

**IN THE COURT OF APPEALS OF IOWA**

No. 1-191 / 10-0667  
Filed April 27, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**SUSAN TERESA FESSLER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Story County, Lawrence E. Jahn,  
District Associate Judge.

Susan Fessler appeals from the denial of her motion to suppress and  
subsequent judgment and sentence entered upon her conviction of operating  
while intoxicated, second offense. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney  
General, Stephen Holmes, County Attorney, and Tiffany Meredith, Assistant  
County Attorney, for appellee.

Considered by Sackett, C.J., Potterfield, J., and Huitink, S.J.\* Tabor, J.,  
takes no part.

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

**POTTERFIELD, J.**

On October 9, 2009, Susan Fessler was arrested after officers suspected she was operating her vehicle while intoxicated. She requested to call her husband, and the arresting officer informed her she could do so at the police station.

Fessler was transported to the Ames police station. Soon after her arrival, an officer asked Fessler if she would like to make any phone calls. She stated she would like to call her husband, which she was allowed to do. While waiting for her husband to answer the phone, she asked officers what to tell her husband "in terms of where he can come find me." Officers informed Fessler she would be transported to Nevada. While on the phone with her husband, Fessler asked officers, "Is there a bond or a bail? You don't know that yet." She then spoke with her husband briefly before asking the officers, "You guys don't know anything else yet, right?" The officers responded in the negative and informed Fessler she would be able to call once she arrived in Nevada. Officers asked Fessler whether she would like to make other phone calls, and Fessler declined. Fessler then agreed to provide a breath specimen, which revealed she was intoxicated.

Fessler was charged with operating while intoxicated, second offense, in violation of Iowa Code section 321J.2 (2009). On December 14, 2009, Fessler filed a motion to suppress evidence, including breath test results and statements she made, asserting the officers violated Iowa Code section 804.20 by not informing her of all the persons she could call under the statute nor the purposes for which she could place calls.

After a hearing on the matter, the district court denied the motion to suppress as it related to this argument. We conclude the district court did not err in reaching this conclusion. See *State v. Garrity*, 765 N.W.2d 592, 595 (Iowa 2009) (“We review the district court’s interpretation of Iowa Code section 804.20 for errors at law.”).

On appeal, Fessler asserts the district court erred in concluding the officers did not have a duty to advise her of all the persons she could call and the purposes for which calls could be made, relying heavily on *Didonato v. Iowa Department of Transportation*, 456 N.W.2d 367 (Iowa 1990) and *Garrity*, 765 N.W.2d 592. We conclude neither the statute nor case law support a blanket requirement that an officer advise an arrestee of all persons that may be called or all purposes for which calls may be made. The case law interpreting section 804.20 requires law enforcement officers to provide an arrestee with information about the scope of persons to whom a call may be placed and the permissible purposes of the call only in situations where the arrestee requests a phone call to a person who is neither a family member or an attorney.<sup>1</sup> *Garrity* and *Didonato* are distinguishable in that they involved a request by an arrestee to call someone not contemplated by the statute. *Garrity*, 765 N.W.2d at 596; *Didonato*, 456 N.W.2d at 370. Both cases determined that in such a situation, when the officer turned down the arrestee’s phone call request, the officer must explain the scope of the statutory right. *Id.* In contrast, Fessler asked to call her husband and was allowed to do so. Accordingly, we determine the officers’ conduct in the present

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<sup>1</sup> Nothing prevents an officer from providing the information in other situations, but our cases do not require suppression of evidence when the officer fails to do so.

case complied with section 804.20, and the district court properly denied Fessler's motion to suppress on this ground.

Fessler also asserts the officers failed to permit her the opportunity to consult privately with family members at the Ames police station. We conclude the statute does not contain such a requirement. Although the statute provides for phone calls to family and an attorney, it is only the attorney that "shall be permitted to see and consult confidentially with such person alone and in private at the jail or other place of custody without unreasonable delay." Iowa Code § 804.20. Again, we determine the officers' conduct in the present case complied with section 804.20.

**AFFIRMED.**