

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 09 2015

Appeal from Richland County
In the Court of Common Pleas

SC Court of Appeals

Hon. L. Casey Manning, Circuit Court Judge

Appellate Case No. 2013-000887

Anna Dillard Wilson.....Respondent,

v.

South Carolina Department of Motor Vehicles.....Appellant

BRIEF OF RESPONDENT

JOHN D. ELLIOTT
Attorney for Appellant
P.O. Box 607
1122 Lady Street, Suite 710
Columbia, SC 29202
Phone: 803.252.9236
Fax: 803.799.2079
E-Mail: jayel@mindspring.com

TABLE OF CONTENTS

Table of cases	ii
Issue on Appeal	iii
Statement of the Case	1
Argument:	
The circuit court correctly found that a five-year delay between the respondent's conviction for driving under the influence and suspension of her license to drive deprived her of due process of law, to her detriment, and prejudice.	1
Conclusion	4

TABLE OF CASES

Cases:

<i>Bell v. Burson</i> , 402 U.S. 535 (1971)	3
<i>Hipp v. S.C. Department of Motor Vehicles</i> , 381 S.C. 323, 673 S.E.2d 416 (2009)	1, 4
<i>In Re Petition of Donley</i> , 217 W.Va. 449, 618 S.E.2d 458 (2005)	3
<i>Thomas v. Indiana Bureau of Motor Vehicles</i> , 979 N.E.2d 169 (2012)	3
<i>S.C. Department of Motor Vehicles v. McCarson</i> , 391 S.C. 136, 705 S.E.2d 425 (2011)	3
<i>State v. Chavis</i> , 261 S.C. 408, 200 S.E.2d 390 (1973)	2, 4

Other Authority:

Shakespeare, William, <i>Hamlet</i> , Act 3, Scene 1	4
--	---

ISSUE ON APPEAL

Did the circuit court correctly find that a five-year delay between the respondent's conviction for driving under the influence and suspension of her license to drive deprived her of due process of law, to her detriment, and prejudice?

STATEMENT OF THE CASE

Anna D. Wilson, the respondent, brought an action for declaratory and injunctive relief against the South Carolina Department of Motor Vehicles with a summons and complaint filed June 9th, 2014 and served on the department on June 11th, 2014. The department timely interposed an answer to the complaint, filed July 28th, 2014. The circuit court entered a temporary restraining order enjoining the department from suspending the respondent's license to drive on June 10th, 2014. The circuit court held a hearing on permanent relief on January 20th, 2015, and entered an order granting that relief on March 23rd, 2015. The department timely served its notice of appeal.

ARGUMENT

The circuit court correctly found that a five-year delay between the respondent's conviction for driving under the influence and suspension of her license to drive deprived her of due process of law, to her detriment, and prejudice.

The principal case relied on by the circuit court, and relevant here is *Hipp v. S.C. Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009). There, the South Carolina Supreme Court was presented with a 12-year delay between Mr. Hipp's guilty plea to driving under the influence in Georgia, and the subsequent imposition of suspension of his license in South Carolina by the Department of Motor Vehicles.

The court found that such a lapse of time violated the principle of fundamental fairness required by due process of law. The court did not establish a "bright line rule" with which to determine whether an unreasonable delay amounted to such a violation, but noted in its opinion, though not dispositive, that South Carolina's statutory scheme regarding sentence enhancements and records of driving convictions routinely referenced a ten year limit. *Id.*, 381 S.C. 325-326. 673 S.E.2d 417.

The court referenced *State v. Chavis*, 261 S.C. 408, 200 S.E.2d 390 (1973), involving a 14-month delay between Mr. Chavis' refusal to submit to a breathalyzer test, together with his subsequent conviction for driving under the influence, and the suspension of his license for two three month periods as a consequence by the South Carolina Highway Department. The court there held that such a delay was not so prejudicial to Mr. Chavis as to justify estoppel of the suspension. In *Hipp*, however, the court noted that a lengthy delay constituting a denial of due process was contemplated by *Chavis*, and *Hipp* was such a case.

Here, in the five years intervening between Mrs. Wilson's conviction and notification of a six month suspension of her license to drive, she had lost her job as a result of the conviction, regained employment two years later, was driving a company vehicle requiring that she have a license and remain insured, and was purchasing a new home while maintaining mortgage payments on her former home was on the market. [Notice of suspension; Tr. pp.14-15]. These are reasonably foreseeable events in Mrs. Wilson's life given the lapse of time of a half-decade.

She was understandably concerned about the hardships she might now face if she her license to drive was now suspended again, this time for six months.¹ She reasonably believes her job might once again be jeopardized. She is also contending with the prospect of financial hardship in any event; she is maintaining two house payments, and her insurance premiums may increase as a result of the suspension.² While the department dismissed her potential job loss as "hypothetical" in the hearing before the circuit court, Mrs. Wilson adroitly pointed out that it was "an awfully big risk to take," and not one for the department to minimize. [Tr. p. 18, l. 12-20.]

¹ She had already completed a suspension of three months for violation of the state's implied consent law. [Tr. pp. 7, l. 24 – 8, l. 6.]

² While the Department of Motor Vehicles is quite correct that Form SR-22 is by itself a mere filing of a form by an insurance company with the department verifying that a driver convicted of driving under the influence has insurance, it is the potential for significant increases in insurance premiums for a substantial period of time which is daunting for the driver.

The U.S. Supreme Court recognized that the “continued possession” of a license to drive a motor vehicle “...may become essential in the pursuit of a livelihood,” requiring due process of law in a state’s action to deprive the driver of it. *Bell v. Burson*, 402 U.S. 535 (1971), at 539. The South Carolina Supreme Court does as well. *See, S.C. Department of Motor Vehicles v. McCarson*, 391 S.C. 136, 148, 705 S.E.2d 425, __ (2011), excluding the observation of a non-testifying police officer as hearsay in an administrative hearing to suspend a driver’s license.

Mrs. Wilson’s important interest in pursuing her livelihood and avoiding financial hardship are precisely the important interests due process of law is intended to protect in this setting.

The department cites a number of decisions in other state’s appellate courts, both reported and unreported, upholding suspensions in the wake of delay between conviction and suspension. *See*, Brief of Appellant at pp. 3-4. The outer limit of the delay in those cases is three and a half years, and at that the suspension of an habitual traffic offender, citing *Thomas v. Indiana Bureau of Motor Vehicles*, 979 N.E.2d 169 (2012). Mr. Thomas had been convicted of two drunken driving offenses and reckless driving within an eight year period. The Indiana court rejected his arguments regarding the application of a statute of limitations and laches, observing that the interest of the public in keeping him off the road would be served rather than threatened by suspension.³ By contrast, Mrs. Wilson’s ten year driving record is clean, other than this incident. [10-year record]. And in *In Re Petition of Donley*, 217 W.Va. 449, 618 S.E.2d 458 (2005), relied on by the department, the West Virginia supreme court held that a three year delay was unreasonable as a matter of law, but the appellant showed no prejudice resulting from the delay.

³ Mrs. Wilson does not argue the application of laches should estop the department from suspending her license, relying solely on the more important principle of due process of law.

Nor is the consideration of fault on the part of the government agency causing the delay a material factor in determining whether due process has been violated with a lengthy delay in the imposition of suspension. In *Hipp v. S.C. Department of Motor Vehicles, supra*, it was immaterial to the court that neither the department nor the driver were “at fault” in the delay; it only mattered that the delay occurred, due to the failure of the Georgia law enforcement agency to report it. *Id.*, at 381 S.C. 323, 326, 673 S.E.2d 416, 417, fn. 2. And in *State v. Chavis, supra*, a fair reading of that decision is that while the department there acted promptly upon receipt of proof of the conviction, and the delay inexplicable from the record, the 11 month period which elapsed between the date of his conviction and notice of his suspensions did not prejudice Mr. Chavis. Hence, it is not blameworthiness but hardship as a result of government prorogation which violates due process. After all, as Shakespeare famously observed, “the law’s delay” can drive men mad.⁴

Mrs. Wilson’s uncontroverted testimony is that she is likely to suffer the loss of her livelihood and financial hardship if her license is suspended after five years of delay, a period during which she has had no other driver’s license infractions, and before this incident, had no infractions for the five years leading up to it. She does not pose a threat to public safety and the process of law which is due her should prohibit suspension of her license now.


CONCLUSION

The respondent motorist has been deprived of due process of law in the imposition of a six-month suspension of her license to drive, five years after her conviction, to her prejudice. The judgment of the trial court should be affirmed, and the government permanently enjoined from suspending her license.

⁴ *Hamlet*, Act 3, Scene 1

Respectfully submitted,

JOHN D. (JAY) ELLIOTT
Attorney for Respondent
1122 Lady Street – Suite 710
Post Office Box 607
Columbia, South Carolina 29202
Phone 803.252.9236
Fax 803.799.2079
E-Mail: jayel@mindspring.com

By: 
JOHN D. ELLIOTT

Columbia, South Carolina

November 9th, 2015

RECEIVED

NOV 09 2015

SC Court of Appeals

CERTIFICATE OF SERVICE

Counsel certifies that the Initial Brief of Respondent and Designation of the Record in this case was served on all parties by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows, on the 9th of November, 2015:

Frank L. Valenta, Jr.
Phillip S. Porter
Brandy A. Duncan
Office of General Counsel
S.C. Department of Motor Vehicles
P.O. Box 1498
Blythewood SC 29016-0020



JOHN D. ELLIOTT
Attorney for Respondent

John D. Elliott

ATTORNEY AT LAW

1122 LADY STREET-SUITE 710
Post Office Box 607
Columbia, South Carolina 29202

phone (803) 252-9236
fax (803) 799-2079
email jayel@mindspring.com

November 9th, 2015

HAND DELIVERED

Office of the Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina

RECEIVED

NOV 09 2015

SC Court of Appeals

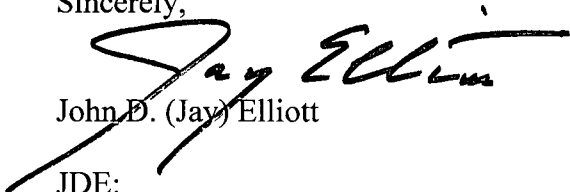
**Re: Anna Dillard Wilson v. S.C. Department of Motor Vehicles
Appellate Case No. 2015-000887**

Dear Honorable Clerk:

Enclosed please find the respondent's initial brief and designation of the record, together with a certificate of service on opposing counsel.

Please let me know if you need anything further to complete filing on behalf of the respondent.

Sincerely,


John D. (Jay) Elliott

JDE:

cc: Frank L. Valenta, Jr.
Phillip S. Porter
Brandy A. Duncan
Attorneys at Law

ENCL.
