BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

HAKIM JAMAL JONES, Petitioner,	:	
	:	Docket No.:
v.	:	OSAH-DPS-ALS-1516390-55-Woodard
	:	
	:	Agency Reference No.: 058629705
DEPARTMENT OF DRIVER SERVICES, Respondent.	:	

FILED
OSAH
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Hazel Jackson, Legal Assistant

FINAL DECISION

I. Introduction

This matter is an administrative review of the decision of Respondent, the Department of Driver Services, 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 before the undersigned Administrative Law Judge on April 8, 2015 at the Gilmer County Courthouse in Ellijay, Georgia. Ms. Erin Gerstenzang represented Petitioner at the hearing and Sergeant Jonathan Barrett of the Georgia State Patrol appeared as the arresting officer.

At the conclusion of the hearing on this matter, the evidentiary record remained open to allow counsel for Petitioner to brief the issue of whether the holding in the recent Georgia Supreme Court case of Williams v. State requires the state to prove that a DUI suspect's consent was freely and voluntarily given in order for the results of a breath test to be admissible in administrative license suspension proceedings. Counsel for Petitioner filed this brief with the Office of State Administrative Hearings on April 13, 2015 and simultaneously served a copy on Respondent. As of the date of entry of this Final Decision, Respondent has not filed a reply. In her brief, Petitioner's counsel argues that, in light of the Supreme Court's holding in Williams, the results of a state-administered breath test are inadmissible absent a showing that Petitioner freely and voluntarily consented to the procuring and testing of his breath.

The administrative law judge has carefully considered the available evidence, and the legal and factual arguments made by Petitioner both at the hearing and in the post-hearing brief. For the reasons indicated below, Respondent's action is **AFFIRMED**.

II. Findings of Fact

1. On November 10, 2013 at approximately 5:35 a.m., Sgt. Barrett responded to the scene of a single-vehicle accident on a rural mountain road in Fannin County. Upon arriving at the scene, Sgt. Barrett made contact with the driver of the vehicle who identified himself as Hakim Jamal Jones (hereafter "Petitioner"). *Testimony of Sgt. Barrett.*

2. Petitioner indicated to Sgt. Barrett that he had gotten lost after leaving a party, and that in attempting to turn his vehicle around he had accidentally backed his vehicle off the roadway. While speaking with Petitioner, Sgt. Barrett detected an odor of an alcoholic beverage emanating from Petitioner's breath and he observed that Petitioner's eyes were bloodshot and watery. Petitioner admitted to consuming "a couple cups of Red Bull and Bacardi" approximately forty-five minutes prior to the accident. *Testimony of Sgt. Barrett.*

3. Petitioner agreed to submit to standardized field sobriety tests, whereupon Sgt. Barrett medically cleared Petitioner for the horizontal gaze Nystagmus (HGN) test. Sgt. Barrett administered the HGN test, and Petitioner displayed six out of six possible clues of impairment. Sgt. Barrett did not administer either the walk and turn test or the one-leg stand test, the other two standardized field sobriety tests, due to cold weather and the unevenness of the gravel road. *Testimony of Sgt. Barrett.*

4. At Sgt. Barrett's request, Petitioner submitted to a preliminary breath test (PBT) on an alco-sensor. The breath sample provided by Petitioner registered positive for the presence of alcohol. *Testimony of Sgt. Barrett.*

5. The foregoing facts caused Sgt. Barrett to believe that Petitioner had consumed an unknown quantity of alcohol in such a manner as to make Petitioner a less safe driver. He thereupon placed Petitioner under arrest for driving under the influence of alcohol and properly read to him the implied consent notice for suspects over the age of twenty-one. Petitioner agreed to submit to a state-administered test of his breath. *Testimony of Sgt. Barrett.*

6. Sgt. Barrett transported Petitioner to the Fannin County Sheriff's Office, where he administered a breath test to Petitioner on the Intoxilyzer 5000 after ensuring the machine had all its electronic and operating components prescribed by its manufacturer properly attached and in good working order.[1] Petitioner provided two sequential breath samples, which registered .104 grams blood alcohol content (BAC) at 7:34 a.m., and .103 grams BAC at 7:37 a.m. *Respondent Exhibit 2; Testimony of Sgt. Barrett.*

III. Conclusions of Law

Based on the above Findings of Fact, the undersigned makes the following Conclusions of Law:

A. The Constitutional Inquiry of Actual Consent is Outside the Limited Scope of ALS Proceedings.

1. The Supreme Court of Georgia held in Williams that a DUI suspect's agreement to submit to a state-administered test of his blood after having been read the statutory implied consent notice did not relieve the state of its burden to demonstrate the suspect's actual, voluntary consent to a search for the purpose of exception to the warrant requirement. Williams v. State, No. S14A1625, 2015 Ga. LEXIS 197, at *10–12 (Ga. March 27, 2015). In so doing, the Williams Court drew a clear distinction between (1) statutory implied consent, i.e., the consent necessary

[1] Sgt. Barrett is certified by the Georgia Bureau of Investigation Division of Forensic Sciences to administer the Intoxilyzer 5000 test. *Respondent Exhibit 1.*

to demonstrate compliance with the implied consent statute; and (2) "actual consent," i.e., the constitutional question of whether the suspect "acted freely and voluntarily under the totality of the circumstances" so as to create an exception to the warrant requirement. Id. at 9 (citing Cooper v. State, 277 Ga. 282, 291 (2003)). The former type of consent is within the purview of Administrative License Suspension ("ALS") proceedings. The latter is not. O.C.G.A. § 40-5-67.1(g)(2) (2014); see Miles v. Ahearn, 243 Ga. App. 741 (2000) (recognizing that the Georgia legislature has chosen to expressly limit the issues that may be considered at an administrative license suspension hearing).

2. In arguing the applicability of Williams to the present proceeding, Petitioner incorrectly presupposes the availability of the exclusionary rule in ALS cases. The exclusionary rule is not constitutionally mandated, but rather is "a judicially created means of deterring illegal searches and seizures." Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 363 (1998) (quoting United States v. Calandra, 414 U.S. 338, 348 (1974)). Therefore, it does "proscribe the introduction of illegally seized evidence in all proceedings," but applies only where its "deterrence benefits outweigh its 'substantial social costs.'" Id. (quoting United States v. Leon, 468 U.S. 897, 907 (1984)); State v. Thackston; 289 Ga. 412 (2011).

3. Because the exclusionary rule precludes the introduction of reliable and probative evidence, it imposes a "'costly toll' upon truth-seeking and law enforcement objectives." Pa. Bd. of Prob. & Parole, 524 U.S. at 364. Given these significant costs, proponents of the rule's application to proceedings other than criminal trials face a "high obstacle," and courts have been reluctant to apply the rule beyond the context of criminal trials.[2] Id. at 363, 364–65; Thackston, 289 Ga. at 415. Although the Georgia Court of Appeals has held the exclusionary rule applicable in certain "quasi-criminal" proceedings, such as civil forfeiture actions,[3] the exclusionary rule has never been held to apply in administrative appeals of driver's license suspensions or analogous proceedings in Georgia.[4] See Thackston, 289 Ga. at 415.

4. Applying the exclusionary rule in ALS proceedings would exact a considerable social cost by interfering with the state's means of combating drunk driving, which the U.S. Supreme Court has repeatedly recognized as an important state interest. See, e.g., Missouri v. McNeely,133 S. Ct. 1552, 1565 (2013); Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 451 (1990). Moreover, implementation of the exclusionary rule would jeopardize the ALS hearing's purpose in providing "a quick, informal procedure to remove dangerous drivers from Georgia's roadways and thereby protect public safety." Swain v. State, 251 Ga. App. 110, 113 (2001); see also INS v. Lopez-Mendoza, 468 U.S. 1032, 1050 (1984) (exclusionary rule incompatible with civil, administrative nature of civil deportation proceedings).

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[2] See Pa. Bd. of Prob. & Parole, 524 U.S. at 369 (holding that the exclusionary rule does not apply in a parole revocation hearing); INS v. Lopez-Mendoza, 468 U.S. 1032, 1050 (1984); United States v. Janis, 428 U.S. 433, 453–54 (1976) (holding that the exclusionary rule does not apply in a civil tax proceeding); United States v. Calandra, 414 U.S. 338, 349–50 (1974) (holding that the exclusionary rule does not apply to grand jury proceedings).

[3] Pitts v. State, 207 Ga. App. 606 (1993).

[4] Contrary to proceedings in which Georgia courts have found the exclusionary rule applicable, ALS proceedings are not quasi-criminal inasmuch as they do not entail adjudication of a property right. Nolen v. State, 218 Ga. App. 819, 822–23 (1995) ("An administrative suspension of a driver's license is not comparable to the civil forfeiture of a property right, which has been found to constitute punishment.").

5. In contrast with the enormity of the social costs associated with applying the exclusionary rule in ALS proceedings, the deterrence benefits of applying the exclusionary rule in such proceedings are slight. As the deterrence benefits of the exclusionary rule are fully realized by its application in concurrent criminal proceedings, its use in ALS proceedings would have a *de minimis* incremental deterrent effect. See Pa. Bd. of Prob. & Parole, 524 U.S. at 364 ("The rule would provide only minimal deterrence benefits in this context, because application of the rule in the criminal trial context already provides significant deterrence of unconstitutional searches"); Janis, 428 at 448, 454 (exclusionary rule's deterrence benefits minimal where its availability in criminal trial already deterred illegal searches); United States v. Calandra, 414 U.S. 338, 349–50 ("The need for deterrence and hence the rationale for excluding the evidence are strongest where the Government's unlawful conduct would result in imposition of a criminal sanction on the victim of the search.") (emphasis added); Thackston, 280 Ga. at 415 (recognizing minimal deterrent effect where law enforcement would "be substantially deterred from violating the suspect's Fourth Amendment rights by the application of the exclusionary rule to the criminal trial.").

6. Because the exclusionary rule is inapplicable in ALS proceedings, the state need not demonstrate an exception to the warrant requirement, such as through the actual consent of the DUI suspect, in order to demonstrate the propriety of a license suspension.

B. The Suspension of Petitioner's License was Proper under O.C.G.A. § 40-5-67.1(g)(2).

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. Sgt. Barrett 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. Sgt. Barrett reasonably believed that Petitioner had consumed an unknown quantity of alcohol in such a manner as to make Petitioner a less safe driver based upon the odor of alcohol emanating from Petitioner's breath; Petitioner's bloodshot, watery eyes; the clues of intoxication Petitioner exhibited during the HGN test; and Petitioner's admission that he had consumed alcoholic beverages forty-five minutes earlier. See, e.g., Frederick v. State, 270 Ga. App. 397, 398 (2004); see also Hughes v. State, No. S14G0622, 2015 Ga. LEXIS 185 (Ga. Mar. 16, 2015).

3. At the time of the request for the test, Sgt. Barrett informed the Petitioner of his 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 results of the Intoxilyzer 5000 test indicated an alcohol concentration in excess of .08 grams. O.C.G.A. § 40-5-67.1(g)(2)(C)(ii).

5. The test was properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences, and the machine at the time of the test was operated with all of its electronic and operating components prescribed by its manufacturer properly attached and in good working order. O.C.G.A. § 40-5-67.1(g)(2)(D).

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

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 29th day of April, 2015.

M. PATRICK WOODARD
Administrative Law Judge