

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

**RYAN LASTIE,**  
Petitioner,

v.

**DEPARTMENT OF DRIVER  
SERVICES,**

Respondent.

Garland Moore, Esquire,  
For Petitioner

Dee Brophy, Esquire,  
For Trooper James Pyland and  
Sgt. Stacy Collins

Docket No.:  
OSAH-DPS-ALS-1530697-60-Malihi



**MAR 23 2015**

*(Victoria Hightower)*  
Victoria Hightower, Executive Assistant

**MICHAEL MALIHI, Judge**

**FINAL DECISION**

**I. Introduction**

Respondent moved to suspend Petitioner's driver's license or privilege to drive in the State of Georgia pursuant to O.C.G.A. § 40-5-67.1. An evidentiary hearing was held on November 6, 2015 in Atlanta, Georgia. For the reasons indicated below, Respondent's action is **AFFIRMED**.

**II. Findings of Fact**

1. On November 30, 2014 at approximately 12:50 a.m., Sgt. Stacy Collins responded to the scene of a traffic collision on I-20 westbound near I-285. Sgt. Collins arrived to find officers of the Atlanta Police Department already at the scene. Upon speaking with the officers and witnesses at the scene, Sgt. Collins learned that one vehicle, an Audi, had struck the rear of a HERO unit. The officers further informed Sgt. Collins that a second vehicle, a Dodge Ram pickup, had been indirectly involved in the traffic incident. APD had detained the driver of the pickup, Petitioner Ryan Lastie. *Testimony of Sgt. Collins.*

2. Sgt. Collins approached and made contact with Petitioner, who was in handcuffs and seated in the back of a patrol car. Petitioner indicated to Sgt. Collins that he was the driver of the pickup. Upon speaking with Petitioner, Sgt. Collins noted that Petitioner's speech was slurred and he detected a strong odor of alcohol emanating from Petitioner's breath. Sgt. Collins further observed that Petitioner's eyes were bloodshot and watery. *Testimony of Sgt. Collins.*

3. After Sgt. Collins determined that Petitioner was not directly involved in the traffic collision, he radioed Trooper James Pyland to conduct a DUI investigation. Trooper Pyland arrived on the scene shortly thereafter, whereupon Sgt. Collins conveyed to him what he had learned in the course of his investigation. *Testimony of Sgt. Collins; Testimony of Trooper Pyland.*

4. Trooper Pyland made contact with Petitioner, and, after reading him his Miranda rights, attempted to interview him. At that time, Petitioner indicated to the trooper that he was exercising his right to remain silent. Trooper Pyland detected a strong odor of alcohol on Petitioner's breath and noted that Petitioner's speech was "extremely" slow and slurred. The trooper further observed that Petitioner's eyes were bloodshot and watery. *Testimony of Trooper Pyland.*

5. The foregoing facts caused Trooper Pyland to believe that Petitioner had consumed an unknown quantity of alcohol in such a manner as to make Petitioner a less safe driver. The trooper thereupon placed Petitioner under arrest for driving under the influence of alcohol and reckless driving and properly read to him the applicable implied consent notice. *Testimony of Trooper Pyland.*

6. Petitioner initially agreed to take the state-administered chemical test. However, after Trooper Pyland transported Petitioner to city jail, Petitioner refused to submit to the state-administered test. At no time thereafter did Petitioner withdraw his refusal. *Testimony of Trooper Pyland.*

### **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 (2014). 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. O.C.G.A. § 40-5-67.1(b) provides, in pertinent part:

If [the implied consent notice] is used by a law enforcement officer to advise a person of his or her rights regarding the administration of chemical testing, such person shall be deemed to have been properly advised of his or her rights under this Code section and under Code Section 40-6-392 and the results of any chemical test, or the refusal to submit to a test, shall be admitted into evidence against such person.

O.C.G.A. § 40-5-67.1(b) (2014).

3. In the present case, Trooper Pyland read the applicable implied consent notice to Petitioner. Therefore, pursuant to O.C.G.A. § 40-5-67.1(b), Petitioner is "deemed to have been properly

advised of his . . . rights” under the implied consent law and his refusal to submit to the state-administered chemical test is admissible. O.C.G.A. § 40-5-67.1(b) (2014).

4. The fact that the implied consent notice was delivered to Petitioner after he was read his Miranda rights does not render his refusal inadmissible. Because Petitioner had been placed in handcuffs and in the back of a patrol car, he was “in custody,”<sup>1</sup> requiring that Trooper Pyland read Miranda to him before initiating questioning. *Turner v. State*, 233 Ga. App. 413, 414 (1998). After speaking with Petitioner, Trooper Pyland formed the reasonable belief that Petitioner was under the influence of alcohol to the extent that it was less safe for him to drive, whereupon he placed Petitioner under arrest for DUI and, pursuant to his obligation under the implied consent statutes, immediately read to him the applicable implied consent notice. O.C.G.A. §§ 40-5-67.1, 40-6-392(a)(4); see *Hough v. State*, 279 Ga. 711 (2005). While such circumstances may have been confusing to Petitioner, Georgia law requires only that an arresting officer deliver the implied consent notice, not that he ensure that Petitioner understood his rights under the implied consent law. *State v. Webb*, 212 Ga. App. 872, 873 (1994) (“In all cases the court is required to find only that the implied consent law was conveyed to the suspect driver. The State is under no duty to prove the suspect driver fully understood his rights under the implied consent law”).

5. Trooper Pyland had reasonable grounds to believe Petitioner was driving a motor vehicle while under the influence of alcohol to the extent that it was less safe for him to drive and lawfully placed him under arrest for violating O.C.G.A. § 40-6-391. O.C.G.A. § 40-5-67.1(g)(2)(A) (2014).

6. Petitioner refused the state designated tests. O.C.G.A. § 40-5-67.1(g)(2)(C)(i) (2014).

Accordingly, the suspension of Petitioner’s driver’s license and driving privilege by Respondent was proper. O.C.G.A. § 40-5-67.1 (2014).

#### IV. Decision

**IT IS HEREBY ORDERED** that the decision of Respondent to administratively suspend 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 20<sup>th</sup> day of March, 2015.

  
MICHAEL MALIHI, Judge



<sup>1</sup> See *Plemmons v. State*, 326 Ga. App. 765, 768 (2014).