

IN THE COURT OF APPEALS OF IOWA

No. 6-634 / 05-2011
Filed September 21, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JESSICA JOY BOONE,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Thomas R. Hronek,
Judge.

Jessica Joy Boone appeals her judgment and conviction for operating a
motor vehicle while under the influence. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Greta Truman, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, Stephen H. Holmes, County Attorney, and Travis Johnson, Assistant
County Attorney, for appellee-State.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

Jessica Joy Boone appeals her judgment and conviction for operating a motor vehicle while under the influence (OWI) on the ground the district court erred in failing to grant her motion to suppress evidence. She claims the evidence was obtained in violation of Iowa Code section 804.20 (2005).

In the early morning hours of September 3, 2005, Officer Alex Syhlman observed a vehicle with a broken taillight. Syhlman initiated a stop and upon approaching the driver of the vehicle, who he identified as Boone, he observed she had “the smell of alcohol on her breath” and bloodshot and watery eyes. Boone admitted she had consumed alcohol. Syhlman administered several field sobriety tests and then placed Boone under arrest for OWI. Boone testified that after being arrested, she made a request to call her mother, but Syhlman denied her request stating she was not allowed to use her phone until they got to the “armory.” Boone was transported to the police station and, once there, submitted to a breath test. While at the station, Boone did not request to make any other phone calls. Boone’s chemical test showed a 0.15 blood alcohol concentration.

Boone was charged with OWI in violation of Iowa Code section 321J.2. She moved to suppress the breath test results, alleging that prior to the breath test she made a “valid request” to contact a family member under section 804.20, but was not allowed to use her phone until after the breath test. The district court overruled her motion, concluding “a clear preponderance of the evidence supports a finding that [Boone] at no time requested to talk to a family member or an attorney and she cannot, therefore, rely upon the provisions of Section 804.20, Iowa Code, to secure suppression of evidence.” The district court denied

Boone's motion to reconsider and proceeded to a bench trial on the OWI charge. At trial, Boone preserved error on the suppression issue. The district court found Boone guilty of OWI and sentenced her to two days in jail and a \$1000 fine. Boone appeals.

Our review of this motion to suppress evidence under Iowa Code section 804.20 is for errors at law. *State v. Moorehead*, 699 N.W.2d 667, 671 (Iowa 2005). "If the district court properly applied the law and there is substantial evidence to support its findings of fact, we will uphold its ruling on a motion to suppress." *Id.* Evidence is considered "substantial" when a reasonable mind would accept it as adequate to reach the same findings. *Id.* We give weight and deference to the district court's findings on credibility of witnesses, even when reviewing constitutional issues de novo in the context of motions to suppress. See *State v. Predka*, 555 N.W.2d 202, 205 (Iowa 1996); *State v. Jackson*, 542 N.W.2d 842, 846 (Iowa 1996).

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. If a call is made, it shall be made in the presence of the person having custody of the one arrested or restrained. If such person is intoxicated, or a person under eighteen years of age, the call may be made by the person having custody. 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. A violation of this section shall constitute a simple misdemeanor.

The issue before us is whether there was sufficient evidence to support the district court's finding that Boone "at no time requested to talk to a family

member or an attorney . . .” because without a sufficient request, she did not come within the purview of section 804.20. See *State v. Moorehead*, 699 N.W.2d at 671 (officer not required to inform defendant of right to contact counsel or family member, but once the right is invoked must give defendant opportunity to make contact).

The only evidence as to whether Boone made a request to contact a family member was the testimony of Boone and Officer Syhlman; there was no independent record of such request. Boone testified that when she was placed under arrest and into Syhlman’s cruiser, she requested to call her mother. Officer Syhlman testified he did not remember Boone asking to call her mother. Because there is no independent evidence of Boone’s alleged request, the credibility of Boone and Syhlman is significant, and we defer to the district court’s findings on such issue. See *Jackson*, 542 N.W.2d at 846. The court acknowledged Boone testified she made a request once she was arrested; however, the court concluded she “at no time requested to talk to a family member.” Thus, the court obviously rejected Boone’s testimony. See *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990) (“When determining the credibility of the testimony of witnesses, the trial court may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness’s appearance, conduct, memory and knowledge of the facts, and the witness’s interest in the trial.”)

Moreover, the district court also considered the surrounding circumstances. See *Moorehead*, 699 N.W.2d at 672. The court found Boone’s behavior at the Public Safety facility was substantially contrary to any request to

talk to her mother given Boone made no references to telephone calls while at the facility; when specifically offered an opportunity to make calls she declined; and her demeanor was contrary to any assertion she intended to talk to her mother. The record supports such findings, and there is substantial evidence to conclude that Boone did not invoke her rights under section 804.20. The district court did not err in denying Boone's motion to suppress.

AFFIRMED.