

IN THE COURT OF APPEALS OF IOWA

No. 1-630 / 10-1901
Filed October 5, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHAD ANTHONY MAST,
Defendant-Appellant.

Appeal from the Iowa District Court for Bremer County, Peter B. Newell,
District Associate Judge.

Chad Mast appeals from the denial of his motion to suppress and
subsequent judgment and sentence for operating while intoxicated, second
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, Kasey E. Wadding, County Attorney, and Jill S. Dashner, Assistant
County Attorney, for appellee.

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

DOYLE, J.

On December 20, 2009, a Waverly police officer transported Chad Mast to the Bremer County Jail after arresting him for operating while intoxicated. At the jail, the officer offered Mast the opportunity to make a phone call but did not explain to Mast all the purposes for which phone calls could be made or advise Mast he could call a family member or an attorney, or both. Mast declined the offer to make a call. A little while later, the officer offered Mast another opportunity to make a phone call. Mast was confrontational, verbally abusive, very uncooperative, and said he would not agree to do anything or sign anything. As a result, the officer did not give Mast the phone call waiver form to review, nor did he read the form out loud to Mast. The officer invoked implied consent and requested a specimen of Mast's breath. Mast declined to give a sample and refused to sign the implied consent form.

Mast was charged with operating while intoxicated, second offense. 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 Mast guilty as charged. Mast appeals.

On appeal, Mast 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).

Mast’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, *Garrity* 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 Mast was offered the opportunity to make a phone call, and he refused the offer. On these facts, we find no violation of Mast’s rights under section 804.20.

We have considered all of Mast'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 Mast's motion to suppress for alleged violations of that section. Having determined the district court did not err in denying Mast's motion to suppress, we affirm the subsequent judgment and sentence.

AFFIRMED.