

**IN THE COURT OF APPEALS OF IOWA**

No. 6-953 / 06-0140  
Filed January 18, 2007

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

**vs.**

**MICHAEL IVAN WELSHHONS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Don C. Nickerson,  
Judge.

Defendant appeals from his conviction for vehicular homicide.

**AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Jim Ward and Ramona Belcher-  
Ford, Assistant County Attorneys, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MAHAN, P.J.**

Michael Welshhons appeals from his conviction for homicide by vehicle, in violation of Iowa Code section 707.6A(1) (2003). He argues the district court erred in denying his motion to suppress the results of a urine test obtained when an officer invoked implied consent procedures. See Iowa Code § 321J.6. We affirm.

**I. Background Facts and Proceedings**

At approximately 9:23 p.m. on July 10, 2004, a pickup truck driven by Welshhons struck an SUV at the intersection of Douglas and Bowdoin Avenues in Des Moines. The two-year-old daughter of the woman driving the SUV was killed in the accident. Witnesses told officers investigating the accident that Welshhons was traveling at a high rate of speed on Bowdoin Avenue and drove through stop signs at the two intersections he passed before reaching Douglas Avenue.

Police officers at the scene of the accident detected an odor of alcohol on Welshhons and observed a beer bottle in his truck. Welshhons was transported to the hospital for treatment of injuries he sustained in the accident. Officer Tracy Rhoads, a drug recognition expert, received a phone call about the accident from Officer Larry Gilmore at 10:00 p.m. Officer Gilmore told Rhoads that Welshhons was at fault and had admitted to using methamphetamine two to three times per week.

Officer Rhoads arrived at the hospital at approximately 10:40 p.m. Welshhons had a broken femur and was in obvious pain; therefore she

concluded he was “in no condition” to conduct a full drug recognition exam.<sup>1</sup> She detected a faint odor of alcohol on Welshhons and observed that his eyes were bloodshot.

Welshhons was taken for x-rays and a CT scan at 11:00 p.m. When he returned to his room at 11:58 p.m., Officer Rhoads gave him a preliminary breath test (PBT). See Iowa Code § 321J.5(1)(b) (permitting an officer to conduct a PBT when the officer has reasonable grounds to believe the motor vehicle operator has been involved in an collision resulting in injury or death). The PBT showed Welshhons had a blood alcohol content of .011.

At 12:01 a.m. Officer Rhoads invoked implied consent procedures. Welshhons consented to testing and the attending nurse took a sample of urine from Welshhons’s catheter bag. The sample tested positive for the presence of alcohol, amphetamine, methamphetamine, and marijuana.

The State charged Welshhons with two counts of homicide by vehicle. See Iowa Code § 707.6A(1) (count I: operating while intoxicated alternative), (2) (count II: reckless alternative). After the court denied his motion to suppress, Welshhons waived his right to jury trial and agreed to a bench trial on the minutes of testimony. In return, the State agreed to dismiss count II of the trial information. The district court found Welshhons guilty and sentenced him to an indeterminate twenty-five-year term of imprisonment. This appeal followed.

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<sup>1</sup> Welshhons was later transported to the University of Iowa Hospitals and Clinics for surgery to his shoulder and hip.

## II. Standard of Review

Our review is for correction of errors at law. Iowa R. App. P. 6.4; *State v. Demaray*, 704 N.W.2d 60, 62 (Iowa 2005).

## III. Discussion

On appeal, Welshhons argues Officer Rhoads improperly invoked the implied consent procedures of section 321J.6 because she did not have reasonable grounds to believe he was operating while intoxicated or under the influence in violation of section 321J.2. Therefore, Welshhons argues the district court erred in denying his motion to suppress the test results.

Section 321J.6 authorizes a “peace officer” to request the withdrawal and testing of bodily substances when (1) the officer has reasonable grounds to believe the person was operating while intoxicated and (2) the person has been involved in a motor vehicle collision resulting in personal injury or death. Iowa Code § 231J.6(1)(b); *State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994). The “reasonable grounds” test is met when

the facts and circumstances known to the officer at the time action was required would have warranted a prudent persons’ belief that an offense had been committed. Further, it is well established that when police officers are acting in concert, the knowledge of one is presumed shared by all.

*State v. Owens*, 418 N.W.2d 340, 342 (Iowa 1988) (citations omitted).

At the time she requested the urine test, Officer Roads knew Welshhons had been speeding, driving erratically, and had failed to stop at posted signs. She also knew he had a beer bottle in his car and had admitted to using methamphetamine two to three times a week. She detected an odor of alcohol on Welshhons and observed his eyes were bloodshot. Although his PBT showed

a blood alcohol content under the legal limit, such a result “does not automatically eliminate any reasonable grounds for believing” Welshhons was operating while intoxicated or under the influence. *Owens*, 418 N.W.2d at 343. “If, as in this case, the preliminary results showed the presence of alcohol, a prudent person would be warranted in requesting a more accurate test.” *Id.* Based on the facts and circumstances known to the officer at the time she invoked implied consent procedures, we conclude Officer Rhoads had reasonable grounds to believe Welshhons was operating while intoxicated or under the influence. The district court did not err in denying the motion to suppress.

**AFFIRMED.**