

IN THE COURT OF APPEALS OF IOWA

No. 8-488 / 07-2055
Filed July 30, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MATHEW KARPAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, James B. Malloy,
District Associate Judge.

Mathew Karpan appeals his conviction for operating while intoxicated, first
offense. **AFFIRMED.**

Trever Hook, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant
Attorney General, Stephen Holmes, County Attorney, and Bryan Barker,
Assistant County Attorney, for appellee.

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

MAHAN, J.

Mathew Karpan appeals following conviction and sentence for operating while intoxicated, first offense, in violation of Iowa Code section 321J.2 (2007). He contends the district court erred in failing to suppress the evidence of his refusal to submit a breath sample in violation of section 804.20. We affirm.

I. Background Facts and Proceedings.

On August 16, 2007, at approximately 12:45 a.m., Huxley police officer William Harvey stopped Karpan after he observed Karpan driving very slowly and crossing the center line of Highway 210. As Officer Harvey approached the vehicle, he noted Karpan smelled strongly of alcohol and his eyes were watery and bloodshot. Karpan admitted he had been drinking and failed field sobriety testing. At 1:14 a.m., Officer Harvey performed a preliminary breath test, which showed a blood alcohol concentration of 0.090. He arrested Karpan for operating while intoxicated and transported to him to the Story County law enforcement center.

Before conducting a breath test, Officer Harvey provided Karpan with an opportunity to make a number of phone calls. Karpan called two attorneys, spoke to one for twenty minutes, and then attempted to contact another attorney. After placing three phone calls in an effort to reach the third attorney, the attorney called Karpan back at 2:37 a.m. Karpan spoke with the attorney for approximately four minutes before Officer Karpan interrupted and informed Karpan that he needed to decide whether or not he would take the breath test. Karpan consented to the breath test. Officer Harvey made several attempts to

administer the test, but Karpan failed to give an adequate specimen. Officer Harvey therefore recorded Karpan's actions as a refusal of the test.

On August 23, 2007, the State charged Karpan by trial information with operating while intoxicated, first offense. On September 17, 2007, Karpan moved to suppress evidence of his refusal to submit to chemical testing, arguing he was denied his rights under Iowa Code section 804.20 because Officer Harvey did not allow him more time to use the telephone. In denying Karpan's motion to suppress, the district court held:

The question becomes one as to whether or not Officer Harvey allowed "reasonable" access to the phone. *Bromeland v. Iowa Dep't of Transportation*, 562 N.W.2d 624 (Iowa 1997). Officer Harvey had allowed the Defendant unfettered access to a phone. He could call whomever he wished. The Defendant made seven calls. Two of those calls were to attorneys, one to the wife of an attorney, and no testimony was received concerning the other four calls. The seventh and final call was made approximately one and one-half hours after the arrest/PBT test; therefore, Officer Harvey had some concern about the two-hour time limit imposed by § 321J.6(2) so the final call was cut short. The officer's actions were clearly reasonable.

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Officer Harvey did not do anything to block the Defendant's use of the phone except for the limitation placed on the seventh and final call which was limited to approximately four minutes. The Defendant had access to two different attorneys for a total of 24 minutes. He additionally had five other calls. The officer did not violate 804.20.

Karpan was later found guilty following a trial on the minutes of testimony. He was sentenced to two days in jail, a \$1250 fine, plus related surcharges and court costs. Karpan now appeals.

II. Scope and Standard of Review.

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). We

will uphold the district court's ruling on a motion to suppress if the court properly applied the law and there is substantial evidence to support its finding of fact. *Id.* Evidence is substantial when a reasonable mind would recognize it sufficient to reach the same findings. *Id.*

III. Merits.

Karpan argues the district court erred in failing to suppress the evidence of his refusal to submit a breath sample. He contends the arresting officer did not allow him enough time to talk with an attorney in violation of his right under Iowa Code section 804.20. 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 statute requires that an arrestee be given a reasonable opportunity to contact an attorney. *Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 626 (Iowa 1997). The arrestee does not, however, have a right to contact a specific attorney who is unavailable when called. *Id.* The rights of the arrestee must be balanced with the goals of the chemical-testing statutes. *State v. Tubbs*, 690 N.W.2d 911, 914 (Iowa 2005). In particular, section 321J.6(2) requires that a chemical test be completed within two hours of administration or refusal of

preliminary breath test or arrest, whichever occurs first. Section 804.20 therefore provides a limited statutory right to counsel before making the decision to take or refuse the chemical test under implied consent procedures. *Id.* (quoting *State v. Vietor*, 261 N.W.2d 828, 831 (Iowa 1978)).

We find that Karpan was given more than a reasonable opportunity to contact an attorney. Officer Harvey allowed Karpan to make seven phone calls. Karpan spoke with two attorneys for a total of approximately twenty-four minutes. In addition, Officer Harvey cut Karpan's final call short under a reasonable concern about the two-hour time limit imposed by section 321J.6(2). We find no violation of Karpan's rights under section 804.20. We conclude the district court did not err in admitting the evidence of his refusal to submit a breath sample.

AFFIRMED.