

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

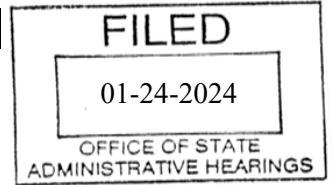
ROMAN COLLINS,
Petitioner,

v.

DEPARTMENT OF DRIVER SERVICES,
Respondent.

Docket No.: 2420296
2420296-OSAH-DDS-ALS-56-Howells

Agency Reference No.: [REDACTED]



FINAL DECISION

I. Introduction

Petitioner requested a hearing to contest 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 January 18, 2024, before the undersigned administrative law judge. After considering all the admissible evidence and the arguments of the parties, the Respondent's action is **AFFIRMED** for the reasons stated below.

II. Findings of Fact

1. On November 5, 2023, at approximately 12:11 a.m., the arresting officer initiated a stop of a vehicle driven by Petitioner, after observing Petitioner travelling at 77 miles per hour in a 55 miles per hour zone.
2. While speaking with Petitioner, the arresting officer noted that the Petitioner's zipper on his pants was down. He also detected the odor of an alcoholic beverage coming from Petitioner.
3. In response to the arresting officer's inquiry regarding Petitioner's consumption of alcoholic beverages, Petitioner admitted to consuming one beer.
4. The Petitioner exhibited clues of impairment on the following field sobriety evaluations, which he performed at the arresting officer's request: horizontal gaze nystagmus ("HGN"), walk and turn, and the one-leg stand. On the HGN, the officer observed six out of six clues. On the walk and turn evaluation he observed five out of eight clues, and on the one leg stand he observed three out of four clues. Petitioner completed an Alco-Sensor/preliminary breath test, which was positive for alcohol.
5. The arresting officer placed Petitioner under arrest for driving under the influence of alcohol or a controlled substance, read him the implied consent notice for drivers age 21 and over, and designated a breath test as the state-administered chemical test.
6. After being advised of his implied consent rights, Petitioner agreed to submit to the state-administered test designated by the arresting officer.¹ The state-administered test of the Petitioner's breath was administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument in good working order and approved by the Division. The results of the state-administered test indicated that the Petitioner's blood alcohol concentration was 0.191.

¹ The arresting officer testified that Petitioner agreed to take the test. He could not recall the exact words Petitioner used, but it was his recollection that Petitioner consented to take the test.

III. Conclusions of Law

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). Respondent met its burden and proved the following:

1. 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, and the Petitioner 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).
2. At the time of the request for the state-administered test or tests, the arresting 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).
3. Petitioner agreed to take the state-administered test of his breath. The state-administered test was properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument approved by the Division of Forensic Sciences, and the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order. A copy of the operator's permit showing that the operator has been trained on the particular type of instrument used and one of the original copies of the test results were introduced into evidence and satisfied the requirements of O.C.G.A. § 40-5-67.1(g)(2)(D).
4. The test results indicated an alcohol concentration of 0.191 which exceeds the legal limit. O.C.G.A. § 40-5-67.1(g)(2)(C)(ii).
5. Petitioner argued that the test results should not be considered because the officer could not provide the exact words that Petitioner used to consent to the test. This argument is without merit. "A witness who is unable to recollect the exact words of a conversation will be permitted to relate their substance." Marshall v. Pierce, 136 Ga. 543, 546 (1911). Here, the officer could not recall the exact words Petitioner used to consent to the breath test, but it was his recollection that Petitioner agreed to take the test. Accordingly, the arresting officer was allowed to offer this testimony. Once doing so, he established a prima facie case and the burden shifted to Petitioner to show that he did not consent. When a party bears the burden of proof, that party can discharge his or her burden by establishing a prima facie case. Hyer v. Holmers & Co., 12 Ga. App. 837, 846 (1913). Thereafter, the adversary must produce "evidence to meet the prima facie case, or to produce evidence sufficient to create a state of equipoise² between his proof and that of the adversary." Complete Auto Transit Inc. v. Baggett, 107 Ga. App. 415, 416 (1963). Once there is a state of equipoise, the party with the burden of proof must elicit testimony or adduce evidence to remove the case from the state of equipoise, or otherwise that party fails to meet his burden of proof. Wall v. Wall, 15 Ga. App. 156, 159 (1914). "The burden of evidence may, and frequently does, vibrate between the parties." Hyer, 12 Ga. App. at 846 (citation omitted).
6. In this case, Petitioner did not present any evidence to meet the officer's prima facie case.
7. Petitioner also argued that the test results should not be considered because if the margin of error is taken into consideration, the difference between the two results is more than 0.020. The argument is also without merit. Georgia Code Section 40-6-392 (a)(1)(B), merely states that the results shall not differ more than 0.020. It says nothing about the margin of error. Rather, it is more likely that the statute is taking into account a margin of error, when considering the difference in the results. Here the two samples were within 0.020 grams of each other.



² Equipoise is defined as a "state of equilibrium or balance." Equipoise, Webster's Third New International Dictionary (1961).

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

IV. Decision

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 is hereby **AFFIRMED**.

SO ORDERED, this 24th day of January, 2024.



Stephanie M. Howells
Administrative Law Judge