IN THE COURT OF APPEALS OF IOWA

No. 22-1080
Filed February 21, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CARLOS DARINEL MARTIN SEBASTIAN,
Defendant-Appellant.

Appeal from the Iowa District Court for O'Brien County, David C. Larson, Judge.

A defendant appeals the denial of his motion to suppress. **AFFIRMED.**

Travis M. Visser-Armbrust of TVA Law PLLC, Sheldon, for appellant.

Brenna Bird, Attorney General, and Zachary Miller, Assistant Attorney General, for appellee.

Considered by Greer, P.J., Buller, J., and Danilson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2024).

DANILSON, Senior Judge.

Carlos Martin Sebastian appeals his conviction for operating while intoxicated (OWI), challenging the denial of his motion to suppress certain evidence. We affirm.

I. Backgrounds Facts

O'Brien County Sheriff's Deputy Tim Rohrbaugh stopped a vehicle that Martin Sebastian was driving for speeding. During the stop, Deputy Rohrbaugh was informed that Martin Sebastian had an outstanding unrelated warrant. When asked if he had drunk any alcoholic beverages, Martin Sebastian responded "two." The deputy observed two empty beer cans in Martin Sebastian's vehicle and noted Martin Sebastian's bloodshot, watery eyes and a slight odor of alcohol on his breath. The deputy believed Martin Sebastian was intoxicated, and pursuant to the arrest warrant, arrested Martin Sebastian and transported him to the county jail. The administration of field sobriety tests was delayed until they arrived at the county jail.

Martin Sebastian only spoke "a little bit" of English. And the language barrier between the two men impeded the deputy's ability to administer the field sobriety tests. With no Spanish speaking employee or interpreter, the deputy used a jail inmate who was able to speak both English and Spanish as an interpreter to help facilitate the field sobriety testing. The inmate stayed with them throughout the reading of the implied consent advisory for chemical testing, though the inmate did not translate the implied consent advisory. Instead, Deputy Rohrbaugh provided Martin Sebastian with a copy of the advisory in Spanish to read through

as the deputy read it in English. Martin Sebastian submitted to chemical testing, which showed his blood-alcohol level to be 0.122.

As a result, the State charged Martin Sebastian by trial information with OWI, first offense. Subsequently, Martin Sebastian filed a motion to suppress evidence claiming the deputy "conducted an illegal search and seizure of physical evidence from" him because the deputy "failed to adequately advise or convey the field sobriety tests, data master implied consent advisory, [Iowa Code] section 804.20 [(2021)] rights, nor *Miranda* rights utilizing reasonable means to convey such [rights] to" him. Following a hearing on the motion, the district court denied the motion to suppress, and Martin Sebastian consented to a trial on the minutes. The district court found Martin Sebastian guilty. Martin Sebastian appeals, challenging the court's ruling on his motion to suppress.

II. Standard of Review

"When a defendant challenges a district court's denial of a motion to suppress based upon the deprivation of a state or federal constitutional right, our standard of review is de novo." *State v. Storm*, 898 N.W.2d 140, 144 (Iowa 2017) (citation omitted); *see also State v. Baraki*, 981 N.W.2d 693, 697 (Iowa 2022) ("When evaluating whether a submission to chemical testing was voluntary, we review the totality of the circumstances. Our review of the circumstances is de novo." (internal citation omitted)). After looking at the entire record, we "make 'an independent evaluation of the totality of the circumstances.'" *Storm*, 898 N.W.2d at 144 (citation omitted). "We give deference to the district court's fact findings due to its opportunity to assess the credibility of the witnesses, but we are not

bound by those findings." *Id.* (quoting *State v. Brown*, 890 N.W.2d 315, 321 (Iowa 2017)).

III. Discussion

In years past, it was not unusual for an officer to find whoever was available, whether that be an inmate or a local foreign language teacher, to aid in communicating with a non-English speaking defendant. Fortunately, times have changed, and interpreters are more readily available, including telephonic interpretive services. Although the better approach may have been to take more steps to search for an interpreter outside of the jail cells before employing an inmate, the issue is whether the method used by Deputy Rohrbaugh reasonably conveyed the implied consent warnings to Martin Sebastian. *State v. Garcia*, 756 N.W.2d 216, 222–23 (Iowa 2008).[1]

At the time of the arrest, the deputy explained that he had no immediate access to an interpreter or any telephonic interpretative services.[2] Additionally, Deputy Rohrbaugh only knew Martin Sebastian was a Spanish-speaking individual who spoke very little English and the inmate spoke both English and Spanish, but the officer did not know the extent of the inmate's fluency in Spanish. Our decision does not rest on these facts alone, however, because we are required to evaluate the totality of the circumstances to determine if Martin Sebastian's decision to

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[1] Martin Sebastian also asks us to overturn *Garcia*, 756 N.W.2d at 220–23, because he believes it conflicts with Iowa Code chapter 321J. As an intermediate court, "[w]e are not a liberty to overturn Iowa Supreme Court precedent." *State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App. 1990).

[2] Deputy Rohrbaugh testified that the department had begun using telephonic interpreter services about a month prior to the suppression hearing, so language barriers should not be an issue for the department moving forward.

submit to the chemical test was voluntary. *See id.* at 219 (citing *State v. Gravenish*, 511 N.W.2d 379, 381 (Iowa 1994)). If the implied consent warnings were not reasonably conveyed, we cannot conclude the decision to submit was voluntary, knowing, and intelligent. *Id.* at 223 (citing *State v Hajtic*, 724 N.W.2d 449, 453 (Iowa 2006)). Further, "the test of whether the implied consent warnings were sufficiently administered" is an objective test. *Id.*

Here, Martin Sebastian was taken to the jail facility as he was arrested pursuant to an outstanding warrant for failure to appear. At that facility and with the aid of the inmate, the deputy asked Martin Sebastian to perform field sobriety tests. The deputy demonstrated the tests and gave instructions on how to perform the tests. The inmate and Martin Sebastian were conversing readily, and there was no indication that Martin Sebastian did not understand what was required of him during each test. His compliance and efforts to do the tests consistent with the instructions reflected that he knew what was expected of him. The deputy also opined that the inmate and Martin Sebastain seemed to converse well, including later in the jail cell. Subsequently, the deputy gave Martin Sebastian a "Spanish DOT version of the implied consent advisory and asked him to read along" while the deputy read the form in English.[3] The deputy testified that it appeared Martin Sebastian was following along with him. The inmate remained with them during this process to assist if needed.[4] Martin Sebastian did not ask for any

[3] Obviously if Martin Sebastian could not understand English, he could not "read along" in Spanish while the deputy spoke in English.

[4] At the suppression hearing, the deputy testified that the inmate "helped me through the field sobriety, *the implied consent portion of it*, the Data Master. He stayed throughout the whole booking process . . . ." (Emphasis added.)

assistance from the inmate during the reading of the implied consent advisory. Again, there was no evidence that Martin Sebastian did not understand, was confused, or could not read the Spanish version of the implied consent form.

When we view the totality of these circumstances, including the time constraints in requesting a chemical test, we are unable to conclude the deputy used unreasonable efforts to convey the implied consent warnings to Martin Sebastian. As a result, we conclude the district court correctly denied Martin Sebastian's motion to suppress the results of the chemical testing. Moreover, to the extent Martin Sebastian argues for suppression of the field sobriety tests results because they were not properly administered in light of the language barrier, his arguments go to the weight, not the admissibility, of the results. *See State v. Quintero-Labrada*, No. 19-0544, 2020 WL 6482726, at *2 (Iowa Ct. App. Nov. 4, 2020) (recognizing *Garcia* does not apply to field sobriety testing and any inconsistencies in testing administration goes to the weight of the results not admissibility). Thus, we affirm.

AFFIRMED.