

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

<b>STATE OF IOWA,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>CHARLES A. AMBLE and JOHN J. MANDRACCHIA,</b>  <b>Defendants.</b>	<b>CASE NO. FECR372327,</b> <b>FECR372333</b>  <b>RULING ON DEFENDANTS’</b> <b>MOTION TO SUPPRESS</b>
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A contested hearing on the defendants’ motion to suppress was held before undersigned on October 11, 2023 as previously scheduled. Upon consideration of the evidence and argument offered at the hearing, and having reviewed the file and being otherwise duly advised in the premises, the court rules as follows:

The defendants seek the suppression of all evidence obtained following the execution of a search warrant on or about July 20, 2023 at their residence at 2021 38<sup>th</sup> Street in Des Moines, Iowa. The sole basis for the approval of the search warrant was the result of multiple prior retrievals of trash bags from the curb of that residence, all undertaken without a search warrant. The state contends that the warrantless retrievals were proper pursuant to Iowa Code §808.16, while the defendants argue that this statute is itself an unconstitutional intrusion into the court’s exclusive authority to interpret the Iowa Constitution. As the motion derives from the execution of a search warrant, the burden is on the defendant to establish that the basis for the warrant was improper. State v. Farber, 314 N.W.2d 365, 367 (Iowa 1982); State v. Garrett, 183 N.W.2d 652, 656 (Iowa 1971) (burden is on the defendant to show warrant was invalidly issued or the evidence was illegally obtained).

In order to frame the competing arguments properly, a brief history of warrantless searches of a suspect's trash under Iowa law is in order. In June of 2021, the Iowa Supreme Court addressed for the first time the issue of whether a warrantless search of a person's trash (which ultimately justified the execution of a search warrant) was an improper search and seizure under the Iowa Constitution. State v. Wright, 961 N.W.2d 396 (Iowa 2021). In Wright, the supreme court held that the trash retrieval was improper, concluding 1) the officer's presence on the suspect's property was an unconstitutional trespass in the absence of a warrant; and 2) the retrieval of the suspect's trash violated his reasonable expectation of privacy, despite having placed the trash on the curbside. Id. at 417, 419. In addressing the trespass issue, the court relied extensively, but not exclusively, on the presence of a municipal ordinance that prohibited anyone other than "an authorized solid waste collector" from collecting trash that has been placed for collection. Id. at 416. In so holding, however, the court was clear that the existence of a particular ordinance was not controlling:

Of course, this is not to say article I, section 8 [of the Iowa Constitution]<sup>1</sup> rises and falls based on a particular municipal law. Municipal laws, like all positive laws, are merely one form of evidence of the limits of a peace officer's authority to act without a warrant. Further, while positive law may help establish a person's Fourth Amendment interest there may be some circumstances where positive law cannot be used to defeat it. For example, neither the legislature nor a municipality could pass laws declaring your house or papers to be your property except to the extent the police wish to search them without cause. Article I, section 8 precludes a peace officer

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<sup>1</sup> Article I, section 8 of the Iowa Constitution reads as follows:

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.

from engaging in general criminal investigation that constitutes a trespass against a citizen's house, papers, or effects.<sup>2</sup> **No department of the government can circumvent this constitutional minimum.**

Id. at 417 (internal citations and quotation marks omitted) (emphasis added).

Regarding the reasonable expectation of privacy issue, the court adopted the reasoning of Justice Gorsuch in Carpenter v. U.S., 585 U.S. \_\_\_\_\_, \_\_\_\_\_, 138 S.Ct. 2206, 2266 (2018) that finding no such expectation “yielded an often unpredictable—and sometimes unbelievable—jurisprudence:”

We believe Justice Gorsuch has the better of the argument here. Garbage contains intimate and private details of life. When a citizen places garbage out for collection in a closed garbage bag, the contents of the bag are private, as a factual matter. The citizen understands, however, that the contents of the bag may be revealed to someone at some point in time. That a citizen may actually lose privacy in certain things or in certain information at some point in the future does not preclude the possibility that a peace officer nonetheless violated the citizen's right to privacy in accessing the same things or information. Privacy rights do not protect a reasonable expectation that privacy will be maintained, but rather a reasonable expectation that privacy will not be lost in certain ways.

Wright, 961 N.W.2d at 418-19 (internal citations and quotation marks omitted). The court identified the source of this expectation as “positive law”—either the city ordinance previously cited, or simply “by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.” Id. at 419 (citation omitted). “The mere fact that a citizen elects to dispose of his garbage in the customary way by making it available for pickup by a municipal or privately-retained hauler is no basis for concluding that his expectation of privacy as to that garbage is unjustified.” Id.

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<sup>2</sup> The court had earlier determined that the garbage taken from the trash grabs were “effects” and some of the trash (two pieces of mail) were “papers” under article I, section 8 of the Iowa Constitution. Id. at 414.

The court concluded its analysis in Wright by dispatching the state's argument that invalidating warrantless trash grabs takes away a valuable tool for law enforcement:

We do not question the utility of warrantless trash grabs for the purposes of law enforcement, but the utility of warrantless activity is not the issue under our constitution. The mere fact that law enforcement may be made more efficient can never by itself justify disregard of the constitution. Obviously, investigation of crime would always be simplified if warrants were unnecessary.

Id. at 420 (internal citation and quotation marks omitted).

The Iowa Supreme Court had an opportunity to address the issue again in a decision filed later in 2021, State v. Kuuttila, 965 N.W.2d 484 (Iowa 2021).<sup>3</sup> In coming to a similar conclusion (invalidating the warrantless trash grab and remanding for further proceedings), the court clarified the relationship between the existence of a municipal ordinance dealing with waste collection and the required expectation of privacy:

Both rationales are applicable in this case. Kuuttila resided in the City of Nevada. As in Wright, the Nevada municipal code prohibits any person from taking or collecting any solid waste which has been placed out for collection on any premises, unless such person is an authorized solid waste collector. Violation of the city code is punishable by a fine of up to \$500 or imprisonment for up to thirty days. Boeckman was not an authorized solid waste collector, and he acted unlawfully and thus unreasonably in seizing and searching Kuuttila's trash without a warrant. In addition, Nevada's ordinance, like similar municipal ordinances, is positive evidence of a societal expectation that trash left out shall remain private and not disturbed by anyone other than an authorized collector. Boeckman violated this expectation of privacy in seizing and searching Kuuttila's trash without a warrant.

Id. at 487.

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<sup>3</sup> A third decision, State v. Hahn, 961 N.W.2d 370 (Iowa 2021), came down on the same day as Wright. It merely reinforced the holding in Wright and was focused on error preservation issues. Id. at 372.

In the ensuing legislative session, the Iowa Legislature passed S.F. 2296, which went into effect as Iowa Code §808.16 on July 1, 2022. That statute reads as follows:

1. It is the public policy of this state that a person has no reasonable expectation of privacy in garbage placed outside of the person's residence for waste collection in a publicly accessible area.
2. A city or county shall only adopt an ordinance or a regulation concerning waste management and sanitation for the purposes of promoting public health and cleanliness. An ordinance or a regulation adopted by a city or county shall not be construed by a person to create a reasonable expectation of privacy in garbage placed outside of the person's residence for waste collection in a publicly accessible area.
3. Garbage placed outside of a person's residence for waste collection in a publicly accessible area shall be deemed abandoned property and shall not be considered to be constitutionally protected papers or effects of the person.
4. A peace officer may conduct a search and may seize garbage placed outside of a person's residence for waste collection in a publicly accessible area without making an application for a search warrant.

Iowa Code §808.16 (2023). There is no dispute that §808.16 would be applicable under the facts of this case, if properly enacted (just as there is no dispute that Wright and its progeny would be applicable absent application of the statute). The sole dispute is whether §808.16 was a proper application of legislative authority following the decisions in Wright, Hahn and Kuuttila. For the reasons noted in this ruling, the court concludes that the legislature acted in violation of the constitutional roles of the legislative and judicial branches when it enacted §808.16, and that the result of the present motion is controlled by the Iowa Supreme Court's prior pronouncements in those cases.

It is clear from a plain reading of the statute that the legislature intended to do far more than simply clarify the property rights of a resident in his or her garbage, as

suggested by the state. It addressed what is or is not a citizen's reasonable expectation of privacy, what are to be considered constitutionally protected papers and effects, and dictates when a warrantless search can occur. All of these subjects derive from article I, section 8 of the Iowa Constitution,<sup>4</sup> a source whose meaning is left to the courts as the final arbiter. Wright, 961 N.W.2d at 402; Burns, 988 N.W.2d at 360. While this role as final arbiter is typically applied to justify the Iowa court's independence from federal interpretations of similar language in the United States Constitution, id., it is equally applicable in determining who has the final say vis-à-vis the legislature in determining what is constitutional:

This court is the final arbiter of what the Iowa Constitution means....Nonetheless, this court gives respectful consideration to the legislature's understanding of constitutional language, especially in the case of a contemporaneous legislative exposition of such language.

Green v. City of Cascade, 231 N.W.2d 882, 890 (Iowa 1975) (quoted in Chiodo v. Section 43.24 Panel, 846 N.W.2d 845, 855 (2014)).

In the case of the passage of §808.16, it is obvious that the legislature disagreed with the holdings in Wright, Hahn and Kuuttila, and simply elected to vacate those constitutional pronouncements by legislative fiat. The legislature is vested with the power to “pass all laws necessary to carry [the Iowa Constitution] into effect,” Iowa Const., art. XII, §1, not the power to enact legislation forbidden by the constitution. Duncan v. City of Des Moines, 222 Iowa 218, \_\_\_, 268 N.W. 547, 553 (1936). The legislature can no more pass on a constitutional issue already decided by the courts than the courts can choose to ignore legislation that does not have a constitutional implication

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<sup>4</sup> See State v. Burns, 988 N.W.2d 352, 367 (Iowa 2023) (Article I, section 8 protects reasonable expectations of privacy).

simply because they disagree with it. The court's obligation to give "respectful consideration" to legislative language, Green, 222 Iowa at \_\_\_\_, 231 N.W.2d at 890, does not mean that the legislature can usurp the court's final authority on what is and what is not constitutional.

As a result, the legislature overstepped when it passed §808.16 in the aftermath of Wright, Hahn and Kuuttila. That legislation is considered void as inconsistent with the language of article I, section 8 of the Iowa Constitution as interpreted by the Iowa Supreme Court. Iowa Const. art XII, §1 ("This Constitution shall be the supreme law of the State, and any law inconsistent therewith, shall be void"). As there is no dispute as to the factual background at issue in these cases, and more specifically that it comes squarely within the holdings in Wright and its progeny, the warrantless trash grabs were improper and the resulting search warrant equally lacking. The evidence obtained from these efforts was obtained in violation of the Iowa Constitution and will be suppressed.

**IT IS THEREFORE ORDERED** that the defendants' motion to suppress is granted. All of the evidence obtained from the trash grabs from the defendants' residence and the ensuing search warrant shall not be admissible at trial.



State of Iowa Courts

**Case Number**  
FECR372327  
**Type:**

**Case Title**  
STATE VS CHARLES AARON AMBLE  
OTHER ORDER

So Ordered

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Michael D. Huppert, District Court Judge,  
Fifth Judicial District of Iowa

Electronically signed on 2023-11-13 13:39:23