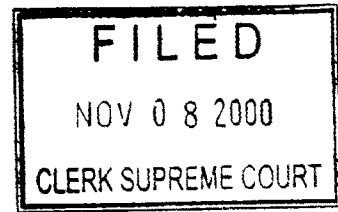


IN THE COURT OF APPEALS OF IOWA

No. 0-606 / 99-1639
Filed November 8, 2000



STATE OF IOWA,
Appellee,

vs.

TRAVIS JAMES CARLSEN,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil, District Associate Judge (suppression) and Walter W. Rothschild, District Associate Judge (trial and sentencing).

Travis Carlsen appeals his conviction, following a bench trial, for operating a motor vehicle while intoxicated, second offense, and leaving the scene of an accident. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven G. Norby, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Miller, JJ.

VOGEL, J.

Travis Carlsen appeals his conviction, following a bench trial, for operating a motor vehicle while intoxicated, second offense, and leaving the scene of an accident. We find Travis Carlsen was not in custody at the time of the invocation of implied consent and, therefore, the trial court did not err in allowing his blood test results into evidence at the trial. We affirm.

Background facts. In the early morning hours of November 21, 1998, Officer Kurt Schreiber responded to an accident call involving property damage caused by a vehicle. The vehicle was no longer present when the officer arrived. However, evidence of the color of the vehicle was left behind and a trail of oil led away from the scene. Officers discovered a damaged vehicle parked a few blocks away. The officers questioned two men present in the area and learned the vehicle owner had been taken to the hospital. Officer Schreiber made his way to the hospital and questioned Carlsen regarding how he had received his injuries. He noticed a strong odor of alcohol from Carlsen and observed his eyes to be watery and bloodshot. Carlsen responded that he was injured in a fight. When asked if he knew his vehicle had been involved in an accident, Carlson indicated he wished to speak to an attorney or his father before answering any further questions. Officer Schreiber then left the room while Carlsen received medical treatment for a severe laceration to his face. Officer Schreiber returned to Carlsen's room approximately one hour later. He again asked Carlsen how he had received his injuries and Carlsen repeated that he had been in a fight. Officer Schreiber then made reference to his belief that Carlsen may have been

driving the vehicle involved in the accident. Carlsen reiterated his request to speak to an attorney. Officer Schreiber ceased all questioning. The officer then invoked implied consent to test Carlsen's blood alcohol level, reading him the advisory notice and asking for his consent. Carlsen looked to his roommate who indicated it was all right to go ahead, and then signed the consent form, crossing out the word "driver" prior to adding his signature.

Carlsen filed a motion to suppress, prior to the trial, in an attempt to exclude from evidence both his statements to the officer and the subsequent blood test results. The trial court found Carlsen had invoked his right to an attorney at his initial request to speak to an attorney and, therefore, sustained the suppression of Carlsen's statements, made after the first attorney request. The trial court, however, further found Carlsen was neither in custody nor under arrest for purposes of the implied consent. Further, it found the requests to speak with an attorney were made in response to the questioning regarding the accident and not the implied consent request. The trial court overruled the motion to suppress as to the results of the subsequent blood test.

Scope of review. Our review of the interpretation of Iowa Code section 804.20 is on error. *See State v. Frake*, 450 N.W.2d 817, 818 (Iowa 1990). We will uphold the trial court's ruling on a motion to suppress if there is substantial evidence to support the court's findings of fact. *Id.* Evidence is substantial when a reasonable mind would accept it as adequate to reach the same findings. *Id.*

Motion to suppress. Carlsen alleges he was denied his statutory right to consult an attorney or family member under Iowa Code section 804.20 (1997).

The State asserts Carlsen was not entitled to this statutory right as he was not in police custody prior to the invocation of implied consent.

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.

...

Carlsen claims he was entitled to call an attorney or a family member prior to consenting to the chemical testing under this code section. However, this statute is only operational in a police custodial or arrest situation. *State v. Krebs*, 562 N.W.2d 423, 426 (Iowa 1997) (holding police denial of phone call to return a page during roadside stop field sobriety tests does not constitute a restraint of liberty such as would invoke the statutory protections of section 804.20). It does not apply to the investigation phase where a person is merely detained rather than restrained of their liberty. *Id.*

We must first determine whether Carlsen was in police custody at the time of the implied consent or was merely detained for investigation purposes. The Supreme Court has established an objective test, stating, "[t]he only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *State v. Smith*, 546 N.W.2d 916, 921 (Iowa 1996) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S. Ct. 3138, 3151, 82 L. Ed. 2d 317, 336 (1984)). Our supreme court has established several factors to analyze whether a person is in police custody. *Smith*, 546 N.W.2d at 922 (citing *State v. Deases*, 518 N.W.2d 784, 789 (Iowa 1994)).

Relevant factors in making this determination include the language used to summon the individual, the purpose, place and manner of the interrogation, the extent to which the defendant is confronted with evidence of his guilt, and whether the defendant is free to leave the place of questioning.

Id.

Carlsen made his own way to the hospital for treatment of his injuries. He was not summoned or taken to any place of detention. Officer Schreiber, after receiving a tip that the owner of the damaged vehicle had gone to the hospital, questioned Carlsen, to further investigate the reported accident. Carlsen received the medical treatment he sought and was not denied such care at any time. Officer Schreiber testified that had the implied consent been invoked at the police station, he would have afforded Carlsen an opportunity to call an attorney. However, he also testified Carlsen was not in custody at the hospital¹. Had Carlsen wanted to leave, Officer Schreiber testified that he would have had to make a decision whether to let him go or arrest him. On cross-examination, he stated that Carlsen would not have been free to leave. However, this was not conveyed to Carlsen. See *Smith*, 546 N.W.2d at 921 (quoting *Berkemer*, 468 U.S. at 442, 104 S. Ct. at 3151, 82 L. Ed. 2d at 336 (holding it inappropriate to take into consideration a "policeman's unarticulated plan" as to the future arrest of a suspect as it has no bearing on the objective beliefs of a reasonable person in the situation))). Carlsen made no attempt to leave at any time.

Additionally, the amount of time Officer Schreiber was in actual contact with Carlsen was relatively short. The record contains no evidence the manner

¹ Carlsen was not arrested until several days after the accident, when the results of his blood test were received.

of questioning used by the officer was in any way coercive and there was no show of force. Officer Schreiber waited for Carlsen to receive medical treatment before invoking implied consent. Although Carlsen had requested to speak to an attorney or family member when questioned about the accident, he did not request an attorney when Officer Schreiber invoked the implied consent.

We find Carlsen was not under arrest or in police custody at the time of the invocation of implied consent. The statutory right to call an attorney or family member, therefore, had not been triggered. Carlsen was not denied a statutory right. Accordingly, the trial court did not err in denying the motion to suppress as to the blood test results. We affirm.

AFFIRMED.