IN THE COURT OF APPEALS OF IOWA

No. 9-058 / 08-1178
Filed February 19, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TODD CHRISTOPHER DOORENBOS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Gregory D. Brandt, District Associate Judge.

Defendant appeals his conviction for operating while intoxicated, second offense. **AFFIRMED.**

Sean P. Spellman of Witherwax & Spellman, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, John P. Sarcone, County Attorney, and Daniel Rothman, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Potterfield, J., and Huitink, S.J.*

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

PER CURIAM

At about 12:30 a.m. on February 2, 2008, Officer John Taylor of the Clive Police Department stopped a blue Jaguar on University Avenue in Clive after he saw the vehicle drive twice over the center line and subsequently pass him at a high rate of speed. The driver of the vehicle was Todd Doorenbos. Officer Taylor noticed Doorenbos had slurred speech, avoided eye contact, and had an odor of alcohol. Officer Taylor asked Doorenbos if he had anything to drink, and he replied, "Enough." Officer Taylor asked Doorenbos to get out of the car, and was preparing to give field sobriety tests when Doorenbos said, "Let's just skip this." Officer Taylor asked two more times if Doorenbos was refusing the tests, and Doorenbos said, "Yeah." Officer Taylor placed Doorenbos in the back of his squad car and arrested him for interference with official acts and improper registration.

Officer Taylor took Doorenbos to the police station and initiated implied consent procedures. On the implied consent advisory form Officer Taylor checked off that Doorenbos was placed under arrest for violation of Iowa Code section 321J.2 (2007). Officer Taylor testified he believed that after they reached the police station he advised Doorenbos he was under arrest for operating while intoxicated. Doorenbos signed the implied consent advisory form and submitted to a breath test. The test showed a blood alcohol level of .214.

Doorenbos was charged with operating while intoxicated (second offense), in violation of Iowa Code section 321J.2. Doorenbos filed a motion to suppress, raising as one of the grounds that implied consent had not been properly

invoked. At the suppression hearing, Doorenbos additionally argued that he had not been properly arrested under section 804.14. The district court specifically noted that it would not address the issue of whether the claim regarding section 804.14 was untimely. The district court denied the motion to suppress.

Doorenbos waived his right to a jury trial, and the case was tried to the court on the minutes of testimony. The court determined Doorenbos was guilty of operating while intoxicated, second offense. Doorenbos was sentenced to two years in prison, with all but seven days suspended, and placed on probation for one year. He was also required to perform fifty hours of community service. Doorenbos now appeals the denial of his motion to suppress.

Section 321J.6(1)(a) requires that in order to invoke implied consent procedures, "[a] peace officer has lawfully placed the person under arrest for violation of section 321J.2." *State v. Lindeman*, 555 N.W.2d 693, 695-96 (Iowa 1996). Doorenbos points out that section 804.14 provides, "[t]he person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer . . . ." Doorenbos claims he was not lawfully arrested for violating section 321J.2 because Officer Taylor did not inform him that he was being arrested for violating that statute. He asserts that because he was not arrested for violating section 321J.2 the implied consent procedures of section 321J.6 were not properly invoked, and the results of his breath test should be suppressed.

The Iowa Supreme Court has held that "substantial compliance with section 321J.6 is sufficient if the purposes underlying the requirements of that

section 'were not compromised.'" *Id.* at 696 (citation omitted). Thus, we must consider whether there has been substantial compliance with section 321J.6(1)(a) under the facts of this case. *See id.*

There is no requirement that formal words of arrest be used to effectuate an arrest under section 804.14, but this is a factor to consider. *State v. Rains*, 574 N.W.2d 904, 910 (Iowa 1998). "[A]n arrest can occur without the police specifically informing the arrestee of their intention to arrest." *State v. Delockroy*, 559 N.W.2d 43, 45 (Iowa Ct. App. 1996). Where formal words of arrest are not used, we look to the surrounding circumstances to determine whether an arrest occurred. *Id*. at 46. The question of whether a person has been arrested is determined on a case-by-case basis. *State v. Dennison*, 571 N.W.2d 492, 495 (Iowa 1997).

The district court ruled:

> In this case Officer Taylor initially placed Mr. Doorenbos under arrest for Interference with Official Acts and driving without a registration. In the field he told the passenger that Mr. Doorenbos was being charged with Operating under the Influence and informed Mr. Doorenbos of that at the station prior to invoking the Implied Consent Procedure. The fact that Officer Taylor told Mr. Doorenbos that he was being charged with Operating under the Influence instead of using the words "under arrest" does not change the basic situation. There is no violation of Iowa Code section 804.14.

We review the district court's denial of a motion to suppress on statutory grounds for the correction of errors at law. *State v. McCoy*, 603 N.W.2d 629, 630 (Iowa 1999). The court's factual findings are binding on appeal if supported by substantial evidence. *State v. Frake*, 450 N.W.2d 817, 818 (Iowa 1990).

Substantial evidence means evidence which could convince a rational finder of fact of the fact in issue. *Id.*

We find substantial evidence in the record to support the district court's findings that Doorenbos was sufficiently apprised that he was being arrested for violating section 321J.2. Officer Taylor was questioned, "At any point did you advise Mr. Doorenbos that he was under arrest for Operating While Intoxicated?" and he replied, "Probably not until we got back to the station." Officer Taylor also testified, "I would have told him he was being charged with OWI at the time of the implied consent." Furthermore, we note that Officer Taylor checked a box on the implied consent advisory showing Doorenbos had been placed under arrest for violating section 321J.2, and Doorenbos then signed the implied consent advisory form.

We conclude there was substantial compliance with the requirement of section 321J.6(1)(a) that Doorenbos was lawfully placed under arrest for violating section 321J.2. The district court did not err in denying Doorenbos's motion to suppress. We affirm the decision of the district court.

AFFIRMED.