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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ARI FREEDMAN, Plaintiff and Appellant, v. DEPARTMENT OF MOTOR VEHICLES, Defendant and Respondent.	A173607 (Mendocino County Super. Ct. No. 24CV00677)

Ari Freedman appeals from the trial court's denial of his petition for a writ of mandate challenging the suspension of his driving privileges by respondent Department of Motor Vehicles (DMV). He contends that the DMV's administrative hearing officer violated his due process rights because she both introduced evidence at the hearing and decided the case. We disagree for the reasons stated in our recent decision in *Chi v. Department of Motor Vehicles* (2026) 119 Cal.App.5th 473, review granted May 13, 2026, S296201 (*Chi*). We also reject Freedman's contention that substantial evidence does not support that he refused to take a chemical test after he was arrested for driving under the influence (DUI). We therefore affirm.

I. BACKGROUND

On the night of September 21, 2022, a California Highway Patrol (CHP) officer stopped Freedman's car after he observed it traveling over 30

miles per hour over the speed limit. Freedman abruptly pulled over to the shoulder and exited the car, even though the officer instructed him to get back into the driver's seat. As the officer approached Freedman, he noticed a young boy sitting in the rear passenger seat. After Freedman provided the officer with his insurance and registration documents, the officer again told him to sit in the car. Freedman did not appear to understand the request. Instead, he told the officer, " 'when you pulled me over, I wasn't driving, I was out here looking at my car.' " He also refused to get back into his car and denied that he had consumed any alcohol or drugs. The officer, however, observed Freedman's "eyes to be red and watery" and smelled a strong odor of alcohol from Freedman's breath and person. His speech was also "slow, slurred, repetitive and at [times] incoherent."

Based on these observations, the officer conducted a DUI investigation. He first attempted to conduct a series of field sobriety tests, but Freedman refused to perform them. At that point, the officer arrested Freedman and placed him in the rear seat of his patrol car. He advised Freedman of the implied consent law (Veh. Code, § 23612), and Freedman agreed to take a chemical breath test.[1] The officer repeatedly explained how to provide a breath sample, but, according to the officer, Freedman "did not listen" to him. Freedman initially "attempted to forcibly spit/blow into the device which did not work." He then "attempted short blows into the machine which did not work." After multiple failed attempts, the officer decided to obtain a warrant for a blood test and transported Freedman to the hospital. Despite reading the chemical test admonition on "the back of the DS 367" form to Freedman multiple times, Freedman "would not answer if he would provide a chemical breath or blood test." After a warrant was obtained, the officer showed it to

[1] All further statutory references are to the Vehicle Code.

Freedman and explained what it was. Freedman still refused the blood test and "started begging to do a chemical breath test." He then tensed up his arm to avoid his blood being drawn. Several officers had to restrain Freedman in order to draw his blood.

Freedman's counsel appeared at the DMV's administrative hearing in April 2024. Freedman was not present. At the outset, the hearing officer explained that she was "prohibited from and w[ould] not advocate for the [DMV] or any law enforcement." She continued that her role was "to simply review the evidence provided, ask necessary questions of witnesses, and make a legal ruling and determination." Counsel objected to "a single hearing officer [serving] as adjudicator and advocate." The hearing officer reiterated that she would not advocate for the DMV. The hearing officer then introduced and moved several documents from the DMV into evidence, over counsel's hearsay objections. These documents included the CHP officer's sworn statement, the arrest report, and video camera footage from the arrest. No witnesses testified. After the hearing, the hearing officer issued a decision that reimposed the suspension of Freedman's driving privileges. The decision found, among other things, that Freedman was admonished but refused or failed to complete a chemical test.

Freedman filed a petition for writ of mandate in the trial court to set aside the suspension, arguing that his due process rights were violated based on the hearing officer's dual role as advocate and adjudicator. The petition also alleged that the CHP officer failed to offer Freedman the blood test after Freedman was incapable of providing a breath sample. The court denied the petition, finding no due process violation because the hearing officer "may collect and develop evidence without acting as an advocate." It further found that Freedman *refused* to complete the breath test because he "was

intentionally not following instructions" and made "it impossible to collect a viable breath sample."

Freedman timely appealed.

II. DISCUSSION

A. Law and Standard of Review

Under California's implied consent law, a driver is deemed to have consented to a blood or breath test to determine their blood alcohol content if the driver is lawfully arrested for driving under the influence. (§ 23612, subd. (a)(1)(A).) If a driver refuses to submit to or complete a chemical test in this circumstance, the DMV may suspend the driver's license for one year. (§ 13353, subd. (a)(1).) The driver may challenge the suspension by requesting an administrative hearing. (§ 13558, subd. (a).) The hearing officer will, in turn, sustain the suspension if there was reasonable cause to believe that the driver: (1) drove under the influence in violation of the law; (2) was arrested or lawfully detained; (3) refused or failed to complete chemical testing upon request by a peace officer; and (4) was advised of the consequences of refusing to submit to or complete testing. (§ 13557, subd. (b)(1)(A)–(D).)

In 2022, the Court of Appeal in *California DUI Lawyers Assn. v. Department of Motor Vehicles* (2022) 77 Cal.App.5th 517 concluded that "combining the roles of advocate and adjudicator in a single person employed by the DMV violates [a driver's] due process" right to an impartial adjudicator. (*Id*. at p. 532.) In response, the DMV changed its policy to specify "that the hearing officer acts only as a neutral trier of fact, [and] does not represent or advocate for the department . . . . Hearing officers are instructed to introduce any relevant evidence received from law

enforcement, ask clarifying questions if necessary, and rule on objections." (*Chi, supra*, 119 Cal.App.5th at p. 479.)

We review the denial of a writ of mandate following an administrative order suspending a driver's license for substantial evidence. (*Lake v. Reed* (1997) 16 Cal.4th 448, 456–457.) We review due process claims de novo. (*Cardona v. Soto* (2024) 105 Cal.App.5th 141, 150.)

B. Analysis

Notwithstanding the DMV's policy change, Freedman argues that he was denied due process because the hearing officer acted both as a prosecutor by introducing evidence and as an adjudicator by deciding the case. He contends that this "create[d] the appearance of unfairness." We dismiss Freedman's arguments based on our recent holding in *Chi*. There, the driver raised similar due process arguments against the DMV in challenging his license suspension. (*Chi*, *supra*, 119 Cal.App.5th at p. 480.) We concluded that a hearing officer "may introduce relevant evidence, ask clarifying questions, and rule on objections, which are all tasks consistent with the role of a neutral fact finder."[2] (*Id*. at p. 483.) We continued that "[t]his combination of investigation and factfinding roles is inquisitorial, rather than adversarial, and does not, by itself, offend due process." (*Ibid*.)

We further held in *Chi* that "a mere *appearance* of bias does not violate the due process clause." (*Chi, supra,* 119 Cal.App.5th at p. 484, italics added.) Indeed, the DMV specifically instructs its hearing officers to act as a

[2] We need not address Freedman's argument that the hearing officer is not required to consider *any* evidence at an administrative hearing. Even assuming that were true, the hearing officer's introduction of relevant documents that "are routinely admitted into evidence," including a CHP officer's sworn statement, does not constitute advocacy for the DMV. (*Romane v. Department of Motor Vehicles* (2025) 110 Cal.App.5th 1002, 1018, review granted August 13, 2025, S291093.)

neutral fact finder and absent "extraordinary facts, we are skeptical that a court can accurately detect favoritism of an unconstitutional magnitude . . . from a routine task like introducing relevant documents into evidence." (*Id.* at pp. 486–487.)

Freedman points to nothing that distinguishes his due process claim from the one we rejected in *Chi*. Nor does he provide us with any reason to reconsider our decision in *Chi*. We therefore follow *Chi* in rejecting his due process claim.

Freedman also argues that because he was *incapable* of completing the breath test, the CHP officer should have offered him the blood test pursuant to section 23612, subdivision (a)(2)(A) but failed to do so. In making this argument, he appears to contend that there is no substantial evidence that he refused to submit to the breath test. We are unpersuaded. The record shows that Freedman did not follow the CHP officer's repeated instructions. First, he "attempted to forcibly spit/blow into the device which did not work." Then he "attempted short blows" which also did not work. This conduct is more than sufficient to support the hearing officer's finding that he refused to submit to a breath test. (*Garcia v. Department of Motor Vehicles* (2010) 185 Cal.App.4th 73, 83 [ineffectually trying to blow into the device established a refusal to submit].) And "[o]nce the driver refuses to take any one of the three chemical tests, the law does not require that he later be given one when he decides . . . he is ready to submit." (*Dunlap v. Department of Motor Vehicles* (1984) 156 Cal.App.3d 279, 283.)

III. DISPOSITION

The judgment is affirmed.

CHOU, J.

WE CONCUR.

JACKSON, P. J.

SIMONS, J.

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