

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Motor Vehicles,) Docket No. 17-ALJ-21-0102-AP
)

Appellant,)

vs.)

Samuel James,)

Respondent.)

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ORDER DENYING
MOTION TO RECONSIDER

NOV 20 2017

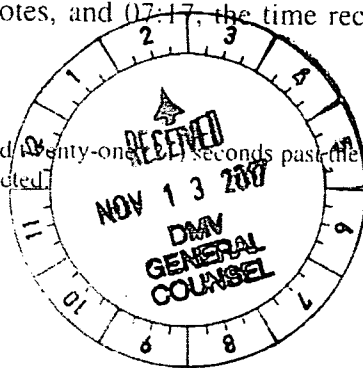
SC Court of Appeals

This matter comes before the Administrative Law Court ("ALC" or "Court") on a Motion to Reconsider filed October 20, 2017, by the South Carolina Department of Motor Vehicles ("Department"). The Department asks the Court to reconsider its Final Order issued on October 11, 2017, affirming the hearing officer's decision.

The Department argues that neither this Court nor the hearing officer specifically explained how the three-minute¹ delay affected the accuracy or reliability of the breath alcohol test. The Department is correct that the amendment of S.C. Code Ann. § 56-5-2950(J) added the requirement that the trial judge or hearing officer 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." At the same time, the legislature added a bright line requirement that a breath sample must be collected within two hours of arrest. The Department contends that trial judges and hearing officers must explain why or how they determined a sample taken outside the statutorily required two-hour window materially affected the accuracy or reliability of the test results. That would inappropriately require the judge or hearing officer to explain why the legislature added the two-hour time limit. A trial court's job is to apply the law as written, not to guess at its purpose in order to enlarge or condense its application.

The Department also complains that the hearing officer did not explain how she decided between 06:45, the time written in the officer's notes, and 07:17, the time recorded on the breathalyzer

¹ The delay was approximately two (2) minutes and twenty-one (21) seconds past the two-hour window from the time of arrest until Respondent's sample was collected.



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SC ADMIN. LAW COURT

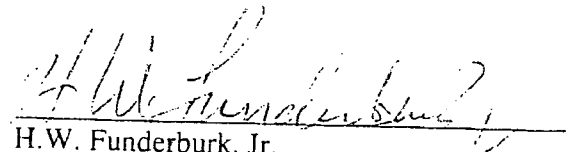
report, in determining the time of arrest. The arresting officer testified that she advised Respondent of his Miranda rights at 6:45 AM, after his arrest.

The reviewing court must defer to the hearing officer's factual finding when there is "substantial" evidence to support it. The arresting officer provided both times and could not say which one was accurate. The hearing officer also considered the officer's statement about the time she provided the Miranda rights to fix the time of arrest at 06:45. Thus, there is substantial evidence to support the hearing officer's finding. That finding is binding on this Court.

Finally, in a footnote, the Department denies that the purpose of the breath test result is to provide an accurate or reliable indicator of the alcohol level while an individual is driving. That argument ignores the reason Section 56-5-2950 exists, which is to establish whether a person has operated a motor vehicle while under the influence of alcohol or drugs. S.C. Code Ann. § 56-5-2930 (Supp. 2016). If breath, field sobriety, blood, urine, or other scientific tests cannot reliably determine whether an individual is under the influence of alcohol or drugs while driving, the enforcement of Section 56-5-2930 would be impossible.

Accordingly, the Department's Motion to Reconsider is **DENIED**.

November 9, 2017
Columbia, S.C.


H.W. Funderburk, Jr.
Administrative Law Judge

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SC ADMIN. LAW COURT

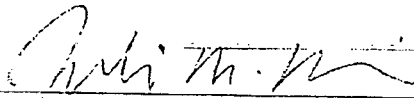
CERTIFICATE OF SERVICE

I, Julia M. Miller, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Margie Bright Matthews, Esq.
Bright Matthews Law, LLC
P.O. Box 499
Walterboro, SC 29488

Brandy A. Duncan, Esq.
SC Dept. of Motor Vehicles
P.O. 1498
Blythewood, SC 29016-0020

November 9, 2017
Columbia, SC



Julia M. Miller
Judicial Law Clerk

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