

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

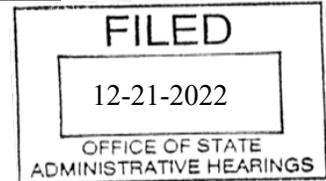
KENNETH CROSBY,
Petitioner,

v.

DEPARTMENT OF DRIVER SERVICES,
Respondent.

**Docket No.: 2300824
2300824-OSAH-DPS-ALS-60-Malihi**

Agency Reference No.: [REDACTED]



FINAL DECISION

I. Introduction

This matter is an administrative review of Respondent’s decision to suspend Petitioner’s driver’s license, permit, or privilege to operate a motor vehicle or commercial motor vehicle in the State of Georgia pursuant to O.C.G.A. § 40-5-67.1. The hearing took place on December 20, 2022. For the reasons indicated below, Respondent’s action is **REVERSED**.

II. Findings of Fact

1. On April 24, 2022 at approximately 2:00 a.m., Trooper Leonard Mullen was in his patrol car on I-75 South near Howell Mill Road when he observed a vehicle traveling at what appeared to be a high rate of speed. Based on a visual estimate, the trooper opined the vehicle was traveling at 100 miles per hour, well in excess of the posted speed limit of 55 miles per hour. The vehicle appeared to slow down after observing the trooper’s patrol vehicle. Trooper Mullen followed the vehicle and matched its speed, which at that time was 70 miles per hour, still in excess of the posted limit. The trooper thereupon activated his emergency equipment and initiated a traffic stop.
2. Upon making contact with the vehicle’s driver, Kenneth Crosby, Trooper Mullen noted that his eyes were bloodshot and watery. The trooper was unable to detect an odor of an alcoholic beverage. Trooper Mullen’s sense of smell was impaired due to a recent COVID-19 infection. When the trooper asked Petitioner if he had consumed alcoholic beverages that night, the Petitioner responded that he “was not intoxicated.” Trooper Mullen noted in his report that Petitioner’s speech seemed “confused.” However, he did not elaborate as to what this meant in his testimony.
3. When Trooper Mullen asked Petitioner to exit his vehicle, Petitioner appeared steady on his feet, and he exhibited no balance or gait issues as he walked to the trooper’s patrol car. Other than the above-mentioned “confusion,” the trooper noted no issues with Petitioner’s speech.
4. Petitioner refused Trooper Mullen’s request to participate in standardized field sobriety tests.
5. Based on the foregoing, Trooper Mullen concluded that Petitioner was under the influence of alcohol or a controlled substance to the extent that it was less safe for him to drive. He thereupon placed Petitioner under arrest and read the applicable implied consent notice to him.
6. Petitioner refused the trooper’s request for a blood test.

III. Conclusions of Law

Based upon a preponderance of the credible evidence before this Court, all provisions were NOT met for the suspension of Petitioner’s driver’s license because Respondent did not establish that the arresting officer had reasonable grounds to believe that 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. O.C.G.A. § 40-5-67.1(g)(2)(A)(i). Trooper Mullen did not possess sufficient facts from which he could have reasonably concluded that Petitioner had been driving while under the influence of alcohol or a controlled substance to the extent that it was less safe for him to drive. The material evidence presented only shows (1) manner of driving (speeding), (2) bloodshot, watery eyes, and (3) possible confusion (with no elaboration).

The trooper also testified that the driver was steady on his feet, walked to the front of the patrol car with no balance issues, and exhibited no issues with speech. The trooper, whose sense of smell was impaired following a COVID-19

infection, did not detect any odor of alcohol. In sum, Trooper Mullen possessed inadequate evidence of consumption or use, let alone that such consumption or use impaired the driver's ability to operate the vehicle.

IV. Decision

Based upon the above Findings of Fact, Respondent failed to meet its burden of proof on all provisions required for the administrative license suspension or disqualification of the Petitioner. O.C.G.A. § 40-5-67.1(g)(2); Ga. Comp. R. & Regs. 616-1-2-.07(1). Accordingly, it is hereby **ORDERED** that Respondent's decision to administratively suspend 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 21st day of December, 2022.

Michael Malihi

Michael Malihi, Judge

The seal of the Georgia Office of State Administrative Hearings is circular with a blue border. The text "GEORGIA OFFICE OF STATE ADMINISTRATIVE HEARINGS" is written around the top inner edge, and "1995" is at the bottom. In the center, there is a depiction of a scale of justice and a book, with the word "CONSTITUTION" written above them.