

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Administrative Law Court  
The Honorable S. Phillip Lenski, Administrative Law Judge

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Appellate Case No. 2015-001622

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James Winston Davis, Jr.....Respondent,

v.

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

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**FINAL BRIEF OF THE RESPONDENT**

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**ATTORNEYS FOR RESPONDENT**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....3

STATEMENT OF ISSUES ON APPEAL.....4

ARGUMENT

**I. THE IMPOSITION OF A HABITUAL OFFENDER SUSPENSION MORE THAN SIX YEARS AFTER RESPONDENT'S THIRD TRAFFIC CONVICTION IS DENIAL OF FUNDAMENTAL FAIRNESS AND VIOLATES THE REQUIREMENTS OF DUE PROCESS. (ISSUE 1).....4**

CONCLUSION.....7

**TABLE OF AUTHORITIES**

**CASES:**

Hipp v. SC Department of Motor Vehicles, 381 SC 323, 673 SE2d 416(2009).....5

State v. Chavis, 261 SC 408, 200 SE2d 390(1973).....5

S.C. Section 56-1-1090 .....6

## STATEMENT OF ISSUES ON APPEAL

1. Was the suspension of Respondent's drivers' license as a habitual offender more than six years after his third qualifying conviction a violation of the standards of fundamental fairness and due process?

### ARGUMENT I

**THE IMPOSITION OF A HABITUAL OFFENDER SUSPENSION MORE THAN SIX YEARS AFTER RESPONDENT'S THIRD TRAFFIC CONVICTION IS DENIAL OF FUNDAMENTAL FAIRNESS AND VIOLATES THE REQUIREMENTS OF DUE PROCESS. (ISSUE 1)**

The pertinent facts in this matter are uncontested. Appellant had convictions for driving under suspension on February 19, 2004; May 5, 2005; and October 20, 2006. Despite the conviction date of October 20, 2006, for the third conviction, for reasons for which were clearly no fault of Respondent, the third conviction was not posted to Respondent's driving record with the South Carolina Department of Motor Vehicles until December 5, 2012. On that same date the Department of Motor Vehicles sent an Official Notice to Respondent advising him his driving privileges were being suspended for five years beginning January 4, 2013. In a well-reasoned and written Final Order the Administrative Law Court ruled the imposition of the driver's license suspension after a delay of more than six years from Respondent's third conviction was a denial of

fundamental fairness and a violation of the requirements of due process pursuant to Hipp v. SC Department of Motor Vehicles, 381 SC 323, 673 SE2d 416(2009).

In Hipp, supra, the South Carolina Supreme Court reviewed the imposition of a driver's license suspension of a South Carolina license twelve years after Hipp was convicted for driving under the influence in Georgia. The Court in Hipp determined a substantial delay in imposition of the suspension was a manifest denial of fundamental fairness and a violation of due process. Respondent respectfully submits the Administrative Law Court was correct in ruling and concluding the current Respondent's situation was controlled by the decision in Hipp.

The Administrative Law Court also considered the imposition of a license suspension in State v. Chavis, 261 SC 408, 200 SE2d 390(1973).

In Chavis, Chavis argued the suspension of his license approximately one year after his refusal to submit to a breath analyzer test and his conviction for driving under the influence violated his due process rights. The South Carolina Supreme Court ruled a delay of approximately one year in imposing a driver's license suspension was not violative of a driver's due process rights.

It is respectfully submitted the Administrative Law Court correctly determined the current situation is more akin to Hipp than Chavis. The delay in imposing the penalty in Chavis was just under one year. Furthermore, the penalty involved was the imposition of a six month license suspension for failure to take a breath analyzer test and an additional six month suspension for a conviction of driving under the influence, for a total of one year. These penalties were imposed just under one year after Chavis' conviction.

The current situation involves the imposition of a five year license suspension more than six years after Mr. Davis' last relevant conviction. It is respectfully submitted the attempt by the State to impose a five year license suspension more than six years after the last conviction violates the principals of fairness in due process as set forth in Hipp.

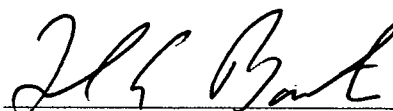
The Administrative Law Court correctly concluded under the specific facts in this case a delay in over six years in imposing such a substantial license suspension would be a denial of fundamental fairness and a violation of the requirements of due process as set forth in Hipp v. SC Department of Motor Vehicles, supra. Respondent had gone a substantial period without driver's license privileges and had already paid reinstatement fees and had completed all requirements to regain his license in 2010. Furthermore, the delay in imposing the habitual offender suspension would have denied Respondent the further ability to take advantage of S.C. Section 56-1-1090 which would have allowed him to reapply for his license after serving a two year suspension. The decision of the administrative law court should be affirmed.

**CONCLUSION**

The Respondent respectfully submits the Administrative Law Court was correct in concluding the current situation was controlled by Hipp v. SC Department of Motor Vehicles. It is fundamentally unfair and a denial of due process to impose a five year suspension of driving privileges more than six years after the last applicable conviction. For these reasons the decision of the Administrative Law Court should be affirmed.

Respectfully submitted,

December \_\_, 2015  
West Columbia, South Carolina



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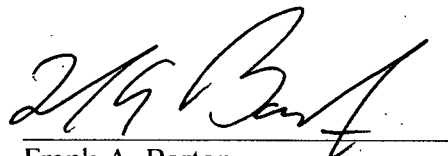
South Carolina Department of Motor Vehicles.....Appellant.

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify one copy of the **FINAL BRIEF OF THE RESPONDENT** was served in the foregoing action by regular mail on December 7, 2015, to the Attorney for Appellant at the following address:

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December 7, 2015  
West Columbia, S.C.

  
Frank A. Barton  
Attorney for the Respondent

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**CERTIFICATE OF COUNSEL**

The undersigned certifies that the **FINAL BRIEF OF RESPONDENTS** filed on December 7, 2015, complies with Rule 211(b) of the South Carolina Appellate Court rules.



West Columbia, South Carolina  
December 10, 2015

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