

IN THE COURT OF APPEALS OF IOWA

No. 3-360 / 92-1283

FILED

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

000763

vs.

DARRELL M. GRAVENISH,
Defendant-Appellant.

Appeal from the Iowa District Court for Clayton County,
John Bauercamper, Judge.

Gravenish appeals from his conviction, following a jury
trial, of vehicular homicide. **REVERSED AND REMANDED.**

Linda Del Gallo, State Public Defender, and Shari
Barron, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Robert P. Ewald,
Assistant Attorney General, and Kevin H. Clefisch, County
Attorney, for appellee.

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

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SACKETT, J.

Defendant-appellant Darrell Gravenish appeals his conviction of vehicular homicide in violation of Iowa Code section 707.6A(1)(a) (1991). He contends the trial court erred in refusing to grant his motion to suppress a blood test. Defendant advances the blood test should have been suppressed because he did not voluntarily consent to the test and when he gave the test, the officer requesting the test misinformed him about the result of the accident. We reverse and remand.

In the early morning hours of January 3, 1992, a car driven by defendant collided, head on, with a car driven by Kerri Kautman. Kerri was killed in the accident and defendant received a head injury. Defendant's car had an air bag. Kerri was not wearing a seat belt. The deputy sheriff who arrived at the accident scene testified both cars were in the eastbound lane with Kerri's car facing east and defendant's car facing west. A state trooper who investigated the accident testified the accident happened in the eastbound lane of travel and defendant's car should have been in the westbound lane. It was foggy the morning of the accident. The accident happened between 1:30 a.m. and 1:45 a.m.

At 4:22 a.m. on January 3, a sample of defendant's blood was drawn. At trial, there was testimony when the blood sample was taken defendant's blood alcohol level was .123 and at the time of the accident it would have been .18

or .19. A blood sample was, also, taken from the decedent which showed her blood alcohol level at the time of the accident to be 112¹.

When the officer asked defendant to consent to a test, defendant was still in the hospital. Defendant had suffered a concussion and had no memory of the accident. When defendant asked the officer requesting the test about the condition of the other driver, the officer said, "wasn't too good" when in fact the other driver was dead.

Defendant contends his consent to having blood drawn was not voluntarily given. The State advances the deputy sheriff had reasonable grounds to believe defendant was operating a motor vehicle while intoxicated and the results of the test was properly admitted. The trial court found reasonable grounds to find defendant intoxicated existed because there was an unopened can of beer in the car, defendant was on the wrong side of the road when the accident occurred and the other driver was dead at the scene.

The State also argues the trial court's finding is supported by evidence an emergency medical technician who took defendant from the scene told the deputy he smelled alcohol on defendant's breath.

The first issue is whether the officer had reasonable grounds to believe that defendant was operating a motor

1. When defendant consented to the blood test, he provided the State with the most critical evidence against himself.

vehicle while intoxicated. We agree with the State that there were reasonable grounds to believe defendant had violated the statute. We consider evidence of the accident and the fact the officer was told by the medic there was alcohol on defendant's breath when defendant was removed from his automobile.

The second issue is whether the consent was voluntarily given. The question is whether the defendant was competent to give the consent given his injuries and whether the misstatement made by the officer was so deceptive as to render the statement coerced.

Because this is a constitutional issue we review de novo. State v. Davis, 446 N.W.2d 785, 787 (Iowa 1989). We will, however, affirm the trial court if there is substantial evidence in the record to support the fact findings of the trial court that it was more likely than not the defendant was capable of consenting or refusing a blood test. See State v. Laughridge, 437 N.W.2d 570, 572 (Iowa 1989); State v. Weidner, 418 N.W.2d 47, 49 (Iowa 1988). However, here the evidence of the facts about the test is not disputed. Rather, what is disputed is what conclusion should be drawn from the evidence.

In examining defendant's first challenge we note the State must show the consent was voluntary and not coerced. See State v. Holland, 389 N.W.2d 375, 381 (Iowa 1986). We examine all the circumstances to decide if the consent to the test was the product of an essentially free and

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unconstrained choice made by the defendant at a time when his will was not overborne and his capacity for self-determination was not critically impaired. See State v. Ransom, 309 N.W.2d 156, 159 (Iowa App. 1981). A doctor and a nurse who had treated defendant testified defendant at the time the test was requested was alert and oriented and his responses to questions were appropriate. While the doctor testified defendant's concussion had affected his memory of the accident, the doctor was of the opinion it did not affect defendant's capability to consent to the test or refuse it. We, therefore, agree with the trial court and the State that defendant had the mental capacity to make a voluntary consent when the consent was given.

The third issue causes us more trouble. At the time the officer requested the test, the officer knew that the driver of the other car was dead. The officer not only did not voluntarily relay this information to defendant, he gave defendant a false answer when defendant inquired about the person in the other car. The State suggests the deputy's statement was not an untruth, rather it was only a half-truth and it was excusable on humanitarian grounds because the deputy did not want to upset defendant. The officer answered defendant's question with an untruthful and defective answer. We reject the State's argument the answer was either a half-truth or in some way justified. The officer clearly gave a false answer. There is no excuse or justification for a law enforcement officer to

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give false information. However, we must decide whether the officer's false answer rendered defendant's consent to the test involuntary.

Without the blood test, the most the State's evidence would have shown was defendant was on the wrong side of the road when he hit a car on a foggy night; there was a smell of alcohol on defendant's breath; there was an unopened can of beer in his car; the driver of the other car had been drinking; and defendant was alert and able to answer questions after the accident.

When defendant consented to the test, he was concerned about his driver's license. Knowledge that the passenger in the other car was dead would have cast the situation for defendant in a different light.

We find the officer's untruthful answer to defendant's question about the condition of the other driver kept from defendant critical facts he should have had available to him in making his determination and resulted in a coerced consent. We agree with defendant on this issue. The results of the test should have been suppressed. We reverse and remand.

REVERSED AND REMANDED.

Hayden, J., concurs; Donielson, P.J., dissents.

DONIELSON, P.J. (dissenting)

I respectfully dissent. I would affirm the trial court. I agree with the majority that there is no excuse or justification for an officer to give false information. I do not agree, however, that the officer's answer coerced appellant into submitting to the test.

Iowa law requires that a party's consent be voluntary and uncoerced to be valid. See State v. Erickson, 362 N.W.2d 528, 530 (Iowa 1985). "When there is an allegation of coercion, the State, therefore, must show that there has been no undue pressure, threats or improper inducements." State v. Holland, 389 N.W.2d 375, 381 (Iowa 1986). The right to make this voluntary decision is statutory, "not mandated by the due process, privilege against self-incrimination or right to counsel provisions of the United States Constitution." State v. Knous, 313 N.W.2d 510, 512 (Iowa 1981) (citations omitted). The standard, therefore, is less than the "knowing and intelligent waiver" required for constitutional rights. Id. (citation omitted).

Iowa law assumes a driver "would consent to have a blood test made as part of a sensible and civilized system protecting himself as well as other citizens." Id. (citation omitted). A driver's consent to the test is "in return for the privilege of using the public highways." State v. Hutchens, 294 N.W.2d 686, 687 (Iowa 1980). Appellant testified at trial that his concern, when asked

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to submit to the test, was losing his drivers' license. He presented no evidence that the officer's response concerning the other driver's condition affected his decision in any way. I do not believe that lying about the other driver's condition put any pressure on appellant to take the test. The only pressure or threat perceived by appellant was fear of losing his drivers' license. This is unrelated to the officer's statement and does not constitute coercion. I believe appellant's consent was voluntary. I would affirm the trial court's decision not to suppress the evidence.