

2013 WL 1189365

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

NOT DESIGNATED FOR PUBLICATION

Court of Appeal of Louisiana,
First Circuit.

Dennis GRIFFIN, Jr.

v.

STATE of Louisiana, Through the DEPARTMENT
OF PUBLIC SAFETY & CORRECTIONS.

No. 2012 CA 1554. | March 22, 2013.

On Appeal from the 21st Judicial District Court, In and for
the Parish of Livingston, State of Louisiana, Trial Court No.
131578, Honorable [M. Douglas Hughes](#), Judge Presiding.

Attorneys and Law Firms

[John N. Samaha](#), Baton Rouge, LA, for Plaintiff–Appellee,
Dennis Griffin, Jr.

Jennifer Del Murray, Baton Rouge, LA, for Defendant–
Appellant, State of Louisiana, through the Department of
Public Safety and Corrections.

Before [WHIPPLE](#), C.J., [McCLENDON](#), and
[HIGGINBOTHAM](#), JJ.

Opinion

[HIGGINBOTHAM](#), J.

*1 The State of Louisiana, through the Department of Public
Safety and Corrections, Office of Motor Vehicles (OMV),
seeks review of a district court judgment ordering it to
reinstate Dennis Griffin, Jr.'s commercial driver's license. For
the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On April 22, 2010, Dennis Griffin, Jr., while driving his
personal vehicle, was pulled over by Officer Edmond Beraud
on St. Ferdinand Street in Baton Rouge, Louisiana. Officer
Beraud, testified that he pulled Griffin over because he
was not wearing a seatbelt and had a Styrofoam cup in
his center console, which at that time of night, usually

indicated drinking alcohol. Officer Beraud asked Griffin
to step out of the vehicle and, after obtaining consent
from him, administered several field sobriety tests. At the
conclusion of the tests, Beraud arrested Griffin for three
violations of the municipal traffic codes of Baton Rouge,
including: 1) Operating a Vehicle While Intoxicated, 2)
Reckless Driving, and 3) Safety Belt required. Subsequently,
Griffin was transported to the Mobile Breath Testing Vehicle
located at Hobby Lobby on College Drive, where he was
advised of his rights relating to tests for chemical intoxication.
Griffin signed the “Rights Relating to the Chemical Test for
Intoxication” form and submitted to the test. The Intoxilyzer
5000 recorded a blood alcohol concentration of .088 for
Griffin. At the time of his arrest, Griffin had a Class A
commercial driver's license (CDL).

As a result of Griffin's 0.088 blood alcohol concentration,
OMV suspended Griffin's driving privileges for 90 days
pursuant to [La. R.S. 32:667 et al](#)¹ and disqualified his CDL
for one year pursuant to [La. R.S. 32:414.2](#).

Griffin timely requested and was granted an administrative
hearing to contest the suspension of his license. On December
14, 2012, the administrative law judge (ALJ) affirmed “the
[OMV's] proposed suspension of Dennis Griffin, Jr.'s driving
privileges.” On January 13, 2011, Griffin filed a “Petition
for Review and For Stay” with the district court.² Following
a hearing on May 14, 2012, the district court rescinded
the suspension of Griffin's driving privileges and reinstated
Griffin's commercial driver's license.

In its oral reasons for judgment, the district court stated
“[b]ased on the testimony, looking at the video and the totality
of the testimony, I can't find where it would be warranted
to find in favor of the State ... I don't think the evidence is
adequate.”

OMV appealed the judgment of the district court. In its only
assignment of error, OMV asserts that the district court erred
in ordering Griffin's license be reinstated because according
to [La. R.S. 32:414.2](#) and [49 C.F.R. § 383.51](#), he is statutorily
disqualified from possessing commercial driving privileges
for one year based on his blood alcohol concentration of 0.088
grams percent as a result of his submission to a chemical test
for intoxication.

LAW AND ANALYSIS

*2 In 1989, the legislature created a series of provisions relating to the suspension and restriction of commercial driving privileges. *La. R.S. 32:414.2, et seq.* The thrust of these statutes is to provide stronger penalties for commercial drivers who commit certain enumerated offenses while operating a commercial motor vehicle. *Austin v. Department of Public Safety, Office of Motor Vehicles*, 46,654 (La.App.2d Cir.11/2/11), 77 So.3d 474, 475.

Louisiana Revised Statute 32:414.2 specifically addresses commercial motor vehicle drivers and grounds for disqualification of a CDL and the applicable subsection is (A) (4), which provides:

Except as provided in Subparagraph (A)(2)(a) for lifetime disqualification, and in Paragraph (A)(3) for three years disqualification for offenses committed while transporting hazardous materials, any person shall be disqualified from operating a commercial motor vehicle for a minimum period of one year for:

(a)(i) A first **conviction** of a commercial driver's license holder, while operating a commercial motor vehicle or a noncommercial motor vehicle, of operating under the influence of alcohol, operating with an alcohol concentration of 0.08 percent or more, or operating under the influence of a controlled dangerous substance, [Emphasis added.]

OMV contends that the statutory language in *La. R.S. 32:414.2* clearly states that any person possessing a CDL faces a mandatory one-year disqualification for submitting to a chemical test resulting in a blood alcohol concentration greater than 0.08 grams while operating a motor vehicle. However, for disqualification of a person's CDL for one year, the statute requires not just testing over the legal limit, but also a **conviction** for operating a motor vehicle with a blood alcohol concentration of greater than 0.08 grams. *See Brooks v. Louisiana Dept. of Public Safety and Corrections*, 2011–71 (La.App. 3 Cir. 6/1/11), 66 So.3d 1236, 1239, *writs denied*, 2011–1977 (La.11/14/11), 75 So.3d 948 and *writ not considered* 2011–2760 (La.12/14/11), 76 So.3d 1184.

Conviction,³ as defined in the statute, includes an unvacated determination by an authorized administrative tribunal that a person has violated or failed to comply with the law. In this case, we find that the ALJ's finding that "Respondent's blood alcohol level of .088 grams percent exceeded the legal limit" is such a "determination" by an authorized tribunal⁴ and

constitutes a conviction as defined by the statute. However, the ALJ's suspension of Griffin's license was overturned by the district court when it rendered judgment in favor of Griffin and concluded that the OMV's evidence was inadequate.

Therefore, we must decide under *La. R.S. 32:414.2* whether the determination made by the ALJ that Griffin violated the law by operating with an alcohol concentration of 0.088 percent mandates that Griffin's CDL be disqualified for a year despite the district court's decision to overturn the ALJ and reinstate Griffin's license.

*3 Griffin, once he exhausted the remedies of the Department of Public Safety, had a right to file a petition for judicial review. *See La. R.S. 32:668(C)*⁵. In seeking the district court's review of his driver's license suspension by the ALJ under *La. R.S. 32:668*, Griffin was entitled to a trial *de novo*. *See Flynn v. Dept. of Public Safety & Corr.*, 608 So.2d 994 (La.1992). Further, OMV had the burden of proving that the officer had "reasonable grounds" to believe the person had been driving a motor vehicle upon the public highways while under the influence of alcohol, that the person was placed under arrest and advised by the officer as provided in *La. R.S. 32:661*, that he voluntarily submitted to the chemical test, and the blood alcohol reading was in excess of the statutory limit. *See La. R.S. 32:668(A)*; *Millen v. State Dept. of Public Safety and Corrections*, 2007–0845 (La.App. 1st Cir.12/21/07), 978 So.2d 957, 961. The district court, in finding inadequate evidence and ruling in favor of Griffin, concluded that the OMV failed to satisfy its burden of proof.

If we conclude that the ALJ's determination that Griffin violated the law is sufficient to satisfy the conviction requirement of the statute, despite the administrative decision being overturned by the district court for the OMV's failure to satisfy their burden of proof, the review process for a suspended CDL would become meaningless. Further, the district court's ruling that Griffin's license be reinstated would be of no effect. Considering the statutory review process for a suspended license and the Supreme Court's determination that the district court's review should be *de novo*, we find that the district court, in reviewing the suspension of Griffin's CDL, was correct in considering the propriety of the suspension. It was not mandated to suspend Griffin's CDL solely because he submitted to a chemical test resulting in a blood alcohol concentration greater than 0.08 grams while operating a motor vehicle. Therefore, we find no error in the decision of the district court.⁶

CONCLUSION

For the foregoing reasons, the judgment of the district court is affirmed. All costs of the appeal in the amount of \$682.50 are taxed to the State of Louisiana, through the Department of Public Safety and Corrections, Office of Motor Vehicles pursuant to [La. R.S. 13:5112](#).

AFFIRMED.

Parallel Citations

2012-1554 (La.App. 1 Cir. 3/22/13)

Footnotes

- 1 The 90 day suspension of Griffin's driver's license is not an issue in this appeal.
- 2 See [La. R.S. 32:668\(C\)](#).
- 3 The definition of "conviction" for purposes of the federal regulations is identical to the definition adopted by Louisiana in [La, R.S. 32:414.2\(A\)\(9\)\(a\)](#), See [49 C.F.R. § 383.5 Subsection \(A\)\(9\)\(a\)](#) of the statute provides, in pertinent part:
"Conviction" for purposes of this Section shall include an unvacated adjudication of guilt or a determination in a court of original jurisdiction or by an authorized administrative tribunal that a person has violated or failed to comply with the law,....
- 4 The State of Louisiana Division of Administrative Law is authorized by [La. R.S. 32:667](#), 668 and [La. R.S. 49:991 et seq.](#) to hold a hearing, upon a person's license being suspended.
- 5 [Louisiana Revised Statute 32:668](#) begins, "Upon suspending the license or permit to drive or nonresident operating privilege of any person ..." This article refers to no particular type of license and therefore applies to all, including a CDL. See [Moore v. State, Dept. of Public Safety, License Control & Driver Imp. Div., 26,949 \(La.App.2d Cir.5/10/95\), 655 So.2d 644, 645](#). See also [La. R.S. 32:414.2\(C\)\(2\)](#) which states, in pertinent part: "[t]he procedures for testing commercial motor vehicle operators for alcohol or controlled substances, and for reporting the results shall, with any appropriate modifications, be the same as for other drivers."
- 6 The OMV did not appeal the district court's factual finding that there was insufficient evidence to find in favor of the state. Thus, we did not address that propriety of that finding.