IN THE COURT OF APPEALS OF IOWA

No. 7-244 / 06-1776
Filed May 9, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL JAMES FARLOW,
Defendant-Appellant.

Appeal from the Iowa District Court for Dallas County, Virginia Cobb, Judge.

Defendant appeals from the district court's refusal to suppress evidence. **AFFIRMED.**

Robert Rehkemper of Gourley, Rehkemper & Lindholm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, Wayne Reisetter, County Attorney, and Sarah Pettinger, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Defendant-appellant, Daniel James Farlow, appeals from his conviction of operating while intoxicated, first offense, in violation of Iowa Code section 321J.2 (2005). Defendant contends he was not afforded the opportunity to make a telephone call after his arrest and as a result, certain evidence should have been suppressed. We affirm.

The relevant facts are without dispute. The defendant was arrested on March 23, 2006. He had a cell phone in his pocket, and prior to his arrest he made one call. After his arrest and while his hands were being cuffed, he asked the arresting officer, "Can I make a phone call or not?" The officer told the defendant he could make as many phone calls as he wished after he arrived at the police department. Once in the police station the defendant was not offered the opportunity to use a phone in the station. However, he had continued possession of his cell phone. When he received a call the officer took off his handcuffs so he could answer it. In a one-hour-and-ten-minute period between his arrival at the station and his taking the DataMaster test, which test he is seeking to suppress, the defendant checked messages on his phone and received two calls.

The defendant filed a written motion to suppress, a hearing was held, and the district court overruled the motion. He contends the motion to suppress should have been sustained because there was a violation of Iowa Code section 804.20 (2005). The State contends the section was not violated.

We review the district court's interpretation of Iowa Code section 804.20 for errors at law. *State v. Moorehead*, 699 N.W.2d 667, 671 (Iowa 2005); *State*

v. Krebs, 562 N.W.2d 423, 425 (Iowa 1997). 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. *Moorehead*, 699 N.W.2d at 671. Evidence is substantial when a reasonable mind would accept it as adequate to reach the same findings. *Id*.

Section 804.20 provides in relevant part:

> Any peace officer or other person having custody of any person arrested . . . 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.

A person arrested for operating while intoxicated has a limited right to contact an attorney under section 804.20. *Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 626 (Iowa 1997); *State v. Vietor*, 261 N.W.2d 828, 832 (Iowa 1978). Generally this right to counsel is satisfied by allowing the arrestee to make a telephone call. *Ferguson v. Iowa Dep't of Transp.*, 424 N.W.2d 464, 466 (Iowa 1988); *Short v. Iowa Dep't of Transp.*, 447 N.W.2d 576, 578 (Iowa Ct. App. 1989). Section 804.20 does not provide an absolute right to counsel, but requires a peace officer to provide the arrestee with a reasonable opportunity to contact an attorney. *Bromeland*, 562 N.W.2d at 626.

The defendant contends he made a proper request to make a phone call. The question is whether he made a specific and unequivocal request to make a call to an attorney, friend, or family member. The State contends he did not; rather he asked a single generic question about whether he could make a telephone call. The State's argument has some merit. However, we do not

consider the defendant's question in isolation but consider it together with the officer's answer that he could make all the phone calls he wanted when they got to the police station. We apply an objective consideration of the statements of the defendant and the peace officer as well as the surrounding circumstances. *See Moorehead*, 699 N.W.2d at 682. Having heard the officer's answer the defendant would have no reason to make a more specific request, as he had been told he could make calls. The defendant was arrested when he asked about making phone calls. We find his rights under Iowa Code section 804.20 were invoked.

The focal question then becomes whether the fact the defendant was in possession of a working cell phone on which he made and received calls negated any further responsibility on the officer's part to supply him with a phone. We believe it did. The statute only provides the officer "shall permit that person . . . to call. It does not require the officer to supply the phone. There was no restraint on his use of his cell phone after he reached the police station. The defendant was not so intoxicated that he was unable to use his cell phone. Additionally, he never asked to use the phones located at the station.

AFFIRMED.