

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 19-0849

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THOMAS CHRISTOPHOR CASPER,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF CERRO GORDO COUNTY
THE HONORABLE ADAM SAUER (TRIAL AND MOTION TO SUPPRESS)

APPELLANT'S FINAL BRIEF
AND
REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF FILING

I, Scott A. Michels, 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 October 7, 2019.

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CERTIFICATE OF SERVICE

I, Scott A. Michels, hereby certify that on October 7, 2019 I served a copy of the attached brief on all other parties to this appeal by electronically filing a copy of the attached brief to the Iowa Attorney General, Hoover State Office Building, 2nd Floor, Des Moines, Iowa 50319.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. Trooper Sneider violated Iowa Code section 321J.11 when he failed to advise Mr. Casper of his right to an independent test.**

Legal Authority

Iowa Cases

Casper v. Iowa Department of Transportation, 506 N.W.2d 799 (Iowa App. 1993)

Didonato v. Iowa Department of Transportation, 456 N.W.2d 367 (Iowa 1990)

State v. Epperson, 264 N.W.2d 753 (Iowa 1978)

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Iowa Statutes

Iowa Code section 4.4

Iowa Code section 321J.2

Iowa Code section 321J.6

Iowa Code section 321J.11

STATEMENT OF THE CASE

Nature of the Case

This case is before the Court on Thomas Casper's appeal from the District Associate Court's order denying Mr. Casper's motion to suppress evidence. The District Associate Court held that the Mr. Casper's request for an independent test was untimely, therefore, the trooper was not required to advise him of rights pursuant to Iowa Code section 321J.11. Consequently, the District Associate Court denied Mr. Casper's motion to suppress and Mr. Casper appealed the District Associate Court's ruling.

Course of Proceedings

Mr. Casper was charged by way of Trial Information, filed on September 25, 2018, with Operating While Intoxicated, First Offense, in violation of Iowa Code section 321J.2. Trial Information; App. 4-5. The offense was alleged to have occurred on or about August 11, 2018. Trial Information; App. 4-5. Prior to trial, Mr. Casper filed a timely motion to suppress evidence alleging that Trooper Sneider violated Iowa Code section 321J.11 when he failed to advise Mr. Casper of his independent test rights after Mr. Casper requested a second attempt at the Datamaster. Motion to Suppress Evidence; App. 28-31. The trial court denied the motion, ruling that the Mr. Casper's request for an independent test was untimely. Ruling on Motion to Suppress; App. 32-35.

The matter proceeded to a stipulated trial on the minutes of testimony on March 27, 2019. Written Waiver of Jury Trial and Stipulation to Trial on the Minutes; App. 36-41. On April 19, 2019, the District Associate Court announced its verdict, finding Mr. Casper guilty of Operating While Intoxicated, First Offense, in violation of Iowa Code section 321J.2. Ruling Following Trial To The Court And Order Setting Sentencing; App. 42-45. The District Associate Court sentenced Mr. Casper on May 13, 2019. Judgment and Sentence; App. 46-48. Notice of Appeal was timely filed on May 20, 2019. Notice of Appeal; App. 49-50.

Statement of Facts

On August 11, 2018, at approximately 12:21 a.m., Trooper Nathan Snieder, of the Iowa State Patrol stopped Thomas Casper's motorcycle for speeding. Supp. Tr. p. 5-6. Trooper Snieder made observations that led him to believe Mr. Casper was intoxicated and initiated an OWI investigation. Supp. Tr. p. 6. Trooper Snieder administered the horizontal gaze nystagmus (HGN) and observed clues of possible impairment. Supp. Tr. p. 7. Neither the walk and turn nor the one leg stand were administered due to Mr. Casper's medical conditions. Supp. Tr. p. 7.

At approximately 12:36 a.m., Mr. Casper submitted to a preliminary breath test, which indicated an alcohol concentration exceeding the legal limit. Supp. Tr. p. 7. Trooper Snieder placed Mr. Casper under arrest for OWI. Supp. Tr. p. 7. Mr. Casper was subsequently transported to the Cerro Gordo County Sheriff's

Office for chemical testing. Supp. Tr. p. 7. Implied consent was invoked upon arrival at the sheriff's office. Supp. Tr. p. 7-8. Trooper Snieder requested a sample of Mr. Casper's breath for chemical testing. Supp. Tr. p. 8. Mr. Casper provided a breath sample for the Datamaster at 1:19 a.m. which tested .113. Supp. Tr. p. 8.

Mr. Casper was turned over to jail staff for booking. Supp. Tr. p. 8. During this process, Mr. Casper's wife arrived at the sheriff's office and paid the bond for Mr. Casper's release. Supp. Tr. p. 9. At approximately 2:15 a.m., while still in the locked booking room, Mr. Casper asked Trooper Snieder if he could take the Datamaster test again. Supp. Tr. p. 9, 14. Trooper Snieder said, "sure" and asked Mr. Casper for his driver's license. Supp. Tr. p. 10. Mr. Casper refused to provide his driver's license to Trooper Snieder so the test was not administered and the jail staff released Mr. Casper to his wife. Supp. Tr. p. 10. Mr. Casper was released from custody without Trooper Snieder ever advising Mr. Casper of his right to an independent test pursuant to Iowa Code section 321J.11. Supp. Tr. p. 12-13. Mr. Casper was charged by way of Trial Information with Operating While Intoxicated, First Offense. Trial Information; App. 4-5.

Further facts will be set forth as necessary in this brief.

Routing Statement

This case should be transferred to the Iowa Court of Appeals because it presents the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a).

Legal Argument

I. Trooper Snieder violated Iowa Code section 321J.11 when he failed to advise Mr. Casper of his right to an independent test.

Preservation of Error: Mr. Casper preserved error by timely filing a Motion to Suppress Evidence, obtaining a ruling on same, and timely filing his Notice of Appeal.

Standard of Review: Mr. Casper alleges a violation of his statutory rights pursuant to Iowa Code section 321J.11. Review of a district court's decision to deny a motion to suppress based on its interpretation of a statute is for correction of errors at law. *State v. Madison*, 785 N.W.2d 706, 707-08 (Iowa 2010).

Argument: Iowa Code section 321J.11 states, in relevant part:

The person [whose breath, blood, or urine is being examined to determine blood alcohol concentration] 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.

It is well established that an officer need not advise a suspect of his or her right to an independent chemical test. *State v. Wootten*, 577 N.W.2d 654, 655 (Iowa 1998); *State v. Epperson*, 264 N.W.2d 753, 756 (Iowa 1978). However, if a

suspect implicates the statute, the officer is required to inform the detainee of his or her right to an independent chemical test pursuant to Iowa Code section 321J.11. *State v. Lukins*, 846 N.W.2d 902, 909-10 (Iowa 2014).

The scenario presented in this case is nearly identical to that presented in *Lukins*. Just as occurred in *Lukins*, Mr. Casper requested a second attempt at the Datamaster. Supp Tr. p. 9, 14; *Id.* at 904-05. The *Lukins* Court held a detainee's statements should be liberally construed and that the request for a second attempt at the Datamaster was sufficient to invoke the right to an independent test pursuant to Iowa Code section 321J.11. *Id.* at 909-10. "[L]ike under Iowa Code section 804.20, any statement that can be reasonably construed as a request for an independent chemical test is adequate to invoke the detainee's right to such a test under Iowa Code section 321J.11. As with officers who fielded phone call requests in *Didonato*, an officer who fields a legally imprecise request for an independent test cannot stand mute and deny the request." *Id.* at 909; citing *Didonato v. Iowa Department of Transportation*, 456 N.W.2d 367, 371 (Iowa 1990). The Court held that the request for a second attempt at the Datamaster did "not closely track with the language of Iowa Code section 321J.11," but was similar to the requests for phone calls set forth in the *Didonato* and *Garrity* cases. *See State v. Garrity*, 765 N.W.2d 592, 597 (Iowa 2009) (holding an officer must inform a detainee of the individuals to whom a call is permitted when the detainee

requests to call someone outside the statute's permissible scope); *see also*, *Didonato v. Iowa Department of Transportation* 456 N.W.2d at 371 (holding when a detainee asks to call a friend the officer must inform the detainee the purpose for which a call is permitted).

As with the statutorily impermissible requests in those cases, Lukins was not entitled under Iowa Code section 321J.11 to take a second crack at the Breathalyzer machine. Nevertheless, his statements, reasonably construed, indicated he wanted another test, even if he was mistaken, unsure, or unaware of the way in which the additional test would be conducted. His statements, like those of the detainees in *Didonato* and *Garrity*, were adequate to implicate the statute.

State v. Lukins, 846 N.W.2d at 909. The Court went on to hold that when Lukins implicated the statute the officer “should have informed [him] that he was entitled to an independent chemical test at his ‘own expense in addition to’ the Breathalyzer test.” *Id.* at 910; *quoting* Iowa Code section 321J.11.

Based upon the holding in *Lukins*, when Mr. Casper requested to retake the Datamaster test, Trooper Snieder was required to advise him that he was entitled to an independent chemical test at his own expense. However, the District Associate Court denied the motion, holding that Mr. Casper's request was untimely. The District Associate Court's ruling was based on the decision in *State v. Wootten*, 577 N.W.2d 654 (Iowa 1998). Ruling on Motion to Suppress; App. 32-35. The District Associate Court's reliance on the *Wootten* decision is misplaced because the facts are drastically different from the present case.

In *Wootten*, the defendant was placed under arrest for OWI and transported to the police department, where he provided a sample for the intoxilyzer test. *Id.* at 654. After the chemical test, the officers took approximately thirty to forty minutes to complete paperwork. *Id.* The defendant was transported to the county jail and left in the custody of a jailer. *Id.* After arrival at the jail, while being booked in by the jailer, Wootten requested an independent test. *Id.* Wootten's request for an independent test came "approximately an hour after the State's test and well over two hours after his arrest." *Id.* at 656.

Ruling that the request was untimely, the Court noted the significance of the fact that the request came "well over two hours after his arrest" because Iowa Code section 321J.6(2) prohibits an officer from requesting a chemical test beyond two hours following the preliminary breath test or arrest. *Id.* The Court further noted that the timing of the request created a problem for the jailer, who had no means of transporting Wootten to have the test conducted. *Id.* The Court also noted that police officers would have had to have been called away from other duties in order to comply with the request. *Id.* "While inconvenience to officers should not be the controlling factor, the unnecessary diversion of officers from other duties should be considered on the issue of reasonableness, along with the timing of the request and Wootten's ample opportunity at the police station to make the request." *Id.*

The only factual similarity between the present case and *Wootten* is that the request for an independent test was made approximately an hour after the Datamaster test. The factual differences, however, are what is important and what mandate a different outcome. To begin, Mr. Casper's request was made one hour and thirty-nine minutes after his arrest, well within the two-hour window prescribed in Iowa Code section 321J.6(2). As such, the concerns of accuracy of the test are absent. In fact, Mr. Casper's request was made within the two-hour window proscribed in Iowa Code section 321J.2(12)(a), wherein the State is afforded a presumption the alcohol concentration, established by the results of a specimen withdrawn within two hours after the defendant was driving will be presumed to be the alcohol concentration at the time of driving.

Secondly, there was no inconvenience or unnecessary diversion of officers from other duties in the present case. Dissimilar to *Wootten*, the arresting officer was still available and at the place of detention when the request for an independent test was made. Mr. Casper directly asked the arresting officer, Trooper Snieder, for a second attempt at the Datamaster.

Thirdly, Mr. Casper's bond had already been posted, so all that was required of Trooper Snieder was to advise him he could get an independent test at his own expense. Neither Trooper Snieder nor the jailer were required to take Mr. Casper anywhere to afford him a meaningful opportunity to obtain an independent test.

See Casper v. Iowa Department of Transportation, 506 N.W.2d 799 (Iowa App. 1993) (suggesting that denying a detainee’s right to an independent test was not a “failure” or “inability to obtain” the test, so the statute would not prevent suppression under circumstances where officer’s actions prevented a meaningful opportunity to obtain an independent test); *see also State v. Lukins*, 846 N.W.2d at 910-11. Had Mr. Casper been advised of his right to an independent test, once he was released the onus would have rested with him to obtain the test. At that point, if he failed to, or was unable to obtain a test the statute would not preclude the introduction of his State administered test result.

Lastly, the *Wootten* Court was bound by the district court’s findings of fact, which concluded that no evidence existed that Wootten would have been denied an opportunity to have an independent test had he made the request to the arresting officers. *State v. Wootten*, 577 N.W.2d at 656. Conversely, even if Mr. Casper would have made his request immediately after being informed of his test result, no advisory was going to be provided. Trooper Snieder testified, “If they ask for an independent test, I would tell them that they can have an independent test.” Supp Tr. p. 13. Trooper Snieder further testified “I didn’t take it as a request for an independent test, no.” Supp. Tr. p. 13. The record is clear that Trooper Snieder had no intention of advising Mr. Casper of his right to an independent test because

Trooper Snieder did not deem the vernacular used by Mr. Casper to be a sufficient request for an independent test.

Despite no time limit for a request being set forth in Iowa Code section 321J.11, the *Wootten* Court held that the request must be made within a reasonable time under the circumstances. *State v. Wootten*, 577 N.W.2d at 656. In making that determination the Court cited to Iowa Code section 4.4(3), “in construing a statute, it is presumed that a just and reasonable result is intended.” *Id.* Based on the facts and circumstances of this case, Mr. Casper’s request was reasonable. He made the request to the arresting officer with twenty-one minutes remaining in the two-hour window under Iowa Code section 321J.6(2) and, most importantly, all Trooper Snieder was required to do was advise him of his right to obtain an independent chemical test. Trooper Snieder’s refusal to advise Mr. Casper of this right was unreasonable and in violation of Iowa Code section 321J.11. *See State v. Lukins*, 846 N.W.2d at 910. Allowing the State to benefit from Trooper Snieder’s dereliction of duty is neither a just nor reasonable result.

Conclusion

For the reasons set forth above, Appellant respectfully requests that this Court reverse the District Associate Court’s order denying Mr. Casper’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 2,412 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.



Scott A. Michels

October 7, 2019
Date

Attorney's Cost Certificate

I, Scott A. Michels, attorney for the Appellant, hereby certifies that the actual cost of reproducing the necessary copies of this Brief was \$0.00, and that amount has been paid in full by me.

Respectfully Submitted,

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A handwritten signature in black ink, appearing to read 'S. Michels', written over a horizontal line.

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