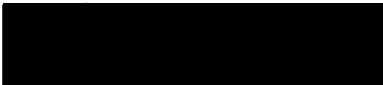


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



Petitioner,

v.

DEPARTMENT OF DRIVER
SERVICES,

Respondent.

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Docket No.:
OSAH-DDS-ALS-1329622-76-Wood

Agency Reference No.: 054721958



SEP 20 2013

Victoria Hightower
Victoria Hightower, Executive Assistant

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 in Warner Robins, Georgia on September 18 2013. Petitioner was represented by Mr. George Williams, Esq. Officer Todd Rountree appeared for Respondent. For the reasons indicated below, the determination that Respondent suspended Petitioner's driver's license is **AFFIRMED**.

II. Findings of Fact

1.

On January 26, 2013 at approximately 1:11 a.m., Officer Rountree of the Warner Robins Police Department observed Petitioner driving northbound on Highway 41. When he pulled behind Petitioner, Officer Rountree observed the vehicle veer over the side of the road and the center line, whereupon he hit his lights and pulled Petitioner's vehicle to the side of the road.

2.

Officer Rountree approached the vehicle, made contact with Petitioner, and asked to see her driver's license. Upon approaching the vehicle, he noticed a strong smell of alcohol

emanating from its interior. Officer Rountree then asked Petitioner to exit her vehicle, after which he noticed that the strong odor of alcohol emanated from her person and that her eyes were red and glassy. He asked Petitioner if she would submit to standardized field sobriety tests, but she refused. (Testimony of Officer Rountree).

3.

Officer Rountree informed Petitioner that she was under arrest for DUI, placed her in the back of his patrol car, and properly read the implied consent rights for driver's aged 21 and over. Petitioner repeatedly indicated that she understood the implied consent warnings while they were being read by the officer. After he had completely delivered the implied consent warnings, Officer Rountree asked the Petitioner if she understood them and she responded in the affirmative. Officer Rountree then asked Petitioner if she would submit to a state-administered chemical test and she refused. (Testimony of Officer Rountree; Respondent Exhibit 1).

4.

While he was preparing to take Petitioner to the station, Officer Rountree asked her what she would like done with her vehicle. Petitioner requested that the officer call her husband. Officer Rountree then asked for her husband's name and his phone number, which Petitioner provided. (Respondent Exhibit 1).

5.

At the hearing on this matter, Petitioner argued that she refused to take the state-administered test because she did not understand the implied consent warnings. Both Petitioner and Mr. Forrest Duston, Petitioner's husband, testified that Petitioner's native language is Spanish and, having recently moved from Rhode Island, experiences difficulty understanding English spoken in Southern accents. (Testimony of Petitioner; Testimony of Forrest Duston).

III. Conclusions of Law

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

1.

This appeal arises under Georgia's Motor Vehicle and Traffic laws. O.C.G.A. § 40-5-67.1 (2007). Respondent bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21.

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 consequences 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 while under the influence of alcohol and lawfully placed Petitioner under arrest for violating O.C.G.A. § 40-5-67.1(g)(2)(A). Officer Rountree had reasonable grounds to believe that Petitioner was driving under the influence based on the strong odor of alcohol emanating from Petitioner's person, her red and glassy eyes, and her erratic driving.

4.

At the time of the request for the state administered test, Officer Rountree properly informed Petitioner of her implied consent rights and the consequences of submitting or refusing to submit to such tests. O.C.G.A. § 40-5-67.1(g)(2)(B).

5.

Petitioner refused to take the state-administered chemical test. O.C.G.A. § 40-5-67.1(g)(2)(C)(i).

6.

Georgia law provides that, if the arresting officer reads the implied consent warnings to the subject of the arrest, that person “shall be deemed to have been properly advised of his or her rights . . . and the . . . refusal to submit to a test shall be admitted into evidence against such person.” O.C.G.A. § 40-5-67.1(b) (2013). Petitioner argues, however, that her refusal to take the state-administered chemical test should not be used as evidence against her because she did not understand her implied consent rights due to her difficulty in understanding Officer Rountree’s accent.


In a DUI arrest, the arresting officer is required only to read the implied consent warnings to the driver in English and is not obligated to make sure the driver understands. State v. Tosar, 180 Ga. App. 885, 887-88 (1986). This holds true even where English is not the driver’s first language. Id. To hold otherwise would allow any driver suspected of driving under the influence to vitiate the statute by claiming that they did not understand the implied consent warnings at the time they were given. State v. Stewart, 286 Ga. App. 542, 545 (2007). Thus, it is of no moment whether the arresting officer’s accent posed a barrier to Petitioner’s understanding of the implied consent warnings because Respondent has shown that the warnings were delivered.¹

¹ Even if the undersigned accepts Petitioner’s argument that the arrested party must be shown to have understood the implied consent warnings, Respondent has met even this burden. Petitioner indicated three times to Officer Barnes that she understood the implied consent warnings. *Respondent Exhibit 1*. She was also responsive to the officer’s other questions, such as when he asked for her phone number and her husband’s name. Id. Accordingly, Respondent has sufficiently demonstrated that Petitioner understood the warning and voluntarily exercised her refusal to take the state-administered test. See Hernandez v. State, 238 Ga. App. 796, 798 (1999) (finding that an individual who primarily spoke Spanish voluntarily withdrew implied consent by refusing to submit to a State-administered test where the refusal came after he demonstrated he could speak some English and effectively communicated with the arresting officer).

IV. Decision

IT IS HEREBY ORDERED that Respondent's suspension of Petitioner's driver's license and driving privileges is **AFFIRMED**.

SO ORDERED this 20th day of September, 2013.


MAXWELL WOOD
Chief Administrative Law Judge

