

IN THE COURT OF APPEALS OF IOWA

No. 0-744 / 10-0308
Filed November 10, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ERIC JORDAN ALEXANDRES,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, District Associate Judge.

A defendant appeals his judgment and sentence for operating a motor vehicle while intoxicated, contending that his rights under Iowa Code section 804.20 (2009) were violated. **AFFIRMED.**

David R. Johnson of Brinton, Bordwell & Johnson, Clarion, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Paul L. Martin, County Attorney, and Erica W. Clark, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.
Tabor, J., takes no part.

VAITHESWARAN, P.J.

A Mason City police officer pulled Eric Alexandres over for crossing the center line and, after conducting field sobriety tests, arrested him for operating a motor vehicle while intoxicated. A certified breath test revealed an alcohol concentration of double the legal limit.

The State charged Alexandres with operating while intoxicated. See Iowa Code § 321J.2 (2009). Alexandres moved to suppress the test result on the ground that the arresting officer violated his statutory right to telephone a member of his family, an attorney, or both. See *id.* § 804.20; *State v. Garrity*, 765 N.W.2d 592, 597 (Iowa 2009) (stating a violation of this provision will result in exclusion of the breath test result). The district court denied the motion and found Alexandres guilty on the stipulated minutes of testimony. Alexandres appealed.

Alexandres maintains the arresting officer violated section 804.20 by inaccurately explaining when he would be allowed to make a telephone call and what he would be allowed to discuss. He cites the following conversation with the officer:

Officer: Okay, Eric, this is what's going to happen. We're going to go out to the county—to the county jail. And, I got to read the implied consent to you, and there's a certified breath machine. So, you're saying that my breath machine's not right. So I'm gonna give you an opportunity to give me another breath test out there. And uh.

Alexandres: And then?

Officer: And then after we get done with the breath test there are a few more question that I have to ask you. Then you'll be given an opportunity—if you blow under out there, then I'll bring you back to your car and let you drive home. *If you blow over, then you go into the jail, you get an opportunity to call somebody to*

*come bail you out, otherwise you see the judge in the morning sometime.*¹

(emphasis added). We note several problems with Alexandre's argument. First, the statute "does not require a police officer to inform a defendant of [the] right to contact counsel or a family member." *State v. Moorehead*, 699 N.W.2d 667, 671 (Iowa 2005); see also *State v. Vietor*, 261 N.W.2d 828, 831 (Iowa 1978) ("[T]he statute did not require the officer to tell [the detainee] he had a right to counsel. It simply forbade telling him he did not have such a right.").² Second, the right to a telephone call is triggered by a request from the detainee, and Alexandre concedes he did not ask to telephone anyone. See *Garrity*, 765 N.W.2d at 597 ("*W*hen a request for a phone call is made, the police cannot remain mute and simply deny the request." (emphasis added)); *Moorehead*, 699 N.W.2d at 671 ("*O*nce the right is invoked the officer must give the defendant the opportunity to call or consult with a family member or attorney." (emphasis added)). Third, substantial evidence supports the district court's finding that the officer did not "misadvise" Alexandre about his rights under section 804.20, as Alexandre contends. See *Garrity*, 765 N.W.2d at 595 (reviewing district court's fact-findings for substantial evidence). Rather, the officer informed him how he might get out of jail in the event a certified breath test showed an alcohol concentration over the legal limit. The officer's statement was clearly not intended as a recitation of all of Alexandre's rights.

¹ This is not an official transcription but a transcription based on listening to a recording made from the officer's police car.

² In *Vietor*, the court examined a predecessor to Iowa Code section 804.20, which contained the same material language. See *Vietor*, 261 N.W.2d at 830.

We conclude the district court did not err in denying Alexandres's motion to suppress the breath test result. We affirm his judgment and sentence for operating while intoxicated, first offense.

AFFIRMED.