

**IN THE COURT OF APPEALS OF IOWA**

No. 9-799 / 09-0061  
Filed December 30, 2009

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

**vs.**

**JEFFREY CHADWICK DEAN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Mills County, James S. Heckerman, Judge.

The defendant appeals his conviction of operating while intoxicated.

**AFFIRMED.**

Brian F. Beattie, Malvern, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Marci L. McClellan, County Attorney, and Eric C. Hansen, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle, J., and Zimmer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**VOGEL, P.J.**

Jeffery Dean appeals from his conviction for operating while intoxicated, second offense. He asserts the district court erred in not suppressing all evidence gathered pursuant to the implied consent procedures. We affirm.

**I. Background Facts.**

At approximately 10:20 p.m. on March 28, 2008, in the city of Malvern, Sergeant Pat Martin stopped a vehicle for speeding and identified the driver to be Dean. Martin's radar unit showed the vehicle to be traveling at forty miles per hour in a twenty-five mile per hour zone. Martin noticed that Dean emitted a strong odor of alcohol, had slow and slightly slurred speech, and had watery eyes. When asked when his last alcoholic beverage was consumed, Dean responded that it was thirty to forty-five minutes earlier. At 10:40 p.m., after Dean failed several field sobriety tests and a preliminary breath test indicated Dean had a blood alcohol level in excess of .08, Martin arrested Dean for operating while intoxicated (OWI).<sup>1</sup>

Martin transported Dean to the Mills County Sheriff's Office, where Martin read Dean the implied consent advisory at 11:17 p.m. Dean requested to speak to his lawyer prior to either consenting to or refusing to take the test. Dean had access to a phone in the Sheriff's Office for local and "collect" long-distance calls, as well as his own cell phone. Dean placed several phone calls to his attorney, leaving messages for him to return his calls. He did reach his friend, with whom he spoke for several minutes. After fifty-five minutes, Martin advised Dean that he would need to make a decision about whether or not to take the test "at some

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<sup>1</sup> Dean was also issued a citation for speeding.

point.” Dean consented to a breath test, which was administered at 12:10 a.m. At that time, thirty minutes remained in the two-hour time limit prescribed in Iowa Code section 321J.6(2) (2007). Shortly thereafter, Dean’s attorney returned his calls.

Dean moved to suppress all evidence gathered pursuant to the implied consent procedures arguing that (1) Martin was not a “peace officer” with authority to invoke implied consent and (2) his rights pursuant to Iowa Code section 804.20 were violated. The district court overruled Dean’s motion. Subsequently, Dean was convicted of OWI, second offense, in violation of Iowa Code section 321J.2. Dean appeals.

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

Our review of the district court’s interpretation of a statute is for correction of errors at law. *State v. Garrity*, 765 N.W.2d 592, 595 (Iowa 2009); *State v. Snider*, 522 N.W.2d 815, 817 (Iowa 1994).

## **III. Analysis.**

### **A. Error Preservation.**

We begin by addressing the State’s contention that Dean did not preserve error on his claims. In his brief, Dean stated that he “was tried on the minutes of testimony and convicted” of OWI, second offense. The State asserts that Dean pled guilty and points to the following district court orders. An October 6, 2008 court order states:

Defendant appeared with his attorney, Brian Beattie, and stipulated to the accuracy of the minutes of testimony. Review of the minutes shows that on March 28, 2008, Defendant operated a motor vehicle while under the influence of alcohol. The minutes also show that Defendant was convicted of OWI on April 13, 1998. Based on the

minutes of testimony, Defendant is found guilty of [OWI], second offense, in violation of Iowa code section 321J.2. Count II is dismissed on the State's motion. Sentencing is scheduled for October 27, 2008, at 9:00 a.m.

A December 2, 2008 sentencing order states:

Defendant entered a plea of guilty to Count I, Operating While Intoxicated, Second Offense, in violation of Iowa Code section 321J.2. . . . The plea was entered freely and voluntarily. Defendant was advised of the constitutional rights given up by pleading guilty. The Court accepts the plea of guilty and finds defendant guilty. Defendant waives time for sentencing. . . . Count II is dismissed pursuant to plea agreement.

The State asserts that the October 6, 2008 order noted that Dean stipulated to the accuracy of the minutes of testimony, which is consistent with an *Alford*<sup>2</sup> plea. Further the December 2, 2008 sentencing order explicitly states Dean pled guilty. Dean does not respond to the State's argument.

We agree with the State that it appears Dean's arguments stemming from the denial of his motion to suppress are not preserved for our review. See *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2009) ("It is well established that a defendant's guilty plea waives all defenses and objections [that] are not intrinsic to the plea." (citing *State v. Antenucci*, 608 N.W.2d 19, 19 (Iowa 2000))). Additionally, Dean does not raise his claims in an ineffective-assistance-of-counsel context. See *id.* Nevertheless, out of an abundance of caution, we proceed to the merits of his appeal.

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<sup>2</sup> See *North Carolina v. Alford*, 400 U.S. 25, 32-38, 91 S. Ct. 160, 164-68, 27 L. Ed. 2d 162, 168-72 (1970) (holding that an accused may consent to the imposition of a sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime).

**B. Motion to Suppress.**

Dean first argues the district court erred in finding Sergeant Martin was a peace officer with authority to invoke implied consent procedures. Iowa Code section 321J.6 requires that implied consent procedures be instituted by a peace officer. For implied consent purposes, a “peace officer” includes:

Any other law enforcement officer who has satisfactorily completed an approved course relating to motor vehicle operators under the influence of alcoholic beverages at the Iowa law enforcement academy or a law enforcement training program approved by the department of public safety.

Iowa Code § 321J.1(8)(e). In the present case, Martin testified that he was a licensed peace officer, having attended the Iowa Law Enforcement Academy and received training in traffic enforcement. See *Snider*, 522 N.W.2d at 817 (stating that because a municipal police officer “is a graduate of the Iowa law enforcement academy, he met the requirements under [section 321J.1(8)(e)]”). Further, Martin was employed by the City of Glenwood Police Department and part-time by the City of Malvern Police Department. We find no merit to Dean’s argument.

Dean next argues that his rights pursuant to Iowa Code section 804.20 were violated. Under this code section, a person arrested or detained has a limited statutory right to contact an attorney or family member and once the right is invoked, the person must be given a reasonable opportunity to do so. *Garrity*, 765 N.W.2d at 595; *State v. Moorehead*, 699 N.W.2d 667, 671 (Iowa 2005); *State v. Vietor*, 261 N.W.2d 828, 831-32 (Iowa 1978). However, this right is subject to the two-hour time limit to administer a chemical test. Iowa Code § 321J.6(2) (requiring a chemical test to be offered within two hours of the person

taking or refusing a preliminary screening test or the person being arrested, whichever occurs first); *Vietor*, 261 N.W.2d at 832. In the present case, after he invoked his right to contact his attorney, Dean freely used his cell phone to place several calls over the next hour. He attempted several phone calls to this attorney as well as successfully reaching and conversing with a friend. When Dean eventually consented to the breath test, thirty minutes remained in the two-hour time limit prescribed in Iowa Code section 321J.6(2). Given time frame and the multiple phone calls Dean was freely allowed to place, we find Dean's rights under Iowa Code section 804.20 were not violated. Therefore, we affirm.

**AFFIRMED.**