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### Blalack v. Idaho Transportation Department Appellant's Brief Dckt. 48293

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IN THE DISTRICT COURT OF THE FRIST JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF BONNER

AIMEE BLALACK,

Petitioner,

vs.

THE STATE OF IDAHO, IDAHO  
TRANSPORTATION DEPARTMENT,

Respondent.

Supreme Court No. 48293-2020

Bonner County No. CV09-19-1349

Appeal from the District Court of the First Judicial District  
of the State of Idaho, in and for the County of Bonner

Honorable John Judge, Presiding

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**APPELLANT'S OPENING BRIEF**

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## **STATEMENT OF THE CASE**

### **A. NATURE OF THE CASE.**

This case involves a challenge of an Administrative License Suspension based on a lack of reasonable suspicion to detain Appellant Aimee Blalack (hereinafter Blalack) to conduct an investigation for driving under the influence.

### **B. PROCEEDINGS BELOW.**

The hearing officer upheld the suspension. The decision was appealed to the District Court which affirmed the hearing officer's decision.

### **C. STATEMENT OF FACTS.**

On August 10<sup>th</sup>, 2019, at approximately 12:30 a.m., Idaho State Trooper Jonathan Cushman (hereinafter "Trooper Cushman") observed Blalack heading east on US 95 travelling 46 mph in a 35 mph zone. (R.12). The video of the stop shows Trooper Cushman initiating the traffic stop by flipping his car around to pursue Blalack. When Blalack's vehicle first comes into view, she is using her turn signal to change from the right lane to the left lane. (R. Ex. R. 68, at 00:34 TS<sup>1</sup>). Blalack is not driving in any erratic manner before and pulls over as soon as Trooper Cushman activated his overhead flashers (Id. At 00:34:19).

During the traffic stop, Trooper Cushman approaches the car and asks Blalack if she knew what the speed limit is and she replies she thought it was 45 mph. Blalack apologizes many times for speeding in the course of promptly responding to all of Trooper Cushman's inquiries. (Id. At 00:35 – 35:48). Trooper Cushman asks Blalack how to pronounce her name, she pronounces her name and then spells it. (Id. At 0:35:49). Trooper Cushman then asks Blalack to exit her vehicle and wait for him at the back of her car. Blalack does as instructed and

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<sup>1</sup> Time Stamp on the video in the upper left corner.

does not show any signs of intoxication, such as swaying or leaning on the car to prevent herself from swaying. When Trooper Cushman returns to Blalack's vehicle he informs Blalak that he is going to make sure she is safe to drive. (Id at 00:37:09)

Trooper Cushman's stated grounds for turning a traffic stop into a driving under the influence investigation is that during the initial contact, he "...suspected that Blalack was under the influence of alcohol based on her slurred speech and glassesey eyes." (R.33). After Trooper Cushman detained Blalack to conduct a DUI investigation, Blalack admitted to drinking, and failed some of the field sobriety tests. She was then arrested on suspicion of DUI.

## **ISSUE ON APPEAL**

1. Did the hearing officer commit error when he failed to make any findings of fact that would support the conclusion that Trooper Cushman had legal cause to detain Blalack to conduct a DUI investigation?
2. Is remand of this matter for findings of fact necessary since any findings supporting the conclusion that Trooper Cushman had legal cause to detain Blalack would be an abuse of discretion because glassy eyes and slurred speech absent other circumstances indicating intoxication do not create a reasonable suspicion of legal intoxication?

## **ARGUMENT**

### **A. STANDARD OF REVIEW**

In an appeal from an administrative agency decision, this Court reviews the agency decision independently of the District Court's Appellate Decision. *Viveros v. Idaho Dep't. of Health & Welfare*, 126 Idaho 714, 717, 889 P.2d 1104, 1107 (1995); *Chambers v. Kootenai County Bd. of Comm'rs.*, 125 Idaho 115, 116, 867 P.2d 989, 990 (1994); *Hardy v. Higginson*, 123 Idaho 485, 488, 849 P.2d 946, 949 (1993). A review of an agency decision is limited to the record on appeal, and this Court may not substitute its judgment for that of the hearing officer on questions of fact. *Viveros v. Idaho Dep't. of Health & Welfare*, 126 Idaho at 717; 889 P.2d at 1107. *Idaho Cty. v. Idaho Dep't of Health & Welfare*, 128 Idaho 846, 848, 920 P.2d 62, 64 (1996).

“As stated in the standard of review section, an agency decision will not be set aside unless one of the exceptions in Idaho Code § 67–5279(3) applies and the petitioner shows that its substantial rights have been prejudiced.” *N. Snake Ground Water Dist. v. Idaho Dep't of Water Res.*, 160 Idaho 518, 529, 376 P.3d 722, 733 (2016). Idaho Code 67-5279(3) allows an agency’s decision to be set aside if it is in violation of constitutional or statutory provisions, or is unsupported by the evidence or is an abuse of discretion. Idaho Code Ann. § 67-5279.

1. The hearing officer erred when he did not make any findings of fact that would support the conclusion that Trooper Cushman had legal cause to detain Blalack in order to conduct a DUI investigation.

Trooper Cushman made an initial investigatory detention (hereinafter referred to as a “stop”) of Blalack for speeding. That stop, however, cannot justify the stop of Blalack for purposes of conducting a DUI investigation. Legal cause to stop Blalack to conduct a DUI investigation had to be supported by a reasonable and articulable suspicion that Blalack was



driving under the influence. The hearing officer concluded that Trooper Cushman had legal cause to stop Blalak, but did not make any findings of fact that would support that conclusion. The lack of any factual findings requires that the suspension be set aside, but not that the matter be remanded for further factual findings.

If a person fails evidentiary testing for alcohol, then their license will be suspended by the Idaho Department of Transportation. Idaho Code 18-8002(A). The person has a right to a hearing to have the suspension set aside and the hearing officer is required to make findings of fact and conclusions of law regarding any applicable grounds to set aside a suspension pursuant to Idaho Code 18-8002(A)(7).

Idaho Code §18-8002A(7)(a) provides that a license suspension can be vacated if the officer did not have legal cause to stop the person. A traffic “stop” is an investigatory detention, *State v. Pylican*, 477 P.3d 180, 186 (2020). To be constitutional, a stop must be supported by articulable facts which would support a reasonable suspicion that the person is engaged in criminal activity. *State v. Perez*, 164 Idaho 626, 628, 434 P.3d 801, 803 (2019). The reasonableness of the suspicion is evaluated considering the totality of the circumstances at the time of the stop. *Id.*

If the purpose of the initial stop changes, the subsequent stop must be supported by articulable facts which support a reasonable suspicion that criminal activity is afoot. In *State v. Linze*, 161 Idaho 605 (2016), a driver was stopped for a cracked windshield. After the reason for the stop was explained to the driver, the officer then called a drug dog to the scene. The Idaho Supreme Court found this to be an abandonment of the original purpose of the stop and that the extended detention must be supported by reasonable suspicion.

Here, we have a case in which a police officer had probable cause because Mrs. Linze was driving with a cracked windshield, which constitutes a traffic violation. It follows that the initial seizure was

reasonable under the Fourth Amendment. The pertinent question before this Court is whether or not the seizure remained reasonable under the Fourth Amendment once Officer Bridges abandoned the purpose of the seizure in order to aid in a search for contraband. We hold that it did not.

The Court then explained that once the original purpose of the stop is abandoned, the new purpose must be supported by reasonable suspicion.

However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions. Indeed, when an officer abandons his or her original purpose, the officer has for all intents and purposes initiated a new seizure with a new purpose; one which requires its own reasonableness under the Fourth Amendment. This new seizure cannot piggy-back on the reasonableness of the original seizure.

*State v. Linze*, 161 Idaho 605,  
609, 389 P.3d 150, 154 (2016).

Trooper Cushman initiated a second stop of Blalack when he decided to turn the traffic stop into an investigation for a possible driving under the influence. That occurred the moment he requested Blalack to exit her vehicle. Nothing else occurred between the two until Trooper Cushman tells Blalack he is going to make sure she is ok to drive.

The only contested issue before the hearing officer was whether Trooper Cushman had legal cause to stop Blalack to conduct a DUI investigation. The hearing officer correctly found that Trooper Cushman had legal cause to stop Blalack for speeding, (E.43), but did not make any findings of what articulable facts supported the legal conclusion that Trooper Cushman had reason to suspect Blalack was driving under the influence and, therefore, had the legal authority to stop Blalack to conduct a DUI investigation. This is an error, but does not require remand to the hearing officer because a determination that Trooper Cushman had legal cause to detain Blalack would be an abuse of discretion as it would not be supported by the evidence.

2. A determination on remand that Trooper Cushman did have legal cause to detain Blalack for a DUI investigation would be an abuse of discretion because glassy eyes

and alleged slurred speech do not create a reasonable suspicion that someone is legally intoxicated.

When a discretionary ruling is tainted by a legal or factual error, ordinarily the matter is remanded for a new, error-free determination. *State v. Truman*, 150 Idaho 714, 723, 249 P.3d 1169, 1178 (Ct. App. 2010). A remand can be avoided if it is apparent from the record that the result would not change or a different result would represent an abuse of discretion. *Id.*

Whether or not Trooper Cushman had a reasonable suspicion that Blalack was driving under the influence is evaluated considering the totality of the circumstances at the time he detained Blalack to conduct a DUI investigation. Other than speeding, which was explained, nothing else about Blalack's driving indicated she was intoxicated. The only two facts which Trooper Cushman observed prior to the time he detained Blalack for a DUI investigation were glassey eyes and alleged slurred speech. Alone, neither of these create a reasonable suspicion of criminal activity, nor do they combined.

Next, we add the offense of speeding. Intoxication cannot be inferred rationally from the offense of speeding alone. Although speeding together with bloodshot eyes may be more suggestive of intoxication than either factor taken alone, the logical combination of these circumstances is not so much greater than the aggregation of their individual weights that it allows for a rational inference of intoxication.

*State v. Thirty Thousand Six  
Hundred Sixty Dollars & no/100,*  
136 S.W.3d 392, 400 (Tex. App.  
2004).

This stop occurred at 12:30 at night. Most people have glassey and/or bloodshot eyes at that time of night, even so bloodshot eyes are not enough to create a reasonable suspicion of DUI. "However, bloodshot eyes alone are not enough to establish reasonable suspicion that a crime is being committed." *State v. Grigg*, 149 Idaho 361, 364, 233 P.3d 1283, 1286 (Ct. App.

2010) citing *See Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999); *State v. Thirty Thousand Six Hundred Sixty Dollars and No/100 in U.S. Currency*, 136 S.W.3d 392 (Tex.Ct.App.2004).

Likewise slurred speech alone could never create a reasonable suspicion of intoxication because an officer would have no way to know if the person is slurring or if that is just how he or she talks. Trooper Cushman did not know Blalack and would have no idea if her speech was slurred or not. More importantly, any finding by the hearing officer that Blalack was slurring her speech would be an abuse of discretion as it would be unsupported by the evidence. Blalack can be clearly heard on the video of the stop and is not slurring her words any point.

Remand in this matter is not required because any finding by the hearing officer that Trooper Cushman did have legal cause to detain Blalack to conduct a DUI investigation would be an abuse of discretion. Blalack having bloodshot eyes at 12:30 a.m. could be expected, does not provide a reasonable suspicion of anything and Blalack was not slurring her words. Trooper Cushman was acting on a hunch, albeit an accurate one, but the result does not justify the means and the suspension should be set aside.

## CONCLUSION

In every single DUI case in the State of Idaho<sup>2</sup> that found that an officer had reasonable suspicion to conduct a DUI investigation involved the smell of alcohol or an admission to drinking and one other factor. No odor of alcohol was involved in this case and the combination of bloodshot/glassey eyes and alleged slurred speech – even if supported by the evidence – do not create a reasonable suspicion that someone is legally intoxicated.

It was error for the hearing officer to fail to make any findings of fact that would support the conclusion that Trooper Cushman had legal cause to stop Blalack to conduct a DUI investigation, however the matter should not be remanded because any finding that Trooper Cushman did have legal cause would be an abuse of discretion for lack of supporting facts. The suspension should be set aside by this Court and this matter concluded.

Respectfully submitted on the following date: March 4, 2021.

BISTLINE LAW, PLLC



ARTHUR M. BISTLINE  
*Attorney for Appellant*

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<sup>2</sup> At least that the undersigned could find.

**CERTIFICATE OF SERVICE**

I HEREBY certify that on the 5<sup>th</sup> day of March, 2021, I caused a true and correct copy of the foregoing to be delivered to the following person in the following manner:

Susan Service  
Special Deputy Attorney General  
618 N. 4<sup>th</sup> Street, #102  
Coeur d'Alene, ID 83814

Via iCourt

s/Nichole Foreman  
NICHOLE FOREMAN