

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



FILED  
OSAH

AUG 19 2013

*Virginia Ramsey*  
Virginia Ramsey, Legal Assistant

████████████████████ :  
Petitioner, :  
v. : Docket No.:  
DEPARTMENT OF DRIVER SERVICES, : OSAH-DDS-ALS-1403305-75-Walker  
Respondent. : Agency Reference No.: 042586148

FINAL DECISION

I. Introduction

This matter is an administrative review of the Respondent's decision to suspend the Petitioner's driver's license pursuant to O.C.G.A. § 40-5-67.1. This case was originally scheduled for hearing in Henry County on August 12, 2013. Petitioner requested a continuance of the matter, and Respondent's representative, Officer Williams, consented to reset the hearing to Fayette County during his off-duty time to accommodate Petitioner and his counsel. The hearing was held on August 15, 2011 before an administrative law judge of the Office of State Administrative Hearings. For the reasons indicated below, Respondent's action is **REVERSED**.

II. Findings of Fact

1.

On July 6, 2013, Petitioner approached a roadblock that was being operated in Henry County, Georgia. After the screening officer detected a strong odor of alcohol coming from Petitioner's vehicle, he asked Officer Williams to make contact with Petitioner. *Testimony of Officer Williams.*

2.

Officer Williams also smelled a strong odor of alcohol coming from Petitioner's vehicle. When the Officer asked how he was, Petitioner responded "I have my Jack right here." Petitioner admitted he had been drinking Jack Daniels at a friend's home. *Testimony of Officer Williams.*

3.

Officer Williams asked Petitioner to perform Field Sobriety Testing, and Petitioner agreed to do so. The Officer observed six out of six clues of impairment on the horizontal gaze nystagmus examination, indicating that the driver was intoxicated. Petitioner was unable to complete the walk and turn examination. A portable breath test was positive for alcohol. *Testimony of Officer Williams.*

4.

Officer Williams placed Petitioner under arrest for driving under the influence of alcohol, and read him the appropriate implied consent notice for drivers age 21 or over. At the request of the arresting officer, Petitioner submitted to a state-administered chemical test to determine the blood concentration of alcohol in the body of the Petitioner. The state-administered chemical 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 in good working order and approved by the Division. The results of the test indicated that the Petitioner greatly exceeded the minimum blood alcohol concentration allowable by statute of .08, testing at .176 and .177. *Testimony of Officer Williams, R-1; R-2.*

### III. Conclusions of Law

1.

In this hearing, the Respondent bears the burden of proof. The burden of proof is a preponderance of the evidence. OSAH Rule 616-1-2-.07(1).

2.

The Georgia Supreme Court, in LaFontaine v. State, 269 Ga. 251 (1998), set forth the specific factors to be considered in determining the validity of a roadblock. The Court held:

A roadblock is satisfactory where the decision to implement the roadblock was made by supervisory personnel rather than the officers in the field; all vehicles are stopped as opposed to random vehicle stops; the delay to motorists is minimal; the roadblock operation is well-identified as a police checkpoint; and the "screening" officer's training and experience is sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication.

Id. at 253; see also Baker v. State, 287 Ga. App. 131 (2007). In the instant case, Respondent did not offer any testimony regarding the roadblock.

3.

Although the officer had sufficient probable cause to arrest Petitioner and performed the testing requirements appropriately, the very specific requirements of LaFontaine in roadblock cases obligate this Court to find that the Respondent failed to meet its burden of proving that the Petitioner was "lawfully placed under arrest for violating O.C.G.A. § 40-6-391," as required by O.C.G.A. 40-5-67.1(g)(2)(a). Thus, under the requirements of LaFontaine, and its progeny, even if probable cause

existed, the arrest itself was not shown to be lawful. O.C.G.A. § 40-5-67.1(g)(2)(a).

#### IV. Conclusions of Law

**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 18 day of August, 2013.



**Ronit Walker, ALJ**