

STATE OF SOUTH CAROLINA)
IN THE COURT OF COMMON PLEAS)
COUNTY OF LEXINGTON)
STATE OF SOUTH CAROLINA,)
Respondent,)
-vs-)
STEVEN E. NELSON,)
Appellant - Defendant.)

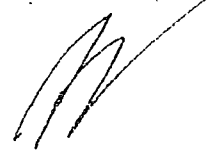
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SC Court of Appeals

ORDER ON APPEAL
Case Number: **2017CP3201118**

This is an appeal from the Magistrate's Court wherein the appellant-defendant challenges his conviction for driving under the influence. He raises several constitutional issues and a failure to request a blood sample within three hours of arrest. This incident occurred when law enforcement officers were called to the scene of a vehicle in a ditch. A Deputy arrived first, then called for the Highway Patrol. The appellant was found in the vehicle, and the Trooper became concerned that the appellant might be suffering medical issues. An ambulance was called and the defendant transported to the hospital. Eventually, it was determined that the defendant was not suffering from any medical conditions. There is a statement in the Return that the defense stated that the arrest occurred at 7:43 p.m. and the Trooper did not request consent to draw blood until 11:00 p.m.

S.C. Code § 56-5-2950 reads, in part:

(A) A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of the person's . . . blood . . . for the purpose of determining the presence of alcohol, drugs, or the combination of alcohol and drugs, if arrested for an offense arising out of . . . driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. . . . 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. . . . A breath sample taken for testing must be collected within two hours of the arrest. Any additional tests to collect other



samples **must be collected within three hours of the arrest.** . . . Blood and urine samples must be obtained and handled in accordance with procedures approved by SLED. . . .

(H) A person who is unconscious or otherwise in a condition rendering the person incapable of refusal is considered to be informed and not to have withdrawn the consent provided by subsection (A) of this section. (I) A person required to submit to tests by the arresting law enforcement officer must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any trial or other proceeding in which the results of the tests are used as evidence. A person who obtains additional tests shall furnish a copy of the time, method, and results of such tests to the officer before a trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

[emphasis added.]

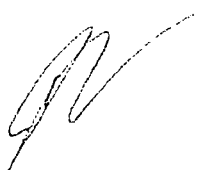
The Magistrate ruled that the refusal to submit to a blood draw could be presented to the jury as evidence.

S.C. Code § 56-5-2950 continues,

(J) Policies, procedures, and regulations promulgated by SLED may be reviewed by the trial judge or hearing officer on motion of either party. The failure to follow policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence of any test results, **if the trial judge or hearing officer finds that this failure materially affected the accuracy or reliability of the test results or the fairness of the testing procedure and the court trial judge or hearing officer rules 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.**

[emphasis added.]

At trial, the defense never raised an argument as to how the failure to request the blood test within three-hours of the arrest affected the accuracy or reliability of the test results. As a result, the magistrate was unable to make a ruling as to how the failure to abide to the three-hour post-arrest time frame materially affected the accuracy or reliability of the test results or the fairness of the procedure. As a practical matter, that failure would have only served to benefit the defendant. This court finds that the magistrate did not err in allowing testimony about the defendant's refusal to provide a blood sample.



The defense also raises constitutional matters concerning this State's implied consent laws. Defense relies on Birchfield v. North Dakota, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016). However, the Court in Birchfield was addressing the constitutionality of implied consent laws that provide criminal penalties for refusing to provide breath, blood, or urine samples. Our implied consent law merely suspends a person's driver's license for refusing to submit a sample. This is a civil, or administrative, penalty. In discussing the constitutionality of state implied consent laws that provide for administrative penalties, the court states,

"nothing we say here should be read to cast doubt on them."
[emphasis added.]

This court declines to order that South Carolina's Implied Consent law is unconstitutional.

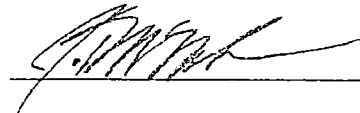
Defense also asserts that he has a right to be free from warrantless searches under his Fourth Amendment rights, as well as his rights under Article I, Section X of the South Carolina Constitution. Defense relies on Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013). This argument is misplaced. The Court in Missouri was concerned with the forcible taking of blood in a felony-DUI situation, absent a valid search warrant. The Court held that those scenarios do not rise to the level of exigency that would allow officers to lawfully take a blood sample without a search warrant. This argument fails. The case at hand is not a felony-DUI. Moreover, no blood sample was forcibly obtained. In fact, the defendant refused to submit a blood sample. Although the defendant has the right to refuse to submit a blood sample, he was told that his refusal may be used against him in court. This appeal is primarily based on the fact that the State used his refusal against him in court. This court finds that the defendant's Fourth



Amendment rights were not violated in this case, nor were his rights under Article I, Section X of the South Carolina Constitution.

THEREFORE, IT IS ORDERED that the defendant, Steven E. Nelson, be recommitted to Lexington County Detention Center to serve the remainder of his sentence. He shall turn himself in to the Lexington County Detention Center within 15 Days of the date of this order to serve the balance of his time.

AND IT IS SO ORDERED.



The Honorable R. Knox McMahon

Circuit Court Judge