

DEPARTMENT OF MOTOR VEHICLES
LICENSING OPERATIONS DIVISION
Driver Safety Branch
1365 N. Grand Ave., Suite 101
COVINA, CA 91724-1016



Telephone: (626) 974-7137 FAX: (626) 974-7118

**ADMINISTRATIVE PER SE - REFUSAL
NOTIFICATION OF FINDINGS AND DECISION & ORDER OF SET ASIDE**

[REDACTED]

DRIVER LICENSE OR FILE NO. [REDACTED]
ARREST DATE December 03, 2019

The stay of the suspension against your driving privilege has been ended. The suspension resulting from the arrest on December 03, 2019, is hereby set aside.

[REDACTED] is hereinafter also known as "Respondent."

The following findings and determinations are the results of your hearing on June 15, 2020

FINDINGS OF FACT

Probable Cause:

On or about Tuesday, December 3, 2019, Officer Son, Badge # 796, of the Arcadia Police Department, contacted Respondent as a result of a traffic collision and, upon investigation, had determined that Respondent had been driving a motor vehicle involved in the collision.

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

The time of the collision is determined to have been within three hours prior to the subsequent chemical test taken by the Respondent, based on:

- An admission by respondent to arresting officer.

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

- DMV Exhibits: Accident Report, Arrest Report, DS-367, Supplemental Report & Arresting officer Sons testimony.

II

Objective Symptoms:

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

- Odor of alcoholic beverage.
- Unsteady gait.
- Slurred speech.

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

- The DS-367 (Officer's Sworn Statement),
- The Arrest Report.
- The Supplemental Report.
- The Accident Report.

III

Reasonable Cause:



5

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

IV

Lawful Arrest:

On 12/3/2019, at 8:03 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:

- » Explicit statements in DMV's documentary evidence.

The authority to arrest Respondent was granted to Officer Son 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

Admonition & Refusal:

The following is the determination of the trier of fact for each indicated contention raised by the Respondent and the findings for each of the indicated primary issues.

ISSUE: Was Respondent admonished that his driving privilege would be suspended or revoked if he refused or failed to complete a required chemical test to determine the alcohol content of his blood?

- » Respondent Contends: The chemical test admonition was never presented.

» Determination: Contention is supported by the respondent's testimony that he was never admonished and supported by Officer Son's testimony that reflects that Officer Son was a new officer and confused by the PAS, Evidential Breath and Blood tests. The respondent clearly refused did not want to submit to the Field Sobriety Tests, then respondent changed his mind about the tests. Officer Son testified that after the respondent was arrested, he was asked to take a breath test, blood or urine test, but the respondent remained silent. Officer Sun testified that he does not recall if he administered the refusal admonition, nor if he remembered stating the consequences of the refusal to the respondent. Audio documentation revealed that Officer Sun read the refusal admonishment after the respondent was being released from jail, and was told by another Officer that it was too late to admonish the respondent, because the respondent had already refused to take required tests. Officer Son never made it clear to the other Officer's that he never admonished the respondent before placing him in the sobering up tank, nor told him the consequences of not submitting to evidentiary tests.

- » The evidentiary basis for the preceding determination(s): 1)

Testimony provided by the respondent regarding not being read the refusal admonition was supported by arresting Officer Son's testimony, in that, the officer testified that he does not recall reading the refusal admonition to the respondent.

FINDING: Respondent was told that his driving privilege would be suspended or revoked if he refused to complete the required testing.

ISSUE: Did Respondent refuse to take or fail to complete a chemical test or tests after being requested to do so by a peace officer?

- » Respondent presented no contentions against this issue and the following finding is based on the Department's evidence associated with this matter.

FINDING: Respondent did refuse or fail to complete the chemical test or tests after being requested to do so by a peace officer.

VI

Other Findings:

" The testimony of Officer Son is deemed credible in that the capacity to recollect the events testified to is reliable, because: The officer confirmed under testimony that he could not recall admonishing the respondent.

Therefore, it is hereby determined that Respondent did not refuse or fail to complete the chemical test or tests after being requested to do so by a peace officer. As a result the administrative action in this case cannot be upheld.

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 told that your driving privilege would be suspended or revoked if you refused to complete the required testing.
- 4) You did not refuse or fail to complete the chemical test or tests after being requested to do so by a peace officer.

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: July 14, 2020

Driver Safety Officer

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

DATE 7/14/2020	SIGNATURE OF AUTHORIZED DMV EMPLOYEE 
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California Relay Telephone Service for the deaf or hearing impaired from TDD Phones: 1-800-735-2929; From Voice Phones: 1-800-735-2922

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