

IN THE COURT OF APPEALS OF IOWA

No. 1-989 / 11-0316
Filed January 19, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY ALAN FISCHER,
Defendant-Appellant.

Appeal from the Iowa District Court for Hancock County, John S. Mackey (motion to suppress), Rustin Davenport (trial), and Bryan H. McKinley (sentencing), Judges.

Jeffrey Alan Fischer appeals from the district court's denial of his motion to suppress. **AFFIRMED.**

Richard A. Bartolomei, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, and Karen Kaufman Salic, Hancock County Attorney for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

EISENHAUER, J.

This is the second appeal from the trial court's denial of Jeffrey Alan Fischer's motion to suppress evidence. The background facts and proceedings can be found in *State v. Fischer*, 785 N.W.2d 697 (Iowa 2010). In this appeal, Fischer contends his motion to suppress evidence should have been granted because he was denied the opportunity to make a phone call before submitting to a chemical test for intoxication. We review his claim for corrections of error at law. See *State v. Hicks*, 791 N.W. 2d 828, 832 (Iowa 2010).

The issue of phone calls arises because Fischer was allowed to use the state trooper's cell phone to make at least three calls to find someone to get Fisher's car off the highway. These phone calls were made at the scene of the traffic stop at the urging of the trooper. Fischer never asked to use the phone either out on the highway, in the trooper's car, or at the jail. The trial court, after finding Fischer never asked to make a phone call and relying on *Didonato v. Iowa Department of Transportation*, 456 N.W.2d 367 (Iowa 1990), concluded Iowa Code section 804.20 (2007) was not triggered. We agree.

Section 804.20 provides in relevant part:

Any peace officer or other person having custody of any person arrested or restrained of the person's liberty for any reason whatever, shall permit that person, without unnecessary delay after arrival at the place of detention, to call, consult, and see a member of the person's family or an attorney of the person's choice, or both

In *Didonato*, our supreme court noted section 804.20 does not require an officer to tell an arrested person he or she has a right to make a phone call. 456 N.W.2d at 371. However, where an arrestee requests to make a phone call, the officer should advise for what purpose a phone call is permitted under the statute. *Id.* If

the arrestee still wishes to make a phone call within those limitations, the officer must allow the call or place it for the arrested individual. *Id.*

Here, the officer offered Fischer the opportunity to call to friends or family to move his vehicle rather than pay the expense of towing it. Fischer never made a request to call anyone on his own. Therefore, the officer's duty to inform him of his right to make a phone call was not triggered.

Finding no error in the district court's ruling denying Fischer's motion to suppress, we affirm.

AFFIRMED.