

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

MARVIN DENNIS WADE,
Petitioner,

v.

**DEPARTMENT OF DRIVER
SERVICES,**
Respondent.

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Docket No.:

OSAH-DPS-ALS-1627741-65-B

Agency Reference No.: 0543137



**FILED
OSAH**

MAY 31 2016

FINAL DECISION

I. Introduction

Hazel Jackson

Hazel Jackson, Legal Assistant

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 April 20, 2016. Jay Brimberry, Esq., represented Petitioner at the hearing and Dee Brophy, Esq., represented Respondent. Trooper G.M. Kelley of the Georgia State Patrol appeared and provided testimony as the arresting officer. For the reasons indicated below, Respondent's action is **AFFIRMED**.

II. Findings of Fact

1. On December 4, 2015, Trooper Kelley was assisting in executing an administrative roadblock at the intersection of Westover Boulevard and Gordon Avenue in Dougherty County, Georgia. (Respondent's Exhs. 2, 3; Testimony of Trooper Kelley).

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 approved the roadblock to operate during the approximate hours of 1:17 a.m. to 2:52 a.m. on December 4, 2015. Trooper Kelley and other law enforcement officers who were to participate in the roadblock were briefed on the roadblock at the Albany Police Department on December 3, 2015. Sergeant Craig Singletary, also with the Georgia State Patrol, and who also serves in a supervisory capacity, was present during the operation of the administrative roadblock. (Respondent's Exhs. 2, 3; Testimony of Trooper Kelley).

3. The roadblock was implemented for the primary purpose of improving driver safety and, more specifically, to perform routine traffic checks for driver's licenses/insurance/registration verification, seatbelt compliance, driver impairment, and vehicle fitness/safety compliance. (Respondent's Exh. 2; Testimony of Trooper Kelley).

4. Pursuant to the Georgia Department of Public Safety's Policy Manual, Policy Number 17.16, roadblocks must be implemented.....

for a legitimate primary purpose, which shall be to monitor and check driver's licenses, driver condition, vehicle registration, vehicle equipment and other requirements of the Georgia motor vehicle and traffic code or to locate a suspected criminal likely to be in the area. The primary purpose shall not be general crime detection.

(Respondent's Exh. 1).

5. The roadblock was rendered clearly identifiable as a police checkpoint by marked patrol cars with activated blue lights and of "eight to ten" uniformed troopers wearing reflective vests. (Respondent's Exh. 2; Testimony of Trooper Kelley).

6. Trooper Kelley has served in the Georgia State Patrol for ten years. He has approximately nine years of experience working DUI cases and has successfully completed training in field sobriety and "ARIDE" (Advanced Roadside Impaired Driving Enforcement). He has been trained and certified on both the Intoxilyzer 5000 and Intoxilyzer 9000. (Testimony of Trooper Kelley).

7. Trooper Kelley testified that, in addition to himself and his fellow troopers, officers of the Albany Police Department (APD) were also screening motorists stopped at the roadblock to make an initial determination as to which should be given field tests for intoxication. Trooper Kelley was uncertain as to the training and experience of the APD officers.

8. All approaching vehicles were stopped at the administrative roadblock and motorists stopped at the roadblock experienced minimal delay. (Respondent's Exh. 3; Testimony of Trooper Kelley).

9. At approximately 1:45 a.m., Trooper Kelley stopped a green Ford F150 at the roadblock and made contact with the vehicle's driver, Petitioner Marvin Dennis Wade, who was the sole occupant of the vehicle. (Testimony of Trooper Kelley).

10. Upon speaking with Petitioner, Trooper Kelley detected a strong odor of an alcoholic beverage emanating from the Petitioner's breath, and he noted that Petitioner's speech was slow and slurred. Trooper Kelley also observed that Petitioner's eyes were bloodshot and watery. A can of "Bud Lite Platinum" was in the vehicle's cup holder. Petitioner indicated to Trooper Kelley that he had consumed "two Bud Light" beers after leaving work at approximately 8:00 p.m. When Trooper Kelley instructed Petitioner to walk to his patrol car, Trooper Kelley observed that Petitioner "staggered" and appeared to walk with considerable difficulty. (Testimony of Trooper Kelley).

11. At Trooper Kelley'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 test, Trooper Kelley administered the horizontal gaze nystagmus (HGN) field sobriety evaluation. Petitioner exhibited six out of six possible clues of impairment on the HGN test. (Testimony of Trooper Kelley).

12. Petitioner also agreed to submit to a preliminary breath test on a portable device approved by the Georgia Bureau of Investigation. The breath sample provided by Petitioner registered positive for the presence of alcohol. (Testimony of Trooper Kelley).

13. The foregoing facts caused Trooper Kelley 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.¹ After Petitioner indicated that he did not understand, Trooper Kelley again read the implied consent notice. Petitioner failed to respond to Trooper Kelley's request to submit to a state-administered test of his breath. Trooper Kelley construed Petitioner's unresponsiveness as refusal. Petitioner did not thereafter request to take the breath test or give any indication that he rescinded his initial refusal. (Testimony of Trooper Kelley).

14. 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" and "Respondent's Exhibit 3," respectively. Trooper Kelley testified that he recognized both documents as the forms completed by SFC Urquhart that implemented the roadblock at issue in this Final Decision, and that both forms were kept and maintained in the ordinary course of business for the Georgia State Patrol. The Roadblock Forms indicate that "All Troopers [operating the roadblock were] qualified in DUI detection, including SFST [standardized field sobriety tests, and Intoxilyzer 5000 certified[.]" (Respondent's Exhs. 2, 3; Testimony of Trooper Kelley).

15. Petitioner, through counsel, contended that Respondent had the burden of demonstrating that *all* screening officers participating in the administrative roadblock had sufficient training to qualify them to make an initial determination as to which motorists should be given field tests for intoxication, citing the Georgia Supreme Court cases of LaFontaine v. State, Brown v. State, and Williams v. State. Therefore, Petitioner argued, because Trooper Kelley could give no testimony as to the training of officers of the APD involved in the roadblock's operation, Respondent had failed to meet its burden to establish the legality of the stop.

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 Trooper Kelley verified that Petitioner was over 21 from his driver's license. (Testimony of Trooper Kelley).

- (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). Additionally, Respondent must show that the law enforcement agency's checkpoint program had an appropriate primary purpose other than ordinary crime control "when viewed at the programmatic level." Brown v. State, 293 Ga. 787, 799 (2013) (citing City of Indianapolis v. Edmond, 531 U. S. 32, 48 (2000)); Williams v. State, 293 Ga. 883, 893 (2013).

3. Based upon the evidence presented at the hearing, specifically the testimony of Trooper Kelley and the Roadblock Forms, the court concludes that Respondent met its burden to demonstrate that the roadblock at issue in this matter had an appropriate primary purpose other than ordinary crime control, and was implemented and operated in accordance with the factors identified in LaFontaine v. State. See LaFontaine, 269 Ga. at 253. The roadblock was ordered by SFC Urquhart for the primary purpose of improving driver safety; specifically, to perform routine traffic checks for driver's licenses/insurance/registration verification, seatbelt compliance, driver impairment, and vehicle fitness/safety compliance. Johnson v. State, 327 Ga. App. 493, 495 (2014) (upholding checkpoint program where it did not have a primary purpose of ordinary crime control, but "an appropriate purpose of utilizing checkpoints to verify compliance with traffic safety, licensing and insurance laws"). The purpose identified on the Roadblock Forms comports with the legitimate purposes authorized by DPS's Policy Manual. See Moss v. State, 333 Ga. App. 875 (2015) (noting that "a written policy certainly provides clearer guidance to the agency's officers and stronger proof for reviewing courts") (citing Williams, 293 Ga. at 892). The checkpoint was not implemented by officers in the field, but rather in advance by a supervisor. See Brown, 293 Ga. at 799. All vehicles were stopped at the checkpoint, delay to motorists passing through the checkpoint was minimal, and the checkpoint was clearly marked as such by uniformed officers and patrol cars with activated blue lights. Moreover, the roadblock was manned by screening officers, such as Trooper Kelley, who were sufficiently trained to allow them to determine which motorists at the roadblock should be subjected to field tests for intoxication.

4. None of the cases cited by Petitioner, including LaFontaine, hold that the state must affirmatively show that *all* of the screening officers involved in the operation of the roadblock have sufficient training to make initial determinations regarding who should be administered field sobriety evaluations. See LaFontaine, 269 Ga. at 253 (validity of roadblock dependent on "whether the screening officer's training was sufficient to qualify him to make an initial determination . . ."). Rather, the State may meet its burden by showing that the screening officer who made the determination at issue had the requisite training. See Baker v. State, 252 Ga. App.

695, 703 (2001) (“Baker [the driver] contends that the state did not prove that the officers who worked the roadblock were sufficiently trained to qualify as screening officers. LaFontaine . . . directs us to focus on the qualifications of Officer Wright in this case because he determined that it was necessary to administer field sobriety tests to Baker [.]”), overruled on other grounds by Brown, 293 Ga. at 799. For example, in State v. Golden, the Georgia Court of Appeals case cited in LaFontaine, the Court upheld the validity of a checkpoint based on evidence that the screening officer who determined that the defendant motorist should be given field sobriety evaluations had the requisite training and experience, despite the fact that the screening officer who made the determination at issue was one of two designated screening officers at the checkpoint. State v. Golden, 171 Ga. App. 27, 28 (1984). The Golden Court did not engage in any inquiry regarding the qualifications of the second screening officer. Id.

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

5. In order for the arrest of Petitioner to be lawful, it must be supported by probable cause. See, e.g., O’Neal v. State, 273 Ga. App. 688, 690 (2005). “Probable cause exists if the arresting officer has knowledge and reasonably trustworthy information about facts and circumstances sufficient for a prudent person to believe the accused has committed an offense.” Devega v. State, 286 Ga. 448 (2010). “[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.” Hughes v. State, 296 Ga. 744, 748–49 (2015) (emphasis in original).

6. In the present case, Trooper Kelley 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 difficulty Petitioner exhibited in walking, the clues of intoxication Petitioner exhibited on the HGN test, Petitioner’s admission to consuming alcohol earlier in the evening, the container of beer Trooper Kelley observed in the vehicle’s cup holder, 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 Kelley 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 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).

7. At the time of the request for the state-administered chemical test, Trooper Kelley 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).

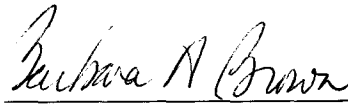
8. Petitioner refused to submit to the state-administered chemical test. O.C.G.A. § 40-5-67.1(g)(2)(C)(i).

9. 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 31st day of May, 2016.



BARBARA A. BROWN
Administrative Law Judge



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

MARVIN WADE,	:	
Petitioner,	:	Docket No.: OSAH-DPS-ALS-1627741-47-
	:	Brown
v.	:	
	:	Agency Reference No.: 054313719
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.