

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 23 2014

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge

SC Court of Appeals

Appellate Case No. 2014-001025

Jennifer K. Salter Appellant,

v.

South Carolina Department of Motor Vehicles and
Conway Police Department Respondents.

INITIAL BRIEF OF THE RESPONDENT

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TABLE OF AUTHORITIES

Cases

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S.C. Code Ann. § 56-5-2950 1, 2

STATEMENT OF ISSUES PRESENTED

THE HEARING OFFICER DID NOT ERR IN FINDING THAT APPELLANT WAS PROPERLY ADVISED OF HER IMPLIED CONSENT RIGHTS AND IN SUSTAINING THE SUSPENSION OF APPELLANT'S DRIVING PRIVILEGES.

STATEMENT OF THE CASE

The Appellant was arrested on April 11, 2013, for an offense arising out of an act alleged to have been committed while she was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. Upon refusal to submit to testing of breath, blood or urine to determine her alcohol concentration Appellant was charged with a violation of S.C. Code Ann. § 56-5-2950. A notice of suspension was issued by the investigating officer. Appellant timely requested a hearing which was held, after notice to the parties, on July 16, 2013. After reviewing the record and considering all the evidence, the hearing officer sustained the suspension of the Appellant's driving license or driving privileges. This appeal was timely filed in the Administrative Law Court on September 6, 2013. By Order dated April 9, 2014, the Administrative Law Court ordered that the OMVH Final Order and Decision dated July 31, 2013, sustaining the suspension of Appellant's driver's license or driving privilege be affirmed.

ARGUMENT

THE HEARING OFFICER DID NOT ERR IN FINDING THAT APPELLANT WAS PROPERLY ADVISED OF HER IMPLIED CONSENT RIGHTS AND IN SUSTAINING THE SUSPENSION OF APPELLANT'S DRIVING PRIVILEGES.

The Department concedes that in the instance case, the officer did not give the Appellant a written copy of the Implied Consent Rights *prior* to the commencement of the testing procedure. However, the Hearing Officer correctly found that the Appellant was properly advised of her rights in that they were read to her and she was given a written copy later. The Hearing Officer concluded that the Appellant “stated that she understood the advisement after it had been read to her by Officer Dixon (OMVH Final Order and Decision issued July 31, 2013, p. 8). Appellant argues that the Final Order and Decision of the OMVH Hearing Officer should be reversed, and the driver’s license suspension of Appellant should be rescinded because the evidence showed and the officer admitted that he failed to follow SLED procedures and admitted he failed to comply with South Carolina Code Section 56-5-2950 (B) when he did not provide Appellant with her Implied Consent Rights in writing prior to beginning the testing procedure. This argument has no merit, as it is established law that in order for the Appellant to prevail with this argument, there must be a showing of prejudice. The Appellant made no showing that the failure of the officer to follow the procedures as outlined in the statute materially affected the fairness of the testing procedure. Pursuant to 56-5-2950(J), a Hearing Officer must not only find that there was a failure to follow any policies, procedures, regulations, there must also be a ruling as to the specific manner in which such failure materially affected the accuracy of any test results or the fairness of the procedures. In other words, prejudice to the motorist must be found.

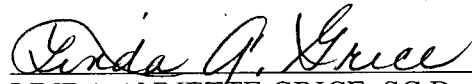
Therefore, because there was no showing of prejudice to the Appellant as a result of the officer’s failure to provide the written copy to the Appellant prior to beginning the testing procedure, such failure does not result in rescission of the suspension without

resulting prejudice. See *Taylor v. S.C. Dep't of Motor Vehicles*, 382 S.C. 567, 677 S.E.2d 588 (2009). Thus, there are no grounds upon which to rescind Appellant's suspension. The Record contains substantial evidence to support the reasoning and determination reached by the Hearing Officer and affirmed by the Administrative Law Court. See *Lark v. Bilo, Inc.*, 276 S.C. 130, 276 S.E.2d 304.

CONCLUSION

For the reasons set forth above, the order of the administrative law judge sustaining the order of the OMVH hearing officer should be affirmed.

Respectfully submitted,



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July 22, 2014
Blythewood, South Carolina

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Jennifer K. Salter Appellant,

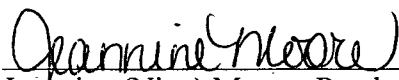
v.

South Carolina Department of Motor Vehicles and
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CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, July 22, 2014,
I served one (1) copy of the Respondent's Initial Brief and Designation of Matter by
depositing with the United States Postal Service, correct postage prepaid, to Counsel for
the Appellant at the address indicated below:

Michael O'Sullivan, Esquire
Post Office Box 1785
Conway, South Carolina 29528



Jeannine (Nina) Moore, Paralegal
Office of General Counsel

July 22, 2014
Blythewood, South Carolina

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SC Court of Appeals

Nikki R. Haley
Governor



Kevin A. Shwedo
Director

State of South Carolina
Department of Motor Vehicles

July 22, 2014

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

**RE: *Jennifer K. Salter v. South Carolina Department of Motor Vehicles and
Conway Police Department***
Appellate Case No: 2014-001025

Dear Ms. Kitchings:

Enclosed for filing please find the following documents:

1. Unbound original and one copy of the Respondent's Initial Brief;
2. Original and one copy of the Respondent's Designation of Matter To Be Included In the Record on Appeal with Certificate of Counsel of SCACR, Rule 209 (c) compliance; and
3. Certificate of Service of these documents on counsel for the Appellant.

Please file the original and copies necessary for SCACR compliance and return the extra copies to me with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

In kind regards,

Jeannine Moore
Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Enclosures

cc: Michael O'Sullivan, Esquire

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