

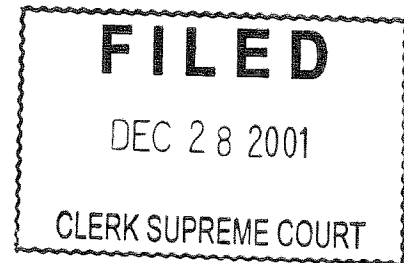
IN THE COURT OF APPEALS OF IOWA

No. 1-819 / 00-0850
Filed December 28, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LISA MARIA HOOSE,
Defendant-Appellant.



Appeal from the Iowa District Court for Linn County, Patrick R. Grady
(motion to suppress) and David M. Remley (trial and sentencing), Judges.

Lisa Maria Hoose appeals from the judgment and sentence entered upon
her conviction for third-offense operating while intoxicated in violation of Iowa
Code section 321J.2 (1999). **AFFIRMED.**

Paul Rosenberg, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney
General, Denver D. Dillard, County Attorney, and Jerry Vander Sanden,
Assistant County Attorney, for appellee.

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

000660

MAHAN, J.

Lisa Maria Hoose appeals from the judgment and sentence entered upon her conviction for third-offense operating while intoxicated in violation of Iowa Code section 321J.2 (1999). She contends the arresting officer failed to comply with Iowa Code section 804.20 and the district court erred by overruling her motion to suppress breath test evidence. She also claims her trial counsel was ineffective for failing to move to suppress breath test evidence on grounds she was denied a confidential and meaningful opportunity to consult with counsel. We affirm.

Background Facts and Proceedings. At approximately 6:18 a.m. on June 6, 1999, Linn County Deputy Sheriff Harvey Hall arrested Hoose for operating while intoxicated and transported her to the Linn County Correctional Center. Upon arrival, Deputy Hall requested that Hoose provide a breath sample. As Deputy Hall was reading her the implied consent form, Hoose asked to contact her attorney, David Baumgartner. Another deputy, Allen Rouse, telephoned Baumgartner on Hoose's behalf at 6:45 a.m. and left a message. At approximately 6:50 a.m., Baumgartner returned the telephone call and spoke with Hoose. Baumgartner did request to consult with Hoose in person, but this request was denied due to the time it would take him to arrive in Cedar Rapids.¹ Hoose spoke with her attorney until approximately 7:18 a.m. and then signed the implied consent form and took the intoxilyzer test. The breath test indicated a blood alcohol level of 0.137.

¹ At the time of the telephone conversation, Baumgartner was in Strawberry Point, Iowa, which is approximately sixty miles from Cedar Rapids.

The State charged Hoose with third-offense operating while intoxicated (OWI) in violation of Iowa Code section 321J.2. On August 5, 1999, Hoose filed a motion to suppress requesting the district court to exclude the results of the breath test because she was not afforded a reasonable opportunity to speak with her attorney pursuant to Iowa Code section 804.20. The district court denied the motion on November 4, 1999. Hoose waived her right to a jury trial. After a trial to the court on the minutes of testimony, the district court found Hoose guilty, sentenced her to five years in prison (with all but thirty days suspended), and fined her \$2500. Hoose appeals.

Motion to Suppress. Our review is for errors at law. *State v. Krebs*, 562 N.W.2d 423, 425 (Iowa 1997). We will uphold the trial court's ruling on a motion to suppress if there is substantial evidence to support the court's findings of fact. *Id.* Evidence is substantial when a reasonable mind would accept it as adequate to reach the same findings. *Id.*

In the present case, Hoose argues not only should she have been afforded additional time to consult with her attorney but the consultation should have been private and outside the presence of the two deputies. We disagree.

Iowa Code section 804.20 states in pertinent part:

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.*

Iowa Code § 804.20 (emphasis added).

A person arrested for OWI has a limited right to contact an attorney under this section. *State v. Vietor*, 261 N.W.2d 828, 832 (Iowa 1978). Generally, this right to contact counsel is satisfied by allowing the person arrested for OWI to make a telephone call. *Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 626 (Iowa 1997). Section 804.20 does not provide an absolute right to counsel but requires a peace officer provide the arrestee with a reasonable opportunity to contact an attorney. *Id.* We have previously stated, "The right is limited to circumstances which will not materially interfere with the administration of testing within the two hour time limit imposed by Iowa Code section 321J.6(2)." *Moore v. Iowa Dep't of Transp.*, 473 N.W.2d 230, 231 (Iowa Ct. App. 1991).

After a careful review of the record, we conclude Hoose was not deprived of her statutory right to consult counsel. Her attorney was approximately sixty miles from the correctional center, and the deputies were not required to wait until he arrived in Cedar Rapids. Hoose spoke with her attorney for approximately twenty-eight minutes. The two-hour time frame has not been construed to afford every arrestee two full hours to consent to testing. *Id.* Under these circumstances, we find Hoose was given a reasonable opportunity to consult with her attorney. Furthermore, we reject Hoose's claim that an attorney consultation pursuant to section 804.20 requires a private consultation. Our supreme court has previously stated, "the telephone calls which section 804.20 assures to persons in custody are not intended to be confidential as is shown by the provision that they are to be made in the presence of the custodian." *State v. Craney*, 347 N.W.2d 668, 679 (Iowa 1984). Accordingly, we affirm the district court's denial of Hoose's motion to suppress and affirm her conviction.

Ineffective Assistance of Counsel. Because we conclude Hoose's section 804.20 argument is without merit, her ineffective assistance of counsel claim also must fail.

AFFIRMED.