

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	S.CT. NO. 19-1219
)	
BRIAN DE ARRIE MCGEE,)	
)	
Defendant-Appellant.)	

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HON. WILLIAM PRICE, JUDGE (MOTION TO SUPPRESS),
HON. BECKY GOETTSCH, JUDGE (BENCH TRIAL ON THE
MINUTES), & HON. CHRISTOPHER KEMP (SENTENCING)

APPELLANT'S REPLY BRIEF

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CERTIFICATE OF SERVICE

On August 27, 2020, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Brian McGee, 685 SE Prairie Park Lane, Waukee, Iowa 50263.

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VKR/vkr/08/20

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STATEMENT OF THE ISSUE*^S PRESENTED FOR REVIEW

I). The district court erred in denying McGee's motion to suppress the warrantless blood draw obtained under Iowa Code § 321J.7 ("Dead or Unconscious Persons").¹

Authorities

State v. Ochoa, 792 N.W.2d 260, 269 (Iowa 2010)

State v. Brown, 930 N.W.2d 840, 846 (Iowa 2019)

State v. Villarreal, 475 S.W.3d 784, 813 (Tex. Crim. App. 2014)

¹ Divisions II and III are not addressed in this Reply.

STATEMENT OF THE CASE

COMES NOW the defendant-appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's brief filed on or about July 22, 2020. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I). The district court erred in denying McGee's motion to suppress the warrantless blood draw obtained under Iowa Code § 321J.7 ("Dead or Unconscious Persons")

Fourth Amendment of the U.S. Constitution and Article I, Section 8 of the Iowa Constitution:

General reasonableness considerations cannot override the warrant requirement. See e.g., State v. Ochoa, 792 N.W.2d 260, 269 (Iowa 2010) ("...[T]he Reasonableness Clause cannot be used to override the Warrant Clause. Otherwise, the Warrant Clause would be mere surplusage."). See also State v. Brown, 930 N.W.2d 840, 846 (Iowa 2019) (discussing

debate among members of the Court concerning significance of Article I section 8's use of semicolon between the clauses).

Further, implied consent statutes are not a “standalone” exception to the warrant requirement. See e.g., State v. Villarreal, 475 S.W.3d 784, 813 (Tex. Crim. App. 2014) (“We hold that the provisions in the Transportation Code do not, taken by themselves, form a constitutionally valid alternative to the Fourth Amendment warrant requirement”; rather, State must prove blood draw conducted pursuant to such state implied consent statute fell within “one of the established exceptions to the warrant requirement”).

CONCLUSION

McGee requests the Court reverse his conviction, and remand for suppression of all evidence flowing from the stop, with directions that any retrial be limited only to the “any amount” alternative (as the district court already acquitted McGee on the “under the influence” alternative).

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Reply Brief and Argument was \$____0____, and that amount has been paid in full by the State Appellate Defender.

VIDHYA K. REDDY

Assistant Appellate Defender

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-
STYLE REQUIREMENTS**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(f)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 289 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(f)(1).



8/26/20

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