

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-0305

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KEEGAN CRAIG SMITH,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF WARREN COUNTY
THE HONORABLE KEVIN PARKER, JUDGE-SUPPRESSION MOTION
THE HONORABLE MARK SHLENKER-TRIAL AND SENTENCING

APPELLANT'S FINAL BRIEF
AND
REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF FILING

I, Matthew T. Lindholm, hereby certify that I will file the attached Brief by filing an electronic copy thereof to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, on August 24, 2018.

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I, Matthew T. Lindholm, hereby certify that on August 24, 2018, I served a copy of the attached brief on all other parties to this appeal by filing it with the Court's electronic document management system.

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

- I. IOWA CODE SECTION 321J.11 REQUIRES THAT AN OFFICER TAKE AFFIRMATIVE STEPS TO OFFER AN ARRESTEE AN OPPORTUNITY SECURE INDEPENDENT TESTING ONCE THEY HAVE PROPERLY INVOKED THAT RIGHT AND SUBSEQUENTLY SUBMIT TO THE STATE ADMINISTERED TEST.**

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Iowa Code section 804.20

STATEMENT OF THE CASE

Nature of the Case

This case is before the Court on the Mr. Smith's appeal from the district associate court's order denying his motion to suppress evidence, in which he alleged that his rights under Iowa Code Section 321J.11 were violated and therefore the breath test result should be suppressed. The district associate court denied the motion by concluding that "the Defendant failed to request an independent test subsequent to the test on the Datamaster." (Emphasis Added) Ruling on Suppression Motion P.2; App P. 66.

Course of Proceedings

Mr. Smith was charged by way of Trial Information filed on April 3, 2017, with Operating While Intoxicated, First Offense, in violation of Iowa Code section 321J.2. Trial Information; App. P. 8-9. The offense was alleged to have occurred on or about March 26, 2017. Trial Information; App. P. 8-9. Prior to trial, Mr. Smith filed a timely motion to suppress evidence seeking to suppress the implied consent proceeding including his failed breath test, alleging a violation of his rights under Iowa Code section 321J.11. Motion to Suppress Evidence; App. P. 33-35. The trial court denied the motion finding that Mr. Smith did not successfully trigger his right to an independent test and that the right to an independent test can only attach after the State's test is completed. Suppression Ruling P. 1-2; App. P. 65-66.

Following the ruling from the court, Mr. Smith filed a Motion for Expanded Findings of Fact and Conclusions of Law asking the court to clarify the reasons for denying the motion to suppress and asking the court to indicate why prior precedent was not applicable to the present situation. Motion for Expanded Findings of Fact and Conclusions of Law; App. P. 68-74. The court summarily denied the motion without further discussion. Ruling Denying Motion to Expand Findings of Fact and Conclusions of Law; App. P. 75-76. The matter proceeded to a stipulated trial on the minutes of testimony on November 20, 2017, and the district associate court found Mr. Smith guilty of operating while intoxicated, first offense in violation of Iowa Code section 321J.2. Waiver of Jury Trial and Stipulation to Trial on the Minutes of Testimony; OWI Sentencing Order; App. P. 81-86. Notice of Appeal was timely filed on February 19, 2018. Notice of Appeal; App. P. 95-97.

Statement of Facts

On March 26, 2017, Officer Darrah of the Indianola Police Department stopped the appellant, Mr. Keegan Craig Smith (hereinafter Mr. Smith) for having a plate lamp violation. Police Report; App. P. 18. The officer began an OWI investigation and asked Mr. Smith to perform field sobriety tests and take a preliminary breath test. Police Report; App. P. 18-20. While this OWI investigation was being performed in the field, Mr. Smith inquired about doing a blood test three to four times. *Supp. Tr.* P. 12; App. P. 50.

Smith was ultimately arrested and brought to the Warren County Jail where implied consent was invoked. *Supp. Tr.* P. 14; *App. P.* 52. Before submitting to a DataMaster breath test, Mr. Smith asked Officer Darrah “If I refuse, then do you take me to a hospital to take my blood?” *Supp. Tr.* P. 14; Exhibit A (Station Video at 2:27:43; *App. P.* 52; 38. In response to this question, Officer Darrah stated, “no, we can give you another chemical test if you want but that will be on your dime.” *Supp. Tr.* P. 14; Exhibit A (Station Video at 2:27:47); *App. P.* 52; 38. Additionally, before the DataMaster, Mr. Smith also asked “So if I refuse then what happens, are we going to go to the hospital and do a piss test or what?” *Supp. Tr.* P. 14; Exhibit A (Station Video at 2:30:05); *App. P.* 52; 38. To which, the officer responded “no we don’t need to go to the hospital but if you want to do a blood test that is up to you.” Exhibit A (Station Video at 2:30:10) In response to this Mr. Smith ultimately consented to the DataMaster test after this exchange with a failing test result. *Supp. Tr.* P. 15; *App. P.* 53. Following his submission to the DataMaster, Mr. Smith was booked into the Warren County Jail and saw a judge the next morning who completed his initial appearance and gave him a bond. Warren County Jail Booking Sheet; *App. P.* 31-32; Initial Appearance Order; *App. P.* 5. He was subsequently released from jail after posting bond the following morning. Bond Release Form; *App. P.* 6-7.

During the course of the investigation, Mr. Smith brought up a blood or urine test five or six times. Supp. Tr. P. 15; App P. 53. Two of those instances were at the station after Mr. Smith had been arrested and as part of the implied consent process. Supp. Tr. P. 15; Exhibit A (Station Video from 2:27:00 to 2:30:30); App. P. 43; 38. In light of Mr. Smith's repeated questions/requests for substances other than breath, Officer Darrah took it upon himself to explain to Mr. Smith that he could get an independent test after he submitted to the Datamaster. Supp. Tr. P. 14; Exhibit A (Station Video from 2:27:00 to 2:30:30); App. P. 52; 38. After completion of the DataMaster test, Officer Darrah never again brought up Smith's wishes for alternate testing to confirm if he in fact wanted one completed, nor attempted to assist him in any fashion to carry out his wishes for an alternate test. Supp. Tr. P. 15; App. P. 53.

Following testimony, the State argued that Mr. Smith's motion should be denied because "after the defendant submitted to the breath specimen, the defendant made no other requests or statements or questions about having a blood test done..." Supp. Tr. PP. 21-22; App. P. 59-60. Conversely, counsel for Mr. Smith argued that although it true that a person is not entitled to obtain an independent test until they have submitted to the State administered test, a persons' request for independent testing prior to submitting to the State administered test triggers the officer's obligation to take affirmative steps to help secure that test once the person does submit to the test. Supp. Tr. PP. 22-25; App. P. 60-63. Ultimately the court denied

the motion to suppress by adopting the State's argument even though it lacked legal support. Ruling on Motion to Supp.; App. P. 65-67.

Routing Statement

Retention of this case by the Iowa Supreme Court is appropriate as it involves an opportunity to clarify that a person's rights under Iowa Code Section 321J.11 can be triggered prior to submission to the State administered test and an opportunity to address whether the officer has an affirmative obligation to assist with the execution of that right following submission to the test. See Iowa R. App. P. 6.1101(2)(b) and (c).

Legal Argument

- I. **IOWA CODE SECTION 321J.11 REQUIRES THAT AN OFFICER TAKE AFFIRMATIVE STEPS TO OFFER AN ARRESTEE AN OPPORTUNITY TO SECURE INDEPENDENT TESTING ONCE THEY HAVE PROPERLY INVOKED THAT RIGHT AND SUBSEQUENTLY SUBMIT TO THE STATE ADMINISTERED TEST.**

Preservation of Error: Mr. Smith preserved error by timely filing a Motion to Suppress Evidence, obtaining a ruling on same, stipulating to a trial on the minutes of testimony and being convicted, then timely filing his Notice of Appeal.

Standard of Review: Mr. Smith alleges a violation of his statutory rights under Iowa Code section 321J.11. As such, the court's review is for correction of

errors at law of district court's ruling on a motion to suppress based on the interpretation of a statute. *State v. Madison*, 785 N.W.2d 706, 707-08 (Iowa 2010); *State v. Fischer*, 785 N.W.2d 697, 699 (Iowa 2010).

Argument: Iowa Code Section 321J.11 provides an arrestee the right to obtain an independent chemical test after submitting to the state administered test. Iowa Code Section 321J.11. The district associate court incorrectly concluded that Mr. Smith failed to properly invoke his rights under this code section because he did not make a request for independent testing after he submitted to the State administered test despite the fact that neither the statute nor caselaw requires such request to be made after submitting to the state administered test. Thus, the court incorrectly concluded that the officer had no duty to help Mr. Smith obtain independent testing and committed reversible error denying the motion to suppress.

A) SMITH PROPERLY INVOKED HIS RIGHTS UNDER IOWA CODE SECTION 321J.11 AS HIS QUESTIONS/INQUIRIES ABOUT THE TESTING OF OTHER SUBSTANCES OVER THE COURSE OF THE INVESTIGATION WERE SUFFICIENT AND PROPERLY TIMED.

Iowa Code Section 321J.11 provides in relevant part:

“The person may have an independent chemical test or tests administered at the person's own expense in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the peace officer.”

When addressing the adequacy of a request for independent testing pursuant to Iowa Code Section 321J.11, the Iowa Supreme Court has applied a “reasonableness” standard so “statements that may be reasonably construed as invoking the detainee’s statutory right to an independent chemical test” are sufficient for the right to attach. *State v. Lukins*, 846 N.W.2d 902, 907-908 (Iowa 2014). In applying this “reasonableness” standard, the Iowa Supreme Court likened requests for independent tests pursuant to Iowa Code Section 321J.11, to requests for consultation pursuant to Iowa Code Section 804.20 and found that to apply “a different rule or standard would be inconsistent with this existing framework.” *Id.* at 908. The purpose for applying this “reasonableness” standard in addressing whether an arrestee has sufficiently invoked their right to independent testing is to ensure the rights are being honored even when “the detainee’s oral attempts to invoke his or her rights are legally inaccurate.” *Id.*

As further discussed below, the district associate court failed to properly apply this “reasonableness” standard and ignored existing caselaw by concluding that Mr. Smith failed to accurately and legally invoke his right to independent chemical testing.

1) Mr. Smith’s statements and inquiries were sufficient to invoke his right to an independent test pursuant to Iowa Code Section 321J.11.

Under Iowa Code Section 321J.11 “a detainee’s statements should be liberally construed” and they should not be required to “string together a precise formulation

of words mirroring the statutory language in order to invoke his or her statutory right to an independent test.” *Id.* at 909. In *Lukins*, the defendant was arrested for OWI and transported to the police department where implied consent was invoked and he ultimately submitted to a breath test with result of .207. *Lukins*, 846 N.W.2d at 904. Upon hearing the result of his breath test he asked the officer if he could get a “re-check” or “re-blow” several times. *Lukins*, 846 N.W.2d at 909. In concluding that the Defendant’s assertions were sufficient to attach his rights under Iowa Code Section 321J.11, the court found that although the “entreaties do not closely track with the language of Iowa Code Section 321J.11” and although the request was “statutorily impermissible” (i.e. he was not entitled to take the Datamaster a second time pursuant to Iowa Code Section 321J.11), the request was nonetheless sufficient to trigger the right.

Similarly, in *Ginsberg v. Iowa Dept. of Transp.*, 508 N.W.2d 663 (Iowa 1993), the Iowa Supreme Court was tasked with determining whether a request by a detainee to get a blood test conducted before he had submitted to the state administered test was a valid refusal of the breath test pursuant to Iowa Code Section 321J.9. At the time the request for a blood or urine test was made, Ginsberg had not yet submitted to the state administered test and therefore was not legally entitled to obtain an independent chemical test. *State v. Bloomer*, 618 N.W.2d 550, 553 (Iowa 2000) (explaining a detainee is entitled to an independent test after the detainee “has

submitted to a requested test.”) Nevertheless, in finding that Ginsberg’s request was not a valid refusal, the court specifically found “when Ginsberg requested that his blood or urine be tested in addition to his breath” that he “was attempting to assert his right to independent testing” and the “peace officer should have explained that, after the requested breath test had been completed, Ginsberg would be able to have other substances tested.” *Id.*

This case is instructive as it stands for the proposition that a request for a “blood or urine test” is sufficient to invoke the right to independent testing pursuant to Iowa Code Section 321J.11 when an officer is asking for a breath test. More importantly, (as will be discussed in further detail below) a request for a blood or urine test before submission to the State administered is sufficient to invoke the right to independent testing even though a person may not be entitled to get one until they have submitted to the state administered test.

In the present case Mr. Smith made at least five or six statements to the officer inquiring about a blood or urine test during the course of the investigation. Supp. Tr. 12, 14, 15. App. P. 50, 52, 53. One request was at the station during the implied consent proceedings where he stated “If I refuse you take me to the hospital to take my blood?” Supp. Tr. P. 14; Video at 2:27:43; App. P. 52; 38. Also during the implied consent proceedings he asked “So if I refuse, you are going to take me to the hospital to do a piss test, right?” Supp. Tr. P. 14; Video at 2:30:05; App. P. 52;

38. Notwithstanding the previous inquiries in the field, these two statements alone were sufficient to invoke his right to independent testing as he referenced both a blood and urine test (tests which were different tests from what the officer was requesting) and mentioned having the test performed by someone other than the officer (i.e. a hospital). See *Ginsberg*, 508 N.W.2d 663, 664 (Iowa 1993) (finding request for blood or urine test sufficient to trigger Iowa Code Section 321J.11); See also *State v. Bindner*, 2002 WL 531504 Iowa App. Unpublished 2002) (request to have nurse of Defendant's choosing do a blood draw and failure to call that nurse violated Iowa Code Section 321J.11).

It seems hard to imagine how an inquiry by an arrestee for a different type of test than what the officer was requesting and to have it performed by someone independent of the officer could be “reasonably construed” as anything but an attempt to assert his right to independent testing. However, when you consider the additional fact that the officer took it upon himself to advise Mr. Smith of his right to independent testing after he made these requests, it becomes impossible to conclude that these inquiries were insufficient to trigger his right to independent testing. In this case the court erroneously was requiring Mr. Smith to “string together a precise formulation of words mirroring the statutory language in order to invoke his statutory right to an independent test” which is contrary to existing law. To hold

otherwise would unravel the framework and purpose of the “reasonableness” standard set forth in *Lukins*.

2) The timing of Mr. Smith’s statements was sufficient to invoke his right to an independent test pursuant to Iowa Code Section 321J.11 even though he may not have been legally able to exercise the right when it attached.

It is anticipated that the crux of the State’s argument will be centered upon the fact that all of Mr. Smith inquiries were made prior to him submitting to the breath test requested by the officer. Supp Tr. P. 21; App. P. 59 (State’s oral argument after close of evidence that “all of this was before the defendant submitted to chemical testing, at which time the defendant had no right to independent chemical testing”). Although not entirely clear, it also appears that this was the focus of the Court’s ruling denying the Defendant’s motion. Supp. Ruling P. 2; App. P. 66 (“The Defendant failed to request an independent test subsequent to the test on the Datamaster”). Mr. Smith contends that although a person is not entitled to receive an independent test until they have submitted to the State administered test, the right can attach prior to submitting to that test. If the right attaches prior to the person submitting to the State administered test, the officer’s obligation to assist in obtaining that test will then only be required if the person subsequently submits to the State administered test.

The attachment of a statutory right can occur before the person has the legal ability to exercise a statutory right. See *State v. Moorehead*, 699 N.W.2d 667 (Iowa

2005), (finding the right to consult with a family member under Iowa Code Section 804.20 attached at the scene of the arrest even though the Defendant was not legally allowed to exercise that right until they arrived at the jail); *Lukins*, 846 N.W.2d 902 at 909 (finding that the right to an independent test attached even though the arrestee requested another breath test which he was not entitled to under the statute); *Didonato v. Iowa Dept. of Transp.*, 456 N.W.2d 367, 368 (Iowa 1990) (finding that the right to consultation under Iowa Code Section 804.20 attached when the arrestee requested to call a friend even though that was not allowed by statute). Once a statutory right has attached, an arrestee is not under any obligation to re-assert this right once they become legally able to exercise that right. *Moorehead*, 699 N.W.2d at 671-72 (rejecting the State's claim that Moorehead needed to re-assert his request for a phone call after he arrived at the station).

Like Iowa Code Section 804.20, the plain language of Iowa Code Section 321J.11, does not require a request for independent testing to be made after submission to the State administered test in order for the right to attach. *State v. Wooten*, 577 N.W.2d 654, 656 (Iowa 1998) (“it is true that no time limit for a request is expressed in section 321J.11”). A request for an independent test simply must be made “within a reasonable time under the circumstances.” *Id.* (finding that a request for an independent test requested an hour after failing the State's test and after being turned over to jail staff was insufficient). Interestingly, both the State and the

District Court relied upon *Wooten* as authority for denying the motion to suppress despite the fact that case recognizes the only time limit for requesting an independent test is “within a reasonable time under the circumstances.”

Even more to the point, is the Iowa Supreme Court’s holding in *Ginsberg* discussed *supra* wherein the Court found that a request for independent testing which was made before the person submitted to the State administered test was sufficient for the right to attach. *Ginsberg*, 508 N.W.2d at 663. (Emphasis added). Mr. Smith urged the court, both at the suppression hearing and after filing a motion for expanded findings of fact and conclusions of law, to distinguish *Ginsberg* and the Court refused to do so. What is clear from the holdings in *Moorehead*, *Wooten*, *Lukins*, *Didonato*, *Ginsberg*, and the plain language of the statute, is that a request for independent testing made before submission to the State administered test is sufficient for the attachment of a detainee’s statutory right even if they are legally unable to exercise the right.

To apply the district associate court’s logic (i.e. that the request must be made after submission to the State administered test) and the holding in *Wooten* (where a request for an independent test an hour after submitting to the State administered test, was made to late) essentially leaves and arrestee with a very short and concise time period in which to exercise the right to an independent test. This interpretation is unreasonable and essentially renders the statute illusory. See *State v. Hicks*, 791

N.W.2d 89, 97 (Iowa 2010) (refusing to interpret Iowa Code Section 804.20 in a manner that transforms the statute into an “illusory statutory right”). To find otherwise would be contrary to the premise and rationale of the existing caselaw as well as the plain language of the statute.

B) THE OFFICER FAILED TO PROVIDE MR. SMITH WITH A REASONABLE OPPORTUNITY TO EXERCISE HIS RIGHT TO INDEPENDENT TESTING.

Little published authority has centered around what the officer’s affirmative obligation is to assist an individual in obtaining an independent test once their rights under Iowa Code Section 321J.11 have attached and they subsequently submit to the State administered test. However, it appears a “reasonableness” standard consistent with the duties imposed on an officer under Iowa Code Section 804.20 has been adopted. See *State v. Tillinghast*, 2005 WL 1959081 (Iowa App. Unpublished) (“using a ‘reasonableness’ standard to determine the extent of an officer’s duties when an arrestee requests an independent chemical test comports with standards used when other statutory rights are invoked by a person arrested for OWI.”) citing *Wooten*, 557 N.W.2d at 656.

In *Casper v. Iowa Dept. of Transp*, the Iowa Court of Appeals concluded that Iowa Code Section 321J.11 was violated when the detainee submitted to the State administered test, requested an independent test, was told about his right to obtain that test, but no arrangement were attempted to facilitate the request and the detainee

was placed in jail. *Casper*, 506 N.W.2d 799 801-802 (Iowa App. 1993) (“licensee was held in such a manner as to make it impossible for him to acquire the independent blood test”) abrogated on other grounds by *State v. Lukins*, 846 N.W.2d 902 (Iowa 2014). *Casper* was a challenge to the administrative proceedings in which the Court of Appeals ultimately concluded that despite the violation of Iowa Code Section 321J.11, the license suspension should not be rescinded because a violation of Iowa Code Section 321J.11 was not an issue that could be raised in the administrative proceeding. Nevertheless, the Court clearly articulated if these same facts had arisen in the criminal context suppression would be mandated by stating “we do not wish to be understood as holding that in a criminal prosecution for driving under the influence of alcohol or drugs, the facts of this case would not cause a suppression of the breath test administered by the peace officers.” *Casper* 506 N.W.2d at 801-802. Importantly, even though the arrestee was informed about his right to independent testing, the fact he was placed in jail without any attempts to facilitate the test created the statutory violation.

In *State v. Bindner*, the Iowa Court of Appeals concluded that an arrestees’ rights under Iowa Code Section 321J.11 were violated when the officers failed to provide the arrestee with reasonable access to a telephone to secure the nurse he wanted to call to perform the independent blood draw and was held in jail overnight. *Bindner*, 2002 WL 531504 (Iowa App. Unpublished 2002). Likewise, in *State v.*

Foss, the Iowa Court of Appeals concluded that the arresting officer interfered with the arrestee's right to obtain an independent test because "[he] was under arrest and in a custodial setting" and "transported to the Polk County jail shortly after his request for an independent test was denied." *Foss*, 2003 WL 21361556 (Iowa App. Unpublished 2003).

Following the holdings in *Casper*, *Bindner*, and *Foss*, the Iowa Supreme Court set forth the legal obligation placed upon officer once the statutory right under Iowa Code Section 804.20 attaches and the arrestee is legally entitled to exercise that right. *State v. Hicks*, 791 N.W.2d 89, 96-98 (Iowa 2010). In this case, the Iowa Supreme Court concluded that Iowa Code Section 804.20 "requires law enforcement to take affirmative action to ensure the request for a phone call is honored." *Id.* at 97. Recognizing the "disparity in power between detaining officers and detained suspects", the Court found that requiring the detainee to pick up a phone in those circumstances would transform section 804.20 into an "illusory right." *Id.* Thus, the Court required the detaining officer to "direct the detainee to the phone and invite the detainee to place the call or obtain the phone number from the detainee and place the phone call himself." *Id.* No lesser standard should be required in the present case and at the very least the officer should have offered Mr. Smith an opportunity to secure independent testing after he submitted to the State administered test.

Although the officer advised Mr. Smith of his right to independent testing prior to him submitting to the Datamaster, no affirmative steps were taken by the officer to offer him the opportunity to secure independent testing after he submitted to the Datamaster and became legally able to exercise this right. Supp. Tr. P. 15; App. P. 53. Contrary to the district associate court's conclusion in this case, Mr. Smith was not under any legal obligation to reassert his right once he became legally able to exercise that right. *Moorehead*, 699 N.W.2d at 671-72. Once the right attached a number of steps could have been taken by the officer to fulfill his obligation of providing Mr. Smith with a reasonable opportunity to exercise this right to independent testing, the most important of which was simply confirming whether or not he wanted to get an independent test completed. If Mr. Smith wanted to obtain that test he could have (1) provided him with a phone to try and secure that test, (2) transported him some place to obtain the test, (3) released him to a sober person, (4) simply given him a suitable container to urinate in.

However, none of these steps were taken. Mr. Smith remained arrested and in jail until the following morning when he posted bond without so much as asking whether he wanted to get an independent test completed. Supp. Tr. P. 15; App. P. 53; Warren County Jail Booking Sheet; App. P. 31-32; Initial Appearance Order; App. P. 5; Bond Release Form; App. P. 6-7. The lack of follow-through by the officer once Mr. Smith became legally able to exercise his right to independent

testing did not comport with the “reasonableness” standard imposed upon the officer to take affirmative steps to ensure the right was honored. Moreover, because of the “disparity in power between detaining officers and detained suspects” to failure to follow-up on Mr. Smith’s request for alternate testing transformed Mr. Smith’s request into an “illusory” right.

C) SUPPRESSION OF BREATH TEST IS THE PROPER REMEDY FOR A VIOLATION OF 321J.11.

The Iowa Supreme Court has already determined that suppression of the State administered test is the appropriate remedy following a violation of Iowa Code Section 321J.11. *Lukins*, 846 N.W.2d at 911. The reasoning behind this is because the legislature did not intend for the words “failure or inability” as used in Iowa Code Section 321J.11 to include cases where the officer violated Iowa Code Section 321J.11. *Id.* Refusing to suppress the results of the State administered test under these circumstances “would permit officers to deny with impunity a detainee’s request for an independent chemical test.” *Id.* at 910. Moreover, as discussed *supra*, suppression of the State administered test results under these facts is consistent with suppression of State administered tests where there were similar violations of Iowa Code Section 804.20.

Conclusion

For the reasons set forth above, Appellant respectfully requests that this Court reverse the district court’s order denying Mr. Smith’s motion to suppress evidence and remand for further proceedings.

Request for Oral Argument

Request is hereby made that, upon submission of this case, counsel for Appellant requests to be heard in oral argument.

Certificate of Compliance with Type-Volume Limitations, Typeface Requirements, and Type-Style Requirements.

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 4,565 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 font.

By: /s/ *Matthew Lindholm*

August 24, 2018

Matthew T. Lindholm

Date

Attorney's Cost Certificate

I, Matthew T. Lindholm, attorney for the Appellant, hereby certifies that the actual cost of reproducing the necessary copies of this Brief was \$0, and that amount has been paid in full by me.

Respectfully Submitted,

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