

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Administrative Law Court  
The Honorable Deborah Brooks Durden, Administrative Law Judge

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Case Number 11-ALJ-21-0501-AP

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Mark Schnee ..... Appellant,

v.

South Carolina Department of Motor Vehicles and  
West Columbia Police Department ..... Respondent.

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**FINAL BRIEF OF THE RESPONDENT**

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SC COURT OF APPEALS

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE DEPARTMENT OF MOTOR VEHICLE HEARINGS ERR IN DECIDING THAT OFFICER RONALD FAIR WAS TRAINED AND CERTIFIED TO ADMINISTER BREATH TESTS BY THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY, PURSUANT TO SLED POLICIES AND SC CODE 56-5-2950(A) AS AMENDED?
  
2. DID THE DEPARTMENT OF MOTOR VEHICLE HEARINGS ERR IN DECIDING THAT OFFICER RONALD FAIR HAD PROBABLE CAUSE FOR APPELLANT'S ARREST?

## STATEMENT OF THE CASE

The Appellant was arrested on October 31, 2009 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 or drugs. Appellant refused to submit to a breath test. Appellant was issued a written notice of suspension of the driver's license or driving privileges for violation of S.C. Code Ann. Section 56-5-2950. The Appellant requested an administrative hearing. Pursuant to notice to the parties, a hearing was held before OMVH Hearing Officer, Robert Harley on July 27, 2010. The Appellant did not appear and was represented by T. Micah Leddy, Esquire. By Final Order & Decision dated September 21, 2011, the suspension was sustained. The Appellant then filed this appeal to the Administrative Law Court. The Final Order and Decision of the OMVH was sustained by Order dated March 09, 2012. Appellant's timely Motion for Reconsideration and Motion for Rehearing was denied by Order dated March 28, 2012. The Appellant filed a Notice of Appeal to the South Carolina Court of Appeals on April 03, 2012.

## ARGUMENT

*DID THE DEPARTMENT OF MOTOR VEHICLE HEARINGS ERR IN DECIDING THAT OFFICER RONALD FAIR WAS TRAINED AND CERTIFIED TO ADMINISTER BREATH TESTS BY THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY, PURSUANT TO SLED POLICIES AND SC CODE 56-5-2950(A) AS AMENDED?*

The Hearing Officer found that “the officer, a certified Datamaster operator, read the Advisement of Implied Consent Rights to Respondent” (ALC ROA p. 93). This finding was not error. The Breath Alcohol Analysis Test Report which was entered into evidence shows that Ronald W. Fair is a Test Operator and his South Carolina Law Enforcement Division Certification # is DMT000923 (ROA p. 102) The record in this matter contains substantial evidence to support the finding of the Hearing Officer. An appeal from action of an administrative agency must be sustained if supported by substantial evidence. *Hamm v. American Telephone & Telegraph Co.*, 302 S.C. 211, 394 S.E.2d 842 (1990). Therefore, it was not error for the Hearing Officer to find that he is a certified Datamaster operator.

Furthermore, in this case, the Appellant refused the breath test (ROA p. 71). Appellant appears to argue that the Department cannot suspend the driver’s license of a person accused of driving under the influence who refused to submit to a breath test where the requirements for admission of the test results were not observed. This argument has no merit. Because there was no test, the certification of the Datamaster operator was not an issue. See. *Ex parte Horne (In re: SCDHPT v. Horne)*, 303 S.C. 30, S.E.2d 788 (Ct. App. 1990).

*DID THE DEPARTMENT OF MOTOR VEHICLE HEARINGS ERR IN DECIDING THAT OFFICER RONALD FAIR HAD PROBABLE CAUSE FOR APPELLANT’S ARREST?*

In the instance case, after a lawful stop based upon the officer’s observations of the Appellant driving without lights and driving erratically, the officer requested that the Appellant

take some standard field sobriety tests. Appellant refused to submit to the requested sobriety testing (ROA p. 70). The officer observed the Appellant making an unlawful turn, drifting, sometimes abruptly, between the curbing and the lane divider, and failing to signal for a lane change (ROA pp. 68, 69). After the stop, the officer noted the smell of an alcoholic beverage coming from within the car (ROA p. 67). The Appellant refused to submit to standard field sobriety tests when requested by the officer.

The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. *State v. Baccus*, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006). Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that the person being arrested has committed a crime. *Id.* Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. *Id.*

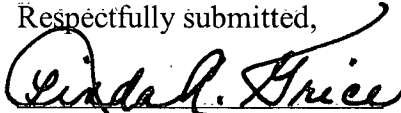
The question before the Hearing Officer was not whether the Appellant was guilty of DUI, but merely whether the facts and circumstances within the trooper's knowledge were sufficient to lead a reasonable person to believe that he had committed the offense of DUI. *See Summersell v. S.C. Dep't of Pub. Safety*, 334 S.C. 357, 369, 513 S.E. 2d 619, 625 (Ct. App. 1999) (noting that an implied consent hearing "is *not* a trial in regard to the guilt or innocence of the defendant on a DUI charge"), vacated in part on other grounds, 337 S.C. 19, 522 S.E.2d 144 (1999). The question before the Hearing Officer was merely whether the circumstances within the officer's knowledge were sufficient to lead a reasonable person to believe that he had committed the offense of DUI. *See Baccus*, 367 S.C. at 49, 625 S.E. 2d at 220. The arrest of the Appellant was based upon the totality of the circumstances known to a seasoned officer who was certified in field sobriety testing and trained to identify signs of inebriation. Therefore, it is

reasonable to assume that an arrest following a lawful stop and based upon the officer's professional assessment and determination that there was probable cause to believe that the driver was possibly under the influence of alcohol, drugs or a combination thereof. The hearing Officer correctly and reasonably found that the Respondent was lawfully arrested for driving under the influence.

**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,



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June 13, 2013

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THE STATE OF SOUTH CAROLINA

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West Columbia Police Department.....

Respondent.

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.



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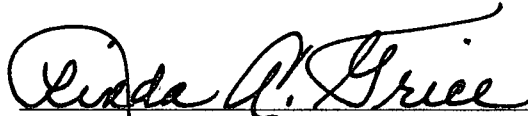
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**CERTIFICATE OF COUNSEL**

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



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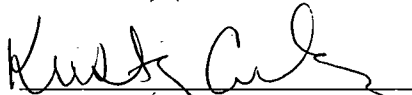
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CERTIFICATE OF SERVICE

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PURSUANT TO SCACR, I HEREBY CERTIFY that today, June 14, 2013,  
I served one (1) copy of the Respondent's Final Brief by depositing with the  
United States Postal Service, correct postage prepaid, to Counsel for the  
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June 14, 2013  
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