

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

**DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS**

IN THE MATTER OF

████████████████████

* **DOCKET NO.: 2018-4369-PS**
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* **LICENSE NO.: 10328002-CV-03**

DECISION AND ORDER

The Department of Public Safety and Corrections suspended the driving privileges of ██████████ after he was arrested for driving while intoxicated. The suspension is **recalled** because the Department failed to meet its burden of proving the criteria required to suspend driving privileges under the Louisiana Tests for Suspected Drunken Drivers law.

APPEARANCES

A hearing was conducted July 2, 2018, before Administrative Law Judge Danny R. Woods. Cliff Cardone, counsel, appeared on behalf of ██████████

STATEMENT OF THE CASE

The Department of Public Safety and Corrections (Department) suspended the driving privileges of ██████████ (Respondent) after he was arrested for driving while intoxicated. Respondent requested a hearing to challenge the suspension. The hearing concerned the issues listed in La. R.S. 32:668(A). At the hearing, the records and documents provided by the Department were admitted into evidence. Counsel for Respondent argued in favor of recalling the suspension of Respondent's driving privileges. The record was closed and the matter taken under advisement.

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

Officer Brian E. Sullivan of the New Orleans Police Department arrested Respondent March 15, 2018, for driving while intoxicated on Tchoupitoulas Street in Orleans Parish. Officer Sullivan came into contact with Respondent at a sobriety checkpoint. The Department suspended Respondent's driving privileges because he submitted to a chemical test for intoxication and the result exceeded the legal limit.

CONCLUSIONS OF LAW

The Department's suspension of Respondent's driving privileges is recalled because the Department failed to meet its burden of proving that the requirements of the Louisiana Tests for Suspected Drunken Drivers law were met. The scope of an administrative adjudication regarding the suspension of driving privileges is limited to the issues listed in the six subsections of La. R.S. 32:668(A). An analysis of the sixth subsection, La. R.S. 32:668(A)(6), is dispositive. The scope of this subsection covers such additional matters as may relate to the legal rights of the person and rights afforded to the person by law or jurisprudence. The Department has the burden of providing sufficient specifically articulated facts to allow a determination to be made as to whether a law enforcement officer was justified in coming into contact with a person.¹

The initial contact occurred when Respondent was stopped at a checkpoint. To prove that law enforcement officers had justification for coming into contact with Respondent, the Department must first prove that the checkpoint was constitutionally conducted.

¹ *Jaubert v. Dep't of Pub. Safety*, 323 So. 2d 212 (La. App. 4th Cir. 1975); *Carmouche v. Dep't of Pub. Safety and Corr.* 618 So. 2d 1220 (La. App. 5th Cir. 1993); *Brown v. State, Dep't of Pub. Safety, License Control & Driver Imp. Div.*, 11-1224 (La. App. 1 Cir. 6/1/12) 2012 WL 1986505.

*In State v. Jackson*² it was established that in determining the propriety of a checkpoint stop an inquiry had to be made regarding, “whether or not the governmental interest outweighed the concern for the protection of the individual’s reasonable expectation of privacy.”³ In making the determination of whether a checkpoint would “withstand constitutional muster, the *Jackson* case developed guidelines to limit the “unbridled discretion of the officer in the field conducting a checkpoint.”⁴ Sufficient evidence to prove compliance with the guidelines must be established for the Department to prove that the checkpoint was constitutionally conducted.⁵

No evidence was presented as to whether field officers, supervisory, or administrative personnel established the location, time, and duration of the checkpoint or any other regulations governing the operation of the checkpoint. No evidence was presented as to what advance warnings, if any, were provided to approaching motorists to warn of the impending stop and the official nature of the police checkpoint. No evidence was presented as to whether the detention of the motorists was for a minimal length of time. No evidence was presented as to what criteria were used for stopping motorists.⁶

The Department failed to present evidence regarding compliance with any of the four guidelines. The lack of evidence precludes the opportunity to determine whether Respondent was subjected to a valid checkpoint. The evidence provided was insufficient to provide

² *State v. Jackson*, 00-0015 (La. 7/6/00), 764 So. 2d 64.

³ *Id.*

⁴ *State v. Jackson*, 00-0015 (La. 7/6/00), 764 So. 2d 64 established the following guidelines for evaluating whether a checkpoint’s intrusiveness withstands constitutional muster: 1) the location, time and duration of a checkpoint, and other regulations for operation of the checkpoint, preferably in written form, must be established by supervisory or other administrative personnel rather than the field officers implementing the checkpoint, 2) advance warning to the approaching motorist with signs, flares and other indications to warn of the impending stop in a safe manner and to provide notice of its official nature as a police checkpoint, 3) detention of the motorist for a minimal length of time, and 4) use of a systematic, nonrandom criteria for stopping motorists.

⁵ *Id.*

⁶ *Id.* at p. 72-73.

justification for a law enforcement officer to come into contact with Respondent.

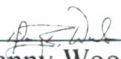
The Department failed to meet its burden of proving the criteria required to suspend driving privileges under the Louisiana Tests for Suspected Drunken Drivers law.

ORDER

IT IS ORDERED that the Department of Public Safety and Correction's suspension of [REDACTED] driving privileges is **RECALLED**.

Rendered and signed July 19, 2018, in Baton Rouge, Louisiana.

NOTICE OF TRANSMISSION OF DECISION OR ORDER



Danny Woods
Administrative Law Judge

I certify that on Thursday, July 19, 2018, I have sent a copy of this decision/order to all parties of this matter.

Clerk of Court
Division of Administrative Law

REVIEW RIGHTS

Please be advised that you may be entitled to a rehearing or reconsideration of this decision within 10 days of the date of this transmission, if you can establish that one of the legal grounds listed in La. R.S. 49:959 is applicable to your case. Requests for a rehearing or reconsideration must be received by the Division of Administrative Law within 10 days of the date of this transmission. You may fax your request to (225) 342-1812 or email it to DPSprocessing@adminlaw.state.la.us. You may also be entitled to judicial review of this decision within certain time limits. To determine your rights to review you should act promptly and seek legal advice.