

11-16-2011

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

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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

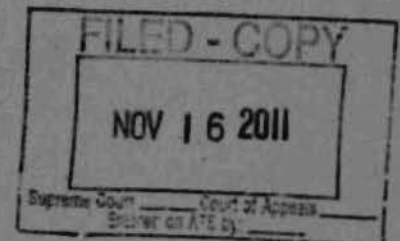
Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for Bonneville
County

Hon. Jon J. Shindurling, District Judge, Presiding

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

<u>TITLE</u>	<u>PAGE</u>
ARGUMENT -----	3
IDOT's Claims -----	3
Extraterritorial Authority -----	3
CONCLUSION -----	5

TABLE OF CASES AND AUTHORITIES

<u>TITLE</u>	<u>PAGE(S)</u>
Idaho Code § 49-1109(a)(2)-----	4
<i>In the Matter of Griffiths,</i> 113 Idaho 364, 744 P.2d 92 (Idaho 1987) -----	3,4

ARGUMENT

IDOT'S CLAIMS

In its responding brief, IDOT claims that Officer Smith had authority to initiate the stop of the vehicle as a proper exercise of extraterritorial authority. IDOT relies solely on the case of *In the Matter of Griffiths*, 113 Idaho 364, 744 P.2d 92 (Idaho 1987). As shown below, the reliance on *Griffiths* is misplaced and factually inconsistent with the facts of this case.

EXTRATERRITORIAL AUTHORITY

It is initially important to note that based on both the determination of the District Court and the briefing and arguments made by the IDOT, it is admitted that the stop by Officer Smith was initiated outside his territorial authority. This is contrary to the initial findings by the hearing officer in this matter, but consistent with the facts and evidence in the record.

In its responding brief, IDOT relies on the *Griffiths* case to support the argument that Officer Smith's initiating a stop of Mr. Hansen was proper. The main difference in the *Griffiths* case is the initial stop was made by officers who were acting within their territorial authority.

In *Griffiths*, the initial stop of Griffiths was made by "two Indian police officers" who "noticed a green vehicle traveling at an excessive rate of speed on the Fort Hall Indian Reservation." *Id.* at 365, 93. These officers "clocked it doing approximately 70 mph in a 45 mph zone" and "observed the vehicle cross the fog line twice and the yellow center line once while driving on straight highway." *Id.*

The Court was correct in stating that there was nothing to discuss in the validity of this stop. It is without question that the Indian Police Officers has the authority to make a traffic stop within the Fort Hall Indian Reservation. They were clearly acting within their jurisdiction.

The Court in that case later indicated that it was proper for the Chubbuck city officers to arrest Mr. Griffiths as DUI is treated as a felony under I.C. § 49-1109(a)(2). *Id.* at 369, 97.

In the *Griffiths* case, there were two separate and distinct actions taken by two separate and distinct law enforcement agencies. IDOT attempts to combine the reasoning of each separate action to justify the actions in this case. With Mr. Hansen, there was only one law enforcement agency initially involved in the stop, the Idaho Falls City Police.

Officer Smith was not within his jurisdiction when he initiated a stop on Mr. Hansen. The only articulated basis for the stop was speeding and almost driving into a ditch. R. p. 035. These are only infractions. There is no provision in Idaho Code that allows an officer to initiate a stop of a vehicle outside his jurisdiction for infractions without approval from the jurisdiction in which he would be acting. This authority was never given to Officer Smith. Therefore, he was not within his authority to make the initial stop of the vehicle.

In *Griffiths*, the initial stop was made by officers acting with probable cause within their jurisdiction. This allows the officers to continue the investigation of Mr. Griffiths. After performing field sobriety tests on Mr. Griffiths, the officers concluded that probable cause existed to arrest Mr. Griffiths for DUI. Therefore, when the Chubbuck City Officer arrived, the probable cause for the DUI, which is treated like a felony, was already in place. Once on the scene, the Chubbuck City Officer again conducted the field sobriety tests before arresting Mr. Griffiths for DUI.

While the driving actions of Mr. Hansen may have provided law enforcement with probable cause to make a traffic stop on the infractions, it does not amount to probable cause for

a felony stop or DUI. Without this additional probable cause, an officer cannot initiate the stop outside his jurisdiction.

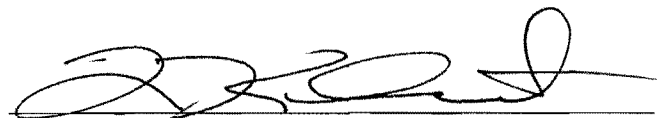
IDOT argues that to grant Mr. Hansen relief would be to say that officers could not effectuate a felony arrest on an individual based on additional information obtained after an infraction traffic stop. This is not what is being argued. If an officer is acting within his jurisdiction at the time the traffic stop is initiated, then the officer can clearly make additional arrests based on information lawfully obtained during the traffic stop. This is what happens many times each and every day. What an officer cannot do is make a traffic stop on an individual outside his jurisdiction and then attempt to justify that stop by discovering additional information for a felony arrest.

CONCLUSION

Jurisdiction and authority for an initial stop of a vehicle is determined at the time of the stop, not on the information later acquired. Officer Smith was outside his jurisdiction when he initiated a traffic stop based on probable cause for infractions only. This is an illegal stop. It does not matter that Officer Smith was later able to discover information that may have provided probable cause for a DUI. The determinations of the District Court and the hearing officer should be reversed and the license suspension reversed.

Dated this 10th day of November, 2011.

SWAFFORD LAW P.C.



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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on November 10, 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.

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- MAILING
- FAXING (208-552-1176)
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DATED this 10th day of November, 2011.

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