IN THE COURT OF APPEALS OF IOWA

No. 0-278 / 99-1622
Filed July 12, 2000

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CLERK SUPREME COURT

TODD LYDON SIROTIAK,
Plaintiff-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Defendant-Appellee

Appeal from the Iowa District Court for Johnson County, L. Vern Robinson, Judge.

Petitioner appeals from the district court's ruling on judicial review affirming the revocation of petitioner's driver's license for a chemical test refusal under Iowa Code section 321J.9 (1999). **AFFIRMED.**

Jerald W. Kinnamon, Cedar Rapids, and J. Dean Keegan, Iowa City, for appellant.

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

Considered by Mahan, P.J., Vaitheswaran, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

HAYDEN, S.J.

In the early morning of December 31, 1998, arresting officer Shawn Sharp (officer) observed petitioner-appellant, Todd Lydon Sirotiak (appellant) get into a car, start it, and brush the snow off of it. This was at a construction site at the University of Iowa. The officer confronted appellant and asked him what he was doing there. The appellant replied he was a contractor and was checking the area to make sure it was secure.

The officer observed appellant had a strong odor of alcohol about his person. Further, his balance was poor, his speech was slurred and his eyes were red and watery. Appellant admitted to the officer he had been drinking earlier in the evening. Appellant failed several field sobriety tests. He failed the horizontal gaze nystagmus, the walk and turn test, and the one leg stand test. Appellant refused a preliminary breath test and the officer arrested him for operating while intoxicated (OWI). The officer took appellant to headquarters and invoked implied consent to test pursuant to Iowa Code section 321J.6 (1997). The officer requested a breath sample. Appellant was uncooperative but did blow breath into the intoxilyzer. A test result of .00 was produced.

The officer claimed appellant did not properly blow into the intoxilyzer. The officer then requested a urine sample to test for a presence of drugs or a combination of alcohol and another drug. Appellant refused to give a urine specimen.

Because of this refusal appellant's driving privileges were revoked in accordance with Iowa Code section 321J.9 (1997). The revocation was for a period of one year. Upon contested case proceedings before the Iowa

Department of Transportation, motor vehicle division (IDOT), appellant claims the arresting officer lacked reasonable grounds to request a second specimen (urine) after a valid breath test had been requested and performed. The administrative law judge agreed the arresting officer did not have reasonable grounds to request a urine specimen and rescinded the IDOT's revocation of appellant's privilege to operate a motor vehicle for one year. IDOT appealed this decision to the agency's reviewing officer. The reviewing officer reversed the administrative law judge's decision and reinstated the revocation of appellant's driver's license for a period of one year. The appellant petitioned for judicial review in district court. The district court affirmed the final agency decision and affirmed the appellant's drivers license revocation pursuant to section 321J.9.

Appellant appealed the district court's decision to the Iowa Supreme Court and it has been transferred to the Iowa Court of Appeals for decision.

I. Scope of Review

Our scope of review is to correct errors of law.

The district court, exercising the power of judicial review conferred by section 17A.19, is itself functioning in an appellate capacity to correct errors of law, as specified in Section 17A.19 (8). *Jackson County Public Hosp. v. Public Employment Relations Bd.*, 280 N.W.2d 426, 429 (Iowa 1979). Thus, when this court reviews a decision of a district court rendered pursuant to Section 17A.19, the sole question is whether the district court correctly applied the law. *Id.* In order to make that determination this court applies the standards of sections 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. *Id.* at 429-30.

II. Merits

The issue is whether the arresting officer had reasonable grounds to request a second specimen (urine) pursuant to Iowa Code section 321J.6(3) (1997). That section states:

> Notwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol or a combination of alcohol and another drug, a urine test may be required even after a blood or breath test has been administered. Section 321J.9 applies to a refusal to submit to a chemical test of urine requested under this subsection.

Iowa Code § 321J.6(3).

The district court and the agency's hearing officer cited and relied upon the case *Bankson v. Iowa Dep't of Transp.*, 444 N.W.2d 515, 518 (Iowa App. 1989), for basis of their decisions. In that case the appellate court determined section 321J.6(3) does not require an officer to have additional reasons for the second specimen request after the first specimen is given. *Id.*

Appellant argues *Bankson* is not applicable to the facts of this case because the arresting officer there found marijuana seeds in the arrested person's vehicle. In the case before us, the arresting officer observed appellant's physical condition and his inability to perform the field sobriety tests.

The "reasonable grounds" test for peace officer's to invoke implied consent procedure is met when facts and circumstances known to the officer at the time of the action was required would have warranted a prudent person's belief that an offense has been committed. *Ramsey v. Iowa Dep't of Transp.*, 576 N.W.2d 103, 107 (Iowa 1998).

As we have noted in the *Bankson* case the arresting officer discovered marijuana seeds in the arrested person's vehicle. *Bankson,* 444 N.W.2d at 516. In this case there was no evidence of drugs on appellant's person, vehicle, or in the surrounding area of where appellant was first detained by the officer. Plaintiff failed to satisfactorily perform the field sobriety tests. The officer testified appellant failed to properly blow into the intoxilyzer. The test result was .00. The officer believed the test result was not consistent with appellant's level of impairment. The officer then requested a urine sample to test for the presence of drugs or a combination of alcohol and another drug.

The agency decision should be affirmed when there is not error of law and the decision is supported by substantial evidence. *Heatherly v. Iowa Dep't of Job Serv.,* 397 N.W.2d 670, 670 (Iowa 1986). Evidence is substantial if a reasonable mind would accept it as adequate to reach the same findings. *Swanson v. Employment Appeal Bd.,* 554 N.W.2d 294, 296 (Iowa App. 1996). In deciding whether substantial evidence exists, we view the record as a whole. Iowa Code section 17A.19(8)(f); *Dunlavey v. Economy Fire & Casualty Co.,* 526 N.W.2d 845, 849 (Iowa 1995).

Iowa Code section 321J.6(3) does not require additional reasons for the second specimen request must arise after the first specimen is given. *Bankson,* 444 N.W.2d at 518.

We hold the officer had reasonable grounds to request a second specimen (urine) after a breath test had been requested from and given by

appellant. We affirm the district court. Appellant's drivers license revocation by IDOT is also affirmed.

AFFIRMED.