IN THE COURT OF APPEALS OF IOWA

No. 1-543 / 10-0601
Filed August 10, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MELISSA GUADALUPE PARRA,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, James D. Birkenholz, District Associate Judge.

A defendant appeals from her conviction of operating while intoxicated, second offense. **AFFIRMED.**

Richard A. Bartolomei of Bartolomei & Lange, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, John P. Sarcone, County Attorney, and David Porter, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Mullins, JJ.

MULLINS, J.

Melissa Parra appeals her conviction of operating while intoxicated (OWI), second offense, in violation of Iowa Code section 321J.2 (2009). She argues the district court erred in denying her motion to suppress evidence of her blood-alcohol concentration because (1) she was not afforded her rights under Iowa Code section 804.20; and (2) the officer did not state he was requesting a breath test while making the written request required by Iowa Code section 321J.6. The record demonstrates that Parra was given the opportunity to call "anyone" and we find she was not denied her rights under section 804.20. We further find that Parra voluntarily consented to a breath test and there was compliance with the writing requirement of section 321J.6. Therefore, we affirm.

I. Background Facts and Proceedings.

On December 4, 2009, Trooper Brian Hilt arrested Parra for OWI. She was handcuffed and placed in the front seat of the trooper's vehicle. While in route to the Des Moines Police Department, Parra received a call on her cell phone but could not answer it because she was handcuffed. She asked the trooper to return her friend's call. The trooper complied and put the phone on speaker mode and Parra spoke with her friend for a couple of minutes.

Once inside the police station, the trooper removed the handcuffs from Parra and began the implied-consent procedures, which was evidenced by an audio recording.[1] The trooper and Parra were seated at a table in a room with a DataMaster machine. The trooper first asked if Parra "had a text message she

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[1] At the hearing, the parties indicated that the district court was shown a video recording, but the record on appeal contains an audio recording.

wanted to check or anything?" She said "yeah." About forty seconds later, the trooper "explained what was going to happen," telling Parra that he was first going to read her the implied consent advisory and she could ask any questions, and then she could "call a family member, friend, attorney, anything like that, to seek advice about the test or anything." The trooper read the implied consent advisory to Parra, after which she asked some questions about license suspension. The trooper reread a portion of the implied consent advisory and answered Parra's questions. The trooper then asked, "Did you want to call anyone." Parra responded, "You said I would be home in the next hour, right?" Parra explained that if that was not the case, she would need to make arrangements with her employer for the morning. The trooper told her that she would be home, but asked if she wanted to "call anyone for advice for the test or anything like that." Parra responded, "I don't need to call anybody."

Next, the trooper used his laptop to complete processing using the Traffic and Criminal Software (TraCS) program. He later testified that he turned the laptop screen toward Parra, and the screen displayed the following language, "Having read to you the appropriate implied consent advisory, I hereby request a specimen of your Breath for chemical testing to determine the alcohol or drug content." The trooper explained to Parra that she needed to mark either "consent" or "refuse," sign, and then hit "accept." She asked what accept meant, to which he replied "that means you will take it." She signed the form and then hit accept. The trooper realized that there was some confusion as Parra had not marked either consent or refuse, so he deleted Parra's signature. He then

explained that she needed to choose consent or refuse, and clarified that consent indicated she would "take it." She marked the consent box and signed the form. Parra submitted to a breath test, which demonstrated her blood alcohol concentration was over the legal limit. The trooper finished the necessary paperwork and drove Parra home.

On January 6, 2010, a trial information was filed charging Parra with OWI, second offense, in violation of Iowa Code section 321J.2. On February 22, 2010, Parra filed a motion to suppress, arguing her rights under section 804.20 were violated and the officer did not make an adequate request for a breath specimen under Iowa Code section 321J.6. A hearing was held, after which the district court denied her motion. Following a trial on the minutes of evidence, the district court found Parra guilty as charged. Parra appeals, asserting the district court should have granted her motion to suppress.

II. Standard of Review.

Our review is for errors at law. *State v. Hicks*, 791 N.W.2d 89, 93 (Iowa 2010) (reviewing the district court's interpretation of section 804.20 for errors at law); *State v. Fischer*, 785 N.W.2d 697, 699 (Iowa 2010) (reviewing the district court's interpretation of section 321J.6 for errors at law). As for a claim that consent was not voluntary, our review is de novo and we will "evaluate the totality of the circumstances." *State v. Hutton*, 796 N.W.2d 898, 902 (Iowa 2011).

III. Iowa Code section 804.20.

Parra first asserts the district court erred in finding her statutory rights under Iowa Code section 804.20 were not violated. "Iowa Code section 804.20

imposes a duty upon police officers to allow a person in custody to telephone a family member or attorney without unnecessary delay after arrival at the place of detention." *Didonato v. Iowa Dep't of Transp.*, 456 N.W.2d 367, 369 (Iowa 1990). A police officer generally does not have a duty to advise a defendant of this right. *State v. Moorehead*, 699 N.W.2d 667, 671 (Iowa 2005); *see State v. Garrity*, 765 N.W.2d 592, 597 (Iowa 2009) (holding that a duty to advise of the scope of the right arises when the defendant asks to call someone not contemplated in the statute). However, once a defendant invokes this right, an officer must give the defendant a reasonable opportunity to call or consult with an attorney or family member. *Hicks*, 791 N.W.2d at 96; *Moorehead*, 699 N.W.2d at 671; *Bromeland v. Iowa Dep't of Trans.*, 562 N.W.2d 624, 626 (Iowa 1997).

Prior to arriving at the police station, Parra asked the trooper to return her friend's phone call, which he did and Parra spoke with her friend for approximately two minutes. It appears from the recording that Parra had access to her cell phone, with the trooper permitting her to check her text messages. After reading the implied consent advisory to Parra, the trooper asked Parra if she wanted to call "anyone." When she indicated that she did not, the trooper asked specifically whether she wanted to call "anyone" to "for advice for the test or anything like that." She again stated that she did not need to call "anybody."

Parra argues that this is not compliance with section 804.20 because the trooper did not inform her of the persons whom she could call and the purposes for which she could place calls, and cites to *Didonato v. Iowa Department of Transportation*, 456 N.W.2d 367 (Iowa 1990). In *Didonato*, the arrestee

requested to call a friend, rather than an attorney or family member as provided for under section 804.20. 456 N.W.2d at 371. The supreme court held that when an arrestee requests to make a phone call to a person not authorized in the statute, an officer cannot stand mute and refuse the request. *Id.* Rather, "[i]n these circumstances the statute is implicated and the officer should then advise for what purpose a phone call is permitted under the statute." *Id.*

Parra's reliance on *Didonato* is misplaced. The trooper did not limit Parra's phone based upon her request to call a friend, or even limit her calls to persons specified in section 804.20. Not only did the trooper permit Parra to call a friend and check her text messages, he asked her twice whether she wanted to call "anyone" else. Even when she declined to make a call, he further explained that she could talk to anyone about the "test" or "anything." Had he been limiting Parra's phone calls to the scope of section 804.20, he would be required to explain what phone calls were permitted under the code section. *See Garrity*, 765 N.W.2d at 597 (explaining that once an arrestee asks to call a person outside the scope of section 804.20, an officer has a duty to advise the arrestee of the purpose of the phone call—who the arrestee can call). However, in this case the trooper permitted Parra to make phone calls beyond those permitted in section 804.20. There was no violation of Parra's rights under section 804.20 and we find her argument without merit.

IV. Iowa Code section 321J.6.

Parra next asserts the district court erred in finding the Trooper made a legally sufficient request for a breath specimen as required by Iowa Code section

321J.6. Iowa Code chapter 321J has two separate procedural requirements: (1) the driver be advised of the consequences of consenting or refusing a chemical test, Iowa Code § 321J.8; and (2) the request to submit to a chemical test be in writing, Iowa Code § 321J.6. *Fischer*, 785 N.W.2d at 704. The two procedural requirements are supported by distinct policies: "[T]he advisory is meant to inform the driver of the consequences to enable fair opportunity for decision making while the written request requirement ensures an accurate and reliable record that a pretest request was made." *Id.* In the present case, both of the procedural requirements were met—the trooper properly read the implied consent advisory to Parra and a proper written request was made. *See id.* (holding that the computerized form on the TraCS program satisfied the written requirement of section 321J.6).

However, Parra argues that because the trooper did not state he was requesting a breath test (rather than blood or urine test) contemporaneous with obtaining her written consent, her consent was not voluntarily given and the written consent was inadequate.

> [T]he consent for a chemical test must ultimately be "freely made, uncoerced, reasoned, and informed." This voluntariness requirement is captured by Iowa Code section 321J.8, which requires law enforcement officers to advise suspects of all the consequences of a decision to submit or refuse testing.

Id. at 701. Conversely, "section 321J.6(1) is not concerned with providing information to a driver to assist in assessing the available options under the implied-consent law." *Id.* at 705. Rather, "the purpose of section 321J.6(1) is to record the request, not to provide notice of what was orally requested." *Id.* at

706. We find no requirement that a verbal request be contemporaneously given with the written request required under section 321J.6(1). *See id.* at 705 (explaining that section 321J.8 imposes an oral requirement and section 321J.6 imposes a written requirement).

The trooper read the proper implied-consent advisory. Further, it is clear Parra knew she was consenting to a breath test. Prior to invoking the implied consent procedures, the trooper twice informed Parra that he would be requesting a breath test. While in the police station, they sat in a room that contained the DataMaster machine. The trooper and Parra talked freely, with Parra asking questions. They spoke about the test, and Parra never indicated any confusion over what type of test he was requesting. The trooper used his computer to make a written request, and on the screen was the statement that he was requesting a breath test. We find Parra's consent to the breath test was voluntary. We affirm.

AFFIRMED.