

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

PETER TODD BISCHOFF,	:	
	:	Docket No.:
Petitioner,	:	OSAH-DDS-ALS-1412231-56-Walker
	:	
v.	:	Agency Reference No.: 052394274
	:	
DEPARTMENT OF DRIVER	:	
SERVICES,	:	
	:	
Respondent.	:	

FINAL DECISION

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. A hearing in this matter was held on October 24, 2013. Officer Stephen Stoyell appeared for Respondent, Department of Driver Services, and Skyler Taylor, Esq. represented Petitioner. For the reasons indicated below, Respondent’s action is **REVERSED**.

II. Findings of Fact

1.

On September 6, 2013, Officer Stoyell was participating in a road safety/sobriety roadblock. The roadblock had been authorized by Lieutenant Meyers. At least seven officers were present and all were wearing reflective vests; additionally, their vehicles’ blue lights were flashing. *Testimony of Officer Stoyell.*

2.

At approximately 11:12 p.m. a blue Ford Explorer approached the roadblock. Petitioner was driving the vehicle. Officer Stoyell signaled to the vehicle to stop with a flashlight but Petitioner continued to move forward, only stopping his vehicle after he had already driven by the Officer. The driver’s behavior was unusual as most drivers stop immediately when signaled. *Testimony of Officer Stoyell.*

3.

As Officer Stoyell approached the vehicle, he observed that Petitioner’s eyes were bloodshot and glassy. He asked Petitioner if he had been drinking; Petitioner initially denied drinking alcohol,

but later admitted to having lied about his whereabouts prior to the roadblock and acknowledged that he had consumed several alcoholic beverages. Petitioner told the Officer he thought he was “borderline.” *Testimony of Officer Stoyell.*

4.

Officer Stoyell asked Petitioner to perform Field Sobriety Testing, and Petitioner agreed to do so. After Petitioner exited the vehicle the Officer observed that he was unsteady. The Officer observed six out of six clues of impairment on the horizontal gaze nystagmus examination, indicating that the driver was intoxicated. Petitioner made a number of errors when performing the walk and turn examination and the one-leg stand examination. A portable breath test was positive for alcohol. *Testimony of Officer Stoyell.*

5.

Officer Williams placed Petitioner under arrest for driving under the influence of alcohol, and read him the appropriate implied consent notice for drivers age 21 or over. At the request of the arresting officer, Petitioner submitted to a state-administered chemical test to determine his blood alcohol concentration. The state-administered chemical test was properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument in good working order and approved by the Division. The results of the test indicated that the Petitioner greatly exceeded the minimum blood alcohol concentration allowable by statute of .08, testing at .145. Petitioner then requested an independent test. The Officer took Petitioner to Piedmont Fayette Hospital, and Petitioner obtained independent testing. *Testimony of Officer Stoyell; R-1; R-2.*

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.

Generally a seizure that is not based upon individualized suspicion “is unreasonable and, hence, unconstitutional.” Brown v. State, No. S12G1287, 2013 Ga. LEXIS 862at *11 (citations omitted). However, “[t]he United States Supreme Court has recognized . . . a narrow exception to the individualized suspicion requirement for vehicle stops made pursuant to a ‘plan embodying explicit, neutral limitations on the conduct of individual officers.’” Id. at *12, citing Brown v. Texas, 443 U.S. 47, 51 (1979).

3.

In LaFontaine v. State, 269 Ga. 251 (1998), the Georgia Supreme Court set forth five specific factors to be considered in determining the validity of a roadblock. The Court held:

A roadblock is satisfactory where [1] the decision to implement the roadblock was made by supervisory personnel rather than the officers in the field; [2] all vehicles are stopped as opposed to random vehicle stops; [3] the delay to motorists is minimal; [4] the roadblock operation is well-identified as a police checkpoint; and [5] the “screening” officer’s training and experience is sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication.

Id. at 253; see also Baker v. State, 287 Ga. App. 131 (2007). In a recently decided Georgia Supreme Court case, the Court reaffirmed the Lafontaine factors and also imposed the additional requirement that a roadblock must “when viewed at the programmatic level [have] an appropriate primary purpose other than general crime control.” Brown, 2013 Ga. LEXIS 862, at *31-32.

4.

Here, Officer Stoyell’s testimony established the presence of two of the five Lafontaine factors, specifically that the decision to implement the roadblock was made by a supervisor and that it was clearly identifiable as a roadblock. See Perdue v. State, 256 Ga. App. 765, 769 (2002) (“checkpoint was identified by police cars, flashing blue lights, officers in uniform wearing reflective vests, and orange cones”). However, the Department presented no evidence to meet the three remaining requirements imposed by Lafontaine. There was no testimony as to whether all vehicles were stopped, whether the delay to drivers was minimal, or that the screening was performed by officers qualified to make an initial determination as to which motorist should be given field tests for intoxication. Furthermore, while Officer Stoyell testified that the primary purpose of the roadblock was to ensure road safety and conduct field sobriety tests—permissible purposes—he did not testify regarding that “when viewed at the programmatic level [the roadblock has] an appropriate primary purpose other than general crime control.” Brown, 2013 Ga. LEXIS 862, at *31-32.

5.

Although the officer had ample probable cause to arrest Petitioner and performed the testing requirements appropriately, the very specific requirements of LaFontaine, and now Brown, in roadblock cases obligate this Court to find that the Respondent failed to meet its burden of proving that the Petitioner was “lawfully placed under arrest for violating O.C.G.A. § 40-6-391,” as required by O.C.G.A. 40-5-67.1(g)(2)(a). Thus, under the requirements of LaFontaine, and its progeny, even if probable cause existed, the arrest itself was not shown to be lawful. O.C.G.A. § 40-5-67.1(g)(2)(a).

IV. Conclusions of Law

IT IS HEREBY ORDERED that the decision of Respondent to administratively suspend the Petitioner's driver's license, permit or privilege to operate a motor vehicle or commercial motor vehicle in this State is **REVERSED**.

SO ORDERED, this _____ day of _____, 2013.

RONIT WALKER, ALJ