IN THE COURT OF APPEALS OF IOWA

No. 2-059 / 91-1232

FILED
JUN 25 1992
CLERK SUPREME COURT

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**TODD MICHAEL REUSCHER,**

Appellant,

**vs.**

**IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,**

Appellee.

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Appeal from the Iowa District Court for Bremer County, Stephen P. Carroll, Judge.

Plaintiff appeals the district court's ruling which affirmed the decision of the Iowa Department of Transportation revoking plaintiff's motor vehicle operator's license. **AFFIRMED.**

Gary J. Boveia of Boveia Law Office, Waverly, for appellant.

Bonnie J. Campbell, Attorney General, David A. Ferree, Special Assistant Attorney General, and Kerry Anderson, Assistant Attorney General, for appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

**HAYDEN, J.**

On August 26, 1990, Reuscher was stopped by a deputy sheriff. The officer believed Reuscher was operating a motor vehicle while intoxicated in violation of Iowa Code section 321J.2. Reuscher was transported to the Waverly Law Center where he submitted to an intoxilyzer test under our implied consent law. In administering the test, the deputy followed the procedures listed on the operational check list for the intoxilyzer. That check list contains eleven steps. The officer encountered no difficulty with the first ten steps. At step ten, the intoxilyzer indicated Reuscher had a breath alcohol content of .121. The rating of .12 was printed on the evidence card. When attempting to perform step eleven, the officer turned the intoxilyzer selector switch past the "air blank" indicator. In response to his action, the machine's error light illuminated, and the machine failed to print the final "air blank" reading on the evidence card.

Reuscher has continually maintained because the eleventh step was not complied with the test results were defective and not in accordance with methods approved by the commissioner of public safety. As such, Reuscher maintains the test results should not have been considered in revoking his driver's license. The administrative law judge rejected Reuscher's contention. That decision was affirmed by the agency and the district court.

Reuscher has appealed. Our review is limited to the correction of errors at law. Office of Consumer Advocate v. Iowa State Commerce Comm'n, 465 N.W.2d 280, 281 (Iowa 1991).

A chemical analysis of a person's breath is admissible at trial with no further foundation if the analysis "was performed by a certified operator using a device and methods approved by the commissioner of public safety. . . ." Iowa Code § 321J.15 (1991). These procedural requirements serve to "guarantee that the test results are sufficiently accurate for use in judicial proceedings." State v. Geinzer, 406 N.W.2d 457, 457 (Iowa App. 1987).

The eleventh and final step on the procedure checklist requires the officer administering the test to "[r]econnect air and breath hoses, turn selector to "Air Blank", and allow instrument to run through cycle." The purpose of step eleven is to clean the machine with clear air. At this step, the officer momentarily turned the selector past the "air blank" position. The officer immediately turned the selector back to the "air blank" position and allowed the machine to clear itself and finish the cycle. Nevertheless, the error light came on, and the machine failed to stamp the final air blank reading on the evidence card.

For all practical purposes, when the alleged error in the procedure occurred, the test had already been completed and the results printed on the evidence card. The machine

was still able to finish the cycle. The only result of the operator's action was the final air blank reading did not print on the evidence card. We note the operational check list does not require the final air blank to be printed on the evidence card. We find no evidence in the record indicating the absence of a final air blank number on the evidence card renders the test results unreliable. In the absence of more persuasive evidence the test results were unreliable, we find substantial evidence in favor of the agency's determination the breath specimen was obtained in accordance with methods approved by the commissioner of public safety. See Gordon v. Iowa Dep't. of Transportation, 389 N.W.2d 390, 392 (Iowa 1986) (superimposition of zeros over the printed test results on the evidence card was not sufficient evidence to establish the test results were unreliable). We affirm.

**AFFIRMED.**