

**OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

JOHN JAMES CRAWFORD,
Petitioner,

v.

**DEPARTMENT OF DRIVER
SERVICES,**
Respondent.

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:
: Docket No.: OSAH-DDS-ALS-1406189-56-
: WALKER
:
:
: Driver's License No.: 055866477
:
:
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OCT 28 2013

Virginia Ramsey
Virginia Ramsey, Legal Assistant

FINAL DECISION

I. Introduction

Petitioner seeks review of Respondent's administrative suspension of his driver's license pursuant to O.C.G.A. § 40-5-67.1. An administrative hearing was held on October 24, 2013. For the reasons indicated, Respondent's action is **AFFIRMED**.

II. Findings of Fact

1.

On July 28, 2013, Officer William Oppermann observed a golf cart traveling on State Highway 54. Concluding that the operation of a golf cart on a state highway was in violation of municipal ordinance, Officer Oppermann stopped the golf cart. *Testimony of Officer Oppermann.*

2.

Petitioner was driving the golf cart. When the Officer approached the golf cart, he smelled the odor of an alcoholic beverage. He asked Petitioner if he had consumed any alcohol, and Petitioner denied consuming any alcohol. The Officer then asked Petitioner to step out of the vehicle. After Petitioner exited the golf cart, Officer Oppermann still detected the odor of an alcoholic beverage. *Testimony of Officer Oppermann.*

3.

Petitioner acknowledged to the Officer that he was aware that it was illegal to operate a golf cart on a state highway. The Officer then asked Petitioner if he would undergo voluntary field sobriety testing. Petitioner refused field sobriety testing. The Officer arrested Petitioner for driving under the influence and read him the appropriate implied consent notice asking for a breath test. Petitioner refused this testing as well. *Testimony of Officer Oppermann.*

III. Conclusions of Law

1.

Respondent has the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

The scope of this administrative hearing is limited to the following issues: (A) whether the arresting officer had reasonable grounds to believe that the Petitioner was driving or in actual physical control of his vehicle while under the influence of alcohol, drugs or intoxicating substances and the Petitioner was lawfully placed under arrest for violating O.C.G.A. § 40-6-391; or (B) whether the Petitioner was involved in a motor vehicle accident or collision resulting in serious injury or fatality; and (C) whether at the time of the request for the test the arresting officer informed the Petitioner of his implied consent rights and the consequences of submitting or refusing to submit to the state administered chemical test; and (D) whether the Petitioner refused the test; or (E) whether a test or tests were administered and the results indicated an alcohol concentration of 0.08 grams or more; and (F) whether the test or tests were properly administered. O.C.G.A. § 40-5-67.1 (g) (2); *Miles v. Ahearn*, 243 Ga. App. 741, 742-43 (2000).

3.

In this case, Petitioner argues that the Officer did not have sufficient probable cause to arrest him for driving under the influence. To sustain a conviction for driving under the influence, the State must prove that alcohol impaired Petitioner's driving ability. Impairment "may include evidence of (i) erratic driving behavior, (ii) refusal to take field sobriety tests... and (iii) the officer's own observations (such as smelling alcohol. . . .)". *Sistrunk v. State*, 287 Ga. App. 39, 40 (2007) (citations omitted). In particular, "the commission of a traffic violation can constitute evidence that a driver is impaired." *Sistrunk*, 287 Ga. App. at 40 (citation omitted).

4.

In this case, Petitioner committed a traffic violation. The Officer smelled the odor of alcohol, and Petitioner refused field sobriety testing. As detailed in *Sistrunk*, these circumstances are sufficient to prove probable cause. *See also Mayberry v. State*, 312 Ga. App. 510, 511 (2011) (finding sufficient evidence of intoxication without evidence of physical manifestations or field sobriety testing, "[w]hen there is evidence that the defendant has been drinking, the manner of his driving may be considered on the question that of whether he has been affected by alcohol to the extent that he is less safe to drive." (citation omitted).

5.

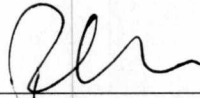
Based on the facts articulated by Officer Oppermann, he had reasonable grounds to believe Petitioner was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol and Petitioner was lawfully placed under arrest. Moreover, at the time the

Officer requested that Petitioner submit to the state-administered tests, he informed Petitioner of his 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)(C). Petitioner refused testing. Accordingly, the suspension of Petitioner's driver's license and driving privileges by DDS was proper. O.C.G.A. § 40-5-67.1.

IV. Decision

For the aforementioned reasons, Respondent's action suspending Petitioner's driver's license is **AFFIRMED**.

SO ORDERED, this 24 day of October, 2013



RONIT WALKER
Administrative Law Judge

