

IN THE COURT OF APPEALS OF IOWA

No. 1-047 / 10-0321
Filed March 30, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL CRAIG GOBUSH,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, Judge.

Defendant appeals his conviction 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, and Janet M. Lyness, County Attorney, for appellee.

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

EISENHAUER, J.

Daniel Gobush appeals his conviction for operating while intoxicated (OWI), second offense. Gobush argues the court erred in denying his motion to suppress evidence of his blood-alcohol concentration because: (1) he was given a misleading implied-consent advisory; and (2) the State violated Iowa Code section 804.20 (2007) (communications by arrested person).

A conviction for OWI, section 321J.2(1), can occur by alternative means. See *State v. Price*, 692 N.W.2d 1, 4 (Iowa 2005) (distinguishing test failure from “under the influence”). The two alternatives relevant here are operating a motor vehicle: (1) while “under the influence of an alcoholic beverage or other drug or a combination of such substances,” Iowa Code § 321 J.2(1)(a); or (2) while “having an alcohol concentration of .08 or more” (test failure), Iowa Code § 321 J.2(1)(b).

At the January 13, 2010 bench trial, Gobush’s attorney requested the court determine the criminal offense under the test failure alternative as opposed to the “under the influence” alternative. However, the court’s February 2010 ruling expressly found Gobush guilty on both grounds.

On appeal, Gobush challenges only the test failure basis for conviction. We need not address those issues because we affirm his conviction under the unchallenged “under the influence” alternative. See *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004) (“[A] person is ‘under the influence’ when the consumption of alcohol affects the person’s reasoning or mental ability, impairs a person’s judgment, visibly excites a person’s emotions, or causes a person to lose control of bodily actions.”).

Second, we review Gobush's claims based on Iowa Code section 804.20 for correction of errors of law. Iowa R. App. P. 6.907. Because we agree with the district court's reasoning, its conclusions under the facts presented, and its application of the law, we affirm pursuant to Iowa Rule of Appellate Procedure 6.1203(a), (d).

AFFIRMED.