

CLERK OF THE COURT
Electronically Filed
Sep 11 2013 11:47 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 JOHN G. WATKINS, ESQUIRE
2 Nevada Bar Number 1574
3 804 South Sixth Street
4 Las Vegas, Nevada 89101
5 Telephone: 383-1006
6 Facsimile: 383-8118
7 e mail: johngwatkins@hotmail.com

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

VALENTI, VINCENT,

Petitioner/Appellant,

vs.

STATE OF NEVADA,
DEPT. OF MOTOR VEHICLES,

Respondent

Case No.: **A-13-677093-J**
Dept No.: **XXXII**

NOTICE OF APPEAL

PLEASE TAKE NOTICE that VINCENT VALENTI, Petitioner/Appellant in the above entitled action, hereby appeals to the Supreme Court of the State of Nevada from the Decision and Order denying Petitioner's Petition For Judicial Review by the Honorable Rob Bare on the 30th day of August, 2013.

DATE this 6th day of September, 2013.

/s/ John G. Watkins, Esquire

John G. Watkins, Esquire
Attorney for Petitioner

1
2 **CERTIFICATE OF MAILING**

3 I HEREBY CERTIFY that on the 6th day of September, 2013, I mailed a true and cor-
4 rect copy of Petitioner/Appellant's Notice of Appeal, in a sealed, postage prepaid envelope,
5 at Las Vegas, Nevada to the following interested party:
6

7 Catherine Cortez Mastro
8 Attorney General
9 **DENISE S. MCKAY**
10 **Deputy Attorney General**
11 555 East Washington # 3900
12 Las Vegas, Nevada 89101

13 /s/ Sheila Varga

14 _____
15 Sheila Varga, an employee of
16 John G. Watkins, Esquire
17
18
19
20
21
22
23
24
25
26
27
28


CLERK OF THE COURT

1 JOHN G. WATKINS, ESQUIRE
2 Nevada Bar Number 1574
3 804 South Sixth Street
4 Las Vegas, Nevada 89101
5 Telephone: 383-1006
6 Facsimile: 383-8118
7 e mail: johngwatkins@hotmail.com

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

VALENTI, VINCENT,

Appellant,

vs.

STATE OF NEVADA,
DEPT. OF MOTOR VEHICLES,

Respondent

Case No.: **A-13-677093-J**
Dept No.: **XXXII**

CASE APPEAL STATEMENT

1. Name of Appellant filing this case appeal statement:

Vincent Valenti, through his attorney John G. Watkins, Esquire.

2. Identify the Judge issuing the decision, judgment, or order:

The Honorable Rob Bare

3. Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited):

Petitioner/Appellant:

Vincent Valenti;

Respondent:

State of Nevada, Department of Motor Vehicles.

1 4. Identify all parties involved in this appeal (the use of et al. to denote parties is pro-
2 hibited):

3
4 Petitioner/Appellant:

5 **Vincent Valenti;**

6 Respondent:

7 **State of Nevada, Department of Motor Vehicles.**

8
9 5. Set forth the name, law firm, address, and telephone number of all counsel on appeal
10 and identify the party or parties whom they represent:

11 Attorney for Petitioner/Appellant:

12 **JOHN G. WATKINS, ESQUIRE**
13 **Nevada Bar Number 1574**
14 **804 South Sixth Street**
15 **Las Vegas, Nevada 89101**
(702) 383-1006

16 Attorney for Respondent:

17 **CATHERINE CORTEZ MASTO**
18 **Attorney General**
19 **Denise S. McKay,**
20 **Deputy attorney General**
555 East Washington Avenue
Suite 3900
21 **Las Vegas, Nevada 89101**
(702) 486-3420

22 6. Indicate whether appellant is represented by appointed or retained counsel in District
23 Court:

24
25 **Retained**

26 7. Indicate whether appellant is presented by appointed or retained counsel on appeal:

27 **Retained**
28

1 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
2 date of the entry of the district court order granting such leave:

3
4 **Not applicable**

5 9. Indicate the date of the proceedings commenced in the district court (e.g., date com-
6 plaint, indictment, information, or petition was filed.):

7 **Appellant's Petition for Judicial Review was filed on February 21, 2013.**

8 DATED this 6th day of September, 2013.

9
10 /s/ John G. Watkins, Esquire

11 _____
12 John G. Watkins, Esquire
13 Nevada Bar Number 1574
14 804 South Sixth Street
15 Las Vegas, Nevada 89101
16 (702) 383-1006

17 **CERTIFICATE OF MAILING**

18 I HEREBY CERTIFY that on the 6th day of September, 2013, I mailed a true and cor-
19 rect copy of Petitioner/Appellant's Notice of Appeal, in a sealed, postage prepaid envelope,
20 at Las Vegas, Nevada to the following interested party:

21 Catherine Cortez Mastro
22 Attorney General
23 **DENISE S. MCKAY**
24 **Deputy Attorney General**
25 555 East Washington # 3900
26 Las Vegas, Nevada 89101

27 /s/ Sheila Varga

28 _____
Sheila Varga, an employee of
John G. Watkins, Esquire


CLERK OF THE COURT

1 JOHN G. WATKINS, ESQUIRE
2 Nevada Bar Number 1574
3 804 South Sixth Street
4 Las Vegas, Nevada 89101
5 Telephone: 383-1006
6 Facsimile: 383-8118
7 e mail: johngwatkins@hotmail.com

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

VALENTI, VINCENT,

Appellant,

vs.

STATE OF NEVADA,
DEPT. OF MOTOR VEHICLES,

Respondent,

Case No.: **A-13-677093-J**
Dept No.: **XXXII**

CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED

Notice is hereby given that VINCENT VALENTI, APPELLANT, by and through his counsel, JOHN G. WATKINS, ESQUIRE, is not requesting the preparation of transcripts for this appeal.

DATE this 6th day of September, 2013.

/s/ John G. Watkins, Esquire

John G. Watkins, Esquire
Attorney for Appellant

DEPARTMENT 32
CASE SUMMARY
CASE NO. A-13-677093-J

Vincent Valenti, Plaintiff(s)
vs.
State of Nevada Dept of Motor Vehicles, Defendant(s)

§
§
§
§
§

Location: **Department 32**
Judicial Officer: **Bare, Rob**
Filed on: **02/21/2013**
Case Number History:
Conversion Case Number: **A677093**

CASE INFORMATION

Case Type: **Civil Petition for Judicial Review**
Subtype: **Worker's Compensation Appeal**
Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-13-677093-J
Court Department 32
Date Assigned 02/26/2013
Judicial Officer Bare, Rob







PARTY INFORMATION

Plaintiff	Valenti, Vincent	<i>Lead Attorneys</i> Watkins, John Glenn <i>Retained</i> 7023831006(W)
Defendant	State of Nevada Dept of Motor Vehicles	Honey, Adam <i>Retained</i> 702-486-3420(W)

DATE

EVENTS & ORDERS OF THE COURT







INDEX

02/21/2013	 Petition for Judicial Review Filed by: Plaintiff Valenti, Vincent <i>Petition For Judicial Review</i>
02/21/2013	Case Opened
02/22/2013	 Peremptory Challenge Filed by: Plaintiff Valenti, Vincent <i>Notice Of Peremptory Challenge of Judge</i>
02/26/2013	 Notice of Department Reassignment
03/06/2013	 Notice of Intent to Participate Filed By: Defendant State of Nevada Dept of Motor Vehicles <i>Respondent State of Nevada's Notice of Intent to Participate</i>
03/12/2013	 Record on Appeal Party: Defendant State of Nevada Dept of Motor Vehicles <i>Record on Appeal Before the Department of Motor Vehicles</i>
03/14/2013	 Receipt of Copy Filed by: Defendant State of Nevada Dept of Motor Vehicles <i>Receipt of Copy Of Respondent's Record On Appeal</i>

DEPARTMENT 32
CASE SUMMARY
CASE NO. A-13-677093-J

03/18/2013	 Opposition to Motion Filed By: Defendant State of Nevada Dept of Motor Vehicles <i>Respondent's Opposition to Motrion for Stay of the Administrative Decision Revoking Petitioner's Driving Privileges; Order Shortening Time</i>
03/18/2013	 Certificate of Service Filed by: Plaintiff Valenti, Vincent <i>Certificate of Service</i>
03/18/2013	 Motion to Stay Filed By: Defendant State of Nevada Dept of Motor Vehicles <i>Motion For Stay Of Administrative Revocation Of Petitioner's Driving Privileges; Order Shortening Time</i>
03/19/2013	 Notice of Entry of Order Filed By: Plaintiff Valenti, Vincent <i>Notice Of Entry Of Order</i>
03/19/2013	 Motion For Stay (9:00 AM) (Judicial Officer: Bare, Rob)
03/19/2013	 Order Filed By: Plaintiff Valenti, Vincent <i>Order</i>
04/12/2013	 Brief Filed By: Plaintiff Valenti, Vincent <i>Opening Brief Petition For Judicial Review</i>
05/06/2013	 Supplemental Brief Filed By: Plaintiff Valenti, Vincent <i>Supplement To Petitioner's Opening Brief</i>
06/07/2013	 Answering Brief <i>Respondent's Answering Brief</i>
06/27/2013	 Reply Filed by: Plaintiff Valenti, Vincent <i>Reply Brief Petition For Judicial Review</i>
06/27/2013	 Request Filed by: Plaintiff Valenti, Vincent <i>Request For Oral Argument</i>
06/27/2013	 Notice Filed By: Plaintiff Valenti, Vincent <i>Notice Of Oral Argument</i>
07/02/2013	 Notice Filed By: Plaintiff Valenti, Vincent <i>Notice Of Oral Argument</i>
08/15/2013	 Petition for Judicial Review (9:00 AM) (Judicial Officer: Bare, Rob) <i>Plaintiff's Oral Argument Re: Petition for Judicial Review</i>

DEPARTMENT 32
CASE SUMMARY
CASE NO. A-13-677093-J

08/30/2013	 Decision Filed By: Plaintiff Valenti, Vincent <i>Decision And Order</i>
09/05/2013	 Notice of Entry of Decision and Order Filed By: Defendant State of Nevada Dept of Motor Vehicles <i>Notice of Entry of Decision and Order</i>
09/05/2013	 Motion to Stay Filed By: Plaintiff Valenti, Vincent <i>Motion To Continue Stay Pending Appeal To The Nevada Supreme Court;Notice Of Hearing</i>
09/06/2013	 Notice of Appeal Filed By: Plaintiff Valenti, Vincent <i>Notice Of Appeal</i>
09/06/2013	 Case Appeal Statement Filed By: Plaintiff Valenti, Vincent <i>Case Appeal Statement</i>
09/06/2013	 Certificate Filed By: Plaintiff Valenti, Vincent <i>Certificate That No Transcript Is Being Requested</i>
11/12/2013	Motion to Stay (9:00 AM) (Judicial Officer: Bare, Rob) <i>Motion To Continue Stay Pending Appeal To The Nevada Supreme Court;Notice Of Hearing</i>

DATE	FINANCIAL INFORMATION	
	Plaintiff Valenti, Vincent	
	Total Charges	24.00
	Total Payments and Credits	24.00
	Balance Due as of 9/10/2013	0.00
	Plaintiff Valenti, Vincent	
	MISCELLANEOUS FEE CODE Balance as of 9/10/2013	250.00

CIVIL COVER SHEET

A-13-677093-J

XXVI

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):

Valenti, Vincent

Attorney (name/address/phone):

John M. Watkins
204 S. 1st St., Las Vegas, NV 89101

Defendant(s) (name/address/phone):

State of Nevada
Dept. of Motor Vehicles
555 E. Washington Ave.
Las Vegas, NV 89101

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acc't/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input checked="" type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input checked="" type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

Feb 24, 2013

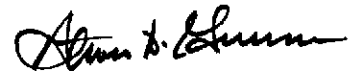
Date

Signature of initiating party or representative

See other side for family-related case filings.

1 **ORDR**

Electronically Filed
08/30/2013 11:47:10 AM



CLERK OF THE COURT

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 *****

7
8 Vincent Valenti,
9 Petitioner,

CASE NO.: A-13-677093-P

10 vs.

DEPT. NO. 32

11 State of Nevada, Department of
12 Motor Vehicles,
13 Respondent.
14

15 **DECISION AND ORDER**

16
17 Petitioner Vincent Valenti challenges the Decision of the Administrative Law
18 Judge affirming the revocation of his driver's license by Respondent State of Nevada,
19 Department of Motor Vehicles. Valenti now petitions this Court for judicial review of the
20 Administrative Law Judge's decision.
21

22 **Factual Background and Procedural Background**

23 Valenti was stopped by a Nevada Highway Patrol (NHP) Trooper on July 1, 2012,
24 for making two unsafe lane changes without signaling. The Trooper smelled alcohol,
25 observed signs of intoxication, and administered a preliminary breath test for a reading of
26 blood-alcohol content. After Valenti failed the preliminary test, the Trooper transported

RECEIVED

AUG 30 2013

CLERK OF THE COURT

1 Valenti to the Clark County Detention Center (CCDC). During the transport, the Trooper
2 read Valenti the standard implied consent form and informed Valenti that he would have
3 to decide whether to proceed with another breath test or a blood test at CCDC. Upon
4 arriving at CCDC, Valenti's blood was drawn and then sent to NHP's Southern
5 Command location for testing. Forensic scientist Christine Maloney performed the
6 analysis and determined Valenti's blood alcohol content to be .159. With this evidence,
7 Respondent revoked Valenti's driver's license, and Valenti contested the revocation. The
8 challenge to the revocation was heard on February 11, 2013, and the Administrative Law
9 Judge affirmed the revocation on February 12, 2013.
10
11

12 Valenti timely brings this petition for judicial review, arguing that the
13 Administrative Law Judge's decision was not supported by substantial evidence. The
14 record on appeal was submitted on March 12, 2013. Valenti filed his Opening Brief on
15 April 12, 2013. Valenti filed a Supplement to Petitioner's Opening Brief on May 6, 2013.
16 Respondent filed an Answering Brief on June 7, 2013. On June 27, 2013, Valenti filed a
17 Reply Brief and a Request for Oral Argument. This matter came on for hearing on the
18 15th day of August, 2013 at the hour of 9:00 a.m. before Department XXXII of the
19 Eighth Judicial District Court, in and for Clark County, Nevada, with Judge Rob Bare
20 presiding; Petitioner Vincent Valenti appeared by and through his attorney, John G.
21 Watkins, Esq.; Respondent State of Nevada appeared by and through its attorneys,
22 Kimberly A. Buchanan, Esq., and Denise S. McKay, of the Office of the Attorney
23 General. The Court, having reviewed the briefs and the record makes the following
24 findings:
25
26
27
28

1 **Conclusions of Law**

2 When reviewing a record on appeal, NRS 233B.135 provides that the District
3 Court is limited to the record on appeal and may not “reweigh the evidence, reassess the
4 witnesses’ credibility, or substitute the administrative law judge’s judgment with [its]
5 own.” Nellis Motors v. State, Dep’t of Motor Vehicles, 197 P.3d 1061, 1066 (Nev.
6 2008). The burden of proof is on the Petitioner to show that the administrative
7 determination was not supported by the law, was clearly erroneous in view of the
8 substantial evidence, or was an abuse of discretion. NRS 233B.135(2), (3)(d)-(f).
9
10

11 Nevada Revised Statute 484C.210 (1) states:

12 “1. If the result of a test given under NRS
13 484C.150 or 484C.160 shows that a person had a concentration of
14 alcohol of 0.08 or more in his or her blood or breath at the time of
15 the test, the license, permit or privilege of the person to drive must
16 be revoked as provided in NRS 484C.220 and the person is not
17 eligible for a license, permit or privilege for a period of 90 days.”

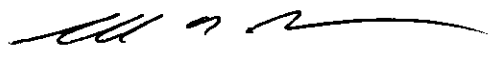
18 Driving within the State of Nevada is a privilege “extended only to those who are
19 qualified to operate a motor vehicle safely.” McCharles v. State, Dept. of Motor Vehicles,
20 99 Nev. 831, 833, 673 P.2d 488, 489 (1983). “[T]he privilege of operating a vehicle in
21 Nevada is conditioned upon driver’s consent to submit to a chemical sobriety test”
22 pursuant to NRS 484C.160. Id. Nevada’s implied consent statute requires that “[a]ny
23 person who drives or is in actual control of a vehicle on a highway or on premises to
24 which the public has access shall be deemed to have given his or her consent to an
25 evidentiary test of his or her blood, urine, breath or other bodily substance to determine
26 the concentration of alcohol in his or her blood or breath.” NRS 484C.160. Consent from
27 the driver is absolute. McCharles, 99 Nev. at 833. If a driver refuses a blood test,
28

1 “reasonable force [may] be used to the extent necessary to obtain samples of blood from
2 the person to be tested.” NRS 484C.160(7). Thus, by voluntarily choosing to operate a
3 motor vehicle on the public roads of Nevada, Petitioner consented to an evidentiary test
4 to determine his blood-alcohol content, as it is undisputed that the NHP Trooper had
5 reasonable grounds to believe Valenti was under the influence of alcohol.
6

7 Upon the withdraw of Valenti’s blood, forensic scientist Christine Maloney tested
8 the sample for blood-alcohol content. Maloney is a chemist as defined in NRS 50.320,
9 and, thus, her affidavit regarding the sample testing is admissible proof of the
10 concentration of alcohol in the blood draw.
11

12 Because this Court finds that Valenti consented to have his blood drawn under
13 NRS 484C.160 and the testing of that blood by a chemist under NRS 50.320 showed that
14 Valenti’s blood alcohol content was above .08 in violation of NRS 484C.210, this Court
15 finds the Administrative Law Judge’s decision was supported by substantial evidence,
16 and was proper as a matter of law. Therefore, the decision of the Administrative Law
17 Judge is AFFIRMED.
18

19
20 Dated this 27th day of August, 2013.

21
22 
23 Rob Bare
24 Judge, District Court, Department 32
25
26
27
28

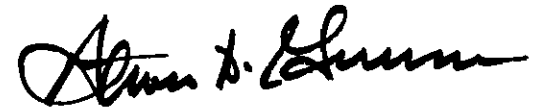
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

John G. Watkins, Esq.
804 South Sixth Street
Las Vegas, NV 89101
Attorney for Petitioner

Catherine Cortez Masto
Attorney General
Denise S. McKay
Deputy Attorney General
Public Safety Division
555 East Washington Avenue, #3900
Las Vegas, NV 89101
Attorneys for Respondent

Answer

Tara Duenas
Judicial Executive Assistant, Dept. 32



CLERK OF THE COURT

CATHERINE CORTEZ MASTO
Attorney General
DENISE S. McKAY
Deputy Attorney General
Nevada Bar No. 10507
Public Safety Division
555 East Washington Avenue, #3900
Las Vegas, Nevada 89101-1068
Tel: (702) 486-3420
Fax: (702) 486-3773
dmckay@ag.nv.gov
*Attorneys for State of Nevada,
Department of Motor Vehicles*

DISTRICT COURT

CLARK COUNTY, NEVADA

VALENTI, VINCENT

Petitioner,

vs.

STATE OF NEVADA, DEPT. OF
MOTOR VEHICLES,

Respondent

CASE NO.: A-13-677093-J
DEPT. NO.: XXXII

**NOTICE OF ENTRY OF DECISION
AND ORDER**

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that the **DECISION AND ORDER** was entered in the above-entitled action on the 30th day of August, 2013, a copy of which is attached hereto.

DATED this 5th day of September, 2013.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ Denise S. McKay
DENISE S. McKAY
Deputy Attorney General
Nevada Bar No. 10507
Office of the Attorney General
Public Safety Division
*Attorneys for Respondent,
Department of Motor Vehicles*

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of September, 2013, service of the **NOTICE OF ENTRY OF DECISION AND ORDER** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, and e-mail, addressed follows:

John G. Watkins, Esq. (VIA E-MAIL)
804 S. Sixth St.
Las Vegas, NV 89101
johnawatkins@hotmail.com

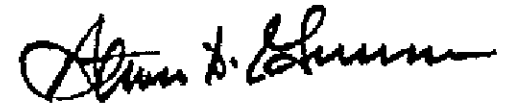
/s/ Carol A. Knight
CAROL A. KNIGHT
An employee of:
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

ATTACHMENT

ATTACHMENT

1 **ORDR**

Electronically Filed
08/30/2013 11:47:10 AM


CLERK OF THE COURT

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 *****

7
8 Vincent Valenti,
9 Petitioner,

CASE NO.: A-13-677093-P

10 vs.

DEPT. NO. 32

11 State of Nevada, Department of
12 Motor Vehicles,
13 Respondent.

14
15 **DECISION AND ORDER**

16
17 Petitioner Vincent Valenti challenges the Decision of the Administrative Law
18 Judge affirming the revocation of his driver's license by Respondent State of Nevada,
19 Department of Motor Vehicles. Valenti now petitions this Court for judicial review of the
20 Administrative Law Judge's decision.

21
22 **Factual Background and Procedural Background**

23 Valenti was stopped by a Nevada Highway Patrol (NHP) Trooper on July 1, 2012,
24 for making two unsafe lane changes without signaling. The Trooper smelled alcohol,
25 observed signs of intoxication, and administered a preliminary breath test for a reading of
26 blood-alcohol content. After Valenti failed the preliminary test, the Trooper transported

RECEIVED

AUG 30 2013

CLERK OF THE COURT

1 Valenti to the Clark County Detention Center (CCDC). During the transport, the Trooper
2 read Valenti the standard implied consent form and informed Valenti that he would have
3 to decide whether to proceed with another breath test or a blood test at CCDC. Upon
4 arriving at CCDC, Valenti's blood was drawn and then sent to NHP's Southern
5 Command location for testing. Forensic scientist Christine Maloney performed the
6 analysis and determined Valenti's blood alcohol content to be .159. With this evidence,
7 Respondent revoked Valenti's driver's license, and Valenti contested the revocation. The
8 challenge to the revocation was heard on February 11, 2013, and the Administrative Law
9 Judge affirmed the revocation on February 12, 2013.

12 Valenti timely brings this petition for judicial review, arguing that the
13 Administrative Law Judge's decision was not supported by substantial evidence. The
14 record on appeal was submitted on March 12, 2013. Valenti filed his Opening Brief on
15 April 12, 2013. Valenti filed a Supplement to Petitioner's Opening Brief on May 6, 2013.
16 Respondent filed an Answering Brief on June 7, 2013. On June 27, 2013, Valenti filed a
17 Reply Brief and a Request for Oral Argument. This matter came on for hearing on the
18 15th day of August, 2013 at the hour of 9:00 a.m. before Department XXXII of the
19 Eighth Judicial District Court, in and for Clark County, Nevada, with Judge Rob Bare
20 presiding; Petitioner Vincent Valenti appeared by and through his attorney, John G.
21 Watkins, Esq.; Respondent State of Nevada appeared by and through its attorneys,
22 Kimberly A. Buchanan, Esq., and Denise S. McKay, of the Office of the Attorney
23 General. The Court, having reviewed the briefs and the record makes the following
24 findings:
25
26
27
28

1 **Conclusions of Law**

2 When reviewing a record on appeal, NRS 233B.135 provides that the District
3 Court is limited to the record on appeal and may not “reweigh the evidence, reassess the
4 witnesses’ credibility, or substitute the administrative law judge’s judgment with [its]
5 own.” Nellis Motors v. State, Dep’t of Motor Vehicles, 197 P.3d 1061, 1066 (Nev.
6 2008). The burden of proof is on the Petitioner to show that the administrative
7 determination was not supported by the law, was clearly erroneous in view of the
8 substantial evidence, or was an abuse of discretion. NRS 233B.135(2), (3)(d)-(f).

9
10
11 Nevada Revised Statute 484C.210 (1) states:

12 “1. If the result of a test given under NRS
13 484C.150 or 484C.160 shows that a person had a concentration of
14 alcohol of 0.08 or more in his or her blood or breath at the time of
15 the test, the license, permit or privilege of the person to drive must
16 be revoked as provided in NRS 484C.220 and the person is not
17 eligible for a license, permit or privilege for a period of 90 days.”


18 Driving within the State of Nevada is a privilege “extended only to those who are
19 qualified to operate a motor vehicle safely.” McCharles v. State, Dept. of Motor Vehicles,
20 99 Nev. 831, 833, 673 P.2d 488, 489 (1983). “[T]he privilege of operating a vehicle in
21 Nevada is conditioned upon driver’s consent to submit to a chemical sobriety test”
22 pursuant to NRS 484C.160. Id. Nevada’s implied consent statute requires that “[a]ny
23 person who drives or is in actual control of a vehicle on a highway or on premises to
24 which the public has access shall be deemed to have given his or her consent to an
25 evidentiary test of his or her blood, urine, breath or other bodily substance to determine
26 the concentration of alcohol in his or her blood or breath.” NRS 484C.160. Consent from
27 the driver is absolute. McCharles, 99 Nev. at 833. If a driver refuses a blood test,
28

1 "reasonable force [may] be used to the extent necessary to obtain samples of blood from
2 the person to be tested." NRS 484C.160(7). Thus, by voluntarily choosing to operate a
3 motor vehicle on the public roads of Nevada, Petitioner consented to an evidentiary test
4 to determine his blood-alcohol content, as it is undisputed that the NHP Trooper had
5 reasonable grounds to believe Valenti was under the influence of alcohol.
6

7 Upon the withdraw of Valenti's blood, forensic scientist Christine Maloney tested
8 the sample for blood-alcohol content. Maloney is a chemist as defined in NRS 50.320,
9 and, thus, her affidavit regarding the sample testing is admissible proof of the
10 concentration of alcohol in the blood draw.
11

12 Because this Court finds that Valenti consented to have his blood drawn under
13 NRS 484C.160 and the testing of that blood by a chemist under NRS 50.320 showed that
14 Valenti's blood alcohol content was above .08 in violation of NRS 484C.210, this Court
15 finds the Administrative Law Judge's decision was supported by substantial evidence,
16 and was proper as a matter of law. Therefore, the decision of the Administrative Law
17 Judge is AFFIRMED.
18

19
20 Dated this 27th day of August, 2013.

21
22 

23 Rob Bare
24 Judge, District Court, Department 32
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

John G. Watkins, Esq.
804 South Sixth Street
Las Vegas, NV 89101
Attorney for Petitioner

James D. Mox

Tara Duenas
Judicial Executive Assistant, Dept. 32

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial Review

COURT MINUTES

March 19, 2013

A-13-677093-J Vincent Valenti, Plaintiff(s)
vs.
State of Nevada Dept of Motor Vehicles, Defendant(s)

March 19, 2013 9:00 AM Motion For Stay

HEARD BY: Bare, Rob COURTROOM: RJC Courtroom 03C

COURT CLERK: Susie Schofield

RECORDER: Ellen Fumo

REPORTER:

PARTIES

PRESENT: Honey, Adam Attorney
Watkins, John Glenn Attorney

JOURNAL ENTRIES

- Arguments by Mr. Watkins regarding the constitutional issue of drivers license suspensions and Plaintiff s request for stay. Opposition by Mr. Honey. Court stated its findings, and ORDERED, Motion for Stay GRANTED; security IMPOSED in the amount of \$250.00. Order submitted and SIGNED IN OPEN COURT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Civil Petition for Judicial
Review**

COURT MINUTES

August 15, 2013

A-13-677093-J Vincent Valenti, Plaintiff(s)
vs.
State of Nevada Dept of Motor Vehicles, Defendant(s)

August 15, 2013 9:00 AM Petition for Judicial Review

HEARD BY: Bare, Rob **COURTROOM:** RJC Courtroom 03C

COURT CLERK: Susie Schofield

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT: Buchanan, Kimberly A. Attorney
 McKay, Denise S. Attorney
 Watkins, John Glenn Attorney

JOURNAL ENTRIES

- Upon request of Mr. Watkins, Court WAIVED the appearance of Plaintiff.

Court reviewed the matter in regard to the traffic incident, the blood test determination, the license revocation, and the administrative hearing confirming the license revocation. Matter submitted. Following arguments by counsel and opposition thereto in regard to the chemist issue and as to McNeely, COURT ORDERED, DECISION PENDING; written Order TO ISSUE.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

JOHN G. WATKINS, ESQ.
804 S. SIXTH ST.
LAS VEGAS, NV 89101

DATE: September 10, 2013
CASE: A677093

RE CASE: VINCENT VALENTI vs. STATE OF NEVADA, DEPARTMENT OF MOTOR VEHICLES

NOTICE OF APPEAL FILED: September 6, 2013

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER; NOTICE OF ENTRY OF DECISION AND ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

VINCENT VALENTI,

Plaintiff(s),

vs.

STATE OF NEVADA, DEPARTMENT OF
MOTOR VEHICLES,

Defendant(s),

Case No: A677093
Dept No: XXXII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 10 day of September 2013.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk