

**IN THE COURT OF APPEALS OF IOWA**

No. 2-557 / 12-0294  
Filed September 6, 2012

**BRIAN KEITH MADDY,**  
Petitioner-Appellant,

**vs.**

**IOWA DEPARTMENT OF  
TRANSPORTATION, MOTOR  
VEHICLE DIVISION,**  
Respondent-Appellee.

---

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,  
Judge.

Brian Maddy appeals from the district court's ruling on judicial review  
affirming the respondent's decision to revoke his driver's license. **AFFIRMED.**

Daniel J. Rothman and Crisanne C. Weimer of McEnroe, Gotsdiner,  
Brewer, Steinbach, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Noel C. Hindt, Assistant Attorney  
General, for appellee.

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

**BOWER, J.**

Brian Maddy appeals from the district court's ruling on judicial review affirming the Iowa Department of Transportation's (IDOT) revocation of his driver's license, under Iowa Code chapter 321J, for chemical test refusal following his arrest for operating a motor vehicle while intoxicated. Maddy contends his refusal does not have any legal effect because he was denied his statutory right to counsel. Upon our review, we conclude the arresting officer afforded Maddy a reasonable opportunity to reach an attorney. Accordingly, we reject Maddy's argument and affirm the revocation of his license.

**I. Background Facts and Proceedings.**

Polk County Deputy Perry Ghee arrested Brian Maddy at 12:27 a.m. in Grimes for operating a motor vehicle while intoxicated (OWI). Upon his arrest, Maddy asked to talk to his attorney. Ghee told Maddy he would have an opportunity to call his attorney at the jail. They remained at the scene for approximately five minutes while Ghee assisted another officer with inventory of Maddy's vehicle before transporting Maddy to the Polk County jail in Ankeny. This trip would normally take ten to fifteen minutes, but they were delayed by a train at the railroad crossing for five to ten minutes. Ghee turned Maddy over to the jail staff for processing when they arrived. Processing would normally take about five minutes, but on this occasion it took ten to fifteen minutes.

By 1:12 a.m., jail staff had delivered Maddy to the intake room, and Deputy Ghee invoked the implied consent procedures and read Maddy an implied consent advisory. At 1:20 a.m., Maddy called his attorney, Brian Brewer.

Maddy and Brewer spoke briefly on the phone before they decided Brewer would come to the jail to consult with Maddy in person. Deputy Ghee spoke to Brewer on the phone and told Brewer he would need a decision from Maddy whether to consent to chemical testing by 1:45 a.m.<sup>1</sup>

Deputy Ghee waited for Brewer until 2:00 a.m. When Brewer had not arrived, Deputy Ghee asked Maddy for his decision on whether he would consent to or refuse testing. Maddy responded that he wanted to see his attorney. Deputy Ghee warned Maddy that Maddy's response would be deemed a refusal. Maddy remained adamant about waiting to make his decision until Brewer arrived. At 2:02 a.m., deputy Ghee marked down Maddy's refusal to submit to chemical testing. Brewer arrived at the jail at approximately 2:00 a.m. However, by the time Brewer was escorted to see Maddy, Maddy had been deemed to have refused testing.

Based on Maddy's refusal to submit to chemical testing, the IDOT revoked Maddy's driver's license for two years. See Iowa Code § 321J.9(1)(b) (requiring license revocation for "[t]wo years if the person has had a previous revocation under this chapter").

Maddy requested an administrative hearing to contest the revocation. See *id.* § 321J.13(1); Iowa Admin. Code r. 761—620.4(1)(a), (e). Maddy argued he was denied a reasonable opportunity to meet with his attorney and seek his attorney's advice. The IDOT's administrative law judge rescinded the revocation, finding the refusal underlying the revocation was improper because Deputy Ghee

---

<sup>1</sup> Brewer's home in Des Moines is approximately twenty minutes away from the Polk County jail.

“did not provide [Maddy] a reasonable opportunity to see and consult with an attorney.” On administrative appeal, the reviewing officer reversed the decision of the administrative law judge, and reinstated the revocation of Maddy’s driver’s license. Maddy filed a petition for judicial review with the district court. The district court affirmed the revocation. Maddy now appeals.

## **II. Standard of Review.**

Judicial review of an IDOT driver’s license revocation for refusal to submit to chemical testing is governed by Iowa Code chapter 17A, the Iowa Administrative Procedure Act. See Iowa Code § 321J.14. The district court reviews for correction of errors at law. *Welch v. Iowa Dep’t of Transp.*, 801 N.W.2d 590, 594 (Iowa 2011). On appeal, we are to apply the standards of chapter 17A to determine whether the conclusions we reach are the same as those of the district court. *Id.* If they are the same, we affirm; otherwise we may reverse. Maddy has the burden to show compliance with the implied consent law, and Deputy Ghee’s failure to satisfy the procedural requirements. See *Ramsey v. Iowa Dep’t of Transp.*, 576 N.W.2d 103, 106 (Iowa 1998).

## **III. Discussion.**

Under Iowa law, a person arrested for OWI must be given a reasonable opportunity to contact an attorney prior to deciding whether to consent or refuse chemical testing.<sup>2</sup> *State v. Hicks*, 791 N.W.2d 89, 94, 96 (Iowa 2010). If an

---

<sup>2</sup> 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

arrestee is denied that right, he cannot be held to have refused testing. See *Fuller v. Iowa Dep't Transp.*, 275 N.W.2d 410, 411 (Iowa 1979). If there is no refusal, there are no grounds for license revocation. *Id.*

In the OWI context, the statutory right to counsel is balanced with Iowa Code section 321J.6(2), which requires chemical testing to be conducted within two hours of the arrest. The existence of the two-hour time period, however, does not grant every arrestee two full hours to consult or acquire an attorney. 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; *Moore v. Iowa Dep't of Transp.*, 473 N.W.2d 230, 231 (Iowa Ct. App. 1991) (“The two-hour period during which testing must occur does not mean every arrestee is granted two full hours before he or she must consent to testing.”). Rather, the right to counsel is normally satisfied by allowing the arrestee to make a telephone call. *Moore*, 473 N.W.2d at 231.

[T]here can be no recognition of an absolute right to refuse the test until a lawyer reaches the scene . . . . If the lawyer is not physically present and cannot be reached promptly by telephone or otherwise, the defendant may be required to elect between taking the test and submitting to revocation of his license, without the aid of counsel.

---

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. . . . An attorney shall be permitted to see and consult confidentially with such person alone and in private at the jail or other place of custody without unreasonable delay.

*State v. Vietor*, 261 N.W.2d 828, 831 (Iowa 1978) (internal quotations marks and citation omitted).

In this case, substantial evidence supports the administrative agency's conclusion that the procedural requirements of Iowa Code section 804.20 were met. Based on the record, a reasonable person could readily conclude Maddy was granted a reasonable opportunity to contact an attorney prior to making a decision. Maddy contacted and spoke with his attorney at 1:20 a.m. and then waited for his attorney's arrival at the jail until 2:02 a.m. During that time, Maddy had access to his phone and failed to call his attorney again or seek legal advice elsewhere. Under the facts of this case, substantial evidence supports the conclusion that Deputy Ghee did not deny Maddy his statutory rights under Iowa Code section 804.20. Accordingly, the license revocation is affirmed.

**AFFIRMED.**