



JUN 10 2013

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

*Victoria Hightower*  
Victoria Hightower, Executive Assistant

CINDY RENEE JENKINS,	:	
Petitioner,	:	Docket No.:
	:	OSAH-DPS-ALS-1328793-92-Wood
v.	:	
	:	Agency Reference No.: 058445363
DEPARTMENT OF DRIVER SERVICES,	:	
Respondent.	:	

**FINAL DECISION**

Wood, Judge.

**I. Introduction**

This matter is an administrative review of Respondent’s decision to suspend Petitioner’s driver’s license pursuant to O.C.G.A. § 40-5-67.1. The hearing on this matter was held on May 8, 2013 at the Lowndes County Judicial Complex in Valdosta, GA. John D. Holt represented Petitioner and Dee Brophy of the Department of Public Safety represented Respondent. Cherie Hathaway, a subcontractor for Cass Burch Automotive Group, appeared as a witness for Respondent. For the reasons indicated below, the Department’s decision is **AFFIRMED**.

**II. Findings of Fact**

1. On January 16, 2013 at approximately 1:30 p.m., Cherie Hathaway, a subcontractor for Cass Burch Automotive Group, observed Petitioner drive to the exit of the Cass Burch Service Center. Ms. Hathaway immediately approached Petitioner and asked if she needed anything. Petitioner stated she wanted a car with a GPS. Ms. Hathaway decided Petitioner was impaired because she appeared dazed, talked slow, and was incoherent. Ms. Hathaway did not observe any physical manifestations of intoxication and did not recall smelling alcohol. (Testimony of Ms. Hathaway).
  
2. Ms. Hathaway observed Petitioner take two sips from a water bottle during their approximately thirty (30) minute conversation. Ms. Hathaway called Petitioner’s husband

to inform him of her whereabouts. He refused to pick her up. (Testimony of Ms. Hathaway).

3. Deputy Brandon Ammons from the Lowndes County Sherriff's Office arrived on the scene at approximately 2:00 p.m. in response to a dispatch that an intoxicated person in a maroon vehicle at Cass Burch had possibly been driving. Deputy Ammons observed Petitioner's maroon vehicle at the Service Center exit. The vehicle was not in a parking spot and Petitioner was behind the wheel. Deputy Ammons did not observe the Petitioner driving the vehicle and observed the keys were not in the ignition when he approached the vehicle. (Testimony of Deputy Ammons).
4. Deputy Ammons asked Petitioner for her driver's license and asked her to explain the reason she was at the Service Center. Petitioner again responded that she wanted to trade in her car for a model with a GPS. Deputy Ammons requested Petitioner step out of the vehicle. He observed that Petitioner was close to falling over and that her eyes were bloodshot. Based on his observations, Deputy Ammons called the Georgia State Patrol to report a possible driving under the influence situation at 2:29 p.m. Deputy Ammons did not perform any Field Sobriety Tests (FSTs) and did not ask Petitioner any questions regarding her alcohol consumption. (Testimony of Deputy Ammons).
5. Georgia State Trooper Israel Hendley arrived shortly after Deputy Ammons reported the incident. After consulting with Deputy Ammons, Trooper Hendley approached Petitioner. Trooper Hendley asked Petitioner if she drove to Cass Burch and Petitioner responded yes. Trooper Hendley observed that Petitioner had a strong odor of alcohol on her breath, appeared to have bloodshot and glassy eyes, was unsteady on her feet, and her speech was slow and confused. Trooper Hendley asked Petitioner if she had any alcohol to drink. Petitioner responded that she drank three shots of vodka around 3:00 a.m. that day. Trooper Hendley then asked when Petitioner had her last drink. Petitioner admitted to drinking four (4) to five (5) hours previously. (Testimony of Trooper Hendley)
6. Trooper Hendley asked petitioner to take a FST. The first Alco Sensor test did not work because Petitioner was not blowing into the device. Trooper Hendley reset the device

and the second test was successful. The result was positive for alcohol. Trooper Hendley did not perform any other standardized FSTs. (Testimony of Trooper Hendley).

7. Trooper Hendley asked Petitioner if she had any open containers in the vehicle and Petitioner replied yes. A water bottle with alcohol was found in the center console of Petitioner's vehicle. After speaking with Ms. Hathaway, Trooper Hendley decided Petitioner was an impaired driver and that she drove her vehicle to Cass Burch. Petitioner was placed under arrest. (Testimony of Trooper Hendley).
8. Trooper Hendley read Petitioner the implied consent notice for suspects over the age of twenty-one (21) years. Petitioner interrupted him in the middle of the consent and stated she wanted to speak to a lawyer. Trooper Hendley completed the implied consent notice and asked if she consented. She again said she would like to speak with her lawyer first and refused. (Testimony of Trooper Hendley).
9. Trooper Hendley transported Petitioner to the Lowndes County Jail. At that time, Trooper Hendley again offered Petitioner the opportunity to take the test on the Intoxilyzer 5000 and she refused. (Testimony of Trooper Hendley).
10. Petitioner's license was suspended and Petitioner now appeals the Department's decision.

### **III. Conclusions of Law**

**Based upon the above findings of fact, the undersigned makes the following conclusions of law:**

**A. The Suspension of Petitioner's License was Proper under O.C.G.A. § 40-5-67.1.**

1. This appeal arises under Georgia's Motor Vehicle and Traffic laws. O.C.G.A. § 40-5-67.1 (2007). The Department bears the burden of proving by a preponderance of the evidence that its decision to suspend Petitioner's license was proper. OSAH Rules 7 &

21 (2010).

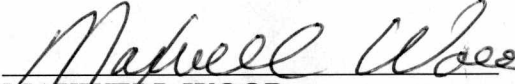
2. In Georgia, the Department may suspend a person's license if the "officer had reasonable grounds to believe the person was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol . . . and [the person] was lawfully placed under arrest" and if "the officer informed the person of the person's implied consent rights and the consequence of submitting or refusing to submit to such test." O.C.G.A. § 40-5-67.1(g)(2)(A)-(B).
3. In this case, the arresting officer had reasonable grounds to believe Petitioner was driving a moving motor vehicle, or in actual physical control of a moving motor vehicle, while under the influence of alcohol and was lawfully placed under arrest for violating O.C.G.A. § 40-6-391 and O.C.G.A. § 40-5-67.1(g)(2)(A). Petitioner admitted to driving her vehicle. Additionally, the evidence presented at trial shows that Petitioner was under the influence of alcohol given that Petitioner tested positive for alcohol on an Alco Sensor test, was unsteady on her feet, her eyes appeared bloodshot and glassy, and she admitted to drinking earlier that day.
4. Trooper Hendley gave Petitioner the Georgia implied consent warning for suspects over the age of twenty-one (21) years old. Petitioner would not submit to chemical testing unless she spoke with her lawyer. It is well established that, "an individual is not entitled to the advice of counsel when he is asked to submit to a breath test under the Implied Consent Law." Rackoff v. The State, 281 Ga. 306 (Ga. 2006). Therefore, the Petitioner's response will be considered a refusal to submit to chemical testing.
5. Based on the evidence presented at trial, the undersigned finds that the Department met its burden of showing that Petitioner was lawfully arrested pursuant to O.C.G.A. § 40-5-

67.1(g)(2)(A), and that Petitioner declined to take the chemical test pursuant to O.C.G.A.  
§ 40-5-67.1(g)(2)(C)(i). Therefore, the Department's suspension of Petitioner's license  
was proper.

**IV. Decision**

**IT IS HEREBY ORDERED THAT** the Department's suspension of Petitioner's driver's  
license and driving privileges is **AFFIRMED**.

SO ORDERED, this 10th day of June, 2013.

  
**MAXWELL WOOD**  
Chief Administrative Law Judge

