

SUPREME COURT OF IOWA

State of Iowa v. John Arthur Senn Jr.

882 N.W.2d 1 (Iowa 2016) · No. No. 15-0624 · Decided June 24, 2016

SUMMARY

The Iowa Supreme Court considered whether Iowa Code section 804.20 violated the Iowa Constitution by allowing an officer to be present during a detainee’s telephone consultation with counsel before chemical breath testing. The court held that the constitutional right to counsel under article I, section 10 had not attached before formal criminal charges were filed, and that Senn’s limited statutory right to counsel was honored. The court affirmed the district court’s judgment of conviction.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Waterman, Justice; Mansfield, Justice; Zager, Justice; Cady, Chief Justice; Wiggins, Justice; Hecht, Justice; Appel, Justice
JURISDICTION	Iowa
DECIDED	June 24, 2016
DOCKET	No. 15-0624
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his OWI conviction and denial of a motion to suppress the result of a chemical breath test, arguing that Iowa Code section 804.20 violated article I, section 10 of the Iowa Constitution by allowing an officer to remain present during a telephone consultation with counsel before the defendant decided whether to submit to chemical testing.
STANDARD OF REVIEW	Constitutional challenges to statutes are reviewed de novo. Statutes are presumed constitutional, and the challenger must prove unconstitutionality beyond a reasonable doubt and refute every reasonable constitutional basis for the statute.
PRECEDENTIAL VALUE	Published but precedential force of the formal-charge attachment rationale is limited because it was adopted by a plurality rather than a majority; the judgment affirming the conviction was supported by the plurality and special concurrence.
PARTIES	John Arthur Senn Jr. v. State of Iowa

TOPICS

right to counsel

criminal procedure

statutory interpretation

suppression of evidence

constitutional law

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

DUI/OWI

QUESTIONS PRESENTED

1. Whether the right to counsel under article I, section 10 of the Iowa Constitution attaches before formal criminal charges are filed, during an implied-consent proceeding in which an arrested OWI suspect must decide whether to submit to chemical testing.
2. Whether Iowa Code section 804.20 is unconstitutional as applied because it permits an officer to remain present during a detainee's telephone consultation with counsel before chemical testing.

HOLDINGS

1. The plurality concluded that the right to counsel under article I, section 10 of the Iowa Constitution attaches only when formal criminal proceedings or a qualifying case have commenced through a court filing; it therefore had not attached when Senn was asked to submit to the breath test.
2. The plurality concluded that section 804.20 was not unconstitutional as applied because the officer complied with the statute by allowing Senn to make telephone calls in the officer's presence and informing him that private consultation was available if an attorney came to the station.

KEY QUOTATIONS

“the right to counsel under the Iowa Constitution, as under the Sixth Amendment to the United States Constitution, does not attach until formal criminal charges are filed” (at 3)

“The text of our constitution provides a clear starting point for the attachment of the right to counsel—the court filing that commences the criminal proceeding or other case putting liberty at risk.” (at 52)

“We are unwilling to erase that bright line.” (at 52)

FACTUAL BACKGROUND

Officer Brian Cuppy stopped Senn after observing him stop his truck beyond a crosswalk and noticing signs of intoxication. After Senn failed field sobriety tests and a preliminary breath test showed an alcohol concentration of 0.165, he was arrested and transported for chemical testing. Senn spoke by telephone with an attorney for approximately twenty-eight minutes while the officer remained present, but no attorney arrived at the station; Senn then submitted to a breath test showing a blood alcohol concentration of 0.140.

PROCEDURAL HISTORY

Senn was arrested for operating while intoxicated and submitted to a breath test after speaking by telephone with an attorney in the arresting officer's presence. Eleven days later, the State charged him by trial information. The

district court denied his suppression motion, Senn waived a jury trial, and he was convicted on the minutes of testimony. The Supreme Court of Iowa retained the appeal and affirmed the district court judgment.

DISPOSITION

affirmed

CASES CITED

- State v. Hensley, 534 N.W.2d 379 (Iowa 1995)
- State v. Hellstern, 856 N.W.2d 355 (Iowa 2014)
- State v. Walker, 804 N.W.2d 284 (Iowa 2011)
- State v. Vietor, 261 N.W.2d 828 (Iowa 1978)
- Rothgery v. Gillespie County, 554 U.S. 191 (2008)
- Kirby v. Illinois, 406 U.S. 682 (1972)
- United States v. Wade, 388 U.S. 218 (1967)
- State v. Young, 863 N.W.2d 249 (Iowa 2015)
- Commonwealth v. Arroyo, 723 A.2d 162 (Pa. 1999)
- State v. Spencer, 750 P.2d 147 (Or. 1988) (en banc)
- Friedman v. Commissioner of Public Safety, 473 N.W.2d 828 (Minn. 1991)

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