

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FILED
OSAH

FEB 25 2015

Kacie Collins

Kacie Collins, Legal Assistant

SHEILA MARIE THORNTON,
Petitioner,

v.

DEPARTMENT OF DRIVER
SERVICES,
Respondent.

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Docket No.

OSAH-DDS-ALS-1526352-148-Miller

Agency Reference No.: 030970664

FINAL DECISION

I. OVERVIEW

This matter is an 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. The hearing took place on February 10, 2015,¹ before the undersigned administrative law judge of the Office of State Administrative Hearings. After considering all of the admissible evidence and for the reasons stated below, the Respondent's action is **AFFIRMED**.

II. FINDINGS OF FACT

1.

On November 8, 2014, at approximately 1:26 a.m., Trooper Greg Stone of the Georgia State Patrol initiated a traffic stop of a grey Honda Accord driven by the Petitioner. Trooper Stone testified that his attention was drawn to the Petitioner's vehicle when he observed its tires cross the fog line. He further observed that it was traveling very slowly and drifting within its lane. Trooper

¹ The record was held open until February 17, 2015, to allow the Petitioner to submit a video recording of the traffic stop into evidence. This deadline was extended to February 19, 2015, the date that the video (Exhibit P-3) was actually received at the Office of State Administrative Hearings. Counsel for the Petitioner requested, in his letter accompanying the video, that a second day of hearing be scheduled so that he might play the video and cross-examine Trooper Stone regarding its contents. Counsel's letter further states, "Of course, because Judge Miller would not permit the video to be played at the hearing, there was no way for me to be able to effectively cross-examine Trooper Greg Stone about the contents of the video." Counsel is encouraged to revisit the record of the hearing, during which the undersigned explained that she preferred to play the video at her office, where it could be viewed on a larger monitor and the relevant portions could be replayed as many times as necessary. Counsel consented to this procedure and agreed to submit a copy of the video after the hearing was completed. His request for a second day of hearing is therefore denied.

Stone stopped the Petitioner after pacing the vehicle and determining that it was traveling between 35 and 37 miles per hour in a zone with a posted speed limit of 55 miles per hour. (Testimony of Tpr. Stone; Exhibits P-1, P-2, P-3.)

2.

While speaking with the Petitioner, Trooper Stone noted a strong odor of an alcoholic beverage coming from the Petitioner's vehicle, person, and breath. The Petitioner stated that she had consumed a few drinks. Trooper Stone further observed that the Petitioner's eyes were bloodshot and watery and that she was talkative. He did not observe anything unusual about her appearance or speech. (Testimony of Tpr. Stone; Exhibit P-1.)

3.

Trooper Stone asked the Petitioner to submit to a preliminary breath test on an Alco-Sensor device. The Petitioner attempted the test several times, but Trooper Stone observed that she appeared to be blocking the mouthpiece with her tongue, which prevented the device from obtaining a reading. (Testimony of Tpr. Stone; Exhibit P-1.)

4.

Trooper Stone asked the Petitioner to submit to standardized field sobriety tests, and she agreed. The Petitioner exhibited six out of six possible "clues" of impairment on the horizontal gaze nystagmus test; four out of eight possible clues on the walk and turn test; and two out of four possible clues on the one-leg stand test. (Testimony of Tpr. Stone; Exhibit P-1.)

5.

After the Petitioner had completed the standardized field sobriety tests, she repeated the Alco-Sensor test. This time, she provided a breath sample that was positive for alcohol. (Testimony of Trooper Stone; Exhibit P-1.)

6.

Trooper Stone placed the Petitioner under arrest for DUI,² read her the implied consent notice for drivers age 21 and over, and designated a breath test as the state-administered chemical test. (Testimony of Tpr. Stone.)

7.

The Petitioner agreed to submit to the state-administered chemical test to determine the blood concentration of alcohol or a chemical substance in her body. The state-administered chemical test was administered by Trooper Stone, who holds 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. (Testimony of Tpr. Stone; Exhibit R-1.)

8.

The results of the state-administered chemical test indicated that the Petitioner's blood alcohol concentration was .114 at 2:11 a.m. and .115 at 2:14 a.m. (Testimony of Tpr. Stone; Exhibit R-2.)

9.

The Petitioner contends that Trooper Stone unlawfully targeted her for a traffic stop. In support of this contention, the Petitioner points to the following evidence: (1) Margo Thornton, the current wife of the Petitioner's ex-husband, sent several text messages to Trooper Stone stating that the Petitioner was a possible drunk driver and providing a description of her vehicle; (2) Trooper Stone failed to note in his report that the Petitioner's vehicle had crossed the fog line; and (3) at the beginning of the video of the traffic stop, Trooper Stone turned off his headlights for a period for approximately six seconds. After weighing the evidence presented, the undersigned credits Trooper

² The Petitioner was also cited for Impeding Traffic Flow. (Exhibit P-2.)

Stone's testimony and declines to find that the stop was a pretext, for several reasons. First, the information received by Trooper Stone indicated that the Petitioner's vehicle was a white Honda CRV; however, at the time of the stop, which took place more than a month later, she was driving a grey Honda Accord. Second, while Trooper Stone's report should have included all of his observations, including his observation of the Petitioner's alleged failure to maintain lane, it must be noted that she was not cited for a traffic violation based on this observation.³ Third, Trooper Stone presented credible testimony that he briefly and unintentionally turned off his headlights when he attempted to retrieve an item that he had dropped on the floor, and the video shows that the taillights of the Petitioner's vehicle were barely visible on the video at the time this occurred. Under these circumstances, it is unlikely that Trooper Stone was attempting to conceal his presence from the Petitioner. Finally, the video of the traffic stop corroborated other material aspects of Trooper Stone's testimony.⁴ (Testimony of Trooper Stone; Exhibit P-3.)

III. CONCLUSIONS OF LAW

1.

The Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). The Respondent met its burden.

³ Additionally, it appears that an obstacle in the roadway may have caused the Petitioner's vehicle to leave its lane of travel. Therefore, the undersigned has not considered her alleged failure to maintain lane as grounds for the traffic stop. (Testimony of Trooper Stone; Exhibit P-3.)

⁴ The undersigned was unable to discern from the video whether or not the Petitioner's vehicle crossed the fog line, as Trooper Stone testified. However, it did appear that the vehicle was traveling slowly and drifting within its lane, and that the Petitioner made a wide right turn off the roadway after Trooper Stone turned on his blue lights. (Testimony of Tpr. Stone; Exhibit P-3.)

2.

Trooper Stone had reasonable grounds to believe the Petitioner was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance, and the Petitioner was lawfully placed under arrest for violating O.C.G.A. § 40-6-391. O.C.G.A. § 40-5-67.1(g)(2)(A). To effectuate a lawful arrest following a traffic stop, an officer must have a reasonable, articulable suspicion to justify the stop. Dryer v. State, 323 Ga. App. 734, 737 (2013). Here, Trooper Stone possessed the requisite reasonable, articulable suspicion based on the Petitioner's slow rate of travel and her vehicle's drifting within its lane. Veal v. State, 273 Ga. App. 47, 49-50 (2005); Graves v. State, 167 Ga. App. 246, 247-48 (1983). Trooper Stone's decision to stop the Petitioner's vehicle was therefore lawful.

3.

At the time Trooper Stone requested that the Petitioner submit to the state-administered chemical test, he properly informed her of her 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)(B).

4.

The test was properly administered by Trooper Stone, who possesses a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation, on an instrument approved by the Division of Forensic Sciences, and the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order. A copy of the operator's permit showing that Trooper Stone has been trained on the particular type of instrument used and one of the original copies of the test results were introduced into evidence, thereby satisfying the requirements of O.C.G.A. § 40-5-67.1(g)(2)(D).

5.

The test results indicated that the Petitioner had an alcohol concentration of 0.08 grams or more. O.C.G.A. § 40-5-67.1(g)(2)(C)(ii).

6.

The suspension of the Petitioner's driver's license or driving privilege by the Department of Driver Services was proper. O.C.G.A. § 40-5-67.1.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent's decision 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 **AFFIRMED**.

SO ORDERED, this 25th day of February, 2015.


KRISTIN L. MILLER
Administrative Law Judge



The seal of the Office of State Administrative Hearings is circular with a dotted border. The text 'OFFICE OF STATE ADMINISTRATIVE HEARINGS' is written around the perimeter. In the center, there is a depiction of a classical building with columns and a pediment.