4-2-2021

Blalack v. Idaho Transportation Department Respondent's Brief Dckt. 48293

IN THE SUPREME COURT OF THE STATE OF IDAHO

AIMEE BLALACK, Petitioner, vs. STATE OF IDAHO TRANSPORTATION DEPARTMENT, Respondent.	**RESPONDENT'S BRIEF** **DOCKET NO. 48293-2020** Bonner County Case No. CV09-19-1349

BRIEF OF RESPONDENT

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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II. STATEMENT OF THE CASE

A. Nature of the Case

This is a response brief of the Idaho Transportation Department (ITD). Petitioner Aimee Blalack (Blalack) requests this Court to reverse the decision of the District Court, who upheld the decision of the hearing officer. The hearing officer determined that the requirements of Idaho Code Section 18-8002A were met and that Blalack's driving privileges should be suspended for ninety (90) days.

B. Course of Proceedings

Blalack was arrested on August 10, 2019 and issued a Notice of Suspension. *Ex., p. 20.*[1] On or about August 13, 2019 Blalack, through counsel, requested a hearing with ITD. *Ex., p. 27.* The hearing was held on September 6, 2019. *Ex., p. 48.* On September 11, 2019 the hearing officer issued his decision upholding the 90-day administrative license suspension. On September 12, 2019, Blalack filed a Motion to Reconsider with the hearing officer. The Motion for Reconsideration was denied on September 25, 2019. *Ex., p. 65.* The appeal to the District Court was filed on or about September 13, 2019. After oral argument, the District Court upheld the decision of the hearing officer. *R., p. 71-83.* Blalack's Motion for Rehearing was denied by the District Court on July 20, 2020. *R., p. 89-94.* Blalack filed this appeal on September 8, 2020. R. p. 95-97.

C. Statement of Facts

On August 10, 2019, Trooper Jonathon Cushman observed a vehicle driven by Blalack traveling 46 mph in a 35 mph speed limit zone while traveling on US Highway 95. The trooper

[1] The clerk's record of this appeal contains two files with documents related to this appeal, Appeal Vol. 1 Exhibits and Appeal Vol. 1 Record. "Ex" refers to page numbers in Appeal Vol. 1 Exhibits and "R" refers to page numbers in Appeal Vol. 1 Record.

initiated a traffic stop. The trooper identified Blalack by her Idaho driver's license. The trooper suspected Blalack may be impaired because of her slurred speech and glassy eyes. *Ex., p. 20-21 and 40-41*. The trooper requested that Blalack exit the vehicle to question her further. She admitted to consuming one glass of wine two hours earlier. He conducted field sobriety tests, which Blalack failed. The trooper notified Blalack of her rights via a Notice of Suspension. Then the trooper gave Blalack two breath tests. Blalack failed the breath tests (.118 and .118). *Ex., p. 15, 42.* Blalack was issued a "Suspension and Mandatory Ignition Interlock Advisory" (also called a Notice of Suspension) and arrested for DUI. *Ex., p. 13-14.* Blalack's driver's license suspension was stayed pending this appeal.

III. ISSUES PRESENTED

A. Was the hearing officer's decision that the trooper had legal cause detain Blalack to investigate whether she was driving in violation of Idaho Code Section 18-8004 correct?

B. Should this matter be remanded to the hearing officer for further findings of fact?

IV. STANDARD OF REVIEW

The administrative license suspension (ALS) statute, I.C. § 18-8002A, requires that the ITD suspend the driver's license of a driver who has failed a BAC test administered by a law enforcement officer. *Bennett v. State, Dept. of Transp., 147 Idaho 141, 206 P.3d 505 (Idaho App. 2009).* The period of suspension is ninety days for a driver's first failure of an evidentiary test and one year for any subsequent test failure within five years. I.C. § 18-8002A(4)(a). A person who has been notified of an ALS may request a hearing before a hearing officer designated by the ITD to contest the suspension. I.C. § 18-8002A(7). At the administrative hearing, the burden of proof rests upon the driver to prove any of the grounds to vacate the suspension. I.C. § 18-

suspension. I.C. § 18-8002A(7); *Kane v. State, Dep't of Transp.*, 139 Idaho 586, 590, 83 P.3d 130, 134 (Ct.App.2003). The hearing officer must uphold the suspension unless he or she finds, by a preponderance of the evidence, that the driver has shown one of several grounds enumerated in I.C. § 18-8002A(7) for vacating the suspension. Those grounds include:

> (a) The peace officer did not have legal cause to stop the person; or
> (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
> (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
> (d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
> (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

I.C. § 18-8002A(7). The hearing officer's decision is subject to challenge through a petition for judicial review. I.C. § 18-8002A(8); *Kane,* 139 Idaho at 589, 83 P.3d at 133.

The Idaho Administrative Procedures Act (IDAPA) also 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. ITD has adopted IDAPA rules for ALS suspensions. See IDAPA 39.02.72.00, et seq. ALS appeals are also governed by the Idaho Rules of Administrative Procedure of the Attorney General. See IDAPA 39.02.72.003. IDAPA 04.11.01.052 provides for liberal construction of the rules and states:

> The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (7-1-93)

In *Bennett v. State Department of Transportation*, 147 Idaho 141, 206 P.3d 505 (Ct App 2009), the Court of Appeals restated the necessary standard of review for the Court reviewing the decision of the hearing officer. The Court of Appeals stated, in pertinent part:

> 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'rs,* 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. Payette County Bd. of County Comm'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).

Id., at 506-507. Therefore, the burden is on the petitioner to establish that ITD erred in a manner specified in Idaho Code Section 67-5279(3) *and* then establish that a substantial right has been prejudiced. This issue was discussed by the Court of Appeal in *State of Idaho v. Kalani-Keegan*, 155 Idaho 297, 311 P.3d 309 (Ct. App. 2013) where the Court stated:

> It is well established that the party challenging an agency decision must demonstrate the agency erred in a manner specified in I.C. § 67-5279(3) and that a substantial right of that party has been prejudiced. *Wheeler v. Idaho Dep't of Health & Welfare*, 147 Idaho 257, 260, 207 P.3d 988, 991 (2009).
>
> Further, nothing in IDAPA requires the courts to address these two requirements in any particular order. *Hawkins v. Bonneville Cnty. Bd. of Comm'rs,* 151 Idaho 228, 232, 254 P.3d 1224, 1228 (2011). Therefore, an agency's decision may be affirmed solely on the grounds that the petitioner has not shown prejudice to a substantial right. Id. In other

words, the courts may forego analyzing whether an agency erred in a manner specified by I.C. § 67-5279(3) if the petitioner does not show that a substantial right was violated. Id.

Id., at page 313.

V. ARGUMENT

A. LEGAL CAUSE TO BELIEVE BLALACK WAS DRIVING IN VIOLATION OF IDAHO CODE SECTION 18-8004.

Blalack alleges that the hearing officer's finding that there was legal cause to believe that she was driving under the influence of alcohol was legally and/or factually defective. Blalack's arguments are without merit.

The Hearing Officer. Before the hearing officer, Blalack argued that the trooper lacked legal cause to investigate and arrest Blalack. The hearing officer stated Blalack's argument as follows:

> 5. Counsel contends that Trooper Cushman did not have probable cause to arrest Blalack and request evidentiary testing. Specifically, Trooper Cushman did not smell the odor of alcohol on Blalack's person and the body camera video clearly shows Blalack as coherent, with no signs of impairment. Trooper Cushman's observation of slurred speech and glassy/bloodshot eyes are not enough to request Blalack submitted to evidentiary testing. This is supported by *State v. Perez-Jungo*. As a result, Blalack was not in violation of Idaho Code §18-8004; therefore, Blalack should not have been arrested and requested to submit to evidentiary testing.

The hearing officer reviewed Idaho case law and cited the *Jordan* case and the *Barker* case, for the following conclusions of law:

> 6. In *State v. Jordan*, 122 Idaho at 775 (1992), the court held that reasonable suspicion to believe a driver was under the influence was established by information that the driver had been drinking, coupled with the driver's admission of drinking.
> 7. In *State v. Barker*, 123 Idaho 162 (Ct. App. 1992), driving under the influence in violation of Idaho Code §18-8004 is established by examining the totality of the circumstance which encompasses circumstantial evidence of impaired driving ability or other observed symptoms of intoxication.

At the ALS hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh the evidence and draw factual inferences from the evidence was vested with the hearing officer. Here, the hearing officer accepted the facts as reported by Trooper Cushman, and found:

> 8. Trooper Cushman's Narrative Report (Exhibit D) asserts that during his initial contact with Blalack, he suspected Blalack was under the influence of alcohol based upon her slurred speech and glassy eyes. Trooper Cushman then had Blalack exit the vehicle to question her further. During questioning, Blalack admitted to consuming one glass of wine that evening.
> 9. A review of video from Trooper Cushman's body camera (Exhibit C) shows him make contact with Blalack after he conducted the traffic stop. Blalack admitted to consuming alcohol prior to driving. Even though Trooper Cushman does not document that he smelled the odor of alcohol on Blalack's person, it does not negate his other observations of impairment he observed.
> 10. In *State v. Perez-Jungo*, 156 Idaho 609, 616, 329, P.3d 391, 398 (Ct. App. 2014) the court held that bloodshot eyes or glassy eyes alone are not sufficient to provide reasonable suspicion.
> 11. In the case at hand, Trooper Cushman first observed Blalack to have slurred speech and glassy eyes. After exiting the vehicle, Blalack admitted to consuming one glass of wine. Blalack's admission to consuming alcohol, along with Trooper Cushman's observation of slurred speech, glassy eyes and impaired memory, support and bolster the suspicion of impairment and intoxication, thus leading to sufficient legal cause to request evidentiary testing.
> 12. Law enforcement officers contemplating arrest charges for driving under the influence should take into consideration driving pattern, personal contact with the driver and observable signs of impairment or intoxication, along with the results of any field sobriety tests.

Ex., p. 53.

During the ALS hearing, by law the burden of proof was on Blalack. The hearing officer specifically noted that she did not meet her burden of proof. The hearing officer found in favor of the evidence presented by Trooper Cushman. He wrote:

> 13. Blalack failed to present any affirmative evidence or any other factually weighted proof that would sway the evidence in her favor and prevail over the evidence of Trooper Cushman. Thus, Blalack's argument fails.

Ex., p. 53. As demonstrated above, the findings of fact by the hearing officer are supported by substantial evidence. As such, even if there is conflicting evidence, the findings of fact are binding on this reviewing Court.

The District Court. The District Court considered and rejected the arguments of Blalack. With respect to the trooper's request that Blalack exit the vehicle, District Court correctly held that:

> The appropriate inquiry is whether Trooper Cushman had reasonable suspicion to continue Blalack's detention to investigate whether she was driving under the influence by administering field sobriety tests, not whether Trooper Cushman had probable cause to believe Blalack was driving under the influence. The hearing officer found, "Trooper Cushman first observed Blalack to have slurred speech and glassy eyes. After exiting the vehicle, Blalack admitted to consuming one glass of wine. Blalack's admission to consuming alcohol, along with Trooper Cushman's observations of slurred speech, glassy eyes and impaired memory, supported and bolster the suspicion of impairment and intoxication, thus leading to sufficient legal cause to request evidentiary testing." AR. At 45. This finding is not clearly erroneous and is supported by substantial evidence in the record.

R., p. 80.

Blalack also contended that the trooper did not have legal cause to request that Blalack submit to a breath test. The District Court also rejected that argument and stated:

> Blalack also alleges that the hearing officer erred in finding that Trooper Cushman had legal cause to request that she submit to breath testing. After admitting to drinking alcohol prior to driving, Trooper Cushman asked Blalack to perform a series of field sobriety tests, which she did. Blalack failed the horizontal gaze nystagmus test and the walk and turn test. Blalack also failed a counting test and an alphabet test. Trooper Cushman then placed Blalack under arrest for DUI, and subsequently asked her to submit to breath testing. Blalack's breath test results were .118/.118.
>
> Here, Trooper Cushman had probable cause to arrest Blalack and reasonable grounds to believe Blalack was operating her vehicle while under the influence of alcohol. Trooper Cushman noted Blalack's bloodshot/glassy eyes and slurred speech, Blalack admitted to consuming alcohol prior to driving, and Blalack failed two of three field sobriety tests, an alphabet test, and a counting test. The hearing officer's finding that Trooper Cushman had "legal cause to request Blalack submit to evidentiary testing" was not an abuse of discretion and is supported by substantial evidence in the record.

R., p. 80-81.

The District Court concluded its decision affirming that Blalack failed in her burden of proof and upheld the administrative license suspension. The decision of the District Court was supported the undisputed facts and by Idaho law.

Idaho Law. A Section 18-8002A license suspension must be vacated if the trooper did not have legal cause to believe the person had been driving a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the law. At issue presented in this case is whether the trooper had legal cause to stop and investigate Blalack.

In 1999, the Idaho Court of Appeals decided *State v. Ferreira, 133 Idaho 474, 988 P.2d 700 (Ct. App. 1999).* One of the issues was whether the officer had the evidence necessary to request the driver to exit the vehicle. Citing the US Supreme Court decision *in Pennsylvania v. Mimms*, the Idaho Court of Appeals stated:

> In *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977), the United States Supreme Court held that once a motor vehicle has been lawfully detained for a traffic violation, the police officer may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures. This rule has been followed in Idaho. In *Mimms,* the Supreme Court focused on the danger posed to the officer from both the driver and passing traffic. ... Thus, it stands to reason that when an officer suspects that the driver of a lawfully stopped vehicle is driving contrary to I.C. § 18-8004, the officer is not required to stand on the roadside and question the driver further while the driver remains seated inside the vehicle.

Id., 483, 988 P.2d 700, 709. (internal citations omitted). Likewise, Trooper Cushman was legally permitted to ask Blalack to step out of the vehicle to question here further.

In 2003 the Idaho Court of Appeals issued a decision regarding whether the officer had legal cause to request a breath test in *Thompson v. State*, 138 Idaho 512, 65 P.3d 534 (Ct.App. 2003). The facts of Thompson were stated as follows:

> At a little after 1 a.m. on a Saturday morning, Thompson was stopped by Officer Donald Thom for driving thirty-five miles per hour in a twenty-five-mile-per-hour zone. When

> Officer Thom spoke to Thompson, he detected a strong odor of alcohol, but upon being questioned about it, Thompson denied drinking any alcoholic beverages that night. Thom also noted that Thompson avoided making eye contact with him. Believing that the alcoholic odor was coming from Thompson's breath, Officer Thom asked Thompson to get out of the vehicle and perform a series of field sobriety tests. Thompson exited the car but refused to perform the tests, stating that he had been told to "never perform field sobriety tests." At this time, Thom observed that Thompson's eyes were bloodshot and that his pupils were atypically dilated. Thom urged Thompson to take the tests, telling him that if he refused he would be arrested for DUI. Thompson again refused and was placed under arrest and transported to the Twin Falls County Jail.

Id., 65 P.3d 534. Thompson argued that the officer did not have legal cause to request a breath test. The Court of Appeals disagreed:

> In the present case, the officer observed Thompson driving ten miles per hour in excess of the twenty-five-mile-per-hour speed limit, detected a strong odor of alcohol on Thompson's breath, observed that he had bloodshot eyes and dilated pupils, and was aware that Thompson had refused to take field sobriety tests which could have confirmed or dispelled the suspicion of intoxication. Thompson had also continued traveling for about a quarter-mile after the officer turned on his overhead lights to signal Thompson to stop. Thompson did not have slurred speech nor difficulty walking, but because of the alcohol odor on his breath, the officer had reason to believe that Thompson had lied when he denied having been drinking. When these events occurred, it was a very late hour on a weekend night. Collectively, these circumstances are sufficient to support a reasonable belief that Thompson had been driving under the influence of alcohol.
>
> Thompson argues vigorously that mere speeding is not an indication that a driver is under the influence and therefore Officer Thom had no basis to believe that Thompson had ingested enough alcohol to impair his driving ability. We cannot wholly agree with this proposition. Admittedly, speeding very frequently occurs without alcohol use, and neither the speeding nor any of the other observations made by Officer Thom, standing alone, would create probable cause for a DUI arrest. Nevertheless, Thompson's driving behavior of exceeding the speed limit and traveling for a quarter-mile before stopping in response to the officer's overhead lights, when coupled with the other evidence of alcohol use and the inference of consciousness of guilt that can be drawn from Thompson's refusal of field sobriety tests and denial that he had been drinking despite the odor of alcohol on his breath, gives rise to probable cause to believe that Thompson had been driving while under the influence. Accordingly, if probable cause for arrest is a prerequisite to an officer's valid request for a breath test, that prerequisite was met here. It follows that the magistrate was correct in suspending Thompson's driver's license pursuant to I.C. § 18-8002(4)(b).

Id., at 515-6, 65 P.3d 587-8. Here, after legally stopping Blalack, Trooper Cushman had additional evidence of glassy eyes and slurred speech. This evidence supported additional investigation.

In 2010 the Idaho Court of Appeals issued a decision in *State v. Grigg, 149 Idaho 361, 233 P.3d 1283 (Ct. App. 2010).* The facts were as follows:

> On a summer evening, Grigg was seated in his parked car at a public park with his windows rolled down, attempting to repair his car cigarette lighter. The sun was out, and Grigg's car was parked in the shade. An officer approached Grigg's vehicle on foot and asked Grigg what he was doing at the park. The officer observed that Grigg had glassy bloodshot eyes, eye tremors, reddening of the conjunctiva, and a white substance around his mouth. After making this observation, the officer asked Grigg to step out of the car. Grigg complied, and the officer questioned Grigg further. During questioning outside of his vehicle, Grigg admitted that he had marijuana in his car. Once another officer arrived at the scene, the original officer searched Grigg's vehicle and discovered drug paraphernalia, methamphetamine, and marijuana. Thereafter, Grigg was arrested for possession of a controlled substance and possession of drug paraphernalia.

Grigg moved to suppress the evidence alleging that his arrest was not legal and violated the Fourth Amendment. The Court of Appeals disagreed and stated:

> In this case, not only did Grigg have bloodshot eyes, but his eyes were also glassy. In addition, the officer testified that Grigg's glassy bloodshot eyes were coupled with reddening of the conjunctiva of his eyes and eyelid tremors. The officer further testified that, based on his training and experience, such characteristics indicate that a person is under the influence of a controlled substance. Therefore, based on the totality of the circumstances, the officer had a reasonable and articulable suspicion that Grigg was under the influence of drugs. As a result, it was reasonable for the officer to briefly detain Grigg outside of his vehicle in order to investigate further. Grigg's encounter with the officer was a reasonable investigative detention under Terry and did not violate the Fourth Amendment. As such, Grigg has failed to show that the district court erred in denying his motion to suppress.

Id., at 363-364, 233 P.3d 1285-6. Likewise, in this case, Trooper Cushman had more evidence than just her glassy eyes. He also observed speeding and slurred speech before he requested Blalack to exit her vehicle.

In 2014, the Idaho Court of Appeals issued a decision in *State v Perez-Jungo, 149 Idaho 361, 329 P.3d 391 (Ct. App. 2014).* In *Perez-Jungo* the facts were as follows:

> An officer came upon Perez-Jungo's vehicle parked to the side of a rural gravel road at approximately 1:36 a.m. As the officer approached Perez-Jungo's vehicle, the officer activated his patrol vehicle's overhead emergency lights. The officer testified that his initial reasons for approaching the vehicle were his concern that the vehicle was abandoned, the vehicle was stolen, the driver was in need of assistance, or the driver may have been involved in recent vandalisms of cell towers in the area. After pointing his spotlight at the driver's side mirror, the officer observed an individual in the vehicle. The officer approached the vehicle and asked Perez-Jungo what he was doing. Perez-Jungo responded that he was waiting for a friend and that someone had told him there was a potential job site nearby. The officer noted that Perez-Jungo's eyes were bloodshot and glassy. He asked Perez-Jungo if he had been drinking and Perez-Jungo said he had not. The officer also noticed a Santa Muerte statuette on the dashboard of Perez-Jungo's vehicle, which the officer testified was the patron saint of drug traffickers. The officer then requested Perez-Jungo's driver's license and information, returned to his patrol vehicle and ran a status check for active warrants, which came back negative. He was also able to determine that the vehicle was not stolen. The officer requested backup, which arrived approximately ten minutes later, and a canine unit, which never arrived. Perez-Jungo was told to exit his vehicle and was questioned. During questioning, other officers shined flashlights into the vehicle's windows. The officers eventually saw what appeared to be drug paraphernalia and a controlled substance, leading to a search of the vehicle. The items tested presumptively positive for controlled substances.

Id., 329 P.3d 394-5. Perez-Jungo moved to suppress the evidence based upon an illegal search.

The Court of Appeals denied the motion and reasoned, in part, as follows:

> The circumstances known to the officer here provided reasonable suspicion to believe that some criminal activity was afoot. The officer testified that, after the concerns justifying his initial contact with Perez-Jungo had been resolved, he suspected that Perez-Jungo might be involved in impaired driving or illegal drug activity. Specifically, the officer came upon Perez-Jungo's vehicle parked on a gravel road in a remote area late at night. Although this was insufficient alone to create reasonable suspicion, officers are not required to ignore the suspicious nature of relevant surrounding circumstances, such as location or time. See, e.g., Illinois v. Wardlow, 528 U.S. 119, 124, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000) (noting that police may consider location, even when not in a high-crime area, when determining if reasonable suspicion exists); State v. McAfee, 116 Idaho 1007, 1010, 783 P.2d 874, 877 (Ct. App. 1989) (agreeing that " unusual activities at unusual hours" can contribute to establish reasonable suspicion, but noting that citizens do not become prospective detainees because they lawfully drive and park late at night). The officer also observed that Perez-Jungo had bloodshot, glassy eyes. Again, the presence of bloodshot and glassy eyes is not alone sufficient to provide reasonable

suspicion. Grigg, 149 Idaho at 364, 233 P.3d at 1286. However, it nonetheless supports suspicion of both intoxication and illegal drug activity. See State v. Sheldon, 139 Idaho 980, 985, 88 P.3d 1220, 1225 (Ct. App. 2003) (noting that glassy, bloodshot eyes not caused by alcohol consumption can contribute to reasonable suspicion of illegal drug activity).

Indeed, few additional facts are needed beyond bloodshot and glassy eyes to provide reasonable suspicion of impaired driving or illegal drug activity. See Grigg, 149 Idaho at 364, 233 P.3d at 1286 (finding reasonable suspicion to support an extended detention where defendant had bloodshot and glassy eyes, reddening of the conjunctiva of his eyes, and eyelid tremors). Although Perez-Jungo denied having consumed alcohol or drugs recently, it was reasonable for the officer to believe Perez-Jungo was being untruthful, especially in light of the questionable explanation Perez-Jungo provided for what he was doing. He asserted that he was waiting to meet with a friend and look into possible employment in the area. However, as noted by the district court, Perez-Jungo was in a remote area with no businesses or residences nearby and it was late at night, making his explanation unlikely. Finally, the officer observed a Santa Muerte statuette on the dashboard of Perez-Jungo's vehicle. The officer testified that, based on his training and experience, Santa Muerte is a patron saint for drug traffickers.

Based on the totality of these circumstances, the officer had reasonable suspicion to detain Perez-Jungo for further investigation. Taken individually, none of these facts would be sufficient to provide reasonable suspicion that Perez-Jungo was, had been, or was about to be involved in criminal activity. However, when taken together and viewed as a whole picture, these facts support extension of the initially lawful detention to further investigate potential crimes involving impaired driving and illegal drug activity. See Brumfield, 136 Idaho at 917, 42 P.3d at 710 (noting that facts susceptible to innocent explanations separately may still warrant further investigation when taken together). The district court did not err in finding that the extension of Perez-Jungo's detention was supported by reasonable suspicion.

Id. Here, the evidence available to Trooper Cushman, when taken as a whole, supported the extension of the Trooper's investigation that Blalack may be driving under the influence of alcohol,

In *State v. Svelmoe, 160 Idaho 327, 372 P.3d 382 (2016)* was cited by the District Court. Svelmoe was pulled over for an equipment violation. The arresting officer testified that Svelmoe had blood shot eyes and smelled of alcohol. The officer also testified that Svelmoe failed two of three field sobriety tests. Based upon the foregoing evidence, the officer had reasonable grounds to believe that Svelmoe was operating his vehicle under the influence of alcohol.

Discussion. Blalack argues that, although Trooper Cushman had legal cause to stop Blalack for speeding, he did not have legal cause "to stop" Blalack to investigate a DUI. Blalack argues:

> *"Trooper Cushman initiated a second stop of Blalack when he decided to turn the traffic stop into an investigation for 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 okay to drive."*

Appellant's Brief, p. 6. As explained above, there was no "second stop" of Blalack by Trooper Cushman. When Blalack was asked to exit the vehicle, Trooper Cushman had "reasonable suspicion to continue Blalack's detention to investigate" whether she was driving under the influence. Reasonable suspicion was based upon speeding, glassy eyes, slurred speed[2] and the time of night. Therefore, the extension of his investigation was supported by the facts of this case.

B. REMAND TO THE HEARING OFFICER.

Blalack also argued that the hearing officer *"did not make any findings of what articulable facts supported the legal conclusion that Trooper Cushman had reason to suspect Blalack was driving un the influence...." Appellant's Brief, page 6.* This argument ignores the record and the facts found in the hearing officer's decision. Specifically, the hearing officer described the narrative of the Trooper in his findings of fact:

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[2] Blalack argued at various points in the record that Blalack was not slurring her speech and that the finding by the hearing officer is an abuse of discretion. *See Appellant's Brief, p. 6.* This argument misperceives the burden of proof and the role of the hearing officer. At the ALS hearing Blalack had the burden of proof and Blalack presented no affirmative evidence that she was not slurring her speech other than the body cam video recording. On issues of fact, it is up to the hearing officer to weigh the evidence presented to him. In this case, the hearing officer found that the police report account of slurred speech was more credible than the assertions from the body cam video that her speech was not slurred. Findings of fact are binding on the reviewing court, absent proof of an abuse of discretion by the hearing officer.

> 8. Trooper Cushman's Narrative Report (Exhibit D) asserts that during his initial contact with Blalack, he suspected Blalack was under the influence of alcohol based upon her slurred speech and glassy eyes. Trooper Cushman then had Blalack exit the vehicle to question her further. During questioning, Blalack admitted to consuming one glass of wine that evening. [emphasis added].

Ex., p. 53. The hearing officer also stated that he accepted the Trooper's evidence over the evidence of presented by Blalack. He stated:

> 13. Blalack failed to present any affirmative evidence or any other factually weighted proof that would sway the evidence in her favor and prevail over the evidence of Trooper Cushman. Thus, Blalack's argument fails.

Ex., p. 53. Therefore, the findings and conclusions of the hearing officer are sufficient and binding on the reviewing court. The decision should be upheld and a remand is not necessary.

If the Court does not affirm the hearing officer's finding and conclusions, the matter must be remanded. If this Court determines that the action of the hearing officer is not affirmed due to his alleged lack of "*findings of what articulable facts*" as alleged by Blalack, Idaho Code Section 67-5279(3) provides that "it shall be set aside, in whole or in part, and remanded for further proceedings as necessary."

VI. CONCLUSION

ITD respectfully requests that this Court uphold the decision of the hearing officer and that the Court vacate the stay of the driver's license suspension.

DATED this 2nd day of April 2021

Susan K. Servick
Special Deputy Attorney General
Idaho Transportation Department

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd of April 2021, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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✓ I Court Service

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