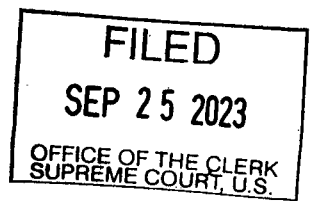


No. 23 - 5681



IN THE
SUPREME COURT OF THE UNITED STATES

Justin Weible — PETITIONER
(Your Name)

vs.

Kevin Provost, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Justin Weible

(Your Name)

1132 Jesse Harbor Ave

(Address)

Henderson, NV 89014

(City, State, Zip Code)

725-252-5858

(Phone Number)

QUESTION(S) PRESENTED

1. That substantial rights of the Petitioner have been prejudiced because of the Lower Courts and Department's findings, inferences, conclusions and/or decisions being:
 - a. In violation of constitutional or statutory provisions; and/or
 - b. In excess of the statutory authority of the agency; and/or
 - c. Made upon unlawful procedure; and/or
 - d. Affected by other error or law; and/or
 - e. Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and/or
 - f. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
2. Did Trooper Kevin Provost have reasonable ground to believe Justin Weible was driving or in actual physical control of a vehicle while he was under the influence of alcohol?
3. After never being informed by Kevin Provost that his license, permit, or privilege to drive would be revoked if he fail to submit to an evidentiary test, did Justin Weible fail to submit to an evidentiary test or did Kevin Provost violate the IV, V, VII and XIV Amendment of the United States of America Constitution?
4. Did Kevin Provost, Richard Nelson Jr., City of Henderson, City of Las Vegas, Henderson Police Department, Nevada Highway Patrol, Clark County, and Melanie Andress-Tobiasson cause substantial harm to Justin Weible by assault, battery, excessive force, unlawful search and arrest, cruel and unusual punishment, and negligently withdraw blood by an invasive non-consensual blood withdraw under color of law, in violation of the United States Constitution of America and the IV, V, VII, and XIV amendment that supports it.
5. Did Thomas Conner make an unlawful decision under the United States constitution by judicating and prosecuting a Department of Motor Vehicle's revocation hearing and/or appeal at the same time?
6. That the Department was in error in issuing the Order revoking Petitioner's driving privileges, and that Petitioner has been substantially prejudiced because of this action and that the conduct and the decision of the Department. The Department's Order represents an infringement of Petitioner's rights guaranteed under the Constitution of the United States of America and under the statutory provisions of the State of Nevada, and said decision is clearly erroneous and is arbitrary and capricious?
7. Did petioners private retained lawyers Damian Sheets, Kelsey Bernstein, Alexis Minichini, Bailey Hellman, Erik Zentz and Robert Zentz commit legal malpractice by never acting in Justin Weible's best interest, good faith and with care, using due care in civil and criminal legal cases, missing deadlines, negligence, and submitting motions to withdraw from criminal cases that were eventually dismissed with public defenders on the record

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Kevin Provost, United States, Nevada Department of Motor Vehicles, Nevada Highway Patrol, The State of Nevada, Lucien Lockhart, Richard Nelson Jr., Clark County, City of Las Vegas, City of Henderson, Nevada Department of Public Safety, Las Vegas, Metropolitan Police Department, Henderson Police Department, Henderson Detention Center, Clark County Detention Center, Melanie Andress-Tobiasson, Pandora Leven, Stephen George, Richard Scotti, Crystal Eller, Thomas Conner, Damian Sheets, Kelsey Bernstein, Baylie Hellman, Alexis Minichini, Erik Zentz, Robert Zentz

RELATED CASES

Weible v. Kevin Provost et al, No. 2:22-cv-00812-GMN-EJY, U.S. District Court for the District of Nevada. Judgment entered Nov. 2, 2022.

Weible v. Kevin Provost et al, No. 22-16736, U.S. Court of Appeals for the Ninth Circuit. Judgment entered Jun. 28, 2023.

Weible v. Connor, No. 83057, Nevada Supreme Court. Judgment entered Aug. 19, 2021 and Order denying rehearing Sep. 21 2021.

Justin Weible vs. Tom Connor, No. A-20-821603-J, Eighth Judicial District Court of Nevada, Judgment entered May 14, 2021.

State of Nevada Department of Motor Vehicles Revocation Appeal, No. RT191217A and No. IP191217B, August 20, 2020

State of Nevada vs Wible, Justin John, No. 20 CRH000950-0000, Henderson Justice Court Order, case closed Oct. 26, 2021

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 06/28/2023; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at 11/01/2022; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 28, 2023.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment IV

United States Constitution, Amendment V

United States Constitution, Amendment VIII

United States Constitution, Amendment XIV

42 U.S. Code § 1983

18 U.S. Code § 241

18 U.S. Code § 242

18 U.S. Code § 245

18 U.S. Code § 249

NRS 484C.230(2)

NRS 233B.135(1)(b)

NRS 233B.125

NRS 233B.121(8)

NRS 233B.135(3)(e)

NRS 233B.135(3)(f)

NRS 484C.160(1)

NRS 199.210

NRS § 197.200

NRS § 200.460

NRS 11.207(1)

STATEMENT OF THE CASE

This writ comes from an appeal from the Ninth Circuit Court of Appeals and United States District Court of Nevada in relief that the decisions of the lower courts are erroneous, made in error, capricious, prejudice and unlawful, 42 U.S.C 1983 provides an individual the right to sue state government and others acting "under color of state law" for civil rights violations.

The lower courts have never appointed counsel for IFP Petitioner or have the right to a fair trial with a jury and due process in Court of law.

Trooper Provost did not have Reasonable grounds to believe Justin Weible was Under the Influence of Alcohol or a Prohibited Substance.

The DMV's burden at the administrative hearing is mandated by statute. NRS 484C.230(2) states: The scope of the hearing must be limited to the issue of whether the person, at the time of the test, had a concentration of alcohol of 0.08 or more in his blood or breath or a detectable amount of a prohibited substance in his blood or urine. Upon an affirmative finding on this issue, the Department shall affirm the order of revocation. Otherwise, the order of revocation must be rescinded.

The scope of a DMV driver's license revocation hearing includes challenging the officer's "reasonable grounds." See, *Beavers v. State, Dep't of Mtr. Vehicles*, 109 Nev. 435, 439, 851 P.2d 432 (1993) ("A person may also challenge whether the police officer who directed the person to submit to an evidentiary test had reasonable grounds, at the time the officer directed the evidentiary test, to believe that the person had been driving or in actual physical control of a vehicle while under the influence"). In the instant case, Trooper Provost lacked reasonable grounds to believe Justin Weible was under the influence.

A district court's review of an administrative agency's decision is confined to the record presented to the agency. NRS 233B.135(1)(b). The agency's facts and decision must be supported by substantial evidence. *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994). See also, NRS 233B.125 ("Findings of fact and decisions must be based upon substantial evidence"); NRS 233B.121(8) ("Findings of fact must be based exclusively on substantial evidence and on matters officially noticed"). "A decision that lacks support in the form of substantial evidence is arbitrary and capricious, and thus an abuse of discretion that warrants reversal." *Tighe*, 110 Nev at 634. Substantial evidence is evidence which "a reasonable mind might accept as adequate to support a conclusion." *First Interstate Bank v. Jafros Auto Body*, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990). This Court may set aside the decision of an administrative law judge if it is "[c]learly erroneous in view of the reliable, probative and substantial evidence on the whole record," or "[a]rbitrary or capricious or characterized by abuse of discretion." NRS 233B.135(3)(e); NRS 233B.135(3)(f).

STATEMENT OF THE CASE

Fortunately, a recent Court of Appeal decision found that the DMV APS process is unconstitutional. In *California DUI Lawyers Association v. California Department of Motor Vehicles*, the Second District Court of Appeal found that the DMV APS process violated fundamental Due Process, was Tom Connors DMV Decision unconstitutional in Violation of the United States Constitution, XIV amendment or an abuse of discretion?

Trooper Kevin Provost testified that he was traveling northbound on US-95 when he came across a white sedan. Trooper Kevin Provost believed the sedan to be traveling at 92 miles per hour when it entered the highway and later he believed to have paced the sedan going 87 miles per hour. Clearly, Trooper Kevin Provost initiated the traffic stop due to what he perceived as excessive speed. Nothing in Trooper Kevin Provost's testimony suggests that Justin Weible demonstrated an impaired driving pattern.

"Reasonable suspicion is not a stringent standard, but does require more than a police officer's hunch. A law enforcement officer has a reasonable suspicion justifying an investigative stop if there are specific, articulable facts support an inference of criminal activity." *State v. Rincon*, 122 Nev. 1170, 1173, 147 P.3d 233, 235 (2006).

Based on the testimony provided, Justin Weible never admitted to consuming alcohol, marijuana, or any controlled substances. Trooper's Kevin Provost testified that he conducted the standardized Field Sobriety Tests, but provided no further information regarding Justin Weible's performance on the tests or what clues of impairment, if any, were observed during the tests. Trooper Kevin Provost testified that the Horizontal Gaze Nystagmus was not completed. Without going into specific detail, Trooper Kevin Provost testified that Justin Weible showed enough clues for a DUI during the Walk and Turn test. Later in his testimony, after reviewing his report, Trooper Kevin Provost clarified that he observed five clues during the Walk and Turn, but did not elaborate about the specific clues observed. Trooper Kevin Provost did not testify about the One Leg Stand test, other than claiming he observed two clues after he reviewed his report. Again, Trooper Kevin Provost did not expound on the specific clues he observed or how the Field Sobriety Tests indicated Justin Weible was under the influence or impaired.

STATEMENT OF THE CASE

Trooper Kevin Provost did not provide any testimony regarding Mr. Weible's demeanor, behavior, appearance, or mannerisms that would support a suspicion of impairment. None of the common phrases, "bloodshot, watery eyes," "slow, slurred speech," "unsteady gait" that are frequently seen in DUI investigations as indicia of impairment were observed by Trooper Kevin Provost. The only applicable clue of DUI came from Trooper Kevin Provost's nose, the smell of "an unknown intoxicant" and "the odor of marijuana." There was no testimony suggesting those smells emanated from Justin Weible's person, just that Trooper Kevin Provost could smell them "when [he] stepped to the passenger side window. As Justin Weible neither admitted to drinking nor admitted to smoking marijuana, Trooper Provost had no reason to believe he was under the influence or intoxicated at the time of driving based on these smells alone.

Based on Mr. Weible's cross-examination of Lucian Lockhart, it appears that he did provide a Preliminary Breath Test prior to his arrest, however Trooper Kevin Provost provided no testimony regarding the Preliminary Breath Test nor did he indicate that Justin Weible failed said test

In *Department of Motor Vehicles & Pub. Safety v. McCleod*, the Nevada Supreme Court initially outlined possible factors an officer may consider when determining whether reasonable grounds exist for an evidentiary test. 106 Nev. 852, 801 P.2d 1390 (1990). These factors in *McCleod* included bloodshot eyes and the smell of alcohol on the driver's breath. *Id.* at 855. The Nevada Supreme Court later clarified that *McCleod* did not serve as an exhaustive list or limit factors an officer may use to determine whether there are reasonable grounds to believe that a person is impaired. See, *Wright v. State DMV*, 121 Nev. 122, 126, 110 P.3d 1066 (2005). *Wright* included a multitude of possible factors an officer may consider, including: a vehicle collision, an admission of alcohol consumption, unsteady gait, inability to balance, and three failed sobriety tests. *Id.* Conversely in the instant case, there is not evidence of any of the above factors, neither the limited couple of factors from *McCleod* nor the wider variety of factors considered in *Wright*. Absent reasonable grounds to suspect Mr. Weible was driving his vehicle unsafely and under the influence, Trooper Kevin Provost's compulsion of Justin Weible to submit to a bloodtest violated NRS 484C.160(1). Therefore, Trooper Provost lacked reasonable grounds to require the evidentiary blood draw and the results of the evidentiary test should not have been considered at the administrative hearing.

Petitioner Justin Weible was unlawfully arrested in violation of the IV, V, VIII and XIV Amendment of The United States Constitution of America for allegedly Driving Under the Influence on or about October 31, 2019 by Nevada Highway Patrol Trooper Kevin Provost. As a result of the arrest, Trooper Kevin Provost seized Petitioner's Nevada driver's license and issued two Certification of Cause forms to the Department of Motor Vehicles ("DMV"). In the first Certification of Cause form, Trooper Provost assumed that he had reasonable grounds to believe that Justin Weible was driving or in actual physical control of a vehicle while under the influence of alcohol and that Petitioner would not submit to evidentiary testing when requested to do so according to Nevada's Implied Consent Law NRS 484C. 160.

STATEMENT OF THE CASE

Trooper Kevin Provost never informed Justin Weible that refusal to submit to a breath or blood test can result in a 1 to 3-year license suspension (effective immediately) in violation of NRS 484C. 160. Trooper Kevin Provost then decided to get a warrant for a non-consensual blood draw and proceed to assault Justin Weible by tying him down while handcuffed to a restraint chair at Henderson Detention Center with Richard Nelson Jr. and unknown Henderson Police officers. The unlawful blood draw incident was being videotaped on a handheld camera by unknown Henderson police officers nor no other officers or person signed the non consensual blood draw search warrant return form as a witness. The video or Trooper Kevin Provost body worn camera was submitted as evidence to suppress the unlawful acts and excessive force in violation of 18 U.S. code 242.

Justin Weible's license was never suspended for 1 to 3- years at anytime because Trooper Kevin Provost did not inform and/or serve petitioner notice under NRS 484C. 160 according to Officers Certification of Cause and Notice of Revocation dated and signed October 31, 2019 by Trooper Kevin Provost. This document at a later date was falsified in violation of NRS 199.210.

Trooper Kevin Provost later issued a second Certification of Cause and Notice of Revocation Cause form on or around March 05, 2020, in violation of NRS 199.210 in which he again claims that he had reasonable grounds to believe Justin Weible was driving or in actual physical control of a vehicle while under the influence of alcohol, which a subsequent evidentiary test measured in a concentration of 0.08 or more. Trooper Kevin Provost never did inform me that failure to submit to an evidentiary test would result in a 1 to 3- year license suspension.

Justin Weible requested an administrative hearing to challenge the two revocations. A hearing was held on August 20, 2020 on both the first and second Certification of Cause forms, case numbers IP191217B and RT191217A, respectively. Chief Administrative Law Judge Tom Connor presided over the hearing where Justin Weible represented himself and Trooper Kevin Provost along with Lucien Lockhart, a forensic scientist for the Las Vegas Metropolitan Police Department, testified. Judge Connor affirmed the DMV's revocation in case number IP191217B.

Justin Weible believes that all respondents acted under color of law in violation of his civil rights against the United States of America's Constitution and the Amendments that support it to protect people's civil rights, conspired against Justin Weible in violation of the IV, X, XIII, XIV Amendments, 18 U.S. Code 241, 18 U.S. Code 242, 18 U.S. Code 245, 18 U.S. Code 246.

REASONS FOR GRANTING THE PETITION

Petitioner believes this case to be very complex with a tremendous amount of legal authority and could change future cases for better and precedent cases. No individual should endure the amount of pain and suffering as Justin Weible, be deprived of life, liberty or property, and have their Civil Rights violated under the Constitution of the United States of America.

There is a substantial number of cases of police brutality and excessive force. I don't believe an individual should have to be murdered in cold blood to obtain justice as in George Floyd, Minnesota v. Chauvin, the death of Tyre Nichols, Breonna Taylor, Rodney King, etc.

I believe no person should be above the law and Justice should be served in the court of law

Petitioner believes that good cause exists for the instant Petition to be granted, including, but not limited to, to wit: to availability and application of the affirmative defenses of Entrapment and Necessity to Petitioner's proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: September 25, 2023