IN THE COURT OF APPEALS OF IOWA

No. 8-895 / 08-0815
Filed November 13, 2008

GREGG ALLEN COPPLE,
Petitioner-Appellant,

vs.

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

Appeal from the Iowa District Court for Wapello County, Annette J. Scieszinski, Judge.

Petitioner appeals from the district court's ruling affirming the revocation of petitioner's driver's license by the Iowa Department of Transportation. **AFFIRMED.**

Michael O. Carpenter of Webber, Gaumer & Emanuel, P.C., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, and Christine Blome, Assistant Attorney General, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

Petitioner-appellant, Gregg Allen Copple (Copple), appeals from the district court's ruling on judicial review that affirmed the Department of Transportation's revocation of Copple's driver's license. Copple contends there is not substantial evidence in the record to support a finding that the arresting officer had reasonable grounds to believe Copple had operated a motor vehicle while intoxicated. He contends since reasonable grounds were lacking, the officer could not invoke implied consent under Iowa Code section 321J.6 (2007). We affirm as the record provides substantial evidence to support a finding that there were reasonable grounds to believe Copple had driven while intoxicated and Copple failed to provide any evidence to challenge this finding.

BACKGROUND. On July 29, 2007, Ottumwa police officer, Cody McCoy (McCoy) was dispatched to a house to respond to a 911 call regarding a fight. When McCoy arrived, Copple was pinned down on the ground by two others, Shawna Bleything and Travis Reinier. Copple's truck was parked partially in the driveway and partially in the front yard of the house. Bleything and Reinier claimed Copple had assaulted them so McCoy handcuffed Copple and separated him from the group. When handcuffing and talking with Copple, McCoy noticed he had watery bloodshot eyes, unsteady balance, and a strong smell of alcohol on his breath. Shortly thereafter, Copple's ex-girlfriend, Shirley, arrived at the residence and Copple began to yell at her. Copple informed McCoy that he was upset that Shirley was allowing Bleything and Reinier to live in the house for free and that is why he "came down here." Another officer at the scene obtained

details from Bleything and Reinier. This officer related to McCoy that Bleything and Reinier had seen Copple drive up to the property and that he had assaulted them.

McCoy informed Copple that he was being charged with criminal trespass and assault and would be offered standardized field sobriety tests upon arriving at the jail. Copple failed the horizontal gaze nystagmus test and a preliminary breath test result was above .08. McCoy told Copple he was going to be charged with operating a motor vehicle while intoxicated and read him the implied consent advisory. Copple consented to giving a breath sample which registered a .168 percent result. Copple asked how he could be charged when the officer did not see him driving. McCoy responded that Bleything and Reinier saw him driving and that he had admitted as much by telling McCoy that he had come to the house.

Copple appealed the revocation of his driving privileges to an administrative law judge pursuant to Iowa Code sections 321J.13 and 17A.18(3). A telephone hearing was held on September 14, 2007, where officer McCoy was the only witness for the State. The administrative law judge found the officer had reasonable grounds to believe Copple was operating a motor vehicle while intoxicated in violation of Iowa Code section 321J.2 (Supp. 2007). The agency found this decision was supported by the record on appeal and sustained the revocation.

Copple filed a petition for judicial review claiming there was not substantial evidence to support this finding. In a ruling filed April 14, 2008, the district court

affirmed, noting Copple bore the burden of showing there was not substantial evidence to support the agency finding. It found Copple failed to meet this burden and that circumstantial evidence in the record supported a finding that Copple operated a motor vehicle while intoxicated. Copple appeals and requests us to reverse this decision and order his license be reinstated.

SCOPE OF REVIEW. Our review of driver's license revocations under Iowa Code chapter 321J is governed by our Administrative Procedure Act in chapter 17A. Iowa Code § 321J.14 (2007); *Ludtke v. Iowa Dep't of Transp.*, 646 N.W.2d 62, 64 (Iowa 2002). We review for correction of errors at law. *Munson v. Iowa Dep't of Transp.*, 513 N.W.2d 722, 723 (Iowa 1994); *Furry v. Iowa Dep't of Transp.*, 464 N.W.2d 869, 870 (Iowa 1991). We may grant relief by modifying or reversing the agency's action if it is not supported by substantial evidence in the record when viewed as a whole. Iowa Code § 17A.19(10)(f); *Ramsey v. Iowa Dep't of Transp.*, 576 N.W.2d 103, 105 (1998).

> The code defines "substantial evidence" as
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> > the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

Iowa Code § 17A.19(10)(f)(1). In other words, there is substantial evidence "when a reasonable person could accept it as adequate to reach the same findings." *Pointer v. Iowa Dep't of Transp.*, 546 N.W.2d 623, 625 (Iowa 1996). We judge the adequacy of the evidence supporting the particular finding in light of all relevant evidence presented, both that which detracts from and supports

the finding at issue. Iowa Code § 17A.19(10)(f)(3). However, we ultimately inquire as to whether the evidence supports the findings actually made, not whether the evidence supports a different finding. *Pointer*, 546 N.W.2d at 625.

ANALYSIS. Under certain conditions, officers may invoke implied consent procedures to test a person's alcohol concentration. The implied consent statute provides in part,

> 1. A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 or 321J.2A is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of a controlled substance or other drugs, subject to this section. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A, and if any of the following conditions exist:
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> d. The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 321J.2.

Iowa Code § 321J.6. The implied consent procedures of section 321J.6 cannot be invoked unless the arresting officer first has reasonable grounds to believe the person operated a motor vehicle while intoxicated. *State v. Christianson*, 627 N.W.2d 910, 913 (Iowa 2001); *Munson*, 513 N.W.2d at 723. "[T]he existence of reasonable grounds is a condition precedent to imposition of implied consent." *Christianson*, 627 N.W.2d at 913.

The issue we must consider is whether officer McCoy had reasonable grounds to believe Copple had operated a motor vehicle while intoxicated, and

thus was justified in instituting the implied consent statute. If substantial evidence in the record supports this finding, we must affirm. Iowa Code § 17A.19(10)(f); *State v. Nieman*, 452 N.W.2d 203, 203 (Iowa Ct. App. 1989). The licensee bears the burden to prove the arresting officer did not have reasonable grounds to believe the licensee was operating a motor vehicle while intoxicated. *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 697 (Iowa 1995); *Reed v. Iowa Dep't of Transp.*, 540 N.W.2d 50, 51 (Iowa 1995). We may consider both direct and circumstantial evidence in determining whether reasonable grounds existed. *State v. Braun*, 495 N.W.2d 735, 739-40 (Iowa 1993). Reasonable grounds are present "'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 has been committed.'" *Munson*, 513 N.W.2d at 725 (quoting *Braun*, 495 N.W.2d at 738-39).

Copple argues the facts of his case are similar to those in *Munson v. Iowa Department of Transportation*, 513 N.W.2d 722, 725 (Iowa 1994), where the court determined the officer lacked reasonable grounds to believe Munson had operated a motor vehicle while intoxicated. In that case, the arresting officer approached Munson who was sleeping in the driver's seat of a truck parked in a private commercial parking lot. *Munson*, 513 N.W.2d at 723. Though the keys were in the ignition and the radio was on, the engine was not running. *Id.* Implied consent was invoked and Munson was arrested for operating while intoxicated when the officer smelled alcohol and observed beer cans in the vehicle. *Id.* at 724. Prior to invoking the implied consent, the officer did not know

how long Munson had been in the parking lot or how Munson had arrived. *Id.* at 725. Under these facts, the court found the agency's finding of reasonable grounds not supported by the record. *Id.* Even though there was proof that Munson was intoxicated at the time of his arrest, there was not substantial evidence that he was intoxicated at the time he operated a vehicle. *Id.* at 724-25.

Copple contends like in *Munson*, the record here shows no evidence of when Copple arrived at the scene. Therefore, even if Copple was intoxicated at the time of his arrest, there is not substantial proof showing Copple was intoxicated when he drove to the residence. He also states his case is stronger given that McCoy did not observe Copple in his vehicle at any time. The department argues direct and circumstantial evidence suggests Copple drove to the house shortly before the 911 call was placed and that he arrived intoxicated.

The department found the facts and circumstances known to the officer at the time he arrested Copple provided reasonable grounds to believe Copple had operated a vehicle while intoxicated. It noted the facts and circumstances in the record supporting this conclusion were (1) Copple admitted to driving to the residence, (2) Bleything and Reinier informed an officer at the scene that Copple had driven to the residence, (3) Copple smelled of alcohol, had bloodshot watery eyes, and was unsteady, and (4) Copple failed the field sobriety test. We agree with this determination. A view of the record as a whole shows circumstances providing a reasonable belief that Copple had driven to the scene in an intoxicated state shortly before the police arrived. Witnesses stated that Copple had driven there. Although the witnesses did not testify at the administrative

hearing, they relayed this to another officer who was dispatched to the incident and McCoy was entitled to rely on this second-hand knowledge in determining whether there were reasonable grounds. *See Reed*, 478 N.W.2d at 847 (stating that an arresting officer's second-hand knowledge of licensee's traffic violation which formed reasonable grounds for invoking implied consent was sufficient). Furthermore, hearsay evidence is generally admissible in administrative hearings and can amount to "substantial evidence" under our judicial review. *Gaskey*, 537 N.W.2d at 698.

There is no evidence in the record suggesting that Copple was not intoxicated when he drove to the residence or that Copple consumed drinks after arriving. Copple, as the licensee, had the burden to prove there were not reasonable grounds to believe he had operated the vehicle while intoxicated. *Id.* at 697; *Reed*, 478 N.W.2d at 846. Copple did not testify at the hearing and provided no proof to contradict McCoy's testimony. "When a party challenging an administrative agency action fails to produce supporting evidence to satisfy the party's burden of proof, the agency's decision should be affirmed." *Gaskey*, 537 N.W.2d at 697. We find Copple failed to meet his burden and substantial evidence in the record supports the department's finding that there were reasonable grounds to believe Copple had operated a motor vehicle while intoxicated.

AFFIRMED.