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# Warner v. Dept of Transportation Appellant's Brief 1 Dckt. 43484

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IN THE SUPREME COURT OF THE STATE OF IDAHO

\* \* \* \* \*

SUSAN JANE WARNER,	)	
	)	
Petitioner/Respondent,	)	
	)	Supreme Court No. 43484-2015
v.	)	
	)	
STATE OF IDAHO, DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent/Appellant.	)	

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**APPELLANT’S BRIEF**

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Appeal from the District Court of the Fifth Judicial District of the State of Idaho,  
in and for the County of Blaine

Honorable Robert J. Elgee  
District Judge, Presiding

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## I. STATEMENT OF THE CASE

### A. Nature of the Case.

This case involves the license suspension of Appellee/Petitioner Susan Jane Warner (“Warner”) following a DUI. Warner unsuccessfully challenged her suspension to the Idaho Department of Transportation (“Department”) and then filed this case in Blaine County for judicial review of the Department’s decision. The District Court vacated the suspension and the Department appeals.

### B. Course of Proceedings.

On September 23, 2014, the Department issued a Notice of Suspension (“Notice”), suspending Warner’s license for one year. Amended Agency Record (“AR”). at 2-4.<sup>1</sup> Warner requested a hearing on October 1, 2014. *Id.* at 5. A hearing was held on October 16, 2014. *Id.* at 25. The hearing officer, Michael B. Howell (“Hearing Officer”) upheld the suspension on October 31, 2014. *Id.* at 27. Thereafter, Warner submitted a Petition for Reconsideration. *Id.* at 30-34. The Hearing Officer denied Warner’s petition on November 15, 2014. *Id.* at 41. Warner filed a Petition for Judicial Review on December 4, 2014. R. 3. The District Court reduced the license suspension from one year for a second DUI to thirty days for a first DUI. *Id.* at 101-102.

### C. Statement of Facts.

On July 9, 2012, Warner was convicted of driving under the influence (“DUI”) in Idaho. AR. 25; *See also* AR. 9, 36. On April 5, 2014, Warner was involved in a single-car accident in Montana. *Id.* at 35-36. It appeared that Warner had veered off the highway, hit a concrete barrier, and then ended up

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<sup>1</sup> Upon preparing this brief, counsel noticed that the Amended Agency Record was not included in the Record on Appeal. The Amended Agency Record was requested in the Notice of Appeal. R.115. The Court has granted the parties’ stipulation to augment the record to include the Amended Agency Record and agency hearing transcript.

back on the highway. *Id.* Warner was detained and given a breath test, which produced a blood alcohol content (“BAC”) of .179. *Id.* After being transported to the Madison Valley Medical Center for evaluation, Warner consented to a blood draw. *Id.* Her blood draw later revealed a BAC of .176. *Id.* Warner was cited for Driving Under the Influence of Alcohol-2<sup>nd</sup> offense, in violation of Montana Code Annotated (“MCA”) § 61-8-401(1)(a). *Id.*

On July 23, 2014, the State of Montana amended the charge against Warner to Aggravated DUI (BAC in excess of .16), in violation of MCA § 61-8-465(1)(a). *Id.* at 22. On September 16, 2014, Warner pled guilty to the Aggravated DUI charge. *Id.* at 21. On or about September 22, 2014, the Department received notice of Warner’s Montana Aggravated DUI conviction. *Id.* at 1. On September 23, 2014, the Department issued the Notice, suspending Warner’s license for one year. *Id.* at 2-4. Warner requested a hearing on October 1, 2014. *Id.* at 5. A hearing was held on October 16, 2014. *Id.* at 25. At the Hearing, Warner argued that “the aggravated DUI in - - Montana is a different statute than aggravated DUI in Idaho.” A. Tr.at 2-3. Warner continued arguing that because the excessive DUI in Idaho required a BAC of .20, the aggravated DUI in Montana only required a .16, and Warner’s BAC was approximately .17, the excessive DUI statute could not serve as a basis for her year-long suspension in Idaho. *Id.* Warner also argued “in order for it to be a year suspension under Idaho, the Court has to - - it has to be a conviction for a second offense DUI, not a - - not just a happens to be a second offense.” *Id.* at 4. The Hearing Officer upheld the suspension on October 31, 2014. AR. 27. Thereafter, Warner submitted a Petition for Reconsideration. *Id.* at 30-34. The Hearing Officer denied Warner’s petition on November 15, 2014. *Id.* at 41. Warner filed her Petition for Judicial Review on December 4, 2014. R. at 3. The District Court determined that even though the Montana DUI was Warner’s second in ten years, the Department “must confine Warner’s license suspension to the

maximum penalty for the offense to which Warner pled guilty pursuant to § 18-8005. That is a first offense DUI.” *Id.* at 101.

## II. 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* Idaho Code §§ 49-201, 49-330, 67-5201(2), 67-5270; *See also, In re Suspension of Driver’s License of Gibbar*, 143 Idaho 937, 941, 155 P.3d 1176, 1180 (Ct. App. 2006). An administrative driver’s license suspension “is a civil penalty separate and apart from any other suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense.” *In re Bowman*, 135 Idaho 843, 845, 25 P.3d 866, 868 (Ct. App. 2001). “In an appeal from the decision of the district court acting in its appellate capacity under IDAPA, [the appellate court] reviews the agency record independently of the district court’s decision.” *State Transp. Dept. v. Kalani-Keegan*, 155 Idaho 297, 300, 311 P.3d 309, 312 (2013). A court may overturn an agency’s decision only when the agency’s 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. Idaho Code § 67-5279(3). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in Idaho Code section 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); *See also, In re Marshall*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct. App. 2002); *In re Beyer*, 155 Idaho 40, 44, 304 P.3d 1206, 1210 (Ct. App. 2013).



### III. LAW AND ARGUMENT

Warner committed a DUI in Montana, which was her second DUI in less than two years, and her license was administratively suspended for one year. After the Hearing Officer upheld the one-year suspension and Warner petitioned for judicial review, the district court posed the issue as “what penalty would have definitely been imposed based upon the conviction, not what penalty could have or probably would have been imposed if Warner received this DUI while driving in Idaho.” R. 98. The Hearing Officer correctly applied the statutes while the district court inappropriately focused on the criminal conviction and penalties thereto instead of viewing the suspension in the civil remedy context it belongs.

A. **THE HEARING OFFICER CORRECTLY SUSPENDED WARNER’S LICENSE FOR ONE YEAR.**

In his decision, the Hearing Officer determined that whether or not Montana considered the Montana DUI a second DUI conviction was irrelevant for the administrative suspension. *Id.* at 26-27. The Hearing Officer identified two code sections that authorized the civil suspension of Warner’s license. *Id.* at 27. The first statute was Idaho Code section 49-324 which states that the Department

shall suspend, disqualify or revoke the driver’s license or privilege of any resident of this state or the privilege of a nonresident to operate a motor vehicle in this state upon receiving notice of the conviction, administrative action, or court order of that person in another state or jurisdiction **of an offense which, if committed in this state**, would be grounds for the suspension, disqualification or revocation of the driver’s license and privileges of the driver. The department shall forward a certified copy or electronic transfer to the national driver register.

(Emphasis added). The second was Idaho Code section 49-326(1)(e) which states that the Department

is authorized to suspend, disqualify or revoke the license or privileges of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the driver:...[h]as **committed an offense** in another state or jurisdiction as

evidenced by a conviction, court order or administrative action, which if committed in Idaho would be grounds for suspension, disqualification or revocation...

(Emphasis added). The Hearing Officer noted that Idaho Code section 18-8005(e) provided for a one-year suspension for a second DUI offense (within ten years). *Id.* In her *Motion for Reconsideration*, Warner argued that the Montana conviction was for a “first time offender in Montana” and that Warner could only be subject to a thirty-day suspension. *Id.* at 32, 34. In his Order on Motion for Reconsideration, the Hearing Officer “reiterate[d] that the actual alcohol concentration of the driver at the time of her arrest in Montana and whether or not the Montana court treated the conviction as a first or subsequent conviction are irrelevant.”<sup>2</sup> *Id.* at 41. The Hearing Officer was correct.

The Department is required to focus on the act of a DUI in suspending a license without regard to how the foreign jurisdiction charges or punishes the DUI. Both Idaho Code sections 49-324 and 49-326 focus on the “offense” committed. “The plain meaning of a statute will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results.” *Bowman*, 135 Idaho at 845, 25 P.3d at 868. “Offense” is defined as “a violation of the law.” BLACK’S LAW DICTIONARY (10<sup>th</sup> ed. 2014). “Commit” is defined as, “to perpetrate (a crime).” *Id.* “Perpetrate” is defined as “to commit or carry out (an act, esp. a crime).” *Id.* In focusing on the offense committed, the legislature intended that the Department look at the underlying acts of the law violation and not what penalties were imposed in a foreign conviction or the form of the conviction.

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<sup>2</sup> The reference to the alcohol concentration raises a seemingly contradictory position taken by Warner at the administrative hearing. Warner was convicted in Montana of an aggravated DUI and argued that since the aggravated DUI in Montana had a threshold of a BAC of .16 and the excessive DUI in Idaho had a threshold of .20, Warner could not be subject to the Idaho excessive DUI enhancement because her BAC was only .17. Then Warner argued that since she was not convicted of a second DUI, she could not be subject to the enhancement for a second DUI in Idaho even though it was her second DUI. Therefore, Warner took the position (aggravated DUI) that the court must look at the underlying facts and ignore the face of the conviction and also took the opposite position (first or second DUI) that the Department was limited by the face of the conviction. *See* A. Tr. 2-4.

The offense committed by Warner in Montana was simply a DUI. In *State v. Schall*, 157 Idaho 488, \_\_\_, 337 P.3d 647, 651 (2014), the Supreme Court addressed whether Idaho Code section 18-8005(6) (third or subsequent DUI) created a separate and distinct offense or consisted of enhancement provisions for a DUI offense. The Court looked at the section title, “Penalties,” and Idaho Code section 18-8005(8), which characterizes subsections 4, 6, and 9 as “enhancement[s],” and determined, along with other reasons, that the provision for a third or subsequent DUI was an enhancement provision and not a separate and distinct offense. *Id.* at 651-52. The Court made clear “that in a prosecution pursuant to Idaho Code section 18-8005(6) [for a third or subsequent DUI] **the offense at issue is the violation of Idaho Code section 18-8004 [DUI] and that very offense may be charged either as a misdemeanor or a felony depending upon the defendant’s prior criminal history.**” *Id.* at 652 (emphasis added). Therefore, the DUI is the offense and whether it is a first, second, or third DUI does not constitute different offenses but only affects the sentencing enhancements in criminal cases.

Put another way, a first DUI is not a separate offense from a second or subsequent DUI. There is no “DUI-Second” offense or “DUI-First” offense. In fact, in DUI cases, a jury first determines whether a defendant is guilty of a DUI before evaluating whether the DUI is the defendant’s second, or subsequent DUI for enhancement purposes. *See* Idaho Criminal Jury Instructions 1008. In the case where the Department is involved, the Department first evaluates whether a DUI occurred (the offense committed) and then assesses the appropriate suspension based upon how many previous DUIs the person has.

While both Idaho Code sections 49-324 and 49-326 refer to convictions, such reference is not for purposes of limiting the Department and the State of Idaho’s ability to suspend licenses as Warner argued. Along with convictions, the statutes also reference administrative actions and orders. Requiring

documentation of any of these to identify the “offense” “committed” is for evidentiary purposes and most likely serves to ensure that the Department utilizes reliable information when it suspends licenses. Neither statute indicates in any way that the Department is limited by the form of the conviction, the penalties imposed therein, the remedies taken in any administrative action, or the result of an order from the foreign jurisdiction. Put simply, the statutes instruct the Department to use these reliable foreign documents to find out what *offense* was committed and then impose the proper suspension according to Idaho law without regard to the foreign penalties.

A logical reason for the emphasis on the “offense” “committed” as opposed to the “form of the conviction” is that foreign DUI statutes and penalties may not coincide with Idaho’s DUI statutes. This case exemplifies that concern.<sup>3</sup> Warner’s Montana DUI was clearly her second DUI within two years. At first, Warner was cited with a DUI with the enhancement of it being her second DUI. However, that was later amended to an aggravated DUI. As noted above, Montana’s aggravated DUI is based upon a different BAC than Idaho’s excessive DUI. Additionally, there are differences between what prior DUI convictions may be counted in Idaho and Montana. *Compare* Idaho Code § 18-8005 with MCA §§ 61-8-714 and 61-8-722. For example, in Idaho, a conviction under 18-8004(1) (a), (b), and (c), along with “substantially conforming foreign criminal violation(s)” within the past 10 years are counted when determining whether the present DUI is a second DUI. Idaho Code § 18-8005(4). In Montana, all prior Montana convictions are considered, regardless of when it occurred, and foreign DUIs appear to be

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<sup>3</sup> The district court incorrectly stated that “[t]here ha[d] been no argument that the Montana code is not substantially conforming, except as to the BAC required for an aggravated DUI” and found the statutes to be substantially conforming. R. at 92. However, the Department addressed significant differences between Montana DUI statutes and Idaho’s. *See* R. 55 (“Warner is attempting to exploit the difference between Idaho DUI laws and Montana DUI laws...”); R. at 61 (“Montana’s DUI laws are very different than Idaho’s” followed by an analysis of those differences which included the observation that Montana laws consider a DUI as a person’s second only if the first was also committed in Montana.).

excluded from consideration. *See* MCA § 61-8-714(2)(a) (“a person convicted of a second violation of 61-8-401...); MCA § 61-8-401 (declaring it unlawful to operate a motor vehicle while under the influence of alcohol “upon the way of this state open to the public”). Therefore, Warner’s DUI did constitute aggravated DUI in Montana but could not be punished as a second DUI in Montana as her first DUI was not in Montana. However, had Warner committed the Montana DUI in Idaho, she could not be charged with excessive DUI, but she would be subject to the enhanced DUI penalties for a second DUI. These jurisdictional differences are perfect examples as to why the legislature thought it was prudent to have the Department focus on the “offense” “committed” as opposed to the form of the conviction or penalties imposed by the foreign jurisdictions.

Recognizing that the offense was the DUI and not the Montana conviction or its penalties, the Hearing Officer correctly determined that the Montana conviction evidenced that Warner committed a DUI offense and, after noting that she had committed a DUI offense less than two years earlier, correctly applied the civil suspension for a second DUI enhancement.

**B. THE DISTRICT COURT ERRED BY FOCUSING ON THE FORM OF THE CONVICTION AND TREATING THE SUSPENSION AS A CRIMINAL PENALTY.**

Despite the clear language of the statutes, the district court focused on elements other than the offense committed. Specifically, the district court posed the issue as, “what penalty would have definitely been imposed based upon the conviction, not what penalty could have or probably would have been imposed if Warner received this DUI while driving in Idaho.” R. 98. This perception is incorrect for two reasons.

First, as noted above, the district court’s focus on the conviction as opposed to the offense was incorrect. The statutes do not instruct the Department to focus on the conviction, but on the “offense”

“committed.” The offense was a DUI. The way in which the foreign jurisdiction charged or punished the DUI was irrelevant.

Second, the district court’s focus on the penalties available for the suspension misperceives the nature of administrative hearings. An administrative driver’s license suspension “is a civil penalty separate and apart from any other suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense.” *In re Bowman*, 135 Idaho 843, 845, 25 P.3d 866, 868 (Ct. App. 2001). The Court of Appeals has noted that “the state’s interest in preventing intoxicated person from driving far outweighs the individual’s interest…” and that “the state has a strong remedial and nonpunitive reason for suspending driver’s licenses.” *Buell v. Idaho Department of Transportation*, 151 Idaho 257, 263, 254 P.3d 1253, 1259 (Ct. App. 2011). Administrative suspensions “serve to provide for the safety of the public at-large.” *Id.* Generally speaking, “Idaho appellate courts have not viewed driver’s license suspensions as punishment.” *Id.*


The civil, nonpunitive, and remedial nature of administrative license suspensions is further evident in comparing the administrative license suspension statutes with the criminal penalty statutes for DUIs. Idaho Code section 18-8002A provides for automatic and immediate license suspensions of those who fail BAC tests. Idaho Code section 18-8005 provides the penalties for DUI convictions. There are no provisions in those statutes that provide for an overlapping offset. That means that a driver who fails a BAC test may have his or her license suspended immediately pursuant to an administrative license suspension and then have his or her license suspended *again* following a DUI conviction. To treat the administrative license suspension as a criminal punishment, as the district court did, would be to effectively consolidate civil and criminal suspensions—a consolidation that the legislature has not created or intended.

The administrative license suspension in this case is a civil, nonpunitive remedy, separate and apart from the confines and restrictions in a criminal case. The district court erred by focusing on the conviction and treating this suspension as though it was a criminal punishment.

#### IV. CONCLUSION

For the second time in less than two years, Warner operated a motor vehicle while under the influence of alcohol. The Hearing Officer correctly reviewed Warner's Montana conviction to ensure that Warner had committed a DUI in Montana, and then affirmed the civil one-year license suspension because Warner had a previous DUI. The Court should reverse the district court's decision and reinstate the license suspension.

DATED this 11<sup>th</sup> day of December, 2015.



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Timothy J. Stover

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of December, 2015, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served by the method indicated below, and addressed to the following:

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\_\_\_\_\_  
Timothy J. Stover