IN THE COURT OF APPEALS OF IOWA

No. 8-693 / 97-1648

CLINTON DALE WATSON,

Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Appellee.

FILED
MAY 26 1999
CLERK OF SUPREME COURT

Appeal from the Iowa District Court for Jefferson County, Robert Bates, Judge.

The petitioner appeals from the district court's ruling on judicial review affirming the appellant's revocation of his driver's license. **AFFIRMED.**

Craig R. Foss of Foss, Kuiken & Gookin, P.C., Fairfield, for appellant.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Carolyn J. Olson, Assistant Attorney General, for appellee.

Considered by Sackett, C.J., Streit, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HAYDEN, S.J.

Clinton Watson appeals the district court's ruling on judicial review affirming the revocation of his driver's license pursuant to Iowa Code section 321J.12 (1995). Watson contends there was not substantial evidence to find the officer possessed reasonable grounds to believe Watson had been operating a motor vehicle while intoxicated. Because we believe there was substantial evidence to support the officer's decision, we affirm the district court's decision.

On December 27, 1996, at approximately 11:45 p.m., Van Buren County deputy sheriff John Zane received a report of a vehicle in the ditch about three miles from the town of Keosauqua. When Zane arrived at the scene there was a tractor on the shoulder of the road and a car in the ditch. The car was not running and there was no one in it, but there were two men at the scene. One of the men was a nearby farmer who had brought the tractor to pull the car out, and the other man was Clinton Watson. Watson informed Zane he was the owner and driver of the car and that he had swerved to miss a deer. While Zane was talking to Watson he detected an odor of alcohol coming from Watson, but Watson denied he had been drinking. Zane searched the car and the area but did not find any signs of alcohol. Zane noticed Watson was having a difficult time walking. Based on a belief Watson may be intoxicated, Zane asked Watson to perform a field sobriety test; Watson agreed to the test. As Zane was explaining the test, Watson was having a difficult time keeping his balance. Watson did not complete either of the two sobriety tests, claiming he was scared. Watson agreed to take a preliminary breath test that produced a result of .264.

He was arrested for operating a motor vehicle while intoxicated and taken to the sheriff's office.

At the sheriff's office, Zane read the implied consent form to Watson, and Watson agreed to submit to a chemical test of his breath, which he failed. Watson's driving privileges were revoked by the Department of Transportation (DOT).

After the DOT revoked his license, Clinton Watson appealed. An administrative law judge affirmed the license revocation, and a DOT reviewing officer issued a final decision affirming the license revocation. Having exhausted all administrative remedies, Watson filed a petition for judicial review with the district court. The district court affirmed the administrative decision of license revocation. Watson appeals.

We review the decision of the DOT according to Iowa Code chapter 17A and are limited to the correction of errors of law. Iowa Code § 17A.19; *Munson v. Iowa Dep't of Transp.*, 513 N.W.2d 722, 723 (Iowa 1994). We will uphold an agency's decision when it is based on substantial evidence, and the evidence is substantial when a reasonable person could accept it as adequate in reaching the same findings. *Pointer v. Dep't of Transp. Motor Vehicle Div.*, 546 N.W.2d 623, 625 (Iowa 1996); *Reed v. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991). Our ultimate inquiry will not be whether the evidence supports a different finding but whether the evidence supports the findings actually made. *Id.* Watson has the burden of proving Zane failed to meet the statutory procedural requirements for invoking the implied consent law. *Reed v. Iowa Dep't of Transp.*, 540 N.W.2d 50, 51 (Iowa 1995).

Watson contends there was not substantial evidence to find Officer Zane possessed reasonable grounds to believe Watson had been operating a motor vehicle while intoxicated. Reasonable grounds are necessary to invoke the implied consent law. The implied consent law of Iowa requires that a chemical test or withdrawal of body substances must be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle while intoxicated. *Munson*, 513 N.W.2d at 723 (citing Iowa Code section 321J.6). Whether an officer has reasonable grounds is determined under the facts and circumstances known to the officer at the time the implied consent law is invoked. *Id.* at 725. We must ask ourselves if a reasonable person would conclude Zane had reasonable grounds to believe Watson was or had been operating a motor vehicle while intoxicated. *State v. Braun*, 495 N.W.2d 735, 738-39 (Iowa 1995). The operation of a motor vehicle by a defendant charged with operating while intoxicated may be established by circumstantial evidence as well as direct evidence. *Id.*

The facts which we should consider are those that Officer Zane knew before he invoked the implied consent law. It was a late, winter night and a car was in the ditch three miles from the nearest town. The only two people in the area were Watson and a local farmer, who was there to help pull the car out. Watson admitted he was the owner of the car and that he had driven it into the ditch. He did not say how long the car had been in the ditch; however a reasonable person could conclude it had not been there too long because the farmer was the only other person in the area. Zane observed Watson was having a difficult time walking and standing.

Watson was unable to complete the field sobriety tests and he failed the preliminary breath tests. The breath test failure is sufficient to complete the implied consent form.

We will reverse an agency's findings if, after we review the record as a whole we determine that substantial evidence does not support the agency findings. Iowa Code § 17A.19(8)(f); *Pointer*, 546 N.W.2d at 625; *Ramsey v. Iowa Dep't of Transp., Motor Vehicle Div.*, 576 N.W.2d 103, 106 (Iowa 1998). However, we will accept any legitimate inferences that may reasonably be deduced from the evidence through direct or circumstantial evidence. *Braun*, 495 N.W.2d at 739. In looking at the facts that Zane was aware of prior to invoking the implied consent law, we believe there was substantial evidence to support the decision made by Zane. It was late at night and Watson was the only one (minus the farmer) in the area. Watson admitted he was the owner of the car and that he had driven it into the ditch. The officer also observed that Watson was having a difficult time standing and walking. Watson was unable to complete the field sobriety tests and he failed the breath test. Even though Watson was not in the car there is enough circumstantial evidence that a reasonable person could infer he had been driving the car while intoxicated.

Watson relies on the holding in *Munson* for support of his claim. *See Munson*, 513 N.W.2d 722. In *Munson*, the court held there were no reasonable grounds for the officer to believe Munson had been driving a motor vehicle while intoxicated. The court first examined whether there were reasonable grounds to believe Munson was operating a motor vehicle while intoxicated; there were not. The court did not stop there, it then asked whether there were reasonable grounds to believe Munson had

been operating while intoxicated; the court found there were not. Munson was in a private lot asleep in his vehicle. He failed the field sobriety tests and the breath test. However, the officer did not find out until after invoking the implied consent law that Munson had nothing to drink after parking and that he drove himself to this area. In our case Watson told the officer prior to the invocation of the implied consent that he was the one who drove the car into the ditch and the car was three miles from the nearest town with Watson being the only person (minus the farmer) in the area. Even though Zane did not ask how long the car had been in the ditch or what Watson had done in the time between going in the ditch and being questioned, the existing observations made by Zane are sufficient to support a reasonable belief. It is not necessary for us to determine whether the evidence supports a different finding but whether the evidence supports the findings actually made. It was not necessary for Zane to ask every possible question; he had sufficient evidence taken in light of the circumstances to support reasonable grounds in believing Watson had been operating a motor vehicle while intoxicated.

In recent years, the Iowa courts have examined the issue of what constitutes reasonable grounds. In *Ramsey v. Iowa Dep't of Transp.*, reasonable grounds were found when an officer stopped Ramsey under the suspicion of running a red light. The officer asserted reasonable grounds based on the smell of alcohol coming from Ramsey and the fact Ramsey's eyes were blood shot. *See Ramsey v. Iowa Dep't of Transp.*, 576 N.W.2d 103 (Iowa 1998). The court found reasonable grounds in *State v. Boleyn* to believe the defendant had been driving while intoxicated. Boleyn was

found when an officer stopped Ramsey under the suspicion of running a red light. The officer asserted reasonable grounds based on the smell of alcohol coming from Ramsey and the fact Ramsey's eyes were blood shot. *See Ramsey v. Iowa Dep't of Transp.*, 576 N.W.2d 103 (Iowa 1998). The court found reasonable grounds in *State v. Boleyn* to believe the defendant had been driving while intoxicated. Boleyn was found asleep in his car at a cemetery. He had his seat belt on and the keys were in the ignition but the car was not running. There was a bottle of alcohol on his lap and he smelled of alcohol. Boleyn had problems walking and failed the field sobriety tests. *See State v. Boleyn*, 547 N.W.2d 202 (Iowa 1996). In *Pointer v. Iowa Dep't of Transp.*, reasonable grounds were present to believe Pointer had been driving while intoxicated. He was found in his car about one mile from the nearest town and he was the only person in the area. He smelled of alcohol and admitted he had been drinking at a bar. *See Pointer v. Iowa Dep't of Transp.*, 546 N.W.2d 623 (Iowa 1996). Our present case represents facts found in all three of the above mentioned cases. We believe the evidence available to Officer Zane was sufficient to support a reasonable belief that Watson had been operating his vehicle while intoxicated. We affirm the district court's decision.

AFFIRMED.

Streit, J., concurs; Sackett, C.J., dissents.

SACKETT, C.J. (dissenting)

I dissent. There was not sufficient evidence to support a reasonable belief by the deputy that defendant drove while intoxicated.

The deputy found defendant and another man trying to hook a chain to the back of a car defendant later admitted was his. A tractor waited to pull the vehicle out of a ditch. The deputy did not know how long the vehicle had been in the ditch and made no investigation to find out.

The district court relied on what defendant did not show in finding, in part:

> The Court also believes that the facts would lead a reasonable person to believe that Petitioner had been drinking before he drove the vehicle into the ditch. *This is because Petitioner presented no evidence to show that he started drinking after he drove the vehicle into the ditch.* Given this, the Court believes a reasonable person would further conclude that Petitioner drove his vehicle into the ditch only a short time before Deputy Zane arrived on the scene. *This conclusion is supported by the fact that Petitioner has not established when he drove his vehicle into the ditch, or that a significant amount of time elapsed before Deputy Zane arrived.*

The district court, without supporting evidence, on its own concluded what it felt people do, finding further:

> Furthermore, the Court does not think most people would decide to pull a vehicle out of the ditch at 11:00 p.m. during the winter unless the vehicle had just recently been driven into the ditch. Additionally, more people would probably ask someone they knew for help, instead of just asking a farmer who lived in the area, as was the case here.

The deputy made no inquiry as to the time the vehicle was driven nor was he able to testify the engine was warm. He did not question the farmer. The deputy made a decision without an even minimally adequate investigation.

The cases cited by the majority do not support the result they reached.

No. 97-1648. [8-693] WATSON v. IOWA DEPT. OF TRANSPORTATION

Appeal from the Iowa District Court for Jefferson County, Robert Bates, Judge. **AFFIRMED.** Considered by Sackett, C.J., Streit, J., and Hayden, S.J. Opinion by Hayden, S.J. Sackett, C.J. dissents. (8 pages $3.20)

Clinton Watson appeals the district court's ruling on judicial review affirming the revocation of his driver's license pursuant to Iowa code section 321J.12. Watson contends there was not substantial evidence for the officer to have reasonable grounds to believe Watson had been operating a motor vehicle while intoxicated. On the night of December 27, 1996, Clinton Watson drove his car into the ditch three miles outside of the town of Keosauqua. Officer John Zane arrived on the scene to find Watson and a local farmer attempting to pull the car out of the ditch with a tractor. Zane observed Watson having a hard time walking and could smell alcohol on him. Zane administered two field sobriety tests, which Watson failed to perform. A preliminary breath test produced a result of .264. Watson was arrested for operating a motor vehicle while intoxicated. After being read the implied consent form by Zane, Watson submitted to a chemical test of his breath and failed this test. The Department of Transportation revoked Watson's driving privileges. Having first exhausted all administrative remedies, Watson petitioned for a judicial review. **OPINION HOLDS: I.** We will uphold an agency's decision when it is based on substantial evidence and the evidence will be considered substantial when a reasonable person could accept it as adequate in reaching the same findings. The question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made. **II.** In order to invoke the implied consent law an officer must have reasonable grounds to believe the person was or had been operating a motor vehicle while intoxicated. Reasonable grounds are determined under the facts known to the officer prior to invoking the implied consent law. We may use both direct and circumstantial evidence to prove the operation of a motor vehicle while intoxicated. The facts we considered are those Zane knew before he invoked the implied consent law. It was a late, winter night and a car was in the ditch three miles from the nearest town. The only two people in the area were Watson and a local farmer. Watson admitted he had driven the car into the ditch. The officer observed Watson having a difficult time walking and standing. Watson was unable to complete the field sobriety tests and he failed the preliminary breath tests. Even though Watson was not in the car, we believe there was sufficient circumstantial evidence that a reasonable person could infer Watson had been driving the car while intoxicated. We accept any legitimate inferences that may reasonably be deduced from the evidence. It is not necessary for us to determine whether the evidence supports a different finding but whether the evidence supports the findings actually made; we believe the evidence did. Zane was not required to ask every possible question; we believe he had sufficient evidence to support reasonable grounds that Watson had been driving while intoxicated. **DISSENT ASSERTS:** I dissent. There was not sufficient evidence to support a reasonable belief by the deputy that defendant drove while intoxicated. The deputy found defendant and another man trying to hook a chain to the back of a car defendant later admitted was his. A tractor waited to pull the vehicle out of a ditch. The deputy did not know how long the vehicle had been in the ditch and made no investigation to find out. The deputy made no inquiry as to the time the vehicle was driven nor was he able to testify the engine was warm. He did not question the farmer. The deputy made a decision without an even minimally adequate investigation. The cases cited by the majority do not support the result they reached.

No. 97-1648. [8-693] WATSON v. IOWA DEPT. OF TRANSPORTATION (continued)