



Bird v. Iowa Department of Transportation

2002 | Cited 0 times | Court of Appeals of Iowa | November 15, 2002

Driver appeals district court decision upholding the administrative revocation of his driver's license. REVERSED.

David Bird challenges his administrative license revocation. We reverse.

Background Facts and Proceedings. David Bird was stopped by a police officer for making a prohibited right-hand turn. When the officer detected an order of alcohol on Bird's breath, Bird confirmed he had consumed beer about fifteen minutes prior. Approximately four minutes into the stop, the officer administered a preliminary breath test (PBT) using an Alco-Sensor III device. The test yielded results over .10. Implied consent was then invoked, with intoxilizer results over the legal limit. The Iowa Department of Transportation (the Department) revoked Bird's driver's license, and that revocation was upheld by agency action and upon judicial review. Bird appeals.

Scope of Review. Agency action is upheld on appeal so long as it was unaffected by error at law and supported by substantial evidence in the record, when that record is viewed as a whole. Iowa Code § 17A.19(10) (Supp. 1999).

Procedural Requirements for PBTs. The existence of at least one of the seven possible conditions for the invocation of implied consent outlined by Iowa Code section 321J.6 (1999), is a prerequisite for a valid revocation. See Iowa Code § 321J.12. It is undisputed the only condition relied on for the implied consent and subsequent revocation in this case was a PBT result at or in excess of the legal limit. See Iowa Code § 321J.6(1)(d). Bird argues the test result must be excluded, because police failed to comply with administrative rules governing the calibration of the PBT device.

Those rules provide, in pertinent part:

Any peace officer using an approved device shall follow the instructions furnished by the manufacturer for use of such a device. ¹ Each unit shall be calibrated at least once per month using either a wet alcohol standard or a Nalco Standard (minimum 5 cubic foot volume). The officer or officer's department shall keep a record of each calibration. This record shall include:

- a. The officer performing the calibration.
- b. Date.



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c. The value and type of standard used.

d. Unit type and identification number. Iowa Admin. Code r. 661-7.5(2).

1. Applicability of Administrative Rules.

As an initial matter, the Department would have us disregard its own administrative rules, claiming, without authority, that such rules are not legally binding. However, it is well established that "[a]gency rules are ordinarily given the force and effect of law, provided they are reasonable and consistent with legislative enactments." *Harlan Sprague Dawley, Inc. v. Iowa State Bd. of Tax Review*, 601 N.W.2d 66, 69 (Iowa 1999). As we noted in Bird's criminal appeal, see *State v. Bird*, No. 01-1223 (Iowa Ct. App. November 15, 2002), we presume the relevant administrative rules in this case were adopted "to advance the public interest in the proper operation of approved PBT devices and to insure the accuracy and reliability of PBT results." See Iowa Code § 321J.5; see also *State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994) ("Underlying the procedural requirements of section 321J.6 is a threefold purpose: to protect the health of the person being tested, to guarantee accuracy of test results used in judicial proceedings, and to prevent citizens from indiscriminate testing or harassment."). As the administrative rules are not only consistent with, but advance the legislative purpose of Iowa's implied consent laws, they should be given proper authoritative effect. We therefore turn to the merits of Bird's claim.

2. Absence of Calibration Standard.

We presume, as we do with section 321J.6, that substantial compliance with the procedure is sufficient, so long as the underlying purposes of the procedure "were not compromised." See *State v. Lindeman*, 555 N.W.2d 693, 696 (Iowa 1996) (discussing presumption in context of section 321J.6). It is undisputed the calibration log in this case failed to show the value and type of standard used, in violation of the administrative rules. See Iowa Admin. Code r. 661-7.5(2)(c). Even if we could find the remaining recorded information brought the logs into substantial compliance, absence of the standard-related information compromised the purpose underlying the log requirements.

The Department misses a salient point when it argues that, notwithstanding the omitted information, no evidence demonstrates the defectively kept logs affected the PBT results. Without any indication of what value and type of standard police used to calibrate the PBT device, there is no way to ascertain whether the device was properly calibrated and whether the subsequent test results were accurate. The absence of the standard therefore goes directly to the presumed purpose behind the administrative rule - assuring the accuracy and reliability of PBT results. See Iowa Admin. Code r. 661-7.5(1) (directing officers to use devices that have been approved for accuracy and precision through the use of predetermined standards).

The absence of the value and type of standard in the log is fatal to the demonstration of reliability of



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the PBT result and the result must be excluded. Accordingly, there was no basis for invoking implied consent and thus no basis for the revocation. See Iowa Code § 321J.12(1). Bird's driver's license revocation must be rescinded.

REVERSED.

1. Bird also complains the officer failed to administer the test in accordance with the manufacturer's directions. As we find this matter can be disposed of on Bird's challenge to the calibration logs, we need not address his other claim.

