

IN THE COURT OF APPEALS OF IOWA

No. 1-987 / 10-2094
Filed February 1, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER LEO BOYCE,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Russell G. Keast
(Motion to Suppress) and Casey D. Jones (Trial), District Associate Judges.

A defendant appeals from his conviction of operating while intoxicated,
second offense. **AFFIRMED.**

R.A. Bartolomei of Bartolomei & Lange, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Jennifer P. Clinton and
Lisa Epp, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

Christopher Boyce appeals from his conviction of operating while intoxicated, second offense, in violation of Iowa Code section 321J.2 (2009). He asserts the district court erred in denying his motion to suppress. Boyce argues the arresting officer signed a form in which he falsely certified he was the operator of the Datamaster machine, and consequently the breath test result should be suppressed as a sanction. Our review is for correction of errors at law. Iowa R. App. P. 6.907; see *State v. Stohr*, 730 N.W.2d 674, 675 (Iowa 2007).

In December 2009, Boyce was arrested and transported to the Cedar Rapids Police Department by Officer Thai Nguyen. Officer Nguyen invoked the implied consent procedures. Boyce was provided with a written copy of the implied consent advisory and Officer Nguyen read the relevant portions of the advisory to Boyce. Boyce then consented to a breath test, which was administered by Officer Mark Asplund using a Datamaster machine and demonstrated that Boyce's blood-alcohol concentration was .227.

The Traffic and Criminal Software (TraCS) program was utilized by the officers. See *State v. Fischer*, 785 N.W.2d 697, 704 (Iowa 2010) (holding that the computerized form on the TraCS program satisfied the written requirement of section 321J.6). Officer Nguyen's information was entered into the program and he affixed his signature into the program several times, which auto-populated the form on various required signature lines. Multiple forms were generated, one of which contained sections entitled "Request for Specimen" and "Notice of Revocation." Officer Nguyen's signature was at the bottom of the form below the

following statement: “I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.”

On appeal, Boyce asserts that by signing the “Request and Notice” form, Officer Nguyen falsely certified under penalty of perjury that he was the operator of the DataMaster machine.¹ In the “Request for Specimen” section, the form stated that Officer Nguyen read Boyce the “appropriate Implied Consent Advisory” and requested “a specimen of [his b]reath for chemical testing to determine the alcohol or drug content.” Officer Nguyen signed this section as the “Peace Officer Making Request.” In the “Notice of Revocation” section, Boyce was notified his “privilege to operate motor vehicles in Iowa is revoked” for a period of one year. Officer Nguyen signed this section as the “Peace Officer Serving Notice.”

Boyce cites to the word “operator” in the form, arguing it referred to the operator of the Datamaster machine. Above the “Notice of Revocation,” the form stated:

¹ Boyce additionally argues the district court should have found the State could not establish the requisite foundation under section 321J.15 for admission of the breath test.

Under section 321J.15, the State must establish three elements: (1) the test was performed on a device intended to determine alcohol concentration, (2) the test was performed by an operator certified to use the device, and (3) the methods used to perform the test were approved by the Commissioner of Public Safety. *Stohr*, 730 N.W.2d at 676. He does not challenge the first and second element, but argues the third could not be established. The State responds this issue was not raised before the district court and is therefore, not preserved. In fact, Boyce acknowledges the district court did not address this issue. Consequently, we find this argument is not preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2006) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”); *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002) (“Generally, we will only review an issue raised on appeal if it was first presented to and ruled on by the district court. This general rule includes constitutional issues.”).

The person (operator): (Check all that apply. At least one box must be checked.)

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submitted to chemical testing which indicated an alcohol concentration of two hundredths (0.08) or more.

The box above was checked. The use of operator clearly refers to the operator of the vehicle who submitted to a chemical test. As the district court found, at no point does this form indicate that Officer Nguyen was the officer who administered the breath test. There was no false certification by Officer Nguyen, and Boyce's argument is without merit. We affirm.

AFFIRMED.