FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	Filed March 24, 1981
Plaintiff-Appellee,	)	0-447 / 64724
vs.	)	
EUGENE HENRY HRUSKA,	)	
Defendant-Appellant.	)	

Appeal from Fayette District Court - Frank D. Elwood, Judge.

Defendant appeals from his conviction of OMVUI in violation of section 321.281, The Code. - AFFIRMED.

John Hofmeyer, III, of Hofmeyer & Anthony, Oelwein, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and John P. Messina, Assistant Attorney General of Iowa, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Eugene Hruska, appeals from his conviction of OMVUI in violation of section 321.281, The Code 1979. We affirm.

On May 26, 1979, Officers Rosenbum and Popenhagen, Fayette City policemen, were traveling north on a city street when they noticed Hruska also traveling north approximately one-half block behind them. They observed Hruska was driving in excess of the speed limit on the left-hand side of the road. The officers turned off onto an intersecting road, returned onto the street and proceeded to follow and observe Hruska for a distance which eventually took them beyond the city limits. The officers did not attempt to stop Hruska immediately because of intervening and oncoming traffic. While following Hruska, the officers observed Hruska's vehicle go off onto the shoulder of the road six or seven times. When the traffic had cleared, the officers truned on their red lights; and Hruska stopped his vehicle. The officers asked for Hruska's license. From his behavior, the officers determined Hruska was intoxicated and arrested him. The officers were in radio contact with West Union police and the state patrol. They took Hruska to West Union where Patrolman Hoffert arrived, observed the defendant and was informed of the events leading to the arrest. The patrolman re-arrested Hruska, read him the Miranda rights and informed him as to the implied consent procedures. Hruska, signed the implied consent form and was taken to Palmer Memorial Hospital where a blood sample was drawn by Deborah Marvin, a medical technician.

Prior to trial, Hruska filed a motion to suppress evidence obtained following his arrest. He alleged the arrest was invalid and the implied consent procedures pursuant to section 321B, The Code 1979, were improperly applied causing this evidence to be inadmissible. His motion was overruled. He was found guilty and was convicted of the offense. He appealed that conviction and raised as error the arrest and implied consent procedures employed.

I. Arrest

The trial court found probable cause to arrest did not exist while the parties were within the city limits of Fayette and within the city policemen's jurisdiction. It concluded, however, the arrest outside the city was justified under the authority of a private person arrest pursuant to section 804.9, The Code 1979. Validity of such an

arrest on these grounds has been established in State v. O'Kelly, 211 N.W.2d 589, 595 (Iowa 1973). Hruska argues the officers cannot avail themselves of this private person statute as they were acting "under color of authority' by using police equipment in the arrest.

We find O'Kelly, controls this matter. O'Kelly does not require an "either/or" distinction as the Nebraska police officers involved in O'Kelly were also engaged in police activity when the challenged arrest was made. The question becomes whether when an officer goes beyond his jurisdiction, do the circumstances grant authority for him as a private person to make an arrest. The trial court found the circumstances in this case justified the arrest on that basis. We agree. Furthermore, Patrolman Hoffert, upon his own observation and information given him by the officers, re-arrested Hruska. Hruska raised no challenge to that arrest. We find no error in trial court determination and no reason to invalidate the arrest.

II. Implied Consent.

Hruska asserts he was erroneously informed of the options available to him when Patrolman Hoffert explained the implied consent procedures. Hruska argues he should have been notified of his right to a hearing before revocation in the event he refused to submit to a chemical test. Her assertion is a misstatement of the law. A hearing on license revocation pursuant to section 321B.8, The Code 1979, is afforded a person whose privileges to drive has been revoked. (Hruska does not raise a constitutional challenge to the post-effect provision, so we need not consider it.)

III. Blood Test.

Hruska submits there was no showing that the medical technician was properly designated by a licensed physican to take the blood sample. At trial two forms were introduced into evidence showing Marvin to be a properly designated person. One was dated December 30, 1978; the other July 28, 1979. Neither designation specified a time frame in which they would be in effect. Hruska contends the evidence was insufficient to show Marvin's status on May 26, 1979.

It is well settled that the requirements of section 321B.4, The Code 1979, concerning a designated person does not require authorization to be given in each instance of testing. State v. Myers, 215 N.W.2d 257 (Iowa 1974). The purpose of this provision is to protect the health of the party submitting to this medical procedure. Id.

at 258. The documents show substantial compliance with this requirement and justify the admissibility of the evidence.

We find no error below on Hruska's contentions and, therefore, affirm the conviction.

AFFIRMED.