

## *Weaver v. State*, 121 Nev. Adv. Op. 50 (Aug. 11, 2005)<sup>1</sup>

### **ADMINISTRATIVE LAW – DRIVER’S LICENSE REVOCATION**

#### **Summary**

The DMV revoked Michael Weaver’s driver’s license pursuant to NRS 484.384 when an officer found him intoxicated at the site of his single vehicle accident with a blood alcohol level three times over the legal limit. Weaver alleges that NRS 484.384 violates due process by not allowing the person tested to present evidence that his or her alcohol level is based on alcohol consumed *after* driving.

#### **Disposition/Outcome**

The Court held that when an intervening time period exists between the driver’s operation of a vehicle and his or her arrest, the driver must be permitted under NRS 484.384 to introduce evidence that he or she drank alcohol only *after* driving.

#### **Factual and Procedural History**

Officer Peter Kisfalvi of the Las Vegas Metropolitan Police Department responded to a call concerning a car crash. At the crash site, Michael Weaver explained to Officer Kisfalvi that he had lost control of the car. Officer Kisfalvi noticed Weaver’s bloodshot eyes, slurred speech, and smell of alcohol. Officer Kisfalvi administered field sobriety tests to Weaver. Weaver failed all of them. Weaver’s blood alcohol level was 0.272.

Pursuant NRS 484.384, if a test reveals a blood or breath alcohol concentration of 0.08 or more, then the person tested loses his or her driver’s license. Because Weaver’s blood alcohol level was three times over the legal limit, the DMV revoked Weaver’s driver’s license. Weaver requested a hearing before an administrative law judge and testified that after the accident, he went home, consumed alcohol, and walked back to the accident site to meet the officer. The administrative law judge affirmed the DMV’s license revocation.

#### **Discussion**

A driver’s license revocation hearing covers three issues: (1) whether the person failed to submit to an evidentiary test; (2) whether a person’s blood alcohol level exceeded the legal limit at the time of the test; and (3) whether the officer who ordered an evidentiary test had reasonable grounds, at the time she ordered the test, to believe the person had been driving or in actual physical control of a vehicle while intoxicated.

Weaver challenged the third prong alleging that there was no substantial evidence for the officer to have reasonable grounds to believe Weaver drove while intoxicated. The Court emphasized that the DMV does not have to prove that Weaver “actually” drove a vehicle while intoxicated. The DMV only needs to prove the officer had “reasonable grounds” to believe that Weaver drove while intoxicated. The officer had reasonable grounds to believe Weaver was

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<sup>1</sup> Summarized Kimberly Lou.

intoxicated because he crashed his vehicle, had bloodshot eyes, slurred speech, and smelled like alcohol.

Weaver's story that he drank at home after the accident before returning to the scene is irrelevant. The third prong only concerns itself with the reasonableness of the officer's belief pertaining to the information the officer observed on the scene.

Nevertheless, a driver's license is a protectable property interest. Drivers have a substantial interest in retaining driving privileges and the government has a substantial interest in maintaining highway safety. Therefore, procedural due process requires that individuals be permitted to submit evidence that they consumed alcohol only *after* driving.

In this case, Weaver lacked credibility in his testimony and the administrative law judge upheld the DMV's license revocation because she did not believe that Weaver consumed alcohol only *after* the crash.

### **Conclusion**

Under NRS 484.384, during a driver's license revocation hearing an individual may introduce evidence that he or she only drank alcohol after driving. However, if there is substantial evidence that supports the administrative law judge's determination that the officer had a reasonable belief that the driver was driving while under the influence, the license revocation stands.