

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
ADMINISTRATIVE ADJUDICATION BUREAU

IN THE MATTER OF

CRAIG B. SOLOMON

Case Number 05-71096

The above-entitled matter came on for
hearing, pursuant to Notice of the New York State
Department of Motor Vehicles at Hauppauge, New York,
on December 5, 2005 at 9:07 a.m., before
Administrative Law Judge Chester J. Weinstein.

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1 APPEARANCES:

2 FOR THE RESPONDENT:

3 FRANK C. PANETTA, ESQ.

MASSIMO & PANETTA, P.C.

4 99 Quentin Roosevelt Boulevard

Suite 201

5 Garden City, New York 11530

6 ALSO PRESENT:

7 Craig B. Solomon

Officer Paul Flockhard

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1 A.L.J. WEINSTEIN: The time is nine o seven. I have in
2 front of me a Notice of Hearing in case number zero five
3 dash seven one o nine six. It does name as the Respondent,
4 Craig B. Solomon. It is a chemical test refusal hearing.
5 Counsel, would put your appearance on the record,
6 please?

7 MR. PANETTA: Massimo and Panetta, Frank Panetta, 99
8 Quentin Roosevelt, Suite 201, Garden City.

9 A.L.J. WEINSTEIN: Are you ready today, Counsel?

10 MR. PANETTA: Yes.

11 A.L.J. WEINSTEIN: Mr. Solomon is seated next to you?

12 MR. PANETTA: Yes.

13 A.L.J. WEINSTEIN: His current address is 5 Carole
14 Lane, East Islip, New York?

15 MR. PANETTA: Correct.

16 A.L.J. WEINSTEIN: Is he holding a New York State
17 driver's license?

18 MR. PANETTA: Yes, he is.

19 A.L.J. WEINSTEIN: May I have that license please.

20 Mr. Solomon has presented me with a class A license.
21 On the face it (inaudible-1s).

22 Officer, your name and command, please?

23 OFFICER FLOCKHART: My name is Officer Paul Joseph
24 Flockhart, Jr. Command three ten, I'm with the Suffolk
25 County Police Department.

1 A.L.J. WEINSTEIN: And are you ready today?

2 OFFICER FLOCKHART: Yes, I am, your Honor.

3 A.L.J. WEINSTEIN: The Notice of Hearing that brought
4 the parties here today has been admitted as an exhibit, as
5 Exhibit Number One.

6 This is a hearing held pursuant to Section 1194 of the
7 Vehicle and Traffic Law to investigate the alleged refusal
8 of the named Respondent.

9 Officer, will you raise your right hand?

10 Swear to tell the truth?

11 OFFICER FLOCKHART: Yes, sir.

12 PAUL J. FLOCKHART; Sworn

13 EXAMINATION/FLOCKHART

14 BY A.L.J. WEINSTEIN:

15 Q. Once again, give us your name and command, please?

16 A. Sure. Officer Paul Joseph Flockhart, Jr. Command
17 three ten, of the Suffolk County Police Department, Suffolk
18 County, New York.

19 Q. Officer, going back to February 22nd, 2005 did you
20 arrest Mr. Solomon for DWI?

21 A. Yes, I did, your Honor.

22 Q. Tell me what happened.

23 A. On the date in question while traveling southbound on
24 Route 111, across from Central Islip (inaudible-1s) just
25 over the Southern State overpass, I did witness a green

1 Infiniti, New York plate B L W three three three,
2 come on the off-ramp from eastbound Southern State onto
3 southbound 111. At that time the vehicle did make a
4 left-hand turn from Route 111 onto eastbound spur going
5 south in Islip. Followed the vehicle approximately
6 three-eighths of a mile and determined that -- by a vehicle
7 pace that the vehicle was traveling at the speed of
8 sixty-four an hour in a legally posted
9 thirty-five-mile-an-hour zone.

10 The motorist did pass a stop sign approximately two
11 hundred yards before I pulled him over.

12 Q. Was your intention to pull him over for a speed at that
13 point?

14 A. Yes, it was, your Honor.

15 Q. And when you did that did you ask the operator of that
16 vehicle for a license?

17 A. Yes, I did, your Honor.

18 Q. Did the operator comply with the order?

19 A. Yes, your Honor.

20 Q. Did you have an opportunity to compare the photo or the
21 description on the license presented with operator of this
22 vehicle?

23 A. Yes, I did, your Honor. And I was confident that the
24 person who handed me the license was, in fact, the person
25 whose photo was on it.

1 Q. Is that the same person who's seated next to counsel
2 today?

3 A. Yes, it is, your Honor.

4 Q. At that point did you make any observations on the
5 condition or demeanor of that person?

6 A. Should be noted, your Honor, that Defendant did have
7 blurry, bloodshot, glassy eyes, slurred speech. A noted
8 delayed reaction to my questions. Was on -- on -- excuse
9 me -- unsteady upon his feet.

10 Q. Upon making those observations what did you do?

11 A. I asked Mr. Solomon to step out of his vehicle and did
12 perform a field sobriety test.

13 Q. Did he step out of his vehicle?

14 A. Yes, he did, your Honor.

15 Q. And did you make any additional observations?

16 A. It was also noted that, at this time after he stepped
17 out of the vehicle, that again he was unsteady on his feet
18 and also did have the odor of alcoholic beverage upon his
19 breath.

20 Q. What happened then?

21 A. At that point I placed Mr. Solomon under arrest.
22 Transported him to the Suffolk County Police, third
23 precinct.

24 Q. What was he arrest time?

25 A. He was arrested -- the time was -- let me double-check

1 my notes on that? This time was four fourteen for -- and
2 the arrest was made for the charge of DWI.

3 Q. Did you transport him to any other location?

4 A. No, your Honor.

5 Q. Was he at the third precinct?

6 A. Yes.

7 Q. And did you ask him to submit to a chemical test?

8 A. Yes, I did, your Honor.

9 Q. How did you do that? Did you specifically advise him
10 of the consequences of him taking or not taking such a
11 test?

12 A. Yes I did, your Honor.

13 Q. How did you do that?

14 A. As per this form we have there, I read the paragraph on
15 there. If you'd like I can read it now.

16 Q. Officer is showing me the paper which is labeled
17 alcoholic/drug influence report (inaudible-2s). Officer,
18 there's a signature on the bottom portion on this form, is
19 that yours?

20 A. Yes, it is, your Honor.

21 Q. When you signed it did you believe it to be true?

22 A. Yes, I did.

23 Q. Do you believe it to be true today?

24 A. Yes, your Honor.

25 A.L.J. WEINSTEIN: I show that to Counsel.

1 MR. PANETTA: No objection.

2 A.L.J. WEINSTEIN: This form will be marked and
3 received as an exhibit, as Exhibit Two.

4 MR. PANETTA: Can I just have a second?

5 A.L.J. WEINSTEIN: Certainly.

6 MR. PANETTA: Thank you, Judge.

7 BY A.L.J. WEINSTEIN: (Cont'g.)

8 Q. I will ask you to read the words there as you read them
9 to the Defendant

10 A. The Defendant was warned as follows: (Reading)
11 "Refusal to submit to a chemical test, or any portion
12 thereof, will result in the immediate suspension and
13 subsequent revocation of your license or operating
14 privilege whether or not you are found guilty of the charge
15 for which you are arrested.

16 "You refusal to submit to a chemical test, or any
17 portion thereof, can be introduced into evidence against
18 you at any trial, proceeding or hearing, resulting from
19 this arrest."

20 Q. And did Mr. Solomon consent or decline to take such a
21 test?

22 A. He did decline to take such a test.

23 Q. How did he do that?

24 A. Both times he did state, "No, I do not want to take the
25 test."

1 Q. What were those times?

2 A. Times were -- the second time was five o one a.m.

3 First time was four thirty-four your Honor.

4 Q. The time of arrest again is?

5 A. Four fourteen.

6 Q. What type of test did you ask him to take?

7 A. A breath test, your Honor.

8 Q. Is that a standard test used in your department?

9 A. Yes.

10 Q. And did you obtain a court-ordered blood test for this
11 individual?

12 A. No, your Honor.

13 Q. (Inaudible-1s) you wish to do?

14 A. No, sir.

15 A.L.J. WEINSTEIN: And will you return the report of
16 refusal?

17 Counsel, do you wish to (inaudible-1s)?

18 MR. PANETTA: Yes, Judge.

19 A.L.J. WEINSTEIN: (Inaudible-1s)

20 MR. PANETTA: May I inquire?

21 A.L.J. WEINSTEIN: Go ahead.

22 CROSS EXAMINATION/FLOCKHART

23 BY MR. PANETTA:

24 Q. Officer?

25 A. Yes.

1 Q. How long have you been a Suffolk County Police Officer?

2 A. Just over three years now.

3 Q. Okay. Before that were you an officer anywhere else?

4 A. No.

5 Q. How many DWI arrests would you say you've made in the
6 time throughout the (inaudible-1s)?

7 A. Approximately ten.

8 Q. And are you part of any special unit?

9 A. No, sir.

10 Q. Okay. On that -- on that night were you in a marked or
11 unmarked R.M.P.?

12 A. I was in a marked patrol unit, unit three twenty.

13 Q. You said your post is --?

14 A. The -- that's that actual number of my post. It covers
15 Islip, parts of East Islip, Bay Shore and Islip Terrace.

16 Q. And then are you on duty for V.T.L. enforcement?

17 A. I was on regular patrol duty, sir.

18 Q. Okay. Where were you when you first observed the
19 Defendant -- Respondent -- I'm sorry -- Respondent.

20 A. I was southbound on Route 111. I had just come to the
21 crest of the overpass for the Southern State Parkway.

22 Q. Okay. Were you stationary or were you moving?

23 A. I was moving.

24 Q. And what shift were you working that day, by the way?

25 A. I was working the nine to seven shift; otherwise

1 known -- once known as the overnight shift.

2 Q. Okay. Had you made any other arrests that day?

3 A.L.J. WEINSTEIN: Counsel, go on to another question,
4 please.

5 MR. PANETTA: Okay.

6 BY MR. PANETTA: (Cont'g.)

7 Q. Were you alone or with a partner?

8 A. I was alone that day, sir.

9 Q. Okay. You said you -- you paced the Respondent?

10 A. Yes.

11 Q. From the time you first saw the Respondent, until the
12 time you pulled him over, how -- how far had you traveled?

13 A. We traveled on Route 111 -- wasn't very far at all; to
14 he left that's maybe one hundred yards, if that. As he
15 made the left Spur Drive South, the distance traveled is
16 approximately three-eighths.

17 Q. Okay. And during that time you said you were able to
18 pace the Respondent?

19 A. Yes.

20 Q. Okay. Are you New York State D.M.V. certified to pace
21 vehicles?

22 A. Yes, I am, sir.

23 Q. And how much time elapsed from the time you first
24 observed the Respondent's vehicle, to the time you pulled
25 him over?

1 A. Approximately ninety seconds.

2 Q. Okay. And how did you notify the Respondent to pull
3 over; did you use your lights or something else?

4 A. The lights and the siren.

5 Q. Okay. And did he pull over right away or did he --?

6 A. Yes.

7 Q. Okay. And at that time, did he get out of his vehicle
8 or did he stay in his vehicle?

9 A. He stayed in his vehicle.

10 Q. Did you give him any instructions from the vehicle
11 through your P.A. system or anything else?

12 A. No, sir.

13 Q. Okay. When you approached the vehicle was he asked for
14 his paperwork or just something else?

15 A. (Inaudible-1s).

16 Q. You asked for his paperwork?

17 A. Yes.

18 Q. Okay. And did he take it right out; did he -- did he
19 hesitate, did he pause?

20 A. There was slight hesitation but --.

21 Q. Did the Respondent fumble with his paperwork or -- or
22 did he --

23 A. I can't remember.

24 Q. -- hand it right over? Okay. You mentioned before
25 that when he exited the vehicle, you observed him to have

1 bloodshot eyes?

2 A. Yes.

3 Q. Okay. Is it correct that people could have bloodshot
4 eyes for other reasons; it could be fatigue, another
5 medical conditions, allergies, something else?

6 A. Yes.

7 Q. Okay. And did you say that he was unsteady on his
8 feet?

9 A. Yes.

10 Q. Okay. And could that be from fatigue, medical
11 conditions or something else?

12 A. Yes.

13 Q. When you spoke to Mr. Solomon, you say he also had a
14 delayed reaction?

15 A. Yes.

16 Q. Okay. Could that be just the way Mr. Solomon talks, be
17 very deliberate? Had you ever spoke to him before?

18 A. No, sir.

19 Q. So, could that be the way Mr. Solomon talks?

20 A. It's quite possible, however the time of delay between
21 his answer to my first question and the -- the period
22 between my first question and his beginning to answer the
23 question was quite extended.

24 Q. What was that question that took so long to answer?

25 A. I did ask him to produce a license at that time. The

1 time was approximately -- I'd have to say approximately
2 twenty to twenty-five seconds.

3 Q. You -- did you ask him a question or did you give him
4 instruction?

5 A. I -- I asked him if he had a New York license.

6 Q. Okay. And you said that when he got out his eyes were
7 red?

8 A. Yes.

9 Q. Okay. And then, you said you placed him under arrest?

10 A. Well, I performed a field sobriety test first.

11 Q. Okay. You -- I don't think you mentioned that before.

12 A. Yes.

13 Q. What standard field sobriety tests were conducted?

14 A. The standard walk-and-turn, the one-legged stand and
15 the horizontal -- H.G.N., gaze --

16 Q. Okay. And --

17 A. -- nystagmus.

18 Q. -- and did you -- did you score him on a rating system,
19 a numbered rating system or something else?

20 A. No -- no scoring. It was -- he just performed poorly
21 on all three tests.

22 Q. Okay. And the -- one second, please. What was Mr. --

23 what was Mr. Solomon's demeanor like at this time; was he
24 cooperative, uncooperative, something else?

25 A. Oh, he was cooperative.

1 Q. Okay. At any time did you administer a P.B.T. or other
2 device to determine the whole --?

3 A. I did attempt to; however, I was unable to. My machine
4 was inoperative at the time.

5 Q. Okay. Did -- did you call for assistance to anyone
6 else --

7 A. Yeah.

8 Q. -- at the scene or -- okay. And did you call over the
9 radio or did you flag down --?

10 A.L.J. WEINSTEIN: Counsel, go on to another question.

11 That's information I need not know.

12 MR. PANETTA: Okay.

13 BY MR. PANETTA: (Cont'g.)

14 Q. Did the Respondent ever get administered the P.B.T.?

15 A. No.

16 Q. Okay. But you said a second ago called for assistance,
17 did assistance come?

18 A. Yes.

19 Q. Did the assistance have the P.B.T. or --?

20 A.L.J. WEINSTEIN: Counsel, go on to another question.

21 That's information I don't need to know.

22 BY MR. PANETTA: (Cont'g.)

23 Q. You -- you said a moment ago you gave warnings to the
24 Respondent. Where was the Respondent when you gave the
25 warnings?

1 A. The warnings as far as refusal to take the --

2 Q. With regards to his license.

3 A. -- chemical test?

4 Q. Yes.

5 A. Those were given at the third precinct.

6 Q. Okay. Was there any conversation about the
7 consequences of refusing to take the Breathalyzer in the
8 car or on the road to the central testing?

9 A. No, sir.

10 Q. Okay. Actually, you don't use central testing in
11 Suffolk, you use -- you take back the --

12 A. No, that's --.

13 Q. -- take the Respondent back to the precinct; right?

14 A. Yes.

15 Q. Okay. And were you the breath tech or --?

16 A. No, I called in a highway patrol officer, who is
17 certified to administer the test.

18 Q. Okay.

19 A. When the test is administered.

20 Q. Do you know what the form is called that you used to
21 give your warnings?

22 A. The alcohol/drug influence report, which is -- I keep
23 losing it. Excuse me.

24 A.L.J. WEINSTEIN: That's not the form that you read
25 from today?

1 OFFICER FLOCKHART: Correct.

2 BY MR. PANETTA: (Cont'g.)

3 Q. You used a different form to read --

4 A. Yes.

5 Q. -- to the Defendant?

6 A. Wait.

7 A.L.J. WEINSTEIN: Just wait and I'll look -- look into
8 it. There needs to be -- okay?

9 OFFICER FLOCKHART: Yeah.

10 BY MR. PANETTA: (Cont'g.)

11 Q. Officer, is this the P.D.C.S.-1075e?

12 A. That is form. That is the county name for the
13 performance, the county (inaudible-1s). Correct.

14 MR. PANETTA: Okay.

15 FURTHER EXAMINATION/FLOCKHART

16 BY A.L.J. WEINSTEIN:

17 Q. Does your signature appear on that?

18 A. Yes, it does.

19 Q. Did you ask (inaudible-1s)?

20 A. Yes, I do.

21 Q. May I see it please?

22 A. Yes, sir.

23 Q. That's (inaudible-1s). This appears to be an original,
24 do you have a copy of this, sir?

25 A. No, I do not.

1 A.L.J. WEINSTEIN: Fax over a copy of this.
2 Counsel?

3 MR. PANETTA: Yes.

4 FURTHER CROSS EXAMINATION/FLOCKHART

5 BY MR. PANETTA:

6 Q. Officer?

7 A. Yes.

8 Q. Were you the one -- were you the officer that also
9 questioned the Respondent about the questions that are
10 listed on this form?

11 A. I read the Respondent his rights and upon reading them
12 he did not wish to answer any further questions in
13 reference to that particular form.

14 Q. Okay. When you say you read the Defendant's rights,
15 you talking about his Miranda warnings?

16 A. Yes.

17 Q. Okay. However, with regard to the form, there are
18 certain protocol that you were trained to -- to go through;
19 isn't -- isn't that correct, Officer?

20 A.L.J. WEINSTEIN: Counsel, go on to another question.

21 That's --

22 MR. PANETTA: I'm asking him --.

23 A.L.J. WEINSTEIN: -- this gentleman was trained to
24 perform certain questions and -- and he did.

25 MR. PANETTA: Okay. I'll withdraw that question.

1 A.L.J. WEINSTEIN: And he's trained and I'm trained.

2 BY MR. PANETTA: (Cont'g.)

3 Q. You were -- you were instructed to ask certain
4 questions that are on this form. Is that correct?

5 A. Correct.

6 Q. And did you do so?

7 A. Yes.

8 Q. And is it the practice of police department to also
9 have the department sign the form or something else
10 regarding the form?

11 A. In normal practice it is trained to request the
12 Respondent's signature, yes.

13 Q. And is that -- that's to prove that the -- the
14 Respondent read the form; is that right?

15 A. It is.

16 A.L.J. WEINSTEIN: Counsel, go on to another question,
17 please. If the form is signed, it's signed, if it's not
18 signed, it's not signed.

19 MR. PANETTA: Yes, your Honor.

20 A.L.J. WEINSTEIN: Did you request that this gentleman
21 sign the form in any place?

22 OFFICER FLOCKHART: Yes.

23 A.L.J. WEINSTEIN: And did he sign?

24 OFFICER FLOCKHART: No, he did not.

25 A.L.J. WEINSTEIN: Okay.

1 MR. PANETTA: Okay.

2 BY MR. PANETTA: (Cont'g.)

3 Q. And why is it that the Respondent did not sign the
4 form?

5 A. He simply did not wish to sign.

6 Q. How many times did you administer these instructions?

7 A. As far as the warnings? They were read twice, sir.

8 Q. And this -- this seems of legalese. Were these ever
9 explained in lay terms or --?

10 A. Yes.

11 Q. Who -- who -- who explained it in lay terms?

12 A. I did.

13 Q. Okay. Do you recall what you said?

14 A. Verbatim? No, sir.

15 Q. Do you recall in substance -- sum and substance what
16 you warned the Respondent?

17 A. Yes.

18 Q. And what was that?

19 ~~*~~ A. That failure to take the breath test would deem --
20 would make his license suspended.

21 Q. Okay. That's all? Anything else?

22 A. If I said anything else, I can't remember, sir.

23 Q. Okay. During the course of this whole arrest, did you
24 ever ask the Defendant where he had consumed alcohol?

25 A. During the arrest?

* KEY
ENCLOSURE
RESIDUAL
LOSS POLICEN
* [THE KEY IS "REVOCKED
WAS NOT SAID"]

1 Q. At any time.

2 A. Prior to the arrest, while interviewing the Respondent
3 in the street, I did, yes.

4 Q. And did you record that in -- any where in your
5 records?

6 A. Yes, I did.

7 Q. (Inaudible-1s) cover sheet?

8 MR. PANETTA: The P.D.C.S.-3009, your Honor -- Judge --
9 the --.

10 A.L.J. WEINSTEIN: Counsel, I will ask you to just give
11 us the name.

12 MR. PANETTA: Sure. The arraignment --

13 A.L.J. WEINSTEIN: (Inaudible-1s).

14 MR. PANETTA: -- cover sheet -- the arraignment cover
15 sheet.

16 A.L.J. WEINSTEIN: Thank you.

17 MR. PANETTA: Okay?

18 OFFICER FLOCKHART: Had this (inaudible-1s)

19 MR. PANETTA: This page on the rear side? Sorry.

20 A.L.J. WEINSTEIN: And do you want to tell us what it
21 says there?

22 OFFICER FLOCKHART: Oh. Said -- well, I -- oh. In
23 context to in the middle of a conversation he did say,
24 "Come on, I only had a couple of beers."

25 A.L.J. WEINSTEIN: Okay.

1 Anything else, Counsel?

2 BY MR. PANETTA: (Cont'g.)

3 Q. Is there anything Officer, that you would like to add?

4 A. No, sir.

5 MR. PANETTA: Judge, at this time I just ---.

6 A.L.J. WEINSTEIN: Give me the alcohol report from
7 back.

8 MR. PANETTA: Oh, sure Judge. It's original.

9 A.L.J. WEINSTEIN: Give me that.

10 MR. PANETTA: It's original there.

11 A.L.J. WEINSTEIN: Any further at this point; are you
12 calling the Respondent as a witness?

13 MR. PANETTA: No, Judge.

14 A.L.J. WEINSTEIN: Then, I close the proceeding for
15 evidentiary purposes inaudible-1s).

16 MR. PANETTA: I would -- I would ask for a continuance
17 Judge for the -- for the highway -- the highway patrol
18 gentleman that is qualified to administer the Intoxilizer
19 Five thousand and ---.

20 A.L.J. WEINSTEIN: Why? The language is
21 (inaudible-1s).

22 MR. PANETTA: He was the -- he was the -- he was the
23 officer that administered the -- the warnings with regard
24 to the ---.

25 OFFICER FLOCKHART: I administered the warnings. No

1 time -- the only time --.

2 A.L.J. WEINSTEIN: Officer, just let's -- let's look at
3 the other statement that you (inaudible-1s) and anything.

4 Just that he wouldn't (inaudible-2s).

5 If there's nothing further then I'll close the case at
6 this point for evidentiary purposes.

7 Is there anything further, Counsel?

8 MR. PANETTA: Just give me one second, Judge. I just
9 want to -- no, nothing further.

10 A.L.J. WEINSTEIN: Then. I will close the proceeding
11 for evidentiary purposes.

12 Officer, anything else you wish to say?

13 OFFICER FLOCKHART: No, sir.

14 A.L.J. WEINSTEIN: Counsel?

15 MR. PANETTA: Nothing further.

16 A.L.J. WEINSTEIN: Actually, I have one other question
17 for you.

18 OFFICER FLOCKHART: Yes.

19 A.L.J. WEINSTEIN: Officer, you indicated in your
20 direct testimony that you read the warnings from the report
21 of refusal. Yet, the second portion of this hearing to --
22 at the request of counsel you asked -- you were asked if
23 there's any other (inaudible-1s) produced an alcoholic/drug
24 influence report.

25 OFFICER FLOCKHART: Yes.

1 A.L.J. WEINSTEIN: The second -- the top portion of
2 that form reads chemical test request. There are a series
3 of warnings that seem to be similar to the ones right here
4 in the report of refusal. You didn't read them from the
5 alcohol/drug influence report, though. You read them from
6 the report of refusal.

7 OFFICER FLOCKHART: When they were read to the
8 Respondent they were read from the alcohol/drug influence
9 report.

10 A.L.J. WEINSTEIN: Okay. So, the warnings that you
11 read this morning from the report of refusal, they were not
12 read to the Respondent? You got me confused; I'm not quite
13 sure ---.

14 OFFICER FLOCKHART: That form was not -- the -- all
15 warnings were read from the alcohol/drug influence report,
16 your Honor.

17 MR. PANETTA: Judge, could -- may I be permitted to
18 just make a closing statement? I mean, when --

19 A.L.J. WEINSTEIN: Yes --

20 MR. PANETTA: -- you're ready?

21 A.L.J. WEINSTEIN: -- please. Go ahead.

22 MR. PANETTA: May I?

23 A.L.J. WEINSTEIN: Yes. Please.

24 MR. PANETTA: Thank you, your Honor. I didn't know if
25 you were ready or not.

1 I just -- with all due respect, to the officer, the
2 officer's inexperience with regard to DWI's and DWI stops,
3 the officer is a little confused as to -- to what was read
4 to the Defendant and frankly I am as well. The -- the
5 burden has not been reached by the State to show that the
6 Defendant refused. There's no signature on the form with
7 regard to stating I refuse.

8 The -- the officer never testified when the form was
9 filled out, whether it was filled out contemporaneously
10 with the arrest. And the Defendant may have been placed in
11 custody wrongfully and been under the -- been under extreme
12 stress. I don't believe the State satisfied their burden
13 of showing the Defendant was read the warnings and
14 understood.

15 A.L.J. WEINSTEIN: All right.

16 Gentlemen, anything else? Okay.

17 Neither party then having any additional information to
18 offer, this hearing is closed.

19 Based on the testimony of the officer and the
20 compelling exhibits received before, counsel has
21 ~~ALSTED~~
(inaudible-2s).

22 One of the elements of the case in front of me is that
23 the warnings are as read ~~INMORRECTLY~~
24 some confusion which one that the officer used to give the
25 warnings. A bit more disturbing to me is the question

FOR THE RESIDENT

ARGUES

1 asked by counsel (inaudible-1s). The officer gave the

2 warnings, that is all he has to do.

THE OFFICER FAILED TO CLEARLY OR UNEQUIVOCALLY WARN

3 MR. (Inaudible-35s) refusal to take the test within the
SOLOMON

4 (inaudible-3s). QUOTED TIME WOULD RESULT IN A SIX MONTH
REVOCATION (AND NOT THAT HIS LICENSE "COULD BE SUSPENDED")

5 That's it. Thank you gentlemen.

6 In fact, we're returning (inaudible-1s). THE LICENSE TO MR. SOLOMON. Thank you.

7 MR. PANETTA: Thank you.

8 A.L.J. WEINSTEIN: Officer, I'll return the original
9 accident report to you (inaudible-1s).

10 (The hearing concluded.)

11
12 tkjm/pcap/62355p0

13
14
15 MR. SOLOMON'S LICENSE

16 WAS RETURNED AND HE
17 WENT THE REFUSAL HEARING.

18 THE OFFICER DID NOT STATE
19 THAT HE WARNED MR. SOLOMON
20 THERE WOULD BE A SIX (6) MONTH
21 REVOCATION.
22
23
24
25

1 I hereby certify the foregoing, consisting of 27
2 pages, inclusive, to be a true and accurate transcription
3 from the tapes provided to me, to the best of my skill and
4 ability.

5 Witness my hand, this the 30th day of Jan, 2006

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Kelly McGrath-Johnson
Kelly McGrath-Johnson
Transcriptionist

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STATE OF NEW YORK - DEPARTMENT OF MOTOR VEHICLES
6 Empire State Plaza, Albany, New York 12228

Division of Safety and Business Hearings, Room 312 Tel: (518-474-1509) Fax: (518-473-8505)

FINDINGS & DISPOSITION - CLOSED CASE FOR CHEMICAL TEST REFUSALS

RESPONDENT: Craig B Solomon

CASE#: 05-71096

ID#: 321 952 382

D.O.B.: 5/23/70

ADDRESS: 5 Carole Lane, East Islip NY 11730

DATE of HEARING: 12/5/05

HEARING LOCATION: Hauppauge

APPEARANCES:

Respondent (& Attorney, if any)

Police Officer (and Witnesses, if any)

Craig B Solomon

PO Paul Flockhart
Suffolk County PD - cmd 310

Frank C Panetta, Esq

99 Quentin Roosevelt Blvd, Ste 201

Garden City NY 11530

FINDINGS:

I find that on 2/22/05 in the County of Suffolk, Police Officer Flockhart had reasonable grounds to believe that the above-named operator was operating a motor vehicle in violation of Section 1192 of the Vehicle and Traffic Law in that he was speeding (64 in a 35 mph zone).

DISPOSITION:

Close case. Warnings were not unequivocal in nature.

Chester J Weinstein

087

ADMINISTRATIVE LAW JUDGE ALJ NO.

par
cc: attorney
Copy to Driver

PO LOSES!
*** LICENSE RETURNED**