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SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

DOCKET NO. 15-ALJ-21-0124-AP

Bradley Sanders.....Appellant,

v.

**South Carolina Department of Motor Vehicles
and Columbia Police Department..... Respondents below,**

Of whom South Carolina Department of Motor Vehicles is the Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bradley Sanders,

Appellant,

vs.

South Carolina Department of Motor
Vehicles and Columbia Police Department,

Respondents.

Docket No. 15-ALJ-21-0124-AP

AMENDED FINAL ORDER

STATEMENT OF THE CASE

This is an appeal by Bradley Sanders (Appellant) from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings (OMVH). A hearing was held at the OMVH on March 5, 2013. On February 13, 2015, the OMVH issued a Final Order and Decision sustaining the decision of the South Carolina Department of Motor Vehicles (Department or DMV) revoking Appellant's driver's license and driving privileges. The Administrative Law Court (ALC or court) has jurisdiction to review this matter pursuant to South Carolina Code Section 1-23-660. Upon review of this matter, the OMVH's Final Order and Decision is affirmed.

BACKGROUND

On November 21, 2012, Officer S. B. Desrochers of the Columbia Police Department was dispatched to the scene of a single-car collision. Officer Desrochers found the Appellant standing nearby, bleeding from the head and smelling strongly of alcohol. The Appellant, according to the officer, also spoke with slurred speech and seemed both mentally and physically "off-balance." The Appellant was transported to Lexington Medical Center, where Officer Desrochers was informed by Angela Albright, who held herself out as a registered nurse that the Appellant was physically unable to submit to a breath test. Officer Desrochers arrested the Appellant, read the Appellant his *Miranda* rights, and advised him of his Implied Consent Rights, both in writing and verbally. The Appellant refused to submit to a blood test and was given a Notice of Suspension of his driver's license.

FILED

JAN 27 2016

ADMIN. LAW COURT

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 (Supp. 2014). Appeals from the OMVH, which is an “agency” by statutory definition, are brought before the ALC. See S.C. Code Ann. §§ 1-23-310(2) and 1-23-660(D) (2005 & Supp. 2014). The standard used to review appeals of agency decisions is provided by S.C. Code Ann. § 1-23-380(5). See S.C. Code Ann. § 1-23-600(E) (Supp. 2014).

(5) 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 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.

Under this statute, the court’s review is essentially “limited to determining whether the findings [of the OMVH] were supported by substantial evidence or were controlled by an error of law.” *Hill v. S.C. Dept. of Health & Environmental Control*, 389 S.C. 1, 9, 698 S.E.2d 612, 617 (2010) (citation omitted).

ISSUES ON APPEAL

1. Did the OMVH hearing officer err in admitting evidence showing that the arresting officer lawfully sought a blood sample?
2. Did the OMVH hearing officer err in ruling that the arresting officer established a prima facie case that the individual who signed the SLED Urine/Blood Collection Report was a licensed medical professional?

DISCUSSION¹

Under South Carolina law, a motorist arrested for driving under the influence is considered to have given consent to chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol or drugs, or both. S.C. Code Ann. § 56-5-2950 (Supp. 2014). If a motorist refuses to submit to such a test, the motorist's license must be immediately suspended. S.C. Code Ann. § 56-5-2951(A) (Supp. 2014). If such a suspension is issued, the motorist may request an administrative hearing to review, in relevant part, whether the arrestee refused to submit to a test pursuant to Section 56-5-2950. *See* S.C. Ann § 56-5-2951(F)(3) (Supp. 2014).

In such a hearing, the Department and the arresting officer have the burden of proof. S.C. Code Ann § 56-5-2951(F) (Supp. 2014). The burden is met by a preponderance of the evidence. S.C. Ann. § 1-23-600(A)(5) (Supp. 2014); OMVH Rule 15(B). The South Carolina Rules of Evidence apply to proceedings before the OMVH. S.C. Code Ann. § 1-23-330(1) (2005); OMVH Rule 14. The question before a hearing officer is not whether the state proved guilt, but whether the motorist violated the implied consent law. *See S.C. Dept. of Motor Vehicles v. Nelson*, 364 S.C. 514, 525–26, 613 S.E.2d 544, 549 (Ct. App. 2005) (citation omitted).

The implied consent statute requires that the arresting officer first offer the subject a breath test, unless the subject is unable to provide a breath test “for any other reason considered acceptable by the license medical personnel....” If this occurs, then the officer “may request a blood sample be taken” from the subject. Specifically, the statute provides:

At the direction of the arresting officer, the person first must be offered a breath test to determine the person's alcohol concentration. If the person is physically unable to provide an acceptable breath sample because the person has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken.

S.C. Code Ann. § 56-5-2950 (Supp. 2014).

The Appellant argues that in determining whether the Appellant violated the implied consent law, the OMVH hearing officer improperly admitted hearsay evidence. Specifically, the Appellant contends that the hearing officer improperly relied upon hearsay statements of Angela

¹ The court appreciates counsel for Appellant's cite to this court's previous opinion which is contrary to the Appellant's position in this matter.

Albright and a SLED Urine/Blood Collection Report,² signed by Albright, because they were offered for the truth of the matter asserted.

Rule 801(c), SCRE defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” It is well settled that a statement introduced not for the truth of the matter asserted should not be excluded as hearsay. *Hatfield v. Van Epps*, 358 S.C. 185, 192, 594 S.E.2d 526, 530 (Ct. App. 2004) (citation omitted). *See also Sams v. McCaskill*, 282 S.C. 481, 485, 319 S.E.2d 344, 347 (Ct. App. 1984). Furthermore, an appellate court will not reverse an evidence ruling absent an abuse of discretion amounting to an error of law. *R & G Const., Inc. v. Lowcountry Regl. Transp. Auth.*, 343 S.C. 424, 439 S.E.2d 113, 121 (Ct. App. 2000).

In this case, the arresting officer’s testimony concerned how he arrived at the conclusion that the Appellant was unable to take a breath test. He testified that the nurse signed the SLED Urine/Blood Collection Report, and also indicated on that form that she was a registered nurse when she listed her title on that report. Under the facts of this case, the officer’s testimony on this point was not hearsay, because it was not offered to prove that the Appellant was, in fact, medically unable to provide a breath test at the time, but rather, to show that the officer had reasonable grounds to request that the Appellant submit to a blood test.

In short, the circumstances of this case are very similar to those in *Cann v. S.C. Dep’t of Motor Vehicles and S.C. Dep’t of Public Safety*, 12-ALJ-21-0465-AP, in which this court previously held that the arresting officer’s testimony was not offered to prove that the Appellant was actually unable to take a breath test, but was offered to show the officer’s action, in offering the Appellant an opportunity to submit to a blood test, was warranted.

Likewise, under the facts of this case, the arresting officer relied on information he received from a person he reasonably believed was qualified to opine that the Appellant was unable to take a breath test under the provisions of Section 56-5-2950(A). The officer then, as required under the statute, offered the Appellant the opportunity to submit to a blood test, to which he refused. *See* Rule 801, SCRE; *see also* S.C. Code Ann. § 56-5-2950(A) (Supp. 2014). This court agrees with

² The court notes that this report, which was admitted at the hearing and relied upon by the hearing officer in his decision, was not originally contained in the Record on Appeal, though it had been present at the hearing. This court issued an Order to Supplement the Record, on December 11, 2015, and the Department supplemented the record with the report (the SLED Report was dated November 21, 2012) on December 18, 2015. The court finds that there is no prejudice to the Appellant, since substantial evidence on the whole record supports the hearing officer’s decision. *See Sweat v. Crawford*, 292 S.C. 324, 327, 356 S.E.2d 147, 149 (Ct. App. 1987).

the hearing officer's conclusion that the evidence was not offered for the truth of the matter asserted, but rather to show that a blood test was warranted under the statute. Thus, the hearing officer did not err in admitting Albright's statement into evidence.

The Appellant further argues that the hearing officer erred in ruling that the Officer established a prima facie case that Albright was a licensed medical professional. The Appellant cites to a criminal case in which a purported "trained, qualified medical personnel" actually collected a blood-alcohol sample from the defendant. See *State v. Frey*, 362 S.C. 511, 516, 608 S.E.2d 874, 877 (Ct. App. 2005).³ In *Frey*, the defendant argued that the court erred in admitting the blood-alcohol test results, and argued that there was no proof that the person who collected his blood sample was a licensed "medical personnel trained to obtain the samples in a licensed medical facility," as required by the statute.

The Appellant's case is easily distinguishable. *Frey* involved a criminal proceeding in which the state sought to introduce a blood sample that the statute mandates must only be collected by licensed physicians or licensed registered nurses or "other medical personnel trained to obtain samples in a licensed medical facility." In this case, the Appellant was appearing before the OMVH hearing officer because he refused to submit to a blood test. In this case, the officer complied with the requirements of the implied consent statute, and reasonably relied on the statement of a hospital nurse that the Appellant was unable to take a breath test. The Appellant also cites to a case where no attempt to consult licensed medical personnel appeared in the record. See generally *Peake v. S.C. Dept. of Motor Vehicles*, 375 S.C. 589, 654 S.E.2d 284 (Ct. App. 2007).

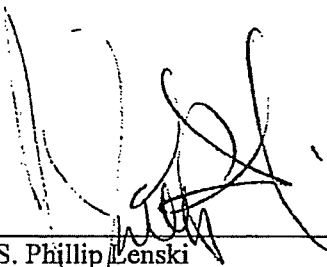
In this case, evidence was presented to establish Albright's status as licensed medical personnel. Officer Desrochers testified that he saw Albright in the hospital wearing a nametag and hospital scrubs that reasonably indicated she was a registered nurse. The Appellant offered no rebuttal of this prima facie evidence. The court notes that the standard of proof in an OMVH hearing is a preponderance of the evidence, unlike in a criminal case. See S.C. Ann. § 1-23-600(A)(5) (Supp. 2014); OMVH Rule 15(B). Additionally, in this instance, no blood sample was collected. Therefore, the court finds that the hearing officer did not err in ruling that Officer Desrochers established a prima facie case the Albright was a registered nurse.

³ The court cites to the opinion substituted and refiled January 25, 2005, not the earlier opinion contained in the record.

ORDER

IT IS HEREBY ORDERED, for the foregoing reasons, that the hearing officer's Final Order and Decision is **AFFIRMED** and the Department's suspension of Appellant's driver's license is upheld.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

January 27, 2016
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 party(ies) or their attorney(s).

This 27th day of JAN 2016
By: EJW

Judicial Law Clerk

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bradley Sanders,

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ORDER

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The Appellant requested an administrative hearing challenging the suspension of this driving privileges. After notice

FILED

JAN 20 2016

STANDARD OF REVIEW

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The Appellant argues that in determining whether the Appellant violated the implied consent law, the OMVH hearing officer improperly admitted hearsay evidence. Specifically, the Appellant contends that the hearing officer improperly relied upon hearsay statements of Angela

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In short, the circumstances of this case are very similar to those in *Cann v. S.C. Dep’t of Motor Vehicles and S.C. Dep’t of Public Safety*, 12-ALJ-21-0465-AP, in which this court previously held that the arresting officer’s testimony was not offered to prove that the Appellant was actually unable to take a breath test, but was offered to show the officer’s action, in offering the Appellant an opportunity to submit to a blood test, was warranted.

Likewise, under the facts of this case, the arresting officer relied on information he received from a person he reasonably believed was qualified to opine that the Appellant was unable to take a breath test under the provisions of Section 56-5-2950(A). The officer then, as required under the statute, offered the Appellant the opportunity to submit to a blood test, to which he refused. *See* Rule 801, SCRE; *see also* S.C. Code Ann. § 56-5-2950(A) (Supp. 2014). This court agrees with

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the hearing officer's conclusion that the evidence was not offered for the truth of the matter asserted, but rather to show that a blood test was warranted under the statute. Thus, the hearing officer did not err in admitting Albright's statement into evidence.

The Appellant further argues that the hearing officer erred in ruling that the Officer established a prima facie case that Albright was a licensed medical professional. The Appellant cites to a criminal case in which a purported "trained, qualified medical personnel" actually collected a blood-alcohol sample from the defendant. *See State v. Frey*, 362 S.C. 511, 516, 608 S.E.2d 874, 877 (Ct. App. 2005).³ In *Frey*, the defendant argued that the court erred in admitting the blood-alcohol test results, and argued that there was no proof that the person who collected his blood sample was a licensed "medical personnel trained to obtain the samples in a licensed medical facility," as required by the statute.

The Appellant's case is easily distinguishable. *Frey* involved a criminal proceeding in which the state sought to introduce a blood sample that the statute mandates must only be collected by licensed physicians or licensed registered nurses or "other medical personnel trained to obtain samples in a licensed medical facility." In this case, the Appellant was appearing before the OMVH hearing officer because he refused to submit to a blood test. In this case, the officer complied with the requirements of the implied consent statute, and reasonably relied on the statement of a hospital nurse that the Appellant was unable to take a breath test. The Appellant also cites to a case where no attempt to consult licensed medical personnel appeared in the record. *See generally Peake v. S.C. Dept. of Motor Vehicles*, 375 S.C. 589, 654 S.E.2d 284 (Ct. App. 2007).

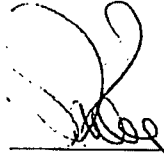
In this case, evidence was presented to establish Albright's status as licensed medical personnel. Officer Desrochers testified that he saw Albright in the hospital wearing a nametag and hospital scrubs that reasonably indicated she was a registered nurse. The Appellant offered no rebuttal of this prima facie evidence. The court notes that the standard of proof in an OMVH hearing is a preponderance of the evidence, unlike in a criminal case. *See* S.C. Ann. § 1-23-600(A)(5) (Supp. 2014); OMVH Rule 15(B). Additionally, in this instance, no blood sample was collected. Therefore, the court finds that the hearing officer did not err in ruling that Officer Desrochers established a prima facie case the Albright was a registered nurse.

³ The court cites to the opinion substituted and refiled January 25, 2005, not the earlier opinion contained in the record.

ORDER

IT IS HEREBY ORDERED, for the foregoing reasons, that the hearing officer's Final Order and Decision is **AFFIRMED** and the Department's suspension of Appellant's driver's license is upheld.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

January 20, 2016
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 party(ies) or their attorney(s).

This 20th day of Jan 2016
By [Signature]
Judicial Law Clerk

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bradley Sanders,

Appellant,

vs.

South Carolina Department of Motor
Vehicles and Columbia Police Department,

Respondents.

Docket No. 15-ALJ-21-0124-AP

**ORDER TO SUPPLEMENT THE
RECORD ON APPEAL**

STATEMENT OF THE CASE

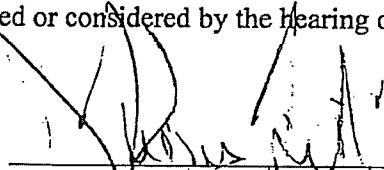
This matter is on appeal by Bradley Sanders (Appellant) from the South Carolina Office of Motor Vehicle Hearings (OMVH). A hearing was held at the OMVH on March 5, 2013. On February 13, 2015, the OMVH issued a Final Order and Decision sustaining the decision of the South Carolina Department of Motor Vehicles revoking Appellant's driver's license and driving privileges.

The Record on Appeal in this case was filed May 1, 2015. Upon review, it appears that certain evidence admitted at the hearing was inadvertently left out of the Record on Appeal. The SLED Urine/Blood Collection Report offered into evidence on page 10 of the Record on Appeal does not appear in the Record, despite being referenced in the hearing officer's Final Order. Therefore, the Court orders that the Record on Appeal be supplemented to include all evidence received or considered, so that the Record complies with ALC Rule 36(B).

ORDER

IT IS HEREBY ORDERED, for the foregoing reasons, that the Record on Appeal be supplemented to include all evidence received or considered by the hearing officer.

AND IT IS SO ORDERED.

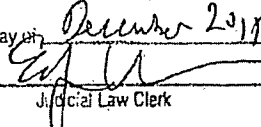

S. Phillip Lenksi

Administrative Law Judge

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 hereto, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 11th day of December 2015

By: 
Judicial Law Clerk

FILED

DEC 11 2015

ADMIN. LAW COURT

December 11, 2015
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

Columbia Police Department and South	)	Docket No. 12-OMVH- 01-6227-CC
Carolina Department of Motor Vehicles,	)	
	)	
Petitioners,	)	
	)	FINAL ORDER AND DECISION
v.	)	
	)	
Bradley Sanders,	)	
	)	
Respondent.	)	

Appearances:

For the Respondent: Leigh Leventis, Esquire, and Bradley Sanders
For the Petitioners: Officer S.B. Desrochers, Columbia PD

Other information:

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

INTRODUCTION

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) upon request by Respondent, Bradley Sanders, for a hearing. Respondent was arrested on November 21, 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. 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 5, 2013, at the Edgar A. Brown Building in Columbia, 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.

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..
2. On November 21, 2012, at approximately 4:10 a.m., Officer Desrochers responded to the scene of a single car collision on Whaley Street in Columbia. When he arrived on the scene, he saw a vehicle that had run off the road and hit a tree. He saw the Respondent standing at the Kangaroo gas station. He was bleeding from the head. He spoke with the Respondent, but he did not know what had happened. He stated he did not know how he hurt his head. The Respondent's personal effects were found in the vehicle and also blood was found in the vehicle.
3. Officer Desrochers smelled a strong odor of an alcoholic beverage coming from the Respondent. The Respondent appeared to be intoxicated. He seemed off balance both physically and mentally. His speech was slurred.
4. The Respondent was transported to the Lexington Medical Center by ambulance.
5. At the hospital, Officer Desrochers was informed by Angela Albright who held herself out to be a nurse, who treated patients at the hospital, and who wore a name badge stating she was a registered nurse, that the Respondent was physically unable to submit to a breath test.
6. The Respondent suffered a head injury in the wreck.
7. The Respondent was told that he was under arrest for driving under the influence and was given his Miranda rights. He was also given the Advisement of Implied Consent Rights (Advisement) both verbally and in writing.
8. Respondent refused to submit to the blood test.
9. On November 21, 2012, Respondent was given a written Notice of Suspension of his driver's license for refusing to submit to a blood test.

10. The Respondent testified that he remembers very little about that night and nothing about the accident. He stated that he had been up all night the night before studying for an exam. He did go to a bar the night of the accident and had two drinks and perhaps part of a third.
11. Respondent was charged with a violation of S.C. Code Ann. §56-5-2950 for refusing to submit to a blood test of his blood alcohol concentration.

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 Hearing (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....

At the direction of the arresting officer, the person must first be offered a breath test to determine the person's alcohol concentration. If the person is physically unable to provide an acceptable breath sample because he has an injured mouth, is unconscious or dead or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken.

Furthermore, the breath test must be administered by a person trained and certified by the South Carolina Department of Public Safety (SCDPS), pursuant to State Law Enforcement Division (SLED) policies. See 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) 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 review of the facts in this case and the applicable law, I find and conclude that the Respondent was lawfully arrested for driving under the influence. The officer responded to a collision and observed that a vehicle had collided with a tree. He located the Respondent nearby who was bleeding from the head. The Respondent stated that he had no memory of what had happened. The Respondent had a strong odor of an alcoholic beverage about his person. He seems intoxicated and had slurred speech. He seemed off balance, both physically and mentally.

The Respondent was advised verbally and in writing of his Advisement of Implied Consent Rights for blood and he refused to submit a blood sample as requested by the officer. The officer was informed by licensed medical personnel that the Respondent was physically unable to submit to a breath test. The license medical person signed the SLED (State Law Enforcement Division) Urine/Blood Collection Report indicating such. Further, the issue stated in Section 6 above is whether the Respondent was physically unable to provide an acceptable breath sample because he has an injured mouth, is unconscious, dead, or for any other reason considered acceptable by the licensed medical personnel. According to the evidence, the Respondent was not unconscious and there was no evidence that he had an injured mouth. Therefore, I find that the officer was advised by a registered nurse (licensed medical personnel) that the Respondent was physically unable to submit to a breath test. The Respondent argued that this is hearsay. He stated that there is no way to know that the person who signed it was actually a registered nurse and that he did not have the opportunity to question her. I conclude that the testimony was not hearsay because it was not admitted to prove that the Respondent was actually unable to leave, only that the blood test was warranted because

licensed medical personnel determined he was unable to provide a breath sample. See Cann v. S.C. Dep't. of Motor Vehicles and S.C. Dep't. of Public Safety, Docket No. 12-ALJ-21-0465-AP. Further, I conclude that Officer Desrochers presented a prima facie case that the person who told him and signed the form was licensed medical personnel – she was in the hospital, treating patients, represented herself as a nurse, and wore a name tag that indicated she was a registered nurse. The Respondent offered no evidence to refute the assertion.

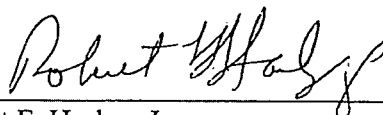
I conclude as a matter of law that the Petitioner met its burden of proof. Accordingly, the relief requested by the Respondent must be denied.

ORDER

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

ORDERED that the suspension of the Respondent's driver's license or driving privilege be sustained.

AND IT IS SO ORDERED.



Robert F. Harley, Jr.
OMVH Senior Hearing Officer

February 13, 2015
Columbia, South Carolina

FILED

FEB 13 2015

SCOMVH

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bradley Sanders,	)	Docket No.: 12-OMVH-01-6227-CC
	)	
Appellant,	)	
	)	
v.	)	NOTICE OF APPEAL
	)	
Columbia Police Department and South	)	
Carolina Department of Motor Vehicles,	)	
	)	
Respondents.	)	
	)	

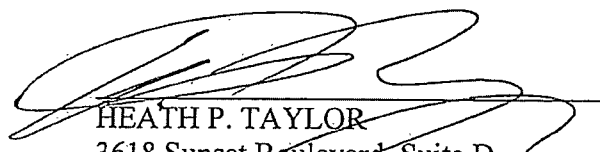
On or about February 13, 2015, counsel for Appellant received the Final Order and Decision in the above referenced matter issued on February 13, 2015 resulting from a hearing held on March 5, 2013 before Hearing Officer Robert F. Harley, Jr. Appellant respectfully petitions this Court for review of the Final Order and Decision based upon the following:

1. The OMVH hearing officer erred in permitting hearsay testimony to establish Appellant's alleged inability to submit to a breath test;
2. The OMVH hearing officer erred in admitting hearsay testimony and a document signed by a person alleged to be a licensed medical professional concerning Appellant's alleged inability to submit to a breath test;
3. The OMVH hearing officer erred in ruling that the arresting officer presented a prima facie case that the individual who stated the aforementioned hearsay statements and signed the aforementioned document was a licensed medical professional; and
4. Any and all other properly preserved issues as permitted by SCALC Rules 33 and 37.

FILED 022
MAR 03 2015

Respectfully Submitted,

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Attorney for Appellant

This 5 day of March, 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Columbia Police Department,)
)
 Petitioner,)
)
vs.)
)
Bradley Sanders,)
)
 Respondent.)
-----)

HEARING

March 5, 2013



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1 HEARING OFFICER: My name is Robert Harley. I have
2 been appointed by the South Carolina Office of
3 Motor Vehicle Hearings to preside at this
4 implied consent hearing scheduled for the 5th of
5 March, 2013, at the Edgar A. Brown Building,
6 Suite 325, Columbia, South Carolina. For the
7 record, the petitioner in this matter is the
8 Columbia Police Department. Their witness, the
9 investigating officer, is present. Respondent,
10 Mr. Bradley Sanders, is present and represented
11 by Attorney Lee Leventis. At this time, we'll
12 swear in the petitioner's witness. State your
13 full name, sir.

14 OFFICER DeROCHA: Officer Scott DeRocha, Columbia
15 Police Department.

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

20 OFFICER DeROCHA: It will.

21 THE COURT: All right, sir. All right. At this
22 time, we'll have testimony. Do you have a
23 witness?

24 MR. LEVENTIS: He might testify.

25 THE COURT: Okay. If he does, we'll swear him in at



1 this time.

2 MR. LEVENTIS: Raise your hand.

3 THE COURT: State your full name.

4 MR. SANDERS: Bradley Gordon Sanders.

5 THE COURT: All right. Solemnly swear the testimony
6 you offer in this matter will be the truth, the
7 whole truth, and nothing but the truth?

8 MR. SANDERS: It will.

9 THE COURT: All right, sir. All right. At this
10 time, we'll move forward with testimony with
11 petitioner's witness, Officer DeRocha.

12 OFFICER DeROCHA - DIRECT TESTIMONY:

13 OFFICER DeROCHA: The incident occurred approximately
14 four -- about 4:10 a.m. on November 21st, 2012,
15 at the 1200 block of Whaley Street, which is in
16 the City Limits of Columbia. On that day and
17 time I was dispatched to the scene of a single
18 car collision which the subject vehicle had ran
19 off the road and struck a tree. I arrived on
20 scene and found Mr. Sanders standing over by
21 the Kangaroo gas station. He was bleeding from
22 his head. Witnesses pointed him out to me.
23 They're not here, so I can't testify to what
24 they said. But he was pointed out as the
25 subject. I did independently verify that his



1. personal belongings were in the vehicle as was
2. blood that indicated that he was in the
3. vehicle, as well. When asked about it, he kept
4. saying he didn't know what we were talking
5. about; he wasn't in a wreck. When I asked how
6. he hurt his head, he couldn't give any kind of
7. straight answer for it. He seemed very
8. intoxicated, had a strong odor of alcoholic
9. beverage about his breath and person. Seemed
10. a little off balance -- not just physically off
11. balance, but mentally not there. We did ask if
12. he had lost consciousness or anything to the --
13. to the witnesses. They stated that he did not.
14. When we were speaking with him, he was speaking
15. with slurred speech. He was taken to Lexington
16. Medical Center for treatment. I did follow the
17. vehicles up -- the ambulance up there. Once we
18. were there, I was told that he would not be
19. able to provide a breath sample -- would not --
20. **MR. LEVENTIS:** I'm going to object to that since
21. that -- that's hearsay, Mr. Harley, and there's
22. nobody here to -- I can't cross-examine that.
23. **THE COURT:** All right. Since you already said it,
24. we'll let it go in, but not for the truth of
25. the matter asserted, just that you was told



1 that.

2 **MR. LEVENTIS:** And I would -- I would respectfully
3 request that anything -- any hearsay testimony
4 be precluded from this. Officer DeRocha's the
5 only one here and I would think that he has to
6 testify without the benefit of any testimony
7 from people who aren't here.

8 **THE COURT:** All right. I'll note it for the record.

9 **OFFICER DeROCHA:** Okay. What about written
10 documentation with signatures from the nurse
11 that said he couldn't leave within that two-
12 hour span of time, would that be considered
13 hearsay, as well?

14 **MR. LEVENTIS:** That's not what she said.

15 **THE COURT:** You have to offer it in evidence and let
16 him object to it at that point in time.

17 **OFFICER DeROCHA:** I would offer up the SLED blood
18 and urine collection report signed by Angela
19 Albright, which is an RN, stating checkmarked
20 that he could not leave because of medical
21 reasons to take the breath sample. Do you have
22 any objections to that?

23 **MR. LEVENTIS:** I'm going to object to that, Mr.
24 Harley, for several reasons. One is we don't
25 know if Angela Albright is actually a



1 registered nurse. You know, we don't know who
2 -- there's a case on point, State v. Frye, that
3 -- that I give to Officer DeRocha. Well, I
4 give Officer DeRocha one and I'll provide the
5 hearing officer with one, that basically says
6 that -- that anybody can have hospital garb on,
7 but -- but that particular person -- that
8 defense needs to be able to cross-examine that
9 particular person on his or her credentials.
10 Secondly, this Affidavit that Officer DeRocha
11 intends to -- to try to submit doesn't say he
12 wasn't able to leave the hospital. It says for
13 some reason deemed acceptable by licensed
14 medical personnel. We have a right to ask that
15 licensed medical personnel what that reason
16 was. And we can't ask that person that reason
17 without that person being here and we're not
18 sure, again, she may well be a registered
19 nurse, but we don't know that for sure and we
20 don't have a right to cross-examine her
21 credentials, so I would respectfully request
22 that any of that testimony be excluded, as well
23 as objection to the introduction of that
24 report.

25 THE COURT: I tell you what now, I'm going to let it



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1 come in, Attorney Leventis, not for the fact
2 that she was a licensed nurse practitioner, but
3 that he relied upon what she said. (Inaudible)
4 I can read the case and study it in more
5 detail. If I found out that -- I understand
6 the argument that basically this case would
7 support excluding it, it will be struck from
8 the record. But it's better included than not
9 to have it and want it, but the case supporting
10 Attorney Leventis' motion, I will exclude the
11 document from the record.

12 MR. LEVENTIS: I'm going to also provide you with
13 another case --

14 THE COURT: Okay.

15 MR. LEVENTIS: -- to review as well in that regard,
16 Peak v. South Carolina Department of Motor
17 Vehicles, and I'll give Officer DeRocha a copy
18 of it, as well. I think I can give you that in
19 conjunction with each other.

20 THE COURT: Okay.

21 OFFICER DeROCHA: And along with Mr. Leventis'
22 motion, I understand that in hospitals, even
23 receptionists wear scrubs, and that's where
24 that's coming from. She did have a name badge
25 indicating she was an RN. I can't testify that



1 I witnessed that at least -- of course, I can't
2 specifically say that she did good in school.

3 I was not with her in school --

4 MR. LEVENTIS: Right, right.

5 OFFICER DeROCHA: -- but she did have the name badge
6 that I indicated that she was. So I will say
7 that beyond that with what I was told was that
8 he would not be able to get out in a timely
9 manner in order to provide that breath sample.
10 I did ask him if he would be willing to submit
11 a blood sample with the hospital staff so that
12 I could take it for testing. He declined doing
13 that. He was -- before I even asked him, I'm
14 sorry, let me back up, I got sidetracked here.
15 Before I asked him all this, he was read
16 Miranda, advised that he was under arrest; he
17 was read the notice of implied consent with all
18 that in mind knowing that his license would be
19 suspended had he not provided the blood sample
20 at that point. He still refused to ... He also
21 had his own copy of the implied consent form,
22 as well. But all that, he still declined that;
23 he was arrested; his license was suspended; and
24 he ended up being transported that night to
25 Alvin S. Glenn. On the record, I'm a member at



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1 -- I'm a member at the Columbia Police
2 Department Traffic Safety Unit, certified
3 through the South Carolina Criminal Justice
4 Academy as a standardized field sobriety test
5 practitioner and roadside advanced -- roadside
6 impaired driving enforcement officer.
7 Datamaster wasn't -- wasn't used on this one.
8 I believe I have everything.

9 THE COURT: All right. Thank you, sir. Please
10 answer any questions Attorney Leventis may
11 have.

12 OFFICER DeROCHA - CROSS-EXAMINATION BY MR. LEVENTIS:

13 Q: (Inaudible) did you take him to jail right
14 after he refused the blood draw?

15 A: He was taken to jail once the medical staff
16 released him. It was quite a while after --
17 after he refused. We were up there for a while.

18 Q: And do you know -- do you know for sure that
19 Angela Albright is a registered nurse?

20 A: I know what the name badge says, but -- but no,
21 I was -- I did not go to school with her. I
22 don't know that she graduated from any specific
23 programs.

24 Q: All right. Now, this -- this collision with
25 the tree was a pretty significant collision,



1 was it not?

2 A: That's correct. I -- I believe that the
3 vehicle probably would have been totaled and I
4 believe (inaudible) earlier had said it was --
5 I'm sorry, Mr. Sanders earlier had said the car
6 was totaled, so it was fairly significant.

7 Q: And you said that he didn't know -- what was
8 the first question you said you asked him,
9 Officer DeRocha? If he was driving the car?

10 A: Yeah, I don't -- recall the specific question,
11 but probably just asked him what happened, you
12 know --

13 Q: And he said --

14 A: -- that kind of thing. He -- he denied knowing
15 anything about a wreck at all at first even
16 though like I said we had his personal
17 belongings in the driver's seat and blood in
18 the driver's seat.

19 Q: Let me give you a copy and (inaudible) two page
20 from Lexington Medical Center of his diagnosis
21 and read to me what's highlighted. The first
22 four lines up there on the left-hand side, what
23 does it show? Says symptoms, what does it
24 show?

25 A: Under diagnosis?



1 Q: Under -- yeah, under diagnosis.

2 A: Right here.

3 Q: I'm sorry.

4 A: Scalp contusions, scalp laceration, cervical
5 strain, and closed head injury.

6 Q: Okay. And then on the second page, let me see
7 if I can find it here, let's see, the second
8 page. Read what it says under head injury.

9 A: He suffered a head injury. Common symptoms
10 include headache, nausea, vomiting once or
11 twice, slight dizziness or sleepiness. Head
12 injury can cause slow bleeding or other
13 problems inside the head that may not be
14 detected at this time. You are being allowed
15 to go home, but a relative or a friend should
16 stay with you and read the following
17 instructions.

18 Q: All right. So does it sound like he may have
19 had a concussion and was out of it?

20 A: I'm not a medical personnel. I don't know and
21 along with my document from my RN, I would say
22 that this seems just as much hearsay as that
23 one does, so if Mr. Harley decides to allow
24 that one in, then this one should go in, as
25 well --



1 Q: Well, my client -- my client will be able to
2 testify to it. I'm just asking. And I'll --
3 I will let him testify to that. Okay.

4 MR. LEVENTIS: I don't have any further questions.
5 I am going to let my client testify, Mr.
6 Harley.

7 THE COURT: All right. Anything further, officer?

8 OFFICER DeROCHA: I have nothing further, Your
9 Honor.

10 THE COURT: Okay. At this time, the State's closed
11 their case of testimony and evidence. Mr.
12 Sanders, please answer any questions Attorney
13 Leventis has.

14 MR. SANDERS - DIRECT EXAMINATION BY MR. LEVENTIS:

15 Q: All right. Brad, you were in a wreck and --
16 you've since found out you were in a wreck at
17 4:00 in the morning that morning, correct?

18 A: Yes, sir.

19 Q: All right. Do you remember when Officer
20 DeRocha asked you what happened that you talked
21 -- I mean, you didn't know what happened, did
22 you?

23 A: No, I had no clue.

24 Q: Okay.

25 A: I was very disoriented.



1 Q: Okay. Well, let me show you what you received
2 from the doctor's office and let's see if this
3 is -- what is -- whose -- whose name is that at
4 the top?

5 A: That's my name.

6 Q: Correct. Which is?

7 A: Bradley Sanders.

8 Q: Okay. And it's from the Lexington Medical
9 Center Emergency Department?

10 A: Yes, sir.

11 Q: Okay. And under -- well, let me say this. All
12 right. I've given you a copy of that, Brad?

13 A: I believe I have a copy of that.

14 MR. LEVENTIS: I'm going to move to introduce this,
15 Mr. Harley, as being Brad's medical diagnosis.

16 THE COURT: All right, sir.

17 MR. LEVENTIS: And I've got an extra copy so you can
18 -- so that you can follow what I'm talking
19 about here.

20 Q: All right, Brad, that -- read the diagnosis
21 from MVA, which is motor vehicle accident.
22 What does it say?

23 A: Scalp contusions, scalp lacerations, cervical
24 strain, and closed head injury.

25 Q: And to the right, again the highlighted areas,



1 what does it say that you had?

2 A: Head injury and neck strain.

3 Q: Turn to the second page, and under the head
4 injury, what Officer DeRocha read a minute ago
5 -- go ahead and read this one to yourself.

6 A: Suffered a head injury, common symptoms include
7 headache, nausea, vomiting once or twice, and
8 select dizziness or sleepiness. There may be
9 some swelling and pain. A head injury can
10 cause slow bleeding or other problems inside
11 that may not be detected at this time. You are
12 being allowed to go home, but a relative or
13 friend should stay with you and read the
14 following instructions.

15 Q: Okay. Go down to where it says contact your
16 doctor or return to the Emergency Department.
17 Read the two highlighted -- the first two
18 highlighted bullet points.

19 A: Contact your doctor or return to the Emergency
20 Department immediately if any of the following
21 occurs: persistent nausea or vomiting,
22 confusion, unusual drowsiness, personality
23 changes, or loss of memory.

24 Q: And -- okay. Good. Now, do you recall much --
25 what do you recall that night?



1 A: Well, I -- I had stayed up the previous night
2 all night because I had a chemistry exam the
3 next morning. So I woke up that day; I took
4 that exam. I was kind of elated with how I
5 felt I did on it, so I, you know, immediately
6 lost all my fatigue and was kind of running on
7 fumes the rest of the day, but I was happy so
8 I didn't really get tired. Then I went out
9 with a couple friends that night and I went --
10 after I left the Five Points area, I drove to
11 go to Sonic on Assembly Street to get some
12 food, that's why I was coming down Whaley
13 towards the tree that I hit. And that's the
14 last thing I remember. The rest of it -- the
15 rest of the evening's really fuzzy until I woke
16 up the next morning in jail.

17 Q: Okay. Do you recall the specifics of any
18 requests that were made of you by Officer
19 DeRocha or anybody else that night?

20 A: No.

21 Q: And do you remember -- do you remember being
22 requested by anybody to do -- for draw blood;
23 do you remember Miranda warnings; do you
24 remember any of those things?

25 A: No. I don't really -- I don't really remember



1 much about being in the hospital or going into
2 the hospital or being in front of the gas
3 station or any of that that you said that I
4 was.

5 Q: Okay.

6 A: It's just all really foggy. My -- all I
7 remember is waking up in jail and my -- the
8 back of my head was -- and clothes were so
9 crusty with blood because they wouldn't like
10 let me -- because they wouldn't even wash the
11 blood off my head when I got to jail. They
12 just threw me in the cell and I woke up with
13 crusted blood and stitches stuck -- the hair
14 stuck all in my stitches when I -- when I woke
15 up.

16 Q: All right. Answer any questions Officer
17 DeRocha has for you, Brad.

18 MR. SANDERS - CROSS-EXAMINATION BY OFFICER DEROGHA:

19 Q: Now, you're saying -- what were you doing prior
20 to the wreck earlier that evening?

21 A: Like went out with some friends to Five Points.

22 Q: Okay. Where at in Five Points?

23 A: Went to the Salty Nut Café.

24 Q: Okay. About -- ballpark, about what time was
25 that?



- 1 A: Well, we didn't go out until -- until later
2 that night. I -- I hadn't really planned on it
3 and then a couple of my friends that were in
4 town -- because it was the Tuesday before
5 Thanksgiving, so a couple of my friends had
6 come into town and wanted to -- wanted to go
7 out. So we didn't even leave to go until
8 probably 1:00 or so. It was -- it was late.
9 I was already very tired before I -- before I
10 went anywhere just from being so tired from
11 staying up the night before for my exams.
- 12 Q: And you said -- now, you had left there to go
13 to Sonic, you said to get something to eat?
- 14 A: Yes, sir.
- 15 Q: So you left the Salty Nut to go to Sonic?
- 16 A: Yes, sir.
- 17 Q: Okay. What route did you take to get there?
- 18 A: I went down I think it's Barnwell. I parked my
19 car right beside the Salty Nut Café on the road
20 that is perpendicular to Greene Street and
21 Blossom in between -- I think it's Sumter
22 Street maybe -- or no, not Sumter. I think
23 it's Barnwell Street.
- 24 Q: Right beside the Salty Nut? Beside the
25 railroad tracks?



1 A: Correct.

2 Q: I believe that's Laurens Street.

3 A: Laurens, okay.

4 Q: Yes.

5 A: Laurens Street. And I was facing towards
6 Blossom, so I proceeded down Laurens Street,
7 took a right onto Blossom Street, and there's
8 -- to avoid taking -- I've been a student at
9 USC for a long time, so I know all the
10 shortcuts to miss stop lights, so I took a --
11 I took a left turn at a green light on Blossom
12 Street up -- I think that's Barnwell or
13 Henderson and then took a right onto Whaley so
14 that I could take a right onto Assembly and I
15 wouldn't have to wait at the stop light on the
16 corner of Blossom and Assembly Street.

17 Q: Got you. And --

18 A: That's a big four-way intersection.

19 Q: Did you say your friends were with you or just
20 you driving?

21 A: Just me driving.

22 Q: Okay. So you were driving down there by
23 yourself. Now, before you left, how many
24 drinks had you had that night?

25 A: I probably had two, maybe part of a third. I



1 can't really recall, just because the whole
2 evening's pretty fuzzy from my head injury, but
3 --

4 Q: Got you. Just --

5 A: But my -- one of my friends walked -- one of my
6 friends was parked directly beside me and he
7 actually walked to the car with me and he was
8 with me the whole night and -- and he also
9 agrees that we -- that I, you know, wasn't
10 intoxicated and hadn't -- hadn't been drinking
11 very much at all.

12 Q: Got you. How many did he have to drink, do you
13 remember him?

14 A: I have no clue. I don't -- I don't monitor my
15 friends' alcohol intake whenever we go places.

16 Q: Got you. But you think that he monitored
17 yours?

18 A: Well, I mean, we had -- the time frame that we
19 had been out, I didn't really have time just
20 from the crowd, I wouldn't have even had time
21 to have many drinks.

22 Q: Your collision -- we have the collision time at
23 about four -- about 4:00, the dispatch time was
24 4:13, so just call it 4:00. You said you went
25 out about 1:00, 1:30, something in that time



1 frame?

2 A: Yeah.

3 Q: So you had about three hours -- two and a half,
4 three hours or so to drink. You said you had
5 two to three beers, something in that --

6 MR. LEVENTIS: Mr. Harley, I've let this line of
7 questioning go for a while. I mean, we're not
8 questioning the fact that he was arrested for
9 DUI. What we're questioning, the fact is he
10 one, that the hearsay on everything involved
11 with the nurse or the alleged nurse; and
12 secondly, just his ability to understand what
13 was going on and the fact that he had the head
14 injury.

15 OFFICER DeROCHA: Well, it did seem like we were
16 questioning the fact that he had a head injury
17 versus DUI, so I was just wanting to establish
18 that he had also been drinking and he admits to
19 drinking --

20 MR. LEVENTIS: He says he had two or three -- two or
21 three --

22 OFFICER DeROCHA: -- and (inaudible) time. That's
23 right.

24 A: I had consumed an alcoholic beverage that
25 night, yes.



1 THE COURT: He admitted that.

2 A: I'm (inaudible)

3 THE COURT: He admitted that now.

4 OFFICER DeROCHA: Okay.

5 Q: You don't feel that alcohol had anything to do
6 with your wreck whatsoever?

7 A: Absolutely not. I think it had to do with me
8 being tired and hungry. I hadn't eaten very
9 much that day at all. And I don't know, I fell
10 asleep at the wheel. The next thing I remember
11 is --

12 Q: You had about two to three beers on an empty
13 stomach late at night while you were tired?

14 A: Yeah, yeah, right about two beers.

15 Q: Okay. That's fine.

16 MR. LEVENTIS: Go ahead.

17 THE COURT: Anything else?

18 OFFICER DeROCHA: No, I don't have any other
19 questions.

20 THE COURT: (Inaudible) finished.

21 OFFICER DeROCHA: Yeah.

22 THE COURT: Okay. That concludes all testimony and
23 evidence. At this time we'll hear closing
24 remark statements. We'll let Officer DeRocha
25 go first.



1 CLOSING STATEMENTS:

2 OFFICER: I'm fine.

3 THE COURT: All right. Mr. Leventis?

4 MR. LEVENTIS: Just basically I just renew my motion
5 (inaudible) would respectfully request that you
6 review the (inaudible) which I think will
7 confirm the objections which I made. But if it
8 doesn't, I would still submit to you that with
9 the basis of his injuries, that he had
10 absolutely no knowledge of what was going on.
11 He had a significant head injury, had a
12 concussion. He doesn't remember anything until
13 he woke up in jail the next morning. And he
14 did -- and he did have blood all over the back
15 of his head.

16 THE COURT: All right.

17 MR. LEVENTIS: That would do it. Sorry.

18 THE COURT: Okay, gentlemen. This hearing is now
19 closed.

20 (There being nothing further, the hearing was
21 concluded.)
22
23
24
25



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

3694627

CERTIFICATE

This is to certify the transcript of the hearing consists of twenty-three (23) pages. This transcript was prepared by me without the benefit of my being present during the hearing. Additionally, this transcript was prepared from a audio recording provided to me.

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 this April 28, 2015.

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

CH50



South Carolina Department of Motor Vehicles

NOTICE OF SUSPENSION

1 MV-63
(Rev. 8/12)

Driver's Name Sanders, Bradley Tharhair BP/DL State and Number [redacted] Date of Birth [redacted]

Address on Driver's License: Street address, Apt. No., City, State, Zip Code [redacted]

Special mailing address for notices (if different from driver's license address): Street address, Apt. No., City, State, Zip Code [redacted]

Vehicle License Plate State and No. [redacted] Vehicle Type: Commercial ☐ Yes ☒ No Hazardous Material ☐ Yes ☒ No

**YOUR PRIVILEGE TO DRIVE IN SOUTH CAROLINA IS SUSPENDED IMMEDIATELY FOR THE FOLLOWING:
(CHECK ONLY ONE BOX)**

**UNDER THE AGE OF TWENTY-ONE (21)
AND NOT UNDER ARREST FOR DUI***

- ☐ Registering an alcohol concentration of .02 or greater*
☐ Refusing to submit to a breath, blood or urine test*
Date of Test/Refusal [redacted]

ANY AGE UNDER ARREST FOR DUI

- ☐ Registering an alcohol concentration of .15 or greater
☒ Refusing to submit to a breath, blood or urine test
Date of Test/Refusal 11 26 2012

*A person who is taken for testing under 56-1-286 cannot be prosecuted under 20-7-8920, 20-7-8925, 56-5-2930 or 56-5-2933. Everyone who receives this Notice of Suspension can request a hearing to challenge the suspension. A request for a hearing must be filed with the SC Office of Motor Vehicle Hearings within thirty days of the issuance of the Notice of Suspension. There is a \$200.00 filing fee. (Personal checks are not accepted.) See the back of this form for more information on how to ask for a hearing.

If a hearing is scheduled, you may be able to get a temporary alcohol restricted license. The temporary alcohol restricted license costs \$100.00 and allows you to drive without restrictions until the hearing results are mailed to you. See the back of this form for instructions on how to obtain a temporary alcohol restricted license.

If you do not obtain a temporary alcohol restricted license, your suspension continues. You cannot drive until you either obtain a route-restricted license or your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules against you after your hearing, your suspension will go back into effect. If you were suspended after having been arrested for DUI, you may be eligible for a route-restricted license to allow you to drive for the remainder of the suspension. There are instructions on the back of this form to explain how to obtain a route-restricted license. If you do not obtain a route-restricted license or if you are under the age of twenty-one (21) and were not arrested for DUI, you cannot drive until your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules in your favor, the suspension will be cancelled. Your driving privileges will be reinstated. However, you must go to a Department of Motor Vehicles office to have a regular license issued.

If you were suspended after having been arrested for DUI, you may be entitled to have a route-restricted license during your suspension period. You do not have to request a hearing to be eligible for a route-restricted license. The route-restricted license costs \$100.00 and allows you to drive only to and from work, college, ADSAP classes, and a court-ordered drug program, plus during the course of your employment or college. However, you must enroll in ADSAP before a route-restricted license will be issued. See the back of this form for instructions on how to obtain a route-restricted license.

I understand that I cannot drive until a license has been issued to me.

Signature of Driver [Signature]

Date Signed 11 26 2012

Driver's license or permit surrendered (yes or no) [redacted] (If yes, license must be attached to yellow copy of this form)

Date Signed 11 21 2012 Signature of Arresting Officer [Signature]

Agency Name Columbia Police Dept Agency Code 900100

Date Signed 11 21 2012 Signature of DataMaster Operator [Signature]

Agency Name Columbia Police Dept Agency Code 900100

Printed Name of Arresting Officer S. B. Desrosiers

Agency Telephone Number (803) 545-3500

Printed Name of DataMaster Operator S. B. Desrosiers

Agency Telephone Number (803) 545-3500

Blue Copy - Driver Yellow Copy - DMV/Driver Records

Green Copy - Officer

White Copy - Officer's Agency

048
RH

I hereby request that I post file my request with the SC Office of Motor Vehicle Hearings within 10 days of the date of this notice and to request a temporary, limited restricted license.

11-26-12 *Bradley Thaler-Sanders*

[Redacted Address]

George M. Eileen, Attorney

Attorney's Address, Phone Number, and E-mail Address

My SC Office of Motor Vehicle Hearings is scheduled

IF YOU WANT TO REQUEST A HEARING

1. You must file this form with the SC Office of Motor Vehicle Hearings, 1105 Pendleton St., Suite 100, Columbia, SC 29201, by the date specified on the form. (If you do not file this form by the date specified, your request will not be accepted.)

2. You must include the following information on this form: your name, address, telephone number, and e-mail address where you can be reached.

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12. You must include the following information on this form: your name, address, telephone number, and e-mail address where you can be reached.

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19. You must include the following information on this form: your name, address, telephone number, and e-mail address where you can be reached.

20. You must include the following information on this form: your name, address, telephone number, and e-mail address where you can be reached.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: Sanders Bradley Thorn Richland
 Last Name First Name Middle Name County of Arrest

Subject's Address: [REDACTED]

Driver's License Number: [REDACTED] State: SC DOB: [REDACTED] Sex: M Race: W

Arresting Officer: S.B. Desmet Agency: Richland Police Dept

Date of Arrest: 11 21 2012 Time of Arrest: 0112P AM/PM Traffic Ticket Number: 2P734 JH

Date of Test: Time of Test: AM/PM Location of Collection:

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- ☒ Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
- ☒ Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- ☐ Officer has reasonable suspicion that the subject is under the influence of drug(s) other than alcohol and a urine sample is requested.
- ☐ Subject is unconscious or otherwise incapable of refusal and is considered informed, therefore, a blood sample is requested.
- ☒ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.
- ☐ Subject is under arrest for, or in violation of, Section 56-5-2945 or 50-21-113, and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- ☐ A blood sample is requested by the subject for his/her own independent test.

Name and Title of Licensed Medical Personnel: Angela Albright, RN

(Please Print)

Signature of Licensed Medical Personnel: [Signature]

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- ☐ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- ☐ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector:

(Please Print)

Signature of Licensed or Trained Collector:

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- ☐ Sample collection was under my direct supervision.
- ☐ Sample container is properly labeled with the subject's name and time of collection.
- ☐ Sample is properly sealed and ready for transport.

Signature of Officer: [Signature]

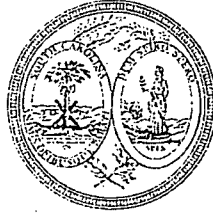
Date: 11 21 2012

I, [Signature] (Subject's Signature) received a copy of this report on 11 21 2012 Date

Copy to: Subject, Hospital, SLED

**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

December 15, 2015

The Honorable S. Phillip Lenski
South Carolina Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Dear Judge Lenski,

The OMVH is in receipt of your Order to Supplement the Record on Appeal. Your order has been presented to the hearing officer. The OMVH is unable to supplement the Record on Appeal because the document you requested is not in our office. Please see the attached affidavit from the hearing officer for further explanation.

Please let us know if there is anything you would like us to do to try to rectify the situation.

Sincerely,

Yolanda P. Williams
Administrative Coordinator
SC OMVH

Cc: Frank L. Valenta, Esquire
Office of General Counsel
SC Department of Motor Vehicles

Heath P. Taylor, Esquire
3618 Sunset Blvd., (Hwy. 378) Suite D
West Columbia, SC 29169

DEC 18 2015

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Docket No. 15-ALJ-21-0124-AP
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Affidavit of Robert F. Harley, Jr.
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Appellant,

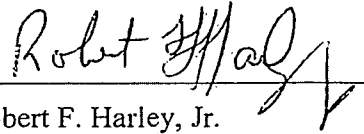
Respondents.

1. My name is Robert F. Harley, Jr.
2. I am over 18 years of age; I have personal knowledge of the facts set forth herein and I am competent to testify.
3. I am a hearing officer with the Office of Motor Vehicle Hearings.
4. On March 5, 2013, I conducted a hearing regarding an implied consent suspension of the Appellant's driver's license. During the hearing, a SLED Blood/Urine Collection Report was offered into evidence by the arresting officer. There was an objection from the Respondent. After argument, I allowed the document into evidence subject to my analysis of the case law the Respondent put into evidence.
5. When I prepared the order in this matter, I did not have the collection report. My Final Order and Decision discusses the report because I saw it at the hearing and the testimony from the hearing stated what was on the document.

6. At the time I prepared the order, I had the other exhibits offered in the case and my notes, but I did not have the report.
7. Because I had possession of all other document involved in the case, it is my belief that I never took possession of the SLED Blood/Urine Collection Report. It is the usual practice that when evidence is admitted, it remains on the party's table for his/her use until the end of the case. Then, the evidence is given to me. It is my belief that, by mistake, this document did not come into my possession and I did not realize it at the time.
8. Therefore, I cannot assist the Office of Motor Vehicle Hearings in complying with the Order to Supplement the Record on Appeal.

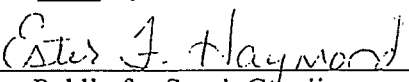
FURTHER, AFFIANT SAYETH NOT.

I certify that the statements contained in this Affidavit are true and correct to the best of my knowledge and belief.


Robert F. Harley, Jr.

Sworn to and Subscribed to before

me this 15th day of December, 2015.


Notary Public for South Carolina
My commission Expires 4-20-2019

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 17, 2016

TAYLOR LAW FIRM LLC



HEATH P. TAYLOR

3618 Sunset Boulevard, Suite D
West Columbia, South Carolina 29169
Telephone: (803) 926-2205
Attorney for Appellant

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