2021 M. Gene Blackburn Award presented to Logan Brundage

This annual cash award, funded by the Cedar Rapids, Iowa law firm of Simmons Perrine Moyer & Bergmann, is presented to the student who submits the best brief for the Supreme Court Celebration Moot Court Competition. The recipient is chosen on the basis of superior writing skills that communicate an issue position based upon an innovative, creative, and concise approach.

The award is named for M. Gene Blackburn, LW'55, in recognition of his dedication to the development of appellate advocacy while a professor at Drake Law School.

Supreme Court Celebration Competition

Each year, outstanding appellate advocates at Drake Law School compete in the Supreme Court Celebration Competition for the honor of presenting final arguments to the Iowa Supreme Court.

The competition is preceded by an Appellate Advocacy course providing students the opportunity to hone their persuasive writing and oral advocacy talents prior to the competition. The Appellate Advocacy course begins with written advocacy in the form of writing a brief. Student work on their briefs during a semester of detailed, in-depth instruction on best practices in appellate briefing by two experienced mentors. The Honorable Mark Bennett brings a wealth of experience from 24 years on the federal bench, and Louis Sloven is an Iowa Assistant Attorney General who regularly argues before the Iowa Court of Appeals and Supreme Court.

Afterward, the course shifts its focus from written to oral advocacy. Students begin this phase of class with several practice rounds of arguments to strengthen their arguments for the competition. Preliminary rounds then result in the selection of a final group of four advocates, who have the chance to argue before the Iowa Supreme Court. The award for Best Oralist in the final round and the Best Brief (M. Gene Blackburn Award) are announced during annual Supreme Court Celebration events.

2021 Supreme Court Competition Problem

One fateful night, Ronnie Dobbs was playing music very loud and honking the horn of his car for no apparent reason. Iowa State Patrol Trooper Terry Twillstein was nearby, and he had reasonable suspicion and probable cause to believe that Dobbs was violating a local noise ordinance.

Trooper Twillstein followed Dobbs and caught up to him. When Trooper Twillstein's car was directly behind Dobbs' vehicle, he turned on his overhead lights and his siren to initiate a traffic stop. But Dobbs did not stop—instead, he turned onto a driveway, drove up, and parked in a garage. Trooper Twillstein saw the garage begin to close as soon as Dobbs' vehicle was inside—so he jumped out of his vehicle, ran to the garage door, and put his foot in front of the sensor to stop the door from closing. Then, Trooper Twillstein walked into the garage to talk to Dobbs. Upon speaking with Dobbs, Trooper Twillstein observed that Dobbs was drunk and arrested him. Dobbs was charged with Operating While Intoxicated (third offense).

Dobbs seems to have committed two misdemeanors, in addition to the noise ordinance violation: eluding and interference with official acts. Under Iowa law, Trooper Twillstein was authorized to arrest Dobbs for committing any misdemeanor offense in his presence. But by following Dobbs into his garage as Dobbs fled from him, Trooper Twillstein made a warrantless entry into the protected area of Dobbs' home (the "curtilage"). That would violate both the Fourth Amendment and Article I, Section 8 of the Iowa Constitution—unless that warrantless entry was "reasonable" in a constitutional sense. The State argues that this fits within the exception for warrantless entry in "hot pursuit" of a fleeing offender. Dobbs argues that these facts do not establish the kind of exigency that would be required to invoke the "hot pursuit" exception to the warrant requirement.

A very similar case is pending in the U.S. Supreme Court right now: *Lange v. California*. But *Lange* only involved a Fourth Amendment claim. This case involves a Fourth Amendment claim, but it also involves a challenge under Article I, Section 8 of the Iowa Constitution. The Iowa Supreme Court is the ultimate authority on what the Iowa Constitution allows, and what it forbids. Our competitors will have to advance their most persuasive vision for how to read and apply each of these constitutional provisions, how to balance the complex array of competing interests involved, and how to craft a fair and practical rule that Iowa courts can apply to resolve future cases.

The two questions before the Supreme Court are:

1. Did Trooper Twillstein's entry into Dobbs' garage—while in "hot pursuit" of a person who had committed a misdemeanor eluding offense—violate the Fourth Amendment?

2. Did Trooper Twillstein's entry into Dobbs' garage—while in "hot pursuit" of a person who had committed a misdemeanor eluding offense—violate Article I, Section 8 of the Iowa Constitution?

IN THE SUPREME COURT OF IOWA
Supreme Court No. 20–0000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONNIE DOBBS.
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY
THE HONORABLE BRENDA BLINKMAN, JUDGE

APPELLANT'S BRIEF

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CERTIFICATE OF SERVICE

The undersigned certifies a copy of this Appellant's Brief for Appellant-Defendant Ronnie Dobbs was served on the 13th day of March 2021, via electronic transmission upon the following persons and upon the clerk of the supreme court:

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II. Independent review of Article I, Section 8 has at times provided Iowans even greater protections against unreasonable searches and seizures than the Fourth Amendment. To establish that Trooper Twillstein's warrantless entry into Dobbs's closed garage after a brief pursuit was reasonable, the State relies on a new misdemeanor-pursuit exception to expand grounds for conducting warrantless searches and seizures. Does Trooper Twillstein's warrantless entry constitute a reasonable search under Article I, Section 8?

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STATEMENT OF THE CASE

Nature of the Case

Dobbs first appealed the district court's denial of his motion to suppress and resulting conviction for Operating While Intoxicated, Third or Subsequent Offense. Dobbs's based his motion to suppress on law enforcement's warrantless entry into his garage to make a search and arrest, violating Dobbs's right to be free from unreasonable searches and seizures under both the Fourth Amendment and Article I, Section 8 of the Iowa Constitution. Law enforcement claimed, together, probable cause for Dobbs's initial misdemeanor failure to yield offense and the trooper's own short pursuit of Dobbs's into his garage served as sufficient circumstances to forego a warrant under an unrecognized misdemeanor-pursuit exception. While the district court agreed, Dobbs contends the State's singular reliance on the mere hot pursuit of a misdemeanant does not satisfy recognized exceptions to the warrant requirement under the Fourth Amendment or Article I, Section 8 of the Iowa Constitution violating both his federal and state constitutional rights.

Course of Proceedings

Ronnie Dobbs (Dobbs) was arrested for Operating While Intoxicated, Third or Subsequent Offense, in violation of Iowa Code § 321J.2 (2020), on October 7, 2019, resulting from events occurring that same night. R. 1. Dobbs filed a motion to suppress, alleging that evidence gathered from the officer's warrantless entry into his garage and leading to his arrest violated both his Fourth Amendment rights and Article I, Section 8 rights under the Iowa Constitution against unreasonable searches and seizures. R. 1, 3. The District Court for Linn County held a hearing and subsequently denied the motion to suppress on December 20, 2019. R. 1. Dobbs was thereafter convicted of Operating While Intoxicated, Third or Subsequent Offense, under Iowa Code § 321J.2. R. 7.

Dobbs filed a Notice of Appeal, and the Court of Appeals heard his case. R. 7. The Court of Appeals found the district court erred in denying Dobbs's motion to suppress, reversed Dobbs's conviction for Operating While Intoxicated, Third or Subsequent Offense, and remanded the case for further proceedings. R. 14. The State sought

this Court's further review, and Dobbs resisted. *See* Iowa R. App. P. 6.1103(1), (2). This Court granted review on January 2, 2021. R. 17.

Statement of Facts

On the night of October 7, 2019, around 10:20pm, Ronnie Dobbs (Dobbs) closed out his Monday with a drive home. R. 1. Dobbs tested the vigor of his car's stereo system with some music along the way. R. 1.

Parked along State Route Highway 12 in Linn County, Iowa, Iowa State Patrol Trooper Terry Twillstein (Trooper Twillstein) noticed Dobbs's car playing music. R. 1. When Dobbs sounded his car horn a few times, he inadvertently captured Trooper Twillstein's full attention. R. 1. Trooper Twillstein was uncertain of a reason for Dobbs sounding his horn. R. 1. And the music and horn together led the trooper to pull out on to the highway, intending to stop Dobbs for a local noise ordinance violation. R. 1–2.

Faulting the presence of several cars between his marked Iowa State Patrol vehicle and Dobbs's car on the highway, Trooper Twillstein followed Dobbs as he turned off of the highway and traveled the residential streets of his neighborhood. R. 2. After turning right after Dobbs, Trooper Twillstein saw Dobbs roughly 500

feet ahead of him on an empty street. R. 2. He did not initiate his stop. R. 2. Dobbs turned left and so did Trooper Twillstein. R. 2.

Making the final approach to his own driveway, Dobbs slowed to a stop for a moment. R. 2. Closing in behind him, Trooper Twillstein then stopped, too. R. 2. As Dobbs's car pulled forward the final 100 feet to the driveway, Trooper Twillstein then switched on his standard-issue overhead police lights and siren to initiate his stop for the noise violation back on Highway 12. R. 2, 3.

A seemingly unaware Dobbs continued driving for four seconds into his driveway and into his garage. R. 3. Trooper Twillstein pulled his vehicle into Dobbs's driveway and exited the car. R. 2. As Dobbs's garage door descended the final length of track to close for the night, Trooper Twillstein inserted his foot in the door's path to reverse its course via the safety sensor. R. 2. Having gained access to Dobbs's garage on his own, Trooper Twillstein entered to question Dobbs. R. 2. He based his warrantless entry on probable cause for: a noise violation; for, allegedly, delaying a peace officer in the discharge of his duties, Iowa Code § 719.1(1)(a) (2020); and for, allegedly, failing to stop when signaled, Iowa Code § 321.279(1)(a) (2020). R. 2–3.

Inside the garage, Dobbs conveyed he had not noticed Trooper Twillstein's signal to stop in the final moments of his trip home. R. 2. During his indoor-questioning, Trooper Twillstein alleges he observed Dobbs's "apparent intoxication," without expounding any further on these observations. R. 2. Trooper Twillstein placed Dobbs under arrest for what was evidently the fourth crime he observed that night. R. 2.

SUMMARY OF THE ARGUMENT

Ronnie Dobbs (Dobbs) seeks reversal of his conviction of Operating While Intoxicated, Third or Subsequent Offense, on the grounds that the district court erred in denying his motion to suppress evidence obtained from law enforcement's warrantless search of his home. Dobbs maintains the warrantless entry into his garage violated his Fourth Amendment and Article I, Section 8 rights against unreasonable search and seizure.

When law enforcement opts to forego a warrant and intrude into a person's home, the circumstances must satisfy a well-recognized exception for the resulting search to be made reasonable under the Fourth Amendment. The State advances an unrecognized exception to permit warrantless action when law enforcement engages in hot pursuit of a misdemeanant. This newly proposed exception, however, proves incompatible with Fourth Amendment principles granting the home the greatest protection against unreasonable searches and seizures and ensuring exceptions to the warrant requirement be carefully drawn and well defined. Approving this new exception poses the risk of deeming constitutional what should be truly unreasonable warrantless conduct by law

enforcement. The new exception also forces the burden for meeting a warrant requirement exception to shift from the law enforcement needing it to the citizen whose rights the warrant requirement aims to protect. As a result, a sweeping misdemeanor-pursuit exception proves unrecognizable under the Fourth Amendment.

Furthermore, no other exigent circumstances, aside from the pursuit, provide an exception under the well-recognized exigent circumstances exception. Dobbs's underlying offense was minor and nonviolent, he had just driven into his home and did not pose a risk of escape, and there is no indication he was armed. Without a categorical misdemeanor-pursuit exception or circumstances presenting an exigency, Trooper Twillstein's warrantless entry stands unreasonable and confirms either seeking a warrant or Dobbs's voluntary conversation would have been the more prudent, and constitutional, course of action.

Similarly under Article I, Section 8 of the Iowa Constitution, Trooper Twillstein's warrantless entry into Dobbs's garage remains unreasonable, thus violating Dobbs's state constitutional rights. The Iowa Supreme Court reviews claims brought under state constitutional provisions independently of parallel federal provisions.

In doing so, the Court has, at times, identified greater protections against unreasonable searches and seizures under Article I, Section 8 than are provided under the Fourth Amendment. The provision's text, constitutional structure, and historical context all support more robust protections. And a growing body of precedent bolsters grounds for expanding Iowans' rights against unreasonable searches and seizures under this provision. As a result, there is no room within Article I, Section 8's parameters for the State's misdemeanor-pursuit exception. And as under the Fourth Amendment analysis, the State makes no additional showing of exigency to support another exception for its warrantless intrusion into Dobbs's garage under Article I, Section 8. Absent a warrant or an exception under both the Fourth Amendment and Article I, Section 8, Trooper Twillstein's warrantless entry was unreasonable and violated Dobbs's federal and state constitutions rights.

ARGUMENT

I. Law enforcement's warrantless entry into Dobb's garage violated Dobbs's Fourth Amendment rights because no recognized exception to the warrant requirement was met, thus resulting in an unreasonable search.

Preservation of Error

Dobbs raised this Fourth Amendment challenge in his motion to suppress, and the district court rejected it. R. 5. The court's adverse ruling preserved error for appellate review. *See State v. Naujoks*, 637 N.W.2d 101, 106 (Iowa 2001).

Standard of Review

This Court reviews "claimed violations of constitutional rights under the Fourth Amendment de novo in light of the totality of the circumstances." *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004) (quoting *State v. Walshire*, 634 N.W.2d 625, 626 (Iowa 2001)).

Merits

Rejecting the British's oppressive reign of rummaging in search of criminality, the Fourth Amendment secured for citizens "a right of personal security against arbitrary intrusions by official power." *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971); *see* U.S. Const. amend. IV; *Carpenter v. United States*, 138 S. Ct. 2206, 2213

(2018). But permitting law enforcement's warrantless entry into Dobbs's garage under the State's newly proposed categorical exception to the Fourth Amendment's warrant requirement in cases of hot pursuit for a misdemeanor significantly thwarts that constitutional safeguard. *See generally Coolidge*, 403 U.S. at 455; *Camara v. Mun. Ct. of S.F.*, 387 U.S. 523, 533 (1967). The question before this Court is whether Fourth Amendment principles, expounded in text, history, and precedent, permit law enforcement's invasion of the home under this exception or any exception. *See Coolidge*, 403 U.S. at 455. Because an expansive misdemeanor-pursuit exception runs counter to those principles and this case lacks any emergency necessitating foregoing a warrant, this Court should find the trooper's warrantless entry unreasonable under the Fourth Amendment and affirm the decision of the Court of Appeals. *See Missouri v. McNeely*, 569 U.S. 141, 148–49 (2013).

A. Fourth Amendment principles preclude recognition of a categorical misdemeanor-pursuit exception to permit warrantless entry.

A warrantless search in general, and especially in the search of a person's home, is only made reasonable "if it falls within a recognized exception." *Id.* at 148. In seeking to justify a warrantless entry with an

exception, the State bears the burden of showing one applies—and should not be granted the benefit of fashioning a new one. *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984). The risk the State's categorical misdemeanor-pursuit exception poses to the sanctity of the home under the Fourth Amendment should not be overlooked. *See Payton v. New York*, 445 U.S. 573, 590, 601 (1980). And the untailored, ill-defined nature of the proposed exception further exacerbates that risk and, if recognized, would have this exception stand alone its broad scope. *See Coolidge*, 403 U.S. at 455.

1. A new misdemeanor-pursuit exception will slacken explicit and well-maintained Fourth Amendment protections of the home.

The Fourth Amendment protects privacy and security in a variety of places, but "the home is first among equals." *Fla. v. Jardines*, 569 U.S. 1, 6 (2013); *Payton*, 445 U.S. at 589. Through its very text, the Amendment grants a "zone of privacy" around the "unambiguous physical dimensions of an individual's home." U.S. Const. amend. IV.; *Payton*, 445 U.S. at 585, 589 ("Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment."). This zone of privacy provides individuals a right "to

retreat into [their] home and there be free from unreasonable governmental intrusion." *Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)) (emphasis added). That right to retreat "extends to the innocent and guilty alike" as one of "the unique values of our civilization" to "stay[] the hand of police." *McDonald v. United States*, 335 U.S. 451, 453 (1948).

The Amendment's vigorous protections over the home arose out of the arbitrary invasions under British writs of assistance. *Carpenter*, 138 S. Ct. at 2213; *see also State v. Ochoa*, 792 N.W.2d 260, 271 (Iowa 2010) (citation omitted). The writs of assistance authorized a kind of permanent warrant for general search, subjecting citizens to the whims of British officers. *See Ochoa*, 792 N.W.2d at 272 (citation omitted). The rifling, rummaging, and ransacking endured by colonists made the Framers fearful of future abuses of government power and resulted in the specific protective domains of "persons," "houses," and "papers" under the Fourth Amendment. U.S. Const. amend. IV; George C. Thomas III, *Time Travel, Hovercrafts, and the Framers: James Madison Sees the Future and Rewrites the Fourth Amendment*, 80 Notre Dame L. Rev. 1451, 1478 (2005); Akhil

Reed Amar, *The Fourth Amendment, Boston, and the Writs of Assistance*, 30 Suffolk U. L. Rev. 53, 69 (1996). To allow for necessary government intrusion to pierce these domains, the Framers placed the neutral magistrate between the "zealous officer and the citizen" to issue a warrant on probable cause, because "police acting on their own cannot be trusted." *Payton*, 445 U.S. at 602; *McDonald*, 335 U.S. at 455–56; *see* U.S. Const. amend. IV.

The Fourth Amendment's text draws the line of protection against warrantless entry at the threshold of the home, and the Supreme Court has even extended it further in both location and circumstance. *Payton*, 445 U.S. at 590; *see Jardines*, 569 U.S. at 11–12. Indicative of need to curtail the "zealous officer," courts have held merely having committed a crime and being subject to "routine arrest" does not authorize a warrantless entry. *Payton*, 445 U.S. at 602. In *Payton v. New York*, the Supreme Court ruled unconstitutional a state law permitting warrantless entry for "routine felony arrest." *Id.* at 576, 603. Moreover, criminals leveraging the privacy of their homes for the furtherance of their criminal schemes—by itself—does not remove them from the warrant requirement's shield. *See McDonald*, 335 U.S. at 454. Even the use of technology to

monitor heat sources within the home from across the street constitutes a search subject to the warrant requirement. *Kyllo v. United States*, 533 U.S. 27, 40 (2001).

Beyond what occurs inside the home, the Fourth Amendment guards against warrantless evidence gathering outside the home to properly effectuate the privacy and security of citizens, "both physically and psychologically." *California v. Ciraolo,* 476 U.S. 207, 212–213 (1986). Warrantless searches of a home's curtilage are "presumptively unreasonable[,] absent a warrant." *Collins*, 138 S. Ct. at 1670. To illustrate, drug-sniffing dogs on a front porch; searching a motorcycle parked outside in a partially enclosed area of a driveway; or entering a fenced backyard to gather evidence are all out of bounds without a warrant. *Jardines*, 569 U.S. at 11–12; *Collins*, 138 S. Ct. at 1671; *State v. Lewis*, 675 N.W.2d 516, 523–24 (Iowa 2004).

The robust Fourth Amendment protections of the home—faithfully guarded by the warrant requirement—have endured and served society well since the nation's founding. *See Payton*, 445 U.S. at 601. The State's proposed categorical exception based solely on the mere hot pursuit of a misdemeanant would dramatically expose the home to warrantless entry and curb citizens' ability to retreat into

their own solemn space. *See Collins*, 138 S. Ct. at 1670. As a result, sustaining the exception demands an answer to why "the constitutional barrier that protects the privacy of the individual [can be] hurdled so easily" as by taking a few steps up the driveway. *McDonald*, 335 U.S. at 455; *see* R. 2.

2. Recognized exceptions to the warrant requirement are well defined and rooted in reasonableness, unlike a misdemeanor-pursuit exception.

As the Fourth Amendment's ultimate touchstone, reasonableness requires the warrant requirement yield to a few "carefully defined classes" of exceptions under which law enforcement may enter a home without a warrant. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006); *Camara*, 387 U.S. at 528. But as a class, the recognized exceptions justifying warrantless searches and seizures are "specifically established," "well delineated," "jealously guarded," and "carefully drawn." *Coolidge*, 403 U.S. at 454–55 (internal quotations omitted). The Supreme Court in *Camara v. Municipal Court of City and County of San Francisco* clarified the threshold question when deciding on a new exception to the warrant requirement: "the question is not whether the public interest justifies the type of search in question, but whether the authority to search

should be evidenced by a warrant." 387 U.S. at 533. Training the focus on the warrant requirement ensures exceptions do not erode, and eventually swallow up, the rule. *See* U.S. Const. amend. IV; *Boyd v. United States*, 116 U.S. 616, 635 (1886) (cautioning that "illegitimate and unconstitutional practices get their first footing . . . namely, by silent approaches and *slight deviations* from legal modes of procedure" (emphasis added)).

The decision of the district court to acknowledge the categorical misdemeanor-pursuit exception deviates from *Camara*'s instruction, generally omitting any discussion of why a warrant could not or should not have been secured under the circumstances. R. 4–5; *see* 387 U.S. at 533. The resulting misdemeanor-pursuit exception expands the hot pursuit doctrine beyond measure and removes law enforcement's burden to "demonstrate an urgent need" for warrantless entry. *Welsh*, 466 U.S. at 749–50. Courts have sometimes struggled to translate "the abstract prohibition against 'unreasonable searches and seizures' into workable guidelines," but this low bar for entry to secure minor offenders is unspecific, un-carefully drawn, and out of alignment with other recognized exceptions. *Camara*, 387 U.S. at 528; *see Coolidge*, 403 U.S. at 454–55.

a. A categorical misdemeanor-pursuit exception removes any consideration of the necessity for warrantless entry and will lead to unreasonable results.

The hot pursuit doctrine descends from the recognized exigent circumstances exception. *McNeely*, 569 U.S. at 149 (recognizing "[a] variety of circumstances may give rise to an exigency sufficient to justify a warrantless search, including law enforcement's need to . . . engage in 'hot pursuit' of a fleeing suspect"). Importantly, "[w]hat makes the pursuit 'hot' is 'the emergency nature of the situation,' requiring 'immediate police action.'" *Smith v. Stoneburner*, 716 F.3d 926, 931 (6th Cir. 2013) (quoting *Cummings v. City of Akron,* 418 F.3d 676, 686 (6th Cir.2005)). The "emergency nature of the situation" tempers the doctrine to offer a warrant exception where a compelling need exists—a reasonable response to such circumstances in consideration of the Fourth Amendment rights. *Kentucky v. King*, 563 U.S. 452, 459 (2011); *Stoneburner*, 716 F.3d at 931. But the creation of a per se hot pursuit exception for all misdemeanors, as the State argues for here, severs hot pursuit from the emergency context and opens the doors of homes to warrantless entry for even the slightest incident of retreat-pursuit and for even the most minor offenses. *See United States v. Santana*, 427 U.S. 38,

42–43 (1976) (holding hot pursuit "need not be an extended hue and cry in and about the public streets" (internal quotations omitted)).

To support this expansive doctrine, the district court relies on *United States v. Santana* for support of an exception based on hot pursuit alone and *Stanton v. Sims* to pull all misdemeanor offenses within the new exception's scope. *See Stanton v. Sims*, 571 U.S. 3, 9 (2013); *Santana*, 427 U.S. at 38, 43; R. 4–5. Unaddressed aspects of both cases, however, frustrate the court's conclusion. *See Stanton*, 571 U.S. at 9; *Santana*, 427 U.S. at 42–43; R. 4–5. In *Santana*, the Supreme Court upheld warrantless entry into the defendant's home based on a variety of factors—the defendant's public exposure at the time police initiated arrest, the brief hot pursuit, and the "extreme emergency" conditions, namely that "any delay would result in destruction of evidence." 427 U.S. at 42–43. The Supreme Court assessed the "totality of the circumstances," as is the proper approach in cases of exigent circumstances; it did not make mere pursuit wholly sufficient. *Id.*; *McNeely*, 569 U.S. at 150. While courts have subsequently referred to *Santana* as the hot pursuit of a felon exception, inherent and inescapable in that exception is the

seriousness of the offense and the emergency nature of the situation. *See, e.g.*, *Welsh*, 466 U.S. at 750.

Additionally, the Supreme Court's per curiam opinion in *Stanton* parsed the unsettled nature of pursuit as grounds for warrantless entry in cases of minor offenses in the context of granting qualified immunity. *Stanton*, 571 U.S. at 10. The Court's discussion aimed to demonstrate a lack of clearly established law in this area as grounds for granting qualified immunity. *Id.* ("[T]wo different District Courts in the Ninth Circuit have granted qualified immunity precisely because the law regarding warrantless entry in hot pursuit of a fleeing misdemeanant is not clearly established."). The Supreme Court's decision did not actually offer much "clarification" at all, and the district court's reliance on it to explain *Welsh* is misplaced. *See id.*; R. 5.

Expanding permissible warrantless entry with a misdemeanor-pursuit exception based on unsettled grounds will no doubt lead to unreasonable outcomes. *See Stanton*, 571 U.S. at 9; *Santana*, 427 U.S. at 42–43; R. 4–5. Pursuit of a teenager drinking beer on the football field or a shoplifter running with a candy bar could easily lead to a warrantless arrest in the confines of a suspect's home simply based on

the officer's choice to give "immediate or continuous" chase. *Welsh*, 466 U.S. at 753. More striking, officers would need only to insert their foot in the door when a party backs up from a no-longer-consensual conversation and attempts to close it to then gain entry (or under a garage door after walking up the driveway). *See, e.g.*, *Cummings*, 418 F.3d at 686; R. 2. These examples demonstrate how the proposed exception would promote warrantless entry in more minor, more routine cases as a result of suspects' varying degrees of flight. The Supreme Court previously considered and rejected this kind of blanket warrant exception because it would be applied in drastically different situations. *See Richards v. Wisconsin*, 520 U.S. 385, 393–95 (1997) (rejecting a blanket exception to the knock-and-announce requirement and noting "creating an exception in one category can, relatively easily, be applied to others"). As a result, this new misdemeanor-pursuit category circumvents *Payton v. New York*'s prohibition on warrantless entry for routine arrests, ignores *Camara*'s question of why the searches should not be evidenced by a warrant, and evades any consideration of reasonableness. *See King*, 563 U.S. at 459; *Payton*, 445 U.S. at 576; *Camara*, 387 U.S. at 533.

b. A categorical misdemeanor-pursuit exception lightens the burden on law enforcement to show exceptional circumstances necessitated warrantless entry.

In cases of warrantless entry, the "burden is on those seeking the exemption to show the need for it"—a burden the Supreme Court described as "heavy" in *Welsh v. Wisconsin*. 466 U.S. at 749–50; *Coolidge*, 403 U.S. at 454–55. Meeting that burden requires tipping the scale to weigh in favor of a "need for effective law enforcement" at the cost of the individual's right to privacy. *Johnson v. United States*, 333 U.S. 10, 14–15 (1948); *see also Birchfield v. North Dakota*, 136 S. Ct. 2160, 2176 (2016). The Supreme Court in *Welsh* rightly held, "[I]t is difficult to conceive of a warrantless home arrest that would *not* be unreasonable under the Fourth Amendment when the underlying offense is extremely minor." *Welsh*, 466 U.S. at 752–53 (emphasis added). Accordingly, effective law enforcement should rarely, if ever, require warrantless entry for minor offenses. *See id.*; *Johnson*, 333 U.S. at 14–15.

But under the new exception, warrantless entry is always acceptable where any misdemeanant retreats to their home, irrespective of any urgency, because their retreat is itself a

misdemeanor crime.[1] *See, e.g.*, *Middletown v. Flinchum*, 765 N.E.2d 330, 332 (Ohio 2002). A suspect's flight offers both the "violation giving rise to the pursuit" and the grounds for warrantless entry in every case of an eluding suspect no matter the "gravity of the underlying offense"—a kind of 2-for-1 special for law enforcement. *Welsh*, 466 U.S. at 753; *State v. Weber*, 887 N.W.2d 554, 569 (Wis. 2016). But this cannot be. *See Ochoa*, 792 N.W.2d at 277. "The protections of the Fourth Amendment . . . cannot depend solely upon the status of state law; otherwise, it could be effectively repealed by ordinary legislation or executive action." *Id.* (citing *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973)). If the Fourth Amendment's protections of the home are forced to categorically yield in the pursuit of a misdemeanant, suspects will unwittingly and unnecessarily lighten law enforcement's burden in maintenance of

[1] In *State v. Weber*, the State sought this same categorical exception arising out of a similar set of facts. The Wisconsin Supreme Court "decline[d] to conclude that the confluence of hot pursuit and probable cause to arrest for a jailable offense will *always* justify a warrantless entry" because it found such a per se exception unreasonable. 887 N.W.2d 554, 565 (Wis. 2016) (emphasis added).

those protections, and warrantless entry will be much more commonplace. *See Welsh*, 466 U.S. at 749–50.

B. No exigencies surrounded law enforcement's warrantless entry into Dobbs's garage to serve as an alternative exception to the warrant requirement.

Beyond hot pursuit of a misdemeanant, the State does not advance other exigencies in this case to justify warrantless entry. *See* R. 2–3. Without this proposed categorical exception, courts look to the "totality of the circumstances" to determine whether exigent circumstances "justified acting without a warrant." *McNeely*, 569 U.S. at 149. Courts take a "finely tuned approach" in assessing the reasonableness of officers' actions under the Fourth Amendment. *Id.* at 150 (citing *Atwater v. Lago Vista*, 532 U.S. 318, 347, n. 16 (2001)).

For its approach, Iowa has adopted six factors to help determine the existence of exigent circumstances. *State v. Jones*, 274 N.W.2d 273, 275 (Iowa 1979) (citing *Dorman v. United States*, 435 F.2d 385, 392–93 (D.C. Cir. 1970)). Guiding factors for courts include whether:

(1) a grave offense is involved;
(2) the suspect is reasonably believed to be armed;
(3) there is probable cause to believe the suspect committed the crime;

(4) there is strong reason to believe he is on the premises;
(5) there is a strong likelihood of escape if not apprehended; and
(6) the entry, though not [] consented to, is peaceable.

Id. These factors are not "conditions precedent, but [] they are important in deciding if warrantless entry into one's dwelling house may be made to effect an arrest based on probable cause." *Id.* at 276.

While the Court in *State v. Jones* noted that not all factors must be present to find exigent circumstances, all factors were, in fact, present. *Id.* The court particularly emphasized the first factor relating to the severity of the offense, which aligns with the directive in *Welsh*. *Id.*; *see Welsh*, 466 U.S. at 753. In *Jones*, the offense at issue was breaking and entering, "a felony bearing a ten-year prison sentence." *Jones*, 274 N.W.2d at 276. The court found the felony-nature of the offense could be "singularly compelling" as to finding exigent circumstances, as in *Santana*. *Id.*; *see Santana*, 427 U.S. at 41.

All six factors are not present in Dobbs's case. *See* R. 1–2. Notably, the first factor relating to gravity of the offense—a potentially determinative factor—weighs against exigency. R. 2; *see Welsh*, 466 U.S. at 741 (noting minor offenses should rarely result in exigent circumstances to support warrantless entry of a home); *Jones*,

274 N.W.2d at 275. Dobbs's alleged crime on which to base any sort of exigency was a misdemeanor committed by simply driving 100 feet into his own garage, far less compelling than *Jones* where the defendant broke into a Hy-Vee grocery store, or in the case of other felony crimes. *See Jones*, 274 N.W.2d at 273, 276; R. 2.

Moreover, no facts in the record offer support for the reasonable belief that Dobbs was armed or that Dobbs posed a risk of escape—he had just rolled into his own garage after having been followed several blocks. R. 2; *see Jones*, 274 N.W.2d at 276. In fact, because he "had already arrived home . . . there was little remaining threat" or risk at all. *Welsh*, 466 U.S. at 753. Even in the event of conceding the remaining three factors of probable cause, suspect on the premises, and peaceable entry, they do not collectively rise to a serious exigency requiring warrantless entry. *See Stoneburner*, 716 F.3d at 931 ("If the presumption against warrantless entries stemming from minor crimes is to have any meaning, the exigency must be a serious one in that context."); *see also City of Seattle v. Altschuler*, 766 P.2d 518, 520 (Wash. Ct. App. 1989) ("The mere fact that [defendant] did not stop his car, without more, does not satisfy

the exigent circumstances requirement that would allow government agents to invade the sanctity of the home.").

Dobbs's case poses facts far less egregious than other similar cases where courts have found no exigent circumstances existed. *See, e.g.*, *State v. Bolte*, 560 A.2d 644 (N.J. 1989); *see also Altschuler*, 766 P.2d at 519–21 (holding hot pursuit alone was an inadequate basis for warrantless entry, nor were there exigent circumstances where police pursued defendant for 12 blocks with lights, siren, and loud-speaker announcements). For example, in *State v. Bolte*, a New Jersey police officer began following the defendant around 1:40am when the officer saw the defendant's car "swerving on and off the road"—much later than Dobbs had driven home without incident. *Bolte*, 560 A.2d at 645; R. 1. The officer in *Bolte* activated his lights after the defendant signaled his first turn and pursued the defendant for "four loops of the neighborhood" with "operation of the [defendant's] vehicle bec[oming] more erratic." 560 A.2d at 646. When the defendant finally stopped at his home, the officer followed him into his "garage, into the house[,] and upstairs to the bedroom" to arrest him. *Id.*

Prioritizing Fourth Amendment rights and applying the minor offense directives of *Welsh*, the New Jersey Supreme Court found hot

pursuit alone failed to justify warrantless entry for "disorderly persons offenses and . . . motor vehicle infractions," nor did the minor offenses result in exigent circumstances. *Id.* at 652, 654. Importantly, the court found the State's concession that the officer lacked probable cause "to believe [the defendant had been] driving while intoxicated" required reviewing the facts in light of *Welsh*'s "minor offense" instructions. *Id.* at 654; *see Welsh*, 466 U.S. at 750. Similarly, Trooper Twillstein did not have probable cause that Dobbs was driving intoxicated and only made observations of "apparent intoxication" after the warrantless entry. R. 2.; *see Bolte*, 560 A.2d at 654.

For the misdemeanor offense of eluding—carried out by pulling up the driveway—the State offers no other reason to apply the exigent circumstances exception beyond the trooper's brief pursuit. *See* R. 2–4. The Court "cannot be true to [the warrant] requirement and excuse the absence of a search warrant without a showing by [the State] that the exigencies of the situation made that course imperative." *McDonald*, 335 U.S. at 456. Therefore, Trooper Twillstein's warrantless entry violated Dobbs's Fourth Amendment rights.

C. Warrantless entry proved to be the improper course of law enforcement action because other forms of constitutional investigation or entry still remained.

The difficulties in satisfying a properly recognized warrant exception further demonstrates why warrantless entry was not the proper course of action in this case. *See McNeely*, 569 U.S. at 148. So far, this case remains void of any discussion regarding why Trooper Twillstein was unable to first obtain a warrant before entering Dobbs's home or why a "knock-and-talk" was an insufficient option. *See* R. 1–4. As pertains to the Fourth Amendment's warrant requirement, the Court is "not dealing with formalities"—a warrant "serves a high function." *McDonald*, 335 U.S. at 455.

In declining to recognize a categorical misdemeanor-pursuit exception to the Fourth Amendment's warrant requirement, the Florida Supreme Court in *State v. Markus* relied, in part, on the police officers' ability to have first obtained a warrant before entering the home. 211 So. 3d 894, 912 (Fla. 2017). The court refused to reward their failure to do so with a new exception. *Id.* Not only do warrants protect the privacy of citizens but they also place limits on the scope of law enforcement's intrusion. *Birchfield*, 136 S. Ct. at 2181. In *Markus*, law enforcement gave credence to the necessity of those

limitations. 211 So. 3d at 912. Parties testified law enforcement manhandled the occupants of the home, dragged individuals out of rooms, and rifled through closets and drawers. *Id.* While Dobbs does not allege Trooper Twillstein's conduct resembles that of law enforcement in *Markus*, his search was not as limited as it could have been. *See id.*; R. 2. Unlike other similar cases where officers have pursued suspects into open garages and led them back outside, Trooper Twillstein reopened Dobbs's garage himself and remained inside the structure for his search and subsequent arrest. *See Weber*, 887 N.W.2d at 566 ("We note that [the deputy's] intrusion here was appropriately limited.").

Absent other reasoning, the Court is left to believe Trooper Twillstein acted without a warrant to avoid the inconvenience or slight delay of constitutional alternatives; but "[t]hese are never very convincing reasons." *Johnson*, 333 U.S. at 15. The Court should not accept them as a basis for circumventing the Fourth Amendment's warrant requirement in this case.

II. Law enforcement's warrantless entry into Dobbs's garage violated Dobbs's Article I, Section 8 rights because no recognized exception to the warrant requirement was met, thus resulting in an unreasonable search.

Preservation of Error

Dobbs cited violations of his rights under Article I, Section 8 of the Iowa Constitution as grounds for his motion to suppress. R. 3. The district court's denial of his motion to suppress preserves error for appellate review. R. 6; *see State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998).

Standard of Review

The Court reviews a motion to suppress based on the deprivation of a state constitutional right de novo relying on the totality of the circumstances reflected in the record. *State v. Brown*, 930 N.W.2d 840, 844 (Iowa 2019).

Merits

Article I, Section 8 of the Iowa Constitution affords Dobbs parallel protections against unreasonable searches and seizures, along with the Fourth Amendment. U.S. Const. amend. IV; Iowa Const. art. I, § 8. Separate and apart from this case's conclusion under the Fourth Amendment, this Court faces the question of whether Trooper Twillstein's warrantless entry into Dobbs's garage

violated Dobbs's rights under Article I, Section 8. *See Ochoa*, 792 N.W.2d at 264–65. Because the provision's text, placement in the state constitution, and this Court's precedent all point to stronger protections under Article I, Section 8, an exception to the warrant requirement based on hot pursuit of a misdemeanant cannot be sustained. Iowa Const. art. I, § 8; *see Ochoa*, 792 N.W.2d at 291. Absent this exception and any showing of exigency by the State, this Court should find Trooper Twillstein's warrantless entry to have been unreasonable and in violation of Dobbs's Article I, Section 8 rights.

A. Broader protections against unreasonable searches and seizures afforded to Iowans under Article I, Section 8 make recognition of a categorical misdemeanant-pursuit exception unattainable.

The Court exercises its own independent judgment in defining the parameters of state constitutional rights. *State v. Gaskins*, 866 N.W.2d 1, 7 (Iowa 2015). And parties invoking state constitutional rights make their case separate from arguments regarding the federal provisions. *See State v. Gibbs*, 941 N.W.2d 888, 902 (Iowa 2020) (McDonald, J., concurring). Given this, assessing the contours of Iowans' rights under Article I, Section 8 in light of its text, constitutional structure, history, and precedent demonstrate robust

protections against unreasonable searches and seizures that cannot be squared with a categorical exception to excuse the mere hot pursuit of a misdemeanant from the provision's warrant requirement. Iowa Const. art. I, § 8; *see Ochoa*, 792 N.W.2d at 268, 274.

1. Both textual and structural evidence support broader protections against unreasonable search and seizure under Article I, Section 8.

Beginning its review with Article I, Section 8's very text, Court will recognize the "*nearly* identical" language granting protections against unreasonable searches and seizures as that of the Fourth Amendment. *State v. Short*, 851 N.W.2d 474, 500 (Iowa 2014) (emphasis in original). But a closer review of the text in its structural and historical context strongly supports the growing body of case law recognizing a need, on occasion, to extend the state constitutional right against law enforcement's warrantless conduct beyond protections granted by its federal counterpart. *See, e.g.*, *Ochoa*, 792 N.W.2d at 291.

Article I, Section 8 consists of a Reasonableness Clause and a Warrant Clause, separated by a semicolon, and reads:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause,

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

Iowa Const. art. I, § 8. This Court acknowledges an even closer relationship between the Reasonableness Clause and the Warrant Clause in Article I, Section 8 than in the Fourth Amendment because of the linking semicolon, as opposed to a comma. *Compare* U.S. Const. amend IV, *with* Iowa Const. art. I, § 8; *Ochoa*, 792 N.W.2d 268–69 (citing William Strunk, Jr. & E.B. White, *The Elements of Style* 6 (4th ed. 2000)).

This Court likens the clause's close relationship to the sister provision of the Massachusetts Constitution on which Article I, Section 8 is modeled. *Short*, 851 N.W.2d at 483. The Massachusetts Constitution does not include a coordinate semicolon; instead, its Article XIV first secures the right against unreasonable searches and seizures for citizens and then associates "[a]ll warrants" with that right, evidenced by use of the word "therefore." Mass. Const. art. XIV. Accordingly, Massachusetts's Article XIV "frequently aligns" with Fourth Amendment precedent, but sometimes it secures "more substantive protection to individuals than that provided by the Fourth Amendment." *Commonwealth v. Alexis*, 112 N.E.3d 796, 803 (Mass.

2018). Similarly, Article I, Section 8's Reasonableness Clause cannot override and reduce the Warrant Clause to "mere surplusage." *Ochoa*, 792 N.W.2d at 269. Therefore, the closer relationship between the clauses signified by the semicolon offers a more formidable shield against unreasonable, warrantless entry than the Fourth Amendment. *Id.*; *cf. Alexis*, 112 N.E.3d at 803.

While some critique the use of a single mark of punctuation as the basis for stronger protections under Article I, Section 8, the prominent placement of Iowa's Bill of Rights in the Constitution's structure further supports valuing citizens' rights to privacy and security above law enforcement's warrantless entry. *Ochoa*, 792 N.W.2d at 274; *see, e.g.*, *Short*, 851 N.W.2d at 522 (Mansfield, J., dissenting) ("I do not think one can use this inconsequential punctuation difference to justify a different interpretation of article I, section 8."). Unlike the Federal Bill of Rights that had its initial proposal defeated late in the Constitutional Convention and was ultimately formulated through initial amendments to the ratified Constitution,[2] Iowa's Bill of Rights features prominently as Article I.

[2] Elbridge Gerry motioned late in the convention for a Bill of Rights and George Mason seconded, but the motion failed. Jeff

Iowa Const. art. I; Jeff Broadwater, *George Mason, James Madison, and the Evolution of the Bill of Rights*, 15 Geo. J.L. & Pub. Pol'y 547, 549, 567 (2017). Additionally, the Framers regularly looked to states for the "preservation of individual rights," so the extension of a state constitutional provision against unreasonable searches and seizures beyond the bounds of its federal counterpart, if needed, makes perfect historical sense. *Short*, 851 N.W.2d at 482.

Iowa's constitutional drafters prided themselves on preserving individual rights. *See id.* at 482–83 (citing 1 THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF IOWA 103 (W. Blair Lord rep., 1857)). In fact, the Chair of the Committee on the Preamble and Bill of Rights at the state's constitutional convention indicated, "[T]he Bill of Rights is of more importance than all the other clauses in the Constitution put together, because it is the foundation and written security upon which the people rest their rights." *Id.* And not

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Broadwater, *George Mason, James Madison, and the Evolution of the Bill of Rights*, 15 Geo. J.L. & Pub. Pol'y 547, 549 (2017). When the Bill of Rights was sent to the states in September 1789 for ratification, "the proposed revisions to the Constitution were labeled simply 'amendments.'" *Id.* at 567.

only is it the most important part but drafters hoped Iowa's would be the "best . . . Bill of Rights." *Ochoa*, 792 N.W.2d at 274 (quoting 1 THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF IOWA 10001 (W. Blair Lord rep., 1857)).

These grammatical, structural, and desired differences between Article I, Section 8 and the Fourth Amendment all point to ample protections against unreasonable searches and seizures, offering Iowans constitutional coverage even in instances when the Fourth Amendment may not.

2. Recent precedent demonstrates how Article I, Section 8 extends beyond Fourth Amendment lines to shield Iowans from unreasonable searches.

Iowa stands among many states that have shaken off the "lockstep approach" to analyzing parallel state constitutional provisions in congruence with the Supreme Court's interpretation of federal provisions. *Ochoa*, 792 N.W.2d at 266–67. The resulting independent interpretation of Article I, Section 8 has expanded the contours of protections against unreasonable searches and seizures beyond the Fourth Amendment, or at least held the line against some "eviscerating innovation[s]" delivered by Supreme Court Fourth Amendment jurisprudence. *Short*, 851 N.W.2d at 500 (citing *Ochoa*,

792 N.W.2d at 291); *see Gaskins*, 866 N.W.2d at 13–14. The Court's Article I, Section 8 analysis allows Iowa to adopt a "precise and focused" search and seizure analysis when a "sweeping and sprawling . . . one-size-fits-all approach" does not uphold the rights of Iowans. *Ochoa*, 792 N.W.2d at 290.

When it comes to Article I, Section 8, this Court has stated its preference for "consider[ing] the law step by step rather than by leaps and bounds." *Short*, 851 N.W.2d at 505. With its misdemeanant-pursuit exception to Article I, Section 8's warrant requirement, however, the State asks this Court to make an enormous leap toward eroding the bounds of search and seizure protections with a sweeping, one-size-fits-all pursuit rule. *See id.*; *Ochoa*, 792 N.W.2d at 290; R. 6. Granting the State's request below, the district court relied on *State v. Pink*, 648 N.W.2d 107 (Iowa 2002), and *State v. Legg*, 633 N.W.2d 763 (Iowa 2001). R. 6. The Court of Appeals, however, rightly pointed out the absence of any mention of Article I, Section 8 in those decisions. *Pink*, 648 N.W.2d at 107; *Legg*, 633 N.W.2d at 763; R. 11. The defendant in *Legg* "offered no reason to distinguish the state constitutional guarantee from the federal provision," perhaps because meaningful precedent recognizing distinctions between Article I,

Section 8 and the Fourth Amendment was still to come. *Legg*, 633 N.W.2d at 765, n.1. While state and federal Fourth Amendment decisions may be persuasive, recent Article I, Section 8 case law better informs whether such an exception fits within the state provision's parameters. *See Short*, 851 N.W.2d at 481.

Since *Legg* and *Pink*, this Court has held firm in maintaining a robust warrant requirement under the state constitution, especially as relating to "a home invasion by law enforcement." *Short*, 851 N.W.2d at 503 (decided 13 years after *Legg* and 12 years after *Pink*). In *State v. Ochoa* and *State v. Short*, the Court came up against a line of precedent from the Supreme Court permitting warrantless searches of the homes and persons of probationers and parolees. *Short*, 851 N.W.2d at 500; *Ochoa*, 792 N.W.2d at 280–82; *see Samson v. California*, 547 U.S. 843 (2006); *United States v. Knights*, 534 U.S. 112 (2001); *Griffin v. Wisconsin*, 483 U.S. 868 (1987). In both cases, this Court declined to adopt the same "innovative reasoning" for Article I, Section 8 that the Supreme Court had used to support its move away from the Fourth Amendment's warrant requirement protection of parolees and probationers. *Short*, 851 N.W.2d at 506; *Ochoa*, 792 N.W.2d at 291. *Ochoa* held Article I, Section 8 prohibits

subjecting parolees to "broad, warrantless searches by a general law enforcement officer without any particularized suspicion"—acts resembling Britain's general warrant. 792 N.W.2d at 291; *see Samson*, 547 U.S. at 856–57. *Short* declined to "retreat [from the warrant requirement] under the Iowa Constitution," holding it applicable and enforceable to protect the rights of probationers in their homes. 851 N.W.2d at 506; *see Knights*, 534 U.S. at 121–22; *Griffin*, 483 U.S. at 879–80.

In *State v. Gaskins*, the Court diverged from Fourth Amendment precedent relating to the rationale for search-incident-to-arrest exception under Article I, Section 8. 866 N.W.2d at 14. *Gaskins* recognized the validity of warrantless searches in the event of arrest for the purposes of ensuring officer safety and preventing evidence destruction. *Id.* at 12–13. The Court, however, stopped there and rejected the more expansive justification of gathering additional evidence recognized under the Fourth Amendment. *Id.* at 13; *see Arizona v. Gant*, 556 U.S. 332, 347 (2009). The Court reasoned holding otherwise "would permit the SITA exception to swallow completely the fundamental textual rule in [A]rticle I, [S]ection 8 that searches and seizures should be supported by a warrant." *Gaskins*,

866 N.W.2d at 13; *see Gant*, 556 U.S. at 347. Similarly, the Court signaled a higher standard for voluntary consent under Article I, Section 8 in *State v. Pals* that requires officers inform parties of their ability to leave or refuse consent—a necessity not required for consent under the Fourth Amendment. 805 N.W.2d 767, 782–83 (Iowa 2011).

Together, these recent Article I, Section 8 decisions indicate the incompatibility of the sweeping misdemeanor-pursuit exception with state constitutional law.[3] *See Ochoa*, 792 N.W.2d at 290. Each case

[3] Florida serves as a noteworthy example for the Court of a state recently rejecting this kind of misdemeanor-pursuit exception under its state constitution, as well as under the Fourth Amendment. *State v. Markus*, 211 So. 3d 894, 912 (Fla. 2017) ("[W]e hold that the exigent circumstance of hot pursuit here on these facts does not justify a warrantless home search and arrest when the underlying conduct for which there is probable cause is the alleged violation here—a nonviolent misdemeanor."). Like Iowa, Florida's state constitution also places its Bill of Rights in Article I, but their supreme court rejected the exception where the Reasonableness Clause and a Warrant Clause of the search and seizure provision are contained in two independent sentences. Fla. Const. art. I, § 12.

demonstrates Article I, Section 8's imposition of limitations on law enforcement to strengthen the warrant requirement—not to bend the state constitution to fit the officer's actions or what is convenient in the circumstances. *Short*, 851 N.W.2d at 502; *see also Brown*, 930 N.W.2d at 849 (recognizing higher standards for warrantless searches in traffic stops "help limit the potential for an abuse of authority"). While Trooper Twillstein's short pursuit of Dobbs may make it "tempting . . . to say . . .that the constitutional requirements have been satisfied," "the reasonableness clause [is not] a generalized trump card to override the warrant clause in the context of home searches." *Short*, 851 N.W.2d at 502. Therefore, independent analysis of Article I, Section 8 cannot support recognizing a categorical exception to the warrant requirement in every event of hot pursuit of a misdemeanant; the state constitution demands more. *See* Iowa Const. art. I, § 8; *Short*, 851 N.W.2d at 502.

B. The State has made no showing of exigency beyond hot pursuit to otherwise satisfy an exception to Article I, Section 8's warrant requirement.

Like the reasonableness of the search under the Fourth Amendment, the State relies, singularly, on the categorical hot pursuit of a misdemeanor exception for sustaining Trooper

Twillstein's search under Article I, Section 8. *See* R. 2–3. The burden lies with the State to prove the circumstances of a warrantless entry satisfy a recognized exception. *Naujoks*, 637 N.W.2d at 109. In line with to the *Dorman* factors, well-recognized instances involving the exigent circumstances exception "usually include 'danger of violence and injury to the officers or others; risk of the subject's escape; or the probability that, unless taken on the spot, evidence will be concealed or destroyed.'" *State v. Nitcher*, 720 N.W.2d 547, 555 (Iowa 2006) (quoting *State v. Holtz*, 300 N.W.2d 888, 893 (Iowa 1981)); *see Jones*, 274 N.W.2d at 275. Not only do the aforementioned facts relating to Trooper Twillstein's warrantless conduct not fall within the recognized concerns addressed by the exigent circumstances exception but the State also abstains from any attempt to argue that they do. *See* R. 2–5.

The exigent circumstances exception grants law enforcement an opportunity to proceed with a search or seizure when "confronted with an emergency" that necessitates dispensing with the delay of obtaining a warrant. *State v. Strong*, 493 N.W.2d 834, 836–37 (Iowa 1992). Law enforcement bears the responsibility of articulating the basis for that emergency. *Naujoks*, 637 N.W.2d at 109. In this case,

Trooper Twillstein has not articulated an emergency that prevented him from taking the time to obtain a warrant beyond Dobbs's brief travel into his garage as constituting flight and hot pursuit. *See* R. 3. The "integrity [that Article I, Section 8] deserves and demands" cannot condone such a weak claim to exigency. *State v. Baldon*, 829 N.W.2d 785, 802 (Iowa 2013). "Even if [the Court] were inclined to fuzzy up the warrant requirement" with a lower threshold for exigency "a home invasion by law enforcement officers is the last place [it sh]ould begin the process." *Short*, 851 N.W.2d at 503. Therefore, the Court should find no exigent circumstances necessitated law enforcement's warrantless actions against Dobbs. *See id.*

CONCLUSION

Appellant respectfully requests the Court find the denial of his motion to suppress was made in err and affirm the decision of the Court of Appeals.

REQUEST FOR ORAL ARGUMENT

Upon submitting this case to the Court, counsel for Appellant respectfully requests to be heard in oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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