

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37743

IN THE MATTER OF THE DRIVER'S)	
LICENSE SUSPENSION OF DONALD J.)	
LINEBERRY.)	
<u>DONALD J. LINEBERRY,</u>)	2011 Unpublished Opinion No. 434
)	
Petitioner-Appellant,)	Filed: April 11, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO, DEPARTMENT OF)	THIS IS AN UNPUBLISHED
TRANSPORTATION,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Respondent.)	
_____)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Ron Schilling, District Judge.

District court decision affirming administrative suspension of driver's license, affirmed.

Richard L. Harris, Caldwell, for appellant.

Michael Kane & Associates, PLLC, Boise, for respondent. Michael Kane argued.

LANSING, Judge

Donald J. Lineberry appeals from district court decision that affirmed, upon judicial review, a hearing officer's decision upholding the Idaho Transportation Department's suspension of Lineberry's driver's license after an analysis of Lineberry's urine revealed the presence of intoxicating drugs. We affirm.

I.

FACTS AND PROCEDURAL HISTORY

On January 29, 2009, after Lineberry apparently hit a building while trying to park his vehicle, the police were called. When questioned, Lineberry admitted consumption of prescription sleep medication. After he failed field sobriety tests, Lineberry was arrested for

driving under the influence of an intoxicating substance. A breathalyzer test revealed no alcohol use, so a sample of Lineberry's urine was submitted to the state lab for testing.

After the test results revealed the presence of two drugs, butalbital and zolpidem, the ITD served Lineberry with notice of administrative suspension of his driver's license. Lineberry requested a hearing to contest that suspension. Following the hearing, the hearing officer upheld the suspension. Lineberry sought judicial review before the district court. The district court affirmed the decision of the hearing officer, and Lineberry appeals to this Court.

II.

STANDARDS 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* I.C. §§ 49-201, 49-330, 67-5201(2), 67-5270. In an appeal from the decision of the district court acting in its appellate capacity under IDAPA, this Court reviews the agency record independently of the district court's decision. *Marshall v. Dep't of Transp.*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct. App. 2002). 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.

The administrative license suspension (ALS) statute, I.C. § 18-8002A, requires that the ITD suspend the license of a driver who has failed an evidentiary test administered by a law enforcement officer. A person who has been notified of an ALS may request a hearing to contest the suspension before a hearing officer designated by the ITD. 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. § 18-8002A(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. 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.

III. ANALYSIS

A. Confrontation Clause

Citing *Crawford v. Washington*, 541 U.S. 36 (2004), Lineberry contends that the hearing officer's consideration of documentary evidence containing hearsay violated his right to confront the witnesses against him. He is incorrect. The Sixth Amendment to the United States Constitution provides, in part, that "[i]n all *criminal* prosecutions, the accused shall enjoy the

right . . . to be confronted with the witnesses against him” (emphasis added). In *Crawford*, the United States Supreme Court determined that, in certain circumstances, this Sixth Amendment right prohibits the admission of hearsay statements against a defendant in a criminal prosecution. An administrative proceeding for the suspension of a driver’s license is a civil proceeding, not a criminal prosecution. *Mills v. Bridge*, 93 Idaho 679, 682, 471 P.2d 66, 69 (1970); *State v. Burris*, 125 Idaho 289, 292-93, 869 P.2d 1384, 1387-88 (Ct. App. 1994). Therefore, the Sixth Amendment has no application to an administrative license suspension.

B. Burden of Proof

In upholding the license suspension, the hearing officer considered ITD documentation including the arresting officer’s probable cause affidavit and narrative report, along with a toxicology report from the Idaho State Police Forensic Services. The toxicology report states that a Urine Toxicology Collection Kit was obtained from Donald Lineberry on January 29 (the date of Lineberry’s arrest) and that it tested positive for butalbital and zolpidem. The report further includes Lineberry’s date of birth and the arresting officer’s name and telephone number. Lineberry asserts as error that “the record does not establish that a urine or blood sample was requested or obtained under the direction of a police officer.” He points out that the officer’s probable cause affidavit left unchecked a box indicating that a urine sample was taken¹ and that nothing in the officer’s narrative report indicates that a urine sample was obtained.

Lineberry’s argument suffers from two misconceptions--it misperceives both the permissible grounds for a challenge to a license suspension under I.C. § 18-8002A(7) and the burden of proof at the administrative hearing. Lineberry’s complaint that the officer’s probable cause affidavit did not comply with the statutory and regulatory requirements presupposes that such a failure is a ground upon which a license suspension may be challenged in an administrative hearing under I.C. § 18-8002A(7). This supposition disregards the plain language of that statute, which enumerates five grounds upon which a hearing officer may vacate a license suspension, none of which concern the adequacy of documentation sent to the ITD by the initiating law enforcement officer. Section 18-8002A(7) specifies that the hearing officer “shall not vacate the suspension unless he finds” one of the five enumerated bases to set aside a

¹ The probable cause affidavit does, however, indicate that a test result was “pending.”

suspension. Therefore, a hearing officer is not authorized to vacate a suspension based upon technical flaws in documents delivered to the ITD. *Kane*, 139 Idaho at 590, 83 P.3d at 134.

Moreover, it was not the ITD's burden at the administrative hearing to prove that Lineberry submitted a urine sample for testing or to disprove any of the possible grounds for challenging a suspension under I.C. § 18-8002A(7). To the contrary, the statute directs that "[t]he burden of proof shall be on the person requesting the hearing." I.C. § 18-8002A(7). Thus, it was Lineberry's burden to prove, by a preponderance of the evidence, that the lab results obtained were not his, either because he did not submit a urine sample or because the urine sample tested was not his. I.C. § 18-8002A(7)(c). Lineberry testified at the hearing, but he did not deny submitting a urine sample for testing. Instead, he admitted that he had taken the drug zolpidem, a medication to aid sleep, while at home the night of the incident, and that he had lain down to go to sleep and later awoke with a headache. He said he remembered being in different rooms in his house and that the next thing he remembered was being tapped on the shoulder by a police officer. He also testified that he had not, to his knowledge, ingested any substance containing butalbital. Lineberry implies that his testimony proved that the urine sample tested could not have been his. Here, by making the factual finding that "the analyses of Lineberry's urine sample indicates the presence of butalbital and zolpidem," the hearing officer necessarily concluded that Lineberry had not sustained his burden of proving by a preponderance of the evidence that the test results obtained were not from his urine. Lineberry has failed to show that the hearing officer's determination was without evidentiary support or was arbitrary, capricious, or an abuse of discretion.

C. Chain of Custody

Lineberry also contends that the submitted ITD documentation did not establish a chain of custody for the urine sample and that a chain of custody is important to establish that the sample was his and to ensure that the sample was not contaminated. His claim of error is without merit. The rules of evidence that apply to judicial proceedings, including foundational requirements for introduction of test reports, do not apply to administrative hearings. *See* I.C. § 67-5251; Idaho Administrative Code 39.02.72.003; 04.11.01.600. Moreover, Lineberry's arguments suffer from the same infirmities identified in the preceding section. It was Lineberry's burden to convince the hearing officer that *in fact* the urine sample tested was not his or that the test results were not reliable because the sample had been contaminated. *Kane*, 139

Idaho at 590, 83 P.3d at 134. It may be protested that this is an impossible burden because evidence concerning the chain of custody and handling of a urine sample is within the exclusive control of agents of the state of Idaho, including the police officer and the laboratory that tested the sample. However, if Lineberry had wished to acquire this information, he could have conducted discovery and subpoenaed witnesses. *See* IDAPA 39.02.72.400 and 39.02.72.300.01; *In re Suspension of Driver's License of Gibbar*, 143 Idaho 937, 945, 155 P.3d 1176, 1184 (Ct. App. 2006). He did not do so. The hearing officer concluded that Lineberry did not show that “there was an invalid chain of custody,” and Lineberry has failed to show that the hearing officer’s determination was contrary to the evidence or arbitrary, capricious, or an abuse of discretion.

D. Evidence of Impairment

Lineberry also argues that “there is no way to determine from the urine sample whether any impairment existed.” It was Lineberry’s burden to prove that “[t]he test results did not show . . . the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code.” These criminal statutes prohibit driving while “under the influence” of an intoxicating drug. Lineberry made no showing that he was not under the influence of butalbital or zolpidem while driving. Indeed, the hearing officer, relying on the arresting officer’s report, found that when confronted by the officer, Lineberry had slurred speech, swayed while standing, and failed field sobriety tests. The hearing officer did not err in considering this evidence to establish impairment in violation of Idaho’s DUI statutes. *Feasel v. Idaho Transp. Dep’t*, 148 Idaho 312, 315-16, 222 P.3d 480, 483-84 (Ct. App. 2009).

Lineberry asserts that the ITD did not show what quantity of these drugs would cause impairment. This argument is misplaced for two reasons. First, Lineberry again misperceives the burden of proof; it was his burden to prove that he was *not* impaired. Second, Idaho law imposes no “quantification” requirement to prove driving under the influence of an intoxicant. *Id.* at 315, 222 P.3d at 483. In addition, and contrary to Lineberry’s argument, the fact that he possessed a valid prescription for zolpidem is not a defense to a driver’s license suspension proceeding.² *Id.* at 316, 222 P.3d at 484.

² Lineberry seems to contend that because he was not stopped while driving but instead was in a barber shop when he was apprehended, I.C. § 37-2732C should apply here. This statute prohibits being in public under the influence of a controlled substance, unless the person has a

E. Due Process

Finally, Lineberry asserts that because of the importance of having a driver's license, Idaho's administrative license suspension procedure violates his right to due process. The due process guarantees under the United States Constitution and the Idaho Constitution are substantially the same in that they both provide protections against deprivations of life, liberty, or property, without due process of law. U.S. Const. amend. XIV; Idaho Const. art. I, § 13; *Rudd v. Rudd*, 105 Idaho 112, 115, 666 P.2d 639, 642 (1983). Procedural due process, as it is guaranteed under both the Idaho and United States Constitutions, requires that a person be given meaningful notice and a meaningful opportunity to be heard before a protected property or liberty interest is impaired. *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); *State v. Doe*, 147 Idaho 542, 544, 211 P.3d 787, 789 (Ct. App. 2009). Lineberry was afforded both through the administrative hearing process. If and to the extent that Lineberry is arguing that Idaho's statutory administrative driver's license suspension scheme violates substantive due process because it imposes the burden of proof upon the driver in order to vacate a license suspension or because the Idaho Rules of Evidence do not strictly apply, his arguments are not supported by any pertinent authority. Absent authority, we will not address the issue further. *See Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010) (issues not supported by cogent argument and authority will not be considered on appeal).

IV.

CONCLUSION

Lineberry has not shown that the district court erred in affirming the decision of the hearing officer. Therefore, the decision of the district court is affirmed.

Judge GUTIERREZ and Judge MELANSON **CONCUR.**

prescription for the substance. However, I.C. 37-2732C has no relevance to a license suspension under I.C. § 18-8002A for driving under the influence.