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

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Supreme Court No. 38435-2011

GREGORY LAMONTE HANSEN,

Plaintiff/Appellant.

v.

IDAHO DEPARTMENT OF TRANSPORTATION,

Defendants/Respondents.

RESPONDENT'S BRIEF

Appeal from the District Court of the Seventh Judicial District for Bonneville County.

Honorable Jon J. Shindurling, District Judge, Presiding.

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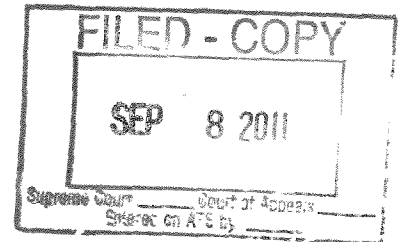


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I. STATEMENT OF THE CASE

a. Nature of the Case.

This is the Respondent's brief filed by the Idaho Department of Transportation (hereinafter "IDOT"). This is in response to an appeal filed by Gregory Lamonte Hansen (hereinafter "Mr. Hansen") in which the District Court upheld the suspension of his driver's license.

b. Factual Statement and Procedural History.

On November 21, 2009, Officer Brian Smith was driving north bound on 5th E when he noticed a truck in front of him speeding and almost drive into the ditch twice, so he initiated a stop. *R*, p. 15. Petitioner, Gregory L. Hansen, pulled in a driveway at 6992 N 5th E. *Id.* Officer Smith indicated in his report that "I then called for Bonneville County units to assist me as I was now in the County." *Id.* After investigation, Petitioner was arrested in Bonneville County. *Id.* He was taken to the police station and failed evidentiary testing. *Id.*

Petitioner requested an administrative hearing on November 23, 2009, which included a request for a subpoena to be issued for the arresting officer. *R*, pp. 21-22. The hearing was initially set for December 16, 2009 *R*, p. 42. Petitioner requested the hearing be continued because he had not received requested discovery in its entirety. *R*, p. 46. The hearing was continued until January 14, 2010. *R*, p. 48. A subpoena was issued for the officer to attend each hearing. *R*, pp. 26, 27.

The hearing was held on January 14, 2010, in which the Petitioner's only witness was Robert LaPier. *R*, p. 52. Mr. LaPier testified the point of the stop was 2.3 miles out of the city limits,

therefore Officer Smith was out of his jurisdiction in making the stop. *Id.* The hearing officer determined that since Officer Smith’s report indicated he “called for Bonneville County units to assist me as I was now in the County,” the stop began before entering the county. *R, p. 54.* The hearing officer determined, Petitioner had shown the stop was made outside the city limits, but does not show Officer Smith was acting out of his jurisdiction. *Id.* Therefore, Officer Smith had legal cause for the stop and the license suspension was upheld. *Id.*

Petitioner timely appealed from the hearing officer’s decision to the District Court. *Id. at 61-63.* The District Judge upheld the hearing officer’s decision. *R, p. 137-142.* Mr. Hansen filed a timely Notice of Appeal on. *R, p. 143.*

II. ISSUES ON APPEAL

Did the district court correctly decide the Officer had probable cause to stop and arrest Mr. Hansen based upon his observations?

III. STANDARD OF REVIEW

The Idaho Court of Appeals has set forth the standard of review when reviewing a case from the District Court.

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 an appeal from the decision of the district court acting in its appellate capacity under IDAPA, this Court reviews the agency record independently of the district court's decision. *Marshall v. Idaho Dep't of Transp.*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct. App. 2002). 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's*, 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).

Archer v. State, Dep't of Transp., 145 Idaho 617, 181 P.3d 543, 545 (Ct.App. 2008).

IV. ARGUMENT

The District Court determined "Officer Smith's stop and subsequent arrest were appropriate exercises of extraterritorial authority." *R*, p. 141. Mr. Hansen argues Officer Smith must have reasonable cause to believe Mr. Hansen was driving under the influence in order to make the initial stop. *Appellant's Initial Brief*, p. 11. Mr. Hansen was pulled over for speeding and almost driving into a ditch. Mr. Hansen's does not argue these are not violations of the law, he just argues they are merely infractions and do not amount to reasonable suspicion of driving under the influence. *Id.* at p. 10.

In *Matter of Griffiths*, 113 Idaho 364, 368, 744 P.2d 92, 97 (1987), the Defendant made the argument the police officers did not have probable cause to stop him. The officers had observed Griffiths speeding (approximately 70 mph in a 45 mph zone), "cross the fog line twice

and the yellow line once while driving on straight highway.” *Griffiths*, 113 Idaho at 365, 744 P.2d at 93. The *Griffiths* Court held Defendant’s “contention merits little discussion. It is clear that exceeding the speed limit and repeatedly failing to stay within one’s traffic lane furnishes probable cause to stop a motor vehicle.” *Griffiths*, 113 Idaho at 368, 744 P.2d at 96. There was no discussion about whether the officers had reasonable suspicion that Griffiths was driving under the influence when they made the initial stop. The *Griffiths* Court focused on whether there was probable cause for a stop, which was clearly present as a result of the speeding and failing to stay in one’s lane. Similar to Griffiths, Mr. Hansen was pulled over for speeding and going out of his lane (almost going into a ditch), which provided probable cause for Officer Smith to make stop Mr. Hansen.

In *Griffiths*, once the stop was made, the officers noticed bloodshot eyes, erratic speech, and a strong odor of alcohol. *Griffiths*, 113 Idaho at 365-66, 744 P.2d at 93-94. The officer who ended up arresting Griffiths was told that Griffiths was pulled over for speeding and failing to stay in his lane. *Griffiths*, 113 Idaho at 366, 744 P.2d at 94. The arresting officer also smelled an odor of beer on Griffiths breath and observed “very glassy” eyes. *Id.* The arresting officer also performed field sobriety tests, which Griffiths failed. *Id.*

Similar to the *Griffiths* case, after Mr. Hansen had been pulled over, Officer Smith smelled alcoholic beverage coming from the cab of the truck, and observed his eyes were glossy and bloodshot. *R*, p. 35. Mr. Hansen failed field sobriety tests. *Id.*

The *Griffiths* Court rejected the argument that the officer was without section 67-2337 authority by stating:

This argument fails, though, because driving under the influence of alcohol is treated as a felony for purposes of arrest. I.C. § 49-1109(a)(2)¹. Thus, [the officer] could have arrested defendant though the offense was not committed in his presence.

Griffiths, 113 Idaho at 369, 744 P.2d at 97.

Similar to the *Griffiths* Court, the District Court held Officer Smith had the authority to arrest based upon all of his observations of Mr. Hansen.

An officer must have probable cause to make an arrest for a felony before doing so. The officer does not have to believe the individual committed a felony when making the stop, as argued by Mr. Hansen. This would prevent officers from arresting individuals on felony possession of drugs after the officer pulled him/her over for speeding or a broken tail light. Once the officer had probable cause to stop Mr. Hansen (speeding and almost going into the ditch) and the further observations evidencing Mr. Hansen was driving under the influence (odor of alcohol, bloodshot eyes, and failure of the field sobriety tests), Officer Smith now had probable cause to make the arrest for driving under the influence. As noted by the *Griffiths* Court and the District Court, driving under the influence is treated as a felony for purposes of arrest. *I.C. §49-1505(1)(b)*. Therefore, Officer Smith had authority to make an arrest outside his jurisdiction, since he possessed probable cause to believe a crime occurred involving a felony or as in this case the crime of driving under the influence which is treated as a felony for purposes of arrest. *See I.C. §67-2337(2)(b) and I.C. §49-1505(1)(b)*. The District Court did not error in upholding

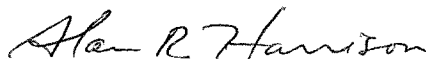
¹ The current statute is I.C. §49-1405(1)(b) which states:
Arrests for serious offenses. (1) The authority to make an arrest is the same as upon an arrest for a felony when any person is charged with any of the following offenses:
(b) Driving, or being in actual physical control, of a vehicle or operating a vessel while under the influence of alcohol or other intoxicating beverage.

the hearing officer's decision that Officer Smith could arrest Mr. Hansen for driving under the influence.

V. CONCLUSION

Mr. Hansen has not met his burden to show by a preponderance of the evidence that Officer Smith did not have legal cause to make the stop or to continue the investigation. Officer Smith had legal cause to make the stop of Mr. Hansen's vehicle. His further observations gave him probable cause to make the arrest for driving under the influence, which could be done outside his jurisdiction since this crime is treated as a felony for purposes of arrest. The decisions of the District Court and the hearing officer should be upheld.


DATED this 6th day of September, 2011.


Alan R. Harrison
Special Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 6th day of September, 2011, caused two (2) true and correct copies of the attached RESPONDENT'S BRIEF by personal delivery, to the following parties:

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