

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

**DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS**

IN THE MATTER OF

[REDACTED]

*
*
*
*
*
*

DOCKET NO.: 2013-3012-PS

LICENSE NO.: [REDACTED]

DECISION AND ORDER

The Department of Public Safety and Corrections suspended the driving privileges of [REDACTED] after he was arrested for driving while intoxicated. The suspension is recalled because the Department failed to prove that the requirements for the Louisiana Tests for Suspected Drunken Drivers law were met.

APPEARANCES

A hearing was conducted May 7, 2013, in Baton Rouge, Louisiana, before Administrative Law Judge Tameka Johnson. James Knipe, Counsel for [REDACTED], was present at the hearing.


STATEMENT OF THE CASE

[REDACTED] (Respondent) requested a hearing to challenge the suspension of his driving privileges by the Department of Public Safety and Corrections (Department). The Department alleges that Respondent refused to submit to an approved chemical test for intoxication. The hearing concerns the issues listed in La. R.S. 32:668(A). The Department submitted exhibits relating to the suspension. Respondent objected to the admission of the narrative on the basis that it is ambiguous and incompetent evidence. The objection was overruled and all of the documents were admitted into evidence. Respondent offered and introduced a copy of the Bill of Information and an extract of the court minutes from the related criminal hearing. The documents were admitted into evidence. Respondent argued that his

driver's license suspension should be recalled because the Certification of Arrest does not state the reason for the stop; the citation is not sworn; there is no evidence that Respondent had physical custody of a vehicle; and there were no reasonable grounds to believe that Respondent was under the influence of alcoholic beverages. Respondent submitted the matter for decision after argument.

This adjudication is conducted in accordance with the Division of Administrative Law Act, La. R.S. 49:991, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the Louisiana Tests for Suspected Drunken Drivers Law, La. R.S. 32:661, *et seq.*

FINDINGS OF FACT

 was arrested for driving while intoxicated in New Orleans, on January 10, 2013. The arrest arose from a traffic stop made by Sgt. E. Burk. The Certification of Arrest submitted by the Department does not state the reason the officer initiated the traffic stop. Respondent refused to submit to the Standardized Field Sobriety Tests and he refused to submit to the breath test.

CONCLUSIONS OF LAW

The Department did not properly suspend Respondent's driver's license because the statutory requirements of the Louisiana Tests for Suspected Drunken Drivers law were not met. The scope of the administrative hearing on a driver's license suspension is limited to the issues listed in the six subsections of La. R.S. 32:668(A). It is only necessary to address subsection 32:668 (A)(6).

(6) Additional matters as may relate to the legal rights of the person

This subsection allows consideration of rights afforded to the arrestee by law or jurisprudence. In a Test for Suspected Drunken Drivers matter, the burden of proof is initially on


Department.¹ When a person invokes the right to a hearing it is incumbent on the Department to prove by competent evidence all the facts necessary to support the suspension of driving privileges.² Jurisprudence has established that one such fact that the Department has the burden of proving is whether, absent a warrant, law enforcement officers had legal justification to invade upon a person's privacy by stopping his vehicle.³ Law enforcement officers must provide objective facts (other than a blanket concern for personal safety in all situations) that are sufficient to justify an intrusion upon the right to privacy secured by Article 1, sec. 5 of the Louisiana Constitution.⁴

The decision to stop a driver is reasonable when the police have justification to believe that a traffic violation has occurred. The Certification of Arrest failed to state the officer's reason for coming into contact with Respondent. The Department did not submit any other competent evidence to show the justification for the stop.

ORDER

IT IS ORDERED that the Department's proposed suspension of [REDACTED] driving privileges is **RECALLED**.

Rendered and signed on May 22, 2013 in Baton Rouge, Louisiana.



Tameka Johnson
Administrative Law Judge

¹ *Allen v. State Dept. of Public Safety* 554 So.2d 207 (La.App. 2 Cir., 1989).

² *State, Department of Public Safety, Drivers' License Division v. Moore*, 311 So.2d 20, 23 (La.App. 2 Cir. 1975); *Millen v. State, Department of Public Safety*, 2007-0845 (La.App. 1 Cir. 12/21/07), 978 So.2d 957; *State v. Meredith*, 36,483 (La.App. 2 Cir. 12/11/02), 833 So.2d 1125, 1128.

³ U.S. Const. amend. IV; La. Const. art. I, sec.5; *Whren v. U.S.*, 517 U.S. 806, 808; *State v. Morris*, 2003-0269 (La. App. 3 Cir. 9/10/03), 854 So.2d 989, 993; *Hagen v. State*, 94-0577 (La.App. 1 Cir. 3/3/95), 652 So.2d 600, 602; *Carmouche v. Department of Public Safety and Corrections*, 618 So.2d 1220, 1222 (La.App. 5 Cir. 1993); *Schultz v. Louisiana Dept. of Public Safety & Corrections*, 606 So.2d 962 (La.App. 3 Cir. 1992); *State v. Arnold*, 593 So.2d 1293, 1297 (La.App. 1 Cir. 1991).