

IN THE COURT OF APPEALS OF IOWA

862

No. 1-581 / 91-913

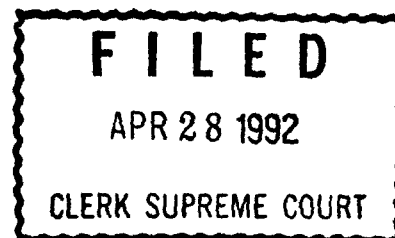
JOHN MICHAEL SEARS,

Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Appellee.



Appeal from the Iowa District Court for Washington
County, James P. Rielly, Judge.

Petitioner appeals district court's affirmance of the
agency's revocation of his driver's license for chemical
test failure. **AFFIRMED.**

Michael R. Mullins of Morrison, Lloyd, McConnell &
Mullins, Washington, for appellant.

Bonnie J. Campbell, Attorney General; David A. Ferree,
Special Assistant Attorney General; and Carolyn J. Olson,
Assistant Attorney General, for appellee.

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

DONIELSON, J.

A citizen telephoned the Washington County Sheriff's Office to report what the citizen believed to be an intoxicated driver. The citizen claimed to have observed a car driving erratically five miles east of the Keokuk-Washington County line on Highway 92. The report stated the vehicle had veered off the road once or twice and had crossed the centerline. The report also gave a description and license number for the car and stated the car was occupied by only the male driver.

Washington County Deputy Sheriff Randy Tinnes received a dispatch reiterating the substance of the citizen's report. Twenty to twenty-five minutes after the report was made, Deputy Tinnes spotted the car about fifteen miles from the location given by the informant. The deputy followed the car for one block in the City of Washington, but he did not observe the car do anything which would constitute independent reasonable cause to stop or investigate. Nevertheless, when he saw the car park at Washington High School, the deputy pulled in and approached the driver. The driver, John Sears, submitted to a preliminary breath screening test which showed his blood alcohol level exceeded .10. Sears was then placed under arrest for violation of Iowa Code section 321J.2. Approximately fifteen minutes later Sears submitted to a chemical test which also indicated an alcohol concentration

of .10 or more. He was given immediate notice his license would be revoked.

The Iowa Department of Transportation revoked Sears' driver's license for chemical test failure pursuant to Iowa Code section 321J.12. On judicial review, the district court upheld the agency's action but granted Sears a ninety day stay of enforcement of the revocation, provided Sears had no subsequent driving violations during the period of the stay.

Sears has appealed from the district court's decision. He contends Officer Tinnes did not have reasonable grounds to believe he was driving in violation of section 321J.2. Sears argues the agency's decision to the contrary is not supported by substantial record evidence. He notes Deputy Tinnes made no independent observation of driving errors and the citizen's report told of an incident far removed in time and distance from the stop.

Sears also challenges the terms of the district court's limited stay of the revocation. He contends the district court abused its discretion by staying the revocation for only ninety days and by providing the stay would be withdrawn upon any subsequent driving violation by Sears.

Our scope of review is for correction of errors at law. Iowa Code § 17A.20 (1991); Iowa R. App. P. 4; Busing v. Iowa Department of Transportation, 455 N.W.2d 921, 922 (Iowa 1990). The agency's factual findings are binding on

us if they are supported by substantial evidence. Hussein v. Tama Meat Packing Corp., 394 N.W.2d 340, 341 (Iowa 1986). In a civil administrative driver's license revocation proceeding, the licensee bears the burden of showing compliance with all lawful requirements for retention of his or her license. Iowa Code § 17A.18(3)(1991); McCrea v. Iowa Department of Transportation, 336 N.W.2d 427, 428 (Iowa 1983). When the agency has found a licensee failed to carry his or her burden, we will not interfere unless we find the licensee carried his or her burden of proof as a matter of law. Heidemann v. Sweitzer, 375 N.W.2d 665, 670 (Iowa 1985). To find the licensee carried his or her burden as a matter of law, we must find the evidence was so overwhelming on each critical fact issue that only one reasonable inference could be drawn and the agency drew the wrong one. See Whiteaker v. State, 382 N.W.2d 112, 114 (Iowa 1986).

Iowa Code section 321J.12 (1989) provides in relevant part:

Upon certification, subject to penalty for perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the results indicated an alcohol concentration as defined in section 321J.1 of .10 or more, the department shall revoke the person's motor vehicle license

Sears asserts this court must examine the sufficiency of the evidence supporting the finding that the facts and circumstances known to Deputy Tinnes when he stopped Sears warranted a prudent person in believing Sears had been operating a motor vehicle in violation of Iowa Code section 321J.2. We disagree. We believe we need only answer the question of whether Sears carried his burden as a matter of law in proving Deputy Tinnes did not certify he had reasonable grounds to believe Sears was operating a motor vehicle in violation of section 321J.2. On our examination of the record, we affirm.

The statute directs the agency to revoke a person's driver's license "[u]pon certification . . . by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2" Iowa Code § 321J.12 (1989)(emphasis added).

The agency's factual findings on the issue of whether the officer in fact had reasonable grounds are simply gratuitous. We certainly believe, as did the agency and the district court, that the record contains substantial evidence Deputy Tinnes had reasonable grounds¹ to believe

¹An officer has reasonable grounds to believe a motorist is operating a motor vehicle in violation of section 321J.2 if the facts and circumstances known to the officer at the time he is required to act warrant a prudent person in believing the offense has been or is being committed. Saunders v. Commissioner of Public Safety, 226 N.W.2d 19, 22 (Iowa 1975).

Sears had been operating a motor vehicle in violation of Iowa Code section 321J.2. See, e.g., State v. Markus, 478 N.W.2d 405 (Iowa App. 1991)(by analogy, under fourth amendment analysis, an anonymous tip, corroborated by identification and location of vehicle, was sufficient to create reasonable suspicion of criminal activity).

However, such an analysis is unnecessary. No constitutional or statutory exclusionary rule is applicable in a license revocation proceeding. See Westendorf v. Iowa Department of Transportation, 400 N.W.2d 553, 556 (Iowa 1987); Manders v. Iowa Department of Transportation, 454 N.W.2d 364, 366 (Iowa 1990).

We find Sears failed to show his entitlement, as a matter of law, to judgment because the three-part test prescribed by Iowa Code section 321J.12 was not satisfied. The record contains an Iowa Department of Transportation form completed, signed and dated by Deputy Tinnes. The form certifies Deputy Tinnes had reasonable grounds to believe Sears was operating a motor vehicle in violation of Iowa Code section 321J.2.

We realize the statute offers the licensee no remedy in the event the peace officer is mistaken or untruthful concerning the existence of reasonable grounds for his belief the licensee was violating section 321J.2. Indeed, not even the State is afforded a remedy in the event the officer is merely mistaken. However, any argument

pertaining to the wisdom of the statute is more appropriately directed to the legislature. We affirm the judgment of the district court on this issue. Furthermore, we do not believe the district court abused its discretion in making its stay of enforcement contingent upon Sears' avoiding any driving violations during the period of the stay.

The costs of this appeal are taxed to Sears.

For all the reasons stated, the judgment of the district court is affirmed.

AFFIRMED.