

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

**CARRIE JO STONEMAN,**  
Petitioner,

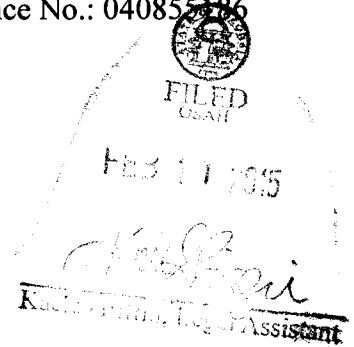
v.

**DEPARTMENT OF DRIVER  
SERVICES,**  
Respondent.

Mary E. Wood, Esq.,  
For Petitioner

Dee Brophy, Esq.  
For Trooper Ashley Haynes.

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\* Docket No.:  
\* OSAH-DPS-ALS-1500263-60-Malihi  
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\* Agency Reference No.: 040855186  
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**FINAL DECISION**

**I. Introduction**

Respondent moved to suspend Petitioner's driver's license or privilege to drive in the State of Georgia pursuant to O.C.G.A. § 40-5-67.1. An evidentiary hearing was held on January 20, 2015.<sup>1</sup> For the reasons indicated below, Respondent's action is **REVERSED**.

**II. Findings of Fact**

1. On April 5, 2014 at approximately 12:10 a.m., Trooper Haynes of the Georgia State Patrol initiated a stop of a vehicle operated by Petitioner Carrie Jo Stoneman as the result of a traffic violation. *Petitioner Exhibit 1; Testimony of Trooper Haynes.*
2. Upon approaching the vehicle, Trooper Haynes observed that Petitioner exhibited physical indicia of intoxication. Petitioner admitted to consuming alcohol prior to the stop. *Petitioner Exhibit 1; Testimony of Trooper Haynes.*
3. At the Trooper's request, Petitioner submitted to field sobriety tests, including the horizontal gaze nystagmus, the one-leg-stand, and the walk-and-turn. Petitioner did not complete the standardized field sobriety evaluations to the satisfaction of the Trooper. *Testimony of Trooper Haynes.*

<sup>1</sup> The evidentiary record remained open after the evidentiary hearing to allow Petitioner to obtain a copy of the arrest video. Petitioner submitted the video recording of the arrest on January 26, 2015 and simultaneously served a copy on Respondent. This recording is admitted into the evidentiary record and referenced herein as "Petitioner Exhibit 1." The record was kept open until February 10, 2015, for Respondent to Respond.

4. The foregoing facts caused Trooper Haynes to believe that Petitioner had consumed an unknown quantity of alcohol in such a manner as to make Petitioner a less safe driver. *Testimony of Trooper Haynes.*

5. Trooper Haynes thereupon placed Petitioner under arrest for driving under the influence of alcohol and read the implied consent notice to her. Trooper Haynes requested that Petitioner submit to a chemical test of her breath. *Testimony of Trooper Haynes.*

6. After Trooper Haynes completed reading the implied consent notice, Petitioner requested a blood or urine test,<sup>2</sup> whereupon Trooper Haynes re-read the implied consent notice and requested that Petitioner submit to a blood test. Petitioner agreed to submit to the test designated by the Trooper. *Petitioner Exhibit 1.*

7. While she was sitting in the back of Trooper Haynes' patrol car, Petitioner asked the Trooper about her right to an independent test. Specifically, Petitioner asked Trooper Haynes whether the "independent test" language of the implied consent notice meant that she could have her own doctor perform a blood test. Trooper Haynes re-read the portion of the implied consent notice pertaining to Petitioner's right to an independent test and advised Petitioner that she could have her own independent test performed after she submitted to the state-administered test at the City of Atlanta jail. *Petitioner Exhibit 1.*

8. After she was transported to City of Atlanta jail, Petitioner reiterated her request for a blood and urine test, whereupon Trooper Haynes requested of the administrator of the state chemical tests that he obtain samples of Petitioner's blood and urine. *Petitioner Exhibit 1* (Time Stamp 1:04:40).

9. Petitioner's blood and urine samples were submitted to the Georgia Bureau of Investigation's Division of Forensic Sciences for analysis. The GBI disclosed the results of Petitioner's blood test in an Official Report dated April 24, 2014. Although the Official Report indicated that the GBI received Petitioner's urine sample, it did not include any urine test results. *Respondent Exhibit 1.*

### **III. Conclusions of Law**

1. Pursuant to O.C.G.A. § 40-6-392(a)(3), a DUI suspect has the right to "have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer." O.C.G.A. § 40-6-392(a)(3) (2014). A DUI suspect may invoke his or her right to an additional independent test by making "some statement that reasonably could be construed, in light of the circumstances, to be an expression of a desire for such test." *Ladow v. State*, 256 Ga. App. 726, 728 (2002).

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<sup>2</sup> *Petitioner Exhibit 1* (Time Stamp: 20:38).

2. O.C.G.A. § 40-6-392(a)(3) imposes a “corresponding duty on the part of law enforcement officers not to refuse or fail to allow the [DUI suspect] to exercise that right.” *Avant v. State*, 251 Ga. App. 165, 166 (2001); *State v. Buffington*, 189 Ga. App. 800, 801 (1989). Failure to allow a DUI suspect to exercise his or her right to an independent test, without justification, renders the results of the state-administered chemical test inadmissible. O.C.G.A. 40-6-392(a)(3) (2014); *State v. Braunecker*, 255 Ga. App. 685, 686 (2002); *Chamberlain v. State*, 246 Ga. App. 423, 425 (2000). In making the determination whether the failure or inability to obtain the additional independent test is justified, the trier-of-fact must discern whether, “under the totality of the circumstances, the officer made a reasonable effort to accommodate” the DUI suspect’s request. *McGinn v. State*, 268 Ga. App. 450, 451 (2004).

3. In the present case, Petitioner clearly invoked her right to an independent chemical test. Petitioner indicated that she wanted blood and urine tests immediately after Trooper Haynes read the implied consent notice at the scene of the arrest. *See, e.g., Ladow*, 256 Ga. App. at 729 (“[The] statement, ‘I want a blood test,’ sufficiently articulated [driver’s] desire to have an additional, independent test such that a law enforcement officer reasonably would have understood her statement to be a request for one.”). After she was placed in the patrol car, Petitioner discussed her right to independent tests with Trooper Haynes. She repeated her request for urine and blood tests after she was transported to the jail. *See McGinn v. State*, 268 Ga. App. 450, 453 (2004) (clear invocation of right to independent test where DUI suspect requested blood test on the scene and “re-initiated” discussion of his ability to obtain an independent blood test after transport).<sup>3</sup> Accordingly, because Trooper Haynes was unequivocally “on notice” that Petitioner was invoking her right to an independent test, she was thereupon obligated to make reasonable efforts to accommodate Petitioner’s request. *State v. Metzger*, 303 Ga. App. 17, 19 (2010); *Mathis v. State*, 298 Ga. App. 817 (2009).

4. Petitioner was not allowed the opportunity to obtain an independent test of her choosing and there is nothing in the evidentiary record to suggest that reasonable efforts were made to accommodate Petitioner’s request for an independent test. Trooper Haynes’ procurement of an additional state-administered urine test did not constitute a reasonable effort to accommodate Petitioner’s request for an independent test of her choosing. O.C.G.A. § 40-6-392(a)(3) imposes an unambiguous requirement that a DUI suspect be afforded an opportunity to obtain a chemical test or tests administered by a “qualified person of his own choosing . . . in addition to any administered at the direction of a law enforcement officer.” O.C.G.A. § 40-6-392(a)(3) (2014); *see Metzger*, 303 Ga. App. at 19 (“[T]he ‘qualified personnel of his own choosing’ language in OCGA § 40-6-392 (a) (3) is not superfluous . . .”). The legislative purpose behind this requirement is “to help[] dissipate any feelings the DUI suspect may have of collusion, fraud, or inaccuracy in the [s]tate-administered testing . . . [and to] enable[] the suspect to obtain independent evidence to refute a possible erroneous [s]tate test result.” *Jones v. State*, 218 Ga.

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<sup>3</sup> The present fact pattern is distinguishable from those in which the DUI suspect does not invoke his or her right to an independent test, but rather disputes the arresting officer’s designation of the chemical test. *See, e.g., England v. State*, 302 Ga. App. 12 (2009); *Mathis v. State*, 298 Ga. App. 817 (2009).


App. 675, 675-676 (1995) (citations omitted). Therefore, evidence that the arresting officer provided a DUI suspect with an additional state-administered test may not serve to fulfill the requirements expressed in O.C.G.A. § 40-6-392(a)(3). Accordingly, Respondent has not met its burden in demonstrating that the failure to allow Petitioner to obtain an independent test was justified, and the results of the state-administered chemical test are inadmissible pursuant to O.C.G.A. § 40-6-392(a)(3).

#### IV. Decision

**IT IS HEREBY ORDERED** that the decision of Respondent to administratively suspend 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 11th day of February, 2015.

  
MICHAEL MALIHI, Judge

The seal of the Office of State Administrative Hearings is circular. It features a central illustration of a classical building with columns and a pediment. The text "OFFICE OF STATE ADMINISTRATIVE HEARINGS" is written around the perimeter of the seal.