

IN THE COURT OF APPEALS OF IOWA

No. 1-629 / 10-1732
Filed October 5, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN MARTIN DOODY JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Cynthia M. Moisan (motion to suppress) and Joe E. Smith (trial and sentencing), Judges.

John Doody appeals from the denial of his motion to suppress and subsequent judgment and sentence for operating while intoxicated, first offense.

AFFIRMED.

Richard A. Bartolomei of Bartolomei & Lange, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, John P. Sarcone, County Attorney, and David Porter, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

DOYLE, J.

On May 16, 2010, an Ankeny police officer transported John Doody to the Polk County Jail after arresting him for operating while intoxicated. During the ride to the jail, the officer told Doody he would have the opportunity to make phone calls. At the jail, the officer read the implied consent form to Doody and asked, “[W]ould you like to make any phone calls for any reason?” The officer did not explain to Doody all the purposes for which phone calls could be made or advise Doody that he could call a family member or an attorney, or both. Doody responded, “You can call about the test?” The officer told Doody he could call “anyone for any reason.” Doody said he wanted to call his father, and the officer allowed the call.

Doody spoke to his father for about six minutes. During the call Doody told the officer, “I just want to get out of here.” The officer told him “the only thing [he] needed from him [was] for him to decide whether or not he would like to take the test.” Doody said, “I’m not taking your test.” Doody wanted to read the implied consent form to his father, so he was shown the form while on the telephone with his father. Doody refused to submit to the test, and he checked the box for refusal on the form.

Doody was charged with operating while intoxicated. He filed a motion to suppress asserting the officer violated Iowa Code section 804.20 (2009) by not informing him of all the persons he could call under the statute or the purposes for which he could place calls. After a hearing on the matter, the district court denied the motion to suppress.

The case was tried to the district court on the minutes of testimony. The court found Doody guilty as charged. Doody appeals.

On appeal, Doody asserts the district court erred in concluding the officer did not have a duty to advise him of all the persons he could call and the purposes for which calls could be made, relying heavily on *State v. Garrity*, 765 N.W.2d 592 (Iowa 2009), and *Didonato v. Iowa Department of Transportation*, 456 N.W.2d 367 (Iowa 1990). “We review the district court’s interpretation of Iowa code section 804.20 for errors at law.” *State v. Hicks*, 791 N.W.2d 89, 93 (Iowa 2010).

Doody’s reliance on *Garrity* and *Didonato* is misplaced. In *Didonato*, the arrestee requested to call a friend, rather than an attorney or family member as provided for under section 804.20. *Didonato*, 456 N.W.2d at 370. The supreme court held that when an arrestee requests to make a phone call to a person not authorized in the statute, an officer cannot stand mute and refuse the request. *Id.* Rather, “[i]n these circumstances the statute is implicated and the officer should then advise for what purpose a phone call is permitted under the statute.” *Id.*

In *Garrity*, the arrestee asked to call a narcotics officer, and the arresting officer refused the request, but did nothing more. *Garrity*, 765 N.W.2d at 594. After an analysis of the requirements of the statute and *Didonato*, the court clarified that “[i]f, as here, the officer turns down the arrestee’s phone call request because the request is to call someone not contemplated in the statute, the officer must explain the scope of the statutory right.” *Id.* at 597 (emphasis added). Further, the court stated that “[o]nce [the arrestee] asked to call a

person outside the scope of section 804.20, [the officer] had an obligation to advise [the arrestee] of the purpose of the phone call, i.e., *who* [the arrestee] could call” *Id.* (emphasis added).

However, in this case Doody was told he could call “anyone for any reason.” Doody’s request to call his father, someone contemplated by the statute, was granted. On these facts, we find no violation of Doody’s rights under section 804.20.

We have considered all of Doody’s claims concerning section 804.20, whether expressly mentioned in this opinion or not, and we conclude the district court did not err in denying Doody’s motion to suppress for alleged violations of that section. Having determined the district court did not err in denying Doody’s motion to suppress, we affirm the subsequent judgment and sentence.

AFFIRMED.