

5. The Trooper noted that Petitioner's speech was slow, mumbled and slurred. Her eyes were bloodshot, and watery. She had a very strong odor of alcoholic beverages on her breath, and was unsteady on her feet. The Trooper testified that Petitioner was "highly intoxicated," and Petitioner did not deny that. The Trooper asked Petitioner if she had been drinking alcoholic beverages, and she said, "Yeah. I had a lot. I had more than I should have." Although she was apparently able to understand his instructions, Petitioner was just "slow to respond."
6. Although the Trooper located a small amount of marijuana in Petitioner's car, he conducted a DUI/alcohol investigation. There were several witnesses present at the scene of the accident, specifically, friends and/or relatives of the folks in Vehicle 1, that told the Trooper that Petitioner had been driving her car very slowly, and very close to the parked cars where Vehicle 1 was parked. Two witnesses (who were together in one car) saw Petitioner driving behind them in her car, and witnessed the accident when Vehicle 1 pulled out and hit Petitioner's vehicle.
7. During the investigation, the Lowndes County deputies located Petitioner's purse, but the Trooper found her car keys next to the sidewalk, 20 – 30 feet from her vehicle. Petitioner became very upset about the accident, because her car is a "classic." However, Petitioner's statement concerning her body damage seemed to be inconsistent with the witnesses' statements. Petitioner just kept saying that she was sitting in her car smoking when this other vehicle hit her car. Petitioner was adamant that she was not driving at the time.
8. Petitioner would not agree to any field sobriety evaluations, so the Trooper placed Petitioner under arrest for DUI, and read to her the implied consent notice for suspects over the age of 21. Petitioner refused to take the state-administered test(s) of her breath, and never changed her mind. On the way to the jail, Petitioner urinated all over the back seat of the patrol car. She urinated all over the floor of the jail; she used a great deal of profanity towards the Trooper, and when she got to the jail, she defecated on herself.
9. Petitioner testified differently than the Trooper. She indicated that she had been inside Cousin's Bar, and had started drinking about 10:30 PM. She had not been smoking marijuana that evening, nor had she taken any other medications or done any other drugs. Petitioner testified that she drank a lot of liquor, specifically, "a lot of gin... 8 – 10 gin shots." The last drink she had was at 1:30 AM, which is when she started calling her boyfriend.
10. It was close to 2:00 AM when she left the bar. Petitioner stated that she was sitting in her car; listening to music; talking on the phone; smoking cigarettes, and waiting on her boyfriend to pick her up. She realized that she should not be driving because she had a lot to drink that evening at the bar. She felt another car hit her vehicle, and when she got out of her car, she saw that the other driver had backed into her left rear quarter panel. She saw the passenger of Vehicle 1, a female, get out of the car and start "cussing," but that female was not the driver of the car that hit her. (Exhibit P-1).
11. When Petitioner exited her vehicle, the passenger of the other car "got in her face." According to Petitioner, the driver, a guy, exited the car and came up to her, too. About that time, she realized

that law enforcement was present, so she wanted to “get rid of her purse and keys to get rid of the marijuana,” so she threw the purse under another car, supposing that her keys were in her purse.

12. Although she recalled that the Trooper asked her to take a chemical test, Petitioner did not recall that he read the implied consent notice to her, although the DVD admitted as evidence in this case indicates that the Trooper did read the implied consent notice to Petitioner, who refused to take the state-administered test(s) of her breath. (Exhibit R-3).
13. Kimberly Goolsby was a witness for the Respondent, and testified that she was the Designated Driver on the evening of July 2, 2016, about 2:30 in the morning. She gave two folks a ride from the bar to their car, which was parked in the parking lot. She drove to the parking space where the two folks had parked the car, and when she stopped to let them out, she realized that someone was behind her, driving really slowly and very close to the parked cars. Her friends got in their car, backed up about a foot and a half, and hit Petitioner’s car.
14. Ms. Goolsby, who had pulled up a little bit to allow the parked car to back up into the driving lane, stopped where she was. (See Exhibit R-2). She saw the driver of the damaged car, Vehicle 2, pull into a parking spot. The passenger in the vehicle that struck Petitioner’s car got out of the car and walked over to speak with Petitioner, but the passenger and the Petitioner began yelling at each other. The Petitioner began yelling at everyone. Petitioner’s speech was slurred; she was stumbling, and began spitting at folks. The passenger of the vehicle that hit Petitioner’s car called 9-1-1.
15. Although Ms. Goolsby does not recall seeing Petitioner throw her purse under another car, she did recall seeing Petitioner throw her keys, so Ms. Goolsby told the Trooper where the car keys were. Lastly, Ms. Goolsby recalled that Petitioner’s car had previously sustained body damage, because there were other dents and damage on the body of the Petitioner’s car. The front quarter panel had dents, too, but the folks who hit Petitioner’s car told the law enforcement present at the scene where their vehicle had struck Petitioner’s vehicle, which was the back quarter panel.
16. Ms. Lisa Sumner was also a witness for Respondent and was in the car with Ms. Goolsby at approximately 2:30 AM on July 2, 2016. Ms. Sumner and Ms. Goolsby were at Cousins Bar together that evening, and was with Ms. Goolsby when she let the folks out of her car, so they could return to their car. Ms. Sumner testified that she also saw that Petitioner was driving behind the car she was in, and was traveling on the wrong side of the road in between the parked cars. The other vehicle pulled out of the parking space very slowly, but did hit Petitioner’s car. When her car was hit, Petitioner pulled into a parking space and sat there.
17. According to Ms. Sumner, Petitioner was very intoxicated. She was slurring her words, cursing, and spitting on people. She kept yelling at the driver of the other car, “You have to fix this. You have destroyed this classic car.” However, Ms. Sumner testified that there was already a lot of damage to Petitioner’s car.

18. Ms. Sumner saw Petitioner throw her keys down, and attempt to re-enter the bar, but at that time it was closed. She witnessed Petitioner punch the driver of Vehicle 1 in the face.
19. Mr. Sterling Bradley testified by telephone, and was not present at the time of the accident. Petitioner telephoned him and asked him to pick her up at the bar. He asked her where she was parked, and she responded, "Next to the building." Then she said, "Somebody just hit my car."
20. By the time he arrived and pulled into the space next to Petitioner's car, Mr. Bradley saw that Petitioner was in her car. He saw the two drivers get out of their respective cars to talk to each other and exchange information, but then they began arguing back and forth. Four other ladies and a younger girl were with them. He saw Petitioner walk over to the sidewalk.
21. Mr. Bradley testified that he witnessed the driver of the other car come over to Petitioner and "he came at her first. All she did was push his hands away."

III. Conclusions of Law

1. This appeal arises under Georgia's Motor Vehicle and Traffic laws. O.C.G.A. 40-5-67.1. The burden of proof is on the Respondent as it seeks to suspend Petitioner's driver's license for DUI. OSAH Rule 7. The standard of proof is a preponderance of the evidence. OSAH Rule 21.
2. Petitioner argued that she is not guilty of DUI, but she has been charged with it. The reason she is not guilty of DUI, she argued, is because she was not driving the car that night at all. She knew she was not in any condition to drive, and she was not driving.
3. However, the testimony of witnesses and evidence in this case supports the Respondent's position that Petitioner did drive her car when she left the bar on July 2, 2016 at approximately 2:30 AM, if ever so slowly and for such a very short period of time. Petitioner was moving her car to a position close to the bar because she had planned to leave her vehicle there overnight.
4. In Georgia, Respondent may suspend a person's driver's license if the "officer had reasonable grounds to believe the person was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or controlled substance and [the person] was lawfully placed under arrest" and if "the officer informed the person of the person's implied consent rights and the consequences of submitting or refusing to submit to [the state-administered chemical test]." O.C.G.A. § 40-5-67.1(g)(2)(A)-(B).
5. In this case, the Trooper had reasonable grounds to believe Petitioner was driving a motor vehicle while under the influence of alcohol and lawfully placed her under arrest for violating O.C.G.A. § 40-6-391. O.C.G.A. § 40-5-67.1(g)(2)(A)(i). The probable cause needed to conduct a DUI arrest requires that the 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 renders him incapable of driving safely." *Malone v. State*, 261 Ga. App. 420 (2003).

6. Petitioner testified that she had been consuming alcoholic beverages and had drunk too much to be driving. Two witnesses testified that she was driving behind them in her car very slowly, in the driving lane, very close behind the parked cars in the parking lot, and when Vehicle 1 backed into her, she sought the safety of the closest parking space. There was little doubt that she acted irrationally at the scene of the accident/arrest. See *Pecina v. State*, 274 Ga. 416 (2001) (“When there is evidence that the defendant has been drinking, the manner of his driving may be considered on the question of whether he has been affected by alcohol to the extent that he is less safe to drive.”).
7. After confirming with the witnesses that she was driving her car at the time Vehicle 1 backed up and hit her car, the Trooper attempted to ask Petitioner if she would perform certain field sobriety evaluations, but she would not agree to any field sobriety evaluations, so the Trooper believed he had no choice but to arrest Petitioner for DUI, and read the implied consent to her immediately, a fact that Petitioner testified she did not recall the Trooper reading to her. (DVD, Exhibit R-3).
8. The Petitioner refused the state-administered breath test. O.C.G.A. § 40-5-67.1(g)(2)(C)(i). In the Georgia Court of Appeals case of *Jones v. State*, 273 Ga. App. 192 (2005), the Court held that the refusal to submit to the state-administered chemical test is admissible as circumstantial evidence of intoxication. In the present case, the evidence shows not only that the Petitioner was intoxicated, but also that she was impaired sufficiently to show probable cause for DUI. The Trooper testified that he smelled a very strong odor of alcoholic beverages on the Petitioner’s breath. Her speech was very slow, mumbled and slurred; her eyes were bloodshot and watery; she was unsteady on her feet, and she admitted that she had been drinking “a lot” of alcohol. She said, “I had more than I should have.”
9. Immediately after her arrest for DUI, The Trooper properly informed the Petitioner of her implied consent rights and the consequences of submitting or refusing to submit to a state-administered test. O.C.G.A. § 40-5-67.1(b); O.C.G.A. § 40-5-67.1(g)(2)(B).
10. The Petitioner refused to submit to the state-administered test of her breath. Accordingly, the Respondent’s suspension of the Petitioner’s driver’s license and driving privilege 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 decision to suspend Petitioner’s driver’s license is **AFFIRMED**.

SO ORDERED, this 17th day of January, 2017.

Barbara A. Brown

Barbara A. Brown
Administrative Law Judge

