IN THE COURT OF APPEALS OF IOWA

No. 9-298 / 08-1660
Filed June 17, 2009

STATE OF IOWA,
Plaintiff-Appellant/Cross-Appellee,

vs.

ANDREA BIRDSALL LAFORGE,
Defendant-Appellee/Cross-Appellant.

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

The State appeals and the defendant cross-appeals from a district court ruling denying the defendant's motion to suppress evidence but granting her motion to dismiss the criminal charge against her. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Thomas J. Miller, Attorney General, Jean C. Pettinger and Mary Tabor, Assistant Attorney Generals, John P. Sarcone, County Attorney, and David Porter and Steve Foritano, Assistant County Attorneys, for appellant.

Robert G. Rehkemper of Gourley, Rehkemper & Lindholm, P.L.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

MILLER, J.

The State appeals from a district court ruling dismissing the charge of homicide by vehicle in violation of Iowa Code section 707.6A(1) (2007) against Andrea LaForge. LaForge cross-appealed and was granted discretionary review of the court's denial of her motion to suppress evidence of her blood-alcohol concentration. We affirm in part, reverse in part, and remand.

I. BACKGROUND FACTS AND PROCEEDINGS.

On February 27, 2007, at about 11:15 p.m., LaForge lost control of her vehicle on an exit ramp off of the interstate. Jamie Hill, a passenger in the vehicle, died as a result of the accident. LaForge and the other passenger in the vehicle, Alan Hill, were transported to Mercy Hospital for treatment.

Iowa State Troopers John Salesberry and Tyson Underwood arrived at the scene of the accident at approximately 11:23 p.m. Salesberry observed the roadway was slightly icy with snow on the ground. He discovered a beer bottle near the vehicle. Salesberry and Underwood contacted Iowa State Trooper Kirk Lundgren for technical assistance in investigating the scene of the accident. He arrived at around 11:45 p.m. and sent Underwood to the hospital to interview the vehicle's occupants. Salesberry and Lundgren stayed at the scene of the accident to continue their investigation.

Underwood arrived at the hospital shortly after midnight. He spoke with Alan Hill first and obtained his consent to withdraw a blood sample for alcohol testing. While waiting for Hill's blood to be withdrawn, Underwood learned LaForge had informed staff at the hospital that she had been driving the vehicle

when the accident occurred. An individual that witnessed the accident had previously informed Underwood at the scene of the accident that LaForge was driving the vehicle.

Underwood spoke with LaForge in her hospital room at about 2:00 a.m. He noticed she had bloodshot, watery eyes and smelled of alcohol. LaForge admitted she was the driver of the vehicle, and Underwood requested that she provide a breath sample. LaForge refused. Her mother then demanded that Underwood leave the hospital room. Underwood continued to try to speak to LaForge and read the implied consent advisory to her, but he was prevented from doing so by LaForge's mother. LaForge's mother eventually called an attorney who informed the officers that LaForge would not consent to the withdrawal of her blood for chemical testing.

Lundgren, who had arrived at the hospital after completing his investigation of the accident scene, began working on a search warrant application around 3:15 a.m. He contacted the on-call assistant county attorney and was advised to proceed with the blood withdrawal from LaForge while continuing to prepare the warrant application. LaForge's blood was withdrawn without her consent sometime after 4:16 a.m. by a technician from the medical examiner's office. A search warrant was not obtained until 6:30 a.m. LaForge was never placed under arrest during the officers' investigation of the accident that night.

On March 8, 2007, in anticipation of possible criminal charges stemming from the accident, LaForge sent letters to the Iowa State Patrol, the Polk County

Sheriff's Department, and the Polk County Attorney's Office requesting preservation of "[a]ny and all bodily fluids withdrawn or obtained for the purposes of scientific testing." LaForge's blood sample was tested by the Iowa Department of Criminal Investigation (DCI) the following day. The test results showed her blood-alcohol concentration was .057%. The lab sent a report documenting its findings to the Iowa State Patrol and the Polk County Attorney's Office on March 12. That report indicated the blood sample would be destroyed within ninety days unless there was a request to preserve it. No request was made, and the blood sample was destroyed on August 23, 2007.

On October 3, 2007, LaForge was charged, by trial information, with homicide by vehicle in violation of Iowa Code section 707.6A(1). She filed a motion to suppress evidence and a motion to dismiss the criminal charge against her. In support of those motions, she contended the warrantless withdrawal of her blood without her consent violated Iowa Code section 321J.10A and her right to be free from unreasonable search and seizure, as guaranteed by the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution. She additionally contended the destruction of her blood sample violated her rights to a fair trial and to due process of law under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, sections 9 and 10 of the Iowa Constitution.

Following a hearing, the district court denied LaForge's motion to suppress, concluding the warrantless withdrawal of LaForge's blood "*even in the*

absence of an arrest" did not violate section 321J.10A and was not unconstitutional. The court did, however, grant LaForge's motion to dismiss based on the destruction of the blood sample. Although it rejected her *Brady* claim, the court found the destruction of the blood sample "deprived [LaForge] of a meaningful opportunity to present a complete defense," thus denying her of her constitutional right to a fair trial.

The State appeals from the district court's dismissal of the criminal charge against LaForge. It claims the court erred in concluding the destruction of the blood sample deprived LaForge of her right to a fair trial. LaForge filed a cross-appeal from the court's denial of her motion to suppress. Our supreme court ordered that LaForge's cross-appeal be treated as an application for discretionary review, which it then granted. On appeal, LaForge claims the district court erred in rejecting her federal and state due process claims under *Brady* and in concluding the withdrawal of her blood without a warrant did not violate section 321J.10A and her right to be free from unreasonable search and seizure.

II. SCOPE AND STANDARDS OF REVIEW.

"Our review of the constitutional issues is de novo, which involves an independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Stanford*, 474 N.W.2d 573, 575 (Iowa 1991). However, "[i]n considering the statutory questions our review is to correct errors of law." *Id.*

III. MERITS.

A. Warrantless Withdrawal of Blood.

We begin our discussion with the district court's ruling denying LaForge's motion to suppress the blood test results obtained from the warrantless withdrawal of her blood. LaForge claims the court erred in not suppressing that evidence because she was not under arrest when the blood sample was drawn as required by Iowa Code section 321J.10A. We agree.

As our supreme court recently explained in *State v. Harris*, 763 N.W.2d 269, 271 (Iowa 2009), when a traffic accident has resulted in death and there are reasonable grounds to believe the driver at fault for the accident was intoxicated, Iowa Code section 321J.10 allows for the withdrawal of a specimen of blood for chemical testing over the individual's objection, pursuant to a search warrant. Notwithstanding that section, withdrawal of blood without a warrant is permitted in certain circumstances under section 321J.10A(1), which provides in relevant part that

> *if a person is under arrest* for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A, and that *arrest* results from an accident that causes a death or personal injury reasonably likely to cause death, a chemical test of blood may be administered without the consent of the person *arrested* to determine the amount of alcohol or a controlled substance in that person's blood . . . .

(Emphasis added.)

In finding that LaForge's blood was not withdrawn in violation of section 321J.10A(1), the district court stated,

> While [LaForge] is correct that the plain language of Iowa Code section 321J.10A requires an arrest, this Court concludes as a matter of law, the purpose and intent is to ensure law enforcement officials can provide specific, and articulable facts needed to support a probable cause finding. That threshold was clearly established.

The State asserts the court "correctly concluded that although [LaForge] was not under arrest as set forth in section 321J.10A, the existence of probable cause to arrest substituted for a technical arrest."[1] We cannot agree with this assertion as it ignores the unambiguous language of the statute. *See Harris*, 744 N.W.2d at 271 ("When the language of a criminal statute is clear, the court looks no further for meaning than its express terms.").

Iowa Code section 804.5 defines "arrest" as "the taking of a person into custody when and in the manner authorized by law, including restraint of the person or the person's submission to custody." Where the legislature has defined a term, courts cannot rewrite the statute and apply a definition more to its liking. *State v. Palmer*, 554 N.W.2d 859, 865 (Iowa 1996). If the legislature had meant the term "arrest" in section 321J.10A to be synonymous with "probable cause," it would have said so. *See, e.g.*, Iowa Code § 321J.10(3)(e) (requiring magistrate to be "satisfied from the oral testimony that the grounds for the warrant exist or that there is *probable cause* to believe that they exist" (emphasis

[1] The district court concluded the officers had probable cause to arrest LaForge based on their observations that she "had bloodshot and watery eyes and that they detected alcohol emanating from [her]." However, both Underwood and Lundgren testified at the hearing on LaForge's motions they did not place LaForge under arrest before having her blood withdrawn because they did not have sufficient information at that time to believe she had committed a crime. *See State v. Freeman*, 705 N.W.2d 293, 298 (Iowa 2005) (stating probable cause exists "if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed and that the arrestee committed or is committing it").

added)). We are bound by what the legislature said, not by what it should or might have said. *See Palmer*, 554 N.W.2d at 865. Where the meaning of a statute is clear, as it is here, our role is simply to enforce the law according to its terms. *Id.*

Our conclusion is supported by our supreme court's observation in *State v. Johnson*, 744 N.W.2d 340, 343 (Iowa 2008) that the wording of section 321J.10A "tracks closely with the language of" *Schmerber v. California*, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966). In that case, the United States Supreme Court "concluded that the warrantless withdrawal of blood from an individual implicates the Fourth Amendment to the United States Constitution."[2] *Johnson*, 744 N.W.2d at 342. In considering whether such an "intrusion into the petitioner's body was constitutional, the Court noted, 'The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the States.'" *Palmer*, 554 N.W.2d at 861 (quoting *Schmerber*, 384 U.S. at 766, 86 S. Ct. at 1834, 16 L. Ed. 2d at 917). The Court in *Schmerber* acknowledged that despite those Fourth Amendment implications "alcohol naturally dissipates from the body shortly after its consumption." *Johnson*, 744 N.W.2d at 342. It therefore concluded "the warrantless seizure of blood for purposes of chemical testing may be justified by the exigent-circumstances exception to the warrant requirement of the Fourth Amendment." *Id.*

[2] The rights guaranteed in the Fourth Amendment apply to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1694, 6 L. Ed. 2d 1081, 1090 (1961).

Having reached that conclusion, the *Schmerber* Court proceeded to consider whether that exception applied in the case before it. It stated, "In this case, as will often be true when charges of driving under the influence of alcohol are pressed, these questions arise in the context of an arrest." *Schmerber*, 384 U.S. at 768, 86 S. Ct. at 1834, 16 L. Ed. 2d at 918. The "mere fact of a lawful arrest" did not, however, end the Court's inquiry. *Id.* at 769, 86 S. Ct. at 1835, 16 L. Ed. 2d at 919. In finding the "attempt to secure evidence of blood-alcohol content in this case was an appropriate incident to petitioner's arrest," the Court observed the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence.'" *Id.* at 770-71, 86 S. Ct. at 1835-36, 16 L. Ed. 2d at 919-20 (citation omitted). In so concluding, the Court "warned against ill-considered extensions of its decision," *Palmer*, 554 N.W.2d at 862, stating:

> We thus conclude that the present record shows no violation of petitioner's right under the Fourth and Fourteenth Amendments to be free of unreasonable searches and seizures. It bears repeating, however, that we reach this judgment only on the facts of the present record. The integrity of an individual's person is a cherished value of our society. That we today hold that the Constitution does not forbid the States minor intrusions into an individual's body *under stringently limited conditions* in no way indicates that it permits more substantial intrusions, *or intrusions under other conditions*.

Schmerber, 384 U.S. at 772, 86 S. Ct. at 1836, 16 L. Ed. 2d at 920 (emphasis added); *see also State v. Christianson*, 627 N.W.2d 910, 913 (Iowa 2001) (applying our implied-consent statute strictly because of the "sensitive and unique nature of any procedures involving intrusions into the human body").

"The Iowa legislature was sensitive to these concerns because in enacting Iowa's implied consent statute, the legislature incorporated limitations on the State's ability to conduct a warrantless search of a suspected drunk driver." *Palmer*, 554 N.W.2d at 862; *see also Johnson*, 744 N.W.2d at 343 (noting section 321J.10A "tracks closely with the language of *Schmerber*" and Iowa case law has followed the rationale set forth in that case). "We will not undermine the legislature's policy decision by ignoring the plain language of the statute." *Palmer*, 554 N.W.2d at 865 (rejecting State's argument that a law enforcement officer without the training required by the implied consent statute "is, nevertheless, a de facto peace officer under that section").

Because LaForge was not under arrest as required by section 321J.10A,[3] we conclude the district court erred in denying her motion to suppress the blood

[3] We also do not agree with the district court that the record in this case supports the existence of facts satisfying another requirement of section 321J.10A(1) for an unconsented withdrawal of blood. Section 321J.10A(1)(c) requires that the peace officer ordering such a withdrawal "*reasonably believes* the officer is confronted with an emergency situation in which the delay necessary to obtain a warrant under section 321J.10 threatens the destruction of the evidence [of intoxication]." (Emphasis added.) The officers stated that an OWI investigation is time sensitive, as they were aware of the body's natural dissipation of alcohol over time. However, "this knowledge alone is not sufficient to satisfy the statute." *Harris*, 763 N.W.2d at 274. The actual time to obtain a warrant is an important fact in considering whether exigent circumstances exist to justify a warrantless search. *See State v. Lovig*, 675 N.W.2d 557, 566 (Iowa 2004). From almost the initiation of their investigation at the scene of the accident the officers had information indicating that LaForge had been the driver of the vehicle involved in the accident. The withdrawal of LaForge's blood without her consent and without a warrant was performed on instruction from an assistant county attorney. No officer testified to a belief that evidence of LaForge's blood-alcohol concentration would have been destroyed or compromised if they had timely sought a search warrant and waited to draw blood until a search warrant was obtained. *Compare Harris*, 763 N.W.2d at 275 (affirming court's suppression of blood test results where the officer simply acted on the instructions of the county attorney in withdrawing the suspect's blood without a warrant and "never asserted the reason he ordered the warrantless blood sample was his belief that the time it would take to obtain the warrant would result in the destruction of evidence"), *with Johnson*, 744 N.W.2d at 344 (affirming court's admission of blood test

test results obtained from the warrantless withdrawal of her blood. We therefore reverse that portion of the district court's ruling. The question remains, however, whether the court erred in dismissing the criminal charge against LaForge based on the destruction of the blood sample.

B. Destruction of Blood Sample.

"Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness." *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532, 81 L. Ed. 2d 413, 419 (1984). The United States Supreme Court "has long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense." *Id.* "To safeguard that right, the Court has developed 'what might loosely be called the area of constitutionally guaranteed access to evidence,' which "delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system." *Id.* at 485, 104 S. Ct. at 2532, 81 L. Ed. 2d at 419-20 (citation omitted).

In considering the failure of police officers to preserve a defendant's breath samples in a drunk driving case, the Court in *Trombetta* noted it had "never squarely addressed the government's duty to take affirmative steps to preserve evidence on behalf of criminal defendants," which it attributed in part to "the difficulty of developing rules to deal with evidence destroyed through prosecutorial neglect or oversight." *Id.* at 486, 104 S. Ct. at 2533, 81 L. Ed. 2d at

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results where the "traffic officer testified that he believed evidence of Johnson's blood-alcohol concentration would be destroyed if he waited to withdraw blood until after a search warrant was obtained").

420-21. "Whenever potentially exculpatory evidence is permanently lost, courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed." *Id*. The Court accordingly set out the following standard for the State's duty to preserve evidence:

> Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality . . . evidence must both possess an *exculpatory* value that was apparent *before* the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.

Id. at 488-89, 104 S. Ct. at 2534, 81 L. Ed. 2d at 422 (emphasis added). In finding that standard was not violated in the case before it, the Court also focused on the State's intent, stating the breath samples were not destroyed "in a calculated effort to circumvent the disclosure requirements established by *Brady*."[4] *Id.* at 488, 104 S. Ct. at 2533, 81 L. Ed. 2d at 422. Instead, in failing to preserve the breath samples, the officers were "acting 'in good faith and in accord with their normal practice.'" *Id.* (citation omitted).

The Supreme Court expounded on the State's duty to preserve evidence in the later case of *Arizona v. Youngblood*, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988). The Court acknowledged its decision in *Brady* in which it had held a state's good or bad faith is irrelevant when the prosecution fails to disclose to a defendant "*material exculpatory* evidence." *Youngblood*, 488 U.S. at 57, 109

[4] In the seminal "access to evidence" case of *Brady*, 373 U.S. at 87, 83 S. Ct. at 1197, 10 L. Ed. 2d at 218, where a co-defendant's confession to murder was withheld from the defense by the prosecution, the Court held: "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

S. Ct. at 337, 102 L. Ed. 2d at 289 (emphasis added). But, according to the Court in *Youngblood*, the Due Process Clause

> requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that *it could have been* subjected to tests, the results of which *might have* exonerated the defendant.

Id. (emphasis added). In those cases, "unless a criminal defendant can show bad faith on the part of the police, failure to preserve *potentially useful evidence* does not constitute a denial of due process of law." *Id.* at 58, 109 S. Ct. at 337, 102 L. Ed. 2d at 289 (emphasis added).

Our supreme court adopted this standard in *State v. Dulaney*, 493 N.W.2d 787, 791 (Iowa 1992), a drunk driving case in which the defendant sought to suppress test results from a warrantless blood withdrawal. Like LaForge, the defendant in *Dulaney* argued the State violated his due process rights under *Brady* by destroying his blood sample before he was able to have it independently tested. *Dulaney*, 493 N.W.2d at 790. After setting forth the standard articulated by the United States Supreme Court in *Trombetta* and *Youngblood*, our supreme court concluded: "[T]he State's blood sample merely could have been subjected to tests, and the results merely might have exonerated Dulaney This is not enough under *Trombetta* and *Youngblood* to find a violation of Dulaney's due process rights." *Id.* at 791.

Citing *Dulaney*, the district court in this case determined "there is no evidence that the State intentionally destroyed [LaForge's blood] sample in an effort to deprive [her] of evidence as required by the current Iowa law." It accordingly rejected LaForge's federal and state due process claims under

Brady. LaForge claims the court erred in so doing because "[t]here is no need for a defendant to establish the exculpatory nature of the evidence, nor bad faith on the part of the State" when a defendant has made a "specific request to preserve evidence."

That claim is clearly belied by the Supreme Court's opinions in *Trombetta* and *Youngblood*, which as set forth above expressly require a showing of bad faith when the State has failed to preserve potentially exculpatory evidence regardless of whether a request had been made for preservation. Moreover, a similar argument was rejected in *Illinois v. Fisher*, 540 U.S. 544, 548, 124 S. Ct. 1200, 1202, 157 L. Ed. 2d 1060, 1066 (2004), in which the Court stated, "We have never held or suggested that the existence of a pending discovery request eliminates the necessity of showing bad faith on the part of police." Given our supreme court's wholesale adoption of *Trombetta* and *Youngblood* in *Dulaney*, a case that involved both federal and state due process claims, there is no merit to LaForge's alternative claim that the Iowa Due Process Clause does not require a showing of bad faith.[5] *See also State v. Craig*, 490 N.W.2d 795, 796 (Iowa 1992) (holding that in order to find a due process violation, "*Youngblood* requires more objectionable police conduct (bad faith) when the exculpatory value of the

[5] Our supreme court has held that our state constitution provides the same due process protections found in the Fourteenth Amendment to the United States Constitution and thus Iowa constitutional principles follow federal principles. *State v. Klawonn*, 609 N.W.2d 515, 519 (Iowa 2000). Furthermore, LaForge's reliance on *State v. Brown*, 337 N.W.2d 507, 509 (Iowa 1983), a case in which our supreme court affirmed suppression of the defendant's blood-alcohol test results irrespective of the good or bad faith on the part of the State in failing to preserve the blood sample, is misplaced for the reasons stated in *Dulaney*. *See Dulaney*, 493 N.W.2d at 790-92 (noting the development of Supreme Court and Iowa case law after its decision in *Brown* required a showing of bad faith when considering potentially useful evidence lost or destroyed by the State).

destroyed evidence is not suitable for evaluation"); *accord State v. Hulbert*, 481 N.W.2d 329, 334 (Iowa 1992).

As in *Dulaney*, there is no evidence here that the State intentionally destroyed LaForge's blood sample in an effort to deprive her of evidence. Instead, it appears the State's failure to inform the DCI lab of LaForge's request that the evidence be preserved was an oversight on its part. The sample was then destroyed pursuant to the lab's usual procedure. In addition, there is no evidence that LaForge's blood sample was exculpatory in any way. The testimony of her expert at the hearing on her motions simply established that had the sample been preserved it "could have been subjected to tests," the results of which "might have exonerated" LaForge. *Dulaney*, 493 N.W.2d at 791. Like the blood-alcohol test results in *Trombetta*, "the chances are extremely low that preserved samples would have been exculpatory." *Trombetta*, 467 U.S. at 489, 104 S. Ct. at 2534, 81 L. Ed. 2d at 422. That possibility is not sufficient to find a due process violation under *Trombetta* and *Youngblood*. *See Dulaney*, 493 N.W.2d at 791. We therefore affirm that portion of the district court's ruling denying LaForge's federal and state due process claims under *Brady* and its progeny.

This brings us to the State's sole claim on appeal: whether the district court erred in dismissing the criminal charges against LaForge based on its conclusion that the destruction of her blood sample "deprived [her] of a meaningful opportunity to present a complete defense." We conclude it did.

Despite its determination that LaForge did not establish a due process violation under *Brady* and its progeny, the district court found her "right to a fair trial pursuant to the 6th and 14th Amendments to the United State Constitution and Article 1, Section 10 of the Iowa Constitution" was violated by the State's destruction of her blood sample. The court reasoned that irrespective of the lack of bad faith on the part of the State in destroying the evidence,

> the inability of [LaForge to] physically inspect the blood test evidence; the inability to subject the blood test evidence to scientific testing; and the inability to retain an expert to assist in evaluating and rebutting the expert analysis of physical and testimony of the State's expert witness is fundamentally unfair.

However, in *State v. Steadman*, 350 N.W.2d 172, 175 (Iowa 1984), our supreme court rejected the notion that the "[l]ack of an independent test . . . leave[s] a defendant defenseless." It stated,

> Drunk driving cases have been defended successfully for years through use of traditional trial resources including cross-examination and extrinsic evidence that cast doubt on the reliability and accuracy of particular test results. . . . Machine accuracy, testing procedures and compliance with foundational requirements are always open to question.

Steadman, 350 N.W.2d at 175 (concluding the due process clauses of the state and federal constitutions did not require suppression of blood alcohol test results obtained through implied consent procedures where officer did not preserve a sample of the specimen tested in the absence of a request to do so); *see also* Iowa Code § 321J.11 ("The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the peace officer.").

Furthermore, when deciding issues related to the right to present a defense under the Sixth Amendment to the Federal Constitution,[6] the United States Supreme Court, along with our own supreme court, "has ignored mentioning the Sixth Amendment genesis of [that right] and has simply relied on the Due Process Clause alone when deciding issues in this area." *Simpson*, 587 N.W.2d at 771; *see also State v. Weaver*, 608 N.W.2d 797, 802 (Iowa 2000) (analyzing defendant's Sixth Amendment right-to-present-a-defense claim under a due-process analysis). This is because the right to present a defense is essential to a fair trial and is thus a fundamental element of due process of law. *Simpson*, 587 N.W.2d at 771. "For that reason, it is an incorporated right in the Due Process Clause of the Fourteenth Amendment," and as such, the right is binding on the states. *Id.*

Because the Sixth Amendment right to present a defense is subsumed within a defendant's fundamental right to a fair trial under the Fourteenth Amendment, we believe the district court erred in disregarding the State's lack of bad faith in destroying the blood sample. *See, e.g.*, *State v. Rush*, 242 N.W.2d 313, 316 (Iowa 1976) (recognizing "[a] good faith loss [of evidence] does not trigger exclusion, and does not even rise to the dignity of constitutional dimension" in denying defendant's Sixth Amendment claim). Under *Trombetta* and *Youngblood*—both of which were concerned with ensuring that "criminal defendants be afforded a meaningful opportunity to present a complete

[6] The Sixth Amendment provides in relevant part that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor." U.S. Const. amend. VI; *see also* Iowa Const. art. I § 10. "The right to present a defense stems from this Sixth Amendment right to compulsory process." *State v. Simpson*, 587 N.W.2d 770, 771 (Iowa 1998).

defense"—the failure to preserve potentially useful evidence does not deprive a defendant of a fair trial unless the defendant can show the State acted in bad faith. *Trombetta*, 467 U.S. at 485, 104 S. Ct. at 2532, 81 L. Ed. 2d at 419; *Youngblood*, 488 U.S. at 55-56, 109 S. Ct. at 336, 102 L. Ed. 2d at 287-88. LaForge did not make that showing here for the reasons previously set forth. We therefore conclude the district court erred in dismissing the criminal charge against her.

IV. CONCLUSION.

Because LaForge was not under arrest as required by Iowa Code section 321J.10A when her blood was withdrawn without a warrant, we conclude the district court erred in denying her motion to suppress the blood test results. That portion of the district court's ruling is therefore reversed. We agree with the court that LaForge did not establish bad faith on the part of the State in failing to preserve the potentially useful evidence of her blood sample. Based on that lack of bad faith, we conclude the court erred in proceeding to find LaForge's right to a fair trial was violated by the destruction of her blood sample and in dismissing the criminal charge against her. We therefore affirm in part, reverse in part, and remand for further proceedings.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.