

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

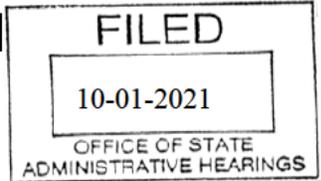
IAN KNUREK,
Petitioner,

v.

DEPARTMENT OF DRIVER SERVICES,
Respondent.

Docket No.: 2202688
2202688-OSAH-DDS-ALS-44-Fry

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 September 24, 2021, 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 May 13, 2021 at approximately 3:21 AM, the arresting officer, a City of Decatur Police Officer:
 - initiated a stop of a vehicle driven by the Petitioner based on a traffic violation
(The officer observed Petitioner driving a 2007 black Infiniti M35 with a temporary tag with its headlights and taillights off. The officer followed the vehicle for several blocks as it headed east on East College Avenue in Decatur. The officer testified that the vehicle failed to maintain lane and appeared to accelerate away from him. The officer momentarily lost sight of the vehicle as he approached the Sams Crossing intersection. When he arrived at the intersection, he looked to his right down Arcadia Avenue and observed the vehicle parked with its brake lights engaged. He testified that the brake light pattern corresponded to those he observed on the vehicle he was following, that the color, make and model also matched and that the vehicle also had a temporary tag. On cross examination Petitioner questioned how he could have seen the brake lights engaged when the vehicle was accelerating. The officer responded that the driver simply tapped the brake which caused the brake lights to illuminate only momentarily. The officer testified that the Petitioner's vehicle was located just outside of the Decatur city limits)
2. While speaking with the Petitioner, the arresting officer noted that the Petitioner exhibited:
 - bloodshot/red eyes
 - glassy eyes
 - watery eyes
 - slurred speech
 - an odor of an alcoholic beverage coming from the Petitioner's vehicle (initially) breath (after he exited the vehicle).
3. In response to the arresting officer's inquiry regarding the Petitioner's consumption of alcoholic beverages, the Petitioner:
 - admitted consuming alcoholic beverages (one beer).
4. The Petitioner exhibited clues of impairment on the following field sobriety evaluations, which he/she performed at the arresting officer's request:
 - horizontal gaze nystagmus: six clues, enough to show impairment
 - walk and turn: six clues, enough to show impairment
 - one-leg stand: two clues, enough to show impairment
 - The Petitioner completed an Alco-Sensor/preliminary breath test, which was positive for alcohol.
5. The arresting officer placed the Petitioner under arrest for driving under the influence of alcohol or a controlled substance, read him/her the implied consent notice for drivers age 21 and over drivers under age 21 commercial drivers, 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:
 - agreed to submit to the state-administered test designated by the arresting officer, and:

- ☒ 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 .152.

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:

- ☒ While 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, the officer did not have reasonable grounds to believe 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).

As recently as 2015, the Georgia Court of Appeals had held that despite the statute specifying that a peace officer has power of arrest only in the territory of the governmental unit by which he was appointed, (Ga. Code Ann. § 40-13-30), an exception applies specifically to moving violations such that an officer has authority to arrest a person accused of violating any law or ordinance governing the operation of a vehicle where the offense is committed in his presence regardless of territorial limitations. *See State v. Zilke*, 333 Ga. App. 344 (2015). On certiorari to the Georgia Supreme Court, the Court of Appeals decision was reversed. *See Zilke v. State*, 299 Ga. 232, 234-35 (2016) (concluding that "Nothing in the statute's history indicates that the legislature ever intended OCGA § 17-4-23 to allow officers to arrest traffic violators outside the jurisdiction of their respective law enforcement agencies. Therefore, we disapprove of *Glazner v. State* to the extent that case and its progeny hold OCGA § 17-4-23 (a) authorizes a law enforcement officer, including a campus police officer, to make a custodial arrest outside the jurisdiction of the law enforcement agency by which he is employed."). As a result, the arrest outside the jurisdictional limits of the city that appointed the arresting officer was unlawful such that the officer did not have reasonable grounds to believe 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)

Petitioner also objected to the arrest on the grounds that the officer momentarily lost sight of the vehicle and cited *Vansant v. State*, 264 Ga. 319, (1994) for the proposition that the stop was improper. The facts of the *Vansant* case, however, are readily distinguishable from those here. In *Vansant*, the arresting officer, responding to a "be on the lookout for" dispatch for a "white, new-styled General Motors van," stopped a white van approximately one mile from the place where the incident occurred. The Supreme Court noted that during the suppression hearing the officer testified that "he stopped the white van solely because it was a white van, and admitted that he would have stopped any white van." *Id.* at 321. The Supreme Court further noted:

It is clear from the evidence adduced at the suppression hearing that the detaining officer did not have the requisite particularized basis for suspecting the driver of this particular white van of criminal activity. He did not have a particularized description of the vehicle; he did not know the direction in which the vehicle had left the scene of the purported hit-and-run; he had not observed criminal activity on the part of the person stopped; he had no knowledge or suspicion that the vehicle had been involved in other similar criminal behavior.

Id. (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968). and *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

The officer's testimony in this case was even more particularized than that in *Thomason v. State*, 268 Ga. 298 (1997) where the Supreme Court concluded that the officer had sufficient particularized information to make the stop. The officer made the stop as follows:

Local police were alerted to be on the lookout for a brown 1978 or 1979 Oldsmobile Cutlass, described as being "not as dark [brown] as the sheriff department's cars," with a lighter brown top, being driven by a white male. Shortly thereafter, a vehicle and driver matching that description were seen leaving a convenience store in nearby Calhoun. After following the Cutlass for approximately five minutes, City of Calhoun police officer Gilbert stopped the car, which was being driven by appellant Thomason.

Id. at 299 (finding that “the initial stop of Thomason was based upon reasonable suspicion. Contrary to Thomason’s argument, Officer Gilbert had more than a generalized description of the suspect he was seeking and the car he was driving. Officer Gilbert knew the color of both the car and its top, the manufacturer, model, and model year of the car, and the driver’s gender and race. That detailed information was sufficient to provide Officer Gilbert with the requisite particularized basis to warrant the investigative stop of Thomason.”) Here the arresting officer had sufficient particularized knowledge to make the stop.

Petitioner also objected to the fact that at the hearing, the officer did not produce a copy of the calibration information for the breathalyzer device used to administer the state test. Since the officer produced a copy of his operator’s certificate and an original of the test results, production of other documents or testimony that the device was in good working order with all its components properly attached was not required. *See* O.C.G.A. § 40-5-67.1(g)(2)

The scope of the hearing shall be limited to the following issues:

(A) (i) Whether the law enforcement officer had reasonable grounds to believe the person 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 Code Section 40-6-391; or (ii) Whether the person was involved in a motor vehicle accident or collision resulting in serious injury or fatality; and

...
(D) Whether the test or tests were 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 or a test conducted by the Division of Forensic Sciences, including whether 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, which shall be required. *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* or, where the test is performed by the Division of Forensic Sciences, a copy of the crime lab report *shall satisfy the requirements of this subparagraph.*

Id. (emphasis added).

Although Petitioner’s second and third objections are without merit and are overruled, the officer nevertheless made an unlawful arrest when he arrested Petitioner outside the city limits of Decatur. As a result, 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 sustained and **REVERSED**.

SO ORDERED, this 1st day of October, 2021.



John Fry
Administrative Law Judge

