

**SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**



Taylor v. S.C. Dep't of Motor Vehicles, 382 S.C. 567, 677 S.E.2d 588 (2009)

An officer read an implied consent form to a motorist, and the motorist later objected to his license suspension because he was not given a copy in writing as provided by S.C. Code § 56-5-2951(F)(2). The S.C. Supreme Court held the lack of written notice was not a fatal defect because “the criterion in § 56–5–2951(f) are simply factors which the DMV may consider in determining whether to uphold a suspension, i.e., a prejudice analysis.”

Hamrick v. State, 426 S.C. 638, 828 S.E.2d 596 (2019)

The S.C. Supreme Court held that failure to comply with the requirement that a blood test be collected within three hours of the time of arrest under S.C. Code Ann. § 56-5-2950(A), alone, is insufficient to exclude a sample absent a showing, pursuant to subsection (J), that the test results’ accuracy or reliability or the fairness of the testing procedure was materially affected by the failure.

S.C. Dep't of Motor Vehicles v. Brown, 406 S.C. 626, 753 S.E.2d 524 (Ct. App. 2014)

The S.C. Supreme Court held that a motion regarding the failure to follow the provisions of S.C. Code Ann. § 56-5-2950 must be made when the test results are offered, and it cannot be raised for the first time after the close of the evidence.

Sanders v. S.C. Dep't of Motor Vehicles, 431 S.C. 374, 848 S.E.2d 768 (2020)

In this case, licensed medical personnel determined the motorist could not give a breath sample and a blood sample was sought instead and was refused. The motorist challenged his suspension on the ground the alleged licensed medical personnel did not testify at the implied consent hearing and, therefore, their identity as licensed medical personnel could not be established. The S.C. Supreme Court held licensed medical personnel are not required to testify at implied consent hearings for their qualification as licensed medical personnel to be established. The Court concluded the officer’s “first-hand” observations that the licensed medical personnel was wearing a nametag identifying her as a registered nurse (RN) and performing duties commensurate with an emergency RN constituted sufficient evidence of the nurse’s status as licensed medical personnel. Furthermore, the Court held the statement of licensed medical personnel on a form that the motorist is not able to provide a breath sample is not hearsay because it is admitted to show the officer complied with the statute before requesting a blood sample, not whether the licensed medical personnel complied with the statute. The Court noted that whether the licensed medical personnel are correct about whether a motorist is able to provide a breath sample is beyond the scope of implied consent hearings.

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S.C. Dep't of Motor Vehicles v. Nelson, 364 S.C. 514, 613 S.E.2d 544 (Ct. App. 2005)

In this case, the motorist refused a breath test and then argued the suspension of his license was improper because the Department did not comply with the videotaping requirements for administering breath tests under S.C. Code Ann. § 56-5-2953. The Court of Appeals noted the implied consent laws are driven by the State's "strong interest in maintaining safe highways and roads." The court further held a failure to comply with videotaping requirements for breath tests under section 56-5-2953 does not warrant the dismissal of prosecution when a motorist refuses a breath test. Rather, the videotaping requirements of section 56-5-2953 becomes applicable only when a motorist consents to a breath test. Thus, under section 56-5-2951, the scope of the hearing was limited "to whether [the motorist] (1) was lawfully arrested, (2) was advised in writing of his section 56-5-2950 rights, and (3) refused to submit to a test."

State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978)

Although a criminal DUI case, this case has been applied in OMVH cases before the ALC. The case answers the question, "[w]hat foundation should be laid for the introduction of the results of the breathalyzer test?" The S.C. Supreme Court held that prior to admitting such evidence, the State may be required to prove the following foundational elements (precautions) were met: (1) the machine was in proper working order at the time of the test; (2) the correct chemicals had been used; (3) the accused was not allowed to put anything in his mouth for twenty minutes prior to the test; and (4) that the test was administered by a qualified person in the proper manner.

State v. Jansen, 305 S.C. 320, 408 S.E.2d 235 (1991)

The S.C. Supreme Court held the precautions in *Parker* (see above) are not applicable if a motorist refuses a breathalyzer test. The precautions do not apply in a refusal because "there are no test results which require[e] protection from improper testing procedures." The Court explained the *Parker* precautions are intended to "insure that the results of the breathalyzer test if given are accurate and reliable as evidence at trial."

S.C. Dep't of Motor Vehicles v. McCarson, 391 S.C. 136, 705 S.E.2d 425 (2011)

In *McCarson*, the S.C. Supreme Court addressed the question of whether hearsay is admissible in an administrative hearing to establish probable cause pursuant to S.C. Code Ann. § 56-5-2951(F)(1). The Court found an officer's testimony of another officer's basis for stopping a motorist constituted inadmissible hearsay. The Court contrasted a license-suspension hearing, which constitutes a final adjudication of an important interest, with a preliminary (probable cause) hearing in a criminal case, in which hearsay is permitted on a limited basis to establish probable cause because the hearing is not a final adjudication.

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Chisolm v. S.C. Dep't of Motor Vehicles, 402 S.C. 593, 741 S.E.2d 42 (Ct. App. 2013)

This case discusses what constitutes a constructive refusal. A motorist blew into a DataMaster (breath test machine) for approximately one minute and fifty-three seconds and the machine issued a steady tone indicating that air was going into the machine. However, the machine did not give a reading. The officer asked the motorist to take the test again, and she agreed to do so, but the machine would not let the motorist take the test again. The officer recorded a refusal by the motorist. The S.C. Court of Appeals found a breath test machine's failure to produce a report reflecting an acceptable breath sample does not automatically mean the motorist refused the breath test. Rather, a court must also look at other factors indicating a constructive refusal, such as whether the motorist: (1) tried to fake or thwart the test; (2) was uncooperative; (3) acted unruly; (4) delayed the administration of the test; (5) ingested prohibited substances during the observation period; (6) failed to cooperate with the officer's instructions; or (7) behaved in any manner that would amount to a constructive refusal.