

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

Appellate Case No. 2016-000228

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FEB 06 2019

SC Court of Appeals

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.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant hereby respectfully petitions the Court for a rehearing of its opinion in this matter filed January 30, 2019. The Court affirmed the decision of the lower court holding that statements from an alleged registered nurse, whether true or not, are not hearsay and were admissible to consider whether the arresting officer complied with S.C. Code Ann. § 56-5-2950 (A) (2018) before requesting a blood sample from Appellant.

In the opinion, the Court failed to address or acknowledge Appellant's argument concerning

this Court's decision in *State v. Frey*, 362 S.C. 511, 608 S.E.2d 874 (Ct. App. 2004). The evidence presented in the lower court woefully failed to comply with the standard set forth in *Frey* in which a member of the present panel concurred. The *Frey* court stated:

The plain language of section 56-5-2950 further requires that we reject the State's suggestion that the mere appearance of Scott Darragh in the emergency room is sufficient, for the statute mandates that the blood sample "must" be obtained by a trained medical professional. One's mere appearance in a hospital wearing generic hospital attire is not evidence of one's medical training. We likewise reject the State's assertion that Darragh's signature on the SLED form in the space labeled "licensed or trained collector" is sufficient to establish compliance with the statute. Simply signing a preprinted form does not provide any indicia that the signatory's qualifications meet the specific licensing or training requirements of section 56-5-2950. To hold otherwise would render the minimal foundational requirement of section 56-5-2950 without any meaningful force or effect. In light of the State's failure to satisfy this basic requirement, we are constrained to find the circuit court erred in finding the foundational requirements of section 56-5-2950 had been satisfied.

Frey, 362 S.C. at 517, 608 S.E.2d at 877 – 878. The Court's holding in the present case simply cannot be reconciled with the *Frey* decision. Appellant urges the Court to reconsider its determination that the statements by the alleged medical professional were not hearsay and that Respondent met its burden to prove that licensed medical personnel determined Appellant could not submit to a breath test.

For the forgoing reasons and for all reasons presented in Appellant's brief, Appellant urges this Court to grant its Petition for Rehearing and reconsider the opinion issued in this case.

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Respectfully Submitted,

TAYLOR LAW FIRM LLC

February 6, 2019



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PROOF OF SERVICE

I certify that I have served the Petition for Rehearing by causing it to be mailed to its attorneys of record, Frank L. Valenta, Jr., Esquire, Philip S. Porter, Esquire and Brandy A. Duncan, Esquire at their office located at 10311 Wilson Boulevard, Post Office Box 1498, Blythewood, South Carolina 29016-0020 on February 6, 2019.

February 6, 2019



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