TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-14-00194-CV

Texas Department of Public Safety, Appellant

v.

Cody Littlepage, Appellee

FROM THE COUNTY COURT AT LAW NO. 2 OF WILLIAMSON COUNTY NO. 13-1544-CC2, HONORABLE TIMOTHY L. WRIGHT, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

After authorities received reports that he had vomited at the entrance of a convenience store to which he had just driven, appellee Cody Littlepage was arrested for driving while intoxicated. Events incident to the arrest also led to a 180-day administrative suspension of Littlepage's driver's license by appellant Texas Department of Public Safety (DPS) under color of Section 724.035 of the Transportation Code, the provision of Texas's implied-consent statute that requires DPS to impose such suspensions "[i]f a person refuses the request of a peace officer to submit to the taking of a [blood or breath] specimen."[1] Littlepage invoked the contested-case-hearing process that Subchapter D of the statute provides for challenging such suspensions,[2] and the Administrative Law Judge (ALJ) found in the affirmative as to each issue required to sustain the

[1] Tex. Transp. Code § 724.035; *see id*. §§ 724.011–.019 (authorizing taking of blood or breath specimens).

[2] *See id*. §§ 724.041–.048.

suspension.[3] Littlepage then appealed the ALJ's decision to the trial court,[4] which upon review of the administrative record held that DPS "has failed to prove by a preponderance of the evidence that a license revocation was appropriate under Texas Transportation Code § 724.035 in this cause,"[5] and reversed the ALJ's order. DPS appeals that judgment, urging that the ALJ's findings sustaining the suspension were each supported by substantial evidence. We agree, and accordingly reverse the trial court's judgment and render judgment affirming the ALJ's order.

As DPS alludes, judicial review of an administrative driver's-license suspension is constrained to the "substantial evidence" analysis codified in Section 2001.174 of the Administrative Procedure Act.[6] Under that analysis, "a court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion," but instead considers whether "substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions" are:

(A) in violation of a constitutional or statutory provision;

(B) in excess of the agency's statutory authority;

(C) made through unlawful procedure;

(D) affected by other error of law;

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[3] *See id*. §§ 724.042–.043.

[4] *See id*. §§ 524.041, 724.047.

[5] *But cf.* the following discussion of the governing substantial-evidence standard of review.

[6] *See* Tex. Transp. Code §§ 524.002(b), 724.047; *see also Texas Dep't of Pub. Safety v. Alford*, 209 S.W.3d 101, 103 (Tex. 2006) (per curiam) (citing *Mireles v. Texas Dep't of Pub. Safety*, 9 S.W.3d 128, 131 (Tex. 1999) (per curiam)).

(E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.[7]

Although Littlepage attempts to raise an additional "due-process" theory on appeal, the sole challenge he preserved in the trial court was directed to "substantial-evidence" in the narrower sense of Paragraph (E), contesting whether the ALJ's order was reasonably supported by substantial evidence considering the reliable and probative evidence as a whole. "Substantial evidence" in this sense "'does not mean a large or considerable amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion of fact.'"[8] The test is not whether the agency made the correct determination in the reviewing court's view, but whether some reasonable basis exists in the record for the agency's action.[9] Consequently, a reviewing court must uphold an agency's determination even if the evidence actually preponderates against it, so long as the determination is within the bounds of reasonableness.[10] A reviewing court must presume that

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[7] Tex. Gov't Code § 2001.174.

[8] *Lauderdale v. Texas Dep't of Agric.*, 923 S.W.2d 834, 836 (Tex. App.—Austin 1996, no writ) (quoting *Pierce v. Underwood*, 487 U.S. 552, 564–65 (1988)) (internal quotations and citation omitted).

[9] *See Mireles*, 9 S.W.3d at 131 (citing *City of El Paso v. Public Util. Comm'n*, 883 S.W.2d 179, 185 (Tex. 1994)).

[10] *See id*.

substantial evidence supports the agency decision, and the burden is on the contestant to prove otherwise.[11]

Whether there is substantial evidence to support an administrative decision is a question of law that we review de novo.[12] In that respect, we stand in the same position as the trial court and review the ALJ's order without deference to that court's judgment.[13]

As applicable here, "[t]he issues at a hearing [challenging an administrative license suspension] under this subchapter [D]" consist of whether:

> (1) reasonable suspicion or probable cause existed to stop or arrest [Littlepage];
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> (2) probable cause existed to believe that [Littlepage] was . . . operating a motor vehicle in a public place while intoxicated; . . .
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> (3) [Littlepage] was placed under arrest by the officer and was requested to submit to the taking of a specimen; and
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> (4) [Littlepage] refused to submit to the taking of a specimen on request of the officer.[14]

To sustain the license suspension required an affirmative finding by the ALJ on each issue,[15] and DPS acknowledges that it had the burden of proof at the hearing. To meet its burden, DPS presented the live testimony of the arresting officer, Deputy Reynaldo G. Ramirez of the Williamson County

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[11] *See Texas Health Facilities Comm'n v. Charter Med.-Dallas, Inc.*, 665 S.W.2d 446, 453 (Tex. 1984).

[12] *See Alford*, 209 S.W.3d at 103.

[13] *See id.*

[14] *See* Tex. Transp. Code § 724.042.

[15] *See id*. § 724.043(a).

Sheriff's Office, plus two sets of documents that Ramirez had generated in connection with the incident: (1) his report (specifically, a "Peace Officer's Sworn Report" on a DPS DIC-23 form, which also incorporated a six-page Williamson County Sheriff's Office report); and (2) a DPS "Statutory Warning" or DIC-24 form that Ramirez had completed. Littlepage chose not to present any evidence, so the administrative record consisted solely of DPS's evidence.[16] After hearing the evidence that was presented, the ALJ made the following affirmative findings as to the four material issues:

> 1. On or about July 8, 2012, at roughly 5:27 a.m., reasonable suspicion to detain [Littlepage] existed. More specifically, [Deputy Ramirez was] dispatched to respond to a report of a drunk driver at a convenience store . . . in Round Rock, Texas. [The store clerk] reported . . . that he had observed [Littlepage] drive into the store parking lot. [Littlepage] then got out of his vehicle and vomited at the entry to the store.
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> 2. On the same date, probable cause to arrest [Littlepage] existed in that probable cause existed to believe that [Littlepage] was operating a motor vehicle in a public place while intoxicated because, in addition to the facts in No. 1: Deputy Ramirez observed that the vomit was blue in color. [Littlepage] explained that his vomit was blue because he had recently drunk a "Blue Hurricane" alcoholic drink. [Littlepage] was unsteady on his feet and his clothing was disheveled. [Littlepage] admitted to Deputy Ramirez that he had also drunk six beers earlier that night. Deputy Ramirez detected a strong alcoholic beverage odor emanating from [Littlepage]. Deputy Ramirez requested that [Littlepage] participate in standard field sobriety tests (SFSTs). Deputy Ramirez administered the horizontal gaze nystagmus (HGN) test and observed that [Littlepage] displayed lack of smooth pursuit in both eyes, distinct and sustained nystagmus at maximum deviations in both eyes, and the onset of nystagmus prior to 45 degrees in both eyes. [Littlepage] also displayed vertical nystagmus in both eyes. During the walk and turn test, [Littlepage] lost balance during instructions, and began before being

[16] Although Littlepage's counsel alluded during the hearing to a video recording of the investigation, the recording itself is not in evidence. Nor did counsel succeed in obtaining admissions from Ramirez regarding various supposed contents of the recording.

instructed to do so. During the One Leg Stand test, [Littlepage] swayed, hopped, used arms for balance, and put his foot down.

3. [Littlepage] was placed under arrest and was properly asked to submit a specimen of breath.

4. After being requested to submit a specimen of breath, [Littlepage] refused.

Littlepage has not appeared to contest the first two issues, and in any event the testimony and written report of Deputy Ramirez reasonably (if not compellingly) demonstrate the existence of reasonable suspicion to detain Littlepage[17] and probable cause for the arrest.[18] We can thus spare the reader further discussion of Littlepage's blue vomit and the like.[19] Nor is there any dispute that Deputy Ramirez arrested Littlepage, a component of the third issue. Littlepage's substantial-evidence challenge, rather, has centered on the remaining requirements that he have been "requested to submit to the taking of a specimen" and that he have "refused" that request. His arguments emphasize the fact—undisputed here—that he is deaf and communicates primarily in American Sign Language (ASL), along with acknowledgments by Deputy Ramirez that he

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[17] *See, e.g.*, *Neal v. State*, 256 S.W.3d 264, 280 (Tex. Crim. App. 2008) ("Reasonable suspicion exists if the officer has specific articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably suspect that a particular person has, or soon will be, engaged in criminal activity."). *See also, e.g.*, *Alonzo v. State*, 251 S.W.3d 203, 208–09 (Tex. App.—Austin 2008, pet. ref'd) (concluding that reasonable suspicion existed to detain where suspect smelled of alcohol, admitted to drinking alcoholic beverages, and seemed unsteady).

[18] *See, e.g.*, *Hughes v. State*, 24 S.W.3d 833, 838 (Tex. Crim. App. 2000) ("Probable cause exists where the police have reasonably trustworthy information, considered as a whole, sufficient to warrant a reasonable person to believe a particular person has committed or is committing an offense. . . . Probable cause requires more than mere suspicion but far less evidence than that needed to support a conviction or even that needed to support a finding by a preponderance of the evidence." (citing *Guzman v. State*, 955 S.W.2d 85, 87 (Tex. Crim. App. 1997)) (internal citation omitted).

[19] *See* Tex. R. App. P. 47.1.

could not communicate in ASL nor had enlisted any ASL interpreter to assist him in his dealings with Littlepage. In the face of this language barrier, Littlepage insists, the evidence falls short of reasonably supporting a finding that he was ever "requested" to provide a breath sample in a manner he could comprehend. And it follows, Littlepage continues, that any conduct on his part cannot reasonably support a finding that he ever voluntarily or knowingly "refused" any request for a breath specimen.

The primary linchpin of Littlepage's substantial-evidence challenge is thus the extent to which he understood communications made to him by Deputy Ramirez. While Littlepage's appellate briefing repeatedly claims that he could not understand or communicate with Ramirez due to deafness, he chose not to testify during the hearing (through an interpreter or otherwise), and thus the sole *evidence* on that score is from Deputy Ramirez's perspective. According to Ramirez, Littlepage evinced the ability to communicate in written English, and repeatedly communicated with him in that fashion—at least prior to his arrest.

Ramirez recounted that when he arrived at the convenience store, Littlepage had been communicating with other individuals[20] by texting in English on his phone. Because texting in English thus "seemed like an appropriate way to communicate with him," Ramirez commenced to do so as well, and he explained that it was through this means that Littlepage had admitted recently drinking a Blue Hurricane preceded by six beers. Ramirez further testified that he had also communicated questions and instructions to Littlepage by writing in English on a notepad, including

[20] Emergency Medical Services had also been summoned, and Ramirez indicated that they were "checking" Littlepage when he arrived. His investigation began, according to Ramirez, once Littlepage was "medically cleared."

while administering the SFSTs. The deputy indicated that he had structured several questions as yes-or-no choices in which Littlepage was to circle the correct answer, and that Littlepage had done so. Other questions had elicited written answers from Littlepage. Ramirez acknowledged during cross-examination that some of these answers were difficult to understand and had an unusual grammatical structure, but he attributed this at least in part to the extent of Littlepage's intoxication. Overall, however, the deputy maintained that Littlepage had appeared to understand and be capable of communicating in written English. And Littlepage also appeared to be content to do so, Ramirez added, noting that the suspect did not make any request for an ASL interpreter at that juncture.

On this record, the ALJ could reasonably have inferred that Littlepage was able to read and understand written English and even to communicate responsively in writing. Although Littlepage urges a contrary view of the evidence that emphasizes Ramirez's acknowledgments of difficulty in deciphering some of his written responses, his arguments overlook the constraints of substantial-evidence review[21] and ultimately invite us to second-guess credibility and weight determinations that the standard leaves to the fact-finder.[22]

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[21] *See, e.g.*, *Mireles*, 9 S.W.3d at 131 ("The issue for the reviewing court [under substantial-evidence review] is not whether the [ALJ's] decision was correct, but only whether the record demonstrates some reasonable basis for the [ALJ's] action. Courts must affirm administrative findings in contested cases if there is more than a scintilla of evidence to support them. In fact, an administrative decision may be sustained even if the evidence preponderates against it.") (internal citations omitted).

[22] *See* Tex. Gov't Code § 2001.174; *Charter Med.-Dallas*, 665 S.W.2d at 452; *see also Sanchez v. Texas State Bd. of Med. Exam'rs*, 229 S.W.3d 498, 511 (Tex. App.—Austin 2007, no pet.) (explaining that administrative fact-finder decides "meaning, weight, and credibility to assign conflicting evidence").

It is against this backdrop that we evaluate the inferences that can reasonably be drawn from the evidence relevant to whether Deputy Ramirez requested a sample of Littlepage's breath and whether Littlepage knowingly and voluntarily refused such a request. After arresting Littlepage, according to Ramirez, he repeatedly conveyed a request for a breath sample through the aforementioned DIC-24 form. A DIC-24 form is a means of providing in written form the statutory notice that Section 724.015 of the Transportation Code prescribes law-enforcement officers to administer "[b]efore requesting a person to submit to the taking of a specimen."[23] The form advised

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[23] Section 724.015 provides in full:

> Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:
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> (1) if the person refuses to submit to the taking of the specimen, that refusal may be admissible in a subsequent prosecution;
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> (2) if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended, whether or not the person is subsequently prosecuted as a result of the arrest, for not less than 180 days;
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> (3) if the person refuses to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from the person;
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> (4) if the person is 21 years of age or older and submits to the taking of a specimen designated by the officer and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Chapter 49, Penal Code, the person's license to operate a motor vehicle will be automatically suspended for not less than 90 days, whether or not the person is subsequently prosecuted as a result of the arrest;
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> (5) if the person is younger than 21 years of age and has any detectable amount of alcohol in the person's system, the person's license to operate a motor vehicle will be automatically suspended for not less than 60 days even if the person submits to the taking of the specimen, but that if the person submits to the taking of the specimen and an analysis of the specimen shows that the

Littlepage that he was under arrest for operating a motor vehicle or watercraft while intoxicated and that he would be requested to provide a breath or blood specimen that would be tested to determine alcohol concentration or the presence of controlled substances. The form then incorporated the statutory notices, after which it advised that Ramirez was then requesting a specimen of Littlepage's breath.

Ramirez testified that he showed Littlepage the DIC-24 form at least twice before transporting him to jail. Ramirez further indicated that he also wrote Littlepage a note asking whether he would read the DIC-24 form, providing as before "yes" and "no" alternatives for him to circle, and also wrote him a note explaining the statutory warnings incorporated into the form.[24] By

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> person had an alcohol concentration less than the level specified by Chapter 49, Penal Code, the person may be subject to criminal penalties less severe than those provided under that chapter;
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> (6) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state; and
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> (7) the person has a right to a hearing on the suspension or denial if, not later than the 15th day after the date on which the person receives the notice of suspension or denial or on which the person is considered to have received the notice by mail as provided by law, the department receives, at its headquarters in Austin, a written demand, including a facsimile transmission, or a request in another form prescribed by the department for the hearing.

Tex. Transp. Code § 724.015.

[24] There were some arguable discrepancies between Ramirez's report and his live testimony, but we are to presume that the ALJ resolved any of these in favor of its order. *See Granek v. Texas*

this juncture, Ramirez recounted, Littlepage had become uncooperative, "glanc[ing] over" the form but refusing to respond to the question posed. Instead, Ramirez indicated, Littlepage wrote that he wanted a phone call and "something (un-legible) about a deaf law." Later, after Littlepage had been transported to jail, Ramirez continued, he again provided Littlepage a copy of the DIC-24 form. Littlepage refused to read the form, according to Ramirez, and further refused to provide an answer on a portion of the form inquiring whether he was refusing the breath-sample request. Based on this conduct, Ramirez concluded that Littlepage was refusing to provide a breath specimen and confiscated his driver's license.

In the context of the aforementioned evidence that Littlepage could read and understand written English, the ALJ had a reasonable basis to infer that Littlepage's conduct in response to the DIC-24 form reflected a suspect who understood the nature of the request being made and the statutory warnings, yet had chosen to be uncooperative and refuse through inaction to comply.[25] While Littlepage correctly notes the absence of evidence that he ever explicitly refused

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State Bd. of Med. Exam'rs, 172 S.W.3d 761, 778–79 (Tex. App.—Austin 2005, no pet.) (citing *Railroad Comm'n. v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995)).

[25] *See, e.g.*, *Ott v. Texas Dep't of Pub. Safety*, 958 S.W.2d 294, 296 (Tex. App.—Austin 1998, no pet.) (holding that ALJ could reasonably conclude that suspect was refusing to provide sample when, after being handed statutory warning, she instead laid warning on her chest, closed her eyes, stared at ceiling, refused to read warning, and asked for her mother instead of responding to officer's request to read and sign warning); *Texas Dep't of Pub. Safety v. Latimer*, 939 S.W.2d 240, 245 (Tex. App.—Austin 1997, no writ) (holding, in face of suspect's claims that he had been injured too severely to understand request for sample, that ALJ could reasonably conclude that suspect had refused request for specimen based on officer's testimony that suspect "'knew what was going on'" and had responded only by asking to see his wife "'before he did anything'"; holding further that officer had sufficiently conveyed statutory warning and request by leaving request with nurse and instructing nurse to provide it to suspect the next morning, as "[t]endering the written notice is all that is required under section 724.015"); *see also Texas Dep't of Pub. Safety v. Schleisner*, 343 S.W.3d 292, 295–96 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (noting that "a response

to provide a specimen, an explicit refusal is not required, only some sort of "intentional failure of the person to give the specimen."[26] Those inferences, in turn, reasonably support the ALJ's order.

Littlepage's arguments to the contrary ultimately devolve to a plea that we weigh the evidence differently (which, again, we cannot do) and an insistence that Ramirez's request through the DIC-24 form was deficient because it is undisputed that the statutory warnings were not conveyed in ASL in addition to writing. Littlepage emphasizes the text of Section 724.015, which states that "the officer shall inform the person orally *and* in writing" of the statutory warnings before requesting the specimen.[27] Because ASL is the equivalent of an oral communication for a deaf person, Littlepage reasons, Ramirez failed to comply with Section 724.015. But assuming without deciding that this is so, Littlepage fails to explain why such technical noncompliance with Section 724.015 (if indeed it was) would have controlling effect in determining the material issues that the Legislature has prescribed under Subchapter D, which are stated simply in terms of whether Littlepage "was requested to submit to the taking of a specimen" and "refused to submit to the taking

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that evades or ignores the legal request of an officer for such a test may be considered a refusal to submit"); *Texas Dep't of Pub. Safety v. O'Donnell*, 998 S.W.2d 650, 655 (Tex. App.—Fort Worth 1999, no pet.) (substantial evidence existed to support ALJ's finding that suspect had refused to submit specimen where ALJ heard testimony that suspect had initially been cooperative, but then became uncooperative and refused to sign warning); *Texas Dep't of Pub. Safety v. Fecci*, 989 S.W.2d 135, 140 (Tex. App.—San Antonio 1999, pet. denied) (reasonable minds could conclude that suspect's requesting of attorney without responding to request had refused the request; "a defendant need not give the officer a definite 'no' about whether or not he will take the test"); *Texas Dep't of Pub. Safety v. Raffaelli*, 905 S.W.2d 773, 777–78 (Tex. App.—Texarkana 1995, no writ) (ALJ could reasonably conclude that suspect who insisted on providing sample in presence of his attorney had refused the request).

[26] Tex. Transp. Code § 724.032(a); *see Schleisner*, 343 S.W.3d at 295–96 (citing Tex. Transp. Code §§ 724.032(a), .061).

[27] Tex. Transp. Code § 724.015 (emphasis added).

of a specimen on request of the officer"; there is no textual linkage to Section 724.015.[28] The upshot of Littlepage's argument is that any technical noncompliance with Section 724.015 categorically renders incompetent what would otherwise be probative evidence that a suspect was requested to provide a breath or blood specimen and voluntarily and knowingly refused to comply. To the contrary, the point of the Section 724.015 warnings is simply to "ensur[e] that the consent is given 'freely and with a correct understanding of the actual statutory consequences of refusal,'"[29] which in turn may bear upon whether the suspect's response (or refusal to respond) was made voluntarily and knowingly.[30] In this respect, it is sufficient that Littlepage received and could read the written warnings,[31] and he presented no evidence, only argument, to dispute the reasonable inferences that

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[28] *See* Tex. Transp. Code § 724.042.

[29] *Sandoval v. State*, 17 S.W.3d 792, 796 (Tex. App.—Austin 2000, pet. ref'd) (quoting *Erdman v. State*, 861 S.W.2d 890, 893 (Tex. Crim. App. 1993) (discussing former article 6701*l*-5, § 2 of Texas Revised Civil Statutes, since repealed and re-codified as § 724.015 of Transportation Code), *overruled on other grounds by Fienen v. State*, 390 S.W.3d 328, 332 (Tex. Crim. App. 2012)).

[30] *See Landin v. Texas Dep't of Pub. Safety*, 475 S.W.2d 594, 596 (Tex. Civ. App.—Dallas 1971, no writ) (affirming finding that Spanish-speaking suspect's refusal was made knowingly and voluntarily, noting that "there is no evidence in the record that he could not understand English, or that in truth he did not understand either the warning or the request for a chemical breath test, or that for any other reason his refusal to take the test was made unknowingly or without due warning as to . . . the probable results of his refusal"); *see also, e.g.*, *Ott*, 958 S.W.2d at 296 (observing that reasonable minds could conclude that, based on "evasive behavior" and "nonresponsive" answer to request to provide sample, suspect was refusing to give a specimen); *Latimer*, 939 S.W.2d at 245 (holding that ALJ could reasonably conclude that suspect's "lack of concurrence" was refusal to provide specimen).

[31] *See Texas Dep't of Public Safety v. Jauregui*, 176 S.W.3d 846, 850–51 (Tex. App.—Houston [1st Dist.] 2005, pet. denied) (noting that while the evidence showed that suspect was not provided the written warning before refusing to provide a specimen, he was "adequately given the section 724.015 warnings" and that in the context of suppression hearings "courts have interpreted that statute to allow either oral or written warnings and not to require

he understood the warnings that Ramirez twice provided for him and the additional explanation Ramirez provided.[32] We conclude that a reasonable basis exists in the record to support the ALJ's findings regarding Ramirez's request for a breath specimen and Littlepage's refusal to provide it.

CONCLUSION

Because substantial evidence supports the ALJ's order, we reverse the trial court's judgment and render judgment affirming the ALJ's order.

Bob Pemberton, Justice

Before Justices Puryear, Pemberton, and Field

Reversed and Rendered

Filed: July 8, 2016

both"). *Cf. State v. Amaya*, 221 S.W.3d 797, 800 (Tex. App.—Fort Worth 2007, pet. ref'd) ("absent evidence that [Spanish-speaking suspect] could not read the warnings set forth on the Spanish DIC-24S form provided to him, the record demonstrates substantial compliance with section 724.015" notwithstanding officer's failure also to read form to him in Spanish); *Lane v. State*, 951 S.W.2d 242, 243 (Tex. App.—Austin 1997, no pet.) (determining that trial court did not abuse its discretion in overruling motion to suppress where suspect only received oral warning before providing specimen, and there was no evidence that he did not understand information in warning).

[32] *See Jauregui*, 176 S.W.3d at 850–51 (proper determination at administrative hearing is whether suspect "had been informed of the consequences of his failing to provide a breath specimen"; noting that suspect "presented no evidence to show that he did not understand the warnings or that his failure to receive the warnings both in writing and verbally before a request for a breath specimen had any impact on his decision not to take the breath test").