
PARTIES/ATTORNEYS

Plaintiff	Ariana Garcia	William Makler
Defendant	Steve Gordon, Director of Department of Motor Vehicles	Rob Bonta Attorney General of California Gabrielle H. Brumbach Supervising Deputy Attorney General Dennis D. Gutierrez Deputy Attorney General

Factual and Procedural Background**1. The Arrest**

On March 2, 2024, at approximately 3:20 p.m., California Highway Patrol (CHP) Officer Nathan Burd responded to a traffic collision involving petitioner Ariana Garcia. During his investigation, Burd spoke to Garcia while she was receiving medical treatment in an ambulance, observed that Garcia's eyes were "red and watery," and smelled alcohol on Garcia's breath. When Burd asked about this, Garcia said that she had "one shot of vodka at a friend's house." Later, Burd spoke to Garcia at Lompoc Valley Medical Center, whereupon he formed the opinion Garcia had been operating a motor vehicle while "under the influence of an alcoholic beverage" and arrested Garcia for violating Vehicle Code section 23152, subdivision (a).¹

Burd read Garcia the Chemical Test Admonition verbatim by reading the refusal portion of the DMV DS367 form. Garcia refused multiple times to submit to a chemical test. Burd attempted to obtain a search warrant for Garcia's blood sample but neither Burd nor his colleagues could obtain one in a timely manner. As a result, Burd ordered a phlebotomist to conduct a warrantless blood draw. While the blood draw was being prepared, Garcia remained uncooperative. Following the blood test and medical clearance, Garcia was transported and booked into the Santa Barbara County Jail in Santa Maria. As a consequence, her license was suspended for failure to submit to a chemical test pursuant to Vehicle Code section 13353.

2. DMV Upholds Suspension Following Administrative Hearing

¹ Although Garcia was allegedly driving under the influence of alcohol, she was determined to not be the at fault party for the crash.

Following Garcia's arrest, the DMV revoked her driving privilege. After Garcia requested an administrative hearing, the DMV stayed its revocation of Garcia's driving privilege pending the hearing's outcome. On April 23, 2024, DMV Driver Safety Officer Jose Trinidad held a hearing to determine, among other things, whether Garcia refused or failed to complete a chemical test or tests as requested by Burd. (See Veh. Code, §§ 13557, subds. (b)(1)(A)–(D), 13558, subd. (c)(1).)² On behalf of the DMV, Trinidad admitted into evidence Burd's Sworn Officer's Statement as Exhibit 1 (AR007-010), the Driving Under the Influence Arrest-Investigation Report as Exhibit 2 (AR011-013), the Traffic Crash Report as Exhibit 3 (AR014-020), the MVAR (video) as Exhibit 4 (AR031) and Ms. Garcia's driving record as Exhibit 5. (AR032-034.) Garcia objected to admission of Exhibits 1-4 based on hearsay and lack of foundation. All objections were overruled. (AR039-040.)

Garcia presented argument that there was insufficient sworn evidence that she refused a chemical test because the Sworn Officer's Statement (Exhibit 1) reported only the fact of her refusal and described none of the circumstances surrounding the refusal. On May 10, 2024, the DMV issued a "Notification of Findings and Decision" (AR003-006) wherein Trinidad found that Garcia's "contention is deemed without merit based on the department's evidence (Exhibit #3). The traffic collision report completed by Officer Burd indicates that the respondent was read the chemical test admonition verbatim in which the respondent refused to submit to a test." Trinidad consequently found that Garcia "did refuse or fail to complete the chemical test or tests after being requested to do so by a peace officer." (AR004.) Based on these findings, the DMV re-imposed its revocation of Garcia's driving privilege. (AR005.)

Garcia timely challenges the decision in this court by writ of mandate. (§ 13559.) On July 3, 2024, this court stayed Garcia's suspension pending entry of judgment on the petition. (Code Civ. Proc., § 1094.5, subd. (g).) The administrative record has been filed and the matter has been fully briefed.

Discussion

1. Implied Consent Law

If a person is lawfully arrested for driving under the influence of alcohol, he or she is deemed to have given his or her consent to chemical testing of his or her blood or breath to determine blood alcohol content. (§ 23612, subd. (a)(1)(A); *Garcia v. Department of Motor Vehicles* (2010) 185 Cal.App.4th 73, 81.) A driver lawfully arrested for driving under the influence of alcohol has the choice of a breath or blood test, and the arresting officer shall inform the driver of that choice. (§ 23612, subd. (a)(2)(A).) "If the person arrested either is incapable, or states that he or she is incapable of completing the chosen test, the person shall submit to the remaining

² All subsequent statutory references are to the Vehicle Code, unless indicated otherwise.

test.” (*Ibid.*) A person who refuses to submit to, or fails to complete, a chemical test under section 23612 is subject to suspension of his or her driving privileges, among other sanctions. (§ 13353.) The officer shall tell the arrestee that his or her failure to submit to, or failure to complete, the required chemical testing will result in a fine and suspension or revocation of driving privileges. (§ 23612, subd. (a)(1)(D).) If the lawfully arrested motorist refuses to submit to a chemical test as requested by a peace officer, the DMV is required to suspend his or her driving privilege. (§ 13353; *Garcia, supra*, 185 Cal.App.4th at p. 81.)

The subsequent procedure is as follows: “[W]hen a person is arrested for driving under the influence and is determined to have a prohibited blood-alcohol concentration, the arresting officer or the DMV serves the person with a notice of order of suspension. [Citations.] The notice informs the driver the license suspension will be effective 30 days from the date of service, states the reason and statutory grounds for the suspension, and explains the driver's right to seek an administrative hearing. [Citations.] [¶] After the arresting officer serves a driver with the notice of order of license suspension, the DMV conducts an automatic internal review of the merits of the suspension. [Citations.] In its review, the DMV considers the sworn report submitted by the peace officer and any other evidence accompanying the report. [Citation.]” (*MacDonald v. Gutierrez* (2004) 32 Cal.4th 150, 155.)

In addition to the automatic internal review, the driver may request a hearing, in which case the DMV holds a contested review hearing on its decision to suspend a license. The hearing encompasses the following issues: “(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle [under the influence of alcohol; ¶] (2) Whether the person was placed under arrest; ¶] (3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer; ¶ and] (4) Whether, except for a person ... who is incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests.” (§ 13353, subd. (d)(1)–(4).)

The rules governing the evidence available for use in such hearings are set forth in division 6, chapter 3, article 3 of the Vehicle Code, commencing with section 14100. [Citation.] Two provisions are especially relevant for our purposes. First, section 14104.7 states in pertinent part: “At any hearing, the department shall consider its official records and may receive sworn testimony.” Second, for all matters not specifically covered by division 6, chapter 3, article 3 of the Vehicle Code, section 14112 incorporates the provisions of the Administrative Procedures Act governing administrative hearings generally. Government Code section 11513 addresses the admissibility of evidence in administrative hearings. It states in relevant part: “The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant

evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. (*MacDonald, supra*, 32 Cal.4th at p. 156.)

In *MacDonald, supra*, 32 Cal.4th at page 159, the court concluded that under the statutory scheme, the DMV can consider the arresting officer's sworn and unsworn reports. “A police officer's report, even if unsworn, constitutes “the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.” ‘ [Citation.] Again, too, we must not lose sight of the reason for the ‘slight relaxation of the rules of evidence applicable to an administrative per se review hearing[.]’ ... [¶][S]o long as a sworn report is filed, it is consistent with the relaxed evidentiary standards of an administrative per se hearing that technical omissions of proof can be corrected by an unsworn report filed by the arresting officer.”

However, the *MacDonald* court also noted: “Section 13380 provides the arresting officer's sworn report will contain ‘all information relevant to the enforcement action.’ Therefore, the Legislature clearly anticipates the sworn report will contain all or nearly all of the information necessary to remove the offender's license. In light of this legislative intent, *the sworn report cannot be wholly devoid of relevant information.*” (*Id.* [Italics added].)

2. Relevant Legal Standards Applicable to Writ

In ruling on a petition for a writ of mandate seeking to set aside a driver's license suspension, the trial court uses its independent judgment to determine whether the weight of the evidence supports the administrative decision. (*Lake v. Reed* (1997) 16 Cal.4th 448, 456; *Murphey v. Shiimoto* (2017) 13 Cal.App.5th 1052, 1068–1069 (*Murphey*).) “Even exercising its independent judgment, the trial court still ‘must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.’” (*Manriquez v. Gourley* (2003) 105 Cal.App.4th 1227, 1223.)

3. Application

A critical inquiry at the DMV hearing was whether Garcia refused to take or failed to complete a chemical test when requested to do so by the Officer. (§ 13353, subd. (d)(3).) Relying on *MacDonald*, Garcia argues that the weight of the evidence does not support the DMV's determination that she refused to submit to a chemical test because Burd's sworn statement is “wholly devoid of relevant information” regarding Garcia's alleged refusal. Case law advises that “[i]n determining whether an arrested driver's conduct amounts to a refusal to submit to a test, the court looks

not to the state of mind of the arrested driver, but to ‘the fair meaning to be given [the driver’s] response to the demand he submit to a chemical test.’ (*Payne v. Department of Motor Vehicles* (1991) 235 Cal.App.3d 1514, 1518.) Based on this interpretation, Garcia argues that the sworn report must contain sufficient information to make such an assessment.³ Stated differently, Garcia argues that resort to the unsworn reports are not permissible to make this determination.

To put the argument in context, the sworn Officer’s Statement must be described. DMV form DS 367 is titled “Age 21 and Older Officer’s Statement.” The form consists of three pages. The first and second pages are the officer’s statement. The third page is the “Administrative Per Se Suspension/Revocation Order and Temporary Driver License.” On page 1, the violation is described by checking a box next to “Chemical Test Refusal (Complete Reverse).” On the back of page 1, the content of the Chemical Test Admonition appears, with a space on which to record the date and time the admonition was given to the driver. The admonition states: “If you refuse to submit to, or fail to complete a chemical test, your driving privilege will be administratively suspended for one year or administratively revoked for two or three years by the Department of Motor Vehicles.” The form provides a section on which to record the driver’s response the admonition. The form directs: “Include statements or actions by the driver that indicate a refusal or failure of each test.” This directive is followed by three questions listed sequentially, each preceded by a checkbox: “Will you take a Preliminary Alcohol Screening Test?” Will you take a Breath Test? and “Will you take a Blood Test?” Each question is followed by a blank line. In this case, Burd wrote “Refusal” on each line. (AR008.) No other sworn testimony was given on the point.

The court rejects the proposition that the sworn report was “wholly devoid of relevant information.” The facts of this case are analogous to those in *MacDonald*. In *MacDonald*, the court was confronted with whether the sworn statement of the arresting officer adequately supported a finding that the officer had reasonable cause to believe that MacDonald was driving under the influence. The sworn report in *MacDonald* contained little relevant information other than the reason for the stop. (*MacDonald, supra*, 32 Cal.4th at p. 154—“OBS, S/V [subject vehicle] DRIVING W/B 101 DESOTO TO TOPANGA WEAVING SIDE TO SIDE IN W-1 LANE—STOP MADE.”) All the details concerning MacDonald’s symptoms of alcohol intoxication, admissions of drinking and administration of field sobriety tests were set forth in unsworn reports (i.e., Driving Under the Influence Arrest/Investigation Report (CHP form 202) [the same report at issue here] and the narrative/supplement report (CHP form 556).) (*Id.* at pp. 153-154.) Our Supreme Court nevertheless found the sworn report complied with “the intent and spirit” of the administrative per se law. (*Id.* at p. 154.) In other words, the Cal. Supreme Court determined that officers’ unsworn reports were admissible because the

³ To be clear, Garcia does not actually challenge whether she refused to take a chemical test or whether there was any ambiguity in her refusal.

documents were deemed to be “ ‘the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.’ ” [Citations.]” (*MacDonald, supra*, 32 Cal.4th at p. 159.) In doing so, the court focused on section 13557, which “provides that the DMV ‘shall consider the sworn report submitted by the peace officer ... and any other evidence accompanying the report ...’ ” (See *MacDonald, supra*, 32 Cal.4th at p. 158.)

In this case, the sworn report is no more devoid of information as the report in *MacDonald*. The critical fact of refusal was duly recorded in the sworn statement—as was the critical fact underlying the stop in *MacDonald*. As in *MacDonald*, “so long as a sworn report is filed, it is consistent with the relaxed evidentiary standards of an administrative per se hearing that technical omissions of proof can be corrected by an unsworn report filed by the arresting officer.” (*MacDonald, supra*, 32 Cal.4th at p. 159.) Officer Burd’s unsworn reports were admissible as “the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs” in the administrative hearing setting. (Gov. Code, § 11513; see also *MacDonald, supra*, 32 Cal.4th at p. 159.) As Garcia concedes, Burd “states in his unsworn Traffic Crash Report that Garcia refused numerous times to submit to a chemical test and failed to cooperate fully with the phlebotomist during the blood draw. (Ex. 2, 12.)” (Petitioner’s Opening Brief, p. 5, ll. 17-19.) As such details were fully described, and Hearing Officer Trinidad was permitted to consider them, and there being no other issues raised with respect to the quality of the refusal, the court, exercising its independent judgment, determines the weight of the evidence supports the administrative decision.

The petition is denied.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)