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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 REPLY BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The district court erred by considering whether the defendant understood the implied consent warning instead of whether the officer acted reasonably in conveying the warning.

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ARGUMENT

I. The district court erred by considering whether the defendant understood the implied consent warning instead of whether the officer acted reasonably in conveying the warning.

Merits

In *State v. Garcia*, the Iowa Supreme Court explained that an officer satisfactorily advises a driver of the consequences of refusing a chemical test under the implied consent law if the officer, "under the circumstances facing him or her at the time of the arrest [uses] those methods which are reasonable, and would reasonably convey the implied consent warnings." 756 N.W.2d 216, 222 (Iowa 2008) (quoting *State v. Piddington*, 623 N.W.2d 528, 534–35 (Wis. 2001)). That is a reasonableness standard. *State v. Lukins*, 846 N.W.2d 902, 908 (Iowa 2014); *State v. Fischer*, 785 N.W.2d 697, 701 (Iowa 2010). It is objective and focuses on the officer's actions. *Garcia*, 756 N.W.2d at 22–23.

Here, the district court erred by failing to apply *Garcia*'s test of whether an officer used reasonable methods "under the circumstances" that "would reasonably convey the implied consent warnings." *See Garcia*, 756 N.W.2d at 222. Instead, the district court focused on the defendant's subjective understanding of the implied

consent warning. Indeed, the district court suppressed the defendant's DataMaster test results because he "did not understand the Implied Consent Advisory and thus could not give valid consent." Order Suppressing Evid. at 2; App.20. Focusing on the defendant's subjective understanding was error. *Garcia*, 756 N.W.2d at 222 ("The 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.... [W]hether the implied consent warnings were sufficiently administered must not depend upon the perception of the accused driver.") (quoting *Piddington*, 623 N.W.2d at 539).

Had the district court focused on the officer's conduct, it would have denied the motion to suppress. It found that the officer "did nothing wrong. He had no other options." Order Suppressing Evid. at 2; App.20. In other words, it found that the officer acted reasonably under the circumstances. Under *Garcia* the district court should have denied the motion to suppress. 756 N.W.2d at 222.

Disagreeing, the defendant argues that the district court properly focused on his understanding of the implied consent warning. Defendant Br. at 19–20. He claims that focusing on his

understanding was appropriate because reading the implied consent warning in English when he had little understanding of the English language would not "reasonably convey the implied consent warnings." *Id.* (quoting *Garcia*, 756 N.W.2d at 222). He misreads *Garcia*.

To start, the defendant's approach requires focusing on his subjective understanding—*i.e.*, would the warning reasonably convey the implied consent warning *to him*. But *Garcia* explicitly disclaims considering a defendant's subjective understanding of the warning in determining whether law enforcement properly advised a defendant. *Garcia*, 756 N.W.2d at 222 (quoting *Piddington*, 623 N.W.2d at 539).

In addition to considering a defendant's subjective understanding of the advisory, the defendant's interpretation of *Garcia* effectively requires law enforcement to give the warning in a language that the driver understands. Indeed, he says that non-English-speaking drivers must have the same opportunity to understand the advisory as English speaking drivers, meaning non-English-speaking drivers must be advised in a language they understand. Defendant Br. at 25–26, 28. But requiring law enforcement to convey the implied consent warning in a language a

driver speaks improperly shifts the test to the driver's subjective understanding. *State v. Mfataneza*, 210 A.3d 874, 878 (N.H. 2019) ("[W]e do not agree that … the officer [must] deeply probe into an arrested person's preferred language … to convey the warnings in the language of preference. Such a requirement would shift the statutory focus from the positive duty imposed on the officer to the subjective understanding of the defendant.") (cleaned up).

Moreover, in *Garcia*, the Iowa Supreme Court implicitly rejected the idea that law enforcement must convey the warning in a language a driver understands. It explained:

> That a law enforcement officer must use reasonable methods to convey the implied consent warnings does not mean the officer must take extraordinary, or even impracticable measures to convey the implied consent warnings.... The State cannot be expected to wait indefinitely to obtain an interpreter and risk losing evidence of intoxication. Such would defeat, rather than advance, the intent of the implied consent law to facilitate the gathering of evidence against drunk drivers in order to remove them from the state's highways. The approach we adopt today only ensures that barriers which may affect the arresting officer's ability to reasonably convey the implied consent warnings to an accused driver are taken into account and accommodated as much as is reasonable under the circumstances.

Garcia, 756 N.W.2d at 222 (quoting *Piddington*, 623 N.W.2d at 542) (cleaned up).

Other States that only require law enforcement to act reasonably in advising drivers of implied consent warnings have rejected arguments like the defendant's that would require informing drivers of the implied consent law in a language the driver speaks. *Mfataneza*, 210 A.3d at 876–78; *State v. Ayala*, 894 N.W.2d 865, 868 (N.D. 2017); *Piddington*, 623 N.W.2d at 537, 542; *Portillo Funes v. State*, 230 A.3d 121, 134, 137–41 (Md. 2020); *but cf. State v. Marquez*, 998 A.2d 421, 424, 427–39 (N.J. 2010) (reversing a conviction for refusing a breath test and adopting a standard that law enforcement must inform a driver of "the consequences of refusal by conveying information in a language the person speaks or understands").

The defendant's reading of *Garcia* also effectively jettisons the requirement to consider an officer's conduct under the circumstances the officer faced. If an officer must advise a driver of the implied consent warning in a language that the driver speaks, circumstances beyond the language the driver speaks do not matter. Similarly, an officer's efforts to get the warning translated do not matter if the

officer fails in that effort, no matter how Herculean that effort may have been.

Of course, what is reasonable for an officer to try to convey the warning depends on the circumstances. A reasonable effort to convey the warning to a Tigrinya-speaking driver may not suffice for a Spanish-speaking driver. For example, it might be more possible to find someone who can speak Spanish than Tigrinya when a formal interpreter is not available. *See Piddington*, 623 N.W.2d at 535, 543 (noting law enforcement contacted an officer who knew some sign language to communicate with deaf driver). Or perhaps law enforcement could be expected to have written translations of the implied consent warning for common languages like Spanish but not uncommon languages like Tigrinya. *See Portillo Funes*, 230 A.3d at 141 (explaining that a written translation of Maryland's implied consent warning would suffice but that the court adopted the reasonableness standard to cover situations like encountering an uncommon language).

The defendant's reading of *Garcia* also ignores two circumstances present in every drunk driving case: (1) that alcohol dissipates from the bloodstream when a person stops drinking, and

(2) that law enforcement must collect a specimen from a driver within two hours of preliminary screening or arrest. *Garcia*, 756 N.W.2d at 222; Iowa Code § 321J.6(2). Those time pressures make it impossible to get the warning translated for drivers who speak uncommon languages every time. Yet the Iowa Supreme Court has said such circumstances should not thwart the implied consent law. *Garcia*, 756 N.W.2d at 222.

This case offers a good example of why the Iowa Supreme Court refused to require "extraordinary" or "impracticable" measures to convey the implied consent warning. The defendant speaks Tigrinya, an uncommon language. Tr. Suppress Hr'g, 5:21–22, 12:24 to 13:2. The officer tried to get an interpreter using the available interpreting service. *Id*. at 6:18 to 7:13, 12:24 to 13:2. No interpreter was available. *Id*. The officer also tried to use Google Translate to convey the warning, but Google Translate did not translate from English to Tigrinya. *Id*. at 8:24 to 9:9. As the district court put it, the officer "did nothing wrong. He had no other options." Order Suppressing Evid. at 2; App.20. In such circumstances it makes little sense to let the defendant—a person driving with a blood alcohol content over the

legal limit, Mins. Test. at 2; C.App.8—off the hook and frustrate the implied consent law.

The officer here acted reasonably under the circumstances and his actions would have reasonably conveyed the implied consent warning if successful. He tried to secure an interpreter. Then he tried to use Google Translate. While neither effort succeeded, both would have conveyed the warning had they been available to use. The officer acted reasonably under the circumstances; indeed, "[h]e had no other options." Order Suppressing Evid. at 2; App.20. That is enough under *Garcia*. The district court erred in suppressing the defendant's DataMaster results.

II. This Court should reverse and remand, directing the district court to enter an order denying the motion to suppress the DataMaster results.

The defendant argues that if this Court finds that the district court misapplied *Garcia*, it should order a remand to apply the correct test. Defendant Br. at 32. While that option is available, *State v. Robinson*, 506 N.W.2d 769, 772 (Iowa 1993), this Court should reverse the district court's order and order it to deny the motion to suppress the DataMaster results, *see* Iowa Code § 602.5106 ("The court of appeals may … remand the cause and direct the entry of an

appropriate … order.”). Indeed, Iowa’s appellate courts routinely reverse orders on motions to suppress with a mandate to reach the opposite conclusion. *E.g.*, *State v. Pals*, 805 N.W.2d 767, 770 (Iowa 2011); *State v. McFadden*, No. 16–1184, 2017 WL 4315047, at *6 (Iowa Ct. App. Sept. 27, 2017). And here the district court found that the officer “did nothing wrong. He had no other options.” Order Suppressing Evid. at 2; App.20. In other words, it found that the officer acted reasonably under the circumstances. It therefore made the fact findings needed under *Garcia* to deny the motion to suppress. This Court can correctly apply the law and direct the district court to deny the motion to dismiss. *See Garcia*, 756 N.W.2d at 222; Iowa Code § 602.5106.

CONCLUSION

The State requests that this Court reverse the district court’s order suppressing the defendant’s DataMaster results and order the district court to enter an order denying the motion to suppress on remand. Alternatively, this Court should reverse and remand for the district court to apply the correct standard.

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:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,750** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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