

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge

Case Number 12-ALJ-21-0230-AP

Charles Holdorf. Appellant,

vs.

South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety, Defendants

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

FINAL BRIEF OF THE RESPONDENT

Linda Annette Grice
Assistant General Counsel
Philip S. Porter
Deputy General Counsel
Frank L. Valenta, Jr.
General Counsel
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Post Office Box 1498
Blythewood, South Carolina 29016-0020
Telephone: (803) 896-9900
Facsimile: (803) 896-9901
Attorneys for the Respondents

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STATEMENT OF ISSUES ON APPEAL

DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING THAT REASONABLE SUSPICION OF DRUG USE EXISTED TO WARRANT THE REQUEST OF A URINE TEST?

STATEMENT OF THE CASE

The Respondent accepts the Appellant's Statement of the Case.

ARGUMENT

DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING THAT REASONABLE SUSPICION OF DRUG USE EXISTED TO WARRANT THE REQUEST OF A URINE TEST?

In the instance matter, the Appellant was lawfully arrested for Driving Under the Influence, read and given a copy of the appropriate implied consent rights in writing and he verbally refused to submit to the urine test offered him by Trooper Brigham (ROA p. 24). The Hearing Officer did not err in finding that Appellant's failure to provide a urine sample was a refusal after a lawful request by the trooper. The appellant submitted to a breathalyzer test and blew a .05%. The trooper testified that based upon his experience and training he felt that there was a possibility that narcotics could be involved. Therefore, pursuant to 56-5-2950 which provides that "if an officer has reasonable grounds to believe that the person is under the influence of drugs other than alcohol, the officer may order that a urine sample be taken for testing", the trooper requested that the Appellant submit to a urine test. Because it was established that there was probable cause to believe that the Appellant was "under the influence" as he was legally arrested for same, it was reasonable to believe that given the low BAC reading that the Appellant was under the influence of something other than alcohol.

The Appellant in his brief argues that in order for an arresting officer to request a urine sample, he must have *reasonable suspicion* that the individual is under the

influence of drugs other than alcohol, or is under the influence of a combination of alcohol and drugs, however, § 56-5-2950 merely requires *reasonable grounds to believe* that the individual is under the influence of drugs other than alcohol. Pursuant to § 56-5-2950, a breath test must first be offered to determine the person's alcohol concentration. An arresting officer is prohibited from requesting blood or urine tests if a breath test has not been offered. When a breath test for a person under arrest for driving under the influence results in a low BAC reading, clearly there are reasonable grounds to believe that the sign of impairment may be due to drugs other than alcohol.

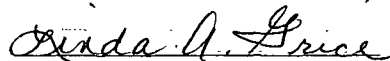
The Appellant's assertion of lack of "reasonable suspicion" to request a urine sample is simply misplaced. In the instance case, the Appellant is not challenging his detention and arrest as violating his Fourth Amendment rights as established in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1869, 20 L. ED.2d 889. "Reasonable suspicion" is the standard for evaluating the lawfulness of a stop, while "probable cause", a more stringent standard, is used for evaluating the lawfulness of the arrest. *See. State v. Lesley*, 326 S.C. 641, 643, 486 S.E.2d 276, 277 (Ct. App. 1997) Having a reasonable suspicion based upon reasonable grounds to believe that a subject may be under the influence of drugs other than alcohol is not the equivalent of having a "reasonable suspicion" to initiate a stop and limited detention for investigative purposes. The determination that there existed "reasonable grounds to believe" that the Appellant was possibly under the influence of drugs other than or in addition to alcohol was made in the course of a lawful arrest in furtherance of the requirements of § 56-5-2950. The standard of reasonable suspicion does not apply in this instance.

S.C. Code Ann. § 1-23-380(g)(5) provides that “[t]he Court shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact.” The substantial evidence rule means that the finding of fact by an administrative agency will not be overturned “unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304. The Hearing Officer’s determination that Officer Brigham reasonably concluded that the Appellant could possibly be under the influence of drugs other than alcohol was not clearly erroneous. The testimony of the officer was not refuted by the Appellant.

CONCLUSION

For the reasons set forth above, the order of the administrative law judge sustaining the order of the OMVH hearing officer should be affirmed.

Respectfully submitted,



LINDA ANNETTE GRICE

Assistant General Counsel

PHILIP S. PORTER

Deputy General Counsel

FRANK L. VALENTA, JR.

General Counsel

South Carolina Department of Motor Vehicles

10311 Wilson Boulevard

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: 803.896.9900

Fax: 803.896.9901

Attorney’s for Respondent

January 10, 2013

Blythewood, South Carolina

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that Respondent's Final Brief complies with South Carolina Supreme Court Order 2007-08-13-02, filed August 13, 2007.

Linda A. Grice

Linda Annette Grice
Assistant General Counsel
Philip S. Porter
Deputy General Counsel
Frank L. Valenta, Jr.
General Counsel
SC Department of Motor Vehicles
P. O. Box 1498
Blythewood, SC 29016
Telephone: (803) 896-9900
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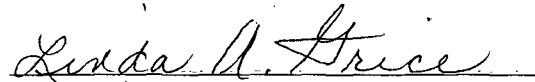
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CERTIFICATE OF COUNSEL

The Undersigned Counsel certifies that the attached Final Brief is in compliance with
SCACR 211(b).



Linda Annette Grice
Assistant General Counsel
Philip S. Porter
Deputy General Counsel
Frank L. Valenta, Jr.
General Counsel
SC Department of Motor Vehicles
P. O. Box 1498
Blythewood, SC 29016
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CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, January 11, 2013,
I served the Respondent's Final Brief by depositing with the United States Postal Service,
correct postage prepaid, to Counsel for the Appellant at the address indicated below:

T. Kirk Truslow, Esquire
Post Office Box 238
North Myrtle Beach, South Carolina 29597
Counsel for Appellant



Kristy Corley, Administrative Specialist
Office of General Counsel

January 11, 2013
Blythewood, South Carolina

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