

GEORGIA OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

230 Peachtree Street
Suite 850
Atlanta, Georgia 30303
(404) 657-2806

DOCKET NO. OSAH-DDS-ALS-1314836-25-TEATE
AGENCY REFERENCE NO. 055027484

_____,
Petitioner,
vs.
DEPARTMENT OF DRIVER
SERVICES,
Respondent.

 ORIGINAL

HEARING BEFORE HONORABLE STEVEN TEATE

December 6, _____

5:23 p.m.

Municipal Court
100 Central Avenue
Garden City, Georgia

Amy Jo Kaska, CCR-2531

Gilbert & Jones, Inc.

Certified Court Reporters

7505 Waters Avenue, Suite F3

Savannah, Georgia 31406

912-355-0320, Toll Free: 877-355-0329, gilbertandjones1@bellsouth.net

APPEARANCES OF COUNSEL

On behalf of the Petitioner:

JASON CERBONE, Esq.
302 East Oglethorpe Avenue
Savannah, Georgia 31401
(912) 236-0595
jason@savannahduilawyer.com

On behalf of the Respondent:

OFFICER [REDACTED]
Savannah-Chatham Metropolitan Police Department
295 Police Memorial Drive
Savannah, Georgia 31405

1 THE COURT: Today is [REDACTED].
2 My name is Steven Teate. I'm the administrative
3 law judge at the Office of State Administrative
4 Hearings.

5 We're here today in the case of [REDACTED]
6 [REDACTED], Petitioner, versus Department of
7 Driver Services, Respondent, Docket Number
8 1314836.

9 This hearing is being held at the Garden
10 City Municipal Court in Garden City, Georgia.
11 Petitioner is represented by Jason Cerbone.
12 Agency is represented by Officer Mark Williams.

13 We're here today at the request of the
14 petitioner in response to an adverse agency
15 action consisting of the issuance of the DS-1205
16 form seeking to suspend the driver's license
17 regarding privileges of the petitioner in the
18 state of Georgia.

19 Based on the allegation, the petitioner
20 was operating a moving motor vehicle involving
21 O.C.G.A. 40-6-391, driving under the influence
22 of alcohol.

23 This hearing arises under the provisions
24 of 40-5-67.1 and provides for an administrative
25 license suspension pending a determination of

1 that underlying criminal charge. By evidentiary
2 standard places the initial burden on the agency
3 so I'll hear first from the officer. You'll
4 have an opportunity to cross-examine. Then if
5 petitioner gives testimony, the officer will
6 have the same right to cross-examination.

7 Do we need to review the scope of the
8 hearing?

9 MR. CERBONE: No, your Honor.

10 OFFICER [REDACTED]: No.

11 THE COURT: Officer, if you'll raise your
12 right hand.

13 Do you solemnly affirm the testimony
14 you're about to give is the whole truth and
15 nothing but the truth so help you God?

16 OFFICER [REDACTED]: I do.

17 THE COURT: Please state your name and
18 position for the record and then describe the
19 occurrences that led up to the issuance of the
20 DS-1205.

21 OFFICER [REDACTED]: Yes, your Honor.

22 My name is [REDACTED] [REDACTED]. I work for the
23 Savannah-Chatham Metro Police Department,
24 Precinct 1.

25 On December -- or correction. On

1 September 27th at approximately 1:41 in the
2 morning I observed a blue Legacy --

3 MR. CERBONE: Objection, your Honor. He's
4 reading from the report. We would ask that he
5 refresh his recollection --

6 THE COURT: If you need to refresh
7 yourself, you can go ahead and refresh yourself
8 and then not read from the report.

9 OFFICER WILSON: Sure. I was traveling
10 westbound -- or correction, eastbound on
11 Highlands Boulevard. I observed a vehicle
12 traveling at a high rate of speed. I estimated
13 it at 50 miles an hour in a 35-mile-an-hour
14 zone.

15 I initiated traffic stop to make contact
16 with the driver who was Ms. [REDACTED]. I asked
17 her if she knew the speed limit. She told me
18 she didn't -- she wasn't familiar with the area
19 and she didn't know the speed, so I informed her
20 it's 35 miles an hour -- or 35 miles an hour in
21 a residential area.

22 While talking to her, I detected an odor
23 of alcoholic beverages. I asked her if she had
24 been drinking and she denied that she had been
25 drinking. I informed her that I did detect an

1 odor of alcoholic beverages and if she would be
2 willing to do some sobriety tests. She agreed
3 to do sobriety tests.

4 I asked her to exit the vehicle. She
5 stepped out and we went to the side. She had on
6 high heels and asked if she needed to do the
7 test in high heels. I said that either way,
8 whatever your preference is, if you want to take
9 them off, you can take them off.

10 During the nystagmus test, I noticed,
11 observed four clues. She lacks smooth pursuit
12 in the right and left eye and she lacked -- she
13 had nystagmus at maximum deviation in the right
14 and left eye.

15 During the walk and turn test,
16 Ms. [REDACTED] could not stay in an instructional
17 position. She raised her hands for balance and
18 she stepped off the line on step three.

19 MR. CERBONE: Objection, your Honor. He's
20 reading from the report again.

21 THE COURT: If you'll just familiarize
22 yourself with the report and testify from that.

23 OFFICER [REDACTED]: Okay. Step three and
24 eight she stepped off the line -- or she took
25 ten steps and then stepped off the line again on

1 step eight. She turned incorrectly. And on the
2 one-legged stand she swayed while balancing.
3 She raised her hands and then put her foot down
4 on step -- or on count 1,003, put her step
5 down -- or put her foot down again on count
6 1,007 and 1,010.

7 At that time I asked her if she would be
8 willing to do a portable -- or do a portable
9 breath test. She agreed. I gave her a test on
10 my Alco-Sensor III and I have a serial number
11 for that. She had tested positive for alcohol
12 and I then placed her under arrest for DUI and
13 read her the implied consent for persons over 21
14 years of age.

15 I asked her if she was willing to perform
16 the state test and she refused the state test.
17 That's your -- that's it for my testimony.

18 THE COURT: There's nothing else you'd
19 like to add?

20 OFFICER [REDACTED]: I have the test results.
21 I do have the serial number and this is approved
22 Alco-Sensor III for the state test. The test
23 results were 0.155 grams.

24 MR. CERBONE: Objection, your Honor.

25 THE COURT: This is from the Alco-Sensor?

1 MR. CERBONE: It's hearsay.

2 OFFICER [REDACTED]: Alco-Sensor III test.

3 THE COURT: Sustained. That's not
4 admissible on a positive or negative for the
5 Alco-Sensor.

6 OFFICER [REDACTED]: Okay.

7 THE COURT: Anything else?

8 OFFICER [REDACTED]: No.

9 THE COURT: Do you wish to make
10 cross-examination or just proceed with your
11 motion?

12 MR. CERBONE: I actually -- well, I need
13 to ask him something on cross that he had said
14 and then we can let them -- first on the cross.

15 EXAMINATION

16 BY MR. CERBONE:

17 Q. You said she was in heels, high heels?

18 A. Yes, sir.

19 Q. And she actually asked you while you were
20 doing the test if she could stop -- if she could take
21 them off, right?

22 A. She asked before she started the test. I
23 said either way, if you want to wear the heels or if
24 you don't, whichever way you want to do the test.

25 Q. What were the instructions that you read

1 to her for this eye test that you gave her for the
2 HDN? What instructions did you read her?

3 A. It's what I need you to -- I didn't read
4 them to her. I gave her the instructions. I need
5 you to put your hands at your sides. I want you to
6 look at the tip of my finger with your eyes. Don't
7 move your head. Follow the tip of my finger with
8 your eyes and do not move your head.

9 And then for the -- I asked her if she
10 understood. She said she did and did the test.

11 Q. And on the walk and turn?

12 A. I'm sorry?

13 Q. You gave the walk and turn also?

14 A. Yes.

15 Q. What were the instructions you gave her
16 for that, the instructions you gave her?

17 A. The instructions for the walk -- the
18 standard --

19 Q. What were those that you gave her?

20 A. To go over each --

21 Q. Yeah, what instructions did you give her
22 to do?

23 A. Okay. Ma'am, what I'd like you to do is
24 place your foot on an imaginary line in front of you.
25 I want you to put your left foot on that line, put

1 your right foot heel, toe in front of your left foot
2 and keep your hands at your sides at all times.

3 Do you understand my instructions? Yes.

4 Stay in that position while I give you the
5 rest of the instructions. Do not start the test
6 until I tell you to begin. Do you understand my
7 instructions? Yes.

8 When I tell you to begin, what I want you
9 to do is take nine heel-to-toe steps forward, turn
10 yourself around with a series of short steps, which
11 I'll demonstrate for you, and take nine heel-to-toe
12 steps back. I demonstrate.

13 Do you understand my instructions? Yes.
14 Go ahead and perform the test.

15 Q. Okay. And did she have on her shoes or
16 was she barefoot at that point?

17 A. I believe she took off her shoes.

18 MR. CERBONE: I have no further questions.

19 Your Honor, we move to dismiss for lack of
20 showing the implied consent section.

21 THE COURT: I'll sustain that motion. The
22 case is dismissed. There was no either reading
23 of the implied consent for the record or intend
24 to offer the implied consent.

25 Further, there's no evidence here of

1 anything other than an Alco-Sensor being
2 administered and there's no condition whether
3 there was a refusal or whether there was a test
4 actually performed. There's no operator's
5 permit and no copy of the test results. Case
6 dismissed.

7 MR. CERBONE: Can I be excused?

8 THE COURT: You're excused.

9 (Hearing concluded at 5:36 p.m.)
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C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF EFFINGHAM:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 11 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 18th day of ~~December~~, 2010.



AMY JO KASKA, CCR-2531