# APPENDIX

## TABLE OF CONTENTS

## APPENDIX A

**In the Iowa Supreme Court**

No. 23–1218

Submitted February 17, 2025—Filed June 20, 2025

**State of Iowa**,

Appellee,

vs.

**Patrick Wayman Scullark, Jr.**,

Appellant.

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Court for Black Hawk County, Linda M. Fangman, judge.

The State seeks further review of the court of appeals decision reversing the district court order denying suppression of evidence found in the defendant's fanny pack during a search incident to arrest. **Decision of Court of Appeals Vacated; District Court Judgment Affirmed.**

Oxley, J., delivered the opinion of the court, in which all justices joined except McDermott, J., who filed a dissenting opinion.

Martha J. Lucey, State Appellate Defender, and Josh Irwin (argued), Assistant Appellate Defender, for appellant.

Brenna Bird, Attorney General, and Timothy Hau (argued) and Thomas J. Ogden (until withdrawal), Assistant Attorneys General, for appellee.

**Oxley, Justice.**

Patrick Scullark, Jr. was charged with possessing a controlled substance after police officers searched the fanny pack that he was wearing at the time of his arrest on unrelated charges and that he attempted to pass to another person before being handcuffed. Scullark contends that the district court should have suppressed the evidence of the methamphetamine found in his fanny pack, arguing that the search violated the United States and Iowa Constitutions because he could no longer access the fanny pack at the time it was searched. The court of appeals agreed and reversed the district court order denying Scullark's motion to suppress.

Incident to a lawful arrest, police officers are authorized to conduct a full search of the arrestee's person. Because Scullark was wearing the fanny pack around his waist at the time of his arrest, we conclude that this was a valid search of his person that did not violate either the United States Constitution or the Iowa Constitution. As explained more fully below, we vacate the court of appeals decision and affirm the district court order denying Scullark's motion to suppress.

## I. Factual Background and Proceedings.

On April 12, 2022, Officer Jacob Bolstad investigated a domestic abuse call involving Scullark. Officer Bolstad went to the residence Scullark was known to be at, where he found Scullark sitting on the tailgate of a truck outside. Scullark was talking on the

phone and was in an emotional, distressed state about going back to jail. When Officer Bolstad attempted to talk with Scullark, Scullark bolted inside the residence despite Officer Bolstad's order to stay outside. Officer Bolstad followed. Inside the residence, Scullark remained agitated and emotional. He was adamant that he could not go back to jail.

During their encounter, Scullark was wearing a fanny pack around his waist. Officer Bolstad told Scullark that he was going back to jail and started to handcuff him. Scullark pulled away to remove the fanny pack from his waist, told Officer Bolstad "don't touch me right now," and attempted to hand the fanny pack and other items to one of his companions standing nearby. At this point, Scullark was not yet handcuffed, and Officer Bolstad was the only officer on the scene. To prevent escalating the already emotional situation, Officer Bolstad did not oppose the handoff. After Scullark handed the items to his companion, Officer Bolstad handcuffed Scullark behind his back and advised the companion to set the items down because he was going to search the items and bring them to the jail.

Other officers arrived at the scene as Officer Bolstad led Scullark out of the residence to the patrol car. As the two walked out, Officer Bolstad picked up the fanny pack and other items. He testified at the suppression hearing that, at this point, Scullark was unable to access the fanny pack and its contents.

Two of Scullark's companions followed Officer Bolstad and Scullark outside, protesting the search of the fanny pack and its transport to the jail. They attempted to grab the contents of the fanny pack from

the officers as Officer Bolstad conducted a pat-down search of Scullark outside the patrol car and another officer searched the fanny pack nearby. Officer Bolstad joined the search of Scullark's fanny pack after placing Scullark in the back of his patrol car. The officers found a clear baggy containing methamphetamine inside the fanny pack.

The State charged Scullark with possession of a controlled substance with intent to deliver and failure to affix a drug tax stamp. Scullark filed a motion to suppress the contents of the fanny pack, arguing that the search violated his rights under the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution. The district court found the search of the fanny pack valid as a search incident to arrest (SITA) and denied Scullark's motion to suppress. In 2023, Scullark entered a conditional guilty plea to all counts, preserving his right to challenge the denial of his motion to suppress.

Scullark challenges the denial of his motion to suppress on two grounds: (1) the SITA exception does not apply when an arrestee is unable to access the item at the time it is searched, and (2) the State must establish that the officers were looking for a weapon or for evidence of the offense of arrest. We transferred the appeal to the court of appeals, which reversed the district court's denial of Scullark's motion to suppress. The court of appeals agreed with Scullark that the search did not satisfy the SITA exception because he could not access the fanny pack at the time it was searched.

We granted the State's application for further review to address whether a search of a defendant's fanny pack that he passed to another person before being handcuffed violates either the United States Constitution or the Iowa Constitution. We conclude that it does not. We therefore vacate the court of appeals decision and affirm the district court order denying Scullark's motion to suppress.

**II. Analysis.**

**A. Jurisdiction to Consider the Appeal Under Iowa Code Section 814.6(3).** The State challenges the court of appeals' interpretation of Iowa Code section 814.6(3) (2024). Iowa Code section 814.6(1)(*a*)(3) prevents a defendant from appealing a guilty plea to a non-class "A" felony unless the defendant can first establish good cause. Subsection (3) provides an exception to that rule:

> A conditional guilty plea that reserves an issue for appeal shall only be entered by the court with the consent of the prosecuting attorney and the defendant or the defendant's counsel. An appellate court shall have jurisdiction over only conditional guilty pleas that comply with this section and when the appellate adjudication of the reserved issue is in the interest of justice.

*Id.* § 814.6(3). The court of appeals construed the requirement that the appeal be "in the interest of justice" to mean when appellate review would be "fair and right." (Quoting *Interests of Justice, Black's Law Dictionary* 971 (11th ed. 2019).)

Here, the State and Scullark agreed to a conditional guilty plea that explicitly allowed Scullark to challenge the suppression ruling, and the district

court accepted the conditional guilty plea. The issue on appeal is the same issue reserved by the conditional guilty plea, and success on appeal of that issue would give Scullark some relief. *Cf. State v. Treptow*, 960 N.W.2d 98, 108–09 (Iowa 2021) (holding that "a legally sufficient reason is a reason that would allow a court to provide some relief" for purposes of establishing good cause under Iowa Code section 814.6(1)(*a*)(3)). Scullark satisfied section 814.6(3)'s "in the interest of justice" requirement.

**B. Unreasonable Search of the Fanny Pack.** Scullark argues that evidence from his fanny pack was obtained in violation of his right to be free from unreasonable searches and seizures. We review challenges to the denial of a motion to suppress on constitutional grounds de novo. *State v. Watts*, 801 N.W.2d 845, 850 (Iowa 2011) ("Because this case concerns the constitutional right to be free from unreasonable searches and seizures, our review of the district court's suppression ruling is de novo."). "We independently evaluate the totality of the circumstances found in the record, including the evidence introduced at...the suppression hearing...." *State v. Vance*, 790 N.W.2d 775, 780 (Iowa 2010). "We give deference to the district court's findings of fact" but are not bound by them. *Id.*

The Fourth Amendment to the United States Constitution provides, in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." Under the Fourth Amendment, a warrantless search is per se unreasonable, and therefore, unconstitutional, "subject only to a few narrow and well-delineated

exceptions." *Williams v. United States*, 401 U.S. 646, 660 n.1 (1971) (Brennan, J., concurring in the result). One such exception to the warrant requirement is a search conducted incident to a lawful arrest. *See*, *e.g.*, *Chimel v. California*, 395 U.S. 752, 763 (1969) (limiting the scope of a search incident to a lawful custodial arrest to the arrestee's person and the area within his immediate control—i.e., "the area from within which [one] might gain possession of a weapon or destructible evidence").

Similarly, article I, section 8 of the Iowa Constitution provides: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated . . . ." We have recognized similar warrant exceptions under the Iowa Constitution. *See State v. Lewis*, 675 N.W.2d 516, 522 (Iowa 2004) ("Exceptions recognized by this court are searches based on consent, plain view, probable cause coupled with exigent circumstances, *searches incident to arrest*, and those based on the emergency aid exception." (emphasis added)). While our "interpretations of section 8 have often 'tracked with prevailing federal interpretations' of the Fourth Amendment," *State v. Burns*, 988 N.W.2d 352, 360 (Iowa 2023) (quoting *Kain v. State*, 378 N.W.2d 900, 902 (Iowa 1985)), "we are not 'compel[led]' to follow that path," *id.* (alteration in original) (quoting *State ex rel. Kuble v. Bisignano*, 28 N.W.2d 504, 508 (Iowa 1947)). "It follows that if a federal interpretation of the Fourth Amendment is not consistent with the text and history of section 8, we may conclude that the federal interpretation should not govern our interpretation of section 8." *Id.*

Scullark argues that the search of his fanny pack violated his constitutional rights under the Fourth Amendment and article I, section 8 because (1) he was unable to access the fanny pack at the time the officers searched it, and (2) the State failed to establish that the officers were looking for a weapon or for evidence of the offense of the arrest.

In determining whether an exception to the warrant requirement applies, we assess the officers' conduct using an objective standard. *State v. Simmons*, 714 N.W.2d 264, 272 (Iowa 2006). Therefore, the officers' subjective motivations for conducting the search are irrelevant. *Id.* ("A search's legality does not depend on the actual motivations of the police officers involved in the search.").

1. *Determining the proper context of the search.* The SITA exception has developed in three contexts: (1) searches of the area within the arrestee's immediate control, (2) searches of the arrestee's person, and (3) searches of vehicles incident to arrest, *see Chimel*, 395 U.S. at 763 (limiting the scope of a SITA to "the arrestee's person and the area 'within his immediate control' "); *United States v. Robinson*, 414 U.S. 218, 235–36 (1973) (authorizing full searches of the person incident to arrest); *Arizona v. Gant*, 556 U.S. 332, 351 (2009) (deciding the appropriate scope of a search of a vehicle incident to a recent occupant's arrest). We must decide whether the search of the fanny pack at issue here was a *Robinson*-type search of Scullark's person or a *Chimel*/*Gant*-type search of the area within his immediate control.

The seminal decision establishing the scope of a search of the area within the arrestee's immediate

control is *Chimel*, 395 U.S. 752. In *Chimel*, police officers arrested a defendant in his home pursuant to an arrest warrant. *Id.* at 753. The officers then searched the entirety of the defendant's three-story home premised only "on the basis of the lawful arrest." *Id.* at 753–54. The United States Supreme Court held that, incident to a lawful arrest, officers can search "the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.* at 763. *Chimel* also set out the justifications underlying the SITA exception. A search of the person and the area within his immediate control "serve[s] the dual purposes of protecting arresting officers and safeguarding any evidence the arrestee may seek to conceal or destroy." *Vance*, 790 N.W.2d at 786 (citing *Chimel*, 395 U.S. at 762–63).

Searches of the arrestee's person are treated differently from a search of the area within the arrestee's reach. *Robinson*, 414 U.S. at 224 ("Examination of this Court's decisions shows that these two propositions have been treated quite differently."). The Supreme Court recognized that "[t]he validity of the search of a person incident to a lawful arrest has been regarded as settled from its first enunciation, and has remained virtually unchallenged until the [*Robinson*] case." *Id.* But "[t]he validity of the second proposition, while likewise conceded in principle, has been subject to differing interpretations as to the extent of the area which may be searched." *Id.* In *Robinson*, a police officer searched the arrestee's coat pocket and a cigarette pack he found in it incident to a lawful custodial arrest.

*Id.* at 221–23. The Court set out a categorical rule that officers may conduct a full search of the arrestee's person and the items immediately associated with the person without regard to the justifications supporting the SITA exception. *Id.* at 235–36.

> [The] intrusion [of a custodial arrest] being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment.

*Id.* at 235. The validity of the search does not depend on a later determination about the likelihood that officers would have found weapons or evidence in the specific situation. *Id.* Rather, by virtue of a lawful arrest, an officer is authorized to search the arrestee's person, his pockets, and physical items immediately associated with him. *See Riley v. California*, 573 U.S. 373, 393 (2014).

The Court expounded on the *Robinson* rule in *Riley v. California*. *Id.* at 386. *Riley* involved the search of a cellphone incident to arrest. *Id.* at 378. In declining to extend *Robinson* to digital data, the Court did not "overlook *Robinson's* admonition that searches of a person incident to arrest, 'while based upon the need to disarm and to discover evidence,' are reasonable regardless of 'the probability in a particular arrest situation that weapons or evidence would in fact be found.' " *Id.* at 386 (quoting *Robinson*, 414 U.S. at 235). The Court also noted that

"*Robinson*'s categorical rule strikes the appropriate balance in the context of physical objects." *Id.* Maintaining that categorical rule for physical items, the Court distinguished searches of digital data found on the person: "A conclusion that inspecting the contents of an arrestee's pockets works no substantial additional intrusion on privacy beyond the arrest itself may make sense as applied to physical items, but any extension of that reasoning to digital data has to rest on its own bottom." *Id.* at 393.

Likewise, under the Iowa Constitution, we have historically recognized an officer's broad authority to search the arrestee's person incident to a lawful custodial arrest.

> It is usual and proper for police officers, upon the arrest of felons to subject them to search and take from them articles found upon their persons. . . . Surely there can be no rule of law forbidding a police officer upon the arrest of one charged with a felony, from making a close and careful search of the person of the individual for stolen property, instruments used in the commission of crimes, or any article which may give a clue to the commission of crime or the identification of the criminal. This too may be done promptly on arrest, and not delayed for authority from a court or a superior. The offender would speedily dispose of all such articles which would be found upon his person that might lead to the discovery of crime.

*Reifsnyder v. Lee*, 44 Iowa 101, 103 (1876). It is a well-settled rule that police officers have inherent authority to search the arrestee's person incident to

arrest without a warrant. *State v. Kilby*, 961 N.W.2d 374, 385 (Iowa 2021) (McDonald, J., concurring specially). "[T]he greater power to arrest necessarily includes the lesser power to search." *Id.* at 386.

Indeed, we have previously adopted and applied the categorical rule from *Robinson* to article I, section 8 challenges. *See*, *e.g.*, *State v. Hunt*, 974 N.W.2d 493, 496–97, 499 (Iowa 2022) ("And if an officer may lawfully arrest a person, then the officer may perform a warrantless search incident to that arrest. The search incident to arrest would, in turn, justify the warrantless seizure of the contraband [found in the defendant's pocket]." (citations omitted)); *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995) ("The full search of the arrestee's person 'is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.' " (quoting *Robinson*, 414 U.S. at 235)), *overruled in part on other grounds by*, *State v. Doran*, 563 N.W.2d 620 (Iowa 1997) (en banc), *overruled in part by*, *Knowles v. Iowa*, 525 U.S. 113 (1998); *State v. Farrell*, 242 N.W.2d 327, 329 (Iowa 1976) ("A search of the person is permissible as an incident to lawful arrest, even when the offense is only a minor moving traffic violation.").

The federal SITA exception "trilogy" ends with *Arizona v. Gant*, which determined the appropriate scope of the search of a vehicle incident to arrest. 556 U.S. at 351; *see also Riley*, 573 U.S. at 374 ("The trilogy concludes with *Arizona v. Gant* . . . ." (citations omitted)). In *Gant*, police officers searched the defendant's vehicle after they arrested him for driving with a suspended license. 556 U.S. at 335. At the time of the search, the arrestee was handcuffed and in the back of the patrol car. *Id.* The Court determined that

officers may, without a warrant, "search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Id.* at 351. This latter holding authorizing searches if "it is reasonable to believe the vehicle contains evidence of the offense of arrest" is based on "circumstances unique to the automobile context." *Id.* at 335, 351. *Gant* effectively overruled *New York v. Belton*, which had allowed police officers to contemporaneously search the passenger compartment of an automobile and any containers found therein incident to a lawful arrest of an occupant of the vehicle. 453 U.S. 454, 460–61 (1981).

After *Gant*, we decided *State v. Gaskins*, 866 N.W.2d 1 (Iowa 2015). In *Gaskins*, police officers searched a locked safe in the arrestee's vehicle incident to arrest after the arrestee was handcuffed and placed in the back of the patrol car. *Id.* at 3. In holding the search of the safe invalid, "[w]e approve[d] *Gant's* 'reaching distance' rationale as an appropriate limitation on the scope of searches incident to arrest under article I, section 8 of the Iowa Constitution because that limitation is faithful to the underlying justifications for warrantless searches incident to arrest." *Id.* at 13.

Scullark argues that the reaching-distance rule of *Gant* and *Gaskins* applies to the search at issue here instead of the categorical *Robinson* rule. Scullark asserts that under *Gant* and *Gaskins*, the search of his fanny pack violated both the Fourth Amendment and article I, section 8 because he was unable to access the fanny pack at the time it was searched. We disagree. We conclude that because the fanny pack was attached

to his person at the time of the arrest, this is a search of the person, governed by *Robinson*—rather than a search of the area within his immediate control, governed by *Chimel*, *Gant*, or *Gaskins*.

Starting with his argument under the Fourth Amendment, *Gant* did not modify the rule pertaining to searches of the arrestee's person and the items immediately associated with him. *Robinson* still governs these searches. *See People v. Cregan*, 10 N.E.3d 1196, 1203 (Ill. 2014) ("*Gant* does not apply to a search incident to arrest of the defendant's person or items immediately associated with the defendant's person. The search in those circumstances is still controlled by the Supreme Court's decision in *Robinson*.").

The language of the majority opinion in *Gant*, Justice Alito's dissent, and the subsequent *Riley* opinion inform our conclusion. As Justice Alito stated in his *Gant* dissent: "The first part of the Court's new two-part rule—which permits an arresting officer to search the area within an arrestee's reach at the time of the search—applies, at least for now, only to vehicle occupants and recent occupants . . . ." 556 U.S. at 363–64 (Alito, J., dissenting). Then in *Riley*, the Court took a limited view of the majority opinion in *Gant* by referencing it as a case "which analyzed searches of an arrestee's vehicle" and "authorize[d] police to search a vehicle 'only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.' " *Riley*, 573 U.S. at 384–85 (quoting *Gant*, 556 U.S. at 343). The *Riley* Court also noted that "[l]ower courts applying *Robinson* and *Chimel* . . . have approved searches of a

variety of personal items carried by an arrestee." *Id.* at 392.

Although other courts have extended *Gant* outside of the vehicle context, *see*, *e.g.*, *United States v. Davis*, 997 F.3d 191, 197 (4th Cir. 2021) (applying *Gant* to the search of a backpack the arrestee dropped prior to arrest); *United States v. Knapp*, 917 F.3d 1161, 1168 (10th Cir. 2019) (extending *Gant*'s principles to a purse near the arrestee at the time of search and limiting *Robinson* to searches of clothing and containers concealed under or within the clothing); *United States v. Shakir*, 616 F.3d 315, 318 (3d Cir. 2010) (applying *Gant* to the search of a bag the arrestee was holding at the time of arrest), we find more persuasive those federal cases that have not, *see*, *e.g.*, *United States v. Perez*, 89 F.4th 247, 256, 259 (1st Cir. 2023) (stating that "*Gant* did not address carried personal property at all," and the *Robinson* rule would continue to govern searches "of personal items carried by an arrestee" (quoting *Riley*, 573 U.S. at 392)); *United States v. Perdoma*, 621 F.3d 745, 752 (8th Cir. 2010) ("*Gant* elaborates upon the circumstances in which an arrestee no longer has the possibility to reach into the 'passenger compartment' of his vehicle, and the Court's discussion of whether the arrestee is no longer 'unsecured and within reaching distance' of that area must be understood in that limited context. The Court focuses exclusively on how the rule will affect *vehicle* searches . . . ." (citations omitted) (quoting *Gant*, 556 U.S. at 343)). We therefore find that the reaching-distance rule of *Gant* does not apply to searches of the arrestee's person incident to arrest. *Robinson* still governs these searches.

We reach the same conclusion under the Iowa Constitution. Like *Gant*, *Gaskins* did not change the standard for searches of the arrestee's person incident to arrest. To determine the validity of a search of the arrestee's person, we likewise look to *Robinson*. *See Hunt*, 974 N.W.2d at 496–97, 499 (applying *Robinson* to a challenge to contraband found in an arrestee's pocket under both the Fourth Amendment and article I, section 8).

2. *Was Scullark's fanny pack part of his person*? We still need to determine whether the search of an arrestee's person incident to an arrest allows a police officer to also search a fanny pack on the arrestee's person at the time the officer initiates an arrest. In other words, what is included in the "person" that can be searched incident to his arrest? As the Kentucky Supreme Court recently explained:

> [I]f the [bag] is properly considered part of [the defendant's] "person," then the search was lawful as no additional justification for the search other than it being incident to his arrest was needed. However, if the [bag] was instead "the area within his immediate control," we would then need to address whether the search of the [bag] was justified based on officer safety or the preservation of evidence.

*Commonwealth v. Bembury*, 677 S.W.3d 385, 396–97 (Ky. 2023).

To determine the proper scope of a search of an arrestee's person, we look to the time of arrest. *See Robinson*, 414 U.S. at 226 ("*When an arrest is made*, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that

the latter might seek to use in order to resist arrest or effect his escape." (emphasis added) (quoting *Chimel*, 395 U.S. 762–63)). Consistent with the "jealously guarded" SITA exception, the proper scope of the time of arrest rule is narrow; "[i]t does not extend to all articles in an arrestee's constructive possession, but only those personal articles in the arrestee's actual and exclusive possession at or immediately preceding the time of arrest." *State v. Byrd*, 310 P.3d 793, 799 (Wash. 2013) (quoting *State v. Ortega*, 297 P.3d 57, 60 (Wash. 2013) (en banc)).

Officers are authorized to search not only the person but also those objects which are closely related to and immediately associated with the person. *Preston v. United States*, 376 U.S. 364, 367 (1964) ("This right to search and seize without a search warrant extends to things under the accused's immediate control . . . ." (citations omitted)). As the United States Court of Appeals for the Seventh Circuit explained:

> The human anatomy does not naturally contain external pockets, pouches, or other places in which personal objects can be conveniently carried. To remedy this anatomical deficiency[,] . . . many individuals carry purses or shoulder bags to hold objects they wish to have with them. Containers such as these, while appended to the body, are so closely associated with the person that they are identified with and included within the concept of one's person. To hold differently would be to narrow the scope of a search of one's person to a point at which it would have little meaning.

*United States v. Graham*, 638 F.2d 1111, 1114 (7th Cir. 1981).

Because police officers necessarily must make quick ad hoc decisions when determining how, where, and what to search, they need to know what items they are authorized to search without triggering the need for additional justifications. *See Robinson*, 414 U.S. at 235 ("A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search."). The time-of-arrest rule sets a bright-line rule that allows officers to search the arrestee's person and any items in the arrestee's actual and exclusive possession at the time of the arrest or immediately preceding it. This limited search "constitute[s] only minor additional intrusions compared to the substantial government authority exercised in taking [the arrestee] into custody." *Riley*, 573 U.S. at 392.

Full *Robinson* searches of the person ensure officer safety during "the extended exposure which follows the taking of a suspect into custody and transporting him to the police station." 414 U.S. at 234–35. "When police take an arrestee into custody, they also take possession of his clothing and personal effects, any of which could contain weapons and evidence." *Byrd*, 310 P.3d at 798. Thus, "it is reasonable to allow for an officer to protect himself by searching items he places in his patrol car and transports to the police station." *State v. Allen*, No. 06–1770, 2007 WL 2964316, at *5 (Iowa Ct. App. Oct. 12, 2007); *cf. Illinois v. Lafayette*, 462 U.S. 640, 646–48 (1983) (explaining that another governmental interest in searching any container or

article found on the arrestee, incident to incarcerating an arrestee, is to inventory personal property and protect officers against possible false claims of theft).

Scullark relies on *Gaskins*, but like *Gant*, *Gaskins* involved the search of a vehicle incident to the driver's arrest. The locked safe that the officers searched in *Gaskins* was never on or attached to the arrestee's person. *See Gaskins*, 866 N.W.2d at 3–4. Here, however, the fanny pack was physically attached around Scullark's waist at the time Officer Bolstad initiated Scullark's arrest by attempting to place him in handcuffs. It was only at this point that Scullark removed and handed the fanny pack to his companion. We believe this is sufficient to conclude that the fanny pack was immediately associated with Scullark. The fanny pack was an extension of his person, much like his pockets, the search of which requires no additional justification beyond lawful arrest. *See Robinson*, 414 U.S. at 235 ("A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification."); *see also Riley*, 573 U.S. at 393 (explaining "that inspecting the contents of an arrestee's pockets works no substantial additional intrusion on privacy beyond the arrest itself may make sense as applied to physical items" but not to digital data); 68 Am. Jur. 2d *Searches and Seizures* § 276, at 512–13 (2020) (noting that a purse is considered an extension of the person much like the person's clothing or pockets).

Because the police officers needed no additional justification to search the fanny pack, we conclude that the State was not required to show the officers'

reasons for conducting the search. *See Robinson*, 414 U.S. at 235–36. "Since it is the fact of custodial arrest which gives rise to the authority to search, it is of no moment that [the officer] did not indicate any subjective fear of the respondent or that he did not himself suspect that [he] was armed." *Id.* at 236 (footnote omitted). We do not inquire into the officers' reasons for conducting the search of the arrestee's person because "[t]he interests justifying search are present whenever an officer makes an arrest." *Virginia v. Moore*, 553 U.S. 164, 177 (2008); *see also Robinson*, 414 U.S. at 234–35 (explaining that the close contact with suspects when making an arrest and transporting them to the jail, as opposed to the "fleeting contact" involved with "Terry-type stop[s,] . . . is an adequate basis for treating all custodial arrests alike for purposes of search justification"); *Byrd*, 310 P.3d at 796 ("[S]earches of the arrestee's person and personal effects do not require 'a case-by-case adjudication' because they always implicate *Chimel* concerns for officer safety and evidence preservation." (quoting *Robinson*, 414 U.S. at 235)).

Therefore, a lawful custodial arrest justifies a warrantless search of the person, as long as the search is contemporaneous with the arrest. *See Vance*, 790 N.W.2d at 786 ("[T]he lawful custodial arrest of a person justifies the contemporaneous search of the person arrested and of the immediately surrounding area . . . ."). Here, the officers searched the fanny pack while still at the scene and within minutes of Scullark's arrest. Officers need not expose themselves to unnecessary danger by searching the arrestee and the items on his person before he is properly secured. "[T]he police may see to the safe custody and security

of suspects first and then make the limited search which the circumstances of the particular case permit." *State v. Shane*, 255 N.W.2d 324, 328 (Iowa 1977). "The search incident to arrest rule respects that an officer who takes a suspect into custody faces an unpredictable and inherently dangerous situation and that officers can and should put their safety first." *Byrd*, 310 P.3d at 797.

Scullark's position requires extending the reasoning of *Gant* and *Gaskins* to searches of the person. However, a reasonable search of the person should not depend on games of "hot potato." An arrestee cannot establish and reduce the scope of a permissible SITA by handing the item to a companion before the officer can search him. *See State v. Rincon*, 970 N.W.2d 275, 284–85 (Iowa 2022) (holding that a woman could not prevent police officers from searching her purse by removing it from an automobile when officers had authority to search the automobile and its containers under the automobile exception); *see also Reifsnyder*, 44 Iowa at 103 ("The offender would speedily dispose of all such articles which would be found upon his person that might lead to the discovery of crime.").

We therefore conclude that because Scullark was wearing the fanny pack around his waist at the time of arrest, the fanny pack was immediately associated with his person for purposes of the SITA exception, and the categorical rule from *Robinson* and the related Iowa precedent applies. The search of the fanny pack was reasonable as a search of Scullark's person, and no additional justification for the search was required beyond Scullark's lawful custodial arrest. We hold that the search of Scullark's fanny pack was a valid SITA under both the Fourth Amendment and article I,

section 8. The district court did not err in denying Scullark's motion to suppress.

**III. Conclusion.**

For the reasons stated above, we vacate the court of appeals decision and affirm the district court order denying Scullark's motion to suppress.

**Decision of Court of Appeals Vacated; District Court Judgment Affirmed.**

All justices concur except McDermott, J., who files a dissenting opinion.

#23–1218, State v. Scullark

**McDermott, Justice (dissenting).**

Under the Iowa Constitution, before an officer may search or seize "persons, houses, papers [or] effects," the officer must first obtain a warrant. Iowa Const. art. I, § 8. One recognized exception to this warrant requirement, justified by necessity, allows an officer to search a person placed under arrest and the area within the person's immediate control for two purposes: (1) to ensure the officer's safety and (2) to prevent the person from destroying evidence of a crime for which there is probable cause. The majority concludes that the officers' search of Patrick Scullark, Jr.'s fanny pack was lawful under this "search incident to arrest" exception. But because the officer's search of the fanny pack in this case meets neither of the two purposes for the exception, I must respectfully dissent.

Scullark was in his backyard when Officer Jacob Bolstad arrived to investigate an allegation of domestic violence. Bolstad's bodycam footage shows that as he began to talk to Scullark about the matter, Scullark got upset and walked inside with Bolstad walking after him. Inside the house, the discussion continued, with a couple of women also present in the room who were helping Scullark move in. Scullark was distraught and complained to Bolstad that he didn't do anything, he was on parole, and the charge might mean going back to prison. After a few minutes, Scullark calmed down, and at that point, Bolstad told Scullark that he needed to take him to jail.

Before Bolstad put Scullark in handcuffs, Scullark handed his fanny pack and cellphone to one of the women in the room. As Bolstad began to handcuff

Scullark, Bolstad said, "All the stuff you're handing to her, I'm searching." As Bolstad continued applying the handcuffs, the woman carrying the fanny pack and phone began to walk ahead of them into an adjoining room. Bolstad told the woman, "Stay over here with that." The woman promptly set the fanny pack and phone down on some boxes. As Bolstad led a handcuffed Scullark toward the door, Bolstad stopped where the woman had set down the items and picked up the fanny pack and cellphone. Bolstad admits that, at this point, Scullark could not have accessed the fanny pack.

Another officer who had arrived was waiting in the backyard when they exited the house. Bolstad handed the fanny pack to the other officer to carry. Bolstad led Scullark from the back door, around the house, and to Bolstad's police cruiser in front of the house. The two women from inside walked with them. When they got to Bolstad's cruiser, Bolstad patted Scullark down, revealing no weapons or contraband. At this point, a third officer had arrived to assist. Before putting Scullark in the cruiser, Bolstad gave Scullark, still handcuffed, a moment to talk to the two women. The women had Scullark's mother on speakerphone, and Scullark told his mother that he was being taken to jail. Bolstad then placed Scullark in the back of the police cruiser and closed the door. At this point, outside the cruiser, the other officer holding the fanny pack opened it, and he and Bolstad searched it. The fanny pack contained a baggy of methamphetamine, for which Scullark was ultimately prosecuted for possession.

One of the evils that the Fourth Amendment to the United States Constitution was designed to protect

against was the abuse of suspicionless general warrants. *See* William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning 602–1791*, at 603–13 (2009) [hereinafter Cuddihy, *The Fourth Amendment*]. General warrants allowed government officers to search a person or property for evidence of wrongdoing without specifying what they were looking for or why they had suspicion to search. *See Sanders v. State*, 2 Clarke 230, 239 (Iowa 1855). Warrantless searches are *per se* unreasonable unless the state proves that a recognized exception to the warrant requirement applies. *State v. Lewis*, 675 N.W.2d 516, 522 (Iowa 2004). The warrantless search of Scullark's fanny pack—his "effect," meaning movable personal property—was thus unlawful unless a recognized exception applies.

The State relies on the search-incident-to-arrest exception, which permits an arresting officer to search the arrestee's person and "the area into which an arrestee might reach." *Chimel v. California*, 395 U.S. 752, 763 (1969). Under the Federal Constitution, the exception allows the search where it ensures officer safety, prevents evidence from being destroyed, and in the context of automobiles, enables evidence collection. *See United States v. Robinson*, 414 U.S. 218, 235–36 (1973); *Arizona v. Gant*, 556 U.S. 332, 343–44 (2009). Under the Iowa Constitution, the exception allows the search only where it ensures officer safety and prevents evidence from being destroyed. *See State v. Gaskins*, 866 N.W.2d 1, 14 (Iowa 2015). Because an automobile is not involved, the question presented here is the same under both the Federal and Iowa Constitutions: whether once Scullark removed his fanny pack and was handcuffed, the officer-safety or

evidence-destruction rationales existed to justify the search of the fanny pack.

Once Scullark removed the fanny pack, it was no longer part of his "person." And when the woman walked into the adjoining room with the fanny pack, it was no longer within an area that Scullark could readily access. From that moment forward, neither of the rationales supporting the search-incident-to-arrest exception—officer safety and evidence preservation—could justify the search of the fanny pack. When the officers eventually searched the fanny pack while standing outside the police cruiser, Scullark sat handcuffed in the back seat of the cruiser with the door shut. We do not assume that once handcuffed and locked in a police car, an arrestee will exhibit "the skill of Houdini [or] the strength of Hercules" to break free and gain access to a container. *Thornton v. United States*, 541 U.S. 615, 626 (2004) (Scalia, J., concurring in the judgment) (quoting *United States v. Frick*, 490 F.2d 666, 673 (5th Cir. 1973) (Goldberg, J., concurring in part and dissenting in part)). Scullark could not have grabbed a weapon hidden inside, nor could he have removed any items of evidence had there conceivably been any.

It bears mentioning that Scullark never ceded his privacy interest in the fanny pack. The fanny pack was not in any sense abandoned, as Scullark personally handed it to the woman inside his home. *See State v. Bumpus*, 459 N.W.2d 619, 625 (Iowa 1990) (holding that a defendant lacks standing to challenge a search or seizure of abandoned property). And in her hands (or as it lay on a box in his home), the fanny pack was not otherwise going to be taken to the jail where it inevitably would have been searched as part

of the booking process. *See State v. Entsminger*, 160 N.W.2d 480, 483–84 (Iowa 1968) (holding that police can search an arrestee's effects during booking without a warrant).

"The search-incident-to-arrest exception to the warrant requirement," we have declared, "must be narrowly construed and limited to accommodating only those interests it was created to serve." *State v. McGrane*, 733 N.W.2d 671, 677 (Iowa 2007). The warrantless search of the fanny pack in this case did nothing to advance those interests. Because the fanny pack didn't fall within the search-incident-to-arrest exception, or any other exception, the police needed to get a warrant supported by probable cause to search it. They didn't, and the search was thus unconstitutional. *See State v. Freeman*, 705 N.W.2d 293, 297 (Iowa 2005). The district court erred in denying the motion to suppress the evidence uncovered through the search of the fanny pack.

This conclusion is not groundbreaking. In *State v. Canas*, for instance, the police had a warrant for the defendant's arrest. 597 N.W.2d 488, 491 (Iowa 1999), *overruled on other grounds by*, *State v. Turner*, 630 N.W.2d 601 (Iowa 2001). The police arrived at the defendant's motel, but when the defendant saw them, he went back into his room and slammed the door. *Id.* When the police knocked and the defendant answered, they pulled him out of the room to arrest him. *Id.* When the officers grabbed him, the defendant had been standing about four feet from an unzipped bag on a nightstand, arguably within his area of immediate control. *Id.* After his arrest, the police went back into the motel room, searched the bag, and found drug paraphernalia. *Id.* We held that the search-incident-

to-arrest exception did not apply because, at the time of the search, the defendant was outside the motel room and thus the search did not advance officer safety or prevent the destruction of evidence. *Id.* at 493.

In *United States v. Davis*, the defendant was being chased by police through a swamp. 997 F.3d 191, 198 (4th Cir. 2021). As he came out of the swamp to surrender, he took off the backpack he was wearing and laid it on the ground. *Id.* The police handcuffed him and then searched his bag. *Id.* The United States Court of Appeals for the Fourth Circuit concluded that the government could not justify the search of the bag under the search-incident-to-arrest exception because once the defendant was secured in handcuffs and the backpack was not under his immediate control, there was no longer any safety or destruction-of-evidence concerns. *Id.*

Similarly, in *United States v. Fernández Santos*, the police went to the defendant's house to arrest him. 716 F. Supp. 3d 8, 12 (D.P.R. 2024). When they arrived, they saw the defendant throw a fanny pack (yes, another fanny pack) out a window and into the backyard. *Id.* The police arrested the defendant inside the house. *Id.* After about forty minutes, the police searched the fanny pack. *United States v. Fernández Santos*, No. 23–063, 2023 WL 8915838, at *2 (D.P.R. Dec. 27, 2023). The district court rejected the government's search-incident-to-arrest argument and suppressed the items discovered in the fanny pack, concluding that once the defendant threw the fanny pack into the yard, the search would not advance the officer-safety or evidence-preservation rationales. *Id.*

at *7–8; *Fernández Santos*, 716 F. Supp. 3d at 14 (adopting the magistrate's suppression ruling).

*United States v. Knapp* presents a factual scenario even more analogous to this case. 917 F.3d 1161, 1163 (10th Cir. 2019). In *Knapp*, the defendant was arrested after giving a witness statement to police about a grocery store theft when officers learned that she had an outstanding arrest warrant. *Id.* After making the defendant wait inside the grocery store while several officers completed the earlier theft investigation, one of the officers eventually took possession of the purse she had been carrying. *Id.* at 1163–64. The officer asked for her consent to search the purse, but she refused. *Id.* at 1164. When the defendant asked if she could simply leave the purse in her truck or give it to her boyfriend, the officer refused. *Id.* at 1163. The officers placed her in handcuffs behind her back and led her outside. *Id.* at 1164. As the defendant stood outside a police cruiser, an officer threatened that she would be guilty of a felony if she brought drugs to a detention center. *Id.* The defendant then told the officer that the purse contained a pistol. *Id.* Three officers were present as they searched the purse while the defendant, still handcuffed, stood with her back to them. *Id.* She was charged with being a felon in possession of a firearm. *Id.*

The government in *Knapp* argued that the search was justified under the search-incident-to-arrest exception. *Id.* at 1167. Analyzing the rationales for the exception described in *Chimel v. California*, the Tenth Circuit first concluded that the purse was not part of the defendant's "person" at the time of the search. *Id.* at 1167–68. Turning next to whether it

was within the area of the arrestee's immediate control, the court recited several facts: (1) the defendant's hands were cuffed behind her back, (2) the arresting officer was standing next to her with two other officers standing nearby, (3) the purse was closed and placed three to four feet behind her, and (4) the officers had maintained exclusive possession of the purse since placing her in handcuffs inside the grocery store. *Id*. at 1169. In light of these facts, the court held that it was unreasonable to believe she could have gained possession of a weapon or destroyed evidence inside her purse at the time of the search. *Id*. at 1168. The panel thus reversed the district court's denial of the defendant's motion to suppress. *Id*. at 1170.

In this case, the majority concludes that once an officer begins an arrest attempt, the search-incident-to-arrest exception makes anything on or near the person *at that moment* fair game to search, regardless of what happens after. But in real life, time does not freeze, as we all know, and our analysis of risks similarly does not remain static as events change. Grounding the search-incident-to-arrest exception on such an artificial notion—reducing interactions between suspects and police to what can be thought of as a series of Polaroid pictures and justifying a later search by holding up an outdated snapshot—untethers the exception from its rationale. Had the cases discussed above relied on the "freeze-frame" notion of the search-incident-to-arrest exception, none would have come out the way that they did.

The search-incident-to-arrest exception is based on an *existing* exigency—a present threat to officer safety or a present threat of losing evidence—not a historical one. Taken to its logical end, the majority's theory

would have permitted the officers in this case not simply to have searched the fanny pack five minutes after Scullark was handcuffed (as happened here), but for the officers to hold onto the fanny pack and conduct a warrantless search a month or even a year later, in a location miles away from Scullark.

The majority worries that a different application would make search-incident-to-arrest decisions more complicated because it would force officers to decide between (1) making the arrest immediately, before personal items can be discarded, to take advantage of the warrant exception or (2) delaying the arrest and having to go through the hassle of a search warrant. But as Justice Scalia warned, "The weakness of this argument is that it assumes that, one way or another, the search must take place. But conducting a *Chimel* search is not the Government's right; it is an exception—justified by necessity—to a rule that would otherwise render the search unlawful." *Thornton*, 541 U.S. at 627 (Scalia, J., concurring in the judgment). The search-incident-to-arrest exception is based on the justification that officers *need* to search items that presently *are* on or near the arrestee, not that officers *get* to search items that previously *were* on or near the arrestee.

I recognize the attractiveness of a bright-line rule in these situations. Clear rules, when they can be drawn consistent with a person's constitutional rights, are unquestionably worthy judicial pursuits. But this case demonstrates what happens when we expand what is supposed to be a limited exception in favor of easier-to-administer rules. The framers crafted our constitutional search and seizure protections *despite* the potential hindrance or haziness they might pose

for law enforcement. "The Fourth Amendment's framers were well aware of the constitutional alternatives regarding search and seizure." Cuddihy, *The Fourth Amendment* at 613.

When in conflict, upholding our constitutional protections must always prevail over the urge for simplicity in implementation. "Solving unsolved crimes is a noble objective," as Justice Scalia observed, "but it occupies a lower place in the American pantheon of noble objectives than the protection of our people from suspicionless law-enforcement searches. The Fourth Amendment must prevail." *Maryland v. King*, 569 U.S. 435, 481 (2013) (Scalia, J., dissenting).

I would reverse the trial court's ruling denying the motion to suppress and remand the case for further proceedings.

## APPENDIX B

## IN THE COURT OF APPEALS OF IOWA

No. 23-1218
Filed August 21, 2024

**STATE OF IOWA**,

Plaintiff-Appellee,

**vs.**

**PATRICK SCULLARK**,

Defendant-Appellant.

---

Appeal from the Iowa District Court for Black Hawk County, Linda M. Fangman, Judge.

A defendant appeals his convictions for possession of methamphetamine with intent to deliver and failure to affix a tax stamp. **REVERSED AND REMANDED.**

Martha J. Lucey, State Appellate Defender, and Josh Irwin, Assistant Appellate Defender, for appellant.

Brenna Bird, Attorney General, and Thomas J. Ogden (until withdrawal) and Timothy M. Hau, Assistant Attorneys General, for appellee.

Considered by Tabor, C.J., and Badding and Buller, JJ.

**TABOR, Chief Judge.**

"All the stuff you're handing her, I'm searching, just so you know." That's what Waterloo Police Officer Jacob Bolstad told Patrick Scullark as he handcuffed and arrested him on an assault charge. And the officer was true to his word— seizing and searching the fanny pack Scullark passed to his friend. Inside Scullark's fanny pack, police found cash and twenty-three grams of methamphetamine. Scullark moved to suppress the drugs, alleging the warrantless search of the fanny pack violated his constitutional rights. The district court denied the motion, finding a valid search incident to Scullark's arrest. Scullark now challenges that ruling.

Because Scullark had no realistic ability to access the fanny pack after he was handcuffed and escorted to the patrol car, the search did not meet the incident-to-arrest exception to the warrant requirement. Thus, we reverse the suppression ruling and remand for further proceedings.

## I. Facts and Prior Proceedings

A former girlfriend accused Scullark of throwing a watch, hitting her in the face, and causing a laceration. She alerted Officer Bolstad to the address where Scullark was moving. The officer located Scullark outside that house, talking on the phone, "pretty agitated" and "emotional." Officer Bolstad recorded their encounter on his body camera. The officer heard Scullark say he was on parole and didn't want to go back to jail. When Scullark noticed the officer approaching "he decided to bolt inside of the residence." The officer ordered Scullark to stop, but he ignored that command. So the officer followed him inside.

Scullark was crying and repeating that he didn't do anything wrong. In fact, he was so overwrought he crumpled to the floor. The officer recalled trying "to keep him calm and deescalate the situation because ultimately he was going to be going to jail for domestic assault."

When Officer Bolstad broke the news to Scullark that he was under arrest, Scullark was wearing a fanny pack around his waist. The officer estimated that it was ten by five inches—big enough to hold a small firearm or a knife. Before he was handcuffed, Scullark told the officer, "don't touch me right now" and handed the fanny pack to his friend, Tammy, who was standing nearby. Bolstad did not protest the handoff because he was the only officer present and did not want to "escalate the situation."

A few seconds later, Officer Bolstad handcuffed Scullark and informed him that the police would search the items passed to Tammy. By then, Tammy had taken three or four steps away from Scullark. The officer said: "Tammy, you stay over here with that." She then set the fanny pack down on a plastic tub next to a laundry basket just across the threshold of an adjoining room. As Scullark continued to lament—"I can't go to jail bro"—he walked toward the spot where Tammy left the fanny pack. Bolstad told him to stop and tightened the handcuffs. The officer later conceded that Scullark could not have reached the fanny pack at that point because his hands were cuffed behind his back.

The officer then picked up the fanny pack and carried it outside while escorting Scullark to the waiting patrol car. Tammy and another friend of

Scullark joined them outside. By then, at least two other officers had arrived at the scene. As Officer Bolstad stood with Scullark just outside the open back door of his patrol car, the officers searched the fanny pack. Bolstad later testified: "And while we were searching the bag, [we] located a large amount of money, an amount of drugs, and I don't really recall what else was in the bag."[1]

Based on that discovery, the State charged Scullark with possession of methamphetamine with intent to deliver, a class "B" felony, in violation of Iowa Code section 124.401(1)(b)(7) (2022) and failure to affix a drug tax stamp, a class "D" felony, in violation of section 453B.12. He moved to suppress the evidence seized by the officers, alleging a violation of his rights under the Fourth Amendment of the federal constitution and article 1, section 8 of the Iowa Constitution. The court denied his motion.

Scullark then entered a conditional guilty plea to the charged offenses, reserving his right to raise the suppression issue on appeal. The court entered

---

[1] Officer Bolstad's bodycam footage shows Scullark standing by the patrol car, talking to his mother on a cell phone held by one of his friends. He complains that the police have "his wallet with all of his credit cards in it" and "two hundred dollars for his light bill." At that point, an officer hands Scullark's friend a wad of cash. Then, before placing Scullark in the backseat, Officer Bolstad asks: "Patrick, is there anything else you want them to have out of that thing?" Scullark ignores the question. So the officer tells him: "Get in the car, we're done." Scullark then tells his friend to "get the wallet." Bolstad responds: "She's not getting the wallet. We're taking all that stuff to the jail with you." It is unclear from the recording when the officers find the methamphetamine.

judgment and sentence—from which Scullark now appeals.

## II. Jurisdiction/Conditional Guilty Plea

Traditionally, when defendants enter a guilty plea, they waive "all defenses and challenges not intrinsic to the voluntariness of the plea." *State v. Tucker*, 959 N.W.2d 140, 146 (Iowa 2021). To some degree, that changed effective July 1, 2023. Now defendants may enter conditional guilty pleas to preserve their potential appellate challenges to adverse rulings on a pretrial motion. Iowa R. Crim. P. 2.8(2)(b)(9)[2]; Iowa Code § 814.6(3).[3] But under the statutory language, we have jurisdiction over an appeal from a conditional plea only when "appellate adjudication of the reserved issue is in the interest of justice."[4] *Id.* § 814.6(3)

---

[2] The rule states:

> With the consent of the court and the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.
>
> Iowa R. Crim. P. 2.8(2)(b)(9).

[3] The statute provides:

> A conditional guilty plea that reserves an issue for appeal shall only be entered by the court with the consent of the prosecuting attorney and the defendant or the defendant's counsel. An appellate court shall have jurisdiction over only conditional guilty pleas that comply with this section and when the appellate adjudication of the reserved issue is in the interest of justice.

Iowa Code § 814.6(3).

[4] One commentator offers this insight into the cross-over between the new statute and the rule:

> Curiously, the original language of the rule as approved by the Court in 2023 stated explicitly that an approved

At the July 20, 2023 plea hearing, the State consented to Scullark's request to enter a conditional guilty plea to reserve the right to contest the denial of his motion to suppress on appeal. The court accepted the plea and advised Scullark of his right to appeal. Now Scullark urges appellate review of his suppression issue "is in the interest of justice" under section 814.6(3). *See generally* Iowa R. App. P. 6.103(2)(a) (requiring appellant's brief, in appeal from judgment of sentence following a guilty plea, to include a jurisdictional statement establishing "grounds that establish 'good cause' for purposes of Iowa Code section 814.6(1)(a)(3)"). Recognizing that the "interest of justice" is undefined in chapter 814, Scullark asks us to adopt this common meaning: "the proper view of what is fair and right in a matter in which the decision-maker has been granted discretion." *Interests of Justice, Black's Law Dictionary* (11th ed. 2019). From there, Scullark argues that fairness favors appellate adjudication for three reasons: (1) correct resolution of this constitutional question is valuable not only to him "but to all Iowans"; (2) he has no other avenue for relief; and (3) review would serve "the general purpose" of "good cause" under the statutory scheme. *See State v. Treptow*, 960 N.W.2d 98, 109 (Iowa 2021) (describing "good cause" as "a legally

---

conditional guilty plea constituted good cause to appeal the ruling on the motion, circumventing the Iowa Code § 814.5(1)(a)(3) bar on appeals of guilty pleas. In the final manifestation of the rule, this language was stricken. The value of preserving an issue for a prohibited appeal remains to be seen.

4A B. John Burns, *Iowa Practice Series: Criminal Procedure* § 12:3 n.105 (Mar. 2024) [hereinafter *Criminal Procedure*].

sufficient reason" which in turn means "a reason that would allow a court to provide some relief").

We agree that adjudication of the suppression issue is in the interest of justice.[5] Reviewing this contested constitutional claim—whether the officer acted legally in conducting the warrantless search of Scullark's fanny pack—fulfills the quintessential purpose of the newly enacted scheme of conditional guilty pleas. Because it is "fair and right" that we decide the reserved issue, we have jurisdiction to proceed. *See Criminal Procedure* § 12:3 n.105 ("The 'interest of justice' finding must be the good cause standard for permitting the appeal of a conditional plea to go ahead.").

**III. Scope and Standards of Review**

This appeal involves the constitutional right to be free from unreasonable searches and seizures. Thus, we review the suppression ruling de novo. *State v. Gaskins*, 866 N.W.2d 1, 5 (Iowa 2015). That standard means that we independently evaluate "the totality of the circumstances as shown by the entire record." *State v. Baker*, 925 N.W.2d 602, 609 (Iowa 2019) (citation omitted). "We give deference to the district court's factual findings, but they do not bind us." *Id.*

---

[5] In its appellee's brief, the State notes that Scullark is appealing from a conditional guilty plea but does not contest our jurisdiction to adjudicate the suppression issue. *See* Iowa R. App. P. 6.103(2)(b) (stating if appellee is dissatisfied with appellant's jurisdictional statement, it may include its own jurisdictional statement in its brief or may move to dismiss for lack of good cause). From its lack of response, we presume that the State is satisfied with Scullark's jurisdictional statement.

Scullark contests the warrantless search of his fanny pack under the federal and state constitutions. *See* U.S. Const. amend. IV; Iowa Const. art. I, § 8. The district court decided to "analyze the search of the fanny pack under both of those constitutions as one" asserting that the defense did not provide "any argument or basis to distinguish between the federal and state constitution as it pertains to these particular protections." On appeal, Scullark challenges that assertion, insisting his trial attorney did distinguish between precedent decided under the state constitution, *see Gaskins*, 866 N.W.2d at 14, and federal caselaw, *see Arizona v. Gant*, 556 U.S. 332 (2009). We agree that Scullark raised article I, section 8 as an independent ground for relief in the suppression proceedings. So, as appropriate, we may apply a different standard to his claims under the Iowa Constitution. *See State v. Vance*, 790 N.W.2d 775, 789 (Iowa 2010) (declining to "blindly follow federal precedent on issues of Iowa constitutional law").

**IV. Analysis**

A search conducted without prior judicial approval is per se unreasonable unless the State can show that a recognized exception to the warrant requirement applies. *Gaskins*, 866 N.W.2d at 7. Here, the State relies on the exception for searches incident to arrest. That exception "derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." *Gant*, 556 U.S. at 338; *accord Gaskins*, 866 N.W.2d at 8. "The search-incident-to-arrest exception to the warrant requirement must be narrowly construed and limited to accommodating only those interests it was created

to serve." *State v. McGrane*, 733 N.W.2d 671, 677 (Iowa 2007).

More than four decades ago, the United States Supreme Court articulated the twin rationales for allowing police to search incident to arrest:

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

*Chimel v. California*, 395 U.S. 752, 762–63 (1969).

But *Chimel* did not limit the scope to the arrestee's person:

> And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

*Id.* at 763.

In upholding the search of Scullark's fanny pack, which he was wearing just before his arrest, the district court cited *Chimel*, as well as two of our unpublished cases: *State v. Jones*, No. 02-1972, 2003 WL 22699655 (Iowa Ct. App. Nov. 17, 2003) and *State v. Allen*, No. 06-1770, 2007 WL 2964316 (Iowa Ct. App. Oct. 12, 2007). We start with those now-dated cases. More than twenty years ago, our court upheld the search of a backpack that officers removed from Jones as he was resisting arrest. *Jones*, 2003 WL 22699655, at *1. We reasoned that the right to search incident to arrest continued even if the backpack were no longer accessible to Jones at the time of the search—as long as it was within his reach at the time of his arrest. *Id.*

Using the same rationale, we upheld the search of a backpack sitting on the floor next to Allen when he was arrested. *Allen*, 2007 WL 2964316, at *4 (relying on automobile-search case, *New York v. Belton*, 453 U.S. 454 (1981)). *Belton* allowed the search of containers within a motorist's reach at the time of the arrest, and defined a container as any object that held another object, including those located within the passenger compartment of the automobile. 453 U.S. at 460 n.4.

The trouble with the district court's reliance on *Jones* and *Allen* is that those cases predate the recasting of *Belton* in *Gant*. In that 2009 decision, the supreme court declined "[t]o read *Belton* as authorizing a vehicle search incident to every recent occupant's arrest" and warned that such a broad interpretation would "untether the rule from the justifications underlying the *Chimel* exception." *Gant*, 556 U.S. at 343. *Gant* held that, under the *Chimel* rationale, police could search a vehicle incident to a

recent occupant's arrest *only* when the arrestee was "unsecured and within reaching distance of the passenger compartment at the time of the search."[6] *Id*. And that was not Gant's situation. "Unlike in *Belton*, which involved a single officer confronted with four unsecured arrestees, the five officers in this case outnumbered the three arrestees, all of whom had been handcuffed and secured in separate patrol cars before the officers searched Gant's car." *Id*. at 344. As its bottom line, *Gant* rejected the notion that searches incident to arrest were reasonable regardless of "the possibility of access" in any case. *Id*. And "the most important characteristic of *Gant*'s 'possibility of access' rule is that it is to be applied 'at the time of the search' rather than at some earlier time." 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 7.1(c) (6th ed. 2024).

Our supreme court discussed *Gant* at length in *Gaskins*. 866 N.W.2d at 11–14. After doing so, it held that opening a locked safe in Gaskin's vehicle was not a valid search incident to arrest. *Id*. at 14. *Gaskins* rejected the *Belton* rule that authorized warrantless searches of containers regardless of the *Chimel* considerations of officer safety and protecting evidence.

---

[6] *Gant* also included a second holding that did not flow from *Chimel*. The Court concluded that "circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Gant*, 556 U.S. at 343 (quoting *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring)). In *Gaskins*, our supreme court rejected that evidence-gathering purpose of the search-incident-to-arrest exception under the Iowa Constitution. 866 N.W.2d at 13. The evidence-gathering rationale is not at issue here.

*Id*. at 12. Instead, the court sided with jurisdictions that viewed the search-incident-to-arrest exception as "a rule of reasonableness anchored in the specific circumstances facing an officer." *See State v. Rowell*, 188 P.3d 95, 101 (N.M. 2008); *accord Gaskins*, 866 N.W.2d at 12–13 (citing *Rowell*, 188 P.3d at 101 (refusing to draw "artificial lines" unrelated to the *Chimel* rationales), and *State v. Valdez*, 224 P.3d 751, 758–59 (Wash. 2009) ("The search incident to arrest exception, born of the common law, arises from the necessity to provide for officer safety and the preservation of evidence of the crime of arrest, and the application and scope of that exception must be so grounded and so limited.")). In the end, the Iowa Supreme Court approved *Gant*'s "reaching distance" rationale "as an appropriate limitation on the scope of searches incident to arrest under article I, section 8 of the Iowa Constitution because that limitation is faithful to the underlying justifications for warrantless searches incident to arrest." *Gaskins*, 866 N.W.2d at 13.

Returning to *Jones*, before *Gant* and *Gaskins*, our court said: "[W]e have considered the following facts cited by Jones: 1) at least four police officers were at the scene of the arrest, 2) Jones was handcuffed, and 3) Jones was in the squad car at the time of the search. These facts do not mandate a different result." 2003 WL 22699655, at *1. After *Gant* and *Gaskins*, those facts would mandate a different result. Because Jones was neither unsecured nor within reaching distance of his backpack at the time of the search, the police intrusion was untethered from the justifications underlying the *Chimel* exception. *See Gant*, 556 U.S. at 343. The same holds true in Allen's case. Police did

not search his backpack until they "gained control" of him and placed him in the patrol car. *Allen*, 2007 WL 2964316, at *4.

With the restrictive reading of *Belton* in *Gant* and *Gaskins*, we must rethink the decisions in *Jones* and *Allen*. Commentators agree that the exception has narrowed. *See* 3A Charles Allen Wright, Arthur R. Miller, & Sarah N. Welling, *Fed. Prac. and Proc.* § 676 (4th ed. 2024) ("The appellate courts have generally applied this test to allow police to search within the defendant's grab area even when the defendant's literal ability to grab is limited by guards or handcuffs, but this authority may be curtailed in the wake of the 2009 case, *Arizona v. Gant*, which limited searches incident to arrest in the context of automobiles." (footnotes omitted)).

But does *Gant* apply outside the vehicle context? Justice Alito thought so, writing: "there is no logical reason why the same rule should not apply to all arrestees." *Gant*, 556 U.S. at 364 (Alito, J., dissenting). And many federal and state courts view *Gant* as imposing limits on any search incident to arrest. *See, e.g.*, *United States v. Davis*, 997 F.3d 191, 198 (4th Cir. 2021) (rejecting search-incident-to-arrest justification because Davis was "handcuffed and face-down" and "not within reaching distance of the backpack next to him"); *United States v. Knapp*, 917 F.3d 1161, 1169 (10th Cir. 2019) (finding search of purse was invalid as incident to arrest because "not only were Ms. Knapp's hands cuffed behind her back, Officer Foutch was next to her, and two other officers were nearby. Moreover, the purse was closed and three to four feet behind her, and officers had maintained exclusive possession of it since placing her in handcuffs");

*United States v. Stanek*, 536 F. Supp. 3d 725, 740 (D. Haw. 2021) ("There was no threat that Stanek could have broken free and accessed his bag, and the Government has never asserted that Stanek could have destroyed evidence stored in the bag or pulled a weapon out of it."); *United States v. Moffitt*, No. 2:22-cv-00067, 2023 WL 4197110, at *6 (D. Vt. June 27, 2023) (finding government did not prove search-incident-to-arrest exception because "[w]hen the fanny pack was briefly opened and visually searched, [Moffitt] was handcuffed, in the process of being ankle cuffed, and was surrounded by law enforcement officers"); *United States v. Williams*, No. 2:19-cv-401, 2020 WL 4341722, at *11 (N.D. Ala. June 10, 2020) ("Once the officers took possession of the bag, handcuffed Williams, and had begun to lead him away from the bag, there is no basis for concluding that the bag remained within Williams grab area."); *United States v. Morillo*, No. 08-cr-676, 2009 WL 3254429, at *13 (E.D.N.Y. Aug. 12, 2009) (rejecting search-incident-to-arrest exception because "officers credibly testified that [Morillo] had been handcuffed and placed up against the back passenger side of the police car, while they conducted a search of his backpack at the rear of the vehicle"); *Jean v. State*, 369 So. 3d 1235, 1240–41 (Fla. Dist. Ct. App. 2023) (finding that after officers removed backpack and fanny pack from Jean and placed them on hood of patrol car, a search based on officer safety or destruction of evidence was no longer justified); *State v. Ortiz*, 539 P.3d 262, 268 (N.M. 2023) (denying search-incident-to-arrest exception when officer searched defendant's purse after she "had been arrested and was in handcuffs"); *State v. Lelm*, 962 N.W.2d 419, 424 (N.D. 2021) (finding search-

incident-to-arrest exception did not apply because "[o]nce detained, Lelm's backpack was no longer within his reach").

Turning back to Iowa authority, even before *Gant* and *Gaskins*, our supreme court recognized that outside the context of vehicle searches, a search could be justified only as incident to arrest when it was conducted in an "area into which an arrestee might reach in order to grab a weapon or evidentiary items." *See State v. Canas*, 597 N.W.2d 488, 493 (Iowa 1999), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601 (Iowa 2001) (quoting *Chimel*, 395 U.S. at 763). Canas was standing about four feet from an unzipped bag on a nightstand in his hotel room when he was arrested. *Id*. at 491. But because he was not in the motel room when the officers searched the bag, their conduct was not permitted under the incident-to-arrest exception. *Id*. at 493. Like Canas, Scullark was separated from his fanny pack when police searched it. His fanny pack was no longer in an area "into which an arrestee might reach in order to grab a weapon or evidentiary items." *See id*. (quoting *Chimel*, 395 U.S. at 763).

Having shown that *Gant* and *Gaskins*—as well as *Canas*—limit the scope of the search-incident-to-arrest exception, we still must tie up a couple loose ends. Beyond *Jones* and *Allen*, the district court relied on a third unpublished case: *State v. Saxton*, No. 14-0124, 2014 WL 7343522 (Iowa Ct. App. Dec. 24, 2014). There, our court approved the search of a backpack that was in Saxton's immediate possession when he was arrested. *Id*. at *2. We held: "The fact that he ran and was not subdued until he had put a distance between his person and the backpack is not material

as long as the search was contemporaneous with the arrest." *Id*. Scullark argues that because *Saxton* predated *Gaskins*, it would come out differently today. He contends: "Accessibility, not merely contemporaneity, is the defining characteristic of the search incident to arrest exception under the Iowa Constitution."

The State responds that the supreme court denied further review in *Saxton* after deciding *Gaskins*. And adds that *Gaskins* "did not change the analysis for searches incident to arrest when the purpose is officer safety or the prevention of the destruction of evidence."[7] *See Gaskins*, 866 N.W.2d at 15. The first response makes no difference because denial of further review has no precedential value. *See* Iowa Ct. R. 21.27(3). The State's second point is true as far as it goes. But nothing in our record shows that the search of Scullark's fanny pack was necessary for their safety or to prevent him from destroying evidence of the assault.

What the record does show is that Officer Bolstad believed from the start that he was entitled to search the fanny pack because he was making an arrest, telling Scullark as he handcuffed him that everything that he was passing to his friend would be inspected. But the notion of police entitlement to search someone's nearby personal effects whenever they execute an arrest has been debunked by the United

---

[7] The State does not argue that Scullark's fanny pack was part of his "person" and could be searched just as the pockets of his clothing. *See Knapp*, 917 F.3d at 1166–67 (discussing *United States v. Robinson*, 414 U.S. 218 (1973)).

States Supreme Court. First by Justice Scalia in his special concurrence in *Thornton v. United States*:

> [C]onducting a *Chimel* search is not the Government's right; it is an exception—justified by necessity—to a rule that would otherwise render the search unlawful. If "sensible police procedures" require that suspects be handcuffed and put in squad cars, then police should handcuff suspects, put them in squad cars, and not conduct the search. Indeed, if an officer leaves a suspect unrestrained nearby just to manufacture authority to search, one could argue that the search is unreasonable *precisely because* the dangerous conditions justifying it existed only by virtue of the officer's failure to follow sensible procedures.

541 U.S. at 627 (Scalia, J., concurring).

And then by Justice Stevens in *Gant*:

> The fact that the law enforcement community may view the State's version of the *Belton* rule as an entitlement does not establish the sort of reliance interest that could outweigh the countervailing interest that all individuals share in having their constitutional rights fully protected. If it is clear that a practice is unlawful, individuals' interest in its discontinuance clearly outweighs any law enforcement "entitlement" to its persistence.

556 U.S. at 349.

As its final defense of the suppression ruling, the State points to *State v. Schiebout*, No. 18-1662, 2019 WL 4309062 (Iowa Ct. App. Sept. 11, 2019), a post-*Gaskins* decision in which our court upheld the

warrantless seizure of an arrestee's purse. But *Schiebout* is distinguishable from this case. While being arrested on an outstanding warrant, Schiebout abandoned her purse on the ground outside a church. *Id.* at *1. Finding that suspicious, police seized the purse. *Id.* Schiebout then "grabbed the purse" from the deputy and gave it to her mother. *Id.* "The deputy responded by taking the purse away from Schiebout's mother." *Id.* Our court found the purse was accessible to Schiebout at the time of the deputy's seizure "as demonstrated by her ability to grab the purse and hand it to her mother." *Id.* at *2. We viewed Schiebout's conduct as exemplifying the need to seize the purse incident to her arrest to preserve evidence. *Id.* Notably, the deputy did not search Schiebout's purse after placing her in the patrol car. Instead, he transported it to the sheriff's office where a drug-sniffing dog indicated the purse contained illegal drugs. *Id.* at *1. "The deputy then sought and obtained a search warrant for the purse. The subsequent search revealed several individual baggies of methamphetamine." *Id.*

By contrast, when police seized Scullark's fanny pack, he was already in handcuffs and—by the officer's admission—could not reach the pack or its contents.[8]

---

[8] The Tenth Circuit adopted a four-factor test to determine the propriety of a search incident to arrest: "(1) whether the arrestee is handcuffed; (2) the relative number of arrestees and officers present; (3) the relative positions of the arrestees, officers, and the place to be searched; and (4) the ease or difficulty with which the arrestee could gain access to the searched area." *Knapp*, 917 F.3d at 1168–69. The court added: "the degree to which arresting officers have separated an article from an arrestee at the time of the search is an important consideration." *Id.* at 1169. Applying

And not only did police seize the fanny pack, put they went ahead and searched it outside the patrol car without a warrant. As in *Gaskins*, the safety of the officers was not endangered by the contents of an item that the arrestee could not realistically access. *See* 866 N.W.2d at 14. On this record, we find that the State failed to prove the warrantless search was reasonable. Thus, we reverse the suppression order and remand for further proceedings.

**REVERSED AND REMANDED.**

Badding, J., concurs; Buller, J., dissents.

---

these criteria, the search of Scullark's fanny pack was not valid incident to his arrest.

**BULLER, Judge** (dissenting).

Unlike the majority, I would not voyage into uncharted waters and resolve the issue related to construction of Iowa Code section 814.6(3) (2023), nor would I depart from existing case law to establish a new limitation on searches incident to arrest. I would instead decide only the questions before us, in a narrow way consistent with our unpublished cases, and leave for another day the new code provision's meaning or the constitutional search question that—contrary to the impression one may gather from the majority opinion—has sharply divided courts. Because I believe the search finding methamphetamine in the defendant's fanny pack was constitutionally reasonable, I dissent from the reasoning and outcome of the majority opinion.

First, I do not join the majority's analysis on the meaning of "appellate adjudication of the reserved issue is in the interest of justice" in Iowa Code section 814.6(3). This is an issue of first impression before both this court and the supreme court. In his brief, Scullark offers a proposed construction of the statute that serves him. The State did not meaningfully address the issue in its brief, which I interpret as a concession that resolution of this particular conditional-guilty-plea appeal is in the interest of justice rather than wholesale agreement with the defendant's reading of the statute. I would accept the State's concession and go no further, finding this case satisfied the jurisdictional prerequisite of section 814.6(3). And I note this was the approach taken by a unanimous panel of our court in another case decided earlier this month. *See State v. Sampson*, No. 23-1348, 2024 WL 3688526, at *1 n.2 (Iowa Ct. App. Aug. 7,

2024). I reject the majority's proposed gloss on the statute and reserve judgment on that issue until presented with full briefing from both sides.

Second, I would not discard our unpublished cases as the majority does, nor would I set off in a new direction based on out-of-state authorities regarding searches incident to arrest. In expanding *Gant* beyond the context of automobile searches, and thus adopting a time-of-search rather than time-of-arrest rule, the majority reaches beyond the briefs to decide another issue of first impression in Iowa. And it does so by picking and choosing which precedent to follow—relying on a *Gant* dissent and a one-sided smattering of authorities from other jurisdictions.

For me, the dispositive United States Supreme Court precedent is one the majority relegates to a parenthetical citation in a footnote: *United States v. Robinson*, 414 U.S. 218 (1973). There, the Supreme Court upheld a warrantless search of a cigarette pack even though the police had already taken the pack from the arrestee and thereby limited or eliminated his ability to access it at the time of the search. *Id.* at 235. The Court reasoned: "The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial." *Id.* at 234. Thus "[i]t is the fact of the lawful arrest which establishes the authority to search," and such a search is reasonable under the Fourth Amendment. *Id.* at 235.

There is no question *Robinson* remains good law. It was discussed at length in *Riley v. California*, where

the Court described its holding in *Robinson* as "conclud[ing] that the search of Robinson was reasonable even though there was no concern about the loss of evidence, and the arresting officer had no specific concern that Robinson might be armed." 573 U.S. 373, 384 (2014) (noting the *Robinson* "exception was limited to personal property immediately associated with the person of the arrestee" (cleaned up)). The Court, after exempting cell phones from searches incident to arrest, observed *Robinson*'s "categorical rule" otherwise "strikes the appropriate balance in the context of physical objects." 573 U.S. at 386. And two years later in *Birchfield v. North Dakota*, the Court again reiterated the rule from *Robinson* and noted *Riley* "reaffirmed...and explained how the rule should be applied." 579 U.S. 438, 460 (2016) ("In *Robinson* itself, [the fact of lawful arrest] meant that police had acted permissibly in searching inside a package of cigarettes found on the man they arrested."). In my view, *Robinson*'s categorical rule controls and this is an easy case.

Until now, our unpublished case law agreed with my assessment. *See State v. Schiebout*, No. 18-1662, 2019 WL 4309062, at *2–3 (Iowa Ct. App. Sept. 11, 2019); *State v. Saxton*, No. 14-0124, 2014 WL 7343522, at *3 (Iowa Ct. App. Dec. 24, 2014); *State v. Allen*, No. 06-1770, 2007 WL 2964316, at *3 (Iowa Ct. App. Oct. 12, 2007); *State v. Jones*, No. 02-1972, 2003 WL 22699655, at *1 (Iowa Ct. App. Nov. 17, 2003). In twisting past these on-point decisions, the majority points to *State v. Canas*, 597 N.W.2d 488 (Iowa 1999). But not convincingly. *Canas* only supports the majority opinion if you ignore the facts. Police arrested Canas outside a hotel room, and the supreme court

unsurprisingly concluded the officers could not later enter the room and search it without a warrant. 597 N.W.2d at 491, 493. It is, of course, black-letter United States Supreme Court law that police may not enter a residence to conduct a warrantless search when an arrest is made outside the home. *See Vale v. Louisiana*, 399 U.S. 30, 33–34 (1970) ("If a search of a house is to be upheld as incident to an arrest, that arrest must take place inside the house[.]"). And our supreme court expressly cited *Vale* for this proposition in *Canas*, 597 N.W.2d at 493. I think it's beyond reasonable debate that *Canas* regulates arrests outside a residence, not searches of containers on or near a person—and the leading treatise supports my reading. *See* 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 6.3 n.1 (6th ed. 2024) [hereinafter "LaFave"]. With our unpublished cases universally coming out the other way, and *Canas*'s facts inapposite at best, the majority scraps existing case law and invokes out-of-state authorities to fashion a new-to-Iowa limitation on searches incident to arrest. I strongly disagree with this endeavor.

This departure from the fact-bound analysis in our unpublished cases unnecessarily launches us into the middle of a nationwide dispute over whether the search-incident-to-arrest analysis should turn on whether the searched container is accessible to the arrestee at the time of the arrest or the time of the search. In other words, is the scope of searches incident to arrest subject to a "time-of-arrest" or "time-of-search" limitation?

In answering this question, the majority opinion gives a lopsided and incomplete recitation of where

other courts have landed. While there is some authority that supports the majority's position, the majority opinion curiously omits from discussion the equal or greater number of state and federal appellate courts that have expressly come out the other way and held that a container in the arrestee's possession at the time of arrest may be searched without a warrant, regardless of whether the arrestee could access the container at the time of the search. *See, e.g.*, *Commonwealth v. Bembury*, 677 S.W.3d 385, 406 (Ky. 2023) ("[W]e conclude that a container capable of carrying items, such as a backpack, can be considered part of an arrestee's 'person' for the purposes of a search incident to lawful arrest."), *cert. denied sub nom. Bembury v. Kentucky*, 144 S. Ct. 1459 (2024)[9]; *United States v. Perez*, 89 F.4th 247, 261 (1st Cir. 2023) (reaffirming as law of the circuit that the search of "personal property carried by an arrestee at the time of the arrest" is permissible per *United States v. Eatherton*, 519 F.2d 603, 610 (1st Cir. 1975) (affirming search of a briefcase incident to arrest even though the arrestee "had been subdued and the case removed from his possession and beyond his possible reach")); *Price v. State*, 662 S.W.3d 428, 438 (Tex. Crim. App. 2020) (adopting a time-of-arrest rule, at least for

[9] The defendant in *Bembury* petitioned for certiorari on this very issue. The petition described the time-of-arrest vs. time-of-search issue as concerning "a deep split among federal and state lower courts." Petition for Writ of Certiorari, *Bembury v. Kentucky*, No. 23-802 (2024), 2024 WL 305621, at *11, *13–24. Kentucky's brief in opposition acknowledged the divide among courts but urged that case did "not cleanly contribute to [the] split." Brief in Opposition, *Bembury v. Kentucky*, No. 23-802 (2024), 2024 WL 1421514, at *23.

containers in the arrestee's immediate possession that would inevitably be taken to the stationhouse upon arrest); *State v. Brownlee*, 461 P.3d 1015, 1021–22 (Or. Ct. App. 2020) (taking a time-of-arrest approach and expanding the scope of the search incident to items possessed at the time of arrest and items or area "immediately associated with the arrestee at that time"); *Greene v. State*, 585 S.W.3d 800, 806–08 (Mo. 2019) (rejecting expansion of *Gant* beyond automobiles, applying *Robinson* and its progeny to affirm "a reasonably delayed search of items found on a defendant's person at the time of arrest"—specifically a cigarette pack); *United States v. McLaughlin*, 739 F. App'x 270, 275–76 (5th Cir. 2018) (affirming search of envelope on defendant's person at time of arrest, even though defendant could not access envelope after he was "handcuffed and beyond reaching distance"); *State v. Mercier*, 883 N.W.2d 478, 493 (N.D. 2016) ("Because Mercier had the backpack in his actual possession immediately preceding his lawful arrest, we conclude a search thereof was reasonable.")[10]; *People v. Cregan*, 10 N.E.3d 1196, 1203–07 (Ill. 2014) (holding objects and containers physically possessed by arrestees at the time of arrest are subject to search incident to arrest); *State v. Adams*, 45 N.E.3d 127, 159 (Ohio 2015) ("[T]he right to search incident to arrest exists even if the item is no longer accessible to the arrestee at the

[10] The majority cites a different North Dakota case: *State v. Lelm*, 962 N.W.2d 419 (N.D. 2021). But *Lelm* involved search of a bag inside an automobile and thus implicated *Gant*. *Id.* at 422 (noting Lelm was a passenger and the backpack was "on his lap" while inside the car). This case concerns search of a person and his effects—not an automobile. And *Lelm* did not purport to overrule *Mercier*, which remains the applicable North Dakota authority.

time of the search. As long as the arrestee has the item within his immediate control near the time of the arrest, the item can be searched." (citation omitted)); *State v. Byrd*, 310 P.3d 793, 798 (Wash. 2013) (surveying in-state cases and noting, "Washington courts have long applied this [time-of-arrest] rule, holding that searches of purses, jackets, and bags in the arrestee's possession at the time of arrest are lawful under both the Fourth Amendment and article I, section 7 [of the Washington Constitution]."); *People v. Marshall*, 289 P.3d 27, 31 (Colo. 2012) (rejecting expanding *Gant* to searches of a person and holding, in the context of a backpack possessed at the time of arrest but not searched until the defendant was secured inside a patrol vehicle, "[t]hat [the defendant] was secure has no bearing on the analysis in this case because [the defendant] forfeited his expectation of privacy in the backpack when he was arrested"); *United States v. Perdoma*, 621 F.3d 745, 750–53 (8th Cir. 2010) (affirming search incident to arrest of a bag after the defendant was handcuffed and an officer "had taken control of the bag," when the bag remained in the vicinity of where the defendant was arrested).

These cases largely speak for themselves, but a few highlights stick out:

> **From an originalist or historical perspective, it seems clear the Framers would have no constitutional concerns over a search incident to arrest of "luggage" or "saddlebags" in a person's possession.** *E.g.*, *Price*, 662 S.W.3d at 435 (citing *Birchfield*'s discussion of the Fourth Amendment's original meaning); *Mercier*, 883 N.W.2d at 487–88 (same).

**The time-of-arrest rule follows logically from *Robinson* and is consistent with all existing United States Supreme Court precedent.** *E.g.*, *Bembury*, 677 S.W.3d at 404–06; *Mercier*, 883 N.W.2d at 488–89; *Cregan*, 10 N.E.3d at 1202–03; *Marshall*, 290 P.3d at 29–30.

**The best reading of *Gant* is that it does not extend beyond automobiles to the search incident to arrest of a person and his or her effects.** *E.g.*, *Mercier*, 883 N.W.2d at 489 ("Nothing in the Court's opinion in *Gant*, however, suggested it was meant to limit or abrogate the *Robinson* holding of a search of the arrestee incident to arrest."), 490 ("Because the Supreme Court's decision in *Gant* does not restrict the lawful search of an arrestee, there is no requirement that the arrestee be within reaching distance or have the item within his immediate control once it is seized as part of the lawful arrest."); *Cregan*, 10 N.E.3d at 1202 (rejecting a "broad" reading of *Gant* and noting it only "clarified and limited the search-incident-to-arrest exception as applied to vehicles"); *Byrd*, 310 P.3d at 794 (holding *Gant* did not "restrict[ ] searches of the arrestee's person"); *Marshall*, 289 P.3d at 30 (rejecting expansion of *Gant* and noting "a factual distinction between searches of cars and persons").

**And practical considerations support the time-of-arrest rule because it permits officers to secure suspects without drawing artificial lines between a person**

> **and their pockets or immediate possessions (which may understandably be secured in the course of an arrest to ensure officer safety).** *E.g.*, *Byrd*, 310 P.3d at 798 ("The time of arrest rule reflects the practical reality that a search of the arrestee's 'person' to remove weapons and secure evidence must include more than his literal person[,]...[and] the same exigencies that justify searching an arrestee prior to placing him into custody extend not just to the arrestee's clothes, however we might define them, but to all articles closely associated with his person."); *see also* LaFave, § 5.5(a) n.4 ("The 'time of arrest' rule is a common-sense way to determine whether a container capable of carrying items, such as a backpack, is considered part of an arrestee's person and therefore subject to being searched upon lawful to arrest...").[11]

It is not clear why the majority overlooks these decisions and their (in my view) convincing analysis. But an answer can perhaps be found in footnote seven

---

[11] The majority cites a different portion of LaFave's treatise and claims it supports the decision to reverse here. *See* LaFave, § 7.1(c). Not so. The portion of the treatise cited by the majority comes from a chapter titled: "Search and Seizure of Vehicles." And it draws on the "quite specific" language from *Gant* regulating those who are "unsecured and within reaching distance of the passenger compartment." *Id.* (quoting *Gant*, 556 U.S. at 343). At risk of beating a dead horse to make an obvious point, this is not a vehicle case. This case is about search of a person and his personal effects. Perhaps unsurprisingly, the chapter of LaFave's treatise I cite is titled: "Seizure and Search of Persons and Personal Effects." *Id.* § 5.5(a). And it does not adopt the position claimed by the majority. *See id.*

of the majority opinion, where the majority claims "[t]he State does not argue that Scullark's fanny pack was part of his 'person' and could be searched just as the pockets of his clothing." This is quite a myopic and hyper-technical reading of the briefing. The State's position at the suppression hearing and on appeal was that this was a lawful search incident to arrest. This is at least as specific as Scullark's motion to suppress—which cited no case law but instead vaguely asserted the search was "in violation of the Fourth Amendment to the Constitution of the United States and article I, section 8 of the Iowa Constitution." And the rationale of this dissent is essentially the rationale adopted by the district court, drawing on our unpublished cases. Again curiously, the majority opinion has no trouble expanding the defendant's argument to embrace this issue of first impression (for example, more than half of the cases cited by the majority do not appear in either party's briefs), yet it interprets the State's position and the district court ruling in an artificially narrow way. If we are going to drift beyond the briefs and start freelancing our research, we ought to at least do so in a way that is fair to all parties and the district judge whose work we are reviewing.

If forced to decide this issue of first impression, I would find the time-of-arrest authorities compelling, consistent with constitutional principles and precedent, and workable in practice. The time-of-arrest rule would require we affirm here, as even the majority acknowledges Scullark was "wearing [the] fanny pack around his waist" when arrested. For the reasons expressed in the cited authorities and United States Supreme Court case law, I believe the time-of-

arrest rule is what this court or our supreme court should adopt in an appropriate case.

But I see another error in the majority's analysis, independent of the time-of-arrest and time-of-search question: the majority delves into subjective review of the arresting officer's intent and beliefs about the proper scope of the search. The majority opinion opens by quoting the officer and later opines "nothing in our record shows that the search of [the] fanny pack was necessary for [officer] safety." But, under controlling case law, these subjective case-by-case inquiries are neither permissible nor relevant. The Supreme Court in *Robinson* expressly rejected both consideration of officers' "subjective fear" that an arrestee was armed and any form of "case-by-case adjudication," instead favoring a bright-line rule. 414 U.S. at 235-36. In other words, the validity of a search incident to arrest does not depend on "the probability in a particular arrest situation that weapons or evidence [will] in fact be found." *Id.* at 235; *see also Michigan v. DeFillippo*, 443 U.S. 31, 35 (1979) ("The constitutionality of a search incident to an arrest does not depend on whether there is any indication that the person arrested possesses weapons or evidence."). This portion of the *Robinson* analysis, like what was discussed above, is still good law: it was discussed at length in *Birchfield*, where the Court described *Riley* as having "reaffirmed '*Robinson*'s categorical rule'" and emphasized the legality of a search incident to arrest "does not depend on whether a search of a *particular* arrestee is likely to protect officer safety or evidence." *Birchfield*, 579 U.S. at 460; *see also State v. Wissing*, 379 P.3d 413, 420–22 (Kan. Ct. App. 2016) (citing *Robinson* and *Birchfield* to reach the same

conclusion). The majority errs and diverges from controlling authority when it analyzes the record contrary to these holdings.

As a policy matter, I am also troubled by implications the majority opinion will have for officer safety. The officer in this case testified he did not protest or physically interfere with Scullark handing the fanny pack to his friend because the officer "didn't want to escalate the situation because [he] was the only officer inside the residence at that time." Under the time-of-search rule, the next police officer facing the facts of this case would have to weigh escalating the use of force against potentially forfeiting a search of the container for weapons or contraband incident to arrest. In contrast, under the time-of-arrest rule, police officers are not forced to make this spit-second calculation that could potentially result in injury or loss of life and can instead rely on the bright-line categorical rule that items and containers in the suspect's possession at time of arrest are subject to search—whether the search happens before or immediately after the suspect is safely restrained and no longer an immediate threat. I also view the officer's conduct on the body camera differently than the majority, as it seems clear on my viewing that the officer was doing his best to de-escalate a highly charged encounter in which he was the only officer in the house and nonetheless allowed Scullark's friends to surround him and engage with Scullark—even while Scullark was uncooperative. It runs counter to principles of reasonableness for us to suppress evidence because the officer chose not to escalate and use greater force during Scullark's arrest.

As a penultimate note, it is also unclear to me whether the majority grounds its decision under the state or federal constitution or perhaps both. Part of the confusion may flow from the majority's reliance on *State v. Gaskins*—which is, in my opinion, precedent of questionable vitality. *See* 866 N.W.2d 1 (Iowa 2015); *see also State v. Kilby*, 961 N.W.2d 374, 382 (Iowa 2021) (overruling a case that "relied heavily" on *Gaskins*). I do not believe *Gaskins* compels or supports the result in this case. First, *Gaskins* is easy to distinguish, as it involved search of a locked safe within the defendant's car when the defendant and his passenger were secured in a separate police vehicle—as opposed to a bag within the actual possession of a suspect or his friend. *See* 866 N.W.2d at 7–8, 14. And the *Gaskins* court specifically reserved for another day cases "in which the security of an arresting officer is implicated" or "when the arrested person is within reach of contraband and thus able to attempt to destroy or conceal it." *Id.* at 15.

But if, as the majority seems to conclude, *Gaskins* undermines federal cases like *Robinson* or requires the suppression of evidence on the facts of this case under the state constitution, it probably ought to be overruled. *Gaskins* was sharply divided and deeply fractured, with a four-justice majority, a two-justice special concurrence, a three-justice special concurrence, and two three-justice dissents. *See generally id.* As one of the *Gaskins* dissenters observed, the rationale in that case—even more so if expanded to the facts here—"unduly restricts police searches and creates practical problems undermining public safety." *Id.* at 38 (Waterman, J., dissenting). Or, as the other dissent put it, the rule adopted by the

*Gaskins* majority "compromises officer safety and creates an additional opportunity for the destruction or concealment of evidence." *Id.* at 60 (Zager, J., dissenting). In reading the *Gaskins* majority and concurrences' many pages, there is little or no textual grounding in either constitution. *See id.* at 52-53, 52 n.27 (Waterman, J., dissenting) (quoting the State's brief to comment on the text: "One expects that, if the semicolon in Article I, section 8 fundamentally altered the meaning of that provision, this argument would have emerged at some point within the first 150 years this Court interpreted the Iowa Constitution—not for the first time in 2010."). I believe *Gaskins* was wrongly decided. And while it is my duty as an intermediate appellate judge to apply supreme court precedent, I disagree with the majority that *Gaskins* supports the outcome here.

Last, a return to the facts and the issue at the heart of all this legal wrangling. Scullark was lawfully arrested with methamphetamine in a fanny pack around his waist, and he handed the pack to his friend in a bid to prevent police from finding his drugs. Both the Fourth Amendment and article I, section 8 permit reasonable searches. The majority concludes it was constitutionally unreasonable for police to secure a potentially dangerous suspect and search a fanny pack the suspect handed to his friend after the arrest. I disagree, as I believe our constitutions—to say nothing of our case law and historical practice—permit this commonsense policework.


State of Iowa Courts

| **Case Number** | **Case Title** |
| --- | --- |
| 23-1218 | State v. Scullark |

Electronically signed on 2024-08-21 08:21:39

## APPENDIX C

**IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY**

| | |
|---|---|
| **STATE OF IOWA**<br><br>**Plaintiff**<br><br>**VS**<br><br>**PATRICK WAYMAN SCULLARK JR**<br><br>**Defendant** | **Case No. 01071 FECR246668**<br><br>**ORDER JUDGMENT AND SENTENCE** |

**APPEARANCES:**

Attorney **Jeremy Westendorf** for the State

Attorney **Nichole Watt** for the Defendant, and Defendant in person

On the 20th day of July, 2023, the Defendant pled guilty. At the time of the entry of Defendant's guilty plea, the Defendant, counsel for the Defendant, and counsel for the State agreed on the record that this plea is being entered as a conditional plea.

The Defendant's guilty plea was found to be voluntarily and intelligently entered and as having a basis in fact. The Defendant was informed of the right to challenge the entry of the plea of guilty by filing a Motion in Arrest of Judgment. Such a motion must be filed within forty-five (45) days of pleading guilty and

no later than five (5) days before the imposition of sentence. If these deadlines are not met, the Defendant loses the right to challenge the guilty plea on appeal.

**Defendant waived use of a presentence investigation**, waived time for sentencing, waived the right to file a Motion in Arrest of Judgment and requested immediate sentencing. The Court hereby orders that the 1st Judicial District Department of Correctional Services prepare a presentence investigation report, file same with the Clerk of Court, and distribute copies as provided by law.

**Based on the record made, and pursuant to Iowa Code Section 901.6,**

IT IS NOW ORDERED AND ADJUDGED as follows:

**1.** ***Judgment***. Defendant is guilty and is convicted of the following crimes:

Count 1 Possession of a Controlled Substance, To-Wit: Methamphetamine, With Intent to Deliver, a Class B felony, in violation of Section(s) 124.401(1)(b)(7). Date of offense: April 12, 2022

Count 2 Failure to Affix Drug Tax Stamp, a Class D felony, in violation of Section(s) 453B.12. Date of offense: April 12, 2022

**2.** ***Incarceration and Fines***. Pursuant to Iowa Code Section(s) in paragraph 1 above and 902.9, the defendant is sentenced to an indeterminate term of confinement of not more than that shown below plus fine and surcharge as follows:

Count 1: 25 years, $5,000 plus 15% surcharge, fine and surcharge are imposed,

Count 2: 5 years, $1,025 plus 15% surcharge, fine and surcharge are suspended,

**3.** ***Sentence of Incarceration***. The above term of incarceration

**Sentence is not suspended**. Pursuant to Iowa Code Section 901.7, the defendant is committed to the custody of the Director, Iowa Department of Corrections. The Sheriff of this county is ordered to transport the defendant to the Iowa Medical and Classification Center at Oakdale, Iowa.

**4.** ***Consecutive/Concurrent***. Pursuant to Iowa Code Section(s) 901.5(9) (c) and 901.8, the above sentence(s) of confinement shall be served **concurrently** to each other.

**5.** ***Mandatory Minimum***. A mandatory minimum sentence of incarceration is imposed for a term of 1/3 of the sentence imposed on Count 1. Pursuant to Iowa Code Section 901.10, Defendant is given a 1/3 reduction on his sentence for Count 1, and pursuant to Section 124.413, Defendant is given a 50 percent reduction on Count 1.

**6.** ***Credit for Time Served***. Pursuant to Iowa Code Section(s) 903.A5 and 901.6, the defendant shall be given credit for all time served in connection with this case.

**7.** ***Category A Restitution*****:** means fines, penalties, and surcharges. Judgment is imposed against the defendant for all of the above fines, penalities, and surcharges.

**7(a).** ***Victim Restitution*****.** Pursuant to Iowa Code Section 910.2, the defendant shall pay and judgment

is imposed against the defendant for pecuniary damages (determined at a later time) to the victim(s): .

**7(b).** ***Category B Restitution*****:** means contribution of funds to a local anticrime organization which provided assistance to law enforcement in an offender's case, the payment of crime victim compensation program reimbursements, payment of restitution to public agencies pursuant to Section 231J.2(13)(b), court costs, court-appointed attorney fees ordered pursuant to Section 815.9, including the expense of a public defender, and payment to the medical assistance program pursuant to Chapter 294A for expenditures paid on behalf of the victim resulting from the offender's criminal activities including investigative costs incurred by Medicaid fraud control unit pursuant to Section 294A.50. Category B restitution will be ordered to the extent defendant is found to have a reasonable ability to pay.

With regard to the restitution set forth in this paragraph, the Court finds the following:

Prior to sentencing or at the time of sentencing the Defendant requested the Court make a determination of reasonable ability to pay Category B restitution.

Based on the record and any evidence offered at the hearing, including but not limited to the financial affidavit, the Court finds:

The Defendant proved by a preponderance of the evidence that the Defendant is unable to reasonably make any payments toward the full amount of category "B" restitution.

**7(c)** ***Plan of Payment***. With regard to the fines and penalties imposed in paragraph 2, any victim restitution imposed in paragraph 7 and restitution

imposed in paragraph 7a, the defendant shall pay as set forth below. The judgment shall be paid at the office of any Clerk of Court, online at www.iowacourts.gov, or by phone with the Statewide Payment Center by calling (515) 348-4788.

**8.** ***Reduction of Term***. Pursuant to Iowa Code Section 901.5(9)(a), (b), the court publicly announced that the defendant's term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits and program credits; and defendant may be eligible for parole before the sentence is discharged. In conformance with Section 901.9, the Court recommends that the Parole Board release defendant when satisfied that defendant can conform to lawful restrictions, be self-supporting, and be a contributing member of society.

**9.** ***Reasons for Sentence.*** The Court determines that the above sentence is most likely to protect society and rehabilitate the defendant based upon the nature of the offense, defendant's prior record, and the recommendation of the parties and for the reasons stated in the PSI, if any.

**10.** ***Additional Orders***.

A Notice of Firearm Prohibition Pursuant to Code of Iowa 724.31A will be entered as a separate order.

**11.** ***DNA Profiling.*** The Defendant shall submit a physical specimen for DNA profiling, pursuant to Iowa Code Section(s) 81.2 and 901.5(8A)(a).

**12.** ***Related charges.*** If there exist any related charges requiring disposition, the parties shall inform the Court, and the Court will address those related charges by separate order in each applicable case.

**13.** ***Appeal and Bond.*** The Defendant is advised of the right to appeal to the extent provided by law. Defendant may have the right to appeal the sentence and verdict to the Iowa Supreme Court. Appeal is started by filing a written Notice of Appeal with the Clerk of this District Court. Copies of the Notice must be mailed to the County Attorney and the Attorney General of the State of Iowa. The Notice of Appeal must be filed within 30 days of this date or the right of appeal is lost.

Pursuant to Iowa Code Section 811.1(2), Defendant is not eligible for bond on appeal

**14. Notice Re: Court-Appointed Appellate Attorney Fees.** The Defendant is advised that if he/she determines to appeal this ruling, he/she may be entitled to court-appointed counsel to represent him/her on appeal. The defendant is advised that if he/she qualifies for court-appointed appellate counsel, he/she can be assessed the cost of the court-appointed appellate attorney when a claim for such fees is presented to the Clerk of Court following the appeal. A hearing will be scheduled upon the filing of a claim and the defendant will be given the opportunity to be heard concerning his/her reasonable ability to pay court-appointed appellate attorney fees.

**15. Bonds Exonerated.** All outstanding bonds are exonerated.

**JUDGMENT IS ENTERED ACCORDINGLY THIS 20th day of July, 2023.**

Copies:

Counsel

Sheriff


**Case Number**

FECR246668 STATE OF IOWA VS SCULLARK, PATRICK

**Type:** ORDER OF DISPOSITION

So Ordered

Kellyann M. Lekar

Kellyann M. Lekar, Chief District Court Judge, First Judicial District of Iowa

Electronically signed on 2023-07-20 15:36:44

## APPENDIX D

**IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY**

| | |
|---|---|
| **STATE OF IOWA,**<br><br>**PLAINTIFF,**<br><br>**vs.**<br><br>**PATRICK WAYMAN SCULLARK JR,**<br><br>**DEFENDANT.** | **Case No. 01071 FECR246668**<br><br>**ORDER** |

This matter came before the Court on March 24, 2023, for hearing on the Defendant's Motion to Suppress. The Defendant was personally present along with his attorney Nichole Watt. The State appeared through Assistant Black Hawk County Attorney Jeremy Westendorf. The Court received the testimony of Jacob Bolstad a Waterloo police officer, and received State's Exhibit A which is the body camera worn by Officer Bolstad during his initial interaction with the Defendant.

The Motion to Suppress filed by the Defendant on October 25, 2022, alleges that when the Waterloo police searched the Defendant's fanny pack, the search was without consent and in violation of the Fourth Amendment of the United States as well as Article 1, Section 8 of the Iowa Constitution. The State courters

the Defendant's assertion, contending that the search and seizure of the fanny pack was justified as a lawful search incident to arrest.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

On April 12, 2022, the police were dispatched to a disorderly call on West Second Street in Waterloo, Iowa, regarding a male/female altercation. The female had a laceration on her eyebrow and identified the Defendant, Scullark, as the cause of that laceration. In addition, the female reported she and Mr. Scullark had a domestic relationship. Officer Bolstad then went to look for the Defendant and located him at 412 Thompson in Waterloo, Iowa. Exhibit A which is the body camera worn by Officer Bolstad starts prior to Officer Bolstad's initial contact with Mr. Scullark. The portion submitted to the Court is 10 minutes and 45 seconds long.

When Officer Bolstad arrives at the Thompson Street address, he locates the Defendant sitting on the back of one of the trucks. When Officer Bolstad arrives, he is initially the only police officer on the scene. There are numerous other individuals wandering around outside of the Thompson Street address. When the Defendant sees Officer Bolstad, he is on the phone and he immediately starts talking about how he had not done anything. Mr. Scullark begins to get agitated and indicates he can't do this because he's on parole and does not want to go back to prison. Mr. Scullark then gets off the back of the truck and walks into the house, even though Officer Bolstad told him to stay outside. Officer Bolstad then follows him into the house and again there are at least two other

individuals that go into the home. Mr. Scullark remains on the phone but begins addressing Officer Bolstad, indicating his side of the story regarding the alleged assault. During the conversation, Mr. Scullark is agitated and raises his voice and is swinging his arms around. There are two women within close proximity of the Defendant at this time. Officer Bolstad explains that Mr. Scullark is going to be arrested because of the report of the domestic violence. Mr. Scullark continues to become upset. He raises his voice. He swears, and he begins crying. During this time, Mr. Scullark repeatedly states he's not going to go to jail.

During the encounter with Officer Bolstad, Mr. Scullark is wearing a black fanny pack around his waist. At approximately 4 minutes and 40 seconds into the body camera Officer Bolstad informs Mr. Scullark that he needs to stand up because he's going to be placed under arrest. At that time Mr. Scullark says "Don't touch me," and he proceeds to take off his fanny pack and hands it to one of the women who is in the room who has been identified as Tammi Kisner. Within seconds of Mr. Scullark handing the fanny pack to Ms. Kisner, Officer Bolstad handcuffs Mr. Scullark and tells him he is going to search everything he had on or in his pockets at the arrest. Ms. Kisner appears to start to walk away and Officer Bolstad directs her to stay where she is at. Ms. Kisner then appears to put the black fanny pack down on a tub next to a laundry basket, and the Defendant walks over to that same area. Officer Bolstad tells Mr. Scullark to stop, and he does stop next to the fanny pack. It appears the handcuffs are then tightened and Officer Bolstad asks if there's a

light. The occupants indicate the only light is in the kitchen. Officer Bolstad then picks up the black fanny pack from the tub and walks out of the house with the Defendant and the black fanny pack. Officer Bolstad and the Defendant then have a disagreement about Officer Bolstad's intention to search the fanny pack. As soon as the Defendant and Officer Bolstad get outside, they are met by another officer and Officer Bolstad hands the fanny pack to the other officer and asks the other officer to search the fanny pack. The Defendant is then led to a marked squad car. He is patted down and put in the squad car. Upon search of the fanny pack, police found methamphetamine and money.

The defense challenges the search under both the Fourth Amendment of the United States Constitution as well as the Iowa Constitution. However, the defense does not provide any argument or basis to distinguish between the federal and state constitution as it pertains to these particular protections. As such, the Court will analyze the search of the fanny pack under both of those constitutions as one.

A warrantless search is per se unreasonable unless the search falls within one of the recognized exceptions to the warrant requirement. *State v. McGrane*, 733 N.W.2d 671, 676 (Iowa 2007). Recognized exceptions include consent, plain view, probable cause coupled with exigent circumstances, search incident to arrest, and those based on the emergency aid exception. *State v. Lewis*, 675 N.W.2d 516, 522 (Iowa 2004). The State has the burden to prove by a preponderance of evidence that a recognized exception to the warrant is applicable. *State v. Cline*, 617 N.W.2d 277, 282 (Iowa 2000). The United States Supreme Court recognized

search incident to arrest in *Chimel v. California*, 395 U.S. 752, 763; 89 S.Ct. 2034, 2040; 23 L.Ed.2d 685, 694 (1969). That case held that a search of the arrestee's person and the area within his immediate control is allowed incident to arrest. *Id.* Within immediate control is recognized as the area from within which a defendant might gain possession of a weapon or destructible evidence. *Id.* There is a long line of cases that recognize that if there is probable cause to arrest a person, then a lawful search may be conducted of both the person and the area within that person's immediate control. *New York vs. Belton*, 453 US 454, 460; 101 S.Ct. 2860, 2864; 69 L.Ed.2d 768, 774 (1981). Iowa has long recognized search incident to arrest as an exception to the warrant requirement under the constitution. Iowa has also recognized that that search incident to arrest can include items under the immediate control of the defendant. In *State v. Jones*, 674 N.W.2d 684 (Iowa Ct.App. 2003)(Table) the Court found that the search of the backpack that the defendant was wearing when he was initially placed under arrest fell within the search incident to arrest even though the backpack was removed from the defendant's back and the defendant was handcuffed and in the squad car at the time of the search. In the *Jones* case the Court cites to numerous other Iowa and federal cases allowing the search of an item that the defendant had within his immediate control near the time of his arrest. In *State v. Allen*, 741 N.W.2d 824 (2007)(Table) the Court found that the search of that defendant's backpack was a valid search incident to arrest when it was sitting on the floor next to him when he was arrested. This was in spite of the fact that Allen was cuffed prior to the search of the

backpack. The Court in *Allen* stated that the search was limited to the immediate vicinity of the arrest or the defendant's grab area and that officers may search any containers located in the defendant's grab area upon the defendant's arrest. *Id*. Again, the Court in *Allen* goes on to cite numerous other Iowa and federal cases supporting the search of a bag in the defendant's possession when he is arrested. The *Allen* Court also looked to the fact that the search of the backpack was contemporaneous with his arrest and noted that police may secure of the safe custody and security of suspects first and then make the limited search which circumstances permit. *Id*.

Much like the *Allen* case, in this particular instance Mr. Scullark was wearing the fanny pack when he was told he was under arrest. It was within his grab area when he was told he was under arrest. It was within his grab area when he was being cuffed, and the search of the fanny pack was within minutes of securing Mr. Scullark.

The defense argues because Mr. Scullark tried to give the bag to Ms. Kisner that therefore there is no justification to search. The Court in *State v. Saxton*, 860 N.W.2d 924 (2014)(Table) found this distinction to not be valid. In that particular case the defendant requested that the backpack he had with him be left with another individual who was not being arrested. *Id*. The officers refused and the Court found that to have given the backpack to the other person as the defendant requested without an examination of its contents would have undoubtedly resulted in destruction of relevant evidence. *Id*. The Court went onto note that while the defendant had been subdued, his companion was still free to access the backpack

until it had been seized by the officers. *Id*. That Court found the search of the backpack was a lawful search incident to arrest. *Id*. Again, the Court in *State v. Saxton* cites other Iowa cases supporting the search incident to arrest. In this particular case, if the fanny pack would have contained a weapon, Ms. Kisner would have had access and officer security would be at risk.

Search incident to arrest remains a recognized exception to the warrant requirement, and a litany of cases with facts similar to the ones in this case have found that exception to be appropriate.

ORDER

IT IS THEREFORE ORDERED that the Defendant's Motion to Suppress is DENIED.


State of Iowa Courts

| **Case Number** | **Case Title** |
|---|---|
| FECR246668 | STATE OF IOWA VS SCULLARK, PATRICK |
| **Type:** | OTHER ORDER |

So Ordered

Linda M. Fangman,
District Court Judge, First Judicial District of Iowa

Electronically signed on 2023-04-20 15:38:15

## APPENDIX E

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

| | | |
|---|---|---|
| **STATE OF IOWA**, | ) | |
| Plaintiff, | ) | **CASE NO. FECR246668** |
| vs. | ) | |
| **PATRICK W. SCULLARK, JR.**, | ) | **TRANSCRIPT OF MOTION TO SUPPRESS HEARING** |
| Defendant. | ) | |

| | |
|---|---|
| PROCEEDINGS: | Hearing on Motion to Suppress |
| DATE: | March 24, 2023 |
| LOCATION: | Black Hawk County Courthouse<br>Waterloo, Iowa |
| BEFORE: | Honorable Linda M. Fangman, Judge of the First Judicial District of Iowa |

FOR THE PLAINTIFF:

OFFICE OF THE BLACK HAWK COUNTY ATTORNEY
ASSISTANT COUNTY ATTORNEY
By ATTORNEY JEREMY WESTENDORF
316 East Fifth Street, B-1 Courthouse Building
Waterloo, Iowa 50703

FOR THE DEFENDANT:

ASSISTANT STATE PUBLIC DEFENDER
By ATTORNEY NICHOLE WATT
501 Sycamore Street, Suite 333
Waterloo, Iowa 50701

Brenda L.B. Klenk, CSR, RPR
Black Hawk County Courthouse
316 East Fifth Street, Third Floor
Waterloo, Iowa 50703
Brenda.Klenk@IowaCourts.gov

# I N D E X

## PLAINTIFF'S WITNESS:

**OFFICER JACOB BOLSTAD**



## *E X H I B I T S*

| **PLAINTIFF'S EXHIBIT** | | **ADMITTED** |
|---|---|---|
| A | Body Camera Footage ..... | 7 |

(Proceedings commenced at 1:59 p.m. with the Court, Counsel, and Defendant present.)

THE COURT: This is Black Hawk County Case No. FECR246668 captioned State of Iowa, plaintiff, versus Patrick Scullark, Junior, defendant. This is the time set for a motion to suppress. Mr. Scullark is personally present along with his attorney Nichole Watt. The State today is represented by Assistant Black Hawk County Attorney Jeremy Westendorf. A motion to suppress was filed on October 25, 2022.

Mr. Westendorf, are you ready to proceed?

MR. WESTENDORF: Yes, Your Honor.

THE COURT: Would you like to call a witness, or did you want to be heard first?

MR. WESTENDORF: I'll call a witness, Your Honor.

THE COURT: Okay.

MR. WESTENDORF: The State would call Officer Bolstad.

THE COURT: Right over here (indicating). If you'll raise your right hand.

(Witness sworn. "Yes.")

Thank you. Be seated.

All right.

OFFICER JACOB BOLSTAD,

called as a witness on behalf of the plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WESTENDORF:

Q. Will you please state your name and spell your full name for the record.

A. Jacob Bolstad, J-a-c-o-b B-o-l-s-t-a-d.

Q. Are you currently employed?

A. Yes. With the City of Waterloo as a police officer.

Q. Can you tell us a little bit about your education, training, and work experience which qualifies you for your position?

A. I attended the Iowa Law Enforcement Academy in 2021 and graduated from there; two years prior experience Polk County Jail in Des Moines, Iowa; and two years of law enforcement experience at TSA in Des Moines, Iowa.

Q. Are you a certified peace officer?

A. Yes.

Q. I want to call your attention to April 12, 2022, at approximately 7:38 p.m. Were you working that day?

A. Yes.

Q. And were you essentially dispatched or responding or assisting on a call regarding Patrick Scullark?

A. Yes.

Q. And can you tell the Court, I guess, kind of the nature of what was going on at that moment?

A. The originating call was a disorderly off of Second Street – West Second Street between a male and female. Upon arrival, made contact with the female who had obvious laceration to her left, like,

eyebrow area. And her and another witness advised officers that Patrick Scullark had threw a watch at her, hitting her in the face and causing the injury. And he had left the area already, so...

Q. Now, at this point were you familiar with who Patrick Scullark was?

A. Yes. I knew him just prior – maybe like 20 or 30 minutes prior. I was at the house just looking for some random person that day, and I met him that day at that apartment we were dispatched to.

Q. So were you familiar with the vehicles that were present at that time?

A. Yes.

Q. Were you familiar with what he looked like as an individual?

A. Yes.

Q. Were you familiar with what his clothes were?

A. Yes.

Q. So after you found out about that disorderly situation, I guess, what did you do at that point?

A. We learned that the female that had the injury above her left eye was in an intimate relationship with Patrick Scullark. They had been living with each other for approximately two months, she said. And at that point we – she gave us, like, a rough guesstimate where he was gonna be moving to, some address off Thompson Street on the east side of town. So I went and tried to locate him.

Q. And were you ultimately able to locate him?

A. Yes.

Q. Do you recall where you located him at?

A. I believe it was 412 Thompson Street.

Q. And that's here in Black Hawk County, Iowa?

A. Yes.

Q. Were you equipped with an audio and recording body camera?

A. Yes.

Q. Was it functioning properly that day?

A. Yes.

Q. And did you activate your body camera to be able to record the incident?

A. Yes.

Q. I previously showed you State's Exhibit A. Is this a true and correct copy of a portion of that camera?

A. Yes, it is.

MR. WESTENDORF: Your Honor, at this time the State would offer Exhibit A.

THE COURT: Any objection?

MS. WATT: Sorry. Mr. Westendorf, you said it's a portion. Can you just tell me what the time stamps are that you've got in there, if you know.

MR. WESTENDORF: It's from the beginning until, I think, where they started doing the search of the actual bag.

MS. WATT: Okay. No objection.

THE COURT: Exhibit A is admitted.

BY MR. WESTENDORF:

Q. So when you pulled up to 412 Thompson, what did you see at that point?

A. I observed the vehicles that I had previously seen at the West Second address, and there was multiple people outside. So I approached the vehicles, confronting Patrick Scullark sitting in one of the vehicles–sitting on the back of one of the trucks, talking on the phone.

Q. What – were you able to get kind of an idea of what his emotional state was at that point?

A. Yeah. He was – he was pretty agitated. He kept saying he did not want to go back to jail, he didn't do anything. Emotional.

Q. Did he remain outside with you?

A. No. After I initiated contact with him, he decided to bolt inside of the residence of 412 Thompson.

Q. Did you tell him not to?

A. Yes.

Q. Did he comply with that directive?

A. No.

Q. So at this point what did you do?

A. I followed him inside the residence to continue my interaction with Patrick.

Q. And at this point what were you investigating?

A. A domestic assault that had occurred at Second Street.

Q. Inside the residence did you continue to interact with Mr. Scullark?

A. Yes.

Q. Can you tell us just a little bit about that interaction? I know a lot of it was caught on the video,

but just kind of give us your perceptions and what was going on.

A. Very agitated. Kept stating that he did not want to go back to jail. He was on probation, I believe. And he's still on the phone with – I don't know who he was on the phone with. Kept saying he didn't do anything; doesn't want to go back to jail. And I just tried to keep him calm and deescalate the situation because ultimately he was going to be going to jail for domestic assault.

Q. During your interaction with him, did you ask him some questions about whether he was in an intimate relationship with that female?

A. I don't recall specifically from the video.

Q. If you did, would it be caught on the video camera – or body camera?

A. Yes.

Q. During your interaction with Mr. Scullark, was he in possession of something kind of like a bag or fanny pack or something like that?

A. Yes. Around his waist.

Q. And what type of item would you describe that as?

A. Almost like a satchel bag you can conceal multiple times in – unknown items, I would say.

Q. What was the approximate size?

A. I would say maybe like ten – maybe like ten by five. And I don't know about the depth of it, but...

Q. And those are inches, not feet?

A. Inches, yes.

Q. Is that bag or satchel – was it big enough to conceal a weapon, in your opinion?

A. Yes.

Q. Could it have concealed a small firearm?

A. Yes.

Q. A knife?

A. Yes.

Q. During your interaction with Mr. Scullark, did that continue to be on his person up until the point where you told him he was going to be going to jail?

A. Up until that point. And he proceeded to stand – he was on the floor – stand up and attempt to hand the bag and his phone to another individual that was in the house.

Q. Was that bag on his person when you told him he had to go to jail?

A. Yes.

Q. Did you place – well, first of all, we've been talking about Patrick Scullark. Do you see him in the courtroom today?

A. Yes.

Q. Can you point to him and describe what he's wearing?

A. He is off to my left, sitting at a table wearing, I'd say, gray and black striped clothing.

MR. WESTENDORF: Okay. May the record reflect the witness has identified the defendant.

THE COURT: The record will reflect.

BY MR. WESTENDORF:

Q. So after the defendant stood up and tried to hand off the satchel and his phone to another individual there in the residence, what did you do at that point?

A. I placed him under arrest and told the individual that had received the items to set the items down because I was going to be taking them with Patrick.

Q. You were intending to search those items?

A. Yes.

Q. Essentially the satchel?

A. Yes.

Q. When you say you placed him under arrest, what do you mean by that? Did you handcuff him?

A. Yep. I put him in handcuffs.

Q. Were you able to obtain that fanny pack or satchel from that other individual?

A. Yeah. Almost immediately after I had handcuffed Patrick.

Q. And do you recall what that other individual's name was?

A. Tammy Kisner, I believe.

Q. After you obtained the satchel or fanny pack and you had the defendant under arrest, what happened after that?

A. Other officers arrived on scene. We exited the residence, walked him to my patrol car as a couple people from – Tammy and another individual followed us out to the police car, attempting to get the satchel and phone from him and – searched him. And while we were searching the bag, located a large amount of money, an amount of drugs, and I don't really recall what else was in the bag.

Q. Two of the more important things would be the money and a large quantity of what appeared to be methamphetamine?

A. Correct.

Q. At that point was he placed under arrest? I mean – disregard that.

MR. WESTENDORF: I think that's it, Your Honor. No further questions.

THE COURT: Cross?

MS. WATT: Thank you.

CROSS-EXAMINATION

BY MS. WATT:

Q. Officer, when did you start with Waterloo Police Department?

A. 2021.

Q. Do you have any idea what the outcome of his domestic case was?

A. I believe the victim never showed up. They weren't able to serve a subpoena, and she never showed up; so I believe it was dismissed.

Q. Okay. Were you present to testify when it was dismissed?

A. No. I never received a subpoena for it.

Q. Okay. You described this fanny pack. Is it an average fanny pack size?

A. Yeah, I would say.

Q. Now, just correct me if I'm wrong. Patrick is sitting on the floor. You're telling him he's going to jail; right?

A. Correct.

Q. And he starts to get up, and he says "don't touch me right now" and starts handing his stuff to Tammy. Is that fair?

A. Yes.

Q. And he hands over the fanny pack and possibly a phone to Tammy?

A. Correct.

Q. And did you protest him handing that fanny pack over in some way?

A. Not at that time because I didn't want to escalate the situation because I was the only officer inside the residence at that time.

Q. Okay. Well, I mean, you did tell him after he handed it over that you were going to search it anyways; right?

A. Correct.

Q. So what was your – I guess, what was your fear of an escalation?

A. He was not in custody yet.

Q. Okay. So he was not – you mean he wasn't handcuffed yet?

A. He wasn't handcuffed yet, yes.

Q. So after he hands over the fanny pack and the phone, that's when you place him in handcuffs?

A. Yes.

Q. And did you handcuff him behind his back?

A. Yes.

Q. And did you see what Tammy did with the fanny pack?

A. She, like, walked maybe like three steps away. And I told her to set it down, I believe. And she did.

Q. And she did?

A. Yeah.

Q. So then do you start to walk Mr. Scullark out of the house?

A. After I picked up the fanny pack and his phone, we walked out, yes.

Q. But while you're walking out, he's still handcuffed behind his back; right?

A. Correct.

Q. I think you've got one of your hands on his wrist holding him in front of you?

A. I believe.

Q. The body cam would probably show all of this?

A. Yeah.

Q. Okay. When you guys were walking past the satchel – I mean, Mr. Scullark was ahead of you; right?

A. I believe.

Q. Okay. But when he's walking past the fanny pack, did he try to reach for it?

A. No. He was unable to because he was in handcuffs behind his back.

Q. Okay. So he couldn't have gotten it if he wanted to?

A. Correct.

Q. All right. And then one part I'm not sure the body cam will show, do other officers have ahold of Mr. Scullark by the time you search the fanny pack?

A. We were – I believe we were at my car with the door open, and he was standing next to the open – inside the open door, basically not quite in the car yet while we were searching the fanny pack because he was requesting and other people were trying to get stuff out of the bag, trying to get the property from us.

Q. Okay. But by this time there were other officers around you?

A. Yes.

MS. WATT: Okay. I do not have any other questions.

THE COURT: Redirect?

MR. WESTENDORF: No, Your Honor.

THE COURT: Thank you, sir. You may step down. Does the State have any other witnesses?

MR. WESTENDORF: No, Your Honor.

THE COURT: Does the defense have any witnesses?

MS. WATT: No, Your Honor.

THE COURT: Does the State wish to be heard?

MR. WESTENDORF: Yes, Your Honor.

THE COURT: Okay. Go ahead.

MR. WESTENDORF: I don't believe in this case, Your Honor, there's going to be much of a factual dispute. I think, as the Court can kind of tell, everything is pretty straightforward. The video will certainly supplement all of the officer's testimony.

It really just comes down to whether the officer is allowed to search that fanny pack that was on the defendant's person when he was told he's going to jail,

which is under Iowa law effectively an arrest at that point. So it comes down to search incident to an arrest.

Having looked at some of the caselaw, I think the most on point case that I was able to locate is actually out of Kansas, and it's *State v. Wissing*. And that would be 52 Kansas App.2d 918. It's from 2016. And that case, generally speaking, is a person was being placed under arrest outside of the home, and then he asked the officer permission to go in and essentially tell his mom what's going on. So the officer allowed it. The individual went into the house and then tried to hand off his wallet to his mother. And the officer said no, no; I'm searching that. And then they found drugs inside that wallet. The appellate court there in Kansas said that is completely fine.

However, Iowa has also dealt with some of these issues. I would cite the Court to *State v. Jones*, and that is 674 N.W.2d 684. It is unreported, so I believe the Westlaw citation is 2003 WL 22699655. And then there's also *U.S. v. Nelson* which is 102 F.3d 1344.

Essentially those two cases there also stand for the position the right to search an item incident to an arrest exists even if that item is no longer accessible to the defendant at the time of the search so long as the defendant had the item within his immediate control near the time of his arrest. The item remains subject to search incident to an arrest.

And then there's another line of cases here in Iowa, and I don't have the case right off the top of my head. But essentially it's where there's probable cause to search a vehicle as well as the containers inside the vehicle, as the Court knows. And in that line of cases an individual may try to remove, let's say, a backpack

from the vehicle when they step out of the vehicle so that the car can be searched. And I'm sure the Court's probably familiar with this line of cases. That backpack is still subject to search because it was inside the vehicle when the probable cause arose to search that vehicle.

Essentially the Court's have said that a person can't try to prevent the search of something that would have been searchable by essentially trying to remove it. The State would also cite the Court to *State v. Tolsdorf*. That is 574 N.W.2d 290, and that's Iowa Supreme Court 1998; *U.S. v. Robinson*, 414 US 218, that's 1973. I would also note for the Court, though, that at least there is *Arizona v. Gant* which kind of goes a little bit against some of that case. And then *State v. Rincon*, and that's 970 N.W.2d 275, and that's Iowa Supreme Court 2022.

Those last three cases are less on point and less relevant. However, they do have some language that would support the State's position that this search is valid and this search should not be suppressed. Thank you.

THE COURT: Thank you, Mr. Westendorf.

Ms. Watt, do you want to be heard?

MS. WATT: Thank you.

So the State cited the *State v. Wissing* case out of Kansas, and I think their analysis of that case is a little off the mark. The State says that he tried to hand his wallet to his mother, and the cop said I'm going to search it anyways. My reading of the facts here are that the guy asked to go inside so he could tell his mother what's going on; and then while he's

handcuffed, he takes a wallet out of his pocket, sets it on a dresser.

And that's when the officers ask about the wallet, whether there's going to be an ID on it. And in the meantime, the defendant in that case has not moved. Because in the *Wissing* case what they talk about is a search incident to arrest when you're searching something that is within the immediate control of the defendant.

And in this case – specifically in the *Wissing* case, they said that the handcuffs didn't stop him from placing the wallet on the dresser, so they would not have stopped him from retrieving the same from that same location from which he had not moved. So they thought it was important that he was able to set it there while in handcuffs and, therefore, still had access to it, and so it was still within his immediate control.

The State mentioned something about how it doesn't matter if the item isn't on your person anymore so long as it was when you were placed under arrest, I believe is what they said. But that's where the *Gant* case matters so much – *Arizona v. Gant*, 556 U.S. 332, 2009 – because that's the case that kind of modifies the older rule that the State cited and says the police may search the passenger compartment of a vehicle incident a recent occupant's – may search the passenger compartment of a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.

Because what matters most under the current caselaw is whether the person has access to it at the

time of the search, not the time of arrest. And I did find a case that kind of nicely talks about all of this caselaw from the U.S. Supreme Court, an analysis of it.

I didn't find an Iowa case directly on point to these circumstances either. But I found one similar out of the Supreme Court of Missouri 2016. It's *State v. Carrawell*, 481 S.W.3d 833. And they talk in that case that the item searched within the arrestee's immediate control applies only to items that are so intertwined with the arrestee's person that they cannot be separated from the person at that time of arrest.

I think that in the *Carrawell* case they're talking about perhaps a plastic bag that the person was holding, and they compared to a case where somebody had a purse. But they say it doesn't matter whether it be a purse or a plastic bag because if it's not on them anymore at the time it's being searched, then it's no longer within their control or their immediate access.

And it also analyzes here – because I think the State argued in this *Carrawell* case about how the time of arrest matters more. And it goes through the U.S. Supreme Court caselaw to say that that's not what happens. And I do think that the officer in this case believed that he needed to search it because it was on him at the time he was being told he was going to jail. But that's not what the caselaw would seem to indicate.

And in fact, the officer here testified that at the time he grabs the fanny pack, there's no way Mr. Scullark would have been able to get to it because he's handcuffed with his hands behind his back. He didn't

reach for it, and he couldn't have reached for it if he wanted to.

So we also have in Iowa the *Gaskins* case from 2015. *State v. Gaskins*, 866 N.W.2d 1 (Iowa 2015) which I believe, yes, comes after *Gant* and again reinforces this idea about reaching distance. The Court approved Gant's reaching distance rationale as an appropriate limitation on the scope of searches incident to arrest under Article 1, Section 8 of the Iowa Constitution because that limitation is fateful to the underlying justifications for warrantless searches incident to arrest.

The Court in *Gaskins* appears to have declined to adopt *Gant's* alternative evidence-gathering rationale. I didn't hear anything about that in this case, so I don't think the officer had reason to believe he would find evidence of a domestic assault in Mr. Scullark's fanny pack. It seems to be purely on more the risk of officer safety and destruction of contraband, which then comes down to whether the person had access to it at the time it is searched.

I guess, finally, in the *Carrawell* case they say that they shouldn't have searched the plastic bag because by the time they're doing it, the defendant in that case was handcuffed and locked in the back of a police car.

So I think if we consider what the *Wissing* case actually says and how they focused on the fact that the person still had access to it or it was within his reach at the time the officer gets to search it, I think that matters and the fact that in our case, differently, Mr. Scullark is in handcuffs and the officer has, again, said he would not have been able to access it at that time.

And so even though Mr. Westendorf cites to a couple of – a couple of cases that would have more to do with automobile exception and exigencies there, the exigencies in searching this fanny pack are gone once Mr. Scullark does not have access to it because he's in handcuffs. So we would ask this Court grant our motion to suppress. Thank you.

THE COURT: Any response, Mr. Westendorf?

MR. WESTENDORF: No, Your Honor.

THE COURT: Okay. I'll take the matter under advisement. I'll review these cases and get a ruling out as soon as I can. Thank you.

(Proceedings were adjourned at 2:30 p.m.)

* * * * *

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

| | | |
|---|---|---|
| **STATE OF IOWA**, | ) | |
| Plaintiff, | ) | **CASE NO. FECR246668** |
| vs. | ) | |
| **PATRICK W. SCULLARK, JR.**, | ) | **CERTIFICATE TO TRANSCRIPT** |
| Defendant. | ) | |

The undersigned, one of the Official Shorthand Reporters in and for the First Judicial District of Iowa, which embraces the County of Black Hawk, hereby certifies:

That I acted as such reporter on the hearing of the above-entitled cause before the Honorable Linda M. Fangman stated in the title page attached to this transcript, and took down in shorthand the testimony and other proceedings held on March 24, 2023;

That said shorthand notes were transcribed by me by way of computer-aided transcription; and that the foregoing pages of transcript contain a true, complete, and correct transcript of said shorthand notes so taken to the best of my ability.

Dated this 21st day of August, 2023.

/s/ Brenda L B Klenk, CSR RPR

Black Hawk County Courthouse
316 East Fifth Street
Waterloo, Iowa 50703
Brenda.Klenk@IowaCourts.gov

Combined Certificate Filed: August 4, 2023

(By Martha J. Lucey)

Transcript filed on EDMS: August 21, 2023