

BOISE, TUESDAY, AUGUST 25, 2009, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35839

DAVID OLIVER WHEELER,)
)
 Petitioner-Appellant,)
)
 v.)
)
 THE IDAHO TRANSPORTATION)
 DEPARTMENT, a governmental agency of)
 the State of Idaho,)
)
 Respondent.)
)
 _____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. D. Duff McKee, District Judge.

Vernon K. Smith, Jr., Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Michael J. Kane, Special Deputy Attorney General, Boise, for respondent.

David Oliver Wheeler appeals from the district court's appellate order affirming the administrative suspension of his driver's license. He asserts that his due process rights were violated at the administrative hearing, that the hearing officer's factual findings were arbitrary and capricious, and that his license suspension should have been vacated by the hearing officer because required procedures for alcohol concentration testing were not followed when his breath tests were administered.

BOISE, TUESDAY, AUGUST 25, 2009, AT 10:30 AM

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34701

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 ERIC JASON HANSEN,)
)
 Defendant-Appellant.)
 _____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

In late September 2006, a seventeen-year-old brother and his thirteen-year-old sister were waiting to cross the street on their way to the mall. There was a metallic blue sport utility vehicle (SUV) in the turn lane, and the driver of the SUV began making comments to the sister. The brother responded and words were exchanged between him, the driver, and Eric Jason Hansen--who was a passenger in the front seat of the SUV. The SUV turned in front of the siblings, and the siblings then crossed the street. As the siblings continued down the street toward the mall, the SUV completed a U-turn and came back toward the siblings. As the SUV approached the siblings it slowed down, and Hansen made and maintained eye contact with the siblings. When the SUV was even with the siblings, Hansen put his arm out the window of the SUV, raised his arm above the car's roof, and fired a shot from a pistol.

The siblings ran to the mall. At the mall, the siblings later encountered Hansen and the driver of the SUV, and it appeared the two were looking for the siblings. The police were called and there was a high-speed chase before the SUV was stopped. The driver and Hansen were arrested. An empty shell casing was found by the mall and, a week after the incident, a resident on the street where the SUV was stopped reported finding a pistol in her yard.

Hansen went to trial and a jury found him guilty of two counts of aggravated battery, enhanced by use of a firearm, and unlawful possession of a firearm. Hansen appeals, arguing that the district court erred in instructing the jury and that there was insufficient evidence to sustain the jury's verdict.

BOISE, TUESDAY, AUGUST 25, 2009, AT 1:30 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35340

RICHARD W. KRIEBEL,)
)
 Petitioner-Appellant,)
)
 v.)
)
 STATE OF IDAHO,)
)
 Respondent.)
)
 _____)

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Hon. Carl B. Kerrick, District Judge.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

On September 2, 2005, the district court imposed a unified twenty-five year sentence, with ten years determinate, following Richard A. Kriebel’s conviction for lewd conduct with a child under sixteen years old. Kriebel did not directly appeal the conviction or sentence.

On November 29, 2007, Kriebel filed a pro se petition for post-conviction relief, relying on the Supreme Court’s holding in *Estrada v. State*, 143 Idaho 558, 149 P.3d 833 (2006) that a psychosexual evaluation was a “critical” stage of the proceedings to which the right to counsel and the right against self-incrimination attached. Specifically, he asserted that his counsel had been ineffective for failing to notify Kriebel that he was not required to participate in a psychosexual evaluation and for failing to move to suppress the evaluation report. Kriebel was appointed counsel, and the state moved for summary dismissal of the petition, contending it was untimely.

Kriebel responded, arguing that the one year post-conviction statute of limitation period should be tolled because he was without access to Idaho courts while incarcerated out of state for several months, his trial counsel had discouraged him from filing a post-conviction petition, and the Supreme Court’s decision in *Estrada* became final after the statute of limitations period ran and the rule it announced should be applied retroactively.

A motion was heard on the timeliness of Kriebel’s petition. The district court granted the state’s motion for summary dismissal, deciding that his petition was untimely. Kriebel now appeals.