysis into four questions: (1) Is the subject of the alleged intrusion a person, house, paper, or effect? (2) If so, was it searched or seized? (3) If so, was it the defendant's ("their") person, house, paper, or effect? (4) If so, was the search or seizure unreasonable? *See* Orin S. Kerr, Katz *as Originalism*, 71 Duke L.J. 1047, 1052 (2022).

In *State v. Wright*, we examined whether the police officer's conduct in accessing the defendant's trash bin violated positive law—meaning some existing enacted law or legal doctrine recognized by courts—to determine whether the officer infringed the defendant's rights under article I, section 8. 961 N.W.2d at 416–17. A municipal ordinance made it a crime for anyone other than a licensed trash collector to access a trash bin set out for collection. *Id.* at 417. In our analysis of the reasonableness of the search, we considered whether the existence of the ordinance meant that the officer had committed a trespass when he accessed the trash bin on the defendant's property without a warrant. *Id.* at 416. People may reasonably expect that an officer will not engage in conduct that is "unlawful, tortious, or otherwise prohibited" regarding their "persons, houses, papers and effects." *Id.*; Iowa Const. art. I, § 8. We thus held that the officer violated the defendant's reasonable expectation of privacy when the officer committed a trespass to access the trash bin. *Wright*, 961 N.W.2d at 419.

The appeal in this case comes on the heels of another case in which we analyzed whether a vehicle search involving a police dog violated the Iowa Constitution. In *State v. Bauler*, a split majority of our court found no violation of article I, section 8 despite the officer enabling the police dog to climb with its front two paws onto the vehicle's side paneling to sniff for drugs. 8 N.W.3d 892, 902–07 (Iowa 2024) (plurality opinion). A three-justice plurality contended that our holding in *Wright* did not apply to "dog sniff" cases at all, which the plurality deemed "sui generis" because a drug dog detects only contraband. *Id.* at 906. Three other justices, in a special concurrence, accused the plurality of trying "to walk back this court's analysis in *Wright*." *Id.* at 909 (McDonald, J., concurring

specially). These specially concurring justices applied *Wright*'s analysis but concluded that the police dog's climb onto the side of the vehicle was nonetheless constitutional. *Id.* at 912–13.

I dissented in *Bauler*, having concluded both that *Wright*'s analysis applies to vehicle searches and that the officer's conduct permitting the police dog to climb onto the side of the vehicle to sniff constituted a physical trespass that made the search unconstitutional. *Id.* at 924 (McDermott, J., dissenting). Under the common law, a person commits a "trespass to chattel" when the person unlawfully "intermeddles" with another's personal property. *See* Restatement (Second) of Torts § 217 cmt. *e*, at 417, 419 (Am. L. Inst. 1965). To "intermeddle" with another's personal property is to "intentionally bring[] about a physical contact" with the property. *Id.* at 417. When the officer guided the police dog to climb up onto the side of the vehicle, the officer "intermeddled" with Bauler's personal property and thus committed a trespass. *See State v. Dorff*, 526 P.3d 988, 997–98 (Idaho 2023). Whether the property owner could or would sue for the trespass is immaterial for purposes of determining the relative rights of the parties under article I, section 8. *See id.* at 996. The trespass on Bauler's "effect" (the vehicle) violated a reasonable expectation of privacy. *See Bauler*, 8 N.W.3d at 927 (McDermott, J., dissenting).

Because the officer in *Bauler* had no warrant, and no recognized exception to the warrant requirement applied, I would have held that the district court erred in failing to exclude the fruits of the improper search under the Iowa Constitution. Although the three-justice plurality in *Bauler* disagreed about whether *Wright* applied, it agreed with this trespass analysis and what it would mean in the

case, concluding that "[i]f *Wright* is applied, the dog sniff here does not survive." *Id.* at 905–06 (plurality opinion).

The analytical groupings in *Bauler* are worth highlighting. Four justices (the three-justice plurality and me) concluded that if *Wright*'s property-rights-based analysis applied to dog-sniff cases, then the police dog's climb onto the side of the vehicle constituted a trespass. *Id.*; *id.* at 926–27 (McDermott, J., dissenting). Four justices (the three specially concurring justices and me) concluded that *Wright*'s analysis did in fact apply to the case. *Id.* at 909 (McDonald, J., concurring specially) ("*Wright* is a controlling framework for evaluating claims arising under article I, section 8 . . . ."); *id.* at 926 (McDermott, J., dissenting). This means, curiously, that numerical majorities on this court would have concluded that *Wright* applied and that the State violated Bauler's search-and-seizure protections under *Wright*.

The facts in this case are materially identical to *Bauler*—only more egregious. We left open the question in *Bauler* about "whether a dog sniff wherein a dog has been previously trained to put its head inside the car and in fact does so has violate[d] the Fourth Amendment or article I, section 8." *Id.* at 907 n.8 (plurality opinion). In this case, we now have the police dog not only climbing up and placing its paws on the vehicle, but a step beyond, with the dog also plunging its head through the open window and into the passenger compartment.

The majority finds all this climbing, pawing, and plunging by police dogs onto and into cars "of no constitutional import." I doubt many car owners would agree. The sight of a dog propped up on the side of one's car, literally pawing its panels to gain position as it noses the car's crevices and crannies, presents an alarming picture. More importantly, it constitutes an illegal

trespass. That trespass expands further when a police dog also thrusts its head into the passenger compartment. Until today, we had only sanctioned a police dog's sniffs of the free air *outside* a vehicle. *See State v. Bergmann*, 633 N.W.2d 328, 334–35 (Iowa 2001). The air *inside* a vehicle's cabin is in no sense "free" air—a point made obvious when a police dog needs to insert its head into the cabin to take it in. Despite the majority's repeated attempts to minimize the intrusive conduct here, most drivers, I suspect, would find the prospect of a police dog with its paws up on their door panel and its snout in their passenger compartment a significant, distressing, and embarrassing invasion.

Equally worrisome, in pondering the majority's approval today of this further incursion on the rights of citizens in vehicles, I struggle to find any limiting principle. May a police dog climb completely onto the hood or trunk or roof on all four legs to sniff about? Or, to twist the line in George Orwell's *Animal Farm*, are two legs good but four legs bad? On what rationale would such a distinction rest after today? And may police now direct their dogs to climb completely inside the passenger compartment too? On this question, if a police dog's actual searching tool—its nose—presents no constitutional problem inside a car, why would the rest of its body? Having now approved as constitutional what four justices of this court would agree *is in fact a trespass*, I fail to see how the court in a future case draws any line to find police dog searches involving a vehicle unconstitutional.

But unconstitutional it certainly is. The target of the search—Mumford's car—is an "effect." *See United States v. Jones*, 565 U.S. 400, 404 (2012) ("It is beyond dispute that a vehicle is an 'effect' as that term is used" in our search-and-seizure cases). The officer conducted a "search" of the car when he directed the dog to sniff for

drugs. *See Wright*, 961 N.W.2d at 413 (defining a "search" as "an examination conducted for the 'purpose of discovering proof of . . . guilt in relation to some crime.' " (quoting 2 John Bouvier, *A Law Dictionary* 498 (3d ed. 1848))). The search was unreasonable because the officer committed a common law trespass to personal property. As we held in *Wright*, citizens may reasonably expect that an officer will not engage in conduct that is "unlawful, tortious, or otherwise prohibited" when conducting a warrantless investigation. 961 N.W.2d at 416.

The majority contends that even if the State violated the Fourth Amendment in conducting the search of Mumford's vehicle, the evidence would still come in because the officer acted in good faith. I join Justice Oxley's view on the good-faith exception's applicability in this case under the Fourth Amendment. But no matter what the result under the Fourth Amendment, the good-faith exception clearly has no bearing on Mumford's challenge under article I, section 8. We do not recognize such an exception under the Iowa Constitution. *State v. Cline*, 617 N.W.2d 277, 293 (Iowa 2000) (en banc) (declining to adopt a good-faith exception to the exclusionary rule for unconstitutional searches because "[t]o do so would elevate the goals of law enforcement above our citizens' constitutional rights"), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601, 606 n.2 (Iowa 2001).

I thus respectfully dissent and would hold that the officer's actions violated the search-and-seizure protections of both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution, and that the district court erred in failing to suppress the fruits of the unlawful search accordingly.

APPENDIX C

IN THE IOWA DISTRICT COURT
FOR MADISON COUNTY

STATE OF IOWA Plaintiff, vs. ASHLEE MARIE MUMFORD Defendant.	CRIMINAL NO. SRCR109847, SMAC005298 **JUDGMENT AND SENTENCE COUNT II & SMAC**

On this 9th day of June 2023, the parties appear for a sentencing hearing in the above captioned matter. The State appears by Sierra Iversen, Assistant Madison County Attorney. The Defendant appears with her attorney, Colin Murphy.

A bench trial was held on March 27, 2023. A Verdict was given on April 24, 2023. The verdict was as follows:

-SRCR Count 1: The Court finds the defendant not guilty of Possession of Methamphetamine.

-SRCR Count 2: The Court finds the defendant guilty of Possession of Marijuana.

-SMAC: The Court finds the defendant guilty of Possession of Drug Paraphernalia

No legal cause has been shown to prevent sentencing on this date.

COUNT II

IT IS THE JUDGMENT AND SENTENCE OF THIS COURT that the Defendant is Convicted **Possession of Marijuana a Schedule I Controlled Substance, First Offense,** in violation of **Iowa Code**

124.401(5)(b), a Serious Misdemeanor. It is so ORDERED:

1. Defendant shall be confined to the County Jail for a term of 180 days. Defendant's sentence is hereby suspended.

2. Defendant is placed on probation for a period of one (1) year. Defendant's probation is to be supervised by the 5th Judicial District Department of Correctional Services. Defendant shall appear before a probation supervisor within 72 hours of the filing of this Judgment and Sentence. **The probation office can be reached at phone number: 515-993-4632.** The terms of the Defendant's probation shall be that the Defendant obey all federal, state and local laws, ordinances and regulations; Defendant shall pay a supervision fee of $300.00; Defendant shall comply with the terms of this order; Defendant shall maintain full-time employment or education as approved by the probation officer; and Defendant shall comply with such reasonable rules and regulations as the Department shall prescribe.

3. Defendant shall participate in a substance abuse evaluation and follow any and all recommendation of said evaluation.

4. If the Defendant has not already been fingerprinted, they shall report to the Madison County Sheriff for fingerprinting pursuant to Iowa Code section 690.2 within 30 days.

5. Defendant shall:

   a. Pay full restitution in this cause. The State has 30 days from the date of this order to file a statement of pecuniary damages.

   b. Pay restitution for all costs and fees incurred for legal assistance pursuant to Section 815.9.

   c. Pay restitution for all correctional fees pursuant to Iowa Code Section 256.7.

   d. Pay all court costs.

SMAC005298

IT IS THE JUDGMENT AND SENTENCE OF THIS COURT that the Defendant is Convicted **Possession of Paraphernalia** in violation of **Iowa Code 124.414,** a Simple Misdemeanor. It is so ORDERED:

1. **Defendant shall pay a fine of $105.00 with a 15% criminal surcharge.**

2. Defendant shall:

   a. Pay full restitution in this cause. The State has 30 days from the date of this order to file a statement of pecuniary damages.

   b. Pay restitution for all costs and fees incurred for legal assistance pursuant to Section 815.9.

   c. Pay restitution for all correctional fees pursuant to Iowa Code Section 256.7.

   d. Pay all court costs

CATEGORY B RESTITUTION AND REASONABLE ABILITY TO PAY ANALYSIS

Iowa law separates restitution into three categories. ***Victim Pecuniary Damages*** includes the damages done

to a victim in the course of a crime as set out in Iowa Code § 910.1(3). ***Category A Restitution*** includes fines, surcharges and penalties. Defendant must pay all ***Victim Pecuniary Damages*** and ***Category A Restitution*** and that duty is not subject to a reasonable ability to pay analysis.

Category B Restitution includes court costs (including correctional fees approved pursuant to Iowa Code §356.7(2)(i)), crime victim assistance program reimbursement, expenses incurred by public agencies under Iowa Code §321J.2(13)(b), medical assistance program restitution pursuant to Iowa Code chapter 249A, contributions to a local anti-crime organization and legal assistance fees, (including the expense of a public defender) pursuant to Iowa Code §815.9.

According to Iowa Code §910.2A, Defendant is presumed to have the reasonable ability to pay all ***Category B Restitution and is therefore ordered to pay all Category B Restitution.*** Defendant can challenge the obligation to pay ***Category B Restitution*** by filing a motion within 30 days of this order stating that defendant does not have a reasonable ability to pay ***Category B Restitution.*** The motion must be accompanied by a financial affidavit which must also be served on the prosecutor. Defendant must prove that defendant does not have a reasonable ability to pay ***Category B Restitution*** or the court cannot legally reduce the order to pay such fees. Failure to file a motion or a financial affidavit waives any claim of an inability to pay Category B Restitution. *"Financial affidavit"* means a signed affidavit sworn under penalty of perjury that provides specific financial information about Defendant to enable the sentencing court to determine defendant's reasonable ability to pay Category B Restitution. The affidavit form applying for

court-appointed counsel is not sufficient for purposes of determining reasonable ability to pay.

IT IS FURTHER ORDERED:

Defendant is advised of the right to appeal this judgment and sentence and of the right to apply for appointment of appellate counsel and the furnishing of a transcript if unable to pay the appeal costs. Defendant is also advised of the necessity to comply with the statutory requirements in filing a notice of appeal.

Defendant's appearance bond is released, and surety is exonerated. Defendant's appeal bond is fixed at $1000.

Copies to:
Prosecuting Attorney
Defendant's Attorney
Defendant

CLERK OF DISTRICT COURT
STATE OF IOWA

State of Iowa Courts

Case Number	**Case Title**
SRCR109847	STATE OF IOWA VS MUMFORD, ASHLEE MARIE

Type: ORDER OF DISPOSITION

So Ordered

/s/ Erica Crisp
Erica Crisp,
District Associate Judge
Fifth Judicial District of Iowa

Electronically signed on 2023-06-09 15:30:57

APPENDIX D

IN THE IOWA DISTRICT COURT
FOR MADISON COUNTY

STATE OF IOWA, Plaintiff, vs. ASHLEE M. MUMFORD and SHANE WELLS, Defendants.	Case Nos.: SRCR109847 AGCR109846 **TRANSCRIPT OF PROCEEDINGS** **MOTION TO SUPPRESS**

The above-entitled matter came on for Motion to Suppress hearing before the Honorable Kevin Parker commencing at 1:52 p.m. on the 6th day of June, 2022, at the Madison County Courthouse, Winterset, Iowa.

REPORTED BY: Tonya A. Kain, CSR

[2]

APPEARANCES

For the State:
SIERRA IVERSEN, Assistant Madison County Attorney,
112 South John Wayne Drive, Winterset, Iowa.

For the Defendant Ashlee Mumford:
COLIN MURPHY, Attorney at Law,
440 Fairway, Suite 210, West Des Moines, Iowa.

For the Defendant Shane Wells:
MICHAEL RUSSEL, Attorney at Law,
P.O. Box 286, Winterset, Iowa.

* * *

[4]

PROCEEDINGS

(Hearing commenced at 1:52 p.m. on June 6, 2022, with the Court, Counsel, and the defendants present.)

THE COURT: For the record, this is the State of Iowa versus Ashlee Mumford, SRCR109847; and the State of Iowa versus Shane Wells, AGCR109846. Ms. Mumford is present with her attorney, Colin Murphy. Present with Mr. Wells is Mike Russell. The State is represented by Sierra Iversen.

The Court's understanding is that both defendants have filed Motions to Suppress in this matter; hearings were combined and scheduled for today.

* * *

[5]

MS. IVERSEN: Some light reading.

At this time, the State would like to proceed with calling their first witness, Logan Camp.

THE COURT: Officer Camp, want to come forward, please. Here's the witness stand. It's kind of cramped in there, but -- and could you please face me and raise your right hand.

WHEREUPON

LOGAN CAMP,

called as a witness on behalf of the State, being first duly sworn by the Court, was examined and testified as follows:

THE COURT: Go ahead and have a seat, please.

DIRECT EXAMINATION

BY MS. IVERSEN:

Q. Can you please state your name and spell it for the record.

A. Logan Camp. L-o-g-a-n. C-a-m-p.

Q. And what is your occupation?

A. I'm a police officer.

* * *

[26]

CROSS-EXAMINATION

BY MR. RUSSELL:

* * *

[44]

Q. And you're not claiming that you smelled any marijuana or anything like that when you

[45]

opened the -- or when the -- Ms. Mumford opened the door --

A. No.

Q. -- and you can access the air inside the cabin?

A. I never smelled any marijuana, no.

Q. So it was just this rapidly shaking leg that kind of gave you pause?

A. It's a nervous indicator, yeah.

* * *

[56]

MS. IVERSEN: At this time, the State calls Officer Christian Dekker.

THE COURT: Would you please raise your right hand.

WHEREUPON

CHRISTIAN DEKKER,

called as a witness on behalf of the State, being first duly sworn by the Court, was examined and testified as follows:

THE COURT: Go ahead and have a seat, please.

DIRECT EXAMINATION

BY MS. IVERSEN:

Q. Can you please state your name and spell it for the record.

A. Officer Christian Dekker. Last name is D-e-k-k-e-r.

Q. All right. And what is your occupation?

A. I'm a patrol officer with the City of Winterset.

* * *

[58]

Q. All right. What's the name of your canine?

A. His name is Orozco.

Q. Orozco. And is Orozco a certified canine?

A. Yes, he is.

Q. Can you explain to the Court what the training for a certified canine is?

A. So Orozco originated in Holland. He came to the master trainer around the 18-month mark, I believe. He was trained stateside by Canine Tactical down in Chariton, Iowa. From there he was actually the Madison County's canine first and then was transferred over to me when his prior handler left for a different department.

So then for me, I went through a six-week handler school with him, and then I've been paired with him for almost 18 months at this point.

* * *

[60]

Q. All right. So were the defendants removed from the vehicle prior to the dog being deployed?

A. Yes, they were.

Q. All right. And can you explain to the Court how an open air sniff is conducted?

A. So typically I would remove defendants -- or excuse me -- anybody from the vehicle -- whether they're defendants later on or not, remove them from the vehicle. Due to him being a dual purpose canine, he's also cross-trained in apprehension of people inside of vehicles, so for their safety we remove them from that vehicle.

From there, I would go retrieve the canine, bring him up, make sure that the people that have been removed from the vehicle are a safe distance away, and we get an open air sniff of the vehicle, which is essentially just me bringing the dog around the vehicle as he searches the vehicle -- the outside of the vehicle.

Q. All right. And did your canine alert to this vehicle?

A. Yes, he did.

Q. Okay. And did your canine at any time during this open air sniff enter into the vehicle?

[61]

A. I believe his nose went inside the vehicle, yes,

through an open window that the passenger had left open.

Q. So you did not open the window for the dog?

A. No, I did not.

Q. And did you direct or tell your canine to put their head through the window?

A. No, I did not. It was a -- what we consider -- trying to think of the word right now. I'm sorry.

It wasn't a detailed search. What a detailed search would be is I lead him along the vehicle and tell him where to search. It was a scan search, so basically I'm just telling him to hunt the vehicle. The command is such. So as soon as he hears such, he hunts what is in front of him.

Q. Okay. And did you -- so you didn't tell your canine to put their head through the window at all?

A. No, I did not.

Q. And you didn't encourage your canine to jump onto the vehicle?

A. No, I did not.

* * *

[64]

CROSS-EXAMINATION

BY MR. MURPHY:

* * *

[75]

Q. So when you decide to deploy him, is there a pattern that you follow with regard to where you start on the car and where you intend to end up and whether it's clockwise or counterclockwise, things like that?

A. We train all ways and train from different starting positions. However, typically on the side of the road, I normally start at the driver's side front just simply because as we're working, I still have peripheral vision that I

[76]

can see any traffic that might be coming onto us for safety reasons or if he tries to bell out, that I can pull him off of the bell out so that he doesn't run out into traffic.

So typically I work driver's side down, across the rear, up the passenger side, across the front.

Q. So you start him on the driver's side door up near the driver's front of the bumper?

A. Correct. Yeah. Towards the front quarter panel of the vehicle.

Q. When I watch the video of the first pass by the dog, I can see the dog jump onto the driver's side of the car --

A. Yep.

Q. -- and make physical contact with the door. Do you recall that?

A. I don't recall it on this one, but it's something, yes, he will commonly do. That's how he tries to get high. He's not of tall stature like I am, so he has to come up to his hind legs to reach something at a higher level.

Q. The driver's side window was rolled up?

A. I believe so. I think, if I remember correctly, it was not operational, but . . .

[77]

Q. So if you wanted him to observe the vehicle from this higher vantage point, placing his paws on the driver's side door, you allow that to happen?

A. Yes. He's on his own to search that vehicle.

Q. He's on his own, but you have the other end of the leash; correct?

A. On a deader ring, yes. A non-correctional ring.

Q. So if I shorten that leash up -- or if you shorten that leash up, you could prevent the dog from making physical contact with the car?

A. Potentially, yes. However, I've told him to hunt this, so he's freely to hunt it.

Q. And -- so by giving him the command to hunt and not restricting him, would you agree with me that you're encouraging the dog to make physical contact with the car with its paws?

A. Not encouraging it, no. You can -- that would be a question for Orozco, to ask him why he does that.

Q. Well, I can't ask Orozco that.

A. Correct. But I can't answer for why he jumps on cars.

[78]

Q. Okay. How about answering for why you allow him to jump on the car. If Orozco is trained to check out these higher areas and you give him enough leash to do that and you give him the search command, the dog's going to jump on the car?

A. Potentially, yes, because he's taught to search the entire -- the entirety of the car. Because the

retrospect of it is, is that if I correct him off of it, then I have an attorney sitting here across from me telling me that I told him to indicate at that point in time. So I let him freely search the entire vehicle on his own.

Q. But when we talk about free air sniff, that's searching the air that's emanating from the vehicle based on wind or whatever; correct?

A. It's searching the exterior of the vehicle and as -- yes, potentially as the wind comes through it or leaves that vehicle.

Q. So I'm asking my dog to sniff the air that's immediately around the vehicle?

A. I'm asking him to sniff the vehicle that is there and the air that is leaving the vehicle.

Q. But are you -- are you allowing him to make

[79]

physical contact with the exterior of the vehicle?

A. Yes.

Q. And when he makes physical contact with the exterior of the vehicle, you are not correcting him through a command like, Don't do that or heel or anything like that?

A. Again, because then I'll have an attorney here sitting across from me telling me that I'm trying to get him to indicate.

MR. RUSSELL: Objection. Argumentative.

I guess it's yours.

Withdrawn.

Q. (By Mr. Murphy) And I understand what some attorneys may do. What I'm just trying to figure out is: You have the ability to restrict the dog from physically touching the car. Is that a fair way of putting it?

A. Not on a corrections standard, no. I don't have him on a correction ring.

Q. Okay. So like -- but you could correct the dog -- you could -- this sounds like this is a behavior that's trained with the ball with the little holes in it, am I right?

A. The ball's not presented to the dog until

[80]

he indicates to the presence of controlled substance or the odor of controlled substance.

Q. This ball with the holes that you were testifying to earlier, getting the dog to go into the ball, is that the treat or is that a training tool?

A. There is no ball that's present at that point in time. The ball isn't presented until he indicates to that odor that is inside of that hole.

Q. Now, I realize that you don't have him on a correction leash or however you describe it, but the point I'm just trying to see if we can agree is, if you don't want that dog to touch the vehicle, you're in control of that situation; correct?

A. Yes. I'm always in control of him, yes.

Q. Is it fair to say the dog is just an extension of you?

A. No, the dog is his own person. I can't smell. The only thing I can smell is marijuana. That's how our nose

operates. His nose is well above and beyond ours. That's why we use dogs.

Q. And just for the record, you didn't smell any marijuana that night?

[81]

A. I did not, no.

Q. And -- so going back to the dog -- and maybe I've belabored this enough, but by controlling the other end of the leash, you can direct the dog what to do and what not to do regardless of what any attorney is going to say later about it. Would you agree with that?

A. Potentially, yes.

Q. Okay. And -- so when Orozco touches the driver's side door and comes off of it, there's no correction?

A. Correct. There's no correction.

Q. No verbal command to not do that or anything?

A. Correct.

Q. And then as the dog makes its way down the driver's side of the vehicle and around the rear of the car and now approaches the passenger side door, at this point we've discussed you're aware of -- that the window is down?

A. Correct.

Q. Now, the dog is seen on the video going up onto the window frame of the vehicle on the passenger side and sticking its head into that interior space of the car. Would you agree?

[82]

A. I don't know that he stuck his entire head in there, but I would say his nose potentially, yes.

Q. And so that's something that's permitted by you?

A. Correct. He's freely searching that vehicle on his own.

Q. And he receives no correction at the passenger side door not to do that?

A. Correct.

Q. And then at some point, the dog – let's go back.

Is this a high -- what did you call it -- a high final? Is the dog doing the high final when it's up touching the window frame and sticking its nose in the interior of the car?

A. It would mean that he has -- his high final -- like I said, if he goes high on anything, so whether it was on an open window or a closed window, he would not come off of it. He would stay high and turn and look at me.

Q. And in this case, he came off of it?

A. As I was retrieving his ball he came off of it when -- and sat down.

* * *

[89]

CROSS-EXAMINATION

BY MR. RUSSELL:

* * *

[97]

Q. How much time elapsed from when you were notified about this suspicious vehicle and the time when you

arrived to assist Officer Camp after you pulled over the same vehicle?

A. I don't recall. But it wasn't immediate by any means. I believe 20-ish minutes, 30 minutes potentially. I believe Officer Camp had moved on and was doing something else.

Q. And you did nothing to correct Orozco when

[98]

he jumped up on the car the first time, did you?

A. Correct. I already testified to that.

Q. Okay. And you did nothing when he jumped up on the passenger side door?

A. Correct.

Q. And stuck his head in?

A. Correct.

Q. No correction. Do you think that's allowed?

A. Yes, there's case law that allows it.

Q. That allows your dog to enter that vehicle?

A. Not my dog in particular, but the dog that was in that case, yes.

Q. So you didn't see any problem with your dog sticking his nose into the air inside the vehicle?

A. Mike, he was doing what he was trained to do, which is search the area.

* * *

[121]

(Proceedings concluded at 3:59 p.m.)

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