

**IN THE COURT OF APPEALS OF IOWA**

No. 2-994 / 11-2003  
Filed February 13, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JOSEPH MICHAEL JONES,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Gregory Brandt,  
District Associate Judge.

Joseph Michael Jones appeals from his conviction of operating while  
intoxicated, second offense. **AFFIRMED.**

Donna Ruth Beary, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant  
Attorney General, John Sarcone, County Attorney, and Brendan Greiner,  
Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

**TABOR, J.**

Joseph Michael Jones appeals his conviction of operating while intoxicated, second offense. He contends the district court should have granted his motion to suppress the methamphetamine pipe discovered following a warrantless patdown of his pants pocket. He also argues the district court should have suppressed the chemical analysis of his urine sample because the State did not establish reasonable grounds for invoking implied consent.

Because we find the peace officer could have invoked implied consent based on the occurrence of a personal injury accident, coupled with a reasonable belief Jones was driving while drug impaired, we affirm the ruling denying the motion to suppress the laboratory results showing Jones's urine sample tested positive for methamphetamine. Finding that issue dispositive, we decline to address the question whether the peace officer lawfully seized the pipe.

**I. Background Facts and Proceedings.**

In the early morning hours of June 1, 2011, Polk County Sherriff's Deputy Keith Romp witnessed a single-car accident on Pleasant Hill Boulevard in Pleasant Hill. A black Pontiac Grand Am veered from the southbound lane of traffic into the northbound lane before striking a light pole on the shoulder of the road. It appeared the driver, later identified as Jones, suffered a seizure and was unconscious at the time of the crash.

When Pleasant Hill police officer Chad Hulen responded to the scene, Jones was sitting in the driver's seat. Hulen recalled: "[H]e was wanting to keep getting out of the vehicle, and we just kept telling him to stay in the vehicle

because we didn't know what type of injuries that he may have." Hulen called paramedics to the scene so they could determine whether Jones needed medical attention.

Officer Hulen had both training and experience in recognizing drug impairment and could identify signs of methamphetamine use, including constricted pupils, "paranoid" actions, slow response time, and sweating despite cool temperatures.

At the scene of the Pleasant Hill accident, Officer Hulen observed Jones was sweating "very profusely" and his pupils were "pinpoint in size." The officer asked for his name, but Jones did not answer. Hulen checked whether Jones could name the president of the United States, but Jones could not. Jones also failed to address the officer's inquiries whether he was in pain. Officer Hulen asked Jones four times if he had any medical conditions that would cause him to pass out; Jones finally said he had been experiencing seizures for the last three to four years.

Officer Hulen asked Jones if he was carrying a cell phone. Jones did not respond. Hulen testified Jones's cell phone may have helped the officer find "somebody who knew who he was to let me know what was going on." Observing a bulge in Jones's front pants pocket, Officer Hulen reached into the car and patted the pocket. The officer asked, "Is this a cell phone?" as Jones tried to turn away. In Jones's pocket, Officer Hulen felt a tube with a round, circular object at the end, which the officer thought was consistent with the shape

of a pipe used to smoke methamphetamine. The officer did not seize the pipe immediately.

Responding to the police call, paramedics arrived at the scene and determined Jones needed medical attention. They removed him from the car to a back board. As the paramedics tried to strap him down, Jones was acting, in Officer Hulen's view, "very paranoid, still trying to move around." Officer Hulen then patted Jones down for weapons, calling it "standard procedure" to ensure the paramedics' safety. In addition to seizing the methamphetamine pipe, the officer found loose change and eye drops.

The paramedics transported Jones to the hospital. Through further investigation, Officer Hulen discovered Jones's identity and interviewed him at the hospital. On the standard form prepared by the Iowa Department of Transportation, Officer Hulen checked two of the seven boxes indicating the grounds for invoking implied consent. See Iowa Code § 321J.6 (2011). Hulen indicated Jones "was placed under arrest for violation of Iowa Code section 321J.2" and "submitted to a PBT [preliminary breath test] which indicated an alcohol concentration of less than eight hundredths (0.08) and the peace officer had reasonable grounds to believe that [Jones] was under the influence of a drug other than alcohol or a combination of alcohol and another drug."

The officer read the implied consent advisory to Jones, who had a difficult time understanding it. As the officer repeated the advisory, requesting a urine sample, Jones commented that "either way he's going to be screwed if he didn't take one or if he did take one because he'd smoked meth earlier in the day."

Jones then agreed to provide a urine sample, which tested positive for methamphetamine.

The State filed a trial information charging Jones with operating while intoxicated, second offense. Jones moved to suppress the pipe and the results of his urine test. At the October 18, 2011 suppression hearing, Officer Hulen acknowledged he checked the wrong boxes on the DOT form. Hulen had not given Jones a PBT and did not place him under arrest. Officer Hulen testified he marked those boxes "out of habit" because he was used to investigating cases involving drivers who had consumed alcohol.

In an October 21, 2011 order, the district court denied Jones's motion to suppress. The ruling approved the discovery of the methamphetamine pipe based on the community caretaking exception to the warrant requirement, reasoning that the officer was responding to an emergency situation and obtaining information about Jones's identity and medical condition was important to ensuring he received appropriate care. The court also found Officer Hulen was justified in frisking Jones for the paramedics' safety. With respect to Jones's urine sample, the court found that although Officer Hulen checked the wrong boxes on the DOT form, Jones was not prejudiced by the mistake because valid grounds existed for invoking implied consent.

Jones waived his right to a jury trial and agreed to the judge deciding whether he was guilty based on the minutes of testimony. The district court found Jones guilty of operating while intoxicated, second offense, and sentenced

him to an indeterminate two-year term of imprisonment with all but ten days suspended. Jones filed a timely notice of appeal.<sup>1</sup>

## II. Scope and Standards of Review.

Jones and the State agree our review of his implied consent challenge is for legal error.<sup>2</sup> See *State v. McCoy*, 603 N.W.2d 629, 630 (Iowa 1999); see also *State v. Owens*, 418 N.W.2d 340, 342 (Iowa 1988).

Because Jones moved to suppress the methamphetamine pipe on constitutional grounds, our review of that issue would be de novo in light of the totality of circumstances. See *State v. McConnelee*, 690 N.W.2d 27, 30 (Iowa 2004).

Constitutional errors do not require reversal if the State's proof establishes beyond a reasonable doubt that no harm flowed from the improper admission of the evidence obtained from an unlawful search. *State v. Canas*, 597 N.W.2d 488, 493 (Iowa 1999), *overruled on other grounds by State v. Turner*, 630 N.W.2d 601, 606 n.2 (Iowa 2001). The harmless error analysis involves two steps. *Id.* at 494. First, we consider all the evidence before the fact finder and weigh the probative force of the evidence as a whole against the wrongly admitted evidence. *Id.* We do not ask if a guilty verdict would have resulted in an error-free trial, but if the guilty verdict actually rendered in this trial was "surely unattributable to the error." *Id.*

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<sup>1</sup> Jones's counsel told the court at the sentencing hearing that the drug paraphernalia charge would be handled at a separate proceeding.

<sup>2</sup> Because Jones does not argue that his consent to providing a urine sample was rendered involuntary by the officer's mistaken designation on the DOT form, we do not engage in a de novo review on this claim. See *State v. Hutton*, 796 N.W.2d 898, 901-02 (Iowa 2011) (delineating standards of review).

### III. Analysis.

Jones contends the district court erred in denying his motion to suppress the methamphetamine pipe and the results of the chemical analysis of his urine sample.<sup>3</sup>

Because we find the implied consent issue dispositive, we first address Jones's argument regarding suppression of the laboratory report showing his urine sample tested positive for methamphetamine. On appeal, Jones contends Officer Hulen lacked reasonable grounds to invoke implied consent under section 321J.6.

That provision authorizes an officer to make a written request for a bodily sample if (1) the officer has reasonable grounds to believe the driver has operated a motor vehicle under the influence of alcohol or controlled substances and (2) if one of the following seven conditions exists:

- a. A peace officer has lawfully placed the person under arrest for violation of section 321J.2.
- b. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.
- c. The person has refused to take a preliminary breath screening test provided by this chapter.
- d. The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 321J.2.
- e. The preliminary breath screening test was administered to a person operating a commercial motor vehicle as defined in section 321.1 and it indicated an alcohol concentration of 0.04 or more.
- f. The preliminary breath screening test was administered and it indicated an alcohol concentration less than the level prohibited by section 321J.2, and the peace officer has reasonable

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<sup>3</sup> At the trial level, defense counsel also moved to suppress Jones's incriminating statement to the officer that Jones smoked methamphetamine earlier that day. That argument is not renewed in this appeal.

grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

g. The preliminary breath screening test was administered and it indicated an alcohol concentration of .02 or more but less than .08 and the person is under the age of twenty-one.

Iowa Code § 321J.6(1).

In preparing his written request for a bodily specimen, Officer Hulen mistakenly marked the boxes corresponding to subsections (a) and (f). At the suppression hearing, the officer acknowledged his error, but testified that subsection (b) applied because Jones was involved in an accident resulting in person injury.

The district court concluded Officer Hulen had substantially complied with the implied consent requirements. The court determined Officer Hulen had reasonable grounds for believing Jones was operating his vehicle while under the influence of drugs, given that Jones was sweating “profusely,” his pupils looked like “pinpoints,” he was unable to answer simple questions, and he was acting “paranoid”—all indicia that the officer knew to be consistent with an individual under the influence of methamphetamine. We agree the officer had reasonable grounds to believe Jones was under the influence of methamphetamine while driving his Grand Am. Jones does not contest this aspect of the implied consent requirement.

Instead, Jones argues the record does not support the finding his single-car accident resulted in personal injury, as required by section 321J.6(1)(b). Jones asserts on appeal that the testimony at the suppression hearing offered “no description of blood, welts, red marks or bruises.”



Section 321J.6(1)(b) does not require an officer to have actual knowledge of an injury before invoking implied consent. *State v. Hopkins*, 465 N.W.2d 894, 896-97 (Iowa 1991). In *Hopkins*, the driver struck a telephone pole, and although the officer did not see any major injuries, he turned the driver over to an ambulance crew, which took her to the hospital, where the officer observed her being examined by a doctor who ordered x-rays and blood work. *Id.* at 895. “The officer could not assume the ambulance crew and the doctor would take these actions in the absence of an injury.” *Id.*

In the present case, Officer Hulen told Jones to remain in the vehicle because the police could not tell how badly he might have been hurt. The officer called for paramedics, who took Jones from the scene on a backboard and transported him to Iowa Methodist Medical Center. Under these circumstances, Officer Hulen could reasonably assume Jones had suffered a personal injury.

Jones does not argue on appeal that Officer Hulen’s act of checking the wrong boxes on the DOT form tainted the implied consent procedure or that he was misled as to why the officer desired a urine sample. While our courts have long held that the paperwork attending the implied consent procedure is important, see *McCoy*, 603 N.W.2d at 630, we are not called to consider in this case if the officer’s mistake compromised the purposes of section 321J.6. Because the officer had reasonable grounds to invoke implied consent under section 321J.6(1)(b), we affirm the order denying Jones’s motion to suppress the laboratory results.

Those test results showed Jones had a controlled substance present in his urine at the time he was operating a motor vehicle. That showing was sufficient for the district court to find beyond a reasonable doubt that Jones was guilty under Iowa Code section 321J.2(1)(c). Assuming without deciding the methamphetamine pipe should have been suppressed, any error in its admission was harmless beyond a reasonable doubt. Given Jones's positive drug test, the district court's conclusion he was operating while intoxicated was "surely unattributable" to the evidence he was carrying drug paraphernalia. See *State v. Simmons*, 714 N.W.2d 264, 276 (Iowa 2006) (assuming without deciding that items seized without a warrant should have been suppressed, but finding their admission was harmless beyond a reasonable doubt).

**AFFIRMED.**