

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]
Frank L. Perez
524 E Lemon Ave
Arcadia, CA 91006

DRIVER LICENSE OR FILE NO. [Redacted]
ARREST DATE January 23, 2019

The suspension of your driving privilege, effective March 26, 2019, is hereby set aside.

[Redacted] hereinafter also known as "Respondent."

The following findings and determinations are the results of your hearing on April 01, 2020.

FINDINGS OF FACT

I

Probable Cause:

On or about Wednesday, January 23, 2019 at 12:43 AM, Officer Hernández, Badge # 714, of the Arcadia Sheriff's Department, observed Respondent driving a motor vehicle and one of his rear taillights was not working and he straddled the yellow line multiple times, a violation of the California Vehicle.

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

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

II

Objective Symptoms:

Subsequent to making contact with Respondent, Officer Hernández 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.

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

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

III

Reasonable Cause:

Based on the preceding findings concerning probable cause, Officer Hernández'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 Hernández had reasonable cause to believe that Respondent was driving a motor vehicle while under the influence of alcohol.

IV

Lawful Arrest:

On 1/23/2019, at 1:08 AM 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.

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 are the determinations 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?

» Counsel Contends: The Respondent was not properly admonition.

» Determination: Contention is supported by the evidence presented by the testimony of the Respondent and the arresting officer. The Respondent testified that he was told that if he refused to consent to a breath or a blood test, his license would be suspended. The arresting officer testified that after the Respondent refused to provide a breath or a blood test, he told the Respondent that his license would be suspended. Later the officer stated that he did admonish him as to the consequence of refusing. However, the officer testified that he does not specially remember on this case reading the refusal admonition but that it is his normal practice to read the form. The officer stated that it would be captured on the jail video. The video does not reflect the arresting officer reading him the chemical test admonition. Based on the above findings it is hereby concluded that the administrative action against Respondent's driving privilege cannot be upheld.

VI

Other Findings:

◦ The demeanor or attitude of Officer Hernández while testifying is credible, in that: Officer Hernández made no attempt to conceal any information, and gave no verbal indication of being in favor of any party present at this proceeding.

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

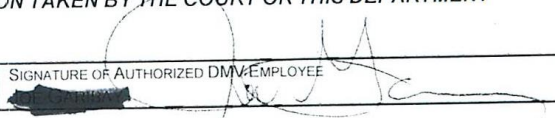
DECISION

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

Dated: April 01, 2020


Driver Safety Officer

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

DATE 4/1/2020	SIGNATURE OF AUTHORIZED DMV EMPLOYEE 
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