IN THE COURT OF APPEALS OF IOWA

No. 2-681 / 92-1146

FILED
MAY 04 1993
CLERK SUPREME COURT

BRYAN ANTHONY HARTMAN,

Appellee,

vs.

000209

IOWA DEPARTMENT OF TRANSPORTATION,

Appellant.

Appeal from the Iowa District Court for Warren County, George W. Bergeson, Judge.

The State appeals from a judgment of the district court, upon judicial review of an agency action, reversing a license revocation order. **REVERSED.**

Bonnie J. Campbell, Attorney General, David A. Ferree, Special Assistant Attorney General, and Mark Hunacek, Assistant Attorney General, for appellant.

Robert A. Gottschald, Indianola, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J. 000210

In this appeal we must determine whether reasonable grounds existed for invocation of implied consent procedures and whether a licensee is entitled to be informed, prior to invocation of implied consent, that he or she may be arrested for operating a motor vehicle while intoxicated ("OWI").

On November 28, 1991, Deputy Bales received a report of a man slumped over a steering wheel of a van on a traveled portion of a highway. Upon arrival at the scene, Bales observed an empty van in the middle of the road and a man walking down the road. According to Bale's testimony at trial, Hartman told him he had nothing to drink since the van stalled. Bales testified he believed Hartman to be intoxicated based on his observations of Hartman's actions. Hartman consented to, and failed, a preliminary breath test. Bales invoked the implied consent procedures, and Hartman consented to a breath test, which indicated a blood alcohol content greater than .10. Hartman was subsequently arrested for OWI. Bales had earlier arrested Hartman for public intoxication, but changed the charge after invocation of implied consent because Hartman admitted he had been driving the vehicle. Hartman's license was subsequently suspended pursuant to Iowa Code section 321J.2 (1991). On judicial review, the district court reversed the license revocation, ruling that the mere

fact the officer was dispatched to a location based on an anonymous report that a man was slumped over a steering wheel in the travel portion of the roadway did not give the officer reasonable grounds to arrest Hartman for OWI. The district court noted that Bales initially arrested Hartman for public intoxication apparently because he did not have sufficient information to arrest Hartman for OWI. The district court also found that Bales had falsified his report that he had informed Hartman prior to his arrest that the intoxilyzer test was being given for a violation of Iowa Code section 321J.2 (1991). The State has appealed.

Scope of Review

Our review of a Department of Transportation decision is governed by the Iowa Administrative Procedure Act. Ferguson v. Iowa Dep't of Transp., 424 N.W.2d 464, 465 (Iowa 1988).

> In reviewing a district court decision on the validity of an agency action, we decide only whether the district court has correctly applied the law. The district court itself acts in an appellate capacity to correct errors of law on the part of the agency. When we review such action by the district court, we merely apply the standards of section 17A.19(8) to determine whether our conclusions are the same as those of the district court. If the conclusions are the same, we affirm; otherwise we reverse. (citations omitted.)

Henry v. Iowa Dep't of Transp., M.V.D., 426 N.W.2d 383, 385 (Iowa 1988):

Discussion 000212

Hartman first contends the officer did not have reasonable grounds to believe he was operating a motor vehicle while intoxicated in violation of Iowa Code § 321J.2 (1991). He claims this renders the officer's invocation of implied consent procedures impermissible.

Iowa Code 321J.6 (1991) governs invocation of implied consent procedures. In pertinent part, the section provides:

> 1. A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 (which defines the crime of operating a motor vehicle while intoxicated) is deemed to have given consent to the withdrawal of specimens . . . for the purpose of determining the alcohol concentration or presence of drugs, subject to this section. [T]ests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 and if any of the following conditions exist:
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> * * *
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> d. The preliminary breath screening test was administered and it indicated an alcohol concentration as defined in section 321J.1 of .10 or more.

Iowa Code § 321J.6(1)(d) (1991).

A police officer has reasonable grounds to believe a motorist is operating a motor vehicle under the influence of alcohol "when the facts and circumstances known to the

officer at the time action was required would have warranted a prudent person's belief that an offense has been committed." State v. Braun, No. 91-1214, slip op. at 8 (Iowa 1993); see also Saunders v. Comm'r of Public Safety,226 N.W.2d 19, 22 (Iowa 1975).

We determine the officer had reasonable grounds to believe Hartman was driving while intoxicated. Officer Bales was dispatched to the scene of a vehicle parked in the traveled portion of the road with a person asleep or slumped over the wheel. When he arrived at the scene, no one was in the vehicle. He discovered Hartman walking near the vehicle approximately five minutes later. Hartman appeared intoxicated. Hartman told him he had been operating the vehicle when it had lost all power. Finally, Hartman told the officer he had consumed alcoholic beverages prior to the vehicle becoming disabled. In addition, the PBT, preliminary breath screening test, indicated an alcohol concentration of .10 or greater. Accordingly, the requirements for invocation of the implied consent procedures were satisfied.

Hartman next contends Officer Bales was required to either arrest him for OWI or inform him he was being charged with OWI before invoking implied consent. He claims he was informed only that he was being charged with public intoxication.

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The notice provisions mandated in Iowa Code § 321J.8 (1991), do not require the officer to arrest the person for OWI prior to requesting that he or she submit to a chemical test. See Iowa Code 321J.8 (1991). In addition, the implied consent advisory states that the person's license will be revoked if the chemical test results indicate the required blood alcohol concentration. Hartman does not dispute that Officer Bales read him the implied consent advisory. We find the notice provided in the implied consent advisory sufficient to cure any irregularities or miscommunication which may have occurred between the officer and Hartman.

We reverse the decision of the district court.

REVERSED.