

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

ANDREW DANIEL WELLS,  
Petitioner,

v.

DEPARTMENT OF DRIVER SERVICES,  
Respondent.

\*  
\* DOCKET NO:  
\* OSAH-DDS-ALS-1426241-25-Teate  
\*  
\*  
\* Driver's License No.: 058913942  
\*  
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**FINAL DECISION**

**I. Introduction**

This matter is the administrative review of the Respondent's decision to suspend the Petitioner's driver's license pursuant to O.C.G.A. § 40-5-67.1. At the close of the hearing March 6, 2014, Petitioner moved to dismiss Respondent's action due to the insufficiency of Respondent's evidence supporting a determination that the appropriate implied consent notice had been read. After considering all the admissible evidence presented at the March 6, 2014, hearing, Petitioner's Motion to Dismiss is **GRANTED** and Respondent's action is **REVERSED**.

**II. Findings of Fact**

1. On December 3, 2013 at approximately 10:26 p.m., Officer Alan Brown of the Savannah-Chatham Metropolitan Police Department was on routine patrol when he observed Petitioner's vehicle parked alongside the road with its lights on. Officer Brown turned his patrol car around to pull behind the vehicle, whereupon the vehicle pulled into the flow of traffic. Officer Brown followed Petitioner's vehicle as it pulled into a residential driveway, where he activated his blue lights and initiated a traffic stop. (Testimony of Officer Brown).
2. Officer Brown exited his patrol car and made contact with Petitioner, who had already stepped out of his vehicle. Officer Brown observed that Petitioner appeared to have spilled a liquid on his pants. Upon speaking with Petitioner, Officer Brown detected an odor of alcohol emanating from Petitioner's breath. Petitioner also appeared to have difficulty following the Officer's instructions to keep his hands out of his pockets. Petitioner refused to submit to a preliminary breath test on an Alco-Sensor. (Testimony of Officer Brown).
3. Based on his observations of Petitioner, Officer Brown placed Petitioner under arrest and testified that he read him an implied consent notice for drivers over twenty-one. Officer Brown neither read the card into the record nor tendered a copy of the card as an exhibit. Further, he provided no testimony establishing the substance of the implied consent notice beyond the fact

that it was for drivers over twenty-one years or age.<sup>1</sup> (Testimony of Officer Brown).

4. Petitioner initially agreed to take a state-administered breath test, whereupon Officer Brown placed him in the back of his patrol car and proceeded to conduct an inventory search of Petitioner's vehicle. Petitioner later withdrew his consent to take the designated breath test, however, and the Officer initiated the license suspension that Petitioner has duly appealed. (Testimony of Officer Brown).

### III. Conclusions of Law


1. Absent other evidence specifying substance of an implied consent notice allegedly given, an arresting officer's statement that he read an implied consent notice for suspects over 21 is insufficient to meet Respondent's burden of proving compliance with implied consent notice requirements. Miller v. State, 238 Ga. App. 61 (1999). Inasmuch as the Officer neither read nor submitted a copy of the notice he read to Petitioner into the record, it was incumbent upon him to show that Petitioner was properly informed of these rights in compliance with O.C.G.A. § 40-5-67.1 (b) by showing that the substance of the warning had appropriately been communicated to Petitioner. Cullingham v. State, 242 Ga. App. 499 (2000).

2. Respondent has the burden of persuasion and going forward with the evidence in this matter. Ga. Comp. R. & Regs. 616-1-2-.07 (1). As part of that burden, it is incumbent upon Respondent to establish that the officer informed the person of the implied consent rights and the consequence of submitting or refusing to submit to such a test. O.C.G.A. § 40-5-67.1 (g) (2) (C). Respondent's failure to sufficiently prove the reading of the appropriate implied consent notice supports a determination that all provisions were not met within the scope of an administrative license suspension hearing.

### IV. Decision

**IT IS HEREBY ORDERED** that Petitioner's Motion to Dismiss is **GRANTED** and the administrative license suspension or disqualification of 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 11<sup>th</sup> day of March 2014.

  
Steven W. Teate  
Administrative Law Judge

<sup>1</sup> This requirement may be simply satisfied by reading the implied consent notice that was read to the Petitioner into the record or submitting a copy of the implied consent notice card into the record.