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IN THE SUPREME COURT OF THE STATE OF IDAHO

RYAN SATTER,)	
)	
Petitioner-Appellant.)	Docket No. 48120-2020
)	
v.)	Nez Perce County District Court
)	CV35-19-2167
STATE OF IDAHO, DEPARTMENT)	
OF TRANSPORTATION,)	
)	
Respondent.)	
)	
)	
)	

APPELLANT’S BRIEF

THE HONORABLE JAY P. GASKILL
District Judge

IDAHO TRANSPORTATION DEPARTMENT HEARING OFFICER,
SKIP CARTER

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ISSUES PRESENTED

- 1. Whether the arresting officer accurately gave the information required pursuant to Idaho Code §18-8002A and *Virgil v. State*, 126 Idaho 946 (App. 1995).
- 2. Whether advising the Petitioner what "show why" is equivalent to "show cause why" as required by Idaho Code §18-8002A.
- 3. Whether the hearing officer's decision was made upon unlawful procedure.

STATEMENT OF THE CASE

On November 3, 2019, Petitioner Ryan Satter was pulled over by Officer Andrew Fox of the Lewiston Police Department for suspicion of DUI. Record, at 10. Petitioner performed the Horizontal Gaze Nystagmus test, the Walk and Turn test, and the One Leg Stand test. R., at 42-44. Afterwards, Petitioner was placed in Officer Fox's car where he was read the I.C. §18-8002A form. Officer Fox made a mistake while reading to the Petitioner Paragraph B of the I.C. §18-8002A form. R., at 44-46. The form reads, "You have the right to an administrative hearing on the suspension before the Idaho Transportation Department to "show cause why" you failed the evidentiary test and why your driver's license should not be suspended. R., at 4. Instead, Officer Fox read, "you have the right to an administrative hearing on the suspension before the Idaho Transportation Department to "show cause why" you failed the evidentiary testing and failed to pass the testing and do not..."R., at 45. Officer Fox starts over and reads, "You have the right to an administrative hearing on the suspension before the Idaho Transportation Department to "show why" you failed the evidentiary test and why your driver's license should not be suspended." R., at 45. Petitioner then failed the breath test and was put under arrest for DUI. R., at 11, 48.

1 On November 8, 2019, Petitioner requested a hearing before the Idaho Transportation
2 Department pursuant to I.C. §18-8002A. R., 15-19. A telephone hearing was held on November 27,
3 2019, where the hearing was supplemented with Exhibit I which was a transcript by the offices of
4 Clark and Feeney and Exhibit J which was the DVD recording of Officer Fox advising the Petitioner
5 as hereinafter stated. The Hearing Officer held that Officer Fox correctly said, "show cause why",
6 that I.C. §18-8002A does not require a verbatim reading, that the later omission of the word "cause"
7 did not have the same impact as in other cases, so Petitioner was properly advised. R., at 58-61.
8 Petitioner's license was suspended for ninety days. R., at 61.

9 STANDARD OF REVIEW

10 Idaho Code §67-5240 provides that a proceeding by an agency that may result in an order
11 being issued is considered a contested case and is subject to the provisions of the Idaho
12 Administrative Procedure Act (IDAPA). A hearing under I.C. §18-8002A results in an "agency
13 action" and is therefore governed by the IDAPA. The IDAPA governs the review of Idaho
14 Transportation Department decisions that deny, cancel, suspend, disqualify, revoke, or restrict a
15 person's driver's license. *Bennett v. State Dep't of Transp.*, 147 Idaho 141, 142, 206 P.3d 505, 506
16 (Ct. App. 2009).

17
18 In an appeal from the decision of the district court acting in an appellate capacity under the
19 provisions of the IDAPA this Court reviews the agency record independently from that of the district
20 court's decision. *Druffel v. State Dep't of Transp.*, 136 Idaho 853, 855, 41 P.3d 739, 741 (2001). The
21 factual determinations made by the agency are binding on the Court, even when there is conflicting
22 evidence before the agency as long as these determinations are supported by substantial evidence in
23 the record. *Id.* "A court may overturn the decision of an agency where the findings, inferences,
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1 conclusions or decisions: (a) violate statutory or constitutional provisions; (b) exceed the agency's
2 statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial
3 evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion." *Bennett*, 147 Idaho
4 142.

5 **SUMMARY OF THE ARGUMENT**

6 The Petitioner was not properly advised of the information required under I.C. §18-8002A.
7 When Officer Fox re-read the advisory form to the Petitioner, he changed the statute by omitting the
8 crucial word of "cause" from this re-reading. The term "show cause why" carries with it a higher
9 level of legal significance than simply stating "show why." The Petitioner was not adequately
10 advised of the information contained within the statute after Officer Fox re-read the statute. Thus,
11 he may seek to challenge his suspension on these grounds. The Idaho Department of Transportation
12 was in error when it held that Officer Fox correctly advised the Petitioner. The Petitioner asks the
13 Court for judicial review of the district court's decision while it was acting in its appellant capacity
14 over the Idaho Department of Transportation's Order. The Petitioner also asks that the Court vacate
15 the Petitioner's license suspension.
16

17 **ARGUMENT**

18 The Petitioner argues that he was not properly advised of the consequences and ramifications
19 of refusing or failing the evidentiary testing as required under I.C. § 18-8002A. The Petitioner also
20 argues that the Idaho Department of Transportation was incorrect when it held that he was advised
21 properly.
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I. THE ARRESTING OFFICER FAILED TO GIVE THE PROPER INFORMATION REQUIRED UNDER I.C. §18-8002A.

1 Officer Fox failed to properly advise the Petitioner of his rights and requirements under I.C.
2 §18-8002A when he incorrectly re-read the paragraph B of the Notice of Suspension of Evidentiary
3 Testing Form.
4

5 Idaho law requires that the information in I.C. §18-8002A requires a strict adherence to the
6 statutory language. *Virgil*, at 126 Idaho 947. The Idaho Supreme Court has emphatically refused to
7 allow the interjection of judicial gloss upon the legislature's license suspension scheme. *Id.* The
8 statute explicitly requires that at the time of the evidentiary testing the person shall be informed
9 substantially of the ramifications for refusing to submit to or failing the evidentiary testing. I.C.
10 §18-8002A(2). The statute plainly requires that the person to be tested be informed that they have
11 the right to request a hearing to "show cause why" they decided to either refuse to take the
12 evidentiary testing or failed the evidentiary testing. I.C. §18-8002A(2)(b).
13

14 While reading the Notice of Suspension of Evidentiary Testing Officer Fox incorrectly stated
15 that the Petitioner would need to show why rather than stating that the Petitioner would need to show
16 cause why he failed the evidentiary testing.
17

II. SHOW WHY IS A LOWER EVIDENTIARY BURDEN OF PROOF THAN THE REQUIRED SHOW CAUSE WHY.

18 When Officer Fox was reading the instructions and requirements laid out in I.C. §18-18002A
19 to the Petitioner he gave the Petitioner incorrect information regarding refusal. By stating that the
20 Petitioner need only "show why" he failed the evidentiary testing instead of the correct form of
21 "show cause why;" Officer Fox incorrectly advised the Petitioner that a showing of a lower
22 evidentiary burden of proof was required to justify why he failed the evidentiary testing.
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1 The court in *Virgil*, dealt with a similar issue to the issue in our case there the officer stated
2 that I.C. §18-8002A(2)(b) required the person who refused to take the evidentiary testing to simply
3 "explain why" they decided not to take the testing and that this showing would be sufficient.
4 However, as the court agreed the term "explain why" created a lower evidentiary burden of proof.
5 One that was below the standard required of "show cause why;" this phrase denotes a legal
6 justification or proof which was not accurately conveyed when the Officer stated, "explain why."
7 *Virgil*, at 948.

8 The term "cause" when referring to the statute I.C. §18-8002A envisions the term to mean
9 something more than any reason. The driver must establish cause as a sufficient magnitude that
10 would show the suspension of the license would be unjust or inequitable. *Matter of Griffiths*, 113
11 Idaho 364, 371-72, 744 P.2d 92, 99-100 (1987).

12 "Show why" as stated by Officer Fox in our case is similar to "explain why" in the *Virgil*,
13 case both of these phrases fail to properly articulate the correct higher evidentiary requirement that
14 the statute requires in the form of "show cause why." By failing to correctly advise the Petitioner
15 by stating "show why" instead of "show cause why", the Petitioner was not properly advised of his
16 rights and requirements under *Griffiths*, and I.C. §18-8002A.
17

18 **III. THE DECISION RENDERED BY THE ADMINSTRATIVE HEARING OFFICER**
19 **WAS MADE UPON UNLAWFUL PROCEDURES.**

20 The hearing officer determined that even though Officer Fox incorrectly re-read I.C.
21 §18-8002A the mistake was not impactful. A claim that the advisory by the officer was incomplete
22 does not require the Petitioner to establish that this incorrect advisory was detrimentally relied upon.
23 *Cunningham v. State*, 150 Idaho 687, 693, 249 P.3d 880, 886 (Ct. App. 2011). The court citing the
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1 decision in *Kling v. State*, 150 Idaho 188, 245 P.3d 499 (Ct. App. 2010) stated that just like the
2 decisions in *Virgil, Beem, and Griffiths*, "contradictory information provided in an advisory renders
3 that advisory incomplete." *Cunningham*, at 693.


4 Officer Fox incorrectly advised the Petitioner of the requirements under I.C. §18-8002A. The
5 way that Officer Fox read the advisory form to the Petitioner was a deviation from the statutory
6 language. As Idaho law has established through *Virgil*, the statutory language in I.C. §18-8002A
7 must be strictly adhered to. Officer Fox's reading of the form was a deviation from the statutory
8 language required and thus invalidated the form. Therefore, the decision of the hearing officer to
9 suspend the Petitioner's license was incorrect and based off of an invalid advisory form.

10 CONCLUSION

11 The Petitioner was not properly advised by Officer Fox of the requirements under I.C.
12 §18-8002A when he incorrectly provided information to the Petitioner. The advisory by the Officer
13 was incomplete as he provided contradictory information which rendered the advisory incomplete.
14 The statute requires a strict adherence to the statutory language, Officer Fox failed to follow this
15 requirement when he advised the Petitioner of the information on the advisory form. Therefore, the
16 Petitioner's license suspension should be vacated because the Officer's reading of the form did not
17 accurately inform the Petitioner of the statutes requirements.
18

19 DATED this 26 day of October, 2020.


21 CLARK and FEENEY, LLP

22 By 
23 Paul Thomas Clark, a member of the firm.
24 Attorneys for Petitioner
25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26 day of October, 2020, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Susan K. Servick, PC Special Deputy Attorney General 1424 Sherman Ave. #300 Coeur d'Alene, ID 83814	iCourt E-Service
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By: 
Attorney for Petitioner

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