

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

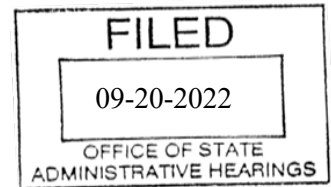
AARON SHEPHARD,
Petitioner,

v.

**DEPARTMENT OF DRIVER
SERVICES,**
Respondent.

**Docket No.: 2302191
2302191-OSAH-DPS-ALS-113-Barnes**

Agency Reference No.: [REDACTED]



FINAL DECISION

I. Introduction

Petitioner Aaron Shephard (“Petitioner”) requested a hearing in response to Respondent Department of Driver Services’ (“DDS’s”) issuance of a DDS 1205 form seeking to suspend the driver’s license or driving privileges of Petitioner based on an underlying citation for driving under the influence of alcohol. The hearing took place on September 12, 2022 in Blackshear, Georgia before the undersigned administrative law judge. Sean Simmons, Esq. represented Petitioner. Trooper Chris Rigby, the arresting officer, represented DDS. For the reasons below, the administrative suspension of Petitioner’s driver’s license is **REVERSED**.

II. Findings of Fact

1. On the evening of July 14, 2022, at approximately 9:23 PM, Pierce County Deputy Ashley Boatright called into Pierce County dispatch to request a State Trooper to come to the scene where Petitioner’s car was on the side of the road. Deputy Boatright was responding to a caller who had reported a “white jacked-up Chevy” in a ditch. The caller had not provided a license

plate number. Petitioner's vehicle is a GMC Sierra. These facts were verified at the hearing by Debra Williamson, custodian of records for Pierce County 911, through testimony and records.

2. Trooper Rigby was traveling to the scene from Waynesboro, Georgia. As of 10:36 PM, an hour and 15 minutes after the initial stop by Deputy Boatright, Trooper Rigby had not arrived. When Trooper Rigby arrived shortly thereafter, "at least four deputy cars" were already on the scene with Petitioner.

3. Petitioner testified that he did not feel free to leave the scene.

4. Petitioner's vehicle's back tire had blown and was flat.

5. Petitioner acknowledged that he had consumed $\frac{1}{4}$ of a pint of Malibu approximately 3 hours earlier.

6. After arriving at the scene, Trooper Rigby spent approximately 6-7 minutes investigating. Trooper Rigby is unaware of anything deputies observed Petitioner do that led to their holding of Petitioner for DUI. Nothing in the investigation report mentions the smell of alcoholic beverages on Petitioner's person or vehicle.

7. Trooper Rigby is unaware of why none of the deputies on the scene performed any field sobriety tests or read the implied consent notice to Petitioner while waiting for Trooper Rigby's arrival.

8. At 10:45 PM—at least 1 hour 22 minutes before Petitioner was stopped by Pierce County deputies—Trooper Rigby read to Petitioner the implied consent notice for drivers age 21 and over, designating a blood test as the state-administered chemical test. After being advised of his implied consent rights, the Petitioner refused to submit to the blood test.

III. Conclusions of Law

1. The Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2. Petitioner was under arrest at the scene of the initial stop. “The test for determining whether a person is ‘in custody’” at a traffic stop is if a reasonable person in the suspect’s position would have thought the detention would not be temporary.” *Hughes v. State*, 259 Ga. 227 (1989). Being surrounded by “at least four” deputy vehicles would cause a reasonable person to believe he was not free to go. Petitioner’s testimony that he felt like he was in custody and did not feel free to go, supports this position.

3. Petitioner did not receive the implied consent notice within an acceptable time period. The implied consent notice “is deemed timely if it is given ‘at a time as close in proximity to the instant of arrest as the circumstances of the individual case might warrant.’” *Dunbar v. State*, 283 Ga. App. 872, 875 (2007), citing *Perano v. State*, 250 Ga. 704 (1983). The facts here differ vastly than those in cases¹ where a delay of less than 30 minutes was deemed appropriate. Here, at least four law enforcement officers were present at the time of Petitioner’s arrest. Yet, the implied consent notice was not read to Petitioner until at least 1 hour 22 minutes after his arrest. Thus, the implied consent notice was not timely.

4. Petitioner was not timely informed of his implied consent rights as provided by Georgia law. Therefore, all provisions were not met for the administrative license suspension or disqualification as to this Petitioner.

¹ See *Mason v. State*, 177 Ga. App. 184, 186 (1985); *Shoemaker v. State*, 2gg Ga. App. 342, 344 (2004); *Naik v. State*, 277 Ga. App. 418, 420 (2006).

IV. Decision

Based on the foregoing, **IT IS HEREBY ORDERED THAT** the decision of Respondent to administratively suspend 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 20th day of September, 2022.



Shakara M. Barnes
Administrative Law Judge

