

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 23 1989

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellant,

)

vs.

)

ERIC RENAUD RYSDAM,

)

Defendant-Appellee.

)

419

8-644
88-570

Appeal from the Iowa District Court for Washington
County (CR 2055), Max H. Ruschmeyer, Judge.

The State seeks to overturn a pretrial order
suppressing the results of a chemical test taken by the
defendant. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General; Ann E. Brenden,
Assistant Attorney General; and Barbara A. Edmondson,
Assistant County Attorney, for plaintiff-appellant.

Michael R. Mullins, of Morrison, Lloyd, McConnell &
Mullins, Washington, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

SACKETT, J.

The question the State asks us to address is whether Iowa Code section 321J.5 precludes more than one valid request for a preliminary screening test. We hold it was error under the facts of this case for the trial court to suppress a chemical test given defendant after he took a second intoxilyzer test given by a different officer than gave the first test.

The facts are as follows. Between 11:15 and 11:30 p.m. on July 22, 1987, Eric Rysdam, traveling alone, was injured when his car went into a ditch. Rysdam went to the Washington County Hospital where he was interviewed by a police officer, who, suspecting Rysdam had been drinking, administered a preliminary breath test at about 1:15 a.m. Based on a reading of .09 the officer told Rysdam he had passed and made no request for a chemical test. Rysdam agreed to have his girlfriend drive him to the Washington County Safety Center for an interview with another police officer who had found the car and sought his assistance in completing an accident report. About 2 a.m. this second officer gave Rysdam several field sobriety tests, arrested him on an OWI charge, invoked the implied consent law, and administered an intoxilyzer test that revealed a blood alcohol content of .12. The officer then requested a chemical test. On defendant's motion, the trial court suppressed the results of that test. Section 321J.5 provides as follows:

When a peace officer has reasonable grounds to believe that a motor vehicle operator may be violating or has violated section 321J.2, or the operator has been involved in a motor vehicle collision resulting in injury or death, the peace officer may request the operator to provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to request a chemical test authorized in this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this chapter.

We determine nothing in this section precludes the admission into evidence of a valid chemical test requested after defendant voluntarily submits to a second preliminary breath test when a first preliminary test administered by a prior officer did not result in a request for a chemical test being made.

We reverse and remand.

REVERSED AND REMANDED.