

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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

Appellate Case No. 2014-001025

Jennifer K. Salter Appellant,

vs.

**South Carolina Department of Motor Vehicles and
Conway Police Department Respondent.**

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

FINAL BRIEF OF THE RESPONDENT

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STATEMENT OF ISSUES PRESENTED

THE HEARING OFFICER DID NOT ERR IN FINDING THAT APPELLANT WAS PROPERLY ADVISED OF HER IMPLIED CONSENT RIGHTS AND IN SUSTAINING THE SUSPENSION OF APPELLANT'S DRIVING PRIVILEGES.

STATEMENT OF THE CASE

The Appellant was arrested on April 11, 2013, for an offense arising out of an act alleged to have been committed while she was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. Upon refusal to submit to testing of breath, blood or urine to determine her alcohol concentration Appellant was charged with a violation of S.C. Code Ann. § 56-5-2950. A notice of suspension was issued by the investigating officer. Appellant timely requested a hearing which was held, after notice to the parties, on July 16, 2013. After reviewing the record and considering all the evidence, the hearing officer sustained the suspension of the Appellant's driving license or driving privileges. This appeal was timely filed in the Administrative Law Court on September 6, 2013. By Order dated April 9, 2014, the Administrative Law Court ordered that the OMVH Final Order and Decision dated July 31, 2013, sustaining the suspension of Appellant's driver's license or driving privilege be affirmed.

ARGUMENT

THE HEARING OFFICER DID NOT ERR IN FINDING THAT APPELLANT WAS PROPERLY ADVISED OF HER IMPLIED CONSENT RIGHTS AND IN SUSTAINING THE SUSPENSION OF APPELLANT'S DRIVING PRIVILEGES.

The Department concedes that in the instance case, the officer did not give the Appellant a written copy of the Implied Consent Rights *prior* to the commencement of the testing

procedure. However, the Hearing Officer correctly found that the Appellant was properly advised of her rights in that they were read to her and she was given a written copy later. The Hearing Officer concluded that the Appellant “stated that she understood the advisement after it had been read to her by Officer Dixon (ROA p. 9). Appellant argues that the Final Order and Decision of the OMVH Hearing Officer should be reversed, and the driver’s license suspension of Appellant should be rescinded because the evidence showed and the officer admitted that he failed to follow SLED procedures and admitted he failed to comply with South Carolina Code Section 56-5-2950 (B) when he did not provide Appellant with her Implied Consent Rights in writing prior to beginning the testing procedure. This argument has no merit, as it is established law that in order for the Appellant to prevail with this argument, there must be a showing of prejudice. The Appellant made no showing that the failure of the officer to follow the procedures as outlined in the statute materially affected the fairness of the testing procedure. Pursuant to 56-5-2950(J), a Hearing Officer must not only find that there was a failure to follow any policies, procedures, regulations, there must also be a ruling as to the specific manner in which such failure materially affected the accuracy of any test results or the fairness of the procedures. In other words, prejudice to the motorist must be found.

Therefore, because there was no showing of prejudice to the Appellant as a result of the officer’s failure to provide the written copy to the Appellant prior to beginning the testing procedure, such failure does not result in rescission of the suspension without resulting prejudice. *See Taylor v. S.C. Dep’t of Motor Vehicles*, 382 S.C. 567, 677 S.E.2d 588 (2009). Thus, there are no grounds upon which to rescind Appellant’s suspension. The Record contains substantial evidence to support the reasoning and determination reached by the Hearing Officer and affirmed by the Administrative Law Court. *See Lark v. Bilo, Inc.*, 276 S.C. 130, 276 S.E.2d 304.

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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September 5, 2014
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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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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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