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Atwood v. State, Transp. Dept. Respondent's Brief Dckt. 40441

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Supreme Court No. 40441-2012

JOEY JAY ATWOOD,

Petitioner/Appellant.

v.

IDAHO DEPARTMENT OF TRANSPORTATION,

Respondent.

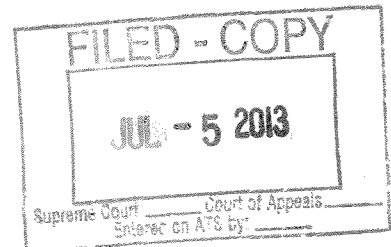
RESPONDENT'S BRIEF

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

Honorable Joel E. Tingey, District Judge, Presiding.

Counsel for Appellant: Stephen A. Meikle
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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 Joey Jay Atwood (hereinafter "Mr. Atwood") in which the District Court upheld the suspension of his driver's license.

b. Factual Statement and Procedural History.

On October 14, 2011 around 9:30a.m., Mr. Atwood was involved in a single vehicle non-injury crash. *R, pp.11-13.* Trooper Lenda of ISP investigated the crash. *Id.* He could smell a strong odor of an alcoholic beverage on Petitioner's breath. *Id.* Trooper Lenda completed the crash investigation while Corporal Vance Cox completed the DUI evaluation. *Id.* Trooper Lenda's report indicates:

Cpl Cox noted that ATWOOD met the decision points for a commercial driver. Cpl Cox read ATWOOD the ALS Advisory form, instructed him not to eat, drink or belch for 15 minutes, and began the observation period. At the conclusion of the observation period, ATWOOD provided two evidentiary breath samples using a Lifeloc portable breath testing instrument, the results of which were .084/.082.

Id., p. 12.

Trooper Lenda then arrested Petitioner for DUI. *Id.* Petitioner timely requested a hearing on his license suspension arguing that Trooper Lenda's sworn statement was defective since he was not the officer which performed the DUI evaluation. *Id. at 71-72.* The hearing officer rejected this argument stating that:

A peace officer may rely upon information from another officer, and the collective knowledge of peace officers involved in the DUI investigation may support a finding of an acceptable breath testing procedure. ...

Atwood has the burden to affirmatively show by a preponderance of the evidence that Cpl. Cox, in fact, did not conduct a valid 15 minute monitoring period. ...

In this case, Atwood presented no affirmative evidence to meet his burden, but rather his challenge to the suspension consisted solely of a technical attack upon the adequacy of the state's documentation.

Id. at 76, ¶¶ 9, 19, and 21.

The hearing officer sustained the suspension of the Petitioner's driver's license. *Id.* at p. 80. The District Judge upheld the hearing officer's decision. *R*, pp. 164-170. Mr. Atwood filed a timely Notice of Appeal on. *R*, p.173.

II. ISSUES ON APPEAL

Did the district court correctly decide Trooper Lenda's properly relied upon information from another officer in his affidavit?

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. PayetteCountyBd. of CountyComm'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

1. The Sworn Affidavit of Trooper Lenda is valid.

Trooper Lenda relied upon information from Cpl Cox in making an arrest of Atwood. The hearing officer stated, "A peace officer may rely upon information from another officer, and the collective knowledge of peace officers involved in the DUI investigation may support a finding of an acceptable breath testing procedure." *R*, p. 76, ¶ 9. The District Court noted that "nothing in the statute requiring that the officer providing the sworn statement have personal knowledge as to all the specifics that constitute legal cause." *R*, p. 168. This is supported by Idaho cases which have held that official police communication provides probable cause for arrest as long as it is "supported by information itself reliable enough to supply probable cause." *State v. Deschamps*, 94 Idaho 612, 613, 495 P.2d 18, 19 (1971). In addition, "An officer in the field may rely on information supplied by other officers, and the collective knowledge of police officers involved in the investigation--including dispatch personnel--may support a finding of

probable cause.” *State v. Carr*, 123 Idaho 127, 130, 844 P.2d 1377, 1380 (Ct. App. 1992); *See also State v. Baxter*, 144 Idaho 672, 677-78, 168 P.3d 1019, 1024-25 (Ct. App. 2007) (referencing “collective knowledge doctrine”); *See also Wheeler v. Idaho Transp. Dept.*, 148 Idaho 378, 383, 223 P.3d 761, 766 (Ct. App. 2009).

Appellant seeks to have this Court hold the affidavit must be provided by the officer who administered the test, rather than allowing the officer who directed the test to be done to submit an affidavit. *Appellant’s Brief*, pp. 9-11. The District Court correctly rejected this argument when it stated:

Atwood’s reference to §18-8002A(5) is not particularly relevant inasmuch as that section governs the *service* of the notice of suspension, not the suspension itself. Still, provisions within § 18-8002A(5) and other subsections speak in terms of tests performed “at the direction of the peace officer”, not tests performed *by* the peace officer. Indeed, §18-8002A contemplates blood and urine tests performed at the direction of the peace officer, which tests would be performed by lap personnel rather than a peace officer.”

R, p. 169 (*emphasis original*).

Trooper Lenda may rely upon information from Cpl Cox regarding the observation period and results of the breath samples in establishing probable cause to arrest Atwood for DUI. He may also direct others to perform certain tests and then rely upon the information from those tests in making the decision to arrest an individual. Since Trooper Lenda had sufficient information to arrest Atwood, then his sworn affidavit containing this information clearly satisfies the statutory requirements for the hearing officer to suspend Atwood’s license.

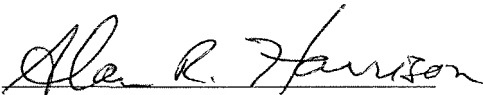
In the present case, the hearing officer determined the affidavit of Trooper Lenda was sufficient under the statute in order to suspend Atwood’s license. This is supported by Idaho

Case law in which Trooper Lenda may rely upon information from other officers in making an arrest. Therefore, his sworn affidavit is sufficient for the District Court to uphold the decision of the hearing officer and the suspension of Atwood's license.

V. CONCLUSION

Trooper Lenda's sworn affidavit properly met the requirements of the statute. The hearing officer's decision to suspend Atwood's license should be sustained. Therefore, the decision of the District Court sustained the hearing officer's suspension of Mr. Atwood's license should be sustained.

DATED this 2 day of July, 2013.



Alan R. Harrison
Special Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 2 day of July, 2013, caused two (2) true and correct copies of the attached RESPONDENT'S BRIEF by personal delivery, to the following parties:

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