

8-1-2013

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

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Atwood v. State, Transp. Dept. Appellant's Reply Brief Dckt. 40441" (2013). *Idaho Supreme Court Records & Briefs*. 855.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/855

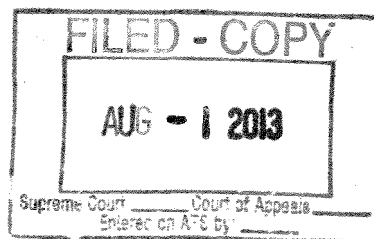
This Court Document is brought to you for free and open access by Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIdaho Law.

ADVANTAGE LEGAL SERVICES
Stephen A. Meikle, Attorney, P.A.
Idaho State Bar No. 2976
Idaho Professional Building
482 Constitution Way - Suite 203
Post Office Box 51137
Idaho Falls, Idaho 83405-1137
Telephone (208) 524-3333
Attorney for Plaintiff

IN THE SUPREME COURT FOR THE STATE OF IDAHO

JOEY JAY ATWOOD,)	
)	
Petitioner-Appellant,)	APPELLANT'S REPLY BRIEF
)	
vs.)	
)	CV-2012-944
STATE OF IDAHO, DEPARTMENT OF)	
TRANSPORTATION,)	Docket No. 40441-2012
)	
Respondent.)	

APPEAL FROM
THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
HONORABLE JOEL E. TINGEY, DISTRICT JUDGE, PRESIDING



For Appellant:
Stephen A. Meikle
482 Constitution Way, Ste 203
Post Office Box 51137
Idaho Falls, ID 83405-1137

For Respondents:
Alan R. Harrison
Special Deputy Attorney General
497 N. Capital Avenue, Ste 210
Idaho Falls, ID 83402

ADVANTAGE LEGAL SERVICES
Stephen A. Meikle, Attorney, P.A.
Idaho State Bar No. 2976
Idaho Professional Building
482 Constitution Way - Suite 203
Post Office Box 51137
Idaho Falls, Idaho 83405-1137
Telephone (208) 524-3333
Attorney for Plaintiff

IN THE SUPREME COURT FOR THE STATE OF IDAHO

JOEY JAY ATWOOD,)	
)	
Petitioner-Appellant,)	APPELLANT'S REPLY BRIEF
)	
vs.)	
)	CV-2012-944
STATE OF IDAHO, DEPARTMENT OF)	
TRANSPORTATION,)	Docket No. 40441-2012
)	
Respondent.)	
<hr/>		

APPEAL FROM

THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
HONORABLE JOEL E. TINGEY, DISTRICT JUDGE, PRESIDING

For Appellant:
Stephen A. Meikle
482 Constitution Way, Ste 203
Post Office Box 51137
Idaho Falls, ID 83405-1137

For Respondents:
Alan R. Harrison
Special Deputy Attorney General
497 N. Capital Avenue, Ste 210
Idaho Falls, ID 83402

I.

TABLE OF CONTENTS

II. TABLE OF CASES AND AUTHORITIES p. 3
III. REBUTTAL ARGUMENT p. 4
VI. CONCLUSION p. 5

II.

TABLE OF CASES AND AUTHORITIES

A.

CONSTITUTIONS

B.

CASES

State v. Baxter, 168 P.3d 1019, (Ct. App. 2007) p. 4, 5
State v. Carr, 123 Idaho 127, 844 P.2d 1377 (Ct. App. 1992) p. 4, 5
State v. Cooper, 119 Idaho 654, 809 P.2d 515, 520 (Ct. App. 1991) p. 5
State v. Wheeler, 223 P.3d 761 (Ct. App. 2009) p. 4, 5,

D.

RULES AND REGULATIONS

Idaho Code §18-8001 p. 4,
Idaho Code §18-8002A p. 4, 5
Idaho Code §18-8002A(4) & (5) p. 4,
Idaho Code §18-8002(A)(5) p. 5
Idaho Code §19-603(1) p. 4,
Idaho Code §49-1405 p. 4,

III.

REBUTTAL

Respondent's brief argued that an officer, who did not direct or administer the tests, can provide the sworn affidavit regarding the information required under Idaho Code 18-8002A based on the ruling(s) that probable cause may be established, not based on personal knowledge, but upon the collective knowledge of all officers involved as enumerated in *State v. Carr*, 123 Idaho 127, 844 P.2d 1377 (Crt. App. 1992); *State v. Baxter*, 168 P.3d 1019 (Crt App. 2007); and *State v. Wheeler*, 223 P.3d 761 (Crt. App. 2009).

In *Carr, Supra*, the driver was arrested for driving without privileges and possession of marijuana. The issue before the court was an interpretation of and the interplay between Idaho Code §19-603(1), §18-8001 and §49-1405 and whether an officer may arrest a driver without personally and directly being notified of the driver's suspension. The court reasoned that probable cause was a sufficient basis to arrest and that probable cause may include the collective knowledge of police who are involved in the case.

Carr, Supra, is not dispositive for a number of important reasons. Idaho Code §18-8002A's requirements of (1) a sworn statement regarding (2) analysis of breath test administered at the direction of the peace officer and (3) that the driver was tested for alcohol concentration as provided for in this chapter were not before the court. The court, in *Carr*, spoke of probable cause being in the realm of possibilities rather certainties. The language of Idaho Code § 18-8002A(5) speaks specifically to the officer who is to provide the sworn statement as to compliance with the breath testing standards established under the chapter. The legislature's precise use of it's language identifying the officer administering the breath test is to swear the BAC test was done properly under the chapter falls precisely into the realm of certainty rather than mere possibilities.

That statutory foundation for suspending a driver's license relies on scientific information, which if not tested properly, will result in unreliable information from which to base a

suspension or criminal charge upon.

In the *Wheeler*, case the issue before the court was whether the Idaho Transportation Department hearing officer may rely on hearsay evidence from the officer, who administered the breath test, to establish legal cause to detain the driver and suspend the driver's license under Idaho Code §18-8002A. The court reasoned that legal cause to stop can be based on the same standard on probable cause to arrest a person, citing the *Carr* case.

In *Wheeler*, the court did not consider the question of whether an officer other than the officer which administered the BAC test can provide the information that the test was performed under the standards set forth under the chapter. The arresting officer, in *Wheeler*, appeared to be the same officer who administered the BAC test. Section 18-8002(A)(5) sets forth that the officer who administers the BAC test swear the testing was in compliance under the chapter. Probable cause can be supplied by a variety of factors. However, BAC testing is based on one particular standard and that is in conformity with the chapter as sworn to by the officer who directed the test.

In *Baxter, supra*, the court addressed the basis for the officer's legal cause to detain and probable cause to search and arrest. The court discussed the doctrine of collective knowledge established in the *Carr* case and *State v. Cooper*, 119 Idaho 654, 809 P.2d 515, 520 (Ct. App 1991), but determined the facts supporting the arrest of *Baxter* was not based on reasonable articulable suspicion.

The validity and admissibility of the BAC test depends on it's scientific reliability which in turn depends on the test being conducted in accordance with established scientific standards. It is these very standards that the officer who administered the BAC test must swear to in order for the department to be statutorily authorized to suspend a person's driver's licence.

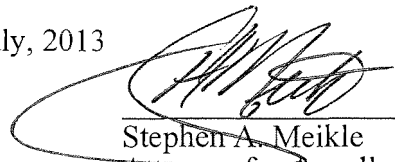
VI.

CONCLUSION

The agency's decision and the district court's holding should be reversed and the

appellant's suspension be vacated.

DATED this 30th day of July, 2013



Stephen A. Meikle
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on July 30th, 2013, I served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Attorney(s)/Person(s) served:

Method of Service:

Idaho Supreme Court
P.O. Box 83820
Boise, ID 83720-0020

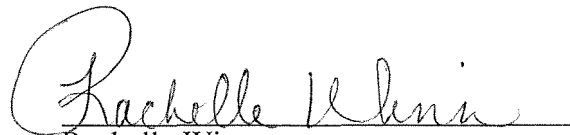
Mailing

Joey Jay Atwood
158 N 3700 E
Rigby, ID 83442

Mailing

Alan R. Harrison
Special Deputy Attorney General
497 N. Capital Avenue, Ste 210
Idaho Falls, ID 83402

Mailing



Rachelle Winn
Legal Assistant