

IN THE IOWA DISTRICT COURT IN AND FOR MAHASKA COUNTY

STATE OF IOWA,

Plaintiff,

Vs.

NO. [REDACTED]

**RULING ON MOTION TO
SUPPRESS**

[REDACTED],
Defendant.

Hearing on the Defendant's Motions to Suppress was held on June 17, 2019.

The State appeared by Cami Eslick, Assistant Mahaska County Attorney; the Defendant appeared with her Lucas Taylor. The issues presented at hearing were:

1. Whether the defendant's Constitutional rights were violated by the search of her purse by law enforcement after the defendant's family had searched the purse, found paraphernalia and contacted an officer;
2. Whether the certification that the defendant was unable to consent or refuse complies with 321J.7 of the Code of Iowa; and
3. Whether law enforcement had reasonable grounds to request a urine sample.

At hearing the State offered: Exhibit 1, a request to medical personnel for a urine specimen, and Exhibit 3, a transcript of the deposition testimony of Trooper Salesberry from March 21, 2019. The defendant offered Exhibit 2 (Defendant's A), a certification – person is dead, unconscious, or otherwise unable to consent or refuse. Exhibits 1, 2, and 3 were admitted without objection. The sworn testimony of Trooper Wade Major was presented. Following the hearing the parties submitted briefs on the issues for the court.

FINDINGS OF FACT

Wade Major, a trooper with the Department of Public Safety Iowa State Patrol, was on duty on September 11, 2018 when he was called to an accident scene at Highway and near Avenue west of in Mahaska County, Iowa. Trooper Major is a certified peace officer, technical collision investigator, drug recognition expert and accident reconstructionist. Upon arrival at the scene at approximately 8:00 pm Trooper Major observed three vehicles that had been involved in a motor vehicle accident. The defendant was in the driver's seat of the Car, and Passenger 1 was a front seat passenger of the defendant's vehicle. The west-bound car had been impacted from behind by a truck. Both the car and the truck were then propelled into the east-bound lane where an oncoming semi-tractor and trailer was unable to avoid impacting both vehicles. Trooper Major interviewed witnesses at the scene including the semi driver. The collision appeared to have been caused by the defendant driving very slow or stopping in the west bound lane and giving no indication of intent to turn. The defendant had slowed/stopped "well short" of the intersection where defendant could have been going to turn left.

Passenger 1 told the officer they were heading to Des Moines. said he did not see what happened as he was "playing on his phone." Trooper Major observed Passenger 1 to be under the influence of a central nervous system stimulant during the interview. Passenger 1 admitted to using methamphetamine the previous day.

The defendant was transported to the local hospital. Defendant's belongings including her purse were given to defendant's family in preparation for defendant to be flown to Methodist Hospital in Des Moines, Iowa.

Defendant's daughter-in-law _____ and defendant's brother _____ went through defendant's purse at the hospital _____ and found drugs and drug paraphernalia in the purse. The family members returned the items to the purse and contacted _____ Police Department and advised them they had located these items and that they believed the defendant was using methamphetamine. Trooper Major was contacted by the _____ Police Department Lt. John Plumb and provided the information about the drugs and paraphernalia in the defendant's purse. Trooper Major went to _____ and spoke with the family members who gave him a pouch they had located in the defendant's purse. Trooper Major opened the pouch and found therein a substance appearing to be methamphetamine and a methamphetamine pipe. Trooper Major contacted Trooper Salesberry of District 2 and asked Trooper Salesberry to obtain a urine sample from the defendant at _____ Hospital in Des Moines. Trooper Salesberry went to _____ Hospital. Defendant was "moaning and yelling and kind of rolling around." Salesberry could not tell if defendant was awake or not. Salesberry asked the defendant's nurse if defendant was capable of giving consent to the request for urine sample. The nurse said the defendant was in no condition to give consent. The registered nurse, _____, then filled out and signed the certification form and provided no information as to why the defendant was incapable of consenting or refusing as required. Exhibit 2. Nurse _____ obtained the defendant's urine sample for the trooper.

CONCLUSIONS OF LAW

1.

The search of the defendant's purse and the pouch within the purse was carried out by private actors, the defendant's daughter-in-law and brother. No law enforcement asked the family members to search the purse. The concerned family members alerted law enforcement that they had located drugs and drug paraphernalia in the pouch in the purse. Trooper Major arrived at the Mahaska Health Partnership and family provided him with the pouch they had found. Trooper Major assessed the contents of the pouch, as the family had previously done and took custody of it. This was a private search exception to warrant requirement. See *State v. Manning*, 858 N.W. 2d 36 (Iowa App. 2014) citing *United States v. Jacobsen*, 499 U.S. 109, 113-114 (1984). Trooper Major's search did not exceed the scope of the private search of the pouch, therefore no warrant was required. The trooper's acquisition of the drugs and drug paraphernalia contained in a pouch from the defendant's purse was lawful and not a violation of the defendant's Constitutional rights under Article I, Section 8 of the Iowa's Constitution or the Fourth Amendment to the United States Constitution.

2.

The Certification signed by the registered nurse RN, fails to comply with the requirements of Iowa Code Section 321J.7 in two ways. The nurse provided no information at all as to why the defendant was unable to consent or refuse. None of the three optional boxes identifying the incapacity is checked; nor is there in detail provided as to why the medical professional believes the defendant is incapacitated. Further, the nurse is

a Registered Nurse. Iowa Code Section 321J.7 specifically authorizes only a “licensed physician, physician assistant, or advanced registered nurse practitioner” to complete the certification form. A registered nurse is not in any of those categories. The certification FAILS to comply with Iowa Code Section 321J.7.

3.

Trooper Major’s investigation led him to conclude the defendant had been moving slowly or stopped well short of an intersection in the westbound lane of Highway when she was impacted from behind by a truck. The defendant had not used a turn signal prior to the impact. The defendant’s passenger, appearing under the influence of a central nervous system stimulant, admitted he had used methamphetamine the previous day. Defendant’s passenger stated they were traveling to Des Moines, which would have been inconsistent with the vehicle intending to make a left turn at the location of the impact. The defendant’s family located drugs and drug paraphernalia in the defendant’s purse at the the hospital and gave those items to Trooper Major. When taken as a whole, these facts and circumstances warrant a prudent person to believe that an offense had been committed, specifically operating under the influence in violation of Iowa Code Section 321J. 2. See *State v. Owens*, 418 N.W.2d 340, 342 (Iowa 1988). Trooper Major had reasonable grounds to believe defendant had been operating under the influence and to request a urine specimen.

The Court rejects defendant’s first and third arguments in the Motion to Suppress, but grants the defendant’s second argument. The remedy for the violation of Iowa Code Section 321J.7 is suppression of the toxicology report of defendant’s urine

specimen.

ORDER

IT IS THEREFORE ORDERED that the defendant's Motion to Suppress is denied in part and granted in part.

IT IS FURTHER ORDERED that pretrial conference is **set for October 28, 2019 at 9:30 a.m. and jury trial November 5, 2019 at 9:00 a.m.**

Dated October 25, 2019.

/s/
ROSE ANNE MEFFORD
JUDGE, EIGHTH JUDICIAL DISTRICT

CERTIFICATE OF SERVICE: The undersigned certifies that a true copy of this document was served on each person named (and checked) below, including attorneys of record, or the parties where no attorney is of record, by electronic mail or by enclosing this document in an envelope addressed to each named person at the respective addresses disclosed by the pleadings of record herein, with postage fully paid, by depositing the envelope in a United States depository or hand-delivered via courthouse mail: _____ (date)

Copies distributed via: Email Mail Hand-Delivery

___	___	___
___	___	___
___	___	___
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County Attorney
Lucas Taylor

Signed: _____



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
STATE OF IOWA VS

So Ordered

A handwritten signature in blue ink, appearing to read "Rose Anne Mefford", is written over a horizontal line.

Rose Anne Mefford, District Associate Judge,
Eighth Judicial District of Iowa