

IN THE SUPREME COURT OF THE STATE OF IDAHO

JASMINE REAGAN,)	
)	Case No. CV-47865-2020
Petitioner/Respondent,)	
)	APPELLANT'S BRIEF
vs.)	
)	
STATE OF IDAHO TRANSPORTATION)	
DEPARTMENT,)	
)	
Respondent/Appellant.)	
_____)	

BRIEF OF APPELLANT

JUDICIAL REVIEW FROM THE IDAHO DISTRICT COURT

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II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal by the Idaho Transportation Department (ITD). ITD requests this Court to reverse the decision of the district court and uphold the decision of the hearing officer who determined that the requirements of Idaho Code Section 18-8002A were met and that Jasmine Reagan's driving privileges should be suspended for one (1) year.

B. Course of Proceedings

Jasmine Reagan (Jasmine¹) was arrested on March 2, 2019 and issued a Notice of Suspension. *R. Vol. 1, p.43-44*. On or about March 6, 2019 Jasmine requested a hearing with ITD. The hearing was held on March 26, 2019 and Jasmine called witness Eric Blomdahl. *R. Vol. 1, pp.10-18*. Jasmine also testified. *R. Vol. 1, pp.18-21*. On April 5, 2019 the hearing officer issued his decision upholding the administrative license suspension and suspending Jasmine's driver's license for one year. On April 22, 2019 an appeal was filed. On April 24, 2019 the district court stayed the driver's license suspension pending the results of this appeal. On January 24, 2020, the district court issued its Memorandum and Order reserving the decision of the hearing officer.

C. Statement of Facts

On March 2, 2019, the Ponderay Police Department received a call from Tracy L. Dubay regarding a reckless driver who was driving down Schweitzer Road.² Witness Dubay reported the driver of a black Subaru, with Idaho license SHRED7B. Witness Dubay reported that the driver was all over the road almost driving into the ditch several times and driving into the oncoming

¹ Because the underlying briefs refer to driver Jasmine Reagan as "Jasmine" ITD will also refer to her as Jasmine.

² Tracy L. Dubay gave the police her name and contact information and told the police she was willing to sign a complaint and go to court. *Ag. Rec., page 13*

traffic lane several times. Ms. Dubay followed the vehicle to 210 Seven Sisters address in Kootenai, Idaho. *R. Vol. I. p. 47.*

A police investigation was begun by Corporal Deal who went to Jasmine's residence at 210 Seven Sisters, Kootenai Idaho. Corporal Deal saw the black Subaru with Idaho license plate SHRED7B. Corporal Deal first contacted Eric Blomdahl (Eric) who was outside the residence smoking a cigarette. Eric confirmed that Jasmine had been driving the black Subaru. Corporal Deal asked to speak with Jasmine. Eric went in the residence, and soon after Jasmine came outside and spoke to Officer Deal. *R. Vol. I. p. 47.*

Corporal Deal questioned Jasmine. She admitted to driving home from Schweitzer. Corporal Deal observed her speech was slurred and that she was swaying side to side. Her eyes were glassy and her memory was impaired. She also admitted to drinking prior to driving home. *R. Vol. I. p. 47.*

Based upon the information he had, Corporal Deal gave Jasmine field sobriety tests which she failed. *R. Vol. I. p. 47.* After failing the field sobriety tests, Jasmine was arrested. She was given a breath test which she also failed. Her breath test results were 0.188/0.198. *R. Vol. I. p. 47.*

III. ISSUES PRESENTED BY APPELLANT

- A. Was there legal cause to stop the driver?
- B. Was there legal cause to believe that the driver was driving under the influence of alcohol?

IV. STANDARD OF REVIEW

The administrative license suspension (ALS) statute, I.C. § 18-8002A, requires that the ITD suspend the driver's license of a driver who has failed a BAC test administered by a law enforcement officer. *Bennett v. State, Dept. of Transp., 147 Idaho 141, 206 P.3d 505 (Idaho App.*

2009). The period of suspension is ninety days for a driver's first failure of an evidentiary test and one year for any subsequent test failure within five years. I.C. § 18-8002A(4)(a). A person who has been notified of an ALS may request a hearing before a hearing officer designated by the ITD to contest the suspension. I.C. § 18-8002A(7). At the administrative hearing, the burden of proof rests upon the driver to prove any of the grounds to vacate the suspension. I.C. § 18-8002A(7); *Kane v. State, Dep't of Transp.*, 139 Idaho 586, 590, 83 P.3d 130, 134 (Ct.App.2003). The hearing officer must uphold the suspension unless he or she finds, by a preponderance of the evidence, that the driver has shown one of several grounds enumerated in I.C. § 18-8002A(7) for vacating the suspension. Those grounds include:

- (a) The peace officer did not have legal cause to stop the person; or
- (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
- (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
- (d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
- (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

I.C. § 18-8002A(7). The hearing officer's decision is subject to challenge through a petition for judicial review. I.C. § 18-8002A(8); *Kane*, 139 Idaho at 589, 83 P.3d at 133.

The Idaho Administrative Procedures Act (IDAPA) also governs the review of department decisions to deny, cancel, suspend, disqualify, revoke, or restrict a person's driver's license. *See* I.C. §§ 49-201, 49-330, 67-5201(2), 67-5270. ITD has adopted IDAPA rules for ALS suspensions. *See* IDAPA 39.02.72.00, et seq. ALS appeals are also governed by the Idaho

Rules of Administrative Procedure of the Attorney General. See IDAPA 39.02.72.003. IDAPA 04.11.01.052 provides for liberal construction of the rules and states:

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (7-1-93)

In *Bennett v. State Department of Transportation*, 147 Idaho 141, 206 P.3d 505 (Ct App 2009), the Court of Appeals restated the necessary standard of review for the Court reviewing the decision of the hearing officer. The Court of Appeals stated, in pertinent part:

This Court does not substitute its judgment for that of the agency as to the weight of the evidence presented. I.C. § 67-5279(1); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. This Court instead defers to the agency's findings of fact unless they are clearly erroneous. *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record. *Urrutia v. Blaine County, ex rel. Bd. of Comm'rs*, 134 Idaho 353, 357, 2 P.3d 738, 742 (2000); *Marshall*, 137 Idaho at 340, 48 P.3d at 669.

A court may overturn an agency's decision where its findings, inferences, conclusions, or decisions: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in I.C. § 67-5279(3) and that a substantial right of that party has been prejudiced. *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. If the agency's decision is not affirmed on appeal, "it shall be set aside . . . and remanded for further proceedings as necessary." I.C. § 67-5279(3).

Id., at 506-507. Therefore, the burden is on the petitioner to establish that ITD erred in a manner specified in Idaho Code Section 67-5279(3) and then establish that a substantial right has been

prejudiced. This issue was discussed by the Court of Appeal in *State of Idaho v. Kalani-Keegan*, 155 Idaho 297, 311 P.3d 309 (Ct. App. 2013) where the Court stated:

It is well established that the party challenging an agency decision must demonstrate the agency erred in a manner specified in I.C. § 67-5279(3) and that a substantial right of that party has been prejudiced. *Wheeler v. Idaho Dep't of Health & Welfare*, 147 Idaho 257, 260, 207 P.3d 988, 991 (2009).

Further, nothing in IDAPA requires the courts to address these two requirements in any particular order. *Hawkins v. Bonneville Cnty. Bd. of Comm'rs*, 151 Idaho 228, 232, 254 P.3d 1224, 1228 (2011). Therefore, an agency's decision may be affirmed solely on the grounds that the petitioner has not shown prejudice to a substantial right. *Id.* In other words, the courts may forego analyzing whether an agency erred in a manner specified by I.C. § 67-5279(3) if the petitioner does not show that a substantial right was violated. *Id.*

Id., at page 313.

V. ARGUMENT

In order for the hearing officer to vacate an automatic license suspension, the driver must show that the peace officer did not have legal cause to stop the person; or that the peace officer did not have legal cause to believe that the person have been driving a vehicle under in influence of alcohol. See Idaho Code section 18-8002A(7)(a) & (b). The hearing officer correctly determined that the driver did not meet her burden of proof and finding that the arrest was lawful and there was legal cause to believe that Jasmine was driving under the influence of alcohol.

The district court reversed the decision of the hearing officer. Specifically, the district found that the hearing officer's decision was arbitrary and capricious and not supported by substantial evidence.

1. Legal Cause to Stop the Person

The Hearing Officer's Findings. The Hearing Officer reviewed the record which included videotapes from the officer's vehicle and body camera and testimony of the witnesses. The

hearing officer found that the investigation conducted by Corporal Deal was minimal and necessary in light of the circumstances. He wrote:

32. With respect to *US v. Santana*, Corporal Deal certainly had the right to arrest Reagan without a warrant based on Reagan's consensual contact made outside the residence and in public place.

33. Based on Corporal Deal's knowledge of the situation and his personal observations of Reagan after she had initially exited her residence, the intrusion of Reagan's privacy was a diminished one.

34. The actions of Corporal Deal were minimal and necessary to effectuate the arrest.

35. Based on Reagan committing law violations, Corporal Deal possessed reasonable articulable suspicion, and sufficient legal cause to seize Reagan, and ultimately arrest her.

36. In conclusion, Corporal Deal possessed legal cause, reasonable suspicion, and the authority for Reagan's lawful arrest outside the residence, thus the arrest warrant was not required.

37. I.C. §18-8002A(7) sets forth in part that the sworn statement of the arresting officer shall be admissible at the hearing without further evidentiary foundation.

R., Vol. 1, p.81.

The findings of the hearing officer are supported by substantial and competent evidence. Further, the findings of the Hearing Officer were binding on the District Court *unless* (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). None of these elements were present in this case therefore the findings of fact were binding on the district court..

Right to Investigate and Idaho Law. The district court questioned the hearing officer's decision including Corporal Deal's reliance on the dispatcher's report of a reckless driver. However, hearing officer's citation to the officer's investigation was not arbitrary or capricious.

Generally, the Fourth Amendment of the US Constitution requires that probable cause exist before a person is arrested by the police. However, there are judicially created exceptions to the probable cause requirement which permit law enforcement officers to investigate for criminal behavior.

In *Wilson v. Idaho Dept. Transp.*, 136 Idaho 270, 32 P.3d 164 (Ct App. 2001), the case involved a motion to suppress and an ALS proceeding. An officer received a report of a possible drunk driver. The officer located the suspected vehicle and, although it did not commit any traffic violations, stopped the vehicle. The court stated:

Articulable facts supporting reasonable suspicion, while usually grounded in an officer's personal perceptions and inferences may, in appropriate circumstances, be based upon external information such as an informant's tip conveyed through police dispatch. See *State v. Carr*, 123 Idaho 127, 130, 844 P.2d 1377, 1380 (Ct.App.1992) (collective knowledge of police officers involved in the investigation--including dispatch personnel--may support a finding of probable cause); *State v. Cooper*, 119 Idaho 654, 659, 809 P.2d 515, 520 (Ct.App.1991) (in calculus of probable cause, a deputy could rely in part upon an emergency medical technician's statement conveyed by police dispatcher that a driver, being treated after a collision, appeared intoxicated). An officer receiving a radio dispatch may be expected to take the message at face value and act upon it. See *United States v. Hensley*, 469 U.S. 221, 232, 105 S.Ct. 675, 682, 83 L.Ed.2d 604, 614 (1985); [32 P.3d 170] *Sevy*, 129 Idaho at 615, 930 P.2d at 1360. Whether the officer had the requisite reasonable suspicion to detain a citizen is determined on the basis of the totality of the circumstances, i.e., the collective knowledge of all those officers and dispatchers involved. *State v. Harris*, 130 Idaho 444, 446, 942 P.2d 568, 570 (Ct.App.1997).

Id., 32 P.3d 170-1. The Court of Appeals also held, that for similar reasons, the state had established reasonable suspicion or legal cause for the stop in the administrative license proceeding.

The facts in this record establish that Corporal Deal received a dispatch about a vehicle that was driving all over the road. Jasmine's vehicle matched the reported vehicle. "An officer receiving a radio dispatch may be expected to take the message at face value and act upon it." *Wilson v. Idaho Transportation Dept.*, 136 Idaho 270, 275-76, 32 P.3d 164, 169-70 (Ct. App. 2001). Thus the record supports a legal basis for Corporal Deal to, at least, approach Jasmine and her vehicle and investigate.

The Sworn Statement Was Admissible. The district court also questioned whether the hearing officer should rely on the sworn statement of Corporal Deal without further evidentiary foundation. This holding by the district court is not supported by Idaho law.

In this case, Corporal Deal submitted a sworn statement which was entitled "Probable Cause Affidavit in Support of Arrest." *R., Vol 1, pages 47-52.* The document was signed by Corporal Deal on March 9, 2019 and was part of the documents submitted to the hearing officer.

Id. Idaho Code Section 18-8002A(7) provides, in pertinent part as follows:

The sworn statement of the arresting officer, and the copy of the notice of suspension and the notice of the requirement to install the ignition interlock system issued by the officer **shall be admissible** at the hearing without further evidentiary foundation. [emphasis added].

Idaho Code Section 67-5251(1) also discusses evidence in administrative proceedings and provides:

The presiding officer may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.³

In addition, submitted exhibits are deemed admitted unless there is a timely objection before the close of proceedings. In pertinent part, IDAPA .04.11.01.606 states:

Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party.

In the case at hand, there was nothing in the record which indicated that Jasmine objected to the Corporal's sworn statement before the close of the proceedings. Therefore, it was not

³ Assuming for the sake of argument that the Clarke decision renders the evidence in the sworn statement not admissible, Clarke had not been decided at the time of the hearing officer's decision.

arbitrary, capricious and/or an abuse of discretion for the hearing officer to rely on Idaho law and the sworn statement of Corporal Deal.

Right to Arrest. Once Jasmine failed the field sobriety tests, Corporal Deal had the authority to arrest Jasmine and perform evidentiary testing. Idaho Code Section 49-1405 provides in pertinent part as follows:

§ 49-1405. ARRESTS FOR SERIOUS OFFENSES

(1) The authority to make an arrest is the same as upon an arrest for a felony when any person is charged with any of the following offenses:

* * *

(b) Driving, or being in actual physical control, of a vehicle or operating a vessel while under the influence of alcohol or other intoxicating beverage.

* * *

(f) Reckless driving.

Therefore, after Jasmine failed the field sobriety tests given by Corporal Deal, she was lawfully arrested.

Clarke Is Distinguishable. To support the argument that arrest was unlawful, district court cited *State v. Clarke*, 165 Idaho 393,446 P.3d 451 (2019), which was issued by the Idaho Supreme Court on June 12, 2019. *Clarke* involved a battery/drug possession case, in which a witness reported a battery to the police by defendant Clarke. The witness told the police that Clarke had grabbed her “butt” without her consent. As short time later, the officer located Clarke. Clarke admitted talking to the witness and grabbing her butt but maintained the touching was consensual. Based upon the witness’ complaint and Clark’s confirmation of the touching, the officer arrested Clarke for misdemeanor battery. In a search incident to the arrest, various drugs were found in Clarke’s possession.

The State argued that the warrantless arrest of Clarke was supported by Idaho Code Section 19-603(6). The State’s position was that although the language in section 19-603(6) has

been amended several times, but each modification has kept the original intent that when there is probable cause to believe certain misdemeanors have been committed outside the presence of an officer, a warrantless arrest is nevertheless lawful. The State's argument was rejected by the Court. After a review of the law at the time of the enactment of the Idaho Constitution, the Idaho Supreme Court concluded:

In light of the foregoing, based upon the state of the common law in 1889, we conclude that the framers of the Idaho Constitution understood that Article I, section 17 prohibited warrantless arrests for **completed misdemeanors**. [emphasis added].

Id., 446 P.3d at 457.

The facts and holding in *Clarke* are distinguishable from this case. In *Clarke*, the battery allegations were based on the victim's complaint to the officer. The officer had no independent knowledge that a battery had been committed. The Idaho Supreme Court noted that *Clarke* involved a "completed misdemeanor" which was no longer in progress when the officer arrived on the scene and took the report. All the elements of the crime of battery were committed outside the presence of law enforcement.⁴

The ALS statute, I.C. § 18-8002A, requires that the ITD suspend the driver's license of a driver who has failed a blood alcohol concentration test administered by a law enforcement officer. Here, the ALS matter was not complete when the officer arrived at Jasmine's house. Idaho Code Section 18-8002A(2) states that one of the elements of an ALS proceeding is that the driver has failed evidentiary testing.⁵ Jasmine was not subject to an Administrative License Suspension until she failed the evidentiary testing given to her in by Corporal Deal.. There were no grounds for an Administrative License Suspension until Jasmine failed the evidentiary testing.

⁴ See ICJI 1203 Battery Defined and ICJI 1204 Battery.

⁵ ICJI 1000 for Driving Under the Influence requires proof of a six (6) separate elements. The sixth element is proof that the driver was under the influence of alcohol and/or had failed an evidentiary test for drugs or alcohol.

and the grounds for the Administrative License Suspension occurred in the presence of the law enforcement officer.

2. Legal Cause to Believe Jasmine was Driving Under the Influence

The Hearing Officer's Findings. The Hearing Officer, after a review of the evidence and the law, found that there was reasonable cause to believe that Reagan was operating a vehicle under the influence of alcohol. The Hearing Officer stated:

10. In this case, Reagan admitted to Cpl. Deal of driving and being in actual physical control of the motor vehicle.
11. Reagan displayed multiple signs of intoxication/impairment and failed all standardized field sobriety tests.
12. Consequently, Reagan submitted to evidentiary testing for determination of her alcohol concentration.
13. The documentary record setting forth the facts as shown above is clear and undisputed that Corporal Deal detained Reagan on suspicion of driving under the influence of alcohol, she was in the custody of police, and she was requested to submit to an evidentiary test to determine if any crime had been committed.
14. For purposes of a civil Administrative License Suspension proceeding and based on the definitions as set forth by statute and law, the Probable Cause Declaration properly sets forth that Reagan was lawfully arrested.
15. Reagan's argument fails.
16. Corporal Deal possessed legal cause for Reagan's lawful arrest, legal cause to believe Reagan was driving while under the influence of alcohol in violation of Idaho Code §18-8004, and legal cause to request Reagan submit to evidentiary testing.

R., Vol. I, pages 83-84. However, the district court held that the findings were not supported by substantial evidence in the record and that the findings of the hearing officer were arbitrary and capricious and an abuse of discretion. The district court cited the *Clarke* decision.⁶

In *State v. Martinez-Gonzales*, 152 Idaho 775, 275 P.3d 1 (Ct. App. 2012), the Court of Appeals discussed various Idaho cases considering factors that related to reasonable suspicion that a driver was driving under the influence. These factors give rise to law enforcement

⁶ The reasoning of the district court on this issue is similar to the reasoning on the issue of "legal cause to stop". The opposition of ITD to those arguments have been stated herein and will not be restated here.


requesting drivers to perform field sobriety tests. Several of the factors, such as the smell of alcohol on the driver's breath, the driver's admission to drinking and glassy/bloodshot eyes created reasonable suspicion in this case.

Therefore, Corporal Deal had reasonable suspicion to believe Jasmine was driving under the influence of alcohol and thus had legal cause to request evidentiary tests.

VI. CONCLUSION

ITD respectfully requests that this Court uphold the decision of the hearing officer and vacate the decision of the district court.

DATED this 22 day of July 2020



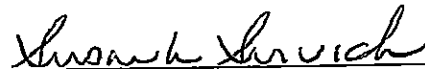
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 of July 2020, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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