FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed September 6, 1984
vs.	)	
KEVIN O. CREESE,	)	4-255 / 83-1281
Defendant-Appellant.	)	

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Appeal from the Iowa District Court for Dallas County - Harry Perkins, Judge.

The defendant appeals from his conviction for operating a motor vehicle while intoxicated, first offense. He contends the results of a blood test should have been excluded on foundational grounds. AFFIRMED.

Joseph G. Bertogli of Flagg, Hockett, Benhart & Golden, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven K. Hansen, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

The defendant, Kevin Creese, was involved in a one-car accident on February 27, 1983. Creese, the sole individual involved, suffered a broken back, contusions, abrasions, and lacerations. He was taken to the Dallas County Hospital for treatment. While he was in the emergency room, Cheryl Sims, a lab technician, withdrew blood on the orders of Dr. Daniel Callan. A sample of the blood was given to Officer Dorin Smith, a patrolman for the Perry Police Department. This blood was tested for alcohol content and the test results showed it to contain .199% of alcohol by weight.

Creese appeals from his conviction for operating a motor vehicle while intoxicated, first offense. He contends the results of a blood test should have been excluded from evidence on foundational grounds.

Our review is on assigned error.

Creese first argues that the blood test results should have been excluded because the State did not prove that he consented to the test voluntarily, freely, intelligently, and with full comprehension of the meaning of the test. The State responds that the consent standard cited by the defendant does not apply to this case because of the effect of Iowa's "implied consent statute."

Creese also argues that the blood test results should have been excluded because the arresting officers did not obtain a physician's certificate, required by Iowa Code section 321B.11, when a suspect is incapable of either consenting or refusing consent. The State responds that the requirement of a physician's certificate does not apply to this case because Creese was capable of consenting or refusing consent.

The implied consent statute, Iowa Code section 321B.4, states:

> 1. Any person who operates a motor vehicle in this state upon a public highway under circumstances which give reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321.281, is deemed to have given consent to the withdrawal of

> specimens of the person's blood, breath, saliva, or urine, and to a chemical test or tests of the specimens for the purpose of determining the alcoholic content of the blood, subject to this section. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321.281, and if any of the following conditions exist:
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> * * *
>
> b. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.

Iowa Code § 321B.4 (1983).

We reject the defendant's argument that the standard to be applied to establish consent under this statute is whether the person consented "voluntarily, freely, intelligently and with full comprehension of the meaning of the test." The defendant incorrectly cites State v. Hraha, 193 N.W.2d 484 (Iowa 1972) in support of this argument. Hraha stands for the proposition that consent must be given voluntarily, freely, and intelligently with full realization and comprehension of the meaning when the blood test is performed by one other than a person authorized by chapter 321B. Id. at 490.

Under the "implied consent statute," a driver impliedly agrees to submit to a test in return for the privilege of using the public highways. State v. Jensen, 216 N.W.2d 369, 373 (Iowa 1974). The driver may withdraw this consent by refusing to take the test, and if he does so the State is allowed to revoke his license. Iowa Code § 321B.7 (1983). To invoke the implied consent statute, the arresting officer must make a written request to administer the blood alcohol test. Iowa Code § 321B.4 (1983). If a person is dead, unconscious, or otherwise incapable of consenting or refusing, the test may be given provided a licensed physician certifies that the person is incapable of consenting or refusing. Iowa Code § 321B.11 (1983).

The facts here indicate that the defendant was capable of consenting, that the arresting officer did make an appropriate request to administer the test, and that the defendant did consent. Dr. Daniel Callan accompanied the defendant to the hospital. Callan testified that he spoke with the defendant after arriving at the hospital and that the defendant was basically "alert and oriented to time, person, and place." While Dr. Callan testified that he could not recall whether any law enforcement officers had asked him whether the defendant was capable of consenting to the test, Patrolman Dorin Smith, the arresting officer, testified that he did speak to Dr. Callan when he arrived at the hospital and that he asked to get a blood sample. Smith stated that he read the implied consent form to the defendant in the presence of the lab technician, Cheryl Sims, and that the defendant responded affirmatively when asked if he understood it. Smith testified that he did not ask the defendant to sign the form due to the nature of his injuries. However, there is no statutory requirement that the consent must be in writing. State v. Epperson, 264 N.W.2d 753, 756 (Iowa 1978). Cheryl Sims, the lab technician, testified that she remembered Officer Smith reading something to the defendant before she withdrew the blood samples, but could not remember exactly what it was. While the defendant testified that he had no independent recollection of Officer Smith's invocation of the implied consent statute or of Sims actually taking the blood, he did remember speaking with Dr. Callan about blood samples being taken for medical purposes. He also recalled being asked to sign a form by someone whom he thought was Leo Skeffington, a deputy with the Dallas County Sheriff's Office. The testimony indicated that Skeffington was present at the hospital that night; however, he did not testify at the trial.

A lack of understanding is not a viable defense in license revocation proceedings under the implied consent statute. Buda v. Fulton, 261 Iowa 981, 990, 157 N.W.2d 336, 341 (1968). Likewise, a driver's confusion is not an excuse for refusing to comply with a request under chapter 321B. Janssen v. Sellers, 207

N.W.2d 746, 747 (Iowa 1973). The record indicates that defendant was conscious and alert during the time in question. He spoke with the doctor and with others in the emergency room, and he knew that blood was to be taken. We reject his argument that he was incapable of refusing or consenting and that certification by a licensed physician that he was incapable of consenting should have been required under Iowa Code section 321B.11.

The trial court's ruling that the officer properly invoked the implied consent statute and that the defendant was capable of consenting was proper.

AFFIRMED.