

Court of Appeals of the State of Georgia

ATLANTA, October 05, 2026

The Court of Appeals hereby passes the following order:

A27A0499. THE STATE v. EDUARDO R. HERRERA et al.

Eduardo Herrera and David Nigel Armstrong were charged in separate accusations with driving under the influence of alcohol and related offenses. On August 6, 2026, the trial court entered an order in both cases, granting, in part, the defendants' motion to exclude the expert testimony of a professor of optometry. On September 2, 2026, the State filed a notice of appeal. We, however, lack jurisdiction.

The State may appeal an order suppressing illegally seized evidence or "excluding the results of any test for alcohol or drugs" provided that certain conditions are met. OCGA § 5-7-1(a)(4). The State may also appeal other orders suppressing evidence pursuant to OCGA § 5-7-1(a)(5). The suppression order at issue in this appeal found that the professor was a qualified expert, but several of the expert's opinions regarding the Horizontal Gaze Nystagmus (HGN) tests were inadmissible under *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (113 SCt 2786, 125 LE2d 469) (1993). The trial court ruled that the results of the HGN tests were admissible as circumstantial evidence of alcohol consumption, but not as evidence of a specific blood alcohol level. Because the order at issue suppressed certain opinions drawn from the HGN tests, but not the results of the tests themselves, any appeal from that order must be sought pursuant to OCGA § 5-7-1(a)(5).

Where the order at issue suppresses evidence on any grounds other than those listed in OCGA § 5-7-1(a)(4), the statute requires that the notice of appeal be filed within two days of the order sought to be appealed. OCGA § 5-7-1(a)(5)(A). Here, the

State filed its notice of appeal 27 days after the entry of the suppression order. Therefore, we lack jurisdiction to consider this appeal. See *State v. Arroyo*, 315 Ga. 582, 583 (883 SE2d 781) (2023) (explaining that “appellate courts do not have jurisdiction to entertain an appeal filed by the State in a criminal case that falls outside the ambit of [OCGA § 5-7-1].”) (citation modified); *State v. Outen*, 289 Ga. 579, 581 (714 SE2d 581) (2011) (State’s failure to comply with the requirements of OCGA § 5-7-1 deprives appellate court of jurisdiction). Accordingly, this appeal is hereby DISMISSED.



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Clerk's Office, Atlanta, 10/05/2026

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Christina Bailey Smith

, Clerk.