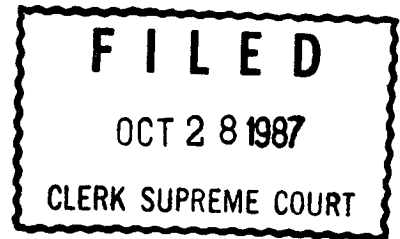


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

Filed October 28, 1987

285

LEROY WAYNE NORTHWAY,

)

7-408
86-1696

Defendant-Appellant.

)

Appeal from the Iowa District Court for Story County (No. 11714) - Glenn C. Sedgwick, District Associate Judge, and Thomas R. Hronek, District Associate Judge (on motion to suppress).

The defendant appeals from his conviction of operating a motor vehicle while intoxicated. **AFFIRMED.**

Mark S. Soldat, Algona, for defendant-appellant.

Thomas J. Miller, Attorney General; Merrell M. Peters, Assistant Attorney General; and Mary E. Richards, County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel, and Sackett, JJ. Snell, J., takes no part.

PER CURIAM

Defendant appeals from his conviction of operating a motor vehicle while intoxicated. Defendant sought to suppress the results of his breath test. The applicable statute, Iowa Code section 321B.12, states "A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following: [advisory that failure to submit to test, or testing over the legal limit, will result in revocation of driver's license]."

Defendant's first argument is that section 321B.12 requires the officer to read the implied consent advisory after, and not before, the request to test is made. The advisory itself refers to the test and presupposes a test has been requested. Thus, the statutory language, "has been requested," is in the past tense. The trial court found the request and advisory were contemporaneous. The important factor is that the advisory is given before the driver answers the request. The manifest intent of the legislature will prevail over the literal import of the words used in a statute. Beier Glass Co. v. Brundige, 329 N.W.2d 280, 283 (Iowa 1983). The fact the officer made his formal request after he read defendant the advisory in no way affects the admissibility of the test results.

Defendant's next argument is the officer should have repeated the implied consent advisory when he requested a breath sample at the hospital thirty minutes after the initial arrest. The officer is not required to repeat the advisory when a defendant refuses a blood test and the officer offers an alternate test. Iowa Code §321B.4(2). Defendant's alleged confusion is not a defense. Mary v. Iowa Dep't of Transp., 382 N.W.2d 128, 133 (Iowa 1986).

Defendant's final argument is that the breath test is not a "chemical test" as contemplated by section 321B.12. He argues the statute requires the use of chemicals in testing for alcohol concentration. The breath test was performed

on an Intoxilyzer, which uses infrared light rather than chemicals or gases to measure blood alcohol concentration. We agree with the trial court the "chemical test" contemplated by the statute is a test for the presence of chemicals, including alcohol, in the driver's blood. This interpretation is consistent with the Department of Transportation's interpretation, to which we give deference. See Lauhoff Grain Co. v. McIntosh, 395 N.W.2d 834, 839 (Iowa 1986). We must avoid a strained, impractical, or absurd construction. In re Estate of Keegan, 369 N.W.2d 447, 450 (Iowa 1985).

The issues raised by defendant on appeal are without merit.

AFFIRMED.