

204 P.3d 1191 (Table)

Unpublished Disposition

(Pursuant to Kansas Supreme Court Rule 7.04(f), unpublished opinions are not precedential and are not favored for citation. They may be cited for persuasive authority on a material issue not addressed by a published Kansas appellate court opinion.)
Court of Appeals of Kansas.

Michael STROUD, Appellant,

v.

KANSAS DEPARTMENT OF REVENUE, Appellee.

No. 99,721. | April 10, 2009.

West KeySummary

1 Automobiles

🔑 [Scope of Review; Discretion and Fact Questions](#)

Automobiles

🔑 [Admissibility](#)

The limited issue raised by a driver in his petition for review of the administrative suspension of his commercial driver's license for his failure to pass a chemical breath test, that the stop was not based on reasonable suspicion, was properly dismissed. Although the court found that the stop of the driver's vehicle was not based upon reasonable suspicion, the exclusionary rule did not apply in administrative proceedings. Whether reasonable grounds existed to believe a driver was under the influence may be considered in an administrative license suspension proceeding, but not whether a traffic stop was supported by reasonable suspicion or other constitutional arguments. [K.S.A. 8–1020\(h\)\(2\)\(A\)](#).

[Cases that cite this headnote](#)

Appeal from Finney District Court; [Michael L. Quint](#), Judge.

Attorneys and Law Firms

[J. Scott Koksal](#), of Lindner & Marquez, of Garden City, for appellant.

James G. Keller, of Kansas Legal Services Bureau, of Topeka, for appellee.

Before [CAPLINGER](#), P.J., [MALONE](#) and [LEBEN](#), JJ.

Opinion

MEMORANDUM OPINION

PER CURIAM.

*1 Michael Stroud appeals the district court's order granting the Kansas Department of Revenue's (KDOR) motion to dismiss Stroud's petition. We affirm.

Factual and procedural background

Garden City police officer Oscar Flores pulled over Stroud's vehicle for expired registration and a broken driver's side mirror. As he walked up to Stroud's vehicle, Flores observed that Stroud had two driver's side mirrors—one operational and the other broken. Flores also saw that Stroud's license plate had a 2006 registration sticker. Flores explained to Stroud that Flores' check of the tags prior to the stop showed they had expired in 2005. Nevertheless, Flores checked the vehicle registration provided by Stroud and discovered it was current. As he conducted the stop, Flores smelled the odor of alcohol and also noticed that Stroud had bloodshot and watery eyes. Stroud admitted he had drunk a couple of beers. Stroud then failed the field sobriety tests administered by Flores, exhibiting four clues on the walk-and-turn test and three clues on the one-legged stand test.

Flores arrested Stroud and administered a chemical breath test, which showed a blood alcohol content of .136. Flores filed a certification and notice of suspension, verifying that he had reasonable grounds to believe Stroud was operating his vehicle while under the influence of alcohol, including that he failed field sobriety tests, slurred his speech, exhibited poor balance and concentration, and admitted to consuming alcohol. Flores also indicated that he stopped Stroud for a defective driver's side mirror and expired registration, but Stroud's paperwork showed a current registration.

Following a hearing, KDOR affirmed the administrative suspension of Stroud's driving privileges for his failure to pass the chemical breath test and issued a lifetime revocation of Stroud's commercial driver's license. Stroud then filed a petition in the district court seeking review of the agency's suspension action for the following reasons: (1) the officer lacked insufficient "reasonable suspicion or probable cause" for the stop; (2) the officer lacked probable cause for the arrest; (3) the officers violated protocol and procedure in the administration of the Intoxilyzer 5000 test, making the results unreliable and invalid; and (4) "all other reasons raised at the administrative hearing."

At the evidentiary hearing, Stroud's counsel clarified that on appeal, Stroud was proceeding only on his claim that the officer lacked reasonable suspicion for the stop. Following the hearing, the district court granted KDOR's motion to dismiss Stroud's petition for review. The court found that although Officer Flores failed to articulate reasonable suspicion for stopping Stroud's vehicle, the court was precluded from considering the lawfulness of the stop by *Martin v. Kansas Dept. of Revenue*, 36 Kan.App.2d 561, 142 P.3d 735 (2006), *aff'd* 285 Kan. 625, 176 P.3d 938 (2008), and K.S.A.2008 Supp. 8-1020(h)(2). The court further concluded that pursuant to *Bruch v. Kansas Dept. of Revenue*, 282 Kan. 764, 773-74, 148 P.3d 538 (2006), Stroud's petition for review lacked the specificity required by K.S.A. 77-614(5) and (6).

*2 Stroud appeals the dismissal of his petition for review.

Discussion

The district court did not err in considering the merits of Stroud's claim that Officer Flores lacked reasonable suspicion for the stop, or in granting the State's motion to dismiss based upon this court's decision in *Martin v. Kansas Dept. of Revenue*, 36 Kan.App.2d 561, 142 P.3d 735. After the district court dismissed this case, our Supreme Court affirmed this court's opinion in *Martin*. See *Martin v. Kansas Dept. of Revenue*, 285 Kan. 625, 176 P.3d 938 (2008).

In *Martin*, the court agreed that K.S.A. 8-1020(h)(2)(A), which authorizes consideration in an administrative driver's

license suspension hearing of whether "reasonable grounds" existed to believe a driver was under the influence, does not permit consideration of whether a traffic stop was supported by "reasonable suspicion" or other constitutional arguments. 285 Kan. 631-32. The court further concluded that although an administrative agency cannot decide constitutional issues, a driver may nevertheless raise such issues in the administrative forum to preserve the issue for judicial review. 285 Kan. at 633-34, 176 P.3d 938. Ultimately, however, the court held that the exclusionary rule does not apply in a driver's license suspension proceeding. Thus, even if a stop is found to be unlawful because it was not based upon reasonable suspicion, the driver is not entitled to suppression or reversal of a license suspension. 285 Kan. at 646, 176 P.3d 938.

Thus, although the district court found here that the stop of Stroud's vehicle was not based upon reasonable suspicion, the district court did not err in dismissing the case because the exclusionary rule does not apply in administrative proceedings.

Finally, we note that in dismissing this case, the district court alternatively relied upon *Bruch*, 282 Kan. at 773-74, 148 P.3d 538, finding Stroud's petition for review lacked the specificity required by K.S.A. 77-614(5) and (6). *Bruch* was recently limited and clarified in *Kingsley v. Kansas Department of Revenue*, 288 Kan. —, — P.3d — (March 27, 2009), and *Rebel v. Kansas Department of Revenue*, 288 Kan. —, — P.3d — (March 27, 2009).

However, based upon our determination that the limited issue raised by Stroud in the district court, *i.e.*, the lawfulness of the stop, was properly dismissed based upon *Martin*, we need not consider the district court's alternative grounds for dismissal based upon *Bruch*.

Affirmed.

Parallel Citations

2009 WL 981695 (Kan.App.)