

8-8-2011

Hansen v. State, Dept. of Transp. Appellant's Brief Dckt. 38435

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"Hansen v. State, Dept. of Transp. Appellant's Brief Dckt. 38435" (2011). *Not Reported*. 153.
https://digitalcommons.law.uidaho.edu/not_reported/153

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Supreme Court Case Number : 38435-2011

Bonneville County District Court Case Number CV-2010-861

IN THE MATTER OF THE DRIVER'S LICENSE SUSPENSION OF GREGORY
LAMONTE HANSEN,

GREGORY LAMONTE HANSEN

PLAINTIFF--APPELLANT

vs.

STATE OF IDAHO TRANSPORTATION DEPARTMENT,

DEFENDANTS--RESPONDENTS

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for Bonneville
County

Hon. Jon J. Shindurling, District Judge, Presiding

APPELLANT'S INITIAL BRIEF

Larren K. Covert
Swafford Law, P.C.
525 9th St
Idaho Falls, ID 83404
Attorneys for the Appellant

Alan Harrison
Harrison Law
497 N. Capital Ave. Ste. 210
Idaho Falls, ID 83402
Attorney for Respondent

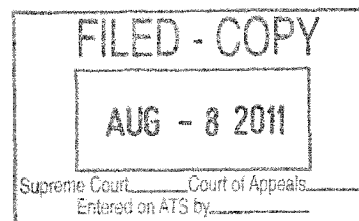


TABLE OF CONTENTS

<u>TITLE</u>	<u>PAGE</u>
STATEMENT OF THE CASE -----	4
Procedural History -----	4
Statement of the Facts -----	5
Issues Presented on Appeal -----	7
ARGUMENT -----	8
Standard of Review -----	8
Legal Standard -----	9
Authority for the Stop -----	10
CONCLUSION -----	11

TABLE OF CASES AND AUTHORITIES

TABLE OF CASES AND AUTHORITIES

<u>TITLE</u>	<u>PAGE(S)</u>
<i>Castaneda v. Brighton Corp.</i> 130 Idaho 923, 926; 950 P.2d 1262, 1265 (1998)-----	8
Idaho Code § 18-8002A(7)-----	9
Idaho Code § 19-705 -----	5
Idaho Code § 19-705 -----	9
Idaho Code § 49-1405(1)(b)-----	6, 7
Idaho Code § 49-1405(1)(b)-----	9, 11, 12
Idaho Code § 49-201 -----	8
Idaho Code § 49-330 -----	8
Idaho Code § 62-5279(3) -----	9
Idaho Code § 67-2337-----	9, 11, 12
Idaho Code § 67-2337(2)-----	9
Idaho Code § 67-2337(2)(a)-(c) -----	5, 6, 7
Idaho Code § 67-5201(2)-----	8
Idaho Code § 67-5270-----	8
Idaho Code § 67-5279(1)-----	8
<i>Marshall v. Idaho Dep't of Transp.</i> , 137 Idaho 337, 340; 48 P.3d 666, 669 (Ct.App.2002)-----	8, 9
<i>Price v. Payette County Bd. Of County Comm'rs.</i> 131 Idaho 426, 429; 958 P.2d 582, 586 (1998)-----	9

State v. Atkinson
128 Idaho 559, 560; 916 P.2d 1284, 1286 (Ct. App. 1996) ----- 10

State v. Flowers
131 Idaho 205, 208; 953 P.2d 645, 648 (Idaho App. 1998) ----- 10

State v. Scott
150 Idaho 123, 124; 244 P.3d. 22, 623, (Idaho App. 2010) ----- 8

United States v. Cortez
449 U.S. 411, 417; 101 S. Ct. 690, 694-95; 66 L. Ed.2d 621 (1981)----- 10

Urrutia v. Blaine County, ex rel. Bd. Of Comm's.
134 Idaho 353, 357; 2 P.3d 738, 742 (2000)----- 8

STATEMENT OF THE CASE

This case is an appeal of the District Court's order sustaining the license suspension of Gregory Hansen, the Appellant.

PROCEDURAL HISTORY

Mr. Hansen was issued a Notice of Suspension on November 21, 2009. R. p. 012. Mr. Hansen requested an Administrative Hearing for the license suspension on November 23, 2009. R. p. 021. The hearing was conducted on January 14, 2010 by Dustin Jansen, hearing officer. R. p. 051. The hearing officer issued a Findings of Fact and Conclusions of Law and Order on January 14, 2010 and served it on Mr. Hansen on January 19, 2010. R. p. 060. This document sustained the license suspension.

Mr. Hansen timely filed a Petition for Judicial Review on February 11, 2010. R. p. 061-063. On August 23, 2010, this matter came before the District Court for oral argument on appeal. R. p. 138. At the oral argument, the District Court believed that an agreement existed between the city and county allowing for city officers to act in the county. Tr. p. 9 L. 16 – p. 10 L. 1. Counsel for Mr. Hansen and the agency informed the court via letter that no policy or agreement existed between the city and county allowing city officers to perform duties in the county, and therefore, no additional information would be gained from the remand. R. p. 138.

The District Court took the appeal under advisement without additional argument from counsel and issued its Opinion, Decision, and Order on Appeal ("Order") on December 1, 2010, sustaining the findings of the hearing officer and suspending Mr. Hansen's license. R. p. 137-142.

On December 22, 2010, Mr. Hansen filed a Notice of Appeal of the District Court's Order. R. p. 143-146.

STATEMENT OF THE FACTS

On November 21, 2009, Officer Smith of the Idaho Falls Police Department was "driving north bound on 5th E." R. p. 35. Officer Smith noticed a truck in front of him speeding and almost driving into a ditch. *Id.* Officer Smith "initiated a stop on the vehicle and after about 500 yards it started to pull into a long drive way, which turned out to be 6992 N. 5th E." *Id.* Officer Smith then called for Bonneville County units to assist "as I was now in the County." *Id.*

Officer Smith would have Mr. Hansen exit his vehicle and conducted field sobriety tests. *Id.* Officer Smith arrested Mr. Hansen and transported him to the county jail. *Id.* Officer Smith read the ALS form and conducted the breath test. *Id.*

At the administrative hearing, several maps were introduced into evidence as Exhibits A, B, C, and D. R. p. 028-031. These maps indicate the city limits of Idaho Falls, roads in the area of the stop and the location of the stop. Robert LaPier was called to testify at the hearing as an expert witness. R. p. 103-107. Mr. LaPier's uncontroverted testimony was that the stop of the vehicle occurred 2.4 miles outside the jurisdictional limits of the city of Idaho Falls and, based on the information from Officer Smith's report, was **initiated** 2.3 miles outside the jurisdictional limits of the city. *Id.* (emphasis added)

The hearing officer was provided with and directed to I.C. §§ 19-705 and 67-2337(2)(a)-(c). These code sections outline "fresh pursuit" law and when a peace officer may act outside his jurisdiction. Argument was made at the hearing that none of the exceptions to jurisdictional limitations was a factor in Officer Smith's stop of Mr. Hansen. R. p. 101-103.

In sustaining the license suspension, the hearing officer necessarily addressed the jurisdictional issues raised in the hearing. In resolving the jurisdictional question, the hearing officer references Officer Smith's report which states "I was now in the County" and then notes, "this statement infers that the probable cause for the stop began before entering the county." R. p. 054. The hearing officer notes that the stop occurred outside the city limits, but that Petitioner "does not show that Officer Smith was acting outside of his jurisdiction or authorization." *Id.*

The District Court in its Order on appeal does not address the location of the stop or where the stop initiated. Rather, the District Court focused on I.C. § 67-2337 and I.C. § 49-1405(1)(b). R. p. 139-140. The District Court concluded that under these code sections, "Officer Smith's stop and subsequent arrest were appropriate exercises of extraterritorial authority." R. p. 141.

ISSUES PRESENTED ON APPEAL

1. Did the district court error in finding that Officer Smith had authority to initiate the stop of Mr. Hansen outside his jurisdictional boundaries based on I.C. §§ 67-2337 and 49-1405(1)(b)'s allowance for an extraterritorial stop based on the officer's stated observations of speeding and driving off the road?

ARGUMENT

STANDARD OF REVIEW

The Idaho Administrative Procedures Act (IDAPA) 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. In a petition for judicial review, the district court acts in its appellate capacity under IDAPA. The Court reviews the agency record independently of the hearing officer's decision. *Marshall v. Idaho Dep't of Transp.*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct.App.2002). The 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. The 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's*, 134 Idaho 353, 357, 2 P.3d 738, 742 (2000); *Marshall*, 137 Idaho at 340, 48 P.3d at 669.

On review of a decision by the district court, rendered in its appellate capacity, this Court examines the decision of the district Court directly. *State v. Scott*, 150 Idaho 123, 124, 244 P.3d 622, 623, (Idaho App. 2010). Over questions of law, this Court exercises free review. *Id.*

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).

LEGAL STANDARD

In conducting an administrative hearing on a license suspension, "The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

(a) The peace officer did not have legal cause to stop the person." *I.C. 18-8002A(7)*. Peace officers can only perform their duties within the jurisdictional limitations of their office. *I.C. § 67-2337*. A peace officer can exercise their authority outside their jurisdictional limitations **only** when one of the following conditions exist:

- (a) A request for law enforcement assistance is made by a law enforcement agency of said jurisdiction.
- (b) The peace officer possesses probable cause to believe a crime is occurring involving a felony or an immediate threat of serious bodily injury or death to any person.
- (c) When a peace officer is in fresh pursuit as defined in and pursuant to chapter 7, title 19, Idaho Code. *I.C. §67-2337(2)*

I.C. §19-705 states:

The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh

pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

I.C. §49-1405(1)(b) states:

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.

AUTHORITY FOR THE STOP

The district court stated that Officer Smith had authority to make the stop of Mr. Hansen based on his “suspicion of drunk driving.” R. p. 137. This suspicion is not voiced by Officer Smith in any documents before the hearing officer or district court. The probable cause for stopping Mr. Hansen was only speeding and almost driving into a ditch. R. p. 035. These actions are infractions and do not amount to a reasonable suspicion of driving under the influence.

A traffic stop by a police officer constitutes a seizure of the vehicle's occupants which implicates the Fourth Amendment's prohibition against unreasonable searches and seizures, applied to the states by the Fourteenth Amendment. *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648, (Idaho App. 1998); *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App.1996). The stop must be supported by a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws or that either the vehicle or the occupant is subject to detention in connection with a violation of other laws. *Id.*; *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 694–95, 66 L.Ed.2d 621 (1981); The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *Id.*

In this case, Officer Smith did not have any information that could give a reasonable suspicion of driving under the influence until after the stop of the vehicle. Officer Smith did not state that he stopped the vehicle for a suspicion of driving under the influence. The district court improperly imputed the suspicion of driving under the influence based on the officer's after acquired information of the smell of alcohol coming from the cab of the truck.

Without a reasonable basis for the officer to believe that Mr. Hansen was driving under the influence at the time of the stop, the additional authority granted by I.C. §§ 67-2337 and 49-1405(1)(b) are not implicated. The district court issued its Order based on this improper application of the law.

CONCLUSION

The district court improperly applied the law to the facts before the court and the hearing officer. This matter should be remanded with the instructions that Officer Smith was not acting within I.C. §§ 67-2337 and 49-1405(1)(b) based on the information and facts before the court.

Dated this 8th day of August 2011.

SWAFFORD LAW, P.C.

A handwritten signature in black ink, appearing to read 'Larren K. Covert', is written over a horizontal line.

LARREN K. COVERT, ESQ.
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 8, 2011, I caused a true and correct copy of the foregoing brief in the format required to be served upon the State of Idaho Transportation Department, by method indicated below.

Alan R. Harrison
Special Deputy Prosecuting Attorney
497 N. Capital Ave, Suite 210
Idaho Falls, ID 83402

- MAILING
- FAXING (208-552-1176)
- HAND DELIVERY
- COURTHOUSE BOX

DATED this 8th day of August, 2011.

SWAFFORD LAW P.C.



LARREN K. COVERT, ESQ.
Attorneys for Appellant