

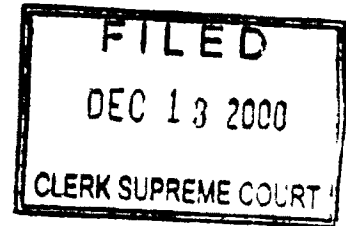
IN THE COURT OF APPEALS OF IOWA

No. 0-480 / 99-1380
Filed December 13, 2000

GRANVILLE BENTON NAPIER,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF
TRANSPORTATION, MOTOR
VEHICLE DIVISION,**
Respondent-Appellee.



Appeal from the Iowa District Court for Chickasaw County, John Bauercamper, Judge.

The petitioner appeals from the district court's ruling on judicial review affirming the respondent's revocation of his driver's license for a chemical test refusal under the implied consent law. **AFFIRMED.**

Judith O'Donohoe of Elwood, O'Donohoe, O'Connor & Stochl, Charles City, for appellant.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Kerry Anderson, Assistant Attorney General, for appellee.

Heard by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

Granville Benton Napier seeks further judicial review of a Department of Transportation decision revoking his drivers license for refusing to submit to a chemical test. He maintains the decision is not supported by substantial evidence, is erroneous as a matter of law, and is unreasonable, arbitrary and capricious and characterized by an abuse of discretion. Napier also contends our statutory implied consent scheme violates substantive due process and the constitutional prohibition against unreasonable searches and seizures. The district court affirmed the agency decision and so do we.

I. Background Facts and Proceedings

A New Hampton police officer stopped Napier one Halloween night because he squealed his tires and excessively accelerated through an intersection. Napier got out of his car and approached the officer. The officer reported Napier balanced himself unsteadily, emitted a strong odor of alcohol, had bloodshot, watery eyes and slurred his speech. Napier admitted to the officer he had consumed "a couple of drinks."

The officer testified Napier twice refused to undergo field sobriety tests. Napier denied he was asked to undergo these tests. He agreed, however, that the officer offered him a preliminary breath test, which he refused based on his belief the test was unreliable. Napier was then arrested, taken to the station house, and advised that refusal to submit to chemical testing would result in revocation of his drivers license. Napier declined to take an Intoxilyzer test, stating he did not believe in the accuracy of the test. The officer invoked Iowa's

implied consent law and issued a notice that Napier's license would be revoked for two years, based on his refusal and a prior OWI arrest.

Following an administrative hearing at which the administrative law judge heard testimony from the officer, Napier and several witnesses for Napier, the license revocation was sustained. The Department's reviewing officer affirmed the decision, as did the district court on judicial review. This appeal followed.

II. Statutory Standards of Review

A. Substantial Evidence. Napier first asserts the Department's decision was not supported by substantial evidence in the record. Evidence is substantial if a reasonable person would find it adequate to reach a given conclusion. *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). The question is not whether the evidence might support a different finding, but whether it supports the findings actually made. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000).

The question here is whether the officer had reasonable grounds to believe Napier was driving while under the influence. Iowa Code § 321J.9 (1997). The reasonable grounds test "is met 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 had been committed." *State v. Ramsey*, 576 N.W.2d 103, 107 (Iowa 1998).

Napier contends the officer could not have had reasonable grounds because: (1) he reached this conclusion in a four-minute time span; (2) Napier's demeanor and level of intoxication were disputed by witnesses who saw Napier earlier that evening; and (3) the officer's conclusion was contrary to that of

Napier's expert, who opined that at most, Napier's blood alcohol level at the time of the stop would have been .07 based on the number of beers he said he consumed. We agree the record concerning Napier's state of intoxication at the time of the stop and his appearance were disputed. However, it is the agency's duty, not ours, to resolve this conflict in the testimony. *Elliot v. Iowa Dep't of Transp.*, 377 N.W.2d 250, 256 (Iowa App. 1985). The agency chose to accept the officer's testimony over the statements of the other witnesses, finding his testimony "more credible." We are not at liberty to reassess the weight accorded the evidence. See *Burns*, 495 N.W.2d at 699. We also are not free to reevaluate credibility determinations made by the agency. See *Benning v. Iowa Dep't of Transp.* 441 N.W.2d 372 (Iowa 1989). We find the officer's testimony alone as set forth above constituted substantial evidence in support of the agency decision revoking Napier's license.

B. Error of Law. Napier next contends the agency decision is erroneous as a matter of law because there are no reasonable grounds to believe he was operating while intoxicated. This argument is merely a repackaged version of his substantial evidence argument. Therefore, we decline to address it.

C. Unreasonable, Arbitrary, Capricious or Abuse of Discretion.

Napier also maintains the administrative law judge gave short shrift to his evidence and legal arguments, rendering the agency decision unreasonable, arbitrary, capricious, and characterized by an abuse of discretion. See Iowa Code § 17A.19(8)(g). Agency action is unreasonable when it is clearly against reason and evidence. *Dico v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998). An action is arbitrary and capricious if it was taken without

regard to the law or facts. *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 764 (Iowa 1998). An agency decision amounts to an abuse of discretion "if it is clearly unreasonable, lacks rationality, and is clearly against reason and evidence." *McMahon v. Iowa Dep't of Transp.* 522 N.W.2d 51, 56 (Iowa 1994).

We have already found the agency decision was supported by substantial evidence. We also conclude the decision did not ignore the law or lack rationality. The agency articulated the correct law, applied the law to the facts it chose to believe, and reached a reasoned conclusion that Napier's license should be revoked. Although the administrative law judge may have expressed impatience with Napier's case, the record reflects the judge did not curtail or limit Napier's presentation. We conclude the agency decision was not unreasonable, arbitrary, capricious, or characterized by an abuse of discretion.

III. Constitutional Arguments

Napier next maintains the statutory scheme under which his license was revoked violates the Fourth Amendment to the United States Constitution and substantive due process under the Fifth Amendment to the United States Constitution. The parties agree all issues have been adequately preserved for appeal.

Constitutional challenges to agency action require an independent de novo evaluation of the totality of the evidence. *Officer of Consumer Advocate v. Iowa State Commerce Comm'n*, 465 N.W.2d 280, 281 (Iowa 1991). As statutes are presumed constitutional, the party challenging their constitutionality "carries a heavy burden" of rebutting the presumption. *Larsson v. Iowa Bd. of Parole*, 465

N.W.2d 272, 273 (Iowa 1991). A statute must "clearly, palpably, and without doubt infringe upon the constitution before we will declare it unconstitutional." *Id.*

A. Fourth Amendment. The Fourth Amendment protects against unreasonable government intrusion upon a person's legitimate expectation of privacy. *Minnesota v. Carter*, 525 U.S. 83, 88, 119 S. Ct. 469, 473, 142 L. Ed. 2d 373, 379 (1998). A search and seizure without a valid warrant is per se unreasonable unless it falls within a recognized exception. *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S. Ct. 2408, 2412, 57 L. Ed. 2d. 290, 298 (1978). One exception is a search incident to a valid arrest. See *Knowles v. Iowa*, 525 U.S. 113, 115, 119 S. Ct. 484, 487, 142 L. Ed. 2d 492, 494 (1998).

Napier first contends "the implied consent law" violates his Fourth Amendment rights because it authorizes seizure of a body sample without a warrant and no valid exception applies to his situation. However, at oral arguments, Napier conceded he was arrested, and has not challenged the validity of his arrest. Assuming without deciding that a person who does not submit to a chemical test may challenge the constitutionality of the test, it is established that a person who is properly arrested "has no valid fourth amendment objection to submission of body fluid specimens." *State v. Oakley*, 469 N.W.2d 681, 682 (Iowa 1991). See also *State v. Johnson*, 135 N.W.2d 518, 523 (Iowa 1965) (receipt of blood alcohol test after valid arrest does not violate constitution). Therefore, we reject this claim.

Napier next argues the implied consent law unconstitutionally burdens the exercise of his Fourth Amendment rights. We reject this contention in light of our conclusion Napier has no valid Fourth Amendment objection to withdrawal of a

bodily fluid. See *Burnett v. Municipality of Anchorage*, 806 F.2d 1447, 1450 (9th Cir. 1986) (holding no rights relinquished because no Fourth Amendment right to refuse a breathalyzer examination); *State v. Knous*, 313 N.W.2d 510, 512 (Iowa 1981) (right to refuse not mandated by constitution but by statute).

Napier also challenges the constitutionality of Iowa Code section 321J.6(1) (c), which provides that a person is deemed to have consented to the withdrawal of a specimen for testing where a person has refused a preliminary breath test. That provision, however, is only one of several conditions an officer may rely on when invoking the implied consent law. A person also is deemed to have consented to a chemical test where "[a] peace officer has lawfully placed the person under arrest for violation of section 321J.2." Iowa Code § 321J.6(1)(a). We need not address Napier's constitutional argument concerning the preliminary breath test in light of his concession that the officer could have invoked the implied consent laws based on Napier's valid arrest.

B. Substantive Due Process. Napier finally contends use of a preliminary breath test as a basis for invoking the implied consent law violates substantive due process because the preliminary breath test is inaccurate. In light of our conclusion the officer had an alternate basis for invoking implied consent, namely Napier's valid arrest, we find it unnecessary to consider this argument.

We affirm the agency's license revocation decision.

AFFIRMED.