

DEPARTMENT OF MOTOR VEHICLES
LICENSING OPERATIONS DIVISION
Driver Safety Branch
 2510 South East Avenue, Suite 310
 Fresno, CA 93706-5116



Telephone: (559) 445-6399 FAX: (559) 445-6398

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



DRIVER LICENSE OR FILE NO.
ARREST DATE May 30, 2017

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**The stay of the suspension against your driving privilege has been ended. The suspension resulting from the arrest on May 30, 2017, is hereby set aside.**

 is hereinafter also known as "Respondent."

The following findings and determinations are the results of your hearing on December **08, 2017**.

**APPEARANCE:**

1. Michael Aed, Attorney For Respondent

**DEPARTMENT'S PRESENTATION:**

1. DS367/Ave 21 And Older Officer's Statement
2. Arrest Report
3. Blood Results
4. Driving Record Printout

**RESPONDENT'S PRESENTATION:**

- A. Counselor's Arguments

**FINDINGS OF FACT**

I

**Reasonable Cause:**

On or about Tuesday, May 30, 2017 at 2:23 AM, as a result of the following circumstances: Officer Baca, Badge # 10440, of the Fresno CHP, initially made contact with Respondent under the following circumstances: Officer Baca indicates in his sworn report that he received a "be on the lookout" request from the Fresno Communication Center. He states he was given a description of the vehicle as being a black Honda Accord. The officer indicates he observed a black sedan pass their location and positioned himself behind the vehicle. The officer indicates the vehicle he was behind was a Ford Fusion, not a Honda Accord as described. The officer indicates he and his partner initiated a stop on this vehicle, and once the vehicle pulled over he contacted the driver who had symptoms of intoxication, and at this point started a possible DUI investigation.

Based on the preceding, Officer Baca did not have reasonable cause to believe that Respondent was driving a motor vehicle while under the influence of alcohol.

II

**Lawful Arrest:**



Because of the fact that reasonable cause could not be established, it is hereby determined that Respondent was not lawfully arrested for a violation of driving under the influence of alcohol.

As a result of the findings contained herein, the administrative action against Respondent's driving privilege cannot be upheld in this case.

**ADDITIONAL FINDINGS:**

Counselor contends the officer did not have probable cause to contact his client; therefore, the arrest was unlawful in this case.

Counselor's contention was considered, and based on his argument this case was set aside because: The officers observed a dark colored vehicle, but knew that this was not the vehicle that they were given a description of prior to pulling the vehicle over, therefore this hearing officer finds the officers did not have probable cause to contact respondent, and this case will be set aside.

**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 not 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: December 08, 2017**

**Floyd Marshall - Driver Safety Officer**

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

|                   |                                                          |
|-------------------|----------------------------------------------------------|
| DATE<br>12/8/2017 | SIGNATURE OF AUTHORIZED DMV EMPLOYEE<br>FLOYARD MARSHALL |
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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**

**cc: Michael Aed, Attorney at Law  
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