

**IN THE COURT OF APPEALS OF IOWA**

No. 3-778 / 13-0047  
Filed September 18, 2013

**ROBERT HUGH SINCLAIR,**  
Petitioner-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Monroe County, Daniel P. Wilson,  
Judge.

Petitioner appeals the decision of the district court affirming the decision of  
the Iowa Department of Transportation to revoke his driver's license.

**AFFIRMED.**

David R. Johnson of Brinton, Bordwell & Johnson, Clarion, for appellant.

Thomas J. Miller, Attorney General, and Michelle R. Linkvis, Assistant  
Attorney General, for appellee.

Considered by Vogel, P.J., Tabor, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**HUITINK, S.J.****I. Background Facts & Proceedings.**

The record includes evidence of the following. At about midnight on February 4, 2012, Officer Tyson Irwin of the Albia Police Department stopped a vehicle driven by fifteen-year-old Robert Sinclair.<sup>1</sup> Officer Irwin noticed Sinclair had an odor of alcoholic beverages, and he saw beer cans in the car. After field sobriety tests had been administered, Sinclair requested to call his father, Joseph Sinclair. Joseph spoke to Sinclair and Officer Irwin. A preliminary breath test was then administered, and Sinclair was detained for operating while intoxicated (OWI).

Officer Irwin transported Sinclair to the Monroe County Law Center. Sinclair and Officer Irwin talked to Joseph again, and Officer Irwin agreed to delay testing for as long as he could to give Joseph an opportunity to arrive at the law center.<sup>2</sup> At 1:49 a.m., Sinclair called his father again to tell him the officer needed to proceed with testing. Joseph stated he would not be able to arrive in time and to go ahead with the testing. The officer read Sinclair the implied consent advisory, and Sinclair stated he understood it. Sinclair's breath test showed his alcohol level was .102. The officer informed Sinclair his driver's license was revoked until his eighteenth birthday.

Sinclair challenged the revocation of his driver's license, claiming that under section 232.11 he had the right to be represented by counsel when he was

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<sup>1</sup> Sinclair had an Iowa instruction permit.

<sup>2</sup> Under Iowa Code section 321J.2A (2011), a chemical test administered within two hours after a defendant was driving is presumed to be the defendant's alcohol concentration at the time of driving.

in the custody of the officer. He asserted that because he was denied his right to counsel, the result of the breath test should be excluded. The case proceeded to an administrative hearing at which both Officer Irwin and Sinclair testified. The administrative law judge (ALJ) determined “the protections of section 232.11 extend only to a couple of specified classes of crimes. Administrative proceedings are not covered.” Sinclair appealed the decision of the ALJ. The Iowa Department of Transportation affirmed the decision of the ALJ. The Department found, “Section 232.11 does not impose a per se exclusionary rule to implied consent procedures.”

Sinclair filed a petition for review of the agency action. The district court determined although under section 232.11 the evidence of the test result would not have been admissible against Sinclair in a criminal proceeding, “the evidence was properly considered in his license revocation proceeding.” The district court affirmed the decision of the Department. Sinclair now appeals the revocation of his driver’s license.

## **II. Standard of Review.**

Judicial review of agency actions is governed by Iowa Code chapter 17A. *Watson v. Iowa Dep’t of Transp.*, 829 N.W.2d 566, 568 (Iowa 2013). Our review is for the correction of errors at law. *Id.* We will uphold the factual findings of the Department if, after considering the evidence as a whole, we determine the findings are supported by substantial evidence. *Id.*

## **III. Merits.**

Under section 232.11(1)(a), a child has a right to be represented by counsel, “[f]rom the time the child is taken into custody for any alleged delinquent

act that constitutes a serious or aggravated misdemeanor or felony under the Iowa criminal code, and during any questioning thereafter by a peace officer or probation officer.” A child under the age of sixteen may not waive this right, without the written consent of the child’s parent, guardian, or custodian. Iowa Code § 232.11(2). A child’s statements are admissible in subsequent criminal proceedings only if the statements “were made with the advice of the child’s counsel or after waiver of the child’s right to counsel and provided that the court finds the child had voluntarily waived the right to remain silent.” *Id.* § 232.45(11)(a). The Iowa Supreme Court has determined that in juvenile delinquency cases a statement from a child without a valid waiver under section 232.11(2) is per se inadmissible. *In re J.A.N.*, 346 N.W.2d 495, 498 (Iowa 1984).

Section 232.11(1) specifically applies to alleged delinquent acts that would constitute a serious or aggravated misdemeanor, or a felony under Iowa criminal law. Civil license revocation proceedings before the Iowa Department of Transportation are separate from criminal proceedings for operating while intoxicated. *State v. Taeger*, 781 N.W.2d 560, 564 (Iowa 2010). These two proceedings are independent of each other. *Id.* at 565-65.

In general, evidence may be introduced in a civil license revocation proceeding that would have been suppressed in a criminal proceeding. *Id.* at 565. There is an exception under section 321J.13(6) if a person can show that under a criminal action arising from the same acts there was a determination the peace officer did not have reasonable grounds to request a chemical test, or a chemical test was otherwise inadmissible or invalid. “Such a holding by the court in the criminal action is binding on the department, and the department shall

rescind the revocation.” Iowa Code § 321J.13(6)(c). “Section 321J.13(6), therefore, constitutes a mandatory exclusionary rule, which prevents the introduction of evidence in a civil license proceeding that has been suppressed in the parallel criminal proceeding.” *Taegeer*, 781 N.W.2d at 566.

Where a person has not been criminally prosecuted for OWI, section 321J.13(6) has not been triggered. *Id.* at 565; *see also Manders v. Iowa Dep’t of Transp.*, 454 N.W.2d 364, 366 (Iowa 1990) (noting the statutory exclusionary rule did not apply when there was no indication in the record of any adjudication in a criminal proceeding that would trigger the statutory exclusionary rule). “Nor is there any indication in the statute that the agency is to apply an exclusionary rule in deciding these cases initially.” *Manders*, 454 N.W.2d at 366-67.

In this case, there was no determination in a juvenile delinquency or criminal proceeding that the results of the chemical test were inadmissible. As the district court found, “Sinclair went through an informal probation process with a juvenile probation officer and the county attorney never filed a petition in juvenile court alleging a delinquent act.”

We conclude the district court did not err in affirming the decision of the Department. There were no juvenile delinquency or criminal proceedings arising from the same facts that are the basis for this license revocation proceeding. For this reason, the exclusionary rules found in sections 232.11, 232.45(11), and 321J.13(6) do not apply. The Department properly determined the officer’s failure to formally advise Sinclair of his right to an attorney did not bar the evidence of his chemical test result from being considered in the license

revocation proceedings. We affirm the decisions of the district court and the Iowa Department of Transportation.

**AFFIRMED.**