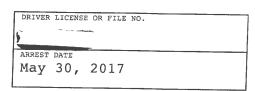
DEPARTMENT OF MOTOR VEHICLES LICENSING OPERATIONS DIVISION Driver Safety Branch 2510 South East Avenue, Suite 310 Fresno, CA 93706-5116

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



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





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
- Arrest Report
- 3. Blood Results
- 4. Driving Record Printout

RESPONDENT'S PRESENTATION:

A. Counselor's Arguments

FINDINGS OF FACT

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.

Lawful Arrest:



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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

Floyard Marshall - Driver Safety Officer

THIS ACTION IS INDEPENDENT OF ANY OTHER ACTION TAKEN BY THE CO.

N TAKEN BY THE COURT OR THIS DEPARTMENT

DATE 10/0/004

12/8/2017

SIGNATURE OF AUTHORIZED DIVIVE PLOYEE

FLOYARD MARSHALL

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 2140 Merced St. #102 Fresno, Ca 93721