

IN THE COURT OF APPEALS OF IOWA

FILED

OCT 20 1988

CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

KENNETH ROBERT KNIPFER,)

Defendant-Appellant.)

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8-356
87-1228

Appeal from the Iowa District Court for Cedar County
(CRM 29611), Max R. Werling, Judge.

Defendant appeals the trial court's refusal to suppress
evidence obtained from him subsequent to his arrest.

AFFIRMED.

David Scieszinski, Wilton, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Bruce
Kempkes, Assistant Attorney General, for
plaintiff-appellee.

Considered by Schlegel, P.J., and Hayden and Sackett,
JJ.

SCHLEGEL, J.

Defendant, Kenneth Robert Knipfer, was arrested for OWI, was advised of his constitutional rights, and was transported to the Cedar County Sheriff's office in Tipton, Iowa. There, he requested the right to contact Sherry Mahoney by telephone. This request was refused and defendant was advised that he would be permitted to make a telephone call when the "paper work" was completed. He continued to make requests to call Mahoney, but was not permitted to do so until he had been required to submit to field sobriety tests on video tape, to answer questions asked as a part of the intoxication report summary, to submit to implied consent procedures on video tape, and to perform the breath analysis test.

Defendant claims that he lived with Mahoney, and that under the provisions of Iowa Code section 804.20 (1987), she was included as a family member with whom he had a right to communicate under that section.

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 his or her family or an attorney of the person's choice, or both

There is no claim that defendant is married to Mahoney, or that she is related to him by either blood or marriage. The court found that while defendant kept

clothing at Mahoney's house, and he stayed there on weekends and some other times, he did not live with her in such a way as to make her a member of his family.

We agree with the State that under the language of section 804.20, the word "family" means the usual concept of family, and that the legislature did not intend to include in that word the concept of a "member of the household" or a "friend with whom the person lives." The legislature had the power to make that distinction but did not do so.

We hold that the court was not in error in refusing to suppress the evidence obtained from defendant between the time he requested to call Mahoney and when he was finally permitted to do so.

AFFIRMED.