



August 18, 2011

[Redacted]
[Redacted]
SURREY BC [Redacted]

FEED FAX THIS END

FAX

To: Dil Gosal

Dept.: _____

Fax No.: 604-598-1117

No. of Pages: 2

From: [Redacted]

Date: Aug 18/11

Company: JOSMV

Fax No.: _____

Comments: _____

Post-it™ ink pad 7903E

REVIEW DECISION Immediate Roadside Prohibition ("IRP") No. 20-[Redacted]

Introduction

On July 30, 2011, a peace officer served you with a Notice of Driving Prohibition. You applied to the Superintendent of Motor Vehicles for a review of your driving prohibition and I am delegated the authority to conduct this review.

Section 215.5(1) of the *Motor Vehicle Act* ("the Act") requires me to confirm your prohibition, along with the corresponding monetary penalty and vehicle impoundment, if I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act, that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device ("ASD"), and that you did not have a reasonable excuse for failing or refusing to comply with a demand.

I must revoke your driving prohibition if I am satisfied that you were not a driver within the meaning of section 215.41(1), that you did not fail or refuse to comply with a demand, or that you had a reasonable excuse for failing or refusing to comply. If I revoke your prohibition, I must also cancel the monetary penalty for which you would otherwise be liable under section 215.44(1), and revoke the corresponding vehicle impoundment.

Preliminary Matters

Records at this office indicate that disclosure was provided to your lawyer, Dil Gosal, on August 8, 2011. I have proceeded with the hearing based on this confirmation.

Issues

There are three issues in this review:

1. Were you a driver within the meaning of section 215.41(1) of the Act?
2. If so, did you fail or refuse to comply with a demand?
3. If so, did you have a reasonable excuse?

Facts, Evidence and Analysis

Were you a driver within the meaning of section 215.41(1) of the Act?

In the Report to Superintendent for the IRP (the "IRP Report"), the investigating officer checked the box to indicate that he observed you as the driver. He provided the date and time of driving/care or control as July 30, 2011, at 0203 hours.

Darcy Britz
Driving Prohibition Review Decision
Page 2

There is no evidence before me to contradict that of the officer. Based on the evidence before me, I am satisfied that you were a driver within the meaning of section 215.41(1) of the Act on July 30, 2011, at 0203 hours.

Did you fail or refuse to comply with a demand?

The officer indicated that you failed or refused to comply with an ASD demand. However, he also indicated that you provided a fail result on an ASD at 0208 hours. As the second test was for your benefit, and as you were not required to provide a second sample, it was not possible for you to fail or refuse to comply.

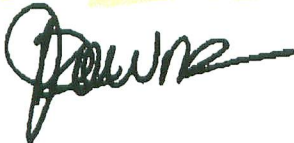
Based on the evidence before me, I am satisfied that you did not fail or refuse to comply with an ASD demand.

Having made that finding, there is no need for me to consider the final issue.

Decision

I am not satisfied that you failed or refused to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an ASD.

I therefore revoke your driving prohibition, monetary penalty, and vehicle impoundment, as required by s. 215.5(4) of the Act.


Adjudicator

cc: Dil Gosal
Fax: 604-598-1117