IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 13-ALJ-21-0235-AP

Kenneth Ray Anderson . . . . . Appellant,

vs.

South Carolina Department of Motor Vehicles and
Clemson University Police Department . . . . . Respondents.

RECORD ON APPEAL

Ryan L. Beasley, No. 68307
RYAN L. BEASLEY, P.A.
650 E. Washington Street
Greenville, SC 29601
(864) 679-7777 (Phone)
(864) 672-1406 (Fax)
rlb@ryanbeasleylaw.com

Other counsel of record:
Linda A. Grice, Assistant General Counsel
Philip S. Porter, Deputy General Counsel
Frank L. Valenta, Jr., General Counsel
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Blythewood, SC 29016
(803) 896-9900
Attorneys for Respondent South Carolina Department of Motor Vehicles

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STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Clemson University Police Department and South Carolina Department of Motor Vehicles. Petitioners, v. Kenneth Ray Anderson, Respondent.	)	Docket No. 12-OMVH- 01-6409-CC **FINAL ORDER AND DECISION**

Appearances:

For the Respondent: Ryan Beasley, Esq.
For the Petitioners': (Witness), Clemson University P.D., Officer Alonzo McDonald

Other information:

Respondent's Driver's License No. 008412772
Type of Hearing: Implied consent (S. C. Code Ann. § 56-5-2950) (Supp. 2011)
[Refusal to take chemical test(s)]

INTRODUCTION

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) upon request by Respondent, Kenneth Ray Anderson, for a hearing. Respondent was arrested on November 10, 2012, for an offense arising out of an act alleged to have been committed while he was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. Upon refusal to submit to a breath, blood or urine test, Respondent was charged with a violation of S.C. Code Ann. §56-5-2950 (Supp. 2011). As a result of the refusal, the primary investigating officer issued a written notice of suspension to Respondent suspending his driver's license or driving privilege.

Pursuant to written notice to the parties, a hearing was held before me on March 27, 2013 at Ronald Townsend Bldg., Main Street in Anderson, South Carolina. After reviewing the entire record and considering all the evidence, I find that the suspension of Respondent's driver's license or driving privilege must be sustained.

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OPENING STATEMENT

Counsel for the Respondent stated that Officer McDonald did not give the Respondent the DataMaster Breath Test and he did not read him his Implied Consent Rights. The Petitioner will not be able to prove his case.

The Petitioner, Officer Alonzo McDonald stated that based on other circumstances with the case his supervisor provided the DataMaster Breath test where the Respondent was advised of his Implied Consent Rights and administered the breath test to him.

EXHIBITS

The following exhibits were introduced and made part of the record:

Petitioner: (No documentation as evidence).

Respondent: (No documentation was offered as evidence.)

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following findings of fact by a preponderance of the evidence:

1. Notice of the date, time, place and subject matter of the hearing was timely given to the parties - Respondent, Kenneth Ray Anderson, and the Clemson University Police Department, Officer Alonzo McDonald and the South Carolina Department of Motor Vehicles.
2. Respondent's driver's license is 008412772.
3. On November 10, 2012 at approximately 22:05hrs (10:05pm) Officer Alonzo McDonald was providing escort on Clemson University campus, in Pickens County on Highway 93, when he observed a golf cart loaded with seven occupants. Some of the occupants had open containers and they were traveling on Highway 93 in the dark.
4. Officer McDonald initiated a traffic stop on the golf cart. Officer McDonald identified the Respondent as the driver of the golf cart. Officer McDonald was within the Clemson University jurisdiction.

5. Officer McDonald conducted field sobriety tests on the Respondent.

6. On the HGN (Horizontal Gaze Nystagmus), Officer McDonald observed four out of six clues. On the walk-and-turn test, seven out of eight clues were observed and on the one-leg stand test, three out of four clues were observed.

7. Officer McDonald determined that the Respondent was intoxicated and placed him under arrest for driving under the influence. While placing the Respondent under arrest, the Respondent pulled away and resisted arrest and became belligerent using racial slurs.

8. The supervisor, Lieutenant Evans decided to conduct the DataMaster breath test. Officer McDonald transported the Respondent to jail for a DataMaster breath test.

9. At the DataMaster breath test site, Lt. Evans conducted the DataMaster breath test.

10. During the test, the Respondent was read his Implied Consent Rights and he signed it. After the conclusion of the test, the Respondent refused to provide a breath sample. The Respondent was read his breath result which was a refusal and the Respondent signed it. The Respondent was issued his Notice of Suspension and he signed it.

11. Officer McDonald was present during the administration of the DataMaster breath test.

12. On November 10, 2012, Respondent was given a written Notice of Suspension of his driver's license for refusing to give a breath sample.

13. Respondent was charged with a violation of S.C. Code Ann. §56-5-2950 for refusing to give a breath sample.

The Respondent was not present to offer testimony.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude as a matter of law the following:

General

1. In S. C. Code Ann. §1-23-660 (Supp. 2011), the General Assembly provided for the creation of the South Carolina Department of Motor Vehicle Hearings (DMVH). Effective January 1, 2006, the DMVH was authorized to employ Hearing Officers to preside over

contested case hearings involving suspensions, cancellations, or revocations of drivers licenses. Effective October 1, 2008, the General Assembly changed the name to the Office of Motor Vehicle Hearings (OMVH).

2. All hearings presided over by Hearing Officers of OMVH must be conducted in accordance with the Administrative Procedures Act (APA) and the rules of procedure of the South Carolina Office of Motor Vehicle Hearings (SCOMVH).

3. Petitioner is an administrative agency of the State of South Carolina which is charged with administering its motor vehicle laws and delivering accurate and secure credentials and transaction documents to the citizens of this state. S. C. Code Ann. §56-1-5 (2006).

4. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. *See* Peabody Coal Co. v. Ralston, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e., the enforcement of a driver's license suspension, and since it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this enforcement action. *See* Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers, Second Edition, 2001, § 9:3, p. 366.

Unlawful to drive while under the influence-

5. Pursuant to S. C. Code Ann. §56-5-2930, it is unlawful for a person to drive a motor vehicle within this State while:

a. under the influence of alcohol to the extent that the person's faculties to drive are materially and appreciable impaired;

b. under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciable impaired; or

c. under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciable impaired.

Implied consent to submit to testing

6. S.C. Code Ann. § 56-5-2950(A) (Supp.2011) provides:

> A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol or drugs or the combination of alcohol and drugs if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. A breath test must be administered at the direction of the law enforcement officer who arrested [the] person....

Furthermore, the breath test must be administered by a person trained and certified by South Carolina Department of Public Safety (SCDPS), pursuant to State Law Enforcement Division (SLED) policies. S.C. Code Ann. §56-5-2950(A)(Supp. 2011).

7. S.C. Code Ann. § 56-5-2950(B) (Supp. 2011) further provides:

> No tests may be administered or samples obtained unless upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:
>
> (1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;
> (2) his privilege to drive must be suspended for at least one month if he takes the tests or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent or more;
> (3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;
> (4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and
> (5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

8. Upon motion by any party, the OMVH Hearing Officer may review the application of the policies, procedures, and regulations promulgated by SLED. If the Hearing Officer finds that the failure to follow any of the policies, procedures, regulations or other provisions of S.C. Code Ann. § 56-5-2950 materially affected the accuracy or reliability of the test results or the fairness of the testing procedure, the test results shall be excluded from evidence. The hearing officer must rule

specifically as to the manner in which the failure materially affected the accuracy or reliability of the test results or the fairness of the procedure. See S.C. Code Ann. § 56-5-2950(J) (Supp.2011).

9. If a person drives a motor vehicle and has an alcohol concentration of fifteen one-hundredths of one percent or more, Petitioner must suspend the person's driver's license, permit or nonresident operating privilege or deny the issuance of a license or permit to that individual. The arresting officer issues a notice of suspension, which is effective beginning on the date of the alleged violation. See S.C. Code Ann. § 56-5-2951(A) (Supp. 2011)

10. A person may request an administrative hearing within thirty (30) days of the issuance of the notice of suspension. S.C. Code Ann. § 56-5-2951(B) (Supp.2011). Section 56-5-2951(F) (Supp. 2011) requires that the scope of the hearing be limited to whether the person:

(1) was lawfully arrested or detained;
(2) was given a written copy of and verbally informed of the rights enumerated in Section 56-5-2950;
(3) refused to submit to a test pursuant to Section 56-5-2950; **or**
(4) consented to taking a test pursuant to Section 56-5-2950, and the:
(a) reported alcohol concentration at the time of testing was fifteen one-hundredths of one percent or more;
(b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;
(c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950; and
(d) the machine was working properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

11. After reviewing the facts of this case and the applicable law, I find and conclude that the Respondent was lawfully arrested for driving under the influence. The arresting officer observed the Respondent was operating a golf cart after dark with seven occupants and some of the occupants had open containers. The arresting officer administered field sobriety test to the Respondent. On the HGN (Horizontal Gaze Nystagmus), the Respondent Officer McDonald observed four out of six clues. On the walk-and-turn test, seven out of eight clues were observed and on the one-leg stand test, three out of four clues were observed. The arresting officer determined that the Respondent was intoxicated and driving under the influence. While the Respondent was being placed under arrest he

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pulled away and resisted arrest. The Respondent became belligerent using racial slurs. The arresting officer's supervisor decided to conduct the DataMaster breath test to the Respondent. The arresting officer transported the Respondent to jail for a DataMaster breath test.

At the DataMaster breath test site, the Respondent was advised verbally and in writing of his Advisement of Implied Consent Rights and he refused to submit to the breath test as requested. The arresting officer witnessed the administration of the DataMaster breath test to the Respondent. The Respondent was read his Advisement of Implied Consent Rights and he signed it. After the conclusion of test, the Respondent refused to provide a breath sample. The Respondent was read his refusal result and he signed it. The Respondent was issued a Notice of Suspension and he signed it.

Counsel for the Respondent argued that the suspension should be rescinded based on the fact that the original Implied Consent Rights was not produced to show that the Respondent was given his Implied Consent Rights in writing, and that there was no probable cause to support the arrest. Arguing that there is no testimony as to the Respondent being under the influence or that there was the smell of alcohol and that the Respondent was not informed that he was under arrest. Additionally, that there is no testimony that the DataMaster machine was working properly, that the Respondent was informed he was being videotaped. Counsel further argued that, due to the DataMaster Operator not being present, the elements of the Implied Consent Hearing cannot be established. I disagree. The arresting officer witnessed the administration of the Respondent's DataMaster breath test. The Respondent was read his Advisement of Implied Consent Rights and offered the breath test and he refused to provide a breath sample. The Respondent signed all the documentation given to him, namely, the Advisement of Implied Consent Rights, the refusal results and his Notice of Suspension, which shows that he was given his documents in writing. Nonetheless, even without the documentation, I find the officer's testimony was sufficient to establish the evidence. There was no evidence presented that contradicted, or questioned the accuracy of the officer's testimony regarding this issue and furthermore, there was no prejudice shown, in reference to the Advisement of Implied Consent Rights.

I therefore conclude as a matter of law that the Petitioner met its burden of proof. Accordingly, the relief requested by the Respondent must be denied.

ORDER

Based upon the above findings of facts and conclusions of law, it is hereby:

ORDERED that the suspension of Respondent, Kenneth Ray Anderson, driver's license or driving privilege must be sustained.

AND IT IS SO ORDERED.

Tracy G. Holland
OMVH Hearing Officer

May 20, 2013
Columbia, South Carolina

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kenneth Ray Anderson, Appellant, v. South Carolina Department of Motor Vehicles and Clemson University Police Department, Respondents.	Docket No. 13-ALJ-21-0235-AP **ORDER**

STATEMENT OF THE CASE

This matter is an appeal by Appellant Kenneth Ray Anderson ("Appellant") from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings ("OMVH") dated May 20, 2013. The OMVH's decision was issued following an administrative hearing held pursuant to S.C. Code Ann. § 56-5-2951(B)(2). Upon careful review of the matter, OMVH's decision is affirmed.

BACKGROUND

On November 10, 2012, at approximately 10:05 p.m., Sergeant McDonald of the Clemson University Police Department was providing escort on Clemson University's campus when he observed a golf cart traveling on Highway 93 with seven occupants on the golf cart. Some of the occupants had open containers. Sgt. McDonald initiated a traffic stop of the golf cart, and he identified Appellant as the driver. Sgt. McDonald subsequently requested that Appellant perform field sobriety tests. Appellant performed three field sobriety tests: the "HGN" test; the "walk and turn" test; and, the "one-leg stand" test. Appellant performed poorly on all three tests. He was placed under arrest for driving under the influence. While attempting to arrest Appellant, he resisted arrest and was subsequently charged with resisting arrest. Appellant was transported to the jail for a DataMaster test.

Appellant was offered a breath test, and he refused to submit a breath sample. Based upon Appellant's refusal, a notice of suspension was issued to him. After Respondent South Carolina Department of Motor Vehicles ("Department") received the notice of suspension, it suspended

Appellant's driver's license in accordance with state law. Appellant subsequently requested an administrative hearing. The hearing was held on March 27, 2013. On May 20, 2013, the OMVH Hearing Officer issued a Final Order and Decision sustaining Appellant's suspension. Appellant then filed this appeal with the ALC on May 22, 2013.

STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. See S.C. Code Ann. § 1-23-660. Therefore, the OMVH is an "agency" under the Administrative Procedures Act ("APA"). See S.C. Code Ann. § 1-23-310(2). As such, the APA's standard of review governs appeals from decisions of the OMVH. See S.C. Code Ann. § 1-23-380; see also Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5). This section provides:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of the agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

A decision is supported by "substantial evidence" when the Record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best W. Royal Motor Lodge, 282 S.C. 634, 641, 321 S.E.2d 63, 68 (Ct. App. 1984). A decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307. The fact that the Record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's

findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing Kearse v. State Health and Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). The party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

ISSUES ON APPEAL

1. Did the Hearing Officer err by finding and concluding that Appellant was given a written copy and verbally informed of the rights enumerated in S.C. Code Ann. § 56-5-2950?

2. Did the Hearing Officer err by finding and concluding that Appellant was lawfully arrested or detained for driving under the influence?

DISCUSSION

Implied Consent Advisement

Appellant initially argues that the Department failed to establish that Appellant was given a written copy and verbally informed of the rights enumerated in § 56-5-2950. In response, the Department argues that it met its burden of proof in establishing that Appellant was given a written copy and verbally informed of the rights enumerated in § 56-5-2950. The Court agrees.

Pursuant to § 56-5-2950, a motorist arrested for DUI consents to a chemical test of his breath, blood or urine for the purpose of determining the presence of alcohol or drugs, and also included in this section is the requirement that, at the direction of the arresting officer, a breath test be administered to the motorist arrested. S.C. Code Ann. § 56-5-2950(A). Additionally, § 56-5-2950 provides that, before any type of chemical test is administered, the motorist must be given a written copy of and verbally informed that:

> (1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;(2) his privilege to drive must be suspended for at least one month if he takes the test or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent

> or more; (3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense; (4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and (5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

S.C. Code Ann. § 56-5-2950(B).

Further, § 56-5-2951 requires that the driver's license of a motorist who refuses to submit to a test required by § 56-5-2950 be immediately suspended. See S.C. Code Ann. § 56-5-2951(A). Section 56-5-2951 also grants motorists the right to request an administrative hearing to challenge such suspensions. S.C. Code Ann. § 56-5-2951(B)(2) (2006). If a hearing is requested, the scope of the hearing is limited to whether the motorist: (1) was lawfully arrested or detained; (2) was advised in writing of the rights enumerated in Section 56-5-2950; and (3) refused to submit to a test pursuant to Section 56-5-2950. S.C. Code Ann. § 56-5-2951(F).

In an administrative hearing held pursuant to § 56-5-2951, the Department bears the burden of proof. See S.C. Code Ann. § 56-5-2951(F). However, once the Department establishes a prima facie case, the burden shifts to the motorist to present evidence to rebut the Department's case. See, e.g., Johnson v. Director of Revenue, 168 S.W.3d 139, 142 (Mo. Ct. App. 2005); and Ponce v. Commonwealth, Dep't of Transp., Bureau of Driver Licensing, 685 A.2d 607, 610-11 (Pa. Commw. Ct. 1996). If the Department establishes a prima facie case and the motorist fails to present any evidence to rebut it, then judgment must go in the Department's favor. See, e.g., Threlkeld v. Breaux Ballard Inc., 177 S.W.2d 157, 161 (Ky. 1944) ("It is the settled rule of law that once a party establishes a prima facie case, judgment will go in his favor unless the opposite party produces evidence sufficient to overcome the prima facie presumption."); Moffitt v. Commonwealth, 434 S.E.2d 684, 687 (Va. Ct. App. 1993) ("Once the Commonwealth has established a prima facie case, it is entitled to judgment, unless the respondent goes forward with evidence that refutes an element of the Commonwealth's case or rebuts the prima facie presumption.").

Absent any proof to the contrary, prima facie evidence is sufficient to establish that law enforcement complied with § 56-5-2950 in administering a breath test. See State v. Parker, 271 S.C. 159, 164, 245 S.E.2d 904, 906 (1978). Prima facie evidence is evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted. LaCount v. Gen. Asbestos & Rubber Co., 184 S.C. 232, 240, 192 S.E. 262, 266 (1937). "The words [prima facie evidence] import

that the evidence produces for the time being a certain result; but that result may be repelled." Mack v. Branch No. 12, Post Exchange, Fort Jackson, 207 S.C. 258, 272, 35 S.E.2d 838, 844 (1945).

In this matter, Sgt. McDonald testified that he advised Appellant of his implied consent rights, verbally and in writing. Sgt. McDonald's testimony was not contradicted, and there is nothing in the Record that is inconsistent with it. Moreover, Sgt. McDonald was neither cross-examined regarding this testimony nor otherwise impeached as a witness. Furthermore, because Sgt. McDonald is a law enforcement officer, his uncontradicted testimony is worthy of reliance. See Mackey v. Montrym, 443 U.S. 1, 14 (1979) (concluding, in a case involving Massachusetts' implied consent law, that the risk of erroneous observation or deliberate misrepresentation of the facts by a law enforcement officer in the ordinary case seemed "insubstantial"). For these reasons, the substantial evidence in the Record established that Appellant was advised of his implied consent rights, verbally and in writing. See, e.g., Johnson v. Painter, 279 S.C. 390, 392, 307 S.E.2d 860, 861 (1983) ("The court does not always have to accept uncontradicted evidence as establishing the truth; however, it should be accepted unless there is reason for disbelief.") (citing Elwood Constr. Co. v. Richards, 265 S.C. 228, 217 S.E.2d 769 (1975)); and Cheatham v. Gregory, 313 S.E.2d 368, 370 (Va. 1984) ("A trier of fact must determine the weight of the testimony and the credibility of witnesses, but may not arbitrarily disregard uncontradicted evidence of unimpeached witnesses which is not inherently incredible and not inconsistent with facts in the record . . .").

Probable Cause

Appellant next argues that Sgt. McDonald's testimony failed to establish that he had probable cause to stop Appellant. As noted above, the Hearing Officer's factual conclusions must be affirmed if there is evidence in the Record that would allow a reasonable mind to reach the same conclusion as the Hearing Officer. Based upon the Record, there is such evidence to support the Hearing Officer's conclusion.

Generally, an officer is reasonable in stopping a vehicle when he has probable cause to believe that a traffic violation has occurred. State v. Butler, 343 S.C. 198, 201, 539 S.E.2d 414, 416 (Ct. App. 2000) (stating that an officer is reasonable in stopping a vehicle if he has probable cause to believe that a traffic violation has occurred). Further, an officer may also stop and briefly detain a vehicle if he has a reasonable suspicion that the occupants are involved in criminal activity. Id. In this case, Sgt. McDonald testified that he observed Appellant operating a golf cart on Highway 93, a

primary state highway, after dark with seven occupants, some of whom had open containers. Pursuant to S.C. Code Ann. § 56-5-105, the use of a golf cart is restricted to secondary highways or streets and may be operated only during daylight hours. S.C. Code Ann. § 56-5-105(B)(1)-(3). This testimony demonstrated that Sgt. McDonald was justified in stopping Appellant. See State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001) ("Generally, the decision to stop an automobile is reasonable where the police have probable cause to believe a traffic violation has occurred."); State v. Vinson, 400 S.C. 347, 353, 734 S.E.2d 182, 185 (Ct. App. 2012); and State v. Banda, 371 S.C. 245, 252, 639 S.E.2d 36, 40 (2006).

Appellant next argues that Sgt. McDonald's testimony did not establish that he had probable cause to arrest him for driving under the influence. Pursuant to State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006), the fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. Id. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. Id. The pertinent question is not whether the motorist is guilty of driving under the influence, but rather whether probable cause exists to arrest the motorist for that offense. See Lapp v. S.C. Dep't of Motor Veh., 387 S.C. 500, 506, 692 S.E.2d 565, 568 (Ct. App. 2010).

Here, Sgt. McDonald testified that, after initiating the traffic stop of Appellant, Appellant was administered field sobriety tests during the course of the stop. Sgt. McDonald also testified that Appellant performed poorly on the field sobriety tests administered. Further, while taking Appellant into custody, he resisted arrest and used several racial slurs towards Sgt. McDconald. Based upon the totality of the circumstances before Sgt. McDonald, the Hearing Officer did not err in concluding that his testimony established that probable cause existed for Appellant's arrest for driving under the influence. See Lapp, 387 S.C. 500, 692 S.E.2d 565 (finding probable cause for arrest for driving under the influence based upon admission of driving, odor of alcohol and refusal to perform field sobriety tests). Whether probable cause exists depends upon the totality of the circumstances, and not a particular set of facts. See Baccus, 367 S.C. at 49, 625 S.E.2d 904 (1978). While Appellant asserts that there was no testimony or evidence presented that he had bloodshot eyes, South Carolina courts have found probable cause to arrest for driving under the influence where there was no

mention of evidence that the motorist had slurred speech or bloodshot eyes. See e.g., Kelly v. S.C. Dep't of Highways, 323 S.C. 334, 474 S.E.2d 443 (Ct. App. 1996); and State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978).

Accordingly, the Hearing Officer did not err in concluding that Sgt. McDonald's testimony established probable cause for Appellant's traffic stop and subsequent arrest for driving under the influence. Based on the testimony and the evidence presented during the hearing, reasonable minds could reach the conclusion the Hearing Officer reached in this matter. The Hearing Officer observed the witnesses and is in the best position to judge their demeanor and veracity and to evaluate the credibility of each witness' testimony. See Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996). Accordingly, the Court concludes that the OMVH Hearing Officer did not err in sustaining Appellant's suspension.

ORDER

IT IS HEREBY ORDERED that the OMVH Final Order and Decision sustaining the suspension of Appellant's driver's license or driver's privilege is **AFFIRMED**.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

November 18, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties by this mailing by placing a single copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the parties, or the attorney(s).
This 18 day of November 2013
By: Jessica Henderson
Judicial Assistant

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Public Safety,

Petitioner,

vs.

Kenneth Anderson,

Respondent.

TRANSCRIPT OF HEARING
March 27, 2013

THE COURT: My name is Tracy Holland and I've been appointed by the Office of Motor Vehicle Hearings and Administrative Law Court to preside over this contested case hearing held in accordance with the Administrative Procedures Act. This hearing is provided by Section of Law 56-5-2950, Code of Laws of South Carolina, as amended. For departmental reference, this is docket number 12-OMVH-01-6409, in reference to the issuance of a notice of suspension to Kenneth Ray Anderson for refusing to submit to a chemical test on November 10, 2012, issued by the Clemson University Police Department. All parties have been notified of this scheduled hearing for

today, March 27, 2013, here at the Ronald Townsend Building in Anderson, South Carolina. Let the record show that the respondent is not present, but is represented by legal counsel. The attorney of record we had initially wrote down was Attorney Ed McCallum, III. I guess it was III. But in -- but he is not representing Mr. Anderson at the administrative hearing and who is representing Mr. Anderson is Attorney Ryan Beasley. This hearing is tape recorded for departmental reference and it is a matter of public record. The petitioner will please state your full name and your agency and I will swear you in.

SGT. McDONALD: Sergeant Alonzo McDonald, Clemson University Police Department.

THE COURT: Please raise your right hand. Do you solemnly swear the testimony you give in this matter will be the truth, the whole truth, and nothing but the truth?

SGT. McDONALD: Yes, Your Honor.

THE COURT: Thank you. The issues for this administrative hearing is provided by Section of Law 56-5-2950, Code of Laws of South Carolina, as amended. Attorney Beasley, what

-- 2951(f). Attorney Beasley, what issues will you be contesting?

MR. BEASLEY: We will be contesting all issues this morning.

THE COURT: Before offering testimony, does either party have an opening statement? Opening from the petitioner? None?

SGT. McDONALD: No, Your Honor.

THE COURT: Thank you. Respondent, opening statement?

MR. BEASLEY: I'll just say that -- that Officer McDonald did not give Mr. Anderson the Breathalyzer test and did not read him his implied consent rights, so I don't think they'll be able to prove their case. I just want to say that on the record.

THE COURT: And his -- is there any opening from the petitioner now that you've heard his opening?

SGT. McDONALD: Based on other circumstances with the case, my supervisor provided a breathalyzer test where he advised him of his implied consent rights and administered the breathalyzer test to him. I do want to enter some documents into evidence.

THE COURT: Okay. We'll wait to that moment for

those documents. Okay. I have your opening statements for the record. Thank you. All right. He's contesting all the issues. If you would prove your case.

DIRECT TESTIMONY BY SGT. McDONALD:

SGT. McDONALD: Okay. I have three documents I want to enter into evidence, advisement of implied consent rights, a copy of that.

THE COURT: He's offering into evidence the advisement of implied consent rights. Attorney Beasley, do you have any objection to this document being offered into evidence?

MR. BEASLEY: Yeah, I object that it's not an original and that Mr. -- that Officer McDonald did not read those rights to Mr. Anderson and that a basis of admission into evidence has not been laid as a foundation for this admissibility.

THE COURT: Okay. The respondent is objecting to the advisement of implied consent rights in that it is a copy. Do you have the original here at the hearing?

SGT. McDONALD: I don't have the original with me at this time.

THE COURT: Okay. Because this is a copy and he is

objecting to it, and as stated in the notice of hearing that the original only for good cause shown can a copy be substituted, but you must bring all originals to the administrative hearing unless they are certified to be true and correct copies, which this is not. Therefore, your objection is sustained and your document is handed back to you.

SGT. McDONALD: Okay.

THE COURT: Also, he's -- well, and we're going to address that when we get to it. All right, you may continue.

SGT. McDONALD: Okay. On November 10, 2012, at approximately 22:05 hours, I was providing an escort on Clemson University's campus, which is located in Pickens County, near Highway 93, when I observed a golf cart heavily loaded with occupants, which appeared to be about seven people. Some of the occupants also had open containers on this golf cart, traveling on Highway 93, which is a primary state highway. It's after dark. After letting the escort that I had out, I initiated a traffic stop on this vehicle and it stopped by the side of Gentry Hall and Mellow Mushroom. Identified the

driver as Kenneth Ray Anderson. Conducted field sobriety on Mr. Anderson for horizontal gaze nystagmus. I received four out of the six clues; walk and turn, seven out of eight clues; one-leg stand, three out of four clues. When I completed my tests, I determined that Mr. Anderson was intoxicated. I arrested him for driving under the influence. While attempting to arrest him, Mr. Anderson began to resist. He was subsequently charged with resisting arrest. Because of the resisting arrest charge and several slurs that were used, my supervisor decided to -- that it was of best interest to be the one to conduct the Datamaster test and he transported Mr. Anderson and conducted -- I transported Mr. Anderson to the police jail and my supervisor, Lieutenant Evans, he was the one who conducted the Datamaster test. At this time, after the conclusion of the test, Mr. Anderson refused to provide a breath sample. During the test, his implied consent rights were read to him. He signed those. His breath results were read to him, which was a refusal. He signed that, as well. And issued -- a notice of suspension was issued to him. He

signed that as well. I was present during this test at the time. All of this happened in Clemson University Eastern Station, Pickens County.

THE COURT: Okay. The State is resting?

SGT. McDONALD: I rest, yes.

THE COURT: Cross-examination?

SGT. McDONALD - EXAMINATION BY MR. BEASLEY:

Q: Officer McDonald, did you inform Mr. Anderson that he was under arrest after he failed -- after you said he failed the field sobriety tests?

A: While in the process of advising him that he was under arrest, he became belligerent. Once he was placed under arrest, he was advised what he was under arrest for.

Q: So you didn't -- so I guess because -- what I'm going to show you is transcript -- a notarized transcription from right at that point in time when he -- you told him to put his foot down and you didn't tell him -- my argument is that he did not -- you did not inform him that he was under arrest. In fact, all you did is turn him around and that's when he yanked away. And I'll let you look at what I have, a notarized

his implied consent in writing. There was no probable cause to support the arrest. There has been no testimony as to the defendant actually being under the influence or any smell of alcohol or anything on the defendant. It was just that some passengers had alcohol. He was not -- Mr. Anderson was not informed that he was actually under arrest. There -- there's been no testimony that the breathalyzer machine was working properly, that the defendant was being informed that he was being videotaped. You know, and the fact that, you know, the Datamaster operator, Officer Evans, is not here today, you know, pretty much prevents any of the elements of the implied consent hearing to be established today and based on all that, I would ask that the suspension be rescinded.

THE COURT: Final closing by the officer?

SGT. McDONALD: None, Your Honor.

THE COURT: None. All right. This administrative hearing is adjourned and both parties will be notified by mail as to the results. Thank you.

(There being nothing further, the hearing was concluded.)

CERTIFICATE

This is to certify that the within hearing in the matter of South Carolina Department of Motor Vehicles vs. Kenneth Anderson, consisting of ten (10) pages, is a true and correct transcript and was prepared by me from an audio recording provided to me. This transcript was prepared by me without the benefit of my being present at the hearing of this matter.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on June 21, 2013.

Carenn N. Moore
Notary Public for South Carolina
My Commission Expires: 3/24/2019

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT
OFFICE OF MOTOR VEHICLE HEARINGS

RALPH K. ANDERSON, III
Director

(803) 734-3201
FAX (803) 734-3200
WWW.SCOMVH.NET

July 18, 2013

The Honorable Shirley C. Robinson
SC Administrative Law Court
1205 Pendleton Street, Ste 224
Columbia, SC 29201

Re: Kenneth Anderson 13-ALJ-21-0235-AP

Dear Judge Robinson:

It has been brought to my attention the copy of the transcript that was submitted with the Record on Appeal was missing two pages. Enclosed please find a copy of the pages that were inadvertently omitted from the Record on Appeal. I apologize that this was overlooked when the Record was initially sent to you.

If you have any questions or require any additional information please feel free to contact our office.

Sincerely,

Yolanda P. Willams
Administrative Coordinator, OMVH

Enclosure

Cc: Frank L. Valenta, Jr. – DMV General Counsel
Ryan Beasley - Esquire

transcription from just that point, and just -- I just want to know whether that's -- do you dispute it or is that correct, because I got it straight from the video tape? And just so you know, too, I had my paralegal transcribe it and notarize it.

A: I don't think all of this is a exact word for word. At that point that you're saying where I told him put his foot down, to put his hands behind his back, yes, I did say that. In the process, I was going to continue. He pulled his hand away and he started saying a lot of racial slurs, starting resisting --

Q: But I --

A: -- I did have the opportunity to continue saying what I wanted to say to him.

Q: All right. So but you didn't say you're under arrest, correct?

A: I didn't get that out of my mouth because I had to control the situation.

Q: Okay. No more questions.

THE COURT: Okay. Is there any evidence that the respondent would like to offer at this time?

MR. BEASLEY: No, Your Honor.

THE COURT: This ends the testimonial evidentiary

part of this administrative hearing. We're now ready for closing statement. Closing statement will go as follows. The officer will have the first closing and then the attorney and then the officer will have the second -- the final closing. First closing?

SGT. McDONALD: As stated, Mr. Anderson was driving a motor vehicle on Highway 93, which was a golf cart. The vehicle was legally stopped. After completion of field sobriety, I attempted to place Mr. Anderson under arrest. He resisted. At that time, when I regained control, he was placed under arrest and advised that he was under arrest. I transported him to the Clemson City Jail where my lieutenant conducted the Datamaster test because of the circumstances that transpired prior to the arrest. I was present at that time. Mr. Anderson refused to provide a breath sample and he was issued a notice of suspension (inaudible).

THE COURT: Closing from the attorney?

MR. BEASLEY: Yes, Your Honor. I would ask that the suspension be rescinded based on that the original implied consent forms were not produced to show that Mr. Anderson was given

transcription from just that point, and just -- I just want to know whether that's -- do you dispute it or is that correct, because I got it straight from the video tape? And just so you know, too, I had my paralegal transcribe it and notarize it.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM OFFICE OF MOTOR VEHICLE HEARINGS

Tracy G. Holland, Hearing Officer

Docket No. 12-OMVH-01-6409-CC

Kenneth Ray Anderson . . . . . Appellant

v.

Clemson University Police Department and
South Carolina Department of Motor Vehicles . . . . . Respondents

---

NOTICE OF APPEAL

Kenneth Ray Anderson appeals the Final Order and Decision of Tracy G. Holland, Hearing Officer, dated May 20, 2013. The appellant received written notice of this Final Order and Decision on May 20, 2013. Generally, the appellant is appealing because the decision was in violation of statutory provisions, affected by errors of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. More specifically: (1) the original implied consent rights was not produced at the hearing; (2) there was no probable cause to arrest the appellant; (3) there was no evidence that the Datamaster machine was working properly; and (4) the appellant was not informed that he was being videotaped.

Name, address, telephone number, and email address of appellant:

Kenneth Ray Anderson
202 Kimberly Lane
Greenwood, SC 29646
864-992-0331
sjgray@650ewashington.com

Name, address, telephone number, and email address of appellant's attorney:

Ryan L. Beasley
650 E. Washington St.
Greenville, SC 29601
864-679-7777
rlb@ryanbeasleylaw.com

Attached to this Notice of Appeal please find a copy of the final decision which is the subject of the appeal, a copy of the request for a transcript, and a certificate of service of the notice of appeal on all parties.

Respectfully submitted,

RYAN L. BEASLEY, P.A.

BY: _____
Ryan L. Beasley
SC Bar No.: 68307
Attorney for Appellant
650 East Washington Street
Greenville, SC 29601
(864) 679-7777

Greenville, South Carolina

This 20th day of May, 2013

FILED

NOV 18 2013

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kenneth Ray Anderson, Appellant, v. South Carolina Department of Motor Vehicles and Clemson University Police Department, Respondents.	Docket No. 13-ALJ-21-0235-AP **ORDER**

STATEMENT OF THE CASE

This matter is an appeal by Appellant Kenneth Ray Anderson ("Appellant") from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings ("OMVH") dated May 20, 2013. The OMVH's decision was issued following an administrative hearing held pursuant to S.C. Code Ann. § 56-5-2951(B)(2). Upon careful review of the matter, OMVH's decision is affirmed.

BACKGROUND

On November 10, 2012, at approximately 10:05 p.m., Sergeant McDonald of the Clemson University Police Department was providing escort on Clemson University's campus when he observed a golf cart traveling on Highway 93 with seven occupants on the golf cart. Some of the occupants had open containers. Sgt. McDonald initiated a traffic stop of the golf cart, and he identified Appellant as the driver. Sgt. McDonald subsequently requested that Appellant perform field sobriety tests. Appellant performed three field sobriety tests: the "HGN" test; the "walk and turn" test; and, the "one-leg stand" test. Appellant performed poorly on all three tests. He was placed under arrest for driving under the influence. While attempting to arrest Appellant, he resisted arrest and was subsequently charged with resisting arrest. Appellant was transported to the jail for a DataMaster test.

Appellant was offered a breath test, and he refused to submit a breath sample. Based upon Appellant's refusal, a notice of suspension was issued to him. After Respondent South Carolina Department of Motor Vehicles ("Department") received the notice of suspension, it suspended

Appellant's driver's license in accordance with state law. Appellant subsequently requested an administrative hearing. The hearing was held on March 27, 2013. On May 20, 2013, the OMVH Hearing Officer issued a Final Order and Decision sustaining Appellant's suspension. Appellant then filed this appeal with the ALC on May 22, 2013.

STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. See S.C. Code Ann. § 1-23-660. Therefore, the OMVH is an "agency" under the Administrative Procedures Act ("APA"). See S.C. Code Ann. § 1-23-310(2). As such, the APA's standard of review governs appeals from decisions of the OMVH. See S.C. Code Ann. § 1-23-380; see also Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5). This section provides:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of the agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

A decision is supported by "substantial evidence" when the Record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best W. Royal Motor Lodge, 282 S.C. 634, 641, 321 S.E.2d 63, 68 (Ct. App. 1984). A decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307. The fact that the Record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's

findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing Kearse v. State Health and Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). The party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

ISSUES ON APPEAL

1. Did the Hearing Officer err by finding and concluding that Appellant was given a written copy and verbally informed of the rights enumerated in S.C. Code Ann. § 56-5-2950?

2. Did the Hearing Officer err by finding and concluding that Appellant was lawfully arrested or detained for driving under the influence?

DISCUSSION

Implied Consent Advisement

Appellant initially argues that the Department failed to establish that Appellant was given a written copy and verbally informed of the rights enumerated in § 56-5-2950. In response, the Department argues that it met its burden of proof in establishing that Appellant was given a written copy and verbally informed of the rights enumerated in § 56-5-2950. The Court agrees.

Pursuant to § 56-5-2950, a motorist arrested for DUI consents to a chemical test of his breath, blood or urine for the purpose of determining the presence of alcohol or drugs, and also included in this section is the requirement that, at the direction of the arresting officer, a breath test be administered to the motorist arrested. S.C. Code Ann. § 56-5-2950(A). Additionally, § 56-5-2950 provides that, before any type of chemical test is administered, the motorist must be given a written copy of and verbally informed that:

> (1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;(2) his privilege to drive must be suspended for at least one month if he takes the test or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent

> or more; (3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense; (4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and (5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

S.C. Code Ann. § 56-5-2950(B).

Further, § 56-5-2951 requires that the driver's license of a motorist who refuses to submit to a test required by § 56-5-2950 be immediately suspended. See S.C. Code Ann. § 56-5-2951(A). Section 56-5-2951 also grants motorists the right to request an administrative hearing to challenge such suspensions. S.C. Code Ann. § 56-5-2951(B)(2) (2006). If a hearing is requested, the scope of the hearing is limited to whether the motorist: (1) was lawfully arrested or detained; (2) was advised in writing of the rights enumerated in Section 56-5-2950; and (3) refused to submit to a test pursuant to Section 56-5-2950. S.C. Code Ann. § 56-5-2951(F).

In an administrative hearing held pursuant to § 56-5-2951, the Department bears the burden of proof. See S.C. Code Ann. § 56-5-2951(F). However, once the Department establishes a prima facie case, the burden shifts to the motorist to present evidence to rebut the Department's case. See, e.g., Johnson v. Director of Revenue, 168 S.W.3d 139, 142 (Mo. Ct. App. 2005); and Ponce v. Commonwealth. Dep't of Transp., Bureau of Driver Licensing, 685 A.2d 607, 610-11 (Pa. Commw. Ct. 1996). If the Department establishes a prima facie case and the motorist fails to present any evidence to rebut it, then judgment must go in the Department's favor. See, e.g., Threlkeld v. Breaux Ballard Inc., 177 S.W.2d 157, 161 (Ky. 1944) ("It is the settled rule of law that once a party establishes a prima facie case, judgment will go in his favor unless the opposite party produces evidence sufficient to overcome the prima facie presumption."); Moffitt v. Commonwealth, 434 S.E.2d 684, 687 (Va. Ct. App. 1993) ("Once the Commonwealth has established a prima facie case, it is entitled to judgment, unless the respondent goes forward with evidence that refutes an element of the Commonwealth's case or rebuts the prima facie presumption.").

Absent any proof to the contrary, prima facie evidence is sufficient to establish that law enforcement complied with § 56-5-2950 in administering a breath test. See State v. Parker, 271 S.C. 159, 164, 245 S.E.2d 904, 906 (1978). Prima facie evidence is evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted. LaCount v. Gen. Asbestos & Rubber Co., 184 S.C. 232, 240, 192 S.E. 262, 266 (1937). "The words [prima facie evidence] import

that the evidence produces for the time being a certain result; but that result may be repelled." Mack v. Branch No. 12, Post Exchange, Fort Jackson, 207 S.C. 258, 272, 35 S.E.2d 838, 844 (1945).

In this matter, Sgt. McDonald testified that he advised Appellant of his implied consent rights, verbally and in writing. Sgt. McDonald's testimony was not contradicted, and there is nothing in the Record that is inconsistent with it. Moreover, Sgt. McDonald was neither cross-examined regarding this testimony nor otherwise impeached as a witness. Furthermore, because Sgt. McDonald is a law enforcement officer, his uncontradicted testimony is worthy of reliance. See Mackey v. Montrym, 443 U.S. 1, 14 (1979) (concluding, in a case involving Massachusetts' implied consent law, that the risk of erroneous observation or deliberate misrepresentation of the facts by a law enforcement officer in the ordinary case seemed "insubstantial"). For these reasons, the substantial evidence in the Record established that Appellant was advised of his implied consent rights, verbally and in writing. See, e.g., Johnson v. Painter, 279 S.C. 390, 392, 307 S.E.2d 860, 861 (1983) ("The court does not always have to accept uncontradicted evidence as establishing the truth; however, it should be accepted unless there is reason for disbelief.") (citing Elwood Constr. Co. v. Richards, 265 S.C. 228, 217 S.E.2d 769 (1975)); and Cheatham v. Gregory, 313 S.E.2d 368, 370 (Va. 1984) ("A trier of fact must determine the weight of the testimony and the credibility of witnesses, but may not arbitrarily disregard uncontradicted evidence of unimpeached witnesses which is not inherently incredible and not inconsistent with facts in the record . . .").

Probable Cause

Appellant next argues that Sgt. McDonald's testimony failed to establish that he had probable cause to stop Appellant. As noted above, the Hearing Officer's factual conclusions must be affirmed if there is evidence in the Record that would allow a reasonable mind to reach the same conclusion as the Hearing Officer. Based upon the Record, there is such evidence to support the Hearing Officer's conclusion.

Generally, an officer is reasonable in stopping a vehicle when he has probable cause to believe that a traffic violation has occurred. State v. Butler, 343 S.C. 198, 201, 539 S.E.2d 414, 416 (Ct. App. 2000) (stating that an officer is reasonable in stopping a vehicle if he has probable cause to believe that a traffic violation has occurred). Further, an officer may also stop and briefly detain a vehicle if he has a reasonable suspicion that the occupants are involved in criminal activity. Id. In this case, Sgt. McDonald testified that he observed Appellant operating a golf cart on Highway 93, a

primary state highway, after dark with seven occupants, some of whom had open containers. Pursuant to S.C. Code Ann. § 56-5-105, the use of a golf cart is restricted to secondary highways or streets and may be operated only during daylight hours. S.C. Code Ann. § 56-5-105(B)(1)-(3). This testimony demonstrated that Sgt. McDonald was justified in stopping Appellant. See State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001) ("Generally, the decision to stop an automobile is reasonable where the police have probable cause to believe a traffic violation has occurred."); State v. Vinson, 400 S.C. 347, 353, 734 S.E.2d 182, 185 (Ct. App. 2012); and State v. Banda, 371 S.C. 245, 252, 639 S.E.2d 36, 40 (2006).

Appellant next argues that Sgt. McDonald's testimony did not establish that he had probable cause to arrest him for driving under the influence. Pursuant to State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006), the fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. Id. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. Id. The pertinent question is not whether the motorist is guilty of driving under the influence, but rather whether probable cause exists to arrest the motorist for that offense. See Lapp v. S.C. Dep't of Motor Veh., 387 S.C. 500, 506, 692 S.E.2d 565, 568 (Ct. App. 2010).

Here, Sgt. McDonald testified that, after initiating the traffic stop of Appellant, Appellant was administered field sobriety tests during the course of the stop. Sgt. McDonald also testified that Appellant performed poorly on the field sobriety tests administered. Further, while taking Appellant into custody, he resisted arrest and used several racial slurs towards Sgt. McDconald. Based upon the totality of the circumstances before Sgt. McDonald, the Hearing Officer did not err in concluding that his testimony established that probable cause existed for Appellant's arrest for driving under the influence. See Lapp, 387 S.C. 500, 692 S.E.2d 565 (finding probable cause for arrest for driving under the influence based upon admission of driving, odor of alcohol and refusal to perform field sobriety tests). Whether probable cause exists depends upon the totality of the circumstances, and not a particular set of facts. See Baccus, 367 S.C. at 49, 625 S.E.2d 904 (1978). While Appellant asserts that there was no testimony or evidence presented that he had bloodshot eyes, South Carolina courts have found probable cause to arrest for driving under the influence where there was no

mention of evidence that the motorist had slurred speech or bloodshot eyes. See e.g., Kelly v. S.C. Dep't of Highways, 323 S.C. 334, 474 S.E.2d 443 (Ct. App. 1996); and State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978).

Accordingly, the Hearing Officer did not err in concluding that Sgt. McDonald's testimony established probable cause for Appellant's traffic stop and subsequent arrest for driving under the influence. Based on the testimony and the evidence presented during the hearing, reasonable minds could reach the conclusion the Hearing Officer reached in this matter. The Hearing Officer observed the witnesses and is in the best position to judge their demeanor and veracity and to evaluate the credibility of each witness' testimony. See Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996). Accordingly, the Court concludes that the OMVH Hearing Officer did not err in sustaining Appellant's suspension.

ORDER

IT IS HEREBY ORDERED that the OMVH Final Order and Decision sustaining the suspension of Appellant's driver's license or driver's privilege is **AFFIRMED**.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

November 18, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
I, the undersigned, certify that I have served this Order on the above-named parties by depositing a copy thereof in the United States mail, postage paid, or the Interagency Mail Service addressed to the parties' attorneys of record
this 18 day of November 2013
By: Jessica Henderson

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 13-ALJ-21-0235-AP

Kenneth Ray Anderson . . . . . Appellant,

vs.

South Carolina Department of Motor Vehicles and
Clemson University Police Department . . . . . Respondents.

NOTICE OF APPEAL

Kenneth Ray Anderson appeals the Order of the Honorable Shirley C. Robinson, Administrative Law Judge, dated November 18, 2013 and attached hereto. Appellant received a copy of this Order on November 21, 2013.

November 27th, 2013

RYAN L. BEASLEY, PA

Ryan L. Beasley
650 E. Washington Street
Greenville, S.C. 29601
(864) 679-7777
Attorney for Appellant

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Other counsel of record:
Linda A. Grice, Assistant General Counsel
Philip S. Porter, Deputy General Counsel
Frank L. Valenta, Jr., General Counsel
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Blythewood, SC 29016
(803) 896-9900
Attorneys for Respondent South Carolina Department of Motor Vehicles

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kenneth Ray Anderson, Appellant, v. South Carolina Department of Motor Vehicles and Clemson University Police Department, Respondents.	Docket No. 13-ALJ-21-0235-AP **ORDER**

STATEMENT OF THE CASE

This matter is an appeal by Appellant Kenneth Ray Anderson ("Appellant") from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings ("OMVH") dated May 20, 2013. The OMVH's decision was issued following an administrative hearing held pursuant to S.C. Code Ann. § 56-5-2951(B)(2). Upon careful review of the matter, OMVH's decision is affirmed.

BACKGROUND

On November 10, 2012, at approximately 10:05 p.m., Sergeant McDonald of the Clemson University Police Department was providing escort on Clemson University's campus when he observed a golf cart traveling on Highway 93 with seven occupants on the golf cart. Some of the occupants had open containers. Sgt. McDonald initiated a traffic stop of the golf cart, and he identified Appellant as the driver. Sgt. McDonald subsequently requested that Appellant perform field sobriety tests. Appellant performed three field sobriety tests: the "HGN" test; the "walk and turn" test; and, the "one-leg stand" test. Appellant performed poorly on all three tests. He was placed under arrest for driving under the influence. While attempting to arrest Appellant, he resisted arrest and was subsequently charged with resisting arrest. Appellant was transported to the jail for a DataMaster test.

Appellant was offered a breath test, and he refused to submit a breath sample. Based upon Appellant's refusal, a notice of suspension was issued to him. After Respondent South Carolina Department of Motor Vehicles ("Department") received the notice of suspension, it suspended

Appellant's driver's license in accordance with state law. Appellant subsequently requested an administrative hearing. The hearing was held on March 27, 2013. On May 20, 2013, the OMVH Hearing Officer issued a Final Order and Decision sustaining Appellant's suspension. Appellant then filed this appeal with the ALC on May 22, 2013.

STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. See S.C. Code Ann. § 1-23-660. Therefore, the OMVH is an "agency" under the Administrative Procedures Act ("APA"). See S.C. Code Ann. § 1-23-310(2). As such, the APA's standard of review governs appeals from decisions of the OMVH. See S.C. Code Ann. § 1-23-380; see also Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5). This section provides:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of the agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

A decision is supported by "substantial evidence" when the Record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best W. Royal Motor Lodge, 282 S.C. 634, 641, 321 S.E.2d 63, 68 (Ct. App. 1984). A decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307. The fact that the Record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's

findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing Kearse v. State Health and Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). The party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

ISSUES ON APPEAL

1. Did the Hearing Officer err by finding and concluding that Appellant was given a written copy and verbally informed of the rights enumerated in S.C. Code Ann. § 56-5-2950?

2. Did the Hearing Officer err by finding and concluding that Appellant was lawfully arrested or detained for driving under the influence?

DISCUSSION

Implied Consent Advisement

Appellant initially argues that the Department failed to establish that Appellant was given a written copy and verbally informed of the rights enumerated in § 56-5-2950. In response, the Department argues that it met its burden of proof in establishing that Appellant was given a written copy and verbally informed of the rights enumerated in § 56-5-2950. The Court agrees.

Pursuant to § 56-5-2950, a motorist arrested for DUI consents to a chemical test of his breath, blood or urine for the purpose of determining the presence of alcohol or drugs, and also included in this section is the requirement that, at the direction of the arresting officer, a breath test be administered to the motorist arrested. S.C. Code Ann. § 56-5-2950(A). Additionally, § 56-5-2950 provides that, before any type of chemical test is administered, the motorist must be given a written copy of and verbally informed that:

> (1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;(2) his privilege to drive must be suspended for at least one month if he takes the test or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent

> or more; (3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense; (4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and (5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

S.C. Code Ann. § 56-5-2950(B).

Further, § 56-5-2951 requires that the driver's license of a motorist who refuses to submit to a test required by § 56-5-2950 be immediately suspended. See S.C. Code Ann. § 56-5-2951(A). Section 56-5-2951 also grants motorists the right to request an administrative hearing to challenge such suspensions. S.C. Code Ann. § 56-5-2951(B)(2) (2006). If a hearing is requested, the scope of the hearing is limited to whether the motorist: (1) was lawfully arrested or detained; (2) was advised in writing of the rights enumerated in Section 56-5-2950; and (3) refused to submit to a test pursuant to Section 56-5-2950. S.C. Code Ann. § 56-5-2951(F).

In an administrative hearing held pursuant to § 56-5-2951, the Department bears the burden of proof. See S.C. Code Ann. § 56-5-2951(F). However, once the Department establishes a prima facie case, the burden shifts to the motorist to present evidence to rebut the Department's case. See, e.g., Johnson v. Director of Revenue, 168 S.W.3d 139, 142 (Mo. Ct. App. 2005); and Ponce v. Commonwealth, Dep't of Transp., Bureau of Driver Licensing, 685 A.2d 607, 610-11 (Pa. Commw. Ct. 1996). If the Department establishes a prima facie case and the motorist fails to present any evidence to rebut it, then judgment must go in the Department's favor. See, e.g., Threlkeld v. Breaux Ballard Inc., 177 S.W.2d 157, 161 (Ky. 1944) ("It is the settled rule of law that once a party establishes a prima facie case, judgment will go in his favor unless the opposite party produces evidence sufficient to overcome the prima facie presumption."); Moffitt v. Commonwealth, 434 S.E.2d 684, 687 (Va. Ct. App. 1993) ("Once the Commonwealth has established a prima facie case, it is entitled to judgment, unless the respondent goes forward with evidence that refutes an element of the Commonwealth's case or rebuts the prima facie presumption.").

Absent any proof to the contrary, prima facie evidence is sufficient to establish that law enforcement complied with § 56-5-2950 in administering a breath test. See State v. Parker, 271 S.C. 159, 164, 245 S.E.2d 904, 906 (1978). Prima facie evidence is evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted. LaCount v. Gen. Asbestos & Rubber Co., 184 S.C. 232, 240, 192 S.E. 262, 266 (1937). "The words [prima facie evidence] import

that the evidence produces for the time being a certain result; but that result may be repelled." Mack v. Branch No. 12, Post Exchange, Fort Jackson, 207 S.C. 258, 272, 35 S.E.2d 838, 844 (1945).

In this matter, Sgt. McDonald testified that he advised Appellant of his implied consent rights, verbally and in writing. Sgt. McDonald's testimony was not contradicted, and there is nothing in the Record that is inconsistent with it. Moreover, Sgt. McDonald was neither cross-examined regarding this testimony nor otherwise impeached as a witness. Furthermore, because Sgt. McDonald is a law enforcement officer, his uncontradicted testimony is worthy of reliance. See Mackey v. Montrym, 443 U.S. 1, 14 (1979) (concluding, in a case involving Massachusetts' implied consent law, that the risk of erroneous observation or deliberate misrepresentation of the facts by a law enforcement officer in the ordinary case seemed "insubstantial"). For these reasons, the substantial evidence in the Record established that Appellant was advised of his implied consent rights, verbally and in writing. See, e.g., Johnson v. Painter, 279 S.C. 390, 392, 307 S.E.2d 860, 861 (1983) ("The court does not always have to accept uncontradicted evidence as establishing the truth; however, it should be accepted unless there is reason for disbelief.") (citing Elwood Constr. Co. v. Richards, 265 S.C. 228, 217 S.E.2d 769 (1975)); and Cheatham v. Gregory, 313 S.E.2d 368, 370 (Va. 1984) ("A trier of fact must determine the weight of the testimony and the credibility of witnesses, but may not arbitrarily disregard uncontradicted evidence of unimpeached witnesses which is not inherently incredible and not inconsistent with facts in the record . . .").

Probable Cause

Appellant next argues that Sgt. McDonald's testimony failed to establish that he had probable cause to stop Appellant. As noted above, the Hearing Officer's factual conclusions must be affirmed if there is evidence in the Record that would allow a reasonable mind to reach the same conclusion as the Hearing Officer. Based upon the Record, there is such evidence to support the Hearing Officer's conclusion.

Generally, an officer is reasonable in stopping a vehicle when he has probable cause to believe that a traffic violation has occurred. State v. Butler, 343 S.C. 198, 201, 539 S.E.2d 414, 416 (Ct. App. 2000) (stating that an officer is reasonable in stopping a vehicle if he has probable cause to believe that a traffic violation has occurred). Further, an officer may also stop and briefly detain a vehicle if he has a reasonable suspicion that the occupants are involved in criminal activity. Id. In this case, Sgt. McDonald testified that he observed Appellant operating a golf cart on Highway 93, a

primary state highway, after dark with seven occupants, some of whom had open containers. Pursuant to S.C. Code Ann. § 56-5-105, the use of a golf cart is restricted to secondary highways or streets and may be operated only during daylight hours. S.C. Code Ann. § 56-5-105(B)(1)-(3). This testimony demonstrated that Sgt. McDonald was justified in stopping Appellant. See State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001) ("Generally, the decision to stop an automobile is reasonable where the police have probable cause to believe a traffic violation has occurred."); State v. Vinson, 400 S.C. 347, 353, 734 S.E.2d 182, 185 (Ct. App. 2012); and State v. Banda, 371 S.C. 245, 252, 639 S.E.2d 36, 40 (2006).

Appellant next argues that Sgt. McDonald's testimony did not establish that he had probable cause to arrest him for driving under the influence. Pursuant to State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006), the fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. Id. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. Id. The pertinent question is not whether the motorist is guilty of driving under the influence, but rather whether probable cause exists to arrest the motorist for that offense. See Lapp v. S.C. Dep't of Motor Veh., 387 S.C. 500, 506, 692 S.E.2d 565, 568 (Ct. App. 2010).

Here, Sgt. McDonald testified that, after initiating the traffic stop of Appellant, Appellant was administered field sobriety tests during the course of the stop. Sgt. McDonald also testified that Appellant performed poorly on the field sobriety tests administered. Further, while taking Appellant into custody, he resisted arrest and used several racial slurs towards Sgt. McDconald. Based upon the totality of the circumstances before Sgt. McDonald, the Hearing Officer did not err in concluding that his testimony established that probable cause existed for Appellant's arrest for driving under the influence. See Lapp, 387 S.C. 500, 692 S.E.2d 565 (finding probable cause for arrest for driving under the influence based upon admission of driving, odor of alcohol and refusal to perform field sobriety tests). Whether probable cause exists depends upon the totality of the circumstances, and not a particular set of facts. See Baccus, 367 S.C. at 49, 625 S.E.2d 904 (1978). While Appellant asserts that there was no testimony or evidence presented that he had bloodshot eyes, South Carolina courts have found probable cause to arrest for driving under the influence where there was no

mention of evidence that the motorist had slurred speech or bloodshot eyes. See e.g., Kelly v. S.C. Dep't of Highways, 323 S.C. 334, 474 S.E.2d 443 (Ct. App. 1996); and State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978).

Accordingly, the Hearing Officer did not err in concluding that Sgt. McDonald's testimony established probable cause for Appellant's traffic stop and subsequent arrest for driving under the influence. Based on the testimony and the evidence presented during the hearing, reasonable minds could reach the conclusion the Hearing Officer reached in this matter. The Hearing Officer observed the witnesses and is in the best position to judge their demeanor and veracity and to evaluate the credibility of each witness' testimony. See Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996). Accordingly, the Court concludes that the OMVH Hearing Officer did not err in sustaining Appellant's suspension.

ORDER

IT IS HEREBY ORDERED that the OMVH Final Order and Decision sustaining the suspension of Appellant's driver's license or driver's privilege is **AFFIRMED**.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

November 18, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the attorney(s).
This 18 day of November 2013
By: Jessica Henderson

South Carolina
Department of Motor Vehicles

05/20/2013

ANDERSON, KENNETH RAY
202 KIMBERLY LN
GREENWOOD, SC 29646-8524

CUSTOMER NO: 22082570
FILE NO: 15677788
DL NO: 8412772

AMENDED NOTICE OF DRIVING STATUS

This is official notification that the information on your driving record has changed effective 05/20/2013. This official notice cancels previous notices of suspension, cancellation, revocation or disqualification concerning the listed description(s).

The Driver Records Office has received the results of your administrative hearing for Implied Consent, dated 11/10/2012. The Office of Motor Vehicle Hearings (OMVH) has ruled that the action by the Department be Sustained.

DRIVING STATUS: Suspended Disqualified Route Restricted

BEGINNING DATE: 12:01 AM 11/10/2012 ENDING DATE: MIDNIGHT 08/10/2013

Suspension, revocation, cancellation and/or disqualification modified or deleted:

DATE	BEGIN DATE	END DATE	ACTION	SUSP DESCRIPTION

IMPORTANT INFORMATION
DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS

DRIVING STATUS:

NO SUSPENSION-Your driving privileges are clear.

SUSPENDED/DISQUALIFIED-All driving privileges to operate commercial and non-commercial vehicles are suspended and disqualified. If you are holding a driver's license, beginner's permit or special driving credential, it must be surrendered to the Department before the date of suspension listed above.

DISQUALIFIED-All driving privileges to operate commercial vehicles are disqualified.

SUSPENDED-Provisional, Route Restricted or Temporary Alcohol license. You have special driving privileges.

RESCINDED-The Office of Motor Vehicle Hearings has ruled that no suspension action will be taken as a result of this occurrence.

SUSTAINED-You are required to serve the suspension period. You may not make application for a driver's license until the suspension period has ended. You are required to meet all reinstatement requirements for any suspension, revocation, cancellation or disqualification. For reinstatement requirements or eligibility for special driving privileges, please refer to previous notices or contact a DMV Customer Service Representative at (803)896-5000.

Information may also be obtained by visiting our website a www.scdmvonline.com.

1

If your driving status shows "No Suspension", you may make application for a driver's license by presenting this notice to your local DMV Office. You may be required to take a vision, knowledge and/or skills test in order to be issued a license.

Driver Records Manager

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 13-ALJ-21-0235-AP

Kenneth Ray Anderson . . . . . Appellant,

vs.

South Carolina Department of Motor Vehicles and
Clemson University Police Department . . . . . Respondents.

Certificate of Counsel

In accordance with Rule 209, *South Carolina Appellate Court Rules*, the undersigned, as counsel for Appellant, certifies that this Record on Appeal contains all material proposed by all parties to be included and not any other material.

Ryan L. Beasley / S.C. Bar No. 60387
RYAN L. BEASLEY, PA
650 East Washington Street
Greenville, South Carolina 29601
(864) 679-7777
rlb@ryanbeasleylaw.com

ATTORNEY FOR APPELLANT

This 17 day of April, 2014

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PROOF OF SERVICE

I certify that I have served the Record on Appeal to the following parties and/or entities by depositing a copy of the same in the United States Mail, postage prepaid, on April 17, 2014, addressed as follows:

Linda A. Grice, Assistant General Counsel
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Blythewood, SC 29016

Philip S. Porter, Deputy General Counsel
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Blythewood, SC 29016

Frank L. Valenta, Jr., General Counsel
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Blythewood, SC 29016

Clemson University Police Department
Centennial Boulevard
Clemson, SC 29634

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S.C. Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

The Honorable Jenny Abbott Kitchings
Clerk of South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Denise M. Allen
Paralegal to Ryan Beasley