

SUPREME COURT OF OREGON

In the Matter of the Suspension of the Driving Privileges of Daniel
Boyd Cole v. Driver and Motor Vehicle Services Branch (DMV);
Karen Dinsmore v. Driver and Motor Vehicle Services Branch
(DMV), 336 Or. 565

87 P.3d 1120 (2004) · No. SC S48815, S49117; CA A108349, A109749; CC 9902-01073; DMV No. 81427 ·
Decided April 8, 2004

SUMMARY

The Supreme Court of Oregon reviewed consolidated driver-license suspension proceedings involving hearsay police reports offered at administrative hearings. It held that hearsay may constitute substantial evidence under Oregon administrative law, but whether it does so depends on a case-specific assessment of reliability, countervailing evidence, cross-examination, available alternatives, economy, consequences, and fundamental fairness. The court affirmed the Court of Appeals in Cole on different grounds and remanded for further proceedings, and affirmed the Court of Appeals, reversed the DMV order, and remanded in Dinsmore.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Balmer, J.; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Riggs, Justice; De Muniz, Justice; Balmer, Justice
JURISDICTION	Oregon
DECIDED	April 8, 2004
DOCKET	SC S48815, S49117; CA A108349, A109749; CC 9902-01073; DMV No. 81427
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	DMV sought review of Court of Appeals decisions holding that hearsay police reports did not constitute substantial evidence supporting orders suspending Cole's and Dinsmore's driver licenses. The Oregon Supreme Court consolidated the cases for argument and decision.
STANDARD OF REVIEW	Under ORS 183.482(8)(c), the court reviews the agency order on the whole record and must set it aside or remand if it is not supported by

	substantial evidence. Substantial evidence exists when the record viewed as a whole would permit a reasonable person to make the finding. Constitutional due-process issues are reviewed independently.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Driver and Motor Vehicle Services Branch (DMV) v. Daniel Boyd Cole, Karen Dinsmore

TOPICS

judicial review of agency action

administrative law

hearsay

procedural due process

due process

PRACTICE AREAS

administrative law

evidence

constitutional law

QUESTIONS PRESENTED

1. Whether hearsay evidence may constitute substantial evidence supporting an agency finding under ORS 183.482(8)(c).
2. Whether the hearsay police report in Cole constituted substantial evidence that Cole had been lawfully stopped and arrested for DUII.
3. Whether DMV violated Cole's due-process rights by failing to disclose the stopping officer's identity and report before introducing the report at the hearing.
4. Whether the police and accident-reconstruction reports in Dinsmore constituted substantial evidence supporting findings of recklessness or criminal negligence.

HOLDINGS

1. Hearsay evidence is not categorically incapable of constituting substantial evidence under ORS 183.482(8)(c). Whether hearsay is substantial evidence depends on a case-specific evaluation of the evidence and surrounding circumstances, including the Reguero factors.
2. Gurkman's police report constituted substantial evidence supporting the finding that Cole was lawfully stopped and arrested for DUII, because the report was prepared in the ordinary course of official duties, no evidence challenged its account, and Cole offered no contradictory evidence.
3. Cole's due-process rights were violated because DMV failed to provide him the stopping officer's name or report before introducing the report at the hearing, depriving him of a meaningful opportunity to subpoena and cross-examine the officer.
4. The police and accident-reconstruction reports offered at Dinsmore's hearing did not constitute substantial evidence supporting the finding that she operated her vehicle recklessly or with criminal negligence.

KEY QUOTATIONS

“Substantial evidence supports a finding made in an administrative hearing when the record, viewed as a whole, permits a reasonable person to make that finding.” (336 Or. at 568)

“Although the hearsay evidence offered was sufficiently reliable to constitute substantial evidence for purposes of ORS 183.482(8)(c), Cole's hearing did not comport with the fundamental requirements of due process.” (336 Or. at 589)

“When, as here, critical evidence is in the form of a hearsay report that is prepared by an expert witness who does not testify and that is based partially on hearsay and multiple hearsay, and when significant questions have been raised as to the methods used to prepare that evidence, we are not satisfied that a reasonable person could rely on the report to support a conclusion that a driver has been either reckless or criminally negligent.” (336 Or. at 595)

FACTUAL BACKGROUND

Cole was stopped by Gresham police after Sergeant Gurkman allegedly observed multiple traffic infractions; Officer Nguyen then arrested Cole for DUII, and a breath test showed a blood-alcohol level of 0.12 percent. At Cole's hearing, DMV introduced Gurkman's report even though Cole had not received the report or Gurkman's identity before the hearing, and Gurkman did not testify. Dinsmore's truck collided with two stopped vehicles, killing one person and seriously injuring another; DMV relied primarily on police and accident-reconstruction reports containing hearsay and multiple hearsay to find recklessness or criminal negligence. Dinsmore introduced evidence contradicting portions of the reports, including evidence concerning cell-phone use and the accident reconstruction.

PROCEDURAL HISTORY

DMV suspended Cole's and Dinsmore's driving privileges after separate incidents and contested administrative hearings. In Cole, the circuit court set aside the suspension on due-process grounds, and the Court of Appeals affirmed on the ground that the hearsay report did not constitute substantial evidence. In Dinsmore, the Court of Appeals reversed and remanded because the agency's conclusions were not supported by substantial evidence. The Supreme Court affirmed the Court of Appeals in both cases, affirmed the circuit-court judgment in Cole, reversed DMV's order in Dinsmore, and remanded both matters to DMV.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

In Cole, DMV must provide a new hearing consistent with due process. In Dinsmore, DMV must dismiss the proceeding after the order is reversed for lack of substantial evidence.

CASES CITED

- Reguero v. Teacher Standards and Practices Commission, 312 Or. 402, 822 P.2d 1171 (1991)
- Younger v. City of Portland, 305 Or. 346, 752 P.2d 262 (1988)

- Norden v. Water Resources Department, 329 Or. 641, 647-48, 996 P.2d 958 (2000)
- Garcia v. Boise Cascade Corp., 309 Or. 292, 295, 787 P.2d 884 (1990)
- Rencken v. Young, 300 Or. 352, 364-65, 711 P.2d 954 (1985)
- Pooler v. Motor Vehicles Division, 306 Or. 47, 51, 755 P.2d 701 (1988)
- State v. Hancock, 317 Or. 5, 9, 854 P.2d 926 (1993)
- State v. Clark, 286 Or. 33, 39, 593 P.2d 123 (1979)
- Dixon v. Love, 431 U.S. 105, 112 (1977)
- Mathews v. Eldridge, 424 U.S. 319, 333 (1976)
- Goldberg v. Kelly, 397 U.S. 254, 269 (1970)
- Richardson v. Perales, 402 U.S. 389, 402, 404, 407 (1971)
- Heer v. Department of Motor Vehicles, 252 Or. 455, 463, 450 P.2d 533 (1969)

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