

RE: LORENA MARIBEL LOPEZ, Petitioner

DOCKET NO.: OSAH-DDS-ALS-1418740-60-Malihi

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

LORENA MARIBEL LOPEZ

Petitioner,

v.

DEPARTMENT OF DRIVER SERVICES,

Respondent.

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: Docket No.:
: OSAH-DDS-ALS-1418740-60-Malihi
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J. Lee Webb, Esq.
For Petitioner

Officer Justin J. Brodnik
Atlanta Police Department
For Respondent



FILED
OSAH

JAN 24 2014

Valerie Ruff
Valerie Ruff, Legal Assistant

FINAL DECISION

I. Introduction

The hearing on this matter was held in Atlanta, Georgia on January 16, 2014. For the reasons indicated below, Respondent's decision to suspend Petitioner's driver's license is **REVERSED**.

II. Findings of Fact

1. On November 3, 2013 at approximately 2:00 a.m., Officer Brodnik was called by his fellow officer, Officer Ferreira, to assist with a possibly-intoxicated driver at the scene of a traffic stop at 110 East Andrews Drive. *Testimony of Officer Brodnik.*
2. Officer Brodnik arrived at the scene shortly after the call and spoke with Officer Ferreira. Officer Ferreira informed Officer Brodnik that he had conducted a traffic stop of Petitioner's vehicle because Petitioner had failed to yield to pedestrians in a cross walk when making a left turn. Officer Ferreira further reported that he had observed several manifestations of intoxication during his contact with Petitioner. *Testimony of Officer Brodnik.*
3. Officer Brodnik then proceeded to make contact with Petitioner, who was still seated behind the wheel of her vehicle. Petitioner told Officer Brodnik that she had come from an establishment that served alcohol. When Petitioner responded to Officer Brodnik's questions, the officer detected that Petitioner's speech was slurred. During his interview with Petitioner, Officer Brodnik observed that Petitioner's eyes were bloodshot, dilated, and watery and that her face was flushed. The officer also detected a strong odor of alcohol emanating from the vehicle's interior. *Testimony of Office Brodnik.*

4. Officer Brodnik asked Petitioner to exit the vehicle. When Petitioner complied, the officer asked her if she knew why she had been stopped. Petitioner replied that she was not certain, but speculated that it had to do with her turning left when pedestrians had been in the crosswalk. Office Brodnik also asked Petitioner if she had consumed alcohol that night. Petitioner admitted to consuming three beers prior to the stop, but could not say for certain when she had stopped drinking. *Testimony of Officer Brodnik.*

5. Petitioner agreed to submit to the standardized field sobriety tests, whereupon Officer Brodnik administered the horizontal gaze nystagmus (HGN), walk-and-turn, and one-leg-stand tests. Petitioner exhibited six out of six clues of impairment on the HGN, six out of eight clues of impairment on the walk-and-turn, and three out of four clues of impairment on the one-leg-stand tests. *Testimony of Officer Brodnik.*

6. Officer Brodnik concluded that Petitioner had been operating her vehicle while impaired by alcohol to the extent that it was less safe for her to drive and placed her under arrest for driving under the influence. He then read the implied consent notice for drivers over the age of 21 to Petitioner. When Officer Brodnik asked Petitioner if she would submit to a state-administered chemical test, Petitioner refused. *Testimony of Officer Brodnik.*

7. At the hearing of this matter, Petitioner objected on hearsay grounds to Officer Brodnik's testimony regarding the statements of Officer Ferreira, who was not present at the hearing to provide testimony. Petitioner, through the argument of counsel, contended that Officer Brodnik could not testify as to what Officer Ferreira told him regarding the circumstances leading to the traffic stop of Petitioner. Without this testimony, Petitioner argued, Respondent could not establish the validity of the traffic stop.

8. Petitioner's counsel supplemented this argument in a document filed with the undersigned entitled "Memorandum of Law in Support of Petitioner's Arguments." In this Memorandum, Petitioner's counsel argued that Officer Ferreira's statements to Officer Brodnik were hearsay and thus inadmissible to establish the validity of the stop. Petitioner further argued that the statements were not admissible under the collective knowledge doctrine. Without the testimony of Officer Ferreira, Petitioner's counsel argued, Respondent had failed to establish that the stop of his client was valid and, therefore, had failed to meet its burden in establishing that Petitioner was lawfully arrested for violating Code Section 40-6-391. *Memorandum of Law in Support of Petitioner's Arguments dated January 16th, 2014.*

III. Conclusions of Law

A. Respondent is required to show the lawfulness of the traffic stop to demonstrate that the Petitioner was properly arrested for a violation of 40-6-391.

1. This appeal arises under Georgia's Motor Vehicle and Traffic laws. O.C.G.A. § 40-5-67.1 (2013). Respondent bears the burden of proof. GA. COMP. R. & REGS. 616-1-2-.07. The standard of proof is a preponderance of evidence. GA. COMP. R. & REGS. 616-1-2-.21.

2. In Georgia, Respondent 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 for violating Code Section 40-6-391” and if “the officer informed the person of the person’s implied consent rights and the consequences of submitting or refusing to submit to [the state-administered chemical test].” O.C.G.A. § 40-5-67.1(g)(2)(A)–(B) (emphasis added).

3. The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures. U.S CONST. amend. I. In Jones v. State, the Georgia Supreme Court identified “three types of police-citizen encounters: [1] verbal communications that involve no coercion or detention; [2] brief stops or seizures that must be accompanied by a reasonable suspicion; and [3] arrests, which can be supported only by probable cause.” Jones v. State, 291 Ga. 35, 37 (2012) (quoting In the Interest of D. H., 285 Ga. 51, 53 (2009)). The Court further explained that traffic stops were seizures, and fall in the second category. Hence, in order for a traffic stop to be valid, “an officer must identify specific and articulable facts that provide a reasonable suspicion that the individual being stopped is engaged in criminal activity.” Id. at 38. A traffic stop that is unaccompanied by the detaining officer’s reasonable, articulable suspicion constitutes an unreasonable seizure violative of the Fourth Amendment. Id.

4. In this case, Respondent has failed to meet its burden of demonstrating that reasonable, articulable suspicion existed for the traffic stop of Petitioner’s vehicle. Therefore, Respondent has failed to show that Petitioner was lawfully arrested for violation of O.C.G.A. § 40-6-391, as is required in order to uphold the suspension of her license.

B. The collective knowledge doctrine does not permit the inclusion of an out-of-court statement offered to show that the out-of-court declarant had reasonable suspicion to conduct a traffic stop.

1. The collective knowledge doctrine permits hearsay statements to be used to establish that an arresting or detaining officer relying on those statements had reasonable suspicion for the arrest or detention. See, e.g., State v. Pennyman, 248 Ga. App. 446, 447 (2001). The doctrine acknowledges that officers are justified in basing reasonable suspicion that a subject has committed an offense on the reliable statements of other officers through direct personal communication or dispatches. The communications are not offered to show that they are true; they are offered as evidence that the officer was justified in conducting the stop or arrest.

2. The doctrine is exemplified in Camp v. State, wherein two Gwinnett County officers conducted a traffic stop of a suspected drunk driver based upon a 911 call from an off-duty police officer reporting that the driver’s car was weaving in and out of its lane. The off-duty police officer did not testify at the driver’s trial and the driver moved to suppress the evidence gathered in connection with his traffic stop, arguing that the officers who actually stopped him did not have reasonable suspicion that would authorize the stop. However, the Court of Appeals held that the officers had reasonable suspicion to conduct the traffic stop based on the off-duty police officer’s report that the driver’s car was weaving in and out of his lane. The Court held that “[r]easonable suspicion need not be based on an arresting officer’s knowledge alone, but may exist based on the ‘collective knowledge’ of the police when there is reliable communication between an officer supplying the information and an officer acting on that information.” Camp v. State, 259 Ga. App. 228, 229 (2003); see also Fritzius v. State, 225 Ga. App. 642, 646 (1997) (“[T]he existence of an articulable suspicion can be based on collective

knowledge of law enforcement officials” and “the detaining officer [is] entitled to rely on the information given him by a fellow officer in the formation of an articulable suspicion.”).

3. The collective knowledge doctrine may be applied here to show that Officer Brodnik had probable cause to arrest Petitioner for DUI based upon the hearsay statements of Officer Ferreira, who made the stop. Accordingly, the statements of Officer Ferreira as to the manifestations of intoxication that he observed were admissible to show that Officer Brodnik had probable cause for the arrest. However, the question remains as to whether Respondent may establish that Officer Ferreira had reasonable suspicion to make the traffic stop of Petitioner’s vehicle through the testimony of Officer Brodnik regarding Officer Ferreira’s out-of-court statements.

4. In this case, the collective knowledge doctrine cannot be applied to show that Officer Ferreira had a reasonable suspicion to conduct the traffic stop of Petitioner’s vehicle. Officer Ferreira’s reasonable suspicion was not derived from communications from other officers, but from his own observations of Petitioner’s vehicle.

5. The Court of Appeals described the doctrine’s limitations in its decision in State v. Fischer. State v. Fischer involved the stop of a driver at a police roadblock. State v. Fischer, 230 Ga. App. 613, 613 (1998). Officer Vaughn of the Lawrenceville Police Department decided to implement a secondary detention of the driver. Id. Officer Vaughn asked a second officer, Officer Kotkiewicz, to talk to the driver, telling him that he determined to conduct the secondary detention because he smelled alcohol on the driver’s breath. Id. at 613–14. Officer Kotkiewicz did not observe first-hand the circumstances giving rise to the driver’s secondary detention. After conducting field sobriety tests, Officer Kotkiewicz determined that the driver was impaired by alcohol and arrested her for driving under the influence. Id. at 614.

6. At her trial, the driver moved that evidence gathered after the secondary detention be suppressed, arguing that Officer Vaughn did not have reasonable suspicion to conduct the secondary detention. Fischer, 230 Ga. App. at 614. Officer Kotkiewicz testified as to Officer Vaughn’s statements relating to the smell of alcohol on the driver’s breath. Id. The trial court held that Officer Kotkiewicz testimony relied on inadmissible hearsay and, therefore, that the State had failed to establish the validity of the secondary detention. Id.

7. The Court of Appeals held that the state had failed to meet its burden in demonstrating that the detaining officer, Officer Vaughn, had reasonable suspicion that would justify the secondary detention of the driver. Fischer, 230 Ga. App. at 614. The Court of Appeals rejected the State’s argument that the collective knowledge doctrine allowed for the use of Officer Vaughn’s out-of-court statement to establish that reasonable suspicion existed for the secondary detention, holding that collective knowledge must be used by the officer actually making the detention or arrest. Id. at 615. The Court noted that there was no evidence that Officer Vaughn relied on any collective knowledge in determining that a secondary detention was warranted.¹ Id.

¹ State v. Fischer was later overturned in Workman v. State. However, the Court of Appeals overturned Fischer due to its conclusion in Workman that reasonable suspicion is not required for a secondary detention at a roadblock. See Workman v. State, 235 Ga. App. 800, 804 (1998). The Fischer Court’s conclusions regarding the collective knowledge doctrine remain intact. See Workman v. State, 235 Ga. App. 800, 804 (1998) (“To the extent our otherwise correct evidentiary analysis in [Fischer] may be read to conflict with the Fourth Amendment analysis contained . . . we will overrule State v. Fischer.”); see also State v. Peterson, 273 Ga. 657, 663 (2001) (Carley, J.,

8. As discussed above, the collective knowledge doctrine acknowledges that officers are justified in relying on the statements of other officers in forming reasonable suspicion. See Pennyman, 248 Ga. App. at 447. The doctrine does not, however, allow for Respondent to establish that the detaining officer had reasonable suspicion necessary to conduct a traffic stop through evidence of the out-of-court statements of that officer. This would essentially constitute accepting Officer Ferreira's statements for their truth—that Petitioner committed traffic infractions, thus giving rise to reasonable suspicion—which is the very definition of hearsay. See Fischer, 230 Ga. App. at 614. In the absence of Officer Ferreira's statements, Respondent has introduced no admissible evidence as to the validity of the stop of Petitioner's vehicle.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to suspend Petitioner's driver's license is **REVERSED**.

SO ORDERED, this the 24th day of January, 2014.



MICHAEL MALIHI, Judge



dissenting) (citing Fischer and noting that while the Court of Appeals overturned Fischer based upon a rejection of its conclusions regarding the Fourth Amendment, the Fischer Court's evidentiary analyses remained intact).