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IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-1530

STATE OF IOWA,
Plaintiff-Appellant,

vs.

COLBY DAVIS LAUB,
Defendant-Appellee.

ON DISCRETIONARY REVIEW FROM THE
IOWA DISTRICT COURT FOR BOONE COUNTY
THE HONORABLE STEPHEN A. OWEN, JUDGE

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Implied Consent Procedures are Not the Exclusive Means to Obtain Chemical Testing, and it Offends Neither Due Process nor Equal Protection for an Officer to Obtain a Search Warrant.

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II. The District Court's Overly Broad Application of the Exclusionary Rule was Untethered to the Impropriety it Found.

Authorities

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State v. Seager, 571 N.W.2d 204 (Iowa 1997)

ROUTING STATEMENT

The district court's grant of suppression conflicts with authority published by both the Iowa Supreme Court and the Iowa Court of Appeals. *E.g.*, *State v. Oakley*, 469 N.W.2d 681, 682–83 (Iowa 1991); *State v. Frescoln*, 911 N.W.2d 450, 452–53, 454, 455 (Iowa Ct. App. 2017). The Court should transfer this matter to the Court of Appeals. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

Colby Davis Laub was charged with operating while intoxicated, first offense, in violation of Iowa Code section 321J.2(2)(a). Trial Info.; App. 4–5. He moved to suppress evidence and the court granted his motion. Mot. Supp.; Ruling; App. 6–10, 13–28. The State sought, and obtained, discretionary review.

Course of Proceedings

On February 24, 2022, the State filed a trial information charging Laub with operating while intoxicated. Trial Info.; App. 4–5. It was alleged Laub operated a vehicle with a .168 blood alcohol content (BAC). *See* Complaint; Minutes; Conf. App. 3–26.

On May 16, 2022, Laub moved to suppress. Mot. Supp.; App. 6–10. His motion asserted, in part, that it was unconstitutional for an

officer to obtain a chapter 808 search warrant for chemical testing because "[t]he implied consent statutes under Chapter 321J provide the exclusive means" for conducting such testing. Mot. Supp. at ¶ 17(A); App. 8. Specifically, he asserted the officer's decision to obtain a warrant rather than invoking implied consent violated both his due process and equal protection constitutional rights. Mot. Supp. at ¶¶ 17(D)–(E); App. 9. The State resisted and a hearing was held. Resistance; App. 11–12.

Following the hearing, in a 16-page order, the court granted Laub's motion and found it was a violation of Laub's due process and equal protection rights for the officer to obtain a search warrant rather than invoking implied consent. Ruling; App. 13–28. The court then ordered the following evidence suppressed: (1) "the search warrant documents, breath testing procedures and breath testing results" and (2) "any verbal or non-verbal assertions [Laub] made upon and after being handcuffed." Ruling at p.15; App. 27.

The State subsequently sought discretionary review from the Iowa Supreme Court, and the Court granted the State's application.

Facts

The district court found the facts below:

> On February 12, 2022, Mr. Laub was driving a vehicle in Boone County, Iowa. He was stopped by Deputy McCrea for going 4 mph over the limit and "swaying in his lane". The deputy makes contact with the defendant at the driver's window of defendant's vehicle. He explains his belief defendant is impaired and asks defendant to submit to [field sobriety testing (FST)] "to prove [Mr. Laub] is safe to drive." He explains the FST, Mr. Laub refuses to engage in FST and he is placed in handcuffs. No PBT was offered.
>
> Deputy McCrea obtains a search warrant. He offers Mr. Laub only the choice of providing a blood, breath or urine sample. Mr. Laub chooses a breath test. The test is performed at the jail with a DataMaster device. Implied consent is not invoked. … When asked why he obtained a search warrant instead of invoking implied consent, Deputy McCrea stated he believed it to be the "simplest" option. However, on cross examination Deputy McCrea acknowledged Mr. Laub's right to refuse testing under implied consent. Deputy McCrea gave Mr. Laub a choice of which body sample to submit, but also testified that Mr. Laub could not refuse.
>
> After a breath sample is obtained via the search warrant, Deputy McCrea informs Mr. Laub the DataMaster returned a blood alcohol level of .168. It is not until now that Mr. Laub is fully informed he is under arrest. …

Ruling at p.2 (second alteration in original); App. 14. One point of clarification is that the officer stated that obtaining a search warrant was "by choice and discretion," and because he decided it would be

the “simplest, most straightforward option in this case.” Supp. Tr. 13:16–:22.

ARGUMENT

I. Implied Consent Procedures are Not the Exclusive Means to Obtain Chemical Testing, and it Offends Neither Due Process nor Equal Protection for an Officer to Obtain a Search Warrant.

Preservation of Error

The defendant moved to suppress the evidence arguing the search warrant for chemical testing violated both due process and equal protection principles. Mot. Supp.; App. 6–10. The State resisted and after a hearing the court granted the defendant’s motion. Resistance; Ruling; App. 11–12, 13–28. Error is preserved.

Standard of Review

Appellate review is de novo when a constitutional error is alleged. *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004) (citing *State v. Naujoks*, 637 N.W.2d 101, 106 (Iowa 2001)). “The court makes an ‘independent evaluation of the totality of the circumstances as shown by the entire record.’ ” *Id.* (quoting *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001)). The court grants “considerable deference to the trial court’s findings regarding the credibility of the witnesses, but [is] not bound by them.” *Id.* (citing *Turner*, 630

N.W.2d at 606; *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994)). A ruling on a motion to suppress based on a court's statutory interpretations is reviewed for correction of errors at law. *See State v. Fischer*, 785 N.W.2d 697, 699 (Iowa 2010) (citing *State v. Stratmeier*, 672 N.W.2d 817, 820 (Iowa 2003)).

Merits

The district court concluded Iowa Code section 321J.6 superseded all other forms of OWI investigation including a search warrant issued under chapter 808; that controlling, published Iowa Supreme Court and Court of Appeals precedent was inapplicable; and that the officer's decision to apply for and obtain a warrant for a blood sample violated Laub's due process and equal protection rights. It relied on these conclusions to find that results of a warrant issued by a neutral and detached magistrate should be suppressed. Ruling at pp.14–15; App. 26–27. Each of these conclusions is erroneous. This Court should reverse.

A. The implied consent procedures contained in chapter 321J are not the exclusive means through which the State may conduct OWI investigations.

The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution both safeguard the right to

be free from "unreasonable searches and seizures." U.S. Const., IV Amend.; Iowa Const., Art. I, sec. 8. A warrantless search is presumed unreasonable and any evidence resulting from the search is inadmissible unless it falls within one of the well-recognized exceptions. *State v. Frescoln*, 911 N.W.2d 450, 453 (Iowa Ct. App. 2017).

The implied consent law, contained in chapter 321J, provides a statutory mechanism to invoke a warrant exception. "Consent to chemical testing obtained under the implied consent statute falls under the voluntary consent exception to the warrant requirement." *Id.* The implied consent law was enacted "to protect public safety and eliminate intoxicated driving from Iowa roads." *Id.* (quoting *State v. McIver*, 858 N.W.2d 699, 704 (Iowa 2015)). But despite the existence of a warrant exception, "obtaining a search warrant is the preferred method for conducting a constitutionally permissible search." *Id.*

The district court here effectively concluded Iowa Code chapter 321J is the exclusive means of investigating and obtaining a bodily specimen for conducting an OWI investigation. *See* Ruling; App. 13–28. This is not so.

Iowa law holds that Iowa Code chapter 321J does not supersede chapter 808's provisions permitting the State to obtain a warrant:

> The provision for a search warrant in section 321J.10 does not limit the State's authority to obtain a search warrant under the general search warrant provisions of Iowa Code chapter 808. Indeed, section 321J.10(2) expressly provides that search warrants may be obtained either under the limited circumstances of section 321J.10(3) or in accordance with chapter 808. *The legislature obviously did not intend for chapter 321J to preempt chapter 808*.

State v. Oakley, 469 N.W.2d 681, 682–83 (Iowa 1991) (emphasis added). As the Court of Appeals discussed in *State v. Frescoln*:

> Frescoln asserts the Iowa legislature removed the option of obtaining a chemical sample by warrant when it enacted our implied consent laws. Under Frescoln's interpretation, an officer may only obtain a sample for chemical testing by following the procedure established by our implied consent statute.
>
> …
>
> [W]e find the State's ability to obtain chemical testing is not limited to the provisions of chapter 321J so long as the procedure utilized conforms to constitutional requirements. Adhering to the warrant requirement is the best means upon which to conform to the constitutional protections from unreasonable searches and seizures.

Frescoln, 911 N.W.2d at 452–53, 455.

The district court concluded an officer engaged in an OWI investigation must comply with the procedure set out in section 321J.6 and offer the suspect the opportunity to refuse a chemical test and cannot obtain a warrant independent of that sequence. *See* Ruling at pp.3–6; App. 15–18. But no portion of Iowa Code chapter 321J contains such a requirement. It was improper for the district court to read such a requirement into the statute. *See State v. Schultz*, 604 N.W.2d 60, 62 (Iowa 1999) ("Our goal is to look at what the legislature said, not what it might or should have said. In looking at the language used, we will not construe a statute in a way which creates an impractical or absurd result, nor will we speculate as to the probable legislative intent beyond what the language clearly states." (internal citations omitted)).

The district court's conclusion defies other provisions of chapter 321J and published Iowa appellate precedent. Chapter 321J itself states it is not the exclusive means, and it conflicts with that language to hold otherwise:

> [Chapter 321J] does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug…

Iowa Code § 321J.18; *see* Iowa Code § 321J.15. The "supreme court has said this provision 'expresses our legislature's intent that [chapter 321J] "not be construed as limiting the introduction of competent evidence bearing on whether an accused was intoxicated." ' " *Frescoln*, 911 N.W.2d at 454 (quoting *State v. Demaray*, 704 N.W.2d 60, 64 (Iowa 2005)); *accord Oakley*, 469 N.W.2d at 682 ("Although Oakley insists otherwise, the State was not required to comply with Iowa Code section 321J.10 in order to take advantage of Oakley's efforts to secure an independent test under section 321J.11. The two sections are not interdependent."). The published opinion in *Frescoln* directly rejected the type of statutory interpretation the district court engaged in here:

> Frescoln argues the procedures outlined in chapter 321J are the only means by which law enforcement may obtain chemical testing of an OWI suspect. He attempts to construe the statute in a manner making it the exclusive means by which law enforcement can obtain chemical testing of persons suspected of OWI. However, nothing in the statute expressly requires this finding. "We do not read a requirement into a statutory scheme when none exists because '[i]t is not our province to write such a requirement into the [implied consent] statute.' " *State v. Fischer*, 785 N.W.2d 697, 705-06 (Iowa 2010) (alteration in original) (quoting *Gottschalk v. Sueppel*, 258 Iowa 1173, 140 N.W.2d 866, 872 (1966)).

> The explicit language of chapter 321J and our supreme court's prior decisions indicate the implied consent statute is not the exclusive means by which law enforcement may obtain chemical testing.

911 N.W.2d at 454. By its own provisions and cases construing them, chapter 321J is not the exclusive means for an officer to obtain a bodily specimen for an OWI investigation.

Iowa does not stand alone in recognizing officers may pursue constitutionally permissible avenues outside of implied consent when conducting OWI investigations. Other courts have reached the same conclusion. *E.g.*, *People v. Raider*, 516 P.3d 911, 918 (Colo. 2022) ("[The Express Consent Statute] does *not* apply to blood draws performed pursuant to a judicially authorized search warrant for which consent is unnecessary. That is, because consent operates as an *exception* to the Fourth Amendment's warrant requirement, the Expressed Consent Statute necessarily doesn't contemplate searches performed *pursuant to* a warrant. Accordingly, it would be illogical to deem a warrant as an exception to a consent statute when, in fact, consent is an exception to the warrant requirement." (emphasis in original)); *Brown v. State*, 774 N.E.2d 1001, 1007 (Ind. Ct. App. 2002) ("The provisions of the implied consent law do not act either

individually or collectively to prevent a law enforcement officer from obtaining a blood sample pursuant to a search warrant. Proscribing the use of a search warrant as a means of obtaining evidence of a driver's intoxication 'would be to place allegedly drunken drivers in an exalted class of criminal defendants, protected by the law from every means of obtaining the most important evidence against them.' " (quoting *Pena v. State*, 684 P.2d 864, 869 (Alaska 1984) (Compton, J., dissenting))); *State v. Green*, 91 So. 3d 315, 316 (La. Ct. App. 2012) ("The right to refuse chemical testing …, and circumvent the implied consent …, does not supersede a validly obtained search warrant for bodily fluids."); *State v. Wood*, 922 N.W.2d 209, 216 (Minn. Ct. App. 2019) ("[N]othing in the implied-consent law prevents an officer from obtaining and executing a search warrant that will yield a sample of bodily fluid that may be tested."); *State v. Smith*, 134 S.W.3d 35, 40 (Mo. Ct. App. 2003) ("The Missouri Implied Consent Law was enacted to codify the procedures under which a law enforcement officer could obtain bodily fluids for testing by consent without a search warrant. It provides administrative and procedural remedies for refusal to comply. Because it is directed only to warrantless tests authorized by law enforcement officers, it does

not restrict the state's ability to apply for a search warrant to obtain evidence in criminal cases … or a court's power to issue a search warrant….”); *State v. Minett*, 332 P.3d 235, 263 (Mont. 2014) (“[T]here is nothing in the statute that prohibits an officer from obtaining a search warrant for blood alcohol testing”); *State v. Garnenez*, 344 P.3d 1054, 1058 (N.M. Ct. App. 2014) (“We do not … read our Implied Consent Act to prohibit an officer from obtaining a blood sample using a search warrant supported by probable cause.”); *State v. Chavez*, 767 S.E.2d 581, 584 (N.C. Ct. App. 2014) (“[The implied consent statute] is not applicable to this case because defendant's blood was drawn pursuant to a search warrant.”); *Beeman v. State*, 86 S.W.3d 613, 616 (Tex. Crim. App. 2002) (en banc) (“The implied consent law expands on the State's search capabilities by providing a framework for drawing DWI suspects' blood in the absence of a search warrant. It gives officers an additional weapon in their investigative arsenal, enabling them to draw blood in certain limited circumstances even without a search warrant. But once a valid search warrant is obtained by presenting facts establishing probable cause to a neutral and detached magistrate, consent, implied or explicit, becomes moot.”); *State v.*

Zielke, 403 N.W.2d 427, 433 (Wis. 1987) ("[W]e hold that if evidence is otherwise constitutionally obtained, there is nothing in the implied consent law which renders it inadmissible in a subsequent criminal prosecution. Chemical test evidence may be otherwise legally obtained if it is seized pursuant to a valid search warrant, incident to a lawful arrest, under exigent circumstances supported by probable cause to arrest, or with the consent of the driver." (internal citations omitted)).

The district court found the "plain language" of Iowa Code chapter 808 forecloses warrants from being used to obtain "bodily samples." Ruling at p.6; App. 18. But this conclusion forgets that Iowa courts do not use hypercritical statutory analysis to strike down facially sufficient warrants: "There is a preference for warrants and we construe them in a commonsense manner, resolving doubtful cases in favor of their validity." *State v. Angel*, 893 N.W.2d 904, 911 (Iowa 2017); *see State v. Richardson*, 279 So. 3d 501, 512 (5th Cir. 2019) ("[C]ourts should strive to uphold warrants to encourage their use by police officers.").

The district court concluded that because section 808.2 authorizes warrants to be issued for "property," a search for bodily

samples is not authorized. Ruling at p.6; App. 18. But this conclusion both fails to consider chapter 808 in its entirety, and it fails to correctly interpret "property."

Iowa law permits the search of a person pursuant to a search warrant. Search warrants may permit an officer to "search a *person*, place, or thing." Iowa Code § 808.1(1) (emphasis added); *accord* Iowa Code § 808.4. Officers may apply for a search warrant based on an application describing "the *person*, place, or thing to be searched and the property to be seized with sufficient specificity to enable an independent reasonable person with reasonable effort to ascertain and identify the *person*, place, or thing." Iowa Code § 808.3(1)(a) (emphasis added).

Contrary to the district court's conclusion, "property" is not a narrowly defined term. Rather, it is broadly defined as "anything of value, whether publicly or privately owned.... The term includes both tangible and intangible property, labor, and services. The term includes all that is included in the terms 'real property' and 'personal property.' " Iowa Code § 702.14; *accord* Iowa Code § 4.1(24). In turn, the sub-definition of "personal property" broadly includes "money, goods, chattels, evidences of debt, and things in action." Iowa Code

§ 4.1(21). Chattel broadly includes “movable or transferable property” or “a physical object capable of manual delivery.” *Chattel*, *Black’s Law Dictionary* (11th ed. 2019).

Bodily samples, such as blood, breath or urine samples, easily fit within these broad definitions of property. Such samples are capable of being contained, transferred, and moved. Other courts have recognized that bodily specimens, such as blood or hair samples, qualify as property as the term is used in search warrant authorizing statutes. For example, the Florida District Court of Appeals found blood qualifies as “property”:

> Blood may be extracted from the body and donated and/or sold for further use. And, blood has long been routinely seized for testing as evidence in many types of criminal cases. It only makes sense that the legislature would intend the term “property” to broadly include the types of physical items that would routinely be seized in connection with a criminal investigation.

State v. Geiss, 70 So. 3d 642, 650 (Fla. Dist. Ct. App. 2011). The Texas Court of Appeals found blood qualified as “property or items.” *Wheat v. State*, No. 14-10-00029-CR, 2011 WL 1259642, at *3 (Tex. App. Apr. 5, 2011). And the Michigan Court of Appeals reached the same

conclusion, that blood or hair samples qualify as "property or [a] thing" as those terms are used in their search warrant statute:

> The language of [the search warrant statute] is sufficiently broad to cover the search of persons for blood and hair samples: The section permits issuance of a search warrant "to search the house, building or other Location or Place where the property or thing which is to be searched for and seized is situated." Indeed, such language should be liberally construed in order to encourage law enforcement officials to seek search warrants.

People v. Marshall, 244 N.W.2d 451, 457 n.23 (Mich. Ct. App. 1976). This Court should reach a similar result here and find that bodily specimens such as blood, breath, or urine qualifies as property.

Section 808.2 should be "liberally construed with a view to promote its objectives," and the public's interest is favored over any private one. Iowa Code §§ 4.2, 4.4. The public's interest in detecting and deterring intoxicated drivers is strong. *See* Iowa Code § 321J.23 (identifying legislative findings on impaired driving including that "[p]rompt intervention is needed to protect society, including drivers, from death or serious long-term injury"). As is the interest in encouraging officers to obtain warrants.

The conclusion that bodily specimens may be obtained by a chapter 808 search warrant makes sense given our preference for

search warrants over warrant exceptions. *See Angel*, 893 N.W.2d at 911. And this conclusion makes sense when considering our appellate courts have been encouraging officers to obtain search warrants for bodily specimens rather than rely on warrant exceptions or statutory mechanisms such as implied consent. *See State v. Pettijohn*, 899 N.W.2d 1, 22–23 (Iowa 2017) ("[A]n officer who has probable cause to suspect an individual of operating while intoxicated should ordinarily be able to complete and submit an electronic warrant application within minutes. … Whenever practicable, the state should obtain a warrant prior to conducting a search. … By submitting a statement with the proper certification to a magistrate electronically, a magistrate can issue the warrant under Iowa Code section 808.3."), *overruled by State v. Kilby*, 961 N.W.2d 374, 378 (Iowa 2021); *Frescoln*, 911 N.W.2d at 453 (recognizing preference for search warrants and encouraging the State to obtain warrants whenever practicable); *see also Birchfield v. North Dakota*, 579 U.S. 438, 474–75 (2016) ("Nothing prevents the police from seeking a warrant for a blood test when there is sufficient time to do so in the particular circumstances….").

The district court erred in effectively concluding that chapter 321J provided the sole means for officers to obtain a bodily specimen. The order suppressing the search warrant and test results should be reversed.

B. The district court's equal protection and due process analyses are underdeveloped and unsupported by authority.

Although it did not use traditional equal protection or due process principles, the district court also concluded that the State's action violated Laub's equal protection and due process rights. Ruling at pp. 13–15 ("Choosing personal extra-legal routes for the sake of simplicity under color of law deprived Mr. Laub of substantive and procedural due process as well as equal protection of the law under the Iowa and United States Constitutions."); App. 25–27. Distilled to its essence, the lower court determined the State violated the Equal Protection Clause by obtaining evidence from Laub's person by obtaining judicial approval through a warrant rather than using Laub's statutory "implied consent." In turn, the State's conduct violated Laub's due process rights by seeking *more* "process" than is provided within Iowa Code section 321J.6.

Each conclusion is incorrect. Iowa Code chapter 321J does not confer Laub—or any defendant—a right to dictate the manner in which law enforcement investigates, nor is a distinct classification created by the officer's proper exercise of that discretion. So long as the method the State uses to obtain evidence does not violate the law, an officer's election for particular procedure is unremarkable. *See, e.g.*, *State v. Jones*, 666 N.W.2d 142, 149 (Iowa 2003) ("[C]onstitutional search and seizure provisions do not require the least intrusive action possible. Instead, they require a measure of 'reasonableness under all the circumstances.' "); *accord Shade v. City of Farmington, Minnesota*, 309 F.3d 1054, 1061 (8th Cir. 2002) ("The Fourth Amendment does not require officers to use the least intrusive or less intrusive means to effectuate a search but instead permits a range of objectively reasonable conduct. If the officers' conduct falls within that permissible range of reasonableness, it is not our role to hinder or interfere with the difficult tasks and emotionally-charged situations that officers face in their daily job."); *Frescoln*, 911 N.W.2d at 454 ("Frescoln argues the procedures outlined in chapter 321J are the only means by which law enforcement may obtain chemical testing of an OWI suspect. He attempts to construe the

statute in a manner making it the exclusive means by which law enforcement can obtain chemical testing of persons suspected of OWI. However, nothing in the statute expressly requires this finding. 'We do not read a requirement into a statutory scheme when none exists because [i]t is not our province to write such a requirement into the [implied consent] statute.' ") (quoting *Fischer*, 785 N.W.2d at 705-06).

The officer's decision to comply with the constitution by obtaining a search warrant rather than pursue a warrant exception provided Laub with greater protection by involving a neutral magistrate, and it thus provided him with *more* process, not less. The exercise of the officer's discretion whether to invoke implied consent or to instead obtain a search warrant does not trigger an equal protection violation when it is not based on an improper standard. *Cf. State v. Apt*, 244 N.W.2d 801, 804 (Iowa 1976) (recognizing no equal protection violation based on selective enforcement where no evidence "selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification") *State v. Walker*, 236 N.W.2d 292, 295 (Iowa 1975) ("It is well settled that selectivity in prosecution is not per se a constitutional violation.

The constitution is not violated unless the selection is deliberately based on an unjustifiable standard, i.e., race, religion, or other arbitrary classification.").

Nor was Laub harmed by the officer's decision to obtain a warrant because Laub no longer faced the administrative sanctions tied to the implied consent process and the involvement of a neutral magistrate provided an extra layer of protection before the testing was performed. *See State v. Zaehringer*, 280 N.W.2d 416, 419 (Iowa 1979) (recognizing to raise a valid equal protection claim it is essential to show harm resulting from the distinction); *State v. Dewbre*, No. 21-1150, 2022 WL 10861226, at *3 (Iowa Ct. App. Oct. 19, 2022) ("By obtaining a warrant, the officer provided more safeguards to Dewbre than if the officer had invoked implied consent. Implied consent is invoked based on the judgment made by the officer. In contrast, a warrant is issued based on probable cause findings of a neutral and detached third party—the judicial officer issuing the warrant. By seeking a warrant, the officer provided Dewbre with more safeguards than if the officer had relied on implied-consent procedures. We find Dewbre's claim unpersuasive that her due process rights protecting her against self-incrimination

were violated by providing her with more process and more judicial oversight than Iowa Code chapter 321J requires." (internal citations omitted)); Iowa Code §§ 321J.9, .12.

Said another way, the court below incorrectly held evidence was suppressible because the State *obtained a warrant* rather than using an exception to the warrant requirement. This was neither a violation of due process nor of equal protection. This Court should reject the district court's conclusion and reverse.

*   *   *

The district court's grant of suppression was erroneous. The officer's decision to obtain a search warrant was lawful and was not precluded by the existence of the implied consent statute. This Court should reverse.

II. The District Court's Overly Broad Application of the Exclusionary Rule was Untethered to the Impropriety it Found.

Preservation of Error

The district court granted suppression of evidence over the State's objection. *See* Resistance; Ruling; App. 11–12, 13–28. Error is preserved.

Standard of Review

Review of an order granting suppression on constitutional grounds is reviewed de novo. *Jones*, 666 N.W.2d at 145.

Merits

After finding the officer's conduct in obtaining a warrant unlawful, the district court entered a broad order suppressing evidence: "[B]ecause [the] defendant's right of due process and equal protection of the law were violated, any verbal or non-verbal assertion he made upon and after being handcuffed is suppressed. Further, the search warrant documents, breath testing procedures[,] and breath test results are also suppressed." Ruling at p.15; App. 27. The court's expansive application of the exclusionary rule was untethered to the violation it found.

The district court's analysis focused on whether the search warrant for chemical testing was proper in place of the invocation of implied consent. But the court simultaneously suppressed all evidence following the point where the officer handcuffed Laub on the side of the road. As it relates to his challenge to the validity of the search warrant, Laub's verbal and non-verbal statements were not subject to the exclusionary rule.

The exclusionary "rule requires suppression at trial of evidence discovered *as a result of* illegal government activity." *Naujoks*, 637 N.W.2d at 111 (emphasis added). But the point at which the court ordered the suppression of evidence—that is, the moment Laub was handcuffed on the side of the road—was before the officer sought to obtain the warrant. Thus, Laub's verbal and non-verbal statements were not a fruit of the officer's supposed unlawful action of obtaining a search warrant.

"[T]he interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, *not a worse*, position that they would have been in if no police error or misconduct had occurred." *State v. McGrane*, 733 N.W.2d 671, 681 (Iowa 2007) (quoting *Nix v. Williams*, 467 U.S. 431, 443–44 (1984)); *accord State v. Seager*, 571 N.W.2d 204, 212–13 (Iowa 1997) (rejecting application of exclusionary rule that "would put the State in a *worse* position than if the illegal search had not occurred," because this result would be "clearly at odds with the underlying philosophy of the exclusionary rule" (emphasis in original)).

Had the officer not conducted *any* chemical testing, Laub's verbal and non-verbal statements would still have occurred and would have been admissible. By suppressing this evidence, the district court used an application of the exclusionary rule that served no practical purpose. This defied the purpose and intent of the exclusionary rule. The district court's order suppressing any verbal and non-verbal statements after the moment Laub was handcuffed should be reversed.

CONCLUSION

This Court should reverse the district court's order granting suppression of evidence and remand for further proceedings.

REQUEST FOR NONORAL SUBMISSION

Oral submission is unnecessary.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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