

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

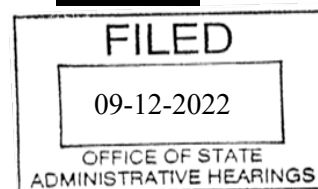
ROBERT PETITT,
Petitioner,

v.

**DEPARTMENT OF DRIVER
SERVICES,**
Respondent.

**Docket No.: 2301647
2301647-OSAH-DDS-ALS-25-Teate**

Agency Reference No.: [REDACTED]



FINAL DECISION

I. Introduction

This matter is the administrative review of the Respondent's decision to suspend the Petitioner's driver's license pursuant to O.C.G.A. § 40-5-67.1. A hearing was held on September 7, 2022, in Pooler, Georgia. Noble L. Boykin, Jr., Esq. represented Petitioner. Sgt. Shawn Myers represented Respondent. After considering all the admissible evidence presented, Respondent's action is **REVERSED**.

II. Findings of Fact

1. On July 11, 2022, at approximately 8:00 p.m., Officer Stephen Wilson responded to a report of a disabled vehicle. He arrived to find a tow truck driven by Robert Petitt, Petitioner, a solo operator, already on the scene. Upon speaking with Mr. Petitt, Officer Wilson detected a heavy odor of alcohol emanating from Mr. Pettit's breath. Shortly thereafter, Officer Chad Wierenga arrived, at which time Officer Wilson told him what he had observed. Officer Wierenga knew Mr. Petitt and went to speak to him. As he did so, Mr. Petitt put a dip of chewing tobacco in his mouth. Even so, Officer Wierenga also noted a strong odor of alcohol. For further investigation of possible impaired driving, Officer Wierenga contacted Sgt. Shawn Myers at about 8:10 p.m. (Testimony of Sgt. Shawn Myers; Respondent Exhibit 1).

2. Sgt. Myers arrived at about 8:18 p.m. He first spoke to Officer Wierenga and then Officer Wilson, who related their observations of Mr. Pettit. Sgt. Myers then called Mr. Pettit over to him. As he approached, Sgt. Myers immediately detected a strong odor of alcohol from his person and noted that his eyes were glassy. When asked if he had been drinking, Mr. Pettit responded no, but as he did so Sgt Myers noted a stronger odor of an alcoholic beverage coming from Mr. Pettit's breath. At one point, Mr. Pettit asked Sgt. Myers to repeat himself and leaned in to within inches of Sgt. Myer's face, at which time Sgt. Myers clearly smelled the strong odor of an alcoholic beverage on Mr. Pettit's breath. (Testimony of Sgt. Myers; Respondent Exhibit 1).

3. Sgt. Myers asked Mr. Pettit if he would give a breath sample on a preliminary breath test. At first, Mr. Pettit agreed. Sgt. Myers walked away briefly to get the portable testing device, at which time Mr. Pettit climbed in the of cab of his wrecker. Upon Sgt. Myers's return, Mr. Pettit refused to take the PBT, with some difficulty completing his statement declining to do so. Sgt. Myers requested that he exit the truck cab and he complied. As Mr. Pettit walked to the rear of the truck, he made some incomplete statements. When Sgt. Myers asked if he would do other field sobriety evaluations for Sgt. Myers or for the other officers, Mr. Pettit declined. (Testimony of Sgt. Myers; Respondent Exhibit 1).

4. Based on the totality of his observations of Mr. Pettit, Sgt. Myers placed him under arrest and read the implied consent notice for driver's 21 years of age or older to him. (Testimony of Sgt. Myers; Respondent Exhibits 1 and 2; Petitioner Exhibit 3).

5. The wrecker vehicle that Mr. Pettit was driving belonged to a commercial wrecker company, US DOT number 130571, authorized for use in interstate commerce. No weight information was provided. Mr. Pettit drove utilizing a regular driver's license rather than a

commercial driver's license. (Testimony of Petitioner; Petitioner Exhibit 2).

6. Mr. Pettit formerly worked with Sgt. Myers as a law enforcement officer. He unpersuasively alleged bias of Sgt. Myers toward him in testimony. Further, Mr. Pettit's testimony that his cologne made him smell like an alcoholic beverage and that he had not been drinking an alcoholic beverage was also unpersuasive and uncorroborated. (Testimony of Petitioner).

III. Conclusions of Law

1. Any person who operates a motor vehicle in Georgia shall be deemed to have given consent to a chemical test of the person's bodily substances to determine whether alcohol or other drug is present upon arrest for driving under the influence of alcohol or drugs. Chancellor v. Dozier, 283 Ga. 259 (2008); O.C.G. A. § 40-5-55. However, a driver has a statutory right to notice of the driver's ability to withdraw that implied consent. Id. An officer is required to inform the driver that a refusal to submit to testing will result in suspension of a driver's license and that the refusal can be evidence in a criminal prosecution. O.C.G.A. § 40-5-67.1(b); Id. The statute prescribes three different implied consent notices: (1) for suspects under age 21; (2) for suspects age 21 and over; and (3) for commercial motor vehicle driver suspects. O.C.G.A. § 40-5-67.1(b)(1)-(3). The arresting officer is required to read the "appropriate" implied consent notice at the time a chemical test or tests are requested. Dozier, 283 Ga. at 260.

2. Apparently because Mr. Pettit presented a routine driver's license indicating that he was over the age of 21 rather than a commercial driver's license, Sgt. Myers read him the notice for 21 years and over, rather than the notice for commercial motor vehicle driver suspects. However, it is undisputed in this matter that Mr. Pettit was driving a commercial motor vehicle. The requirement to read the implied consent notice for commercial motor vehicle driver suspects


is triggered not by the license presented, but by the operation of a commercial motor vehicle. Dozier, 283 Ga. at 262-63 (“The General Assembly intended the statutory implied consent notice entitled ‘for commercial motor vehicle driver suspects’ was to be used for persons stopped while driving commercial motor vehicles.”); see also Meyer v. State, 224 Ga. App. 183, 183 (1997) (“Because Meyer was driving a private passenger car and not a commercial motor vehicle at the time of his arrest, [the implied consent notice for commercial motor vehicle driver suspects] was appropriate.”)

3. Because Sgt. Myers did not read the appropriate notice at the time he requested the chemical test, suspension of Mr. Pettit’s license is not authorized. O.C.G.A. 40-5-67.1(b), (g)(2)(B).

IV. Decision

IT IS HEREBY ORDERED that Respondent’s disqualification of the Petitioner’s driver’s license, permit or privilege to operate a motor vehicle or commercial motor vehicle in this state is **REVERSED**.

SO ORDERED, this 13th day of September, 2022.



Steven W. Teate
Administrative Law Judge

