

DEPARTMENT OF MOTOR VEHICLES  
LICENSING OPERATIONS DIVISION

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

|                               |
|-------------------------------|
| DRIVER LICENSE OR FILE NO.    |
| ARREST DATE<br>April 15, 2003 |

The stay of the suspension against your driving privilege has been ended. The suspension resulting from the arrest on April 15, 2003, is hereby set aside.

is hereinafter also known as "Respondent."

The following findings and determinations are the results of your hearing on July 01, 2003.

**FINDINGS OF FACT**

I

**Probable Cause:**

On or about Tuesday, April 15, 2003 at 3:20 PM, Officer \_\_\_\_\_, Badge # \_\_\_\_\_, of the \_\_\_\_\_ CHP, observed Respondent driving a motor vehicle and allowing vehicle to weave out of its lane, a violation of the California Vehicle Code.

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

- \* DMV Exhibits: DS-367 & Arrest Report.
- \* The testimony of \_\_\_\_\_ confirms the events.

II

**Objective Symptoms:**

Subsequent to making contact with Respondent, Officer \_\_\_\_\_ 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).
- \* The Arrest Report.

III

**Reasonable Cause:**

Based on the preceding findings concerning probable cause, Officer \_\_\_\_\_ determination of driving, the Officer's belief that Respondent was intoxicated due to the objective symptoms of intoxication, and the additional reported factor that the Officer used to form the belief of intoxication, it is hereby determined that Officer \_\_\_\_\_ had reasonable cause to believe that Respondent was driving a motor vehicle while under the influence of alcohol.

IV

**Lawful Arrest:**

On 4/15/2003, at 3:30 PM Respondent was arrested for violation of Section 23152 of the Vehicle Code.

The determination that Respondent was arrested under the charge of driving under the influence, Section 23152 of the Vehicle Code, 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 Section 23152 of the Vehicle Code.

V

### Chemical Test:

As based on the evidence, it is hereby determined that Respondent submitted to and completed a chemical test of his blood, with a result of 0.31 % B.A.C. at 04:45 PM on 4/15/03.

The claim that the time that the blood sample was collected more than three hours after driving is supported based on the following: The blood sample received from the Department of Justice shows offense date 2/15/03 as well as a evidence received on 2/19/03 date analysis complete also shows 2/20/03 sixty days before Respondent's arrest. It is concluded that the forensic alcohol analysis blood test results is untrustworthy and can not be used by the Department to show BAC results.

As a result of the preceding finding the administrative action against Respondent's driving privilege cannot be upheld in this case.

VI

### Driving With B.A.C. At Or Above 0.08%:

Based on the preceding it is determined that the preponderance of evidence in this case supports that Respondent was not driving a motor vehicle at the time that the concentration of alcohol in his blood was at or above 0.08%.

### 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 driving a motor vehicle when you had .08% or more, or .05% or more if under age 21, 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: July 31, 2003

  
C. Tornes - Driver Safety Officer

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

|                   |   |
|-------------------|---|
| DATE<br>7/31/2003 | SIGNATURE OF AUTHORIZED DMV EMPLOYEE<br>C. TORNES |
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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: Lee A. McCoy, Attorney at Law  
1114 State St Suite 318  
Santa Barbara, CA 93101