

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

MARK WESLEY PARRISH,  
Petitioner,

v.

DEPARTMENT OF DRIVERS SERVICES,  
Respondent.

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: Docket No.: OSAH-DPS-ALS-1344563-42-Kennedy  
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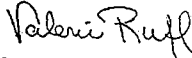
: Agency Reference No.: 03224376  
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**FINAL DECISION**

**I. Introduction**



Valeric Ruff, Legal Assistant

Petitioner requested a hearing in response to Respondent's issuance of an administrative license suspension of Petitioner's driver's license or privilege to drive in the State of Georgia in accordance with the provisions of O.C.G.A. § 40-5-67.1. For the reasons indicated below, Respondent's action is **REVERSED**.

**II. Findings of Fact**

1. The arresting officer initiated a stop as the result of a road block.
2. Petitioner was in actual physical control of a moving motor vehicle in this State at the time of the initial stop.
3. After approaching Petitioner, the arresting officer detected a strong odor of an alcoholic beverage, and noticed a plastic bag on the passenger seat. Petitioner told the arresting officer that the plastic bag contained a six-pack of beer. The arresting officer asked Petitioner how many beers he had consumed, and Petitioner told the arresting officer that four of the six beers had been consumed. The arresting officer also asked Petitioner to show him the contents of the plastic bag. The arresting officer observed that there were five Budweiser bottles in the plastic bag. At that time the arresting officer asked Petitioner to pull to the side of the road.
4. After Petitioner pulled to the side of the road, Petitioner admitted that there was one open alcoholic container in his vehicle. The arresting officer then asked if Petitioner suffered from any head, knee or back injuries that he should "be concerned about." Petitioner advised the arresting officer that he did suffer from back problems. Despite Petitioner's response, the arresting officer asked Petitioner if he would perform field sobriety evaluations. Petitioner refused to submit to any evaluations. The arresting officer also asked Petitioner if he would submit to an alco-sensor evaluation, but again Petitioner refused. When the arresting officer asked Petitioner why he was unwilling to agree to perform field sobriety evaluations or to blow into an alco-sensor, Petitioner advised the arresting officer that he would fail the evaluations and he knew he was going to be taken to jail.
5. These facts caused the arresting officer to believe that Petitioner had consumed an unknown quantity of alcohol in such a manner as to make Petitioner a less safe driver.
6. Petitioner was thereupon placed under arrest for driving under the influence of alcohol and read the applicable implied consent notice.
7. After being advised of the applicable implied consent notice, Petitioner refused to submit to the state designated test as requested by the arresting officer.

**III. Conclusions of Law**

1.

The arresting officer had reasonable grounds to believe Petitioner was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol. However, there is insufficient evidence in the record to establish that the arresting officer lawfully placed Petitioner under arrest for violating Code Section 40-6-391. See O.C.G.A. § 40-5-67.1(g)(2)(A)(i). See also State v. Ellison, 271 Ga. App. 898 (2005) (insufficient evidence of how the alcohol in Defendant's body would affect Defendant's driving ability, or how the alcohol impaired Defendant, for the officer to conclude that Defendant was a less safe driver.)

"Impaired driving ability depends solely upon an individual's response to alcohol. Because individual responses to alcohol vary, the presence of alcohol, in a defendant's body, by itself, does *not* support an inference that the defendant

was an impaired driver.” See Ellison supra. (emphasis in original) In this matter, there is no evidence that the arresting officer observed bloodshot, red, watery or glassy eyes, that Petitioner’s speech was slurred or otherwise impaired, that Petitioner was unsteady on his feet or had any difficulty exiting his vehicle, or any other personal manifestations or driving manifestations that would indicate that Petitioner’s consumption of alcohol impaired his ability to drive, or that his blood alcohol level was likely to exceed the state limit. Based on the evidence presented, the court concludes Respondent has not met its burden to establish that the arresting officer had probable cause to place Petitioner under arrest for violation Code Section 40-6-391.

2.

Accordingly, the suspension of the Petitioner’s driver’s license and driving privilege by Respondent is not authorized based on the present record. O.C.G.A. § 40-5-67.1.

#### 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 30<sup>th</sup> day of July, 2013.



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**ANA B. KENNEDY, Judge**