The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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March 9, 2012

Heath Preston Taylor, Esquire
Taylor Law Firm, LLC
3618 Sunset Blvd., Ste. D
West Columbia, SC 29169

Re: SCDMV v. Brown, Phillip Samuel

Dear Mr. Taylor:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before April 9, 2012. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,

CLERK

DES/lda

cc: Linda Annette Grice, Esquire
Phillip S. Porter, Esquire
Frank L. Valenta, Jr., Esquire
The Honorable Tanya Gee

The Supreme Court of South Carolina

South Carolina Department of
Motor Vehicles, Respondent,

v.

Phillip Samuel Brown, Petitioner.

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in *S.C. Dep't of Motor Vehicles v. Brown*, Op. No. 2011-UP-130 (S.C. Ct. App. filed March 29, 2011). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

C. J.

J.

J.

Columbia, South Carolina

March 9, 2012

Original

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Unpublished Opinion No. 2011-UP-130

South Carolina Department of Motor Vehicles..... Respondent,

v.

Phillip Samuel Brown..... Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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INDEX

CERTIFICATE OF COUNSEL

Counsel for the petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 26, 2011.

QUESTION PRESENTED

1. Did the Court of Appeals err in holding that the issue of whether the breath test was conducted pursuant to S.C. Code Ann. § 56-5-2950 (2006) was not properly preserved for appellate review?

STATEMENT OF THE CASE

On July 7, 2008, Petitioner was arrested for driving under the influence by Officer A. S. Wilson of the Columbia Police Department (R.p. 2). Following his arrest, Petitioner was transported to the Columbia Police Department for a DataMaster test (R.p. 3). Petitioner's privilege to drive in South Carolina was suspended for registering an alcohol concentration of fifteen one hundredths of one percent (0.15%) or greater on the breath test and he was issued the requisite notice of suspension (R.p. 3).

Petitioner timely requested an administrative hearing pursuant to S.C. Code Ann. § 56-5-2951 (2006). A hearing was held before Office of Motor Vehicle Hearings (OMVH) hearing officer Robert F. Harley, Jr. on August 26, 2008. By Order dated September 25, 2008, OMVH hearing officer Harley ruled that Petitioner's driving privileges should be restored and rescinded the administrative license suspension (R.p. 18). Respondent appealed the September 25, 2008 order of OMVH hearing officer Harley to the Administrative Law Court and by order filed August 27, 2009, the Honorable Carolyn C. Matthews reversed the decision of OMVH hearing officer Harley (R.p. 10).

Petitioner filed a timely appeal to the Court of Appeals. The Court of Appeals affirmed the decision of the Administrative Law Court. *South Carolina Department of Motor Vehicles v. Phillip Samuel Brown*, Unpublished Opinion No. 2011-UP-130 (S.C. Ct. App. Filed March 29, 2011). Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

1. THE COURT OF APPEALS ERRED IN HOLDING THAT THE ISSUE OF WHETHER THE BREATH TEST WAS CONDUCTED PURSUANT TO S.C. CODE ANN. § 56-5-2950 (2006) WAS NOT PROPERLY PRESERVED FOR APPELLATE REVIEW.

This case is not about issue preservation. It is about the presentation of evidence and involves an important procedural question with regard to contested administrative license suspension hearings before the South Carolina Office of Motor Vehicle Hearings. Specifically, for the benefit of both the bench and the bar, Petitioner seeks an interpretation of S.C. Code Ann. § 56-5-2951 (F) as to how the items set forth therein must be proven by the prosecuting agency and/or contested by the person whose driving privileges have been suspended.

In South Carolina, the scope of an administrative license suspension hearing is limited to whether the person:

(1) was lawfully arrested or detained;

(2) was advised in writing 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 the samples was qualified pursuant to Section 56-5-2950;

(c) test administered and samples obtained were conducted pursuant to Section 56-5-2950; and

(d) the machine was working properly.

S.C. Code Ann. §56-5-2951 (F) (2006).

At the hearing before the OMVH hearing officer, counsel for Petitioner moved to rescind the suspension based upon the fact that the arresting officer failed to offer evidence that the test administered and samples obtained were conducted pursuant to S.C. Code Ann. § 56-5-2950 as required by S.C. Code Ann. § 56-5-2951 (F) (4) (c) (2006). Specifically, counsel argued that S.C. Code Ann. § 56-5-2950 (a) requires that a simulator solution registering between 0.076 percent and 0.084 percent be used (R.p.23, lines 9 - 25 – p.24, lines 1 - 7).

In his order rescinding the suspension, the OMVH hearing officer did not specifically address the aforementioned argument but the arguments were properly raised before the administrative law judge pursuant to *I'on v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) (holding appellate courts may review additional sustaining grounds and rely on them, or any other reason appearing in the record, to affirm).

Counsel's argument that the suspension should be rescinded came at the close of Respondent's case. Petitioner offered no evidence at the hearing. In addressing Petitioner's argument with respect to S.C. Code Ann. § 56-5-2951 (F) (4) (c) and reversing the decision of the OMVH hearing officer, the administrative law judge held:

"...test results cannot be excluded simply because an

> arresting officer failed to testify that a specific provision in § 56-5-2950 was followed, unless the motorist makes a motion during the hearing requesting the OMVH hearing officer to review such provision and the hearing officer determines that the law enforcement's failure to comply with the provision materially affected the accuracy or reliability of the tests (sic) results or the fairness of the testing procedure."

(R. pp. 8-9) (Emphasis in original). In arriving at this conclusion, the administrative law judge relied on S.C. Code Ann. § 56-5-2950 (e) which allows a trial judge or hearing officer, upon motion of either party, to review policies, procedures, regulations promulgated by SLED or § 56-5-2950 and rule on the admissibility of test results. The administrative law judge effectively held that counsel for Petitioner had an affirmative duty to raise the simulator solution issue during the testimony of Respondent's witness in order to allow the witness to respond. The Court of Appeals agreed with the decision of the administrative law judge and held that the issue of whether the test was conducted pursuant to S.C. Code Ann. § 56-5-2950 was not properly preserved for appellate review by a contemporaneous objection.

This decision amounts to impermissible burden shifting. Pursuant to Rule 15(B) of the Rules of Procedure for the Office of Motor Vehicle Hearings, Respondent bears the burden of proof in matters involving the suspension of a driver's license. This rule is consistent with South Carolina law in that a party making an allegation as to an issue bears the burden of production and persuasion on that issue. Sanders, et al., *Trial Handbook for South Carolina Lawyers*, 9:1 at 410 (2009); *Vereen v. Liberty Life Ins. Co.*, 306 S.C. 423, 412 S.E. 2d 425 (1991); *S.C. Dept. of Motor Vehicles v. Cannon*, Docket No. 06-ALJ-21-0555-AP, 2007 WL 470534 (S.C. Admin. Law Ct. 2007); *S.C. Dept. of*

Motor Vehicles v. Powers, Docket No. 06-ALJ-21-0578-AP, 2007 WL 286784 (S.C. Admin. Law Ct. 2007).

With all due respect to the Court of Appeals and Administrative Law Court, it appears both tribunals have failed to grasp the real issue before them. Counsel for Petitioner did not contest the admissibility of the breath test result. However, counsel, in his closing argument did raise the issue of a failure of proof on the part of Respondent. The issue before the lower courts was not one of admissibility but whether or not Respondent's witness adequately addressed each issue or element set forth in the scope of the hearing by the Legislature in S.C. Code Ann. §56-5-2951 (F) (2006).

The issues to be addressed in the administrative hearing as set forth in S.C. Code Ann. § 56-5-2951 (F) (2006) are not mere areas of concern to be addressed via an objection or cross examination. They are actual elements of proof which must be established through the testimony of the arresting officer. Recently, in *S. C. Dep't of Motor Vehicles v. McCarson*, this Court observed the following with regard to S.C. Code Ann. § 56-5-2951 (F) (2006):

> Specifically, this section sets forth several statutory prerequisites that must be established before a Hearing Officer suspends a citizen's driver's license following an arrest for DUI. In the instant case, a determination of whether McCarson was lawfully arrested or detained for DUI. By including this **element** in section 56-5-2951, the Legislature placed the **burden** on the Department **to present sufficient evidence** of probable cause. . . . Thus, in proving that a driver was lawfully arrested or detained for DUI, the Department **must present admissible evidence** of probable cause. If we were to find otherwise, we would essentially render meaningless the procedure established by our Legislature in section 56-5-2951.

McCarson, 391 S.C. 136, 149, 705 S.E.2d 425, 431 (2011) (emphasis added).

Based upon this Court's interpretation of S.C. Code Ann. § 56-5-2951, testimony that the test was conducted pursuant to S.C. Code Ann. § 56-5-2950 (2006) is an element of proof set forth in S.C. Code Ann. § 56-5-2951 (F) (4) (c) that must be established by competent evidence. Testimony that the machine was working properly does not satisfy this element because S.C. Code Ann. § 56-5-2951 (F) (4) (d), sets forth an additional element requiring testimony that the machine was working properly. Again, the issue raised before the OMVH hearing officer was not one of admissibility, but of the sufficiency of the evidence offered during Respondent's case-in-chief. The arresting officer simply failed to offer any evidence that the test was conducted pursuant to S.C. Code Ann. § 56-5-2950 and that the appropriate simulator solution was used as required by the Legislature.

The Legislature, in enacting S.C. Code Ann. § 56-5-2951 (F), clearly intended for the arresting officer to present testimony or other evidence that the test was conducted pursuant to S.C. Code Ann. § 56-5-2950. By requiring Appellant to challenge the lack of evidence during Respondent's case-in-chief and raise a contemporaneous objection, the Court of Appeals has created a situation whereby Petitioner is required to notify Respondent, or its witness, of defects in the case and thus allow Respondent to remedy the defect. The opinion of the Court of Appeals has the practical effect of requiring counsel representing a driver at an administrative license suspension hearing to object to any failure of proof during Respondent's case-in-chief. For instance, if Respondent failed to prove that an individual was lawfully arrested or detained, counsel is now required to raise a contemporaneous objection. Such a result should not be condoned by this Court.

Counsel for Petitioner is unaware of any other type of hearing where the party not bearing the burden of proof is required to contemporaneously object to a failure of proof or absence of evidence on the part of the party bearing the burden of proof. As noted in Petitioner's Final Brief to the Court of Appeals, this position is antithetical to our entire adversarial process. The opinion of the Court of Appeals has the effect of directing counsel in an administrative license suspension hearing to "assist" Respondent in satisfying its burden of proof. Query: In the trial of a fraud case, if the plaintiff fails to prove one of the nine elements of fraud, is defense counsel required to notify plaintiff's counsel of the defect and allow counsel the opportunity to correct it? In the trial of a burglary case, if the prosecution fails to prove that the defendant entered the dwelling without consent, is defense counsel required to raise the issue during the State's case? The answer to both questions is obvious and should be no different in the context of an administrative hearing for implied consent suspensions.

As was the concern in *McCarson,* the opinion of the Court of Appeals in the present case renders the procedure established by our Legislature meaningless. Respondent is now absolved of its burden to present sufficient evidence establishing that the test was conducted pursuant to S.C. Code Ann. § 56-5-2950 as required by our Legislature, or any other element for that matter, and defense counsel is required to object in a manner that informs Respondent of the defect in its presentation of proof. Such a ruling subverts the intent of S.C. Code Ann. § 56-5-2951 (F) as interpreted by the *McCarson* court. "In a trial on the merits, defendants are entitled to a strict observance of all the rules designed to bring about a fair verdict." *Costello v. United States*, 350 U.S. 359, 364, 76 S.Ct. 406, 409 (1956). Parties to an administrative license suspension

hearing deserve the same strict observance because the hearing is their final hearing on the merits. This hearing is the only opportunity for an individual to contest a violation of the implied consent laws. Requiring contemporaneous objections to a failure of proof creates a contested case procedure unlike any other in our judicial system.

CONCLUSION

If the decision of the Court of Appeals is not reversed, the meaningfulness of administrative license suspension hearings will be severely diminished. Petitioner urges this Court to grant a writ of certiorari in order to review this important procedural question.

Respectfully submitted,

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June 22, 2011

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Unpublished Opinion No. 2011-UP-130

South Carolina Department of Motor Vehicles..... Respondent,

v.

Phillip Samuel Brown..... Petitioner.

AMENDED PROOF OF SERVICE

I certify that I have served the Petition for a Writ of Certiorari and Appendix on the South Carolina Department of Motor Vehicles by causing it to be mailed to its attorneys of record, Linda Annette Grice, Esquire, Phillip S. Porter, Esquire and Frank L. Valenta, Jr., Esquire, at their office at 10311 Wilson Boulevard, Blythewood, South Carolina 29016-0020 on June 22, 2011.

June 22, 2011

TAYLOR LAW FIRM LLC

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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Unpublished Opinion No. 2011-UP-130

South Carolina Department of Motor Vehicles..... Respondent,

v.

Phillip Samuel Brown..... Petitioner.

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June 22, 2011

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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Unpublished Opinion No. 2011-UP-130

South Carolina Department of Motor Vehicles..... Respondent,

v.

Phillip Samuel Brown..... Petitioner.

PROOF OF SERVICE

I certify that I have served the Petition for a Writ of Certiorari and Appendix on the South Carolina Department of Motor Vehicles by causing it to be mailed to its attorneys of record, Linda Annette Grice, Esquire, Phillip S. Porter, Esquire and Frank L. Valenta, Jr., Esquire, at their office at 10311 Wilson Boulevard, Blythewood, South Carolina 29016-0020 on April 12, 2011.

June 22, 2011

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
Carolyn C. Matthews, Administrative Law Judge

Unpublished Opinion No: 2011-UP-130

South Carolina Department of Motor Vehicles, ... Respondent,

v.

Phillip Samuel Brown, ... Petitioner.

RESPONDENT'S RETURN TO
PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

INDEX

STATEMENT OF THE CASE

On July 7, 2008, Appellant was arrested for driving under the influence by Officer A.S. Wilson of the Columbia Police Department. Prior to his arrest, Appellant was stopped for failing turn on his headlights during hours of darkness. (R. p. 20, lines 21-25 -p. 21, line 1). Officer Wilson testified that upon his initial contact with Appellant, he detected the odor of alcohol on Appellant, observed that he had bloodshot eyes, slurred speech and had slow and deliberate movements. (R. p. 21, lines 2-5). Officer Wilson then testified that based upon Appellant's unsatisfactory performance on three of four field sobriety exercise, he placed Appellant under arrest. (R. p. 21, lines 7-9). Following his arrest, Appellant was transported to the Columbia Police Department for a DataMaster test. (R. p. 21, lines 9-10). Officer Wilson testified that Appellant registered an alcohol concentration of seventeen one hundredths of one percent (0.17%) and that the machine was working properly. (R. p. 21, lines 15-18). Appellant's privilege to drive in South Carolina was suspended for registering an alcohol concentration of fifteen one hundredths of one percent (0.15%) or greater on the breath test and he was issued the requisite notice of suspension. (R. p. 21, lines 18-20). Appellant timely requested an administrative hearing pursuant to S.C. Code Ann. 56-5-2951 (2006).

A hearing was held before OMVH hearing officer Robert F. Harley, Jr. on August 26, 2008. At the close of evidence, counsel for the Appellant moved to rescind the suspension based upon the DataMaster operator's failure to prove the test administered and samples obtained were conducted pursuant to S.C. Code Ann. 56-5-2950 (2006). (R. p. 235, lines 9-25 – p. 24, lines 1-7). By Order dated September 25, 2008, OMVH hearing officer Harley ruled that Appellant's driving privileges should be restored and rescinded the administrative license suspension based upon Officer Wilson's failure to prove that the DataMaster was functioning

properly and that Officer Wilson failed to prove Appellant registered fifteen one hundredths of one percent (0.15%) or greater on the breath test. (R. p. 17 – 18).

The Department of Motor Vehicles appealed citing two issues on appeal: (1) Did the OMVH hearing officer err when he concluded that the arresting officer failed to present evidence to show that the Respondent registered 0.15% or greater on a breath test?; and (2) Did the OMVH Hearing officer err when he concluded that the arresting officer failed to prove that the machine was working properly?. (R. p. 3). The Respondent – Appellant raised a third issue in his brief as an additional sustaining ground: (3) Did the OMVH hearing officer err when he concluded that the arresting officer failed to prove that the test administered and the sample obtained from Respondent complied with S.C. Code Ann.§ 56-5-2950 (2006)? (R. p. 3).

The Administrative Law Court held that the OMVH hearing officer erred by concluding that Officer Wilson failed to present evidence to show that the Respondent registered 0.15% or greater on the breath test and the Respondent concedes that the hearing officer erred in reaching this conclusion (R. p. 6). Judge Matthews also found that the hearing officer's conclusion that the Department failed to carry its burden of proof was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record (R. p. 7).

Addressing the additional sustaining ground proposed by the Respondent in his brief, Judge Matthews concluded that Officer Wilson's failure to specifically testify that the "breath test was administered and the sample obtained was conducted pursuant to §56-5-2950" did not mandate rescission of Respondent's suspension since Respondent failed to timely raise the issue and Officer Wilson testified to the test results without objection from Respondent's attorney (R. p. 9).

ARGUMENT

DID THE COURT OF APPEALS ERR IN HOLDING THAT THE ISSUE OF WHETHER NOT THE BREATH TEST WAS CONDUCTED PURSUANT TO S.C. CODE ANN. 56-5-2950 (2006) WAS NOT PROPERLY PRESERVED FOR APPELLATE REVIEW?

The Appellant, throughout the appellate process, has asserted a failure of proof on the part of the arresting officer who was a certified DataMaster operator. Specifically, the Appellant argued that the officer failed to prove the breath test was administered pursuant to S.C. Code Ann. § 56-5-2950 (2006) as required by S.C. Code Ann. § 56-5-2951 (F) (4) (c) (2006). In this case, the officer's testimony was wholly uncontroverted. He was the only witness who testified regarding the events that occurred in the DataMaster room. In that hearing, Officer Wilson testified, "I am certified to operate the DataMaster machine. The machine was functioning properly." While he was cross-examined by the Respondent's counsel, at no time did Officer Wilson offer any testimony contradicting these two points. Thus, in the absence of any contrary evidence, Officer Beckman's testimony constitutes substantial evidence as required to sustain Respondent's suspension. Under *State v. Parker,* 271 S.C. 159, 245 S.E.2d 904, 906 (1978), the Breath Test Operator's testimony that he has been certified constitutes *prima facie* evidence that the test was administered by a qualified person in the proper manner and there was no evidence produced by the Appellant that the accuracy and reliability of the test was compromised. Based upon the existing record, there is no evidence from which the Hearing Officer could reasonably make a finding that the DataMaster machine was not functioning properly or that any requirements for the proper administration of the test had not been met by the officer.

The prima facie case in an implied consent hearing consists of those elements included as a prerequisite to license suspension under Section 56-5-2951(A), which may be enumerated as follows:

(1) a person;
(2) operating a motor vehicle;
(3) in South Carolina;
(4) be arrested for an offense arising out of acts alleged to have been committed while the person was driving under the influence of alcohol, drugs, or both; and
(5) refuses to submit to alcohol or drug testing or has an alcohol concentration of fifteen one-hundredths of one percent or more.

See S.C. Code Ann. § 56-5-2951 (A) (2006) ("The Department of Motor Vehicles must suspend the driver's license, permit or non-resident operating privileges of... a person who drives a motor vehicle and refuses to submit to a test provided for in Section 56-5-2950 or has an alcohol concentration of fifteen one-hundredths of one percent or more."); *S.C. Dep't of Motor Vehicles v. Nelson,* 364 S.C. 514, 523, 613 S.E. 2d 544, 549 (Ct. App. 2005) (citing §§ 56-5-2950, -2951) listing elements of Department's prima facie case of suspension and excluding items listed in S.C. Code Ann. § 56-5-2951(F), which are cited as being properly within the scope of administrative hearing). Contrary to the Appellant's assertions, once a prima facie case is established against a motorist, the burden shifts to the motorist to present evidence to rebut the prima facie case. In the instance matter, the Appellant failed to meet the burden to rebut the prima facie case. The Appellant's assertion, and the Hearing Officer's conclusion, that the officer simply failed to offer any evidence that the test was conducted pursuant to S.C. Code Ann. § 56-5-2950 is not supported by the facts and the testimony and is clearly erroneous.

The Appellant's reliance upon the South Carolina Supreme Court's holding in *S.C. Dep't of Motor Vehicles v. McCarson,* 391 S. C. 136, 705 S.E.2d 425, is misplaced. In *McCarson,* the Court found that the police sergeant's observations of the licensee's erratic driving were not admissible through police officer's incident report and testimony to establish probable cause for licensee's driving under the influence (DUI) arrest. The Court found that the Department failed to present *admissible* evidence in that the evidence presented was hearsay. There is no question of hearsay in the instance case. The officer's testimony was based upon his own observations and conclusions and was competent to establish the testimonial facts and was, of course, admissible.

For the forgoing reasons, the Respondent seeks the denial of the Appellant's Petition for a Writ of Certiorari.

Respectfully submitted,

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Attorney's for Respondent

July 1, 2011
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
Carolyn C. Matthews, Administrative Law Judge

Unpublished Opinion No: 2011-UP-130

South Carolina Department of Motor Vehicles, ... Respondent,

v.

Phillip Samuel Brown, ... Petitioner.

PROOF OF SERVICE

I HEREBY CERTIFY that today, July 5, 2011, I have served a copy of Respondent's Return to Petition for Writ of Certiorari by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney for the Petitioner as follows:

Heath P. Taylor, Esquire
Taylor Law Firm, LLC
3618 Sunset Boulevard, Suite D
West Columbia, SC 29169

Kristy L. Corley
Administrative Specialist

Nikki R. Haley
Governor

Kevin A. Schwedo
Executive Director

State of South Carolina

Department of Motor Vehicles

July 5, 2011

The Honorable Daniel E. Shearhouse
Clerk of Court, S.C. Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: *South Carolina Department of Motor Vehicles vs. Philip S. Brown*
Unpublished Opinion No. 2011-UP-130

Dear Mr. Shearhouse:

I enclose with this letter an original and six (6) copies of our Return to Petition for Writ of Certiorari together with an original and one (1) copy of the certificate of service. If you will be so kind as to return the extra copy of the Return and certificate of service in the envelope provided.

Sincerely,

Kristy L. Corley
Administrative Specialist
Office of General Counsel

cc: Heath P. Taylor, Esquire

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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June 23, 2011

Heath Preston Taylor, Esquire
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Re: SCDMV v. Brown, Phillip Samuel
Case Tracking No. 2011-194026

Dear Mr. Taylor:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

Daniel E. Shearouse

CLERK

DES/lda

Enclosure

cc: Linda Annette Grice, Esquire
Phillip S. Porter, Esquire
Frank L. Valenta, Jr., Esquire
The Honorable Tanya Gee