FILED
AUG 24 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DENNIS RAY HANSEN,

Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE

Respondent-Appellee.

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8-257
87-1642

Appeal from the Iowa District Court for Harrison County (24450), James M. Richardson, Judge.

Petitioner contends the DOT's revocation of his driver's license was invalid because the arresting officer had no reasonable cause to stop his car and because the arresting officer was outside his geographical jurisdiction at the time of the arrest. **AFFIRMED.**

Lon R. Tullar, Sac City, for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Daniel W. Perkins, Assistant Attorney General, for respondent-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, J. 152

The Iowa Department of Transportation (DOT) revoked the driver's license of appellant, Dennis Hansen, pursuant to *Iowa Code section* 321J.12, which authorizes revocation when a vehicle operator's implied consent chemical test indicates intoxication. The district court, upon judicial review, affirmed the DOT's decision. Hansen now appeals to this court. For the reasons set out below, we affirm the district court and sustain the revocation of Hansen's driving privileges.

I.

On the evening of October 22, 1986, Hansen was driving through Missouri Valley, Iowa. As he passed through the city he found himself behind a slow moving vehicle. On several occasions Hansen's car swung out, at least partially, into the other lane, apparently in an effort to pass the vehicle in front of him. A city police officer noticed what he thought to be Hansen's somewhat erratic driving and began to follow him to determine if any violation would occur. The officer followed Hansen for two miles. During this period Hansen again appeared to be trying to pass numerous times, but did not. The officer observed that on a number of those occasions Hansen had sufficient time to pass. After Hansen had swerved back into his lane after another aborted pass attempt, his car drove far to the right and onto the white line which

bordered the highway. The officer decided to stop Hansen's car; but this time Hansen was outside the city limits of Missouri Valley.

After stopping the appellant, the officer approached the vehicle, noticed a 12-pack of beer in a sack behind the driver's seat and smelled the odor of alcohol. These observations, coupled with the erratic driving, prompted the officer to request that Hansen perform a number of field sobriety tests.

The officer administered a preliminary breath test which indicated that Hansen had a blood alcohol concentration of over .10. Hansen was then arrested for operating while intoxicated (OWI) and was transported to the Harrison County jail in Logan, where a breath test on an intoxilyzer once again indicated a blood alcohol concentration of over .10. The arresting officer thereupon invoked the provisions of Iowa Code section 321J.12, and the DOT later revoked Hansen's driver's license pursuant to the statute.

Hansen challenged the DOT's agency action by filing the present petition for judicial review. The district court upheld the revocation of Hansen's license, and Hansen has appealed.

II.

The issues here are two-fold. First Hansen asserts that the police officer had no authority to stop and arrest him outside the city limits of Missouri Valley. Because

the officer was outside of the city, Hansen argues, he was no longer a "peace officer" when he made the arrest and invoked the implied consent provisions of Iowa Code chapter 321J. Hansen, therefore, argues the revocation of his license was improper because it was not based on certification by a "peace officer" as required by Iowa Code section 321J.12.

Hansen also contends the revocation was improper because the officer, functioning either as a police officer or a private citizen, did not have reasonable grounds to stop Hansen's vehicle.

Pursuant to the Iowa Administrative Procedure Act, our review is limited to a correction of errors at law. Ross v. Iowa State Penitentiary, 376 N.W.2d 642, 643 (Iowa App. 1985). In reaching our determination, we apply the standards set forth in section 17A.19(8) to the agency action and determine whether our conclusions are the same as those of the district court. Id.

Where facts are in dispute, both the district court and this court exercise a limited scope of review. We must adopt the agency's factual findings when they are supported by substantial evidence. Norland v. Iowa Department of Job Service, 412 N.W.2d 904, 913 (Iowa 1987)(. Where the facts are not in dispute, however, the question becomes one of law. Ross v. Iowa State Penitentiary, 376 N.W.2d 647 (Iowa App. 1985). We are limited to the record before the hearing officer in making this determination. Id.

III.

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1. Hansen first contends the arresting officer had no authority to effectuate an arrest outside the city limits of Missouri Valley. As a general rule, a peace officer may not make arrests in his or her capacity as a peace officer outside the officer's delineated territory, unless the officer has express statutory authority to do so. State v. O'Kelly, 211 N.W.2d 589, 595 (Iowa 1973). The facts here are uncontroverted that the stop and arrest were made outside the territorial jurisdiction of the Missouri Valley officer. The Iowa Supreme Court has held an officer has only the authority to make arrests as a private person outside of his or her jurisdiction. O'Kelly, 211 N.W.2d at 595.

The Code empowers private citizens to make an arrest "[f]or a public offense committed or attempted in the person's presence." Iowa Code § 804.9(1) (1985). Hansen's action of driving in and out of his proper lane attempting to pass numerous times could lead to any of a number of public offenses. The officer pursued Hansen to determine if an illegal act would occur. After seeing Hansen's car swing out into the left lane and then back into the right lane, nearly leaving the roadway, the officer could reasonably believe a public offense was being committed in his presence. Because we find the stopping of Hansen's automobile was not illegal, this assignment of error is without merit.

2. We also cannot agree with Hansen's assertion that where an officer acts as a private citizen in making an arrest for OWI, the officer is not a "peace officer" for purposes of the statute and thus cannot invoke implied consent under Iowa Code chapter 321J.12. It is true a police officer acts as a private person when making an arrest outside of his jurisdiction, but he still remains a peace officer. Implied consent may be invoked outside of the territorial boundaries of the peace officer's law enforcement authority. State v. Wagner, 359 N.W.2d 487, 490 (Iowa 1984). The peace officer in this case was acting as a state agent for purposes of administering the laws of this state. Id. The officer in this case was certified to invoke implied consent. We do not believe that the language of Iowa Code chapter 321J suggests that a peace officer is limited to his or her territorial jurisdiction in administering implied consent procedures. A valid arrest, then, by a section 321J.1(7) "peace officer" acting as a private citizen does not effect his or her authority to administer implied consent procedures.

We therefore affirm the district court and sustain the revocation of Hansen's driving privileges.

AFFIRMED.