



FILED
OSAH

FEB 2 2016

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

JAMES CANNON,
Petitioner,

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Docket No.:
OSAH-DPS-ALS-1625955-159-Brown

Hazel Jackson
Hazel Jackson, Legal Assistant

v.

DEPARTMENT OF DRIVER
SERVICES,
Respondent.

Agency Reference No.: 051264920

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. The hearing on this matter was held before the undersigned Administrative Law Judge at the Dougherty County Judicial Building in Albany, Georgia on January 20, 2016. Patrick Kunes, Esq., represented Petitioner at the hearing and Dee Brophy, Esq., represented Respondent. Trooper Robert Corbin of the Georgia State Patrol appeared and gave testimony as the arresting officer. For the reasons indicated below, Respondent's action is **AFFIRMED**.

II. Findings of Fact

1. On November 21, 2015, Trooper Corbin (sometimes, the Trooper) was assisting in executing an administrative roadblock at the intersection of Spring Flats Road and South Co. Line Road in Dougherty County, Georgia. (Respondent's Exhibit 2; Testimony of Trooper Corbin).
2. The roadblock was implemented by SFC Urquhart, Post Commander, Post 40-Albany, who serves in a supervisory capacity and is authorized to direct and establish roadblocks. SFC Urquhart was present during the operation of the administrative roadblock. SFC Urquhart approved the roadblock to operate during the approximate hours of 10:00 p.m. to 11:00 p.m. on November 21, 2015. (Respondent's Exhibit 2; Testimony of Trooper Corbin).
3. The roadblock was implemented for the primary purpose of performing routine traffic checks for driver's license/insurance/registration, seatbelt compliance, driver impairment, and vehicle fitness/safety compliance.¹ (Respondent's Exhibit 2; Testimony of Trooper Corbin).
4. The placement of four marked patrol cars with activated blue lights and the presence of four uniformed troopers wearing reflective vests and carrying flashlights rendered the roadblock clearly identifiable as a police checkpoint. (Respondent's Exhibit 2; Testimony of Trooper

¹ Trooper Corbin testified that the roadblock was operated with the primary purpose of "nighttime seatbelt enforcement." (Testimony of Trooper Corbin).

Corbin).

5. Trooper Corbin has served in the Georgia State Patrol for five years. He has extensive experience in DUI cases and has successfully completed training in standardized field sobriety and "ARIDE" (Advanced Roadside Impaired Driving Enforcement). He is certified by the Georgia Bureau of Investigation Division of Forensic Sciences to administer the Intoxilyzer 9000 test. (Respondent's Exhibit 3; Testimony of Trooper Corbin).

6. All approaching vehicles were stopped at the administrative roadblock. If the troopers detected no problems, motorists stopped at the roadblock experienced "very minimal" delay.² (Testimony of Trooper Corbin).

7. At approximately 10:15 a.m., Trooper Corbin stopped a white Ford pickup truck at the roadblock, approached the vehicle, and made contact with the driver. A female passenger was also in the vehicle. At the Trooper's request, the driver produced his driver's license, whereupon the Trooper was able to identify him as Petitioner James Cannon. (Testimony of Trooper Corbin).

8. Upon speaking with Petitioner, the Trooper immediately detected a strong odor of an alcoholic beverage emanating from his breath, and he noted that Petitioner's speech was slow and slurred. The Trooper also observed that Petitioner's eyes were bloodshot and watery. After Trooper Corbin obtained Petitioner's driver's license, he walked to the rear of Petitioner's truck, whereupon he observed that there were multiple empty Miller Lite beer cans in the truck bed. Petitioner indicated to Trooper Corbin that he had consumed "four to five" Miller Lites prior to being stopped at the roadblock. (Testimony of Trooper Corbin).

9. Trooper Corbin directed Petitioner to pull his vehicle onto the shoulder of Spring Flats Road. At Trooper Corbin's request, Petitioner agreed to submit to standardized field sobriety tests. After ensuring that Petitioner had no medical conditions that could affect the outcome of the tests, Trooper Corbin administered the horizontal gaze nystagmus (HGN), walk and turn, and one-leg stand field sobriety evaluations. Petitioner exhibited six out of six possible clues of impairment on the HGN test, three out of eight possible clues of impairment on the walk and turn test, and one out of four possible clues of impairment on the one-leg stand test. (Testimony of Trooper Corbin).

10. Petitioner also agreed to submit to a preliminary breath test on a portable device. The breath sample provided by Petitioner registered positive for the presence of alcohol. (Testimony of Trooper Corbin).

11. The foregoing facts caused Trooper Corbin 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

² Respondent submitted a Department of Public Safety Roadblock Final Report form into evidence at the hearing on this matter. The individual who completed this form checked the box marked "No" next to the field that reads "Delay to motorists at roadblock was minimal." However, Trooper Corbin testified during the evidentiary hearing that delay to motorists at the roadblock was minimal. (Respondent's Exhibit 2; Testimony of Trooper Corbin).

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 Trooper Corbin).

12. Trooper Corbin transported Petitioner to the Worth County Sheriff's Office, where he administered a breath test to Petitioner on the Intoxilyzer 9000 after ensuring the machine had all its electronic and operating components prescribed by its manufacturer properly attached and in good working order. Petitioner provided two sequential breath samples, which registered .139 grams blood alcohol content (BAC) at 11:05 p.m., and .129 grams BAC at 11:10 p.m. (Respondent's Exhibit 4; Testimony of Trooper Corbin).

13. At the hearing on this matter, Respondent tendered certified copies of a "Supervisory Initiation of Roadblock Approval Form" and "Roadblock Final Report" (hereinafter "the Roadblock Forms") as "Respondent's Exhibit 2" over Petitioner's objection. Trooper Corbin testified that he recognized both documents as the forms completed by SFC Urquhart that implemented the roadblock at issue in this Initial Decision, and that both forms were kept and maintained in the ordinary course of business for the Georgia State Patrol. (Respondent's Exhibit 2; Testimony of Trooper Corbin).

14. Petitioner, through counsel, contended that the documentation authorizing the above-described administrative roadblock was hearsay, and that its admission into evidence without the testimony of SFC Urquhart violated his due process right to confront and cross-examine witnesses in an administrative hearing. Petitioner cited the Court of Appeals cases of Neal v. Augusta-Richmond County Personnel Board, 304 Ga. App. 115 (2010), and McGahee v. Yamaha Motor Manufacturing Corporation of America, 214 Ga. App. 473 (1994) in support of this contention. Absent the admission of the roadblock documentation, Petitioner argued, Respondent could not demonstrate the lawfulness of the roadblock, or Petitioner's subsequent arrest, as was its burden. Petitioner further contended that Trooper Corbin lacked probable cause to arrest him for DUI.

III. Conclusions of Law

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

A. Petitioner's vehicle was stopped pursuant to a lawful administrative roadblock.

1. This appeal arises under Georgia's Motor Vehicle and Traffic laws. O.C.G.A. § 40-5-67.1. 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. A court must consider the following five factors, as set forth in the Georgia Supreme Court case of LaFontaine v. State, in determining whether a roadblock is lawful:

- (1) whether the decision to implement the roadblock was made by supervisory personnel rather than the officers in the field;
- (2) whether all vehicles were stopped as opposed to random vehicle stops;
- (3) whether the delay to motorists was minimal;

- (4) whether the roadblock operation was well identified as a police checkpoint; and
- (5) whether the screening officer's training was sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication.

Lafontaine v. State, 269 Ga. 251, 253 (1998). With regard to the first factor, Respondent must show that the supervisor "had a legitimate primary purpose" in implementing the roadblock. Hite v. State., 315 Ga. App. 221, 223 (2012) (quoting Baker v. State, 252 Ga. App. 695, 702 (2001)).

3. In the present case, Petitioner argues Respondent failed to demonstrate that the administrative roadblock conformed to the foregoing factors because it relied on inadmissible evidence, namely the Roadblock Forms. However, the Roadblock Forms are admissible as competent evidence under the business records exception to the hearsay rule. Hite v. State, 315 Ga. App. 221, 223 (2012). Respondent established that the Roadblock Forms met the business records exception through the testimony of Trooper Corbin. Id. at 224. Contrary to Petitioner's argument, the custodian of a record need not testify to lay the foundation for the introduction of a document. Id. Rather, in order to introduce a writing under the business records exception, "the witness must be able to testify that the record was made (1) in the regular course of business, and (2) at the time of the event or within a reasonable time of the event." Id. (quoting McKinley v. State, 303 Ga. App. 203, 209). As applied, Trooper Corbin testified that he recognized the Roadblock Forms as those that were signed by SFC Urquhart to institute the roadblock at issue, and that they were generated and maintained in the ordinary course of business for the Georgia State Patrol. This is sufficient to establish the admissibility of the Roadblock Forms. Id.

4. Based upon the evidence presented at the hearing, specifically the testimony of Trooper Corbin and the Roadblock Forms, this court concludes that Respondent met its burden to demonstrate that the roadblock at issue in this matter was implemented and operated in accordance with the above-listed factors, and was therefore lawful. The roadblock was ordered by SFC Urquhart with the legitimate purpose of performing routine traffic checks for driver's license/insurance/registration, seatbelt compliance, driver impairment, and vehicle fitness/safety compliance. All vehicles were stopped at the roadblock, delay to motorists passing through the roadblock was minimal, the roadblock was clearly marked as such by uniformed officers and patrol cars with activated blue lights, and screening officers, such as Trooper Corbin were sufficiently trained such as to allow them to determine which motorists at the roadblock should be subjected to field tests for intoxication.

5. Petitioner's argument that introduction of the Roadblock Forms without the testimony of the documents' author violates the Confrontation Clause is without merit. The Georgia Court of Appeals case of Neal v. Augusta-Richmond County Personnel Board cited by Petitioner involved the introduction of the results of a drug test in support of a county personnel board's decision to terminate a firefighter. At the hearing, the results of the drug test were admitted over the firefighter's hearsay and confrontation objections, despite the fact that "no one with knowledge of the lab test or testing procedures used in his case testified at the hearing." Id. at 115. The Court of Appeals found the admission of the test results to be erroneous, holding that, while the

right to confrontation guaranteed by the Sixth Amendment applies only in criminal cases, due process requires that a party “be afforded the right to confront witnesses” at administrative hearings. Testimony of a medical review officer who “had never been to the testing lab, did not know what procedures were used at the lab, did not know the chemist whose typed name was on the lab report, had never conducted or seen conducted a lab test such as the one [introduced at the hearing], and based his testimony on the report he received from the lab.” Id. at 117. However, unlike in Neal, where the only evidence in support of the adverse action was uncorroborated hearsay, the record at issue falls under a well-recognized hearsay exception, and Petitioner was given the opportunity to confront and cross-examine Trooper Corbin, who was personally involved in executing the roadblock. Moreover, as the Court of Appeals noted in Hite, Roadblock Forms are administrative in nature and, as such, “are generally admissible absent confrontation.” Hite, 315 Ga. App. at 225–26 (citing Bullcoming v. New Mexico, 131 S. Ct. 2705).

B. The suspension of Petitioner’s license was proper under O.C.G.A. § 40-5-67.1.

6. The probable cause needed to conduct an arrest for driving under the influence requires that the arresting officer have knowledge or reasonably trustworthy information that a suspect was actually in physical control of a moving vehicle while under the influence of alcohol, to a degree which rendered him incapable of driving safely. Handley v. State, 294 Ga. App. 236, 237 (2008) (citation omitted). Regarding probable cause, “[t]he facts and circumstances known to the officer must be examined altogether, for it is the totality of those facts and circumstances that matters, not any one fact or circumstance standing alone.” Hughes v. State, 296 Ga. 744, 748–49 (2015).

7. In the present case, Trooper Corbin had probable cause to arrest Petitioner for driving under the influence of alcohol to the extent that it was less safe for him to drive based upon the strong odor of an alcoholic beverage emanating from Petitioner’s breath, Petitioner’s slow, slurred speech and bloodshot, watery eyes, the clues of intoxication Petitioner exhibited on the field sobriety tests, Petitioner’s admission to drinking “four to five” beers prior to the encounter, and the positive result of the preliminary breath test. See, e.g., Sultan v. State, 289 Ga. App. 405, 408–09 (2008); Cann-Hanson v. State, 223 Ga. App. 690, 691 (1996); see also Hughes v. State, 296 Ga. 744, 748–49 (2015) (“[W]hen a court considers whether an officer had probable cause to arrest a suspect, the court must focus on the facts and circumstances then known to the officer, and it must inquire whether those facts and circumstances *could* lead a prudent person—that is, a reasonable officer—to conclude that the suspect probably has committed an offense.”) (emphasis in original). Thus, Trooper Corbin 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 was lawfully placed under arrest for violating O.C.G.A. § 40-6-391 and O.C.G.A. § 40-5-67.1(g)(2)(A)(i).

8. At the time of the request for the state-administered chemical test, Trooper Corbin informed the Petitioner of his implied consent rights and the consequence of submitting or refusing to submit to the test. O.C.G.A. § 40-5-67.1(g)(2)(B).

9. The results of the Intoxilyzer 9000 test indicated an alcohol concentration in excess of .08 grams. O.C.G.A. § 40-5-67.1(g)(2)(C)(ii).

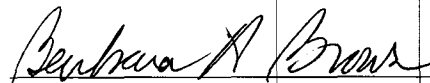
10. The test was properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences, and the machine at the time of the test was operated with all of its electronic and operating components prescribed by its manufacturer properly attached and in good working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

11. 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

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

SO ORDERED this 2nd day of February, 2016.



BARBARA A. BROWN
Administrative Law Judge



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

Petitioner,	:	Docket No.: OSAH-DPS-ALS-
	:	
v.	:	
	:	Agency Reference No.:
DEPARTMENT OF DRIVER SERVICES,	:	
Respondent.	:	

NOTICE OF FINAL DECISION

This is the Final Decision of the Administrative Law Judge (Judge). This decision is not reviewable by the Referring Agency. **If a party disagrees with this decision**, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek judicial review of this decision by the superior court.

FILING A MOTION WITH THE JUDGE AT OSAH

The motion must be filed within ten (10) days of the entry, i.e., the issuance date of this decision. **The filing of this motion may or may not toll the time for filing a petition for judicial review.** See O.C.G.A. §§ 50-13-19; 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH Clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Hazel Jackson, hjackson@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

PETITION FOR JUDICIAL REVIEW

A petition for judicial review must be filed within thirty days (30) after service of this Final Decision in the Superior Court of Fulton County or in the superior court of the county of the appealing party's residence unless the party is an out-of-state resident, then the petition must be filed in the Superior Court of Fulton County, Georgia. If reconsideration or rehearing is requested and granted, then a petition for judicial review must be filed within thirty (30) days after service of that decision. O.C.G.A. §§ 50-13-19 and 50-13-20.1. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the party maintains its principal place of business in the State of Georgia. A copy of the petition must be served simultaneously upon all parties of record and filed with the OSAH Clerk. Ga. Comp. R. & Reg.s r. 616-1-2-.39.