

**DEPARTMENT OF MOTOR VEHICLES**  
**LICENSING OPERATIONS DIVISION**  
 Driver Safety Branch  
 5801 E. Slauson Ave. Flr 2, Ste 250  
 Commerce, CA 90040-3050



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**ADMINISTRATIVE PER SE - .08% BAC**  
**NOTIFICATION OF FINDINGS AND DECISION & ORDER OF SET ASIDE**

DRIVER LICENSE OR FILE NO.

ARREST DATE

November 07, 2020

**The stay of the suspension against your driving privilege has been ended. The suspension resulting from the arrest on November 07, 2020, is hereby set aside.**

is hereinafter also known as "Respondent."

The following findings and determinations are the results of your hearing on **April 07, 2021**.

**FINDINGS OF FACT**

I

**Probable Cause:**

On or about Saturday, November 07, 2020 at 2:28 PM, Officer Zilbert, Badge # 9851, of the Pasadena Police Department, contacted Respondent as a result of a traffic collision and, upon investigation, had determined that Respondent was a suspect driver involved in the collision and that Respondent had fled the scene of the collision in violation of California law.

The determination of driving was based on: Respondent's admission of driving to Officer Zilbert

The time of the collision is determined to have been 2:28 PM, based on:

- ° As stated by Officer Zilbert during direct testimony.

The evidentiary basis for the finding on the probable cause issue is:

- ° DMV Exhibits: Accident Report, Arrest Report & DS-367.
- ° The testimony of Officer Zilbert confirms the events.

II

**Objective Symptoms:**

Subsequent to making contact with Respondent, Officer Zilbert formed the belief that Respondent was intoxicated after having observed the following objective symptoms of intoxication:

- ° Bloodshot and watery eyes.
- ° Odor of alcoholic beverage.
- ° Unsteady gait.
- ° Slurred speech.

Officer Zilbert also considered the following as contributing factors in forming the belief of intoxication:

- ° Unsatisfactory Field Sobriety Tests.
- ° An admission of alcohol consumption.

The evidentiary basis for the finding on the objective symptoms of intoxication issue is:

- ° The DS-367 (Officer's Sworn Statement).
- ° The Arrest Report.



III

**Reasonable Cause:**

Based on the preceding findings concerning probable cause, Officer Zilbert's determination of driving, the Officer's belief that Respondent was intoxicated because of the objective symptom of intoxication, and the additional reported factors that the Officer used to form the belief of intoxication, it is hereby determined that Officer Zilbert had reasonable cause to believe that Respondent was driving a motor vehicle while under the influence of alcohol.

IV

**Lawful Arrest:**

On 11/7/2020, at 2:50 PM Respondent was arrested for violation of Vehicle Code Section 23152, 23153, or 23140.

The determination that Respondent was arrested under the charge of driving under the influence, Vehicle Code Section 23152, 23153, or 23140 is based on:

° The testimony of Officer Zilbert at the hearing that Respondent was verbally informed of the charge at the time of the arrest.

The authority to arrest Respondent was granted to Officer Zilbert under Section 40300.5 of the California Vehicle Code.

As a result of the reasonable cause determination and the subsequent findings of an arrest taking place, it is hereby determined that Respondent was lawfully arrested for a violation of Vehicle Code Section 23152, 23153, or 23140.

V

**Chemical Test:**

As based on the evidence presented for this matter, it is hereby determined that Respondent submitted to and completed a chemical test of his blood, with a result of 0.14 % B.A.C. at 06:55 PM on 11/7/20.

The claim that the time that the blood sample was collected more than three hours after driving is supported based on the following: Officer Zilbert acknowledged that the chemical test was over the three hour presumption because she had to clear the scene of the accident. Furthermore, during direct testimony, expert witness De La Cerda stated she did not have enough information to extrapolate the BAC at the time of driving.

As a result of the preceding finding the administrative action against Respondent's driving privilege cannot be upheld in this case.

VI

**Driving With B.A.C. At Or Above 0.08%:**

Based on the preceding it is determined that the preponderance of evidence in this case supports that Respondent was not driving a motor vehicle at the time that the concentration of alcohol in his blood was at or above 0.08%.

**DETERMINATION OF ISSUES**

- 1) The peace officer had reasonable cause to believe you were driving a motor vehicle in violation of Vehicle Code Section 23140, 23152, or 23153.
- 2) You were placed under lawful arrest.
- 3) You were not driving a motor vehicle when you had .08% or more by weight of alcohol in your blood.

**DECISION**

As a result of the preceding Findings & Determination, suspension of your driving privilege is hereby set aside as specified here in these documents.

Dated: April 13, 2021

 - Driver Safety Officer

**THIS ACTION IS INDEPENDENT OF ANY OTHER ACTION TAKEN BY THE COURT OR THIS DEPARTMENT**