

IN THE COURT OF APPEALS OF IOWA

No. 2-426 / 11-0960
Filed June 27, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRADLEY RONALD COOPER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, William A. Price,
District Associate Judge.

Bradley Cooper appeals 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, John Sarcone, County Attorney, and Jessica Tucker, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

BOWER, .J.

Bradley Cooper appeals his conviction of operating while intoxicated, second offense, in violation of Iowa Code section 321J.2 (2011). He contends the district court erred in denying his motion to suppress his breath test result. Upon our review, we conclude Cooper's statutory rights under Iowa Code section 804.20 were not violated. Accordingly, we affirm his conviction and sentence.

I. Background Facts and Proceedings.

At approximately 2:00 a.m. on January 22, 2011, Des Moines Police Officer Brian Cuppy was on routine patrol when he observed a vehicle attempt a turn in the wrong direction onto a one-way street in downtown Des Moines. The vehicle then looped back, almost hitting another vehicle. Officer Cuppy turned to follow the vehicle and activated his emergency lights. Officer Cuppy then activated his siren and spot light when the vehicle failed to pull over. The vehicle continued to drive for three blocks before stopping.

Officer Cuppy identified Bradley Cooper as the driver of the vehicle. Cooper showed "obvious signs of intoxication" and admitted to drinking a "few" drinks at El Bait Shop one-half hour prior to driving. He had difficulty locating his license, insurance, and registration. Cooper "fumbled" through his wallet and the glove box, scattering papers, money, and credit cards on the passenger seat. Cooper also failed field sobriety tests. Cooper submitted to a preliminary breath test at 2:24 a.m., which indicated his blood alcohol concentration exceeded the legal limit. Officer Cuppy arrested Cooper for operating while intoxicated.

Cooper immediately asked if he could make a phone call. Officer Cuppy told Cooper he could “call anyone he wanted to call.” Cooper made a number of calls on his cell phone during the next twenty minutes while they waited for a tow truck to arrive and remove his vehicle. Cooper made more calls on his phone after arriving at the Des Moines police station. At 2:53 a.m., Officer Cuppy explained and invoked implied consent to Cooper, requested a breath test, and then read him Iowa Code section 804.20. Officer Cuppy provided a phone book that was opened to the “attorneys” section. He also stated to Cooper, “Let me know if you need any help dialing.”

Cooper continued making phone calls. Officer Cuppy cautioned Cooper several times he would have to make a decision about the breath test soon. Cooper repeatedly “made it known” that he wanted “to wait his full two hours” before doing the breath test. At one point, while Cooper was on the phone, he asked Officer Cuppy for a pen and paper and the results of his preliminary breath test. After Cooper completed the call, he closed the phone book and put the pen in his pocket.

By then it was 3:32 a.m. Officer Cuppy asked him what he wanted to do next. Officer Cuppy reminded Cooper that he needed a decision soon and stated “it has been over an hour and a half since I stopped you.” Cooper asked if he could go to the bathroom. Officer Cuppy asked him if he knew what he wanted to do about the test. Cooper said he wanted to wait until the two hours were up. He got his phone back out and made another call. Cooper hung up the phone

and asked again if he could go to the bathroom. Officer Cuppy told him he needed to make a decision, and then he could go to the bathroom.

Cooper stated several more times that he wanted to wait his full two hours. He made another phone call and again asked to go to the bathroom. Officer Cuppy responded, "Are you going to take the test?" Cooper ignored him and made another phone call. He ended the conversation with the person by stating, "Well call him and call me back real quick, and if not then I guess [indecipherable]. Alright, bye."

At 3:44 a.m., Officer Cuppy told Cooper he needed to make a decision. Cooper asked to wait five more minutes. Officer Cuppy refused and told Cooper he had ten seconds to make his decision. Cooper consented to submit to a breath test, which indicated he had a blood alcohol concentration of .186.

Cooper filed a motion to suppress the results of the breath test, asserting a violation of Iowa Code section 804.20. Specifically, he argued his rights were violated by Officer Cuppy's "failure to wait for return call where there was ample time to offer the test within the two hour time period." In its ruling, the district court first observed Cooper "had unfettered access to a phone and to a phone book," and the statements by Officer Cuppy to Cooper "were correct, courteous, and professionally made." The court further observed "there was approximately 20 minutes left on that two hour time period" commenced by Cooper's arrest when Officer Cuppy required Cooper to make a decision. The court stated that although Cooper made it clear he wanted "the full two hours to make a decision," he "had more than a reasonable opportunity to make unlimited calls" prior to

doing so. Consequently, the district court found no violation of Cooper's rights under section 804.20 and denied Cooper's motion to suppress.

Cooper waived his right to a jury trial and stipulated to trial on the minutes of evidence. The district court thereafter found Cooper guilty of operating while intoxicated, second offense, in violation of Iowa Code section 321J.2(b). Cooper now appeals the denial of his motion to suppress the breath test results.

II. Standard of Review.

We review the district court's interpretation of Iowa Code section 804.20 for errors at law. *State v. Walker*, 804 N.W.2d 284, 289 (Iowa 2011). "We affirm the district court's suppression ruling when the court correctly applied the law and substantial evidence supports the court's fact-finding." *Id.*

III. Analysis.

Cooper argues he was denied his statutory right guaranteed by Iowa Code section 804.20 to call a family member or an attorney once detained by a police officer. Iowa Code section 804.20 provides:

Any peace officer or other person having custody of any person arrested or restrained of the person's liberty for any reason whatever, shall permit that person, without unnecessary delay after arrival at the place of detention, to call, consult, and see a member of the person's family or an attorney of the person's choice, or both. Such person shall be permitted to make a reasonable number of telephone calls as may be required to secure an attorney.

To determine whether Cooper was denied his right to contact a family member or an attorney under section 804.20, two distinct inquiries are required. *State v. Hicks*, 791 N.W.2d 89, 94 (Iowa 2010). There is no dispute as to the first inquiry—the record shows Cooper invoked his rights under section 804.20. See

id. The question turns to whether Cooper was afforded the rights section 804.20 guarantees. *See id.*

“[O]nce section 804.20 is invoked the peace officer must provide the detainee ‘with a reasonable opportunity’ to contact a family member or attorney.” *Id.* at 96 (quoting *Bromeland v. Iowa Dep’t of Transp.*, 562 N.W.2d 624, 626 (Iowa 1997)). This requires the officer “to take affirmative action to ensure the request for a phone call is honored.” *Hicks*, 791 N.W.2d at 96-97. More specifically, the officer “must direct the detainee to the phone and invite the detainee to place his call or obtain the phone number from the detainee and place the phone call himself.” *Id.* at 97.

In this case, Cooper was given the opportunity to contact a family member or an attorney within minutes after he arrived to the booking room at the police station.¹ Officer Cuppy handed Cooper a phone book opened up to the “attorneys” page. He also told Cooper, “Let me know if you need any help dialing.” From approximately 2:50 a.m. to 3:40 a.m., Cooper placed numerous calls and spoke to several people. As the district court observed, Cooper “had unfettered access to a phone and to a phone book.” There is no question Officer Cuppy provided Cooper a reasonable opportunity to make a phone call to a family member as guaranteed by section 804.20.

Cooper persists he “was not dilatory in calling, and was entitled to exercise his phone rights and to wait for return calls so long as it did not interfere” with the officer’s ability to perform the test. He alleges Officer Cuppy

¹ Cooper was also allowed to make phone calls for approximately twenty minutes immediately following his arrest, but before section 804.20 was invoked.

“terminated” his rights by failing to wait “the requested 5 minutes [before he] required a decision.” Cooper’s argument hinges on the number of minutes “remaining” in which he “could have placed, or received calls” before the time limits set forth in Iowa Code sections 321J.6(2) and 321J.12(a).

Cooper’s reasoning is misplaced. Pursuant to section 321J.6(2), an officer must “offer a test within two hours after the preliminary breath test is administered or refused or the arrest is made, whichever occurs first.” Further, section 321J.12(a) provides that the result of a test performed “within two hours after the defendant was driving . . . is presumed to be the alcohol concentration at the time of driving.”

The time periods set forth in these sections apply to the State in the interest of a prosecution of an intoxicated driver. The provisions do not, as Cooper suggests, set forth a certain time frame for a defendant to delay, wait, or stall until he or she submits to a breath test.² See, e.g., *Ferguson v. State, Dep’t of Transp.*, 424 N.W.2d 464, 466 (Iowa 1988) (rejecting a “bright line” rule that grants an arrestee two full hours in which to consult with counsel before being required to make the decision whether to consent to, or refuse, chemical testing) abrogated on other grounds by *Hicks*, 791 N.W.2d at 95; *State v. Vietor*, 261 N.W.2d 828, 831 (Iowa 1978) (“An arrested person should not be allowed to sabotage the purpose of Chapter 321[J] by delay.”); *Moore v. Iowa Dep’t of Transp.*, 473 N.W.2d 230, 231 (Iowa Ct. App. 1991) (“The two-hour period during

² After repeatedly requesting to wait his “full two hours,” Cooper then stated he wanted “to wait until 1 [hour] 59 [minutes] is up.”

which testing must occur does not mean every arrestee is granted two full hours before he or she must consent to testing.”).

Under the facts of this case, we do not find Officer Cuppy denied Cooper his statutory rights under section 804.20 by refusing to allow Cooper to wait “five more minutes” before making his decision about the breath test. We acknowledge “there is no need for law enforcement personnel to screen such requests to determine whether the request is made in good faith before honoring the request.” *Hicks*, 791 N.W.2d at 96. However, Cooper had already spent nearly an hour making phone calls and speaking to people on the phone. He had stated his intention to wait his “full two hours” and was obviously stalling.

Because we agree with the district court’s finding Cooper was provided a reasonable opportunity to contact a family member or an attorney by Officer Cuppy, we affirm the district court’s decision denying Cooper’s motion to suppress.

AFFIRMED.