

IN THE COURT OF APPEALS OF IOWA

No. 1999-563 (9-824) / 99-181
Filed January 26, 2000

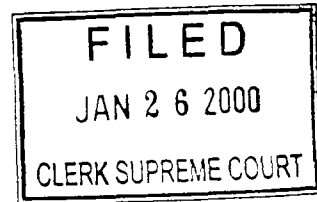
STATE OF IOWA,

Plaintiff-Appellee,

vs.

TIMOTHY BLAYNE WRIGHT,

Defendant-Appellant.



Appeal from the Iowa District Court for Appanoose County, Kirk A. Daily (trial and sentencing) and E. Richard Meadows (suppression hearing), Judges.

Defendant appeals from the judgment and sentence entered upon his conviction of second-offense operating while intoxicated. **AFFIRMED.**

James A. Sinclair and Jeffrey M. Weber of Sinclair & Associates, P.C., West Des Moines, for appellant.

~~Thomas~~ J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, and Robert Bozwell, County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Miller, JJ.

HUTINK, P.J.

I. Background Facts and Proceedings.

Wright was arrested and charged with operating a motor vehicle while intoxicated after he failed field sobriety tests and a preliminary breath test administered at the scene of a traffic accident. Wright refused to provide a breath test following the arresting officer's invocation of implied consent procedures.

Prior to trial, Wright moved to suppress "any and all evidence obtained on the evening in question." The grounds upon which Wright's motion was based included:

3. Violation of Defendant's right to counsel under Iowa Code section 804.20 as guaranteed by the United States and Iowa Constitutions.

The record made at the conclusion of the hearing on Wright's motion includes the following:

COURT: What's with the 804.20 violation? I've heard no evidence on that issue. Do you want to keep the record open for additional evidence?

[DEFENSE COUNSEL]: No need, Your Honor, I'll bring that to trial if necessary. I withdraw my request to hold the record open.

COURT: Okay. The matter is going to be submitted today. you don't need any more time?

[DEFENSE COUNSEL]: That's right.

In its ruling denying Wright's motion to suppress the court said:

No evidence was presented on Defendant's third issue. The State claims the issue as set forth by the Defendant in his written motion and as restated prior to the hearing is too vague. The Defendant did not elaborate or expand his motion, claiming his motion was sufficient and since the State had failed to address the matter the Court should sustain the motion.

As noted above, the Defendant merely makes an unlimited reference to the United States and Iowa Constitutions and to Iowa Code Section 804.20. Defendant's general reference is not adequate and Defendant's failure to plead a more specific ground constitutes a waiver of that ground for purposes of this ruling.

Wright stipulated to a bench trial limited to the court's consideration of the minutes of testimony attached to the trial information. He was convicted as charged and sentenced accordingly.

On appeal Wright contends his motion to suppress should have been sustained. He argues the "motion to suppress was specific enough to alert the court and the prosecutor to the objection raised" and evidence obtained in violation of his statutory and constitutional right to counsel should have been suppressed.

II. Standard of Review.

Because Wright's claims include constitutional questions, our review is de novo. *State v. McNight*, 511 N.W.2d 389, 391 (Iowa 1994).

III. The Merits.

The State correctly notes Wright's obligation to include in his motion to suppress the specific grounds upon which he seeks to exclude evidence obtained in violation of his right to counsel. See *State v. Washington*, 257 N.W.2d 890, 895 (Iowa 1977). A broad reference to constitutional provisions is not sufficient to alert the court or opposing counsel to the issue raised or the nature of the evidence essential to its resolution. *Id.* at 895-96.

We, like the district court, conclude the allegations made in paragraph three of Wright's motion are insufficient to satisfy these requirements. Even if we were to conclude Wright's allegations were sufficient to raise the issue of denial

of his right to counsel under Iowa Code section 804.20,¹ the record is devoid of evidence indicating the manner in which the claimed deprivation occurred. We accordingly affirm.

AFFIRMED.

¹ Iowa Code section 804.20 states:

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.