

From the Minneapolis /Star-Tribune/:

Appeals Court says he wasn't entitled to an interpreter when pulled over because notes were used to communicate.

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Court: Deaf St. Paul man's rights not violated

By PAT PHEIFER, Star Tribune
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A St. Paul man who can't hear or speak was nonetheless not a "person disabled in communication" and thus was not entitled to a sign language interpreter after he was pulled over by police for drunken driving in the summer of 2007, the Minnesota Court of Appeals said.

After Kendall Lee Kail was charged with drunken driving, he asked a Ramsey County district judge to suppress evidence related to his arrest and his consent to take a breath test. He argued that the police officer's failure to provide him with an interpreter violated his statutory and constitutional rights. District Judge Michael Fetsch granted the motion and dismissed the charges.

The state appealed, saying Kail and the officer communicated just fine by passing written notes back and forth, both at the traffic stop and at the police station. In a published opinion released this week, the Appeals Court reversed Fetsch's decision and sent the case back for further proceedings.

An attorney for the Minnesota Disability Law Center said she doesn't agree with the Appeals Court's decision but the ruling does not endanger any of the protections given to deaf and hard-of-hearing people by state and federal laws such as the Americans With Disabilities Act.

"Deaf people who are arrested are not supposed to be subjected to an English literacy test," said attorney Emily Teplin. "They're supposed to be given information about the nature of their arrest and other important information in a way they can understand as quickly as possible."

Communicating with notes

According to the court documents, Kail was pulled over early on June 1, 2007, after a St. Anthony police officer saw his car weave within its own lane and follow another car too closely. The officer asked for a driver's license and proof of insurance and quickly learned Kail cannot hear or speak. The officer communicated with him initially through gestures but soon through handwritten notes.

Kail smelled of alcohol and had watery and bloodshot eyes, the ruling said, so the officer directed him with specific written instructions to perform field sobriety tests. Kail failed the tests, and the officer told him in writing that he was being arrested on suspicion of impaired driving.

At the St. Anthony police station, Kail read the implied consent advisory and initialed it to confirm he understood it. Kail said he wanted to contact an attorney and the officer offered to help by speaking to the attorney by telephone. But the officer wrote that Kail had "to pick the attorney and dial the number," the ruling said.

When they were unable to reach Kail's attorney, they waited 15 minutes for the attorney to respond, then Kail gave his written consent for a breath test. The test recorded a blood-alcohol content of 0.09 percent, just over the legal limit for driving. Kail was charged with fourth-degree drunken driving.

It's not clear from the documents whether Kail asked police for a sign-language interpreter. Neither he nor his appellate attorney, Benjamin Houge, could be reached for comment.