IN THE COURT OF APPEALS OF IOWA

No. 0-59 / 89-1211

FILED
MAY 24 1990
CLERK SUPREME COURT

BRUCE WAYNE BROWN,

Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Appellee.

Appeal from the Iowa District Court for Taylor County, Darrell J. Goodhue, Judge.

Bruce Brown appeals the decision of the Iowa District Court upon judicial review of an order revoking his license pursuant to Iowa Code section 321J.12 (1989). **AFFIRMED.**

Jeffrey B. Millhollin, Corning, and Richard O. McConville, of Scalise, Scism, Sandre & Uhl, Des Moines, for the appellant.

Thomas J. Miller, Attorney General; Charles J. Krogmeier, Deputy Attorney General; and Daniel W. Perkins, Assistant Attorney General, for appellee.

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

OXBERGER, C.J. 9

Bruce Brown appeals the decision of the Iowa District Court upon judicial review of an order revoking his license pursuant to Iowa Code section 321J.12 (1989). Brown challenges the sufficiency of the evidence to support the revocation. He also contends the Iowa Department of Transportation (DOT) and the district court erred by disregarding the dismissal of an OWI charge arising from the same incident. We affirm the district court decision.

On October 19, 1988, a vehicle was seen striking a post, and then proceeding through the yard of a local motel. The vehicle subsequently ended up in a ditch. The driver was able to back the vehicle out of the ditch, and he then proceeded to his home. The witnesses reported the mishap to police. It was later determined that Bruce Brown was the operator of the vehicle. A few minutes after Brown reached his home, a police officer arrived to discuss the accident. The officer subsequently administered a breath test which showed an alcohol level of .135.

Following the investigation of the accident, Brown was charged with OWI. However, that charge was dismissed in return for Brown's plea of guilty to a charge of reckless driving.

The Iowa Department of Transportation later revoked Brown's driver's license pursuant to Iowa Code section 321J.12 due to the breath test result noted above. Upon judicial review, the district court upheld the revocation. Brown has appealed.

Our scope of review in this action is limited by Iowa Code sections 17A.19 and 17A.20 (1989). It is this court's job to determine whether the district court has correctly applied the law. To do this, we apply the standards of Iowa Code section 17A.19(8) to the agency decision and if our conclusion is the same as that of the district court, we affirm. McClure v. Iowa Real Estate Comm'n, 356 N.W.2d 594, 596 (Iowa App. 1984); see Downing v. Iowa Dep't of Transp., 415 N.W.2d 625, 627 (Iowa 1987).

We first address the issue whether the arresting officer had reasonable grounds to believe that Brown was operating the motor vehicle while intoxicated. The hearing officer and subsequently the DOT found that reasonable grounds existed. Brown contends that this decision was not supported by sufficient evidence. He asserts the evidence established (1) that he had consumed substantial amounts of alcohol after arriving at his home, and (2) that this alcohol consumed after he had quit driving contributed heavily to the breath test result. He asserts there was no evidence that he had been under the influence of alcohol while he was driving. We disagree.

Under the substantial evidence rule of Iowa Code section 17A.19(8)(f), we determine whether there is substantial evidence in the record as a whole to support the decision of the agency. McCrea v. Iowa Dep't of Transp., 336 N.W.2d 427, 429 (Iowa 1983). Evidence is substantial if a reasonable person would find it adequate

to reach the agency's conclusion, even if a reviewing court might draw a contrary inference. Chauffeurs, Teamsters, and Helpers, Local Union No. 238 v. Iowa Civil Rights Comm'n, 394 N.W.2d 375, 379 (Iowa 1986).

Iowa Code section 321J.12 (1989) requires revocation of a person's driver's license when certain conditions are met. The condition at issue requires certification of "reasonable grounds" to believe the person was operating a motor vehicle under the influence of alcohol.

"Reasonable grounds" is an objective test. Crosser v. Iowa Dep't of Pub. Safety, 240 N.W.2d 682, 685 (Iowa 1976). "'The "reasonable grounds" test is met where the facts and circumstances known to the officer at the time he was required to act warrant a prudent man in believing the offense has been or is being committed.'" Id.

The evidence in the record shows Brown had consumed alcoholic beverages before operating the vehicle. The evidence further shows that the arresting officer was told by Brown that he had not consumed alcoholic beverages after operating the motor vehicle. The officer smelled the odor of alcohol on Brown's breath. The officer's testimony regarding Brown's condition when undergoing field sobriety tests was that Brown swayed and stumbled while walking, swayed while standing, and that he was unable to touch his nose while performing the finger to nose test. The district court stated:

> Based on the accident, the civilian reports, the odor of an alcoholic beverage on the

> petitioner's person, the statement that he hadn't had anything to drink since the accident and the other facts and circumstances surrounding the incident, substantial evidence was created that the petitioner had, in fact, been operating a motor vehicle while intoxicated. The usual sobriety tests and preliminary breath test were administered prior to invoking the implied consent. The test was consented to and indicated an alcohol concentration in excess of .10. The test was correctly administered. The petitioner does not seriously contend otherwise. The statutory requirements for a license suspension have been met.

We agree with the analysis and conclusion of the district court that there is substantial evidence to support the findings of the agency. This court should broadly and liberally apply the agency's findings in order to uphold rather than defeat the department's decision. Ward v. Iowa Dep't of Trans., 304 N.W.2d 236, 237 (Iowa 1981). We find the evidence in this case is such that a reasonable person would find it adequate to warrant a prudent person in believing that Brown was driving under the influence.

Brown also contends the DOT and the district court erred by disregarding the dismissal of the criminal charge against him. He argues this dismissal was strong evidence that his breath test results did not reflect his condition while he was driving. He also attempts to suggest that the dismissal was binding on the DOT under Iowa Code section 321J.13(4). The DOT maintains and we agree that section 321J.13(4) does not apply in this case because the

dismissal was not based on a court holding that the peace officer lacked reasonable grounds to believe that a violation of section 321J.2 had occurred.

We further note that license revocation proceedings are separate and distinct from criminal charges arising from the same incident and each proceeds independently of the other. Heidemann v. Sweitzer, 375 N.W.2d 665, 668 (Iowa 1985). The dismissal of the criminal charge against Brown did not affect the administrative revocation of his license. We find no error here.

We agree with the decision of the district court, in all respects. Accordingly, we affirm the decision of the district court.

AFFIRMED.