IN THE SUPREME COURT OF IOWA
Supreme Court No. 21–1115

STATE OF IOWA,
Plaintiff-Appellant,

vs.

FETHE FESHAYE BARAKI,
Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE JOHN C. NELSON, JUDGE

APPELLANT'S BRIEF

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I. The district court erred by considering the defendant's subjective understanding of the Implied Consent Advisory instead of evaluating whether the officer made an objectively reasonable effort to communicate the Advisory to him.

Authorities

State v. Garcia, 756 N.W.2d 216 (Iowa 2008)
State v. Knous, 313 N.W.2d 510 (Iowa 1981)
State v. Piddington, 623 N.W.2d 528 (Wis. 2001)
State v. Wright, 961 N.W.2d 396 (Iowa 2021)
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ROUTING STATEMENT

None of the retention criteria in Iowa Rule of Appellate Procedure 6.1101(2) apply to the issues raised in this case, so transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(1).

STATEMENT OF THE CASE

Nature of the Case

The State of Iowa seeks discretionary review from an order suppressing the results of a DataMaster breath test. The district court held that the defendant, Fethe Feshay Baraki, "did not understand the Implied Consent Advisory and thus could not give valid consent" to take the DataMaster test. Because the district court applied the wrong test, this Court should reverse.

Course of Proceedings and Facts

An officer arrived to conduct an OWI investigation on the defendant after he had been stopped for a traffic violation. Tr. Suppress Hr'g, 5:2–15. After roadside investigation offered probable cause to arrest the defendant, the officer transported him to jail for more testing. *Id.* at 5:16 to 6:17.

During the investigation, the officer noticed "a pretty distinct language barrier." *Id.* at 5:20–21. The defendant is from Eritrea and speaks the Tigrinya language. *Id.* at 5:21–22, 12:24 to 13:2. The officer

called the "Language Line" to get an interpreter to help convey the Implied Consent Advisory. *Id.* at 6:18 to 7:9. No Tigrinya interpreter was available, and there was no estimate when an appropriate interpreter "would … become available." *Id.* at 7:1–9, 12:24 to 13:2. The officer tried to use "Google translate" to translate the Implied Consent Advisory, but Google translate did not translate from English to Tigrinya. *Id.* at 8:24 to 9:9.

The officer read the Advisory to the defendant in English. *Id.* at 8:20–23. The officer did not "believe [the defendant] understood the entire thing" and was "not sure" whether the defendant "understood the consent portion." *Id.* at 13:7–24. The officer used "short phrases" and "hand gestures" to determine if the defendant consented to the DataMaster test. *Id.* at 9:10–16. The defendant consented and blew a 0.114. *Id.* at 9:17–24, Mins. Test. at 2, 13, 16; C. App. 8, 19, 22.

The defendant moved to suppress the DataMaster results arguing that he did not knowingly consent to the test. Mot. Suppress; App.6. The State resisted. Rest. Mot. Suppress; App.13. The district court held a hearing. Tr. Suppress Hr'g. While the district court found that the officer "did nothing wrong," it suppressed the DataMaster results because the "Defendant did not understand the Implied

Consent Advisory and thus could not give valid consent." Order Suppressing Evid. at 2; App.20. The State sought discretionary review. Appl. Discretionary Review; App.22.

ARGUMENT

I. The district court erred by considering the defendant's subjective understanding of the Implied Consent Advisory instead of evaluating whether the officer made an objectively reasonable effort to communicate the Advisory to him.

Preservation of Error

The State preserved error by resisting suppression of the DataMaster results and receiving an adverse ruling. Rest. Mot. Suppress; App.13; Order Suppressing Evid.; App.19.

Standard of Review

This Court reviews suppression rulings on whether a defendant voluntarily submitted to chemical testing de novo. *State v. Garcia*, 756 N.W.2d 216, 219 (Iowa 2008). While "not bound by the district court's factual findings," it "give[s them] considerable weight...." *Id.* at 219–20.

Merits

The district court suppressed the results of the defendant's DataMaster test because he "did not understand the Implied Consent Advisory and thus could not give valid consent." Order Suppressing

Evid. at 2; App.20. The district court failed to apply the governing caselaw which led it to wrongly suppress the DataMaster test.

The district court failed to consider the controlling case in its ruling. In *State v. Garcia*, the Iowa Supreme Court provided the standard for considering whether an officer adequately conveyed Iowa's Implied Consent Advisory to a non-English-speaking driver. 756 N.W.2d 216 (Iowa 2008). It held that an officer must use "methods which are reasonable, and would reasonably convey the implied consent warnings" "under the circumstances facing [the officer] at the time of the arrest." *Id.* at 222 (quoting *State v. Piddington*, 623 N.W.2d 528, 534–35 (Wis. 2001)). "[T]he determination of whether the law enforcement officer reasonably conveyed the implied consent warnings is based upon the objective conduct of that officer, rather than upon the comprehension of the accused driver." *Id.* (quoting *Piddington*, 623 N.W.2d at 539). The district court failed to cite *Garcia* or apply its test.

Instead, the district court suppressed the DataMaster results because the defendant "did not understand the Implied Consent Advisory." Order Suppressing Evid. at 2; App.20. But under *Garcia*, the defendant's "comprehension" of the Implied Consent Advisory

does not matter. *Garcia*, 756 N.W.2d at 222. Thus, the district court erred by suppressing the results because the defendant did not understand the Advisory.

By analyzing the defendant's understanding of the Implied Consent Advisory, the district court failed to conduct the correct analysis: whether the officer used "methods which [we]re reasonable" "under the circumstances" to convey the Advisory. *Compare id.*, *with* Order Suppressing Evid. at 2; App.20. The court's only analysis of the officer's conduct led it to find that he "did nothing wrong." Order Suppressing Evid. at 2; App.20. That suggests that the officer used reasonable methods to convey the Advisory. The record supports such a conclusion. The officer tried to secure an interpreter who spoke Tigrinya but none were available. Tr. Mot. Hr'g, 7:1–9, 12:24 to 13:2. Then he tried to use Google translate to translate the Advisory from English to Tigrinya. *Id.* at 8:24 to 9:5. When the officer had no way to translate the form from English to Tigrinya, he read the form to the defendant in English. *Id.* at 8:20–23. The officer's efforts to convey the Advisory were reasonable under the circumstances.

The officer's efforts here compare favorably to the officer's efforts approved in *Garcia*. There, an officer made no effort to read

the Advisory to the defendant in Spanish or secure an interpreter, though the officer "could understand [the defendant] and he seemed to understand her." *Garcia*, 756 N.W.2d at 219, 223. Here, the officer tried to secure an interpreter and then tried to use Google translate to convey the Advisory to the defendant. Unfortunately, those efforts failed. But as the Iowa Supreme Court said in *Garcia*, "[a]lthough making an interpreter available when possible is desirable, finding an interpreter is not absolutely necessary and should not 'interfere with the evidence-gathering purposes of the implied consent statute.'" *Garcia*, 756 N.W.2d at 222 (quoting *Yokoyama v. Comm'r of Public Safety*, 356 N.W.2d 830, 831 (Minn. Ct. App. 1984)). Indeed, an officer need not take "extraordinary" or "impracticable measures to convey the implied consent warnings." *Id.* (quoting *Piddington*, 623 N.W.2d at 542). Here, translating the Advisory from English to Tigrinya would have taken "extraordinary" measures that were "impracticable" if not impossible.

The State makes three other observations that support applying *Garcia*'s test here to hold that the DataMaster results are admissible. One, by choosing to drive in Iowa, the defendant "impliedly agree[d] to submit to a test in return for the privilege of using the public

highways." *Garcia*, 756 N.W.2d at 220 (quoting *State v. Knous*, 313 N.W.2d 510, 512 (Iowa 1981)). That his language barrier made it harder to make an informed choice whether to revoke that consent does not mean that he did not consent to the test. Two, excluding evidence when an officer "did nothing wrong" is incongruent with the exclusionary rule's purpose—deterring officer misconduct, remedying constitutional violations, and protecting the integrity of state courts by excluding illegally obtained evidence. *See State v. Wright*, 961 N.W.2d 396, 425 (Iowa 2021) (Appel, J. concurring) (discussing exclusionary rule). Three, affirming the suppression order would make it almost impossible to conduct a DataMaster test on anyone who speakers an uncommon language and little English. That result is inconsistent with section 321J's goal of stopping the "holocaust on our highways" from drunk driving. *Garcia*, 756 N.W.2d at 221.

The district court failed to apply the governing test when it suppressed the defendant's DataMaster results. It erred by considering the defendant's subjective understanding of the Implied Consent Advisory instead of whether the officer used objectively reasonable methods to convey the Advisory to the defendant. Because the officer used reasonable methods to convey the Advisory under the

circumstances, this Court should reverse the suppression order and rule the DataMaster results admissible.

CONCLUSION

The State requests that this Court reverse the district court's order suppressing the defendant's DataMaster results and rule that those results are admissible. Alternatively, the State asks that this Court remand for the district court to apply the correct test.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for nonoral submission.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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