

IN THE COURT OF APPEALS OF IOWA

No. 0-280 / 09-1100
Filed May 26, 2010

MARK ANTHONY ECKLES,
Petitioner-Appellant,

vs.

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

Appeal from the Iowa District Court for Mahaska County, James Q. Blomgren (first motion for leave to present additional evidence) and Annette J. Scieszinski (second motion for leave to present additional evidence), Judges.

A petitioner appeals the revocation of his driving privileges, contending that the district court should have allowed him to present additional evidence.

AFFIRMED.

Steven Gardner of Kiple, Deneffe, Beaver, Gardner & Zingg, L.L.P., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, and Noel C. Hindt, Assistant Attorney General, for appellee.

Considered by Vaitheswaran, P.J., Doyle, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VAITHESWARAN, P.J.

Mark Eckles appeals the revocation of his driver's license for operating a motor vehicle while intoxicated. He contends the district court should have allowed him to introduce additional evidence.

I. Background Facts and Proceedings

Early one morning, at approximately 1:50 a.m., Oskaloosa police officers responded to a complaint that a vehicle's headlights were pointed at a trailer home and it appeared the vehicle was attempting to ram into the side of the home. The officers went to an adjacent business, where a pickup truck was parked outside, and found Mark Eckles inside the business. Eckles told the officers he just returned from driving the truck. One of the officers asked Eckles if he would consent to field sobriety tests. Eckles declined, stating he had been drinking.

Eckles was arrested for operating a motor vehicle while intoxicated. He refused a breath test. As a result, the Iowa Department of Transportation (DOT) notified him that his driving privileges would be revoked for a period of two years. See Iowa Code § 321J.9(1)(b) (2007) (providing for a revocation of driving privileges for two years if the person has had a previous revocation).

Eckles requested a hearing before an administrative law judge. At the hearing, his wife testified that she dropped Eckles off at his business around 10:30 p.m., watched him park his truck in the driveway, and then went home. She admitted she did not know what happened at 1:50 the following morning.

The administrative law judge sustained the revocation, as did the DOT on an intra-agency review. Eckles petitioned for judicial review. He also filed two

motions for leave to present additional evidence. The first motion sought the admission of a neighbor's testimony, previously admitted at his criminal trial, indicating that Eckles parked his truck at approximately 10:00 p.m. the evening before he was arrested. The second motion sought the admission of similar testimony from the complainant's mother. The district court denied both motions and affirmed the DOT's revocation of Eckles's driving privileges.

On appeal, Eckles only challenges the district court's rulings on his requests to present additional evidence.

II. Analysis

Iowa Code section 17A.19(7) allows for the admission of additional evidence as follows:

Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court.

The district court honed in on the materiality element of this provision. In ruling on the first motion, the court stated:

In this instance the petitioner states . . . the additional witness would provide information about the time of the operation of the motor vehicle. In effect, it would indicate the motor vehicle was parked at some time before the time alleged. However, in this instance there was evidence of that, and it was appropriately weighed by the director.

In ruling on the second motion, the court stated:

[I]n any event, the evidence is cumulative of that evidence Eckles presented at the hearing; further, it is not material to the relevant

circumstances surrounding Eckles's actions in the early morning hours of July 1, 2008.

We discern no abuse of discretion in the district court's rulings. See *Zenor v. Iowa Dep't of Transp.*, 558 N.W.2d 427, 431 (Iowa Ct. App. 1996) (setting forth the standard of review as for an abuse of discretion). Eckles himself notes that the testimony would have simply corroborated evidence already in the record. Additionally, the proposed testimony fails to affirmatively establish that Eckles did not operate the truck around 1:50 a.m. As the district court stated in its ruling on Eckles's petition for judicial review:

All circumstantial evidence available to [the officer] at the scene of investigation, demonstrated that Eckles had just arrived home, having driven his truck in a way that generated a public complaint, and that he was intoxicated at the time of operation. Further, the totality of the evidence established that Eckles's operation of the vehicle had occurred shortly before the police arrived at his office/home and where he was observed in an intoxicated condition.

While Eckles presented testimony of two persons who testified about happenings several hours earlier—between 9:30 p.m. and 10:30 p.m. on June 30, 2008—that evidence is not probative of Eckles's actions, or his condition, at the time of the incident which triggered police response at about 1:50 a.m. July 1st.

For these reasons, we affirm.

AFFIRMED.