BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

MAXWELL ALDRIDGE,
Petitioner,

v.

DEPARTMENT OF DRIVER SERVICES,
Respondent.

Docket No.: 2327208
2327208-OSAH-DPS-ALS-78-Fry Liliana Yeomans

Agency Reference No.: [redacted]

FINAL DECISION

I. Introduction

This matter is an administrative review of the Respondent's decision to suspend the 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 June 28, 2023, before the undersigned administrative law judge. After considering all of the admissible evidence and the arguments of the parties, the Respondent's action is **REVERSED** for the reasons stated below.

II. Findings of Fact

1. On April 7, 2023, the arresting officer:
   ☒ responded to the scene of a motor vehicle collision involving a vehicle driven by the Petitioner.
   The collision: ☒ did result in a serious injury or fatality. When the officer arrived at the scene, he observed a three-vehicle accident involving a truck (the lead vehicle) and two cars behind the truck. The rearmost car, driven by the Petitioner had rear-ended the car in front, forcing that car to collide with the rear of the truck. Petitioner and the driver of the other car had already been transported to the hospital. The officer detected a strong odor of marijuana coming from Petitioner's vehicle. The officer found two empty Twisted Tea cans in the vehicle and found two unopened ones in a cooler in the vehicle. The officer testified that he understood from the passenger in Petitioner's vehicle that he and the Petitioner were coming from a golf course and had been smoking marijuana and drinking. The officer also understood from his discussion with the passenger that Petitioner was on his phone when the accident occurred. After completing the on-scene investigation, the officer went to the hospital to continue the investigation.

2. While speaking with the Petitioner, who was in a hospital bed, the arresting officer noted that the Petitioner exhibited:
   ☒ bloodshot/red eyes
   ☒ a(n) obvious odor of an alcoholic beverage coming from the Petitioner's ☒ person and ☒ breath.

3. In response to the arresting officer's inquiry regarding the Petitioner's consumption of alcoholic beverages, the Petitioner:
   ☒ denied consuming any alcoholic beverages.

4. ☒ The arresting officer did not ask the Petitioner to perform field sobriety evaluations because it appeared that the Petitioner might have had a head injury and was confined to a hospital bed where he was receiving treatment.

5. The arresting officer advised the Petitioner that he was not placing him under arrest and that he would be arrested, and citations would be issued at a later date. Petitioner's parents were present with him. Nevertheless, because Petitioner had been involved in an accident that the officer testified resulted in serious injuries while driving under the influence of alcohol or a controlled substance such that he was a less safe driver, the officer read him/her the implied consent notice for ☒ drivers under age 21, and designated a ☐ breath ☒ blood ☐ urine test as the state-administered chemical test.

6. After being advised of his/her implied consent rights, the Petitioner:
   ☒ refused to submit to the state-administered test designated by the arresting officer.

7. After meeting with Petitioner and his parents, the officer also visited the driver of the other vehicle while she was in the hospital. He had to wait "a while" to speak to her because she was receiving emergency medical treatment. He observed "severe trauma" to her face and "severe trauma" to one leg and the associated hip area. He understood from his observation that her injuries were serious and when speaking to her at some point after she was discharged from the hospital, and a few weeks prior to the hearing, she informed the officer that she was still undergoing treatment for her injuries. The Court finds that based on the officer's interaction with the driver of

the other vehicle during his visit to the hospital and his discussion thereafter that the driver suffered the serious injury of disfigurement as a result of the accident.

III. Conclusions of Law

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). The Respondent failed to meet its burden as follows:

☒ The arresting officer 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 or a controlled substance. O.C.G.A. § 40-5-67.1(g)(2)(A)(i).

☒ The Petitioner was involved in a motor vehicle accident or collision resulting in a serious injury or fatality. O.C.G.A. § 40-5-67.1(g)(2)(A)(ii).

Petitioner challenged the reading of implied consent on the grounds that it occurred prior to Petitioner's arrest and argued based on *Handschuh v. State*, 270 Ga. App. 676, 680 (2004) that even in the case of an accident resulting in serious injuries, the driver must be placed under arrest *before* the officer reads implied consent.

Georgia Code Section 40-5-55(a) provides in part:

> The State of Georgia considers that any person who drives or is in actual physical control of any moving vehicle in violation of any provision of Code Section 40-6-391 constitutes a direct and immediate threat to the welfare and safety of the general public. Therefore, any person who operates a motor vehicle upon the highways or elsewhere throughout this state shall be deemed to have given consent, subject to Code Section 40-6-392, to a chemical test or tests of his or her blood, breath, urine, or other bodily substances for the purpose of determining the presence of alcohol or any other drug, if arrested for any offense arising out of acts alleged to have been committed in violation of Code Section 40-6-391 or if such person is involved in any traffic accident resulting in serious injuries or fatalities.

In *Cooper v. State*, 277 Ga. 282 (2003) the Georgia Supreme Court ruled that subpart (a) was unconstitutional,

> to the extent that OCGA § 40-5-55(a) requires chemical testing of the operator of a motor vehicle involved in a traffic accident resulting in serious injuries or fatalities regardless of any determination of probable cause, it authorizes unreasonable searches and seizures in violation of the State and Federal Constitutions.

Id. at 291.

Following that decision, and prior to the decision in *Handschuh*, a panel of the Georgia Court of Appeals held that in the case of an accident involving death or serious injury, provided the officer has probable cause to make an arrest, the officer has authority to read implied consent such that a refusal or the agreement to provide a sample are legally viable. *Hough v. State*, 269 Ga. App. 744, 746-47 (2004).

Shortly thereafter, the Court of Appeals, sitting *en banc*, held that even in the case of a fatality or serious injury, the driver must be placed under arrest *before* the officer may read implied consent as required by the statute. *Handschuh v. State*, 270 Ga. App. 676, 680-81 (2004). In *Handschuh*, the majority explicitly disapproved *Hough v. State* to the extent it "can be read to support the conclusion that probable cause without an arrest is sufficient to trigger the implied consent warnings in O.C.G.A § 40-5-55(a)." *Id*.

The Georgia Supreme Court granted *certiorari* in both *Hough* and *Handschuh* and consolidated the two cases for a decision, *sub nom Hough v. State*, 279 Ga. 711 (2005). The Georgia Supreme Court agreed with the panel decision in *Hough* and disapproved the holding in *Handschuh* on the grounds that in the case of serious injury, an arrest was not required to trigger the implied consent warnings, provided the officer had probable cause to make the arrest and the other requirements of the statute were met. *Hough v. State*, 279 Ga. 711, 712 (2005). The Supreme Court nevertheless affirmed the result in *Handschuh* but on alternative grounds. The Court of Appeals described Handschuh's injuries as follows: "Although externally he did not appear to have any serious injuries, the EMTs told the officer that he was not responding to pain stimuli in his lower extremities." *Handschuh,* 270 Ga. App. at 676. As noted above, the Court of Appeals concluded that even in cases where there is a serious injury, the driver must be placed under arrest before the reading of implied consent would be valid. *Handschuh*, 270 Ga. App. at 680 (concluding that a reading implied consent based on serious injury as found by the trial court did not eliminate the need for an arrest prior to the reading of implied consent). The Supreme Court, on the other hand, held that an arrest is not necessary in the case of serious injury provided there is probable cause for an arrest. *Hough*, 279 Ga. at 712. The Supreme Court nevertheless upheld the Court of Appeals' conclusion that the "trial court erred by denying Handschuh's

motion to suppress." *Id.* at 718. It did so because it concluded that based on Georgia Code Section 40-5-55(c), there was no serious injury.

> In this case, none of these situations[1] is present, as paralysis is not listed as one of the maladies on the very specific list provided by the Legislature. *Accordingly, the rules associated with the reading of implied consent to a suspect following a traffic accident with serious injuries or fatalities do not apply in this case*. As such, Handschuh's implied consent rights must be analyzed under that portion of the statute regarding an individual who had been "arrested for any offense arising out of acts alleged to have been committed in violation of Code Section 40-6-391."

Id. at 718 (emphasis added). Thus, the trial court's finding of fact as to the nature of Handschuh's injuries did not support the legal conclusion that he suffered a serious injury as defined in O.C.G.A. § 40-5-55(c). *Id.*

Accordingly, the serious injury part of the statute did not apply to Handschuh, and it was necessary that he have been arrested prior to reading implied consent. *Id*. In contrast, Hough was rendered unconscious in the accident at issue in his case, which the Supreme Court noted met the legal definition of a serious injury. *Id.* at 714-15. In Hough's case, therefore, he did not need to have been arrested before reading implied consent. *Id.*

In Petitioner's case, there can be no dispute that he was not placed under arrest. The officer told him that he was not under arrest and that he would be arrested later. Although he did not need to be formally placed under arrest, a reasonable person in his position would have to believe that he was not free to leave. *Hough*, 279 Ga. at 716; *Plemmons v. State*, 326 Ga. App. 756, 768 (2014). While Petitioner may not have felt free to get up and leave the hospital due to his injuries and due to the presence of his parents, those circumstances do not amount to an arrest, even an informal one. Accordingly, for the officer's reading of implied consent in this case to be legally viable, there must evidence of a serious injury. *Hough*, 279 Ga. at 714-15. Otherwise, the driver must be arrested first, for the reading implied consent to be valid.

In this case, the officer testified that he arrived at the scene after Petitioner and the driver of the other car involved in the accident were transferred to the hospital. There was no testimony that during the time the officer was conducting the on-scene investigation that he received information that would support the conclusion that the injuries sustained by Petitioner or the other driver, were "serious" within the definition of O.C.G.A. § 40-5-55(c). The officer testified that when he arrived at the hospital, he went to Petitioner's partitioned area where was in bed receiving treatment. The officer told Petitioner that he would be arrested later and that he would be issued citations later. He read Petitioner implied consent and Petitioner refused. The officer next visited the other driver during which visit, he observed severe trauma to her face, leg, and hip. Based on the officer's observations and description during the hearing, the Court finds that the driver suffered a serious injury within the meaning of O.C.G.A. § 40-5-55(c). *See Lewis v. State*, 216 Ga. App. 796, 796 (1994) (concluding that the officers' observations at the scene supported the officer's belief "that Lewis' crash did result in serious injuries as defined under the implied consent statute"). In *Lewis*, the Court of Appeals observed as follows:

> In the context of aggravated battery (O.C.G.A. § 16-5-24), this court has utilized a definition of "disfigurement" from Black's Law Dictionary: "'that which impairs or injures . . . the appearance of a person.'" *In the Interest of H. S.*, 199 Ga. App. 481 (405 S.E.2d 323) (1991), *citing Baker v. State*, 246 Ga. 317, 318 (2) (271 S.E.2d 360) (1980). There is no requirement that the disfigurement be permanent. *Id.* The application of the definition compels the conclusion that as a result of the collision both Lewis and Adair sustained the serious injury of "disfigurement" so as to invoke implied consent under O.C.G.A. § 40-5-55 (a).

Id. Additionally, the fact that a victim may recover from accident such that the condition is temporary does not "cause it to fall outside the ambit of the statute." *State v. Umbach*, 284 Ga. App. 240, 241 (2007).

That, however, does not end the analysis. The Georgia Supreme Court has also considered the timing of the officer's awareness of the serious injury in relation to the reading of implied consent and concluded as follows:

> When the second contingency of OCGA § 40-5-55 (a) is at issue, OCGA § 40-5-67.1(a) requires that an officer, at the time the officer requests chemical testing of a driver who has not been arrested for driving under the influence, must have reasonable grounds to believe the driver was driving a motor vehicle, and the driver must have been involved in a traffic accident resulting

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1 As used in this Code section, the term "traffic accident resulting in serious injuries or fatalities" means any motor vehicle accident in which a person was killed or in which one or more persons suffered a fractured bone, severe burns, disfigurement, dismemberment, partial or total loss of sight or hearing, or loss of consciousness. O.C.G.A § 40-5-55(c).

in serious injuries or fatalities. We read OCGA § 40-5-67.1 (a) as providing the temporal connection not expressly set forth in OCGA § 40-5-55 (a) and hold that *an officer's request for testing is legally viable under the second contingency only if, at the time of the request, the driver has been involved in a traffic accident that has resulted in serious injuries or fatalities of which law enforcement is aware.* This is in keeping with the statutory definition of the phrase "traffic accident resulting in serious injuries or fatalities" found in OCGA § 40-5-55 (c): "any motor vehicle accident in which a person was killed or in which one or more persons suffered a fractured bone, severe burns, disfigurement, dismemberment, partial or total loss of sight or hearing, or loss of consciousness." The statutory definition speaks in the past tense and lists injuries of which investigating law enforcement officers can gain knowledge by means of their own perceptions and the reports to the officers of persons involved in the accident, witnesses, and treating medical personnel. *See ...State v. Umbach, supra*, 284 Ga. App. 240 (driver who lost consciousness at scene informed by officer requesting chemical testing at hospital that driver had serious injury due to loss of consciousness); *Lewis v. State*, 215 Ga. App. 796 (452 SE2d 228) (1994) (responding officers saw disfigurement to passenger's leg, a 12-inch "knot" on passenger's hip, and driver's swollen ankle). *See also Hill v. State*, 208 Ga. App. 714 (431 SE2d 471) (1993) (officer entitled to rely on nurse's report that driver was "out of it" and request testing to be done on driver he believed was unconscious under OCGA § 40-5-55 (b)).

…

At the time the officer requested chemical testing of appellant and informed appellant of the implied consent warnings, law enforcement officers knew appellant had been driving a vehicle, knew the vehicle had been involved in a traffic accident, and had probable cause to believe appellant had been driving under the influence. Since, at the time chemical testing was requested, appellant had not been arrested and there was no evidence that a serious injury or fatality had resulted from the traffic accident, the request for chemical testing was invalid and the results of the chemical testing should have been suppressed.

Snyder v. State, 283 Ga. 211, 214-15 (2008) (emphasis added) (concluding that the passenger's death ten days after the accident resulting from injuries sustained in the accident, could not retroactively make the reading of implied consent at the hospital legally viable). It is unclear from the Supreme Court's decision whether the internal injuries, which were sustained in the accident, that ultimately led to the passenger's death would have been sufficient to meet one of the other statutory elements. For example, in *Weaver v. State*, 351 Ga. App. 167, 170 (2019), the Court of Appeals held that internal injuries that were not visible could nevertheless constitute "serious disfigurement" for the purposes of an aggravated battery and cruelty to children conviction. In *Snyder*, the operative event, the passenger's death, had not occurred at the time of the reading of implied consent. However, the passage quoted above, and the passage emphasized in italics, require more than just the serious injury has in fact occurred at the time of the reading of implied consent. The Court concludes that *Snyder* requires that at the time implied consent is read, the officer must be aware that a serious injury within the scope of the statute resulted from the accident.

In this case while the officer knew the injuries were serious enough to require transport to the hospital. There is no evidence in the record, however, that the officer was "aware" that the injuries met the statutory definition until after he read implied consent. As a result, Petitioner's refusal to take the state administered test is not admissible.

☒ At the time of the request for the state-administered test or tests, the officer informed the Petitioner of his/her implied consent rights and the consequence of submitting or refusing to submit to such test(s). O.C.G.A. § 40-5-67.1(g)(2)(B).

☒ The Petitioner's refusal to take the state-administered test(s) is inadmissible.

Accordingly, the Respondent's suspension of the Petitioner's driver's license, permit, or privilege was improper. O.C.G.A. § 40-5-67.1.

IV. Decision

The Respondent's decision to suspend the Petitioner's driver's license, permit, or privilege to operate a motor vehicle or commercial motor vehicle in the State of Georgia is hereby overruled and **REVERSED**.

SO ORDERED, this __10th_____ day of_____July_____, 20_23_

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John Fry
Administrative Law Judge