


IN THE SUPREME COURT OF THE STATE OF NEVADA

DINO R. SORRENTINO,
Appellant,
vs.
THE STATE OF NEVADA,
DEPARTMENT OF MOTOR VEHICLES,
Respondent.

No. 48634

FILED

FEB 11 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a driver's license revocation matter. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

After a traffic stop ultimately led to a blood test revealing the presence of marijuana metabolite in appellant Dino R. Sorrentino's blood, Nevada Highway Patrol Trooper James Glenn transmitted a certification of cause to respondent Nevada Department of Motor Vehicles (DMV), claiming that he had reasonable grounds to believe that Sorrentino was driving or in actual physical control of a vehicle while under the influence of an intoxicant. When the DMV revoked Sorrentino's driver's license, he administratively appealed, and an administrative law judge upheld the revocation. The district court denied Sorrentino's subsequent petition for judicial review, and this appeal followed.

On appeal from a district court order denying judicial review, this court's role is the same as that of the district court: we review the administrative record to determine whether the appellant's substantial rights were prejudiced because the administrative decision was affected by

legal error or abuse of discretion.¹ We may not substitute our judgment for that of the administrative agency as to the weight of the evidence, and the agency's fact-based conclusions of law will not be disturbed if they are supported by substantial evidence.²

Here, we conclude that substantial evidence supports the administrative law judge's decision to uphold the revocation of Sorrentino's driver's license. The DMV must revoke the driver's license of anyone certified, based on the result of an evidentiary test obtained under NRS 484.383, as having a detectable amount of a prohibited substance in his blood.³ Under NRS 484.383(1)(a), any person who drives or is in actual physical control of a vehicle on a public road is deemed to have consented to an evidentiary blood test to determine whether a controlled substance is present, if a police officer having reasonable grounds to believe that the person was driving under a controlled substance's influence so directs.

Sorrentino apparently argues that Trooper Glenn did not have reasonable grounds to order the blood test because Trooper Glenn arrested him on an alleged outstanding bench warrant, which was in fact not directed to him at all, but to some other person. But as the administrative law judge concluded, whether the arrest was in error is not relevant to the DMV license revocation proceeding.⁴

¹Beavers v. State, Dep't of Mtr. Vehicles, 109 Nev. 435, 438, 851 P.2d 432, 434 (1993); NRS 233B.135.

²Id. (noting that substantial evidence is that which a reasonable person could find adequately supports a conclusion).

³NRS 484.385.

⁴See Beavers, 109 Nev. at 438, 851 P.2d at 434 (noting that whether an initial traffic stop was lawful is irrelevant in license revocation
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The relevant question is whether Trooper Glenn had reasonable grounds, at the time he ordered the blood test, to believe that Sorrentino had been driving under the influence of a controlled or prohibited substance.⁵ The administrative law judge's fact-based conclusion that Trooper Glenn had reasonable grounds to order the test is supported by substantial evidence: Trooper Glenn testified that he stopped the car that Sorrentino was driving in part because of Sorrentino's failure to maintain his lane. Upon approaching the car, he stated, he smelled marijuana and noticed Sorrentino's bloodshot and watery eyes. According to the trooper, Sorrentino stumbled upon exiting the car and admitted that he had smoked marijuana earlier at a party. Later, after the arrest, marijuana was found on Sorrentino's person. This testimony constitutes substantial evidence supporting the conclusion that the trooper's decision to order the evidentiary test that resulted in the revocation of Sorrentino's driver's license was based on reasonable grounds.⁶

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proceedings, as such proceedings are civil in nature and designed to protect the public from irresponsible drivers, and as court review of such proceedings is limited).


⁵Id. at 439, 851 P.2d at 434.


⁶See, e.g., Wright v. State, Dep't of Motor Vehicles, 121 Nev. 122, 126, 110 P.3d 1066, 1069 (2005) (noting that many factors may establish reasonable grounds, including bloodshot eyes, a car accident, a "moderate odor" of a controlled substance, admissions, unsteady gait and balance, and failed field sobriety tests); State, Dep't of Mtr. Vehicles v. McLeod, 106 Nev. 852, 855, 801 P.2d 1390, 1392 (1990) (recognizing that an odor of alcohol on the breath and bloodshot eyes are indications of intoxication sufficient to show reasonable grounds to order an evidentiary test).


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Accordingly, as the administrative law judge's decision to uphold the revocation of Sorrentino's driver's license is supported by substantial evidence and not otherwise affected by legal error, we affirm the district court's order denying Sorrentino's petition for judicial review.⁷

It is so ORDERED.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

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Although Sorrentino asserts that the trooper testified contradictorily, that assertion is not entirely supported by the record with respect to any material inconsistencies, and regardless, the administrative law judge considered that assertion and nonetheless apparently decided that the trooper's testimony was reliable, noting that whether the trooper's written report was sufficiently complete was outside the scope of the hearing. This court will not disturb an administrative agency's credibility determinations. Langman v. Nevada Administrators, Inc., 114 Nev. 203, 209, 955 P.2d 188, 192 (1998).

⁷Appellant's argument with respect to a ".08" breath alcohol finding is without merit, as the noted language refers to findings of fact and conclusions of law set forth earlier in the administrative law judge's order, which clearly state that a detectable amount of a prohibited substance was present in the petitioner's blood. Further, any reference to a "Trooper Shook" appears to be a harmless clerical error not warranting reversal, as the record indicates that the administrative law judge was aware that Trooper Glenn signed the certification of cause.

cc: Hon. Mark R. Denton, District Judge
Carolyn Worrell, Settlement Judge
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Eighth District Court Clerk