

STATE OF NORTH CAROLINA

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

In the matter of the Driving Privilege of:

)  
)  
 ) Administrative Hearing  
 ) Customer No. [REDACTED]  
[REDACTED] ) Date of Birth: [REDACTED]  
)  
Petitioner, )  
)  
)

---

### **Jurisdiction**

This case is adjudicated under the authority of North Carolina General Statute 20-16.2.

### **Statement of Case**

The Division of Motor Vehicles revoked the driving privileges of [REDACTED] after it received an affidavit [REDACTED] in which Trooper [REDACTED] with the North Carolina State Highway Patrol claims to have reasonable grounds to believe the petitioner operated a vehicle on a public highway or public vehicular area while committing an implied consent offense and willfully refused to submit to a chemical analysis of his blood. The petitioner requested a hearing to contest the revocation of his driving privileges by the Division of Motor Vehicles.

The hearing was held as noticed on the 3<sup>rd</sup> day of October 2019 at 09:00 a.m. at the Forsyth County Driver License Office located at [REDACTED], Winston Salem North Carolina. Administrative Hearing Officer [REDACTED] conducted the hearing.

The petitioner was present and was represented by his attorney Clarke Dummit, Bar # [REDACTED].

Present as a witness for the Division was Trooper [REDACTED] with the North Carolina State Highway Patrol. Trooper [REDACTED] was sworn, and the following testimony and evidence was taken. Petitioner did not testify.

Division Exhibits number one through three were admitted and made part of the record.

#### **List of Exhibits**

1. Division's Exhibit One: (1) Form AOC-CVR-1A DHHS 3907, Affidavit and Revocation Report dated 01/30/2019.
2. Division's Exhibit Two: (1) Form DHHS 4081 Rights of Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration or Presence of an Impairing Substance Rights Form.
3. Division's Exhibit Three: (1) Division's copy of the Petitioners North Carolina Motor Vehicle Record.

#### **Issues**

1. Did law enforcement officer have reasonable grounds to believe the petitioner was operating a vehicle on the highways or public vehicular area while committing an implied-consent offense?
2. Was the petitioner charged with an implied-consent offense?
3. Did the implied-consent offense involve death or critical injury to another person?
4. Was the petitioner notified of their rights as required by subsection (a) of G.S. 20-16.2?
5. Did the petitioner willfully refuse to submit to a chemical analysis of breath, urine or blood?

#### **Findings of Fact**

After consideration of the foregoing testimony and evidence, the Hearing Officer finds that the following facts are supported by substantial evidence:

1. Trooper [REDACTED] (hereafter Trooper [REDACTED]) is the Charging Officer and Chemical Analyst in this matter. He is certified as a Chemical Analyst with the Department of Health and Human Services,

permit # [REDACTED] He has been employed with the North Carolina State Highway Patrol for 11 years.

2. On January 30, 2019, Trooper [REDACTED] responded to a motor vehicle accident which had occurred at approximately 07:21 p.m.
3. Trooper [REDACTED] made contact with Forsyth County Sheriff's Office Deputies regarding the accident. Trooper [REDACTED] made contact with the driver of the vehicle, identified as [REDACTED]  
[REDACTED] (hereafter Petitioner).
4. Trooper [REDACTED] observed the vehicle had ran into the ditch near the driveway and was warm to the touch.
5. Trooper [REDACTED] observed the petitioner having a strong odor of alcohol coming from his breath, red glassy eyes and his speech was slurred.
6. Trooper [REDACTED] ask petitioner how much he had to drink that night. Petitioner refused to answer any questions.
7. Trooper [REDACTED] requested petitioner exit his vehicle to perform Standardized Field Sobriety Testing.
8. Petitioner refused all testing and did not exit the vehicle as requested. No Alco-Sensor test was requested due to petitioner's refusal of Standardized Field Sobriety Testing.
9. Petitioner was requested multiple times to step out of his vehicle. He held on to the steering wheel and refused to do so. He was extracted from the vehicle by Trooper [REDACTED] and two Forsyth County Sheriff's Office Deputies.
10. Based on the totality of evidence collected, Trooper [REDACTED] formed his opinion that the petitioner had committed an implied consent offense and arrested him for Driving While Impaired.
11. Petitioner was transported to the jail by a Deputy. Trooper [REDACTED] obtained a search warrant. After doing so, he transported petitioner to the EMS station for a blood draw.
12. Trooper [REDACTED] read petitioner his Implied Consent Rights at 09:05 p.m. Petitioner was not provided a copy to follow along with.

13. Petitioner did not request to call an attorney or witness prior to being requested to submit to a sample of his blood.
14. Trooper [REDACTED] requested petitioner submit to a sample of his blood at 07:11 p.m. Petitioner refused stating he wanted an attorney.
15. Trooper [REDACTED] marked him as a refusal at 07:11 p.m.

### **Conclusions**

Based on the foregoing findings of fact, the Hearing Officer concludes as a matter of law that:

1. [REDACTED] was charged with an implied-consent offense.
2. Trooper [REDACTED] had reasonable grounds to believe that [REDACTED] had committed an implied-consent offense.
3. The implied-consent offense charged did not involve death or critical injury to another person.
4. [REDACTED] was not notified of his rights as required by N.C.G.S. 20-16.2(a). Trooper [REDACTED] did not provide a copy for petitioner to follow along with.
5. Based on the above rights issue, the undersigned finds that [REDACTED] did not willfully refuse to submit to a chemical analysis of his blood.

### **Decision**

I find that all elements of proof necessary to sustain a revocation for refusing to submit to a chemical analyst of his breath under GS 20-16.2 are not supported by substantial evidence.

THEREFORE, it is the decision of Administrative Hearing Officer [REDACTED] that the Order of Revocation of the driving privilege of [REDACTED], petitioner, is rescinded.

Dated this 5<sup>th</sup> day of October 2019

---

[REDACTED]  
Administrative Hearing Officer  
Division of Motor Vehicles