THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2015-000887

Anna Dillard Wilson ..... Respondent,

v.

S.C. Department of Motor Vehicles ..... Appellant.

FINAL BRIEF OF THE APPELLANT

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STATEMENT OF THE CASE

On November 22, 2008, Respondent was arrested for driving under the influence (hereinafter, "DUI"). On June 11, 2009, Respondent pled guilty to DUI in the Irmo Municipal Court. On May 20, 2014, nearly five (5) years after the conviction, Appellant received a copy of ticket number 31588EE from the Irmo Municipal Court reflecting Respondent's conviction. Accordingly, on May 27, 2014, a mere four (4) working days[2] later, Appellant issued Respondent a notice of suspension for the DUI conviction. Respondent did not surrender her license to the court on the date of her conviction. Therefore, pursuant to S.C. Code Ann. § 56-1-365, the suspension did not begin until the ticket was received and processed by the Appellant.

The ticket, #31588EE was included in the Appellant's audit reports completed by the Irmo Police Department for 2010, 2011 and 2013. The ticket was reported as being in court on the 2010 and 2011 audits (indicating the charge was still pending) and as signed off (sent to Appellant) in the 2013 report. There was no audit report submitted by the Irmo Police Department in 2012.

Due to the 2013 audit report indicating ticket #31588EE had been sent to Appellant, but Appellant having no record of receiving the same, Appellant sent Irmo

[1] This Court has another case with the same issue before it. *See James Winston Davis v. SCDMV, Appellate Case No. 2015-001622*

[2] The weekend and the state holiday for Memorial were not included in this total.

Police Department a listing of tickets, including ticket #31588EE. This listing informed the Irmo Police Department of which tickets they indicated had been sent to Appellant when Appellant had not actually received the ticket and requested Irmo Police Department send certified copies of each ticket to Appellant. Based on this request, and nearly a year after the request was made, Irmo Police Department sent ticket #31588EE to Appellant.

On June 9, 2014, Respondent filed a Summons and Complaint and Motion for Temporary Restraining Order in the Fifth Judicial Circuit Court alleging that the lengthy delay in the imposition of the suspension was a denial of fundamental fairness pursuant to *Hipp v. South Carolina Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009).

On March 23, 2015, the Court ordered that Appellant was permanently enjoined from suspending Respondent's driving privileges relating to the November 22, 2008, DUI violation. Appellant then filed this appeal.

ARGUMENT

1) THE CIRCUIT COURT JUDGE ERRORED IN RULING THAT THE SUSPENSION OF RESPONDENT'S DRIVER'S LICENSE FOUR (4) WORKING DAYS AFTER APPELLANT RECEIVED NOTIFICATION OF RESPONDENT'S DRIVING UNDER THE INFLUENCE CONVICTION VIOLATED THE STANDARDS OF FUNDAMENTAL FAIRNESS REQUIRED BY DUE PROCESS, WILL CAUSE THE RESPONDENT HARDSHIP, AND RESPONDENT HAS NO OTHER REMEDY AT LAW.

In the case *State v. Chavis*, 261 S.C. 408, 200 S.E.2d 390 (1973), the South Carolina Supreme Court held that Chavis' license suspension was effected without unreasonable delay and that fundamental fairness and due process were not violated by delays between an implied consent violation (December 1, 1971) and conviction for

driving under the influence (March 7, 1972) and when his suspension began (February 8, 1973).[3] This case, like the *Chavis* case, contains no allegation that Appellant engaged in any unreasonable delay once it received the notice of Respondent's conviction. In fact, the South Carolina Department of Motor Vehicles (hereinafter, "Appellant" or "DMV"), upon receiving the notice, processed Respondent's suspension within four (4) working days.

Chavis further held that in "the absence of injury or prejudice resulting" from DMV's delay a driver/licensee "has no standing to challenge on constitutional grounds the enforcement of the various statutory provisions by the [DMV]." *Chavis*, 200 S.E.2d at 391. Respondent has failed to show or even allege any injury or prejudice resulting from the four (4) day delay between when Appellant received the notice of conviction and when the notice of suspension was sent to Respondent. Rather, Respondent argues that she was injured and/or prejudiced by the delay in the reporting of the conviction from the Irmo Police Department to the Appellant.

The issue of driving convictions being reported in a delayed manner to agencies/organizations like Appellant is not limited to the state of South Carolina. Several states have tackled this very issue, allowing suspensions to stand even in the face of long delayed reports. For example:

1) thirteen (13) month delay between out-of-state and in-state suspensions for the same offense;[4]

2) fifteen (15) month delay between conviction and revocation;[5]

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[3] In the *Chavis* case, the South Carolina Highway Department was not notified of Chavis' implied consent violation or conviction until on or about February 1, 1973.
[4] *Boyd v. Division of Motor Vehicles*, 307 N.J.Super. 356 (1998).
[5] *Lundsten v. Motor Vehicles Div.*, 91 Or.App. 95 (1988).

3) seventeen (17) month delay between refusal to take chemical test and scheduling of hearing;[6]

4) nineteen (19) month delay between accident and commencement of administrative proceedings;[7]

5) twenty-one (21) month delay between an out-of-state conviction and license revocation;[8]

6) a two and a half (2 ½) year delay between an implied consent violation and the license suspension hearing;[9]

7) three (3) year delay between conviction and receipt of abstract of judgment;[10]

8) three (3) year delay between conviction and revocation;[11]

9) three (3) year delay between conviction and revocation;[12]

10) three (3) year delay between conviction and revocation;[13] and

11) three and a half (3 ½) year delay between DMV receiving notice of third qualifying conviction for habitual traffic violation and sending notice of ten (10) year suspension to driver;[14]

Most of these cases also hold that an administrative delay alone is not enough to violate due process and fundamental fairness. Rather, the driver must show that s/he has suffered some prejudice to a substantial right by the delay. *See Chavis*, 261 at 411 ("If follows that... Chavis here has no standing to challenge on constitutional grounds... in

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[6] *Minnick v. Melton*, 53 A.D.2d 1016 (NY 1976).
[7] *Dubiel v. Department of Motor Vehicles*, 1993 WL 265500 (Conn. 1993), unpublished opinion.
[8] *Miller v. Cline, Department of Motor Vehicles*, 193 W.Va. 210 (1995).
[9] *Alvarez v. State, Dept. of Admin., Div. of Motor Vehicles*, 249 P.3d 286 (2011).
[10] *In re Petition of Donley*, 217 W.Va. 449 (2005).
[11] *Celata v. Registry of Motor Vehicles*, 1995 WL 808614 (Mass. 1995) (unpublished opinion).
[12] *Lyver v. Motor Vehicles Div.*, 91 Or.App. 244 (1988).
[13] *Dubiel v. Dept. of Motor Vehicles*, 1993 WL 265500 (1993) (unpublished opinion).
[14] *Thomas v. Indiana Bureau of Motor Vehicles*, 979 N.E.2d 169 (2012).

the absence of injury or prejudice resulting to him from the delay"); *Alvarez*, 249 at 293 ("We have never held that administrative delay alone, without prejudice, violates due process."); *Celata*, 2015 WL 808614 at 3 ("if a substantial right of the appellant's was prejudiced by the agency's action, this Court may set aside the agency's decision"); *Lyver*, 91 at 246 ("Petitioner has suffered no prejudice."); *State, Div. of Motor Vehicles v. Pepe*, 379 N.J.Super. 411, 416 (2005) ("'Delay will not general affect the validity of an administrative determination, particularly where no prejudice is shown.'"); *Mullen*, 144 A.D.2d 886, 888 (1988) ("petitioner's operating privileges were not suspended during the period of delay and she has failed to identify any resulting prejudice"); *Dubiel*, 1993 WL 265500 at 3 ("The court further finds that the plaintiff was not prejudiced by the delay to the extent that he was denied due process."); *In re Petition of Donley*, 217 W.Va. 449, 453 (2005) ("Although we have found that the delay was unreasonable in this case, Mr. Donley is still not entitled to relief because no prejudice flowed from the delay.").

In this case, Respondent cannot show any prejudice to a substantial right. The United States Supreme Court has long-held that states have the right to regulate the use of state roads. *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586 (1971). Furthermore, there is no fundamental "right to drive." *Miller v. Reed*, 176 F.3d 1202 (9th Cir. 1999). At the hearing, the Respondent argued that the Appellant should disregard the mandatory driver's license suspension for her DUI conviction because the Irmo Police Department had taken too long to submit the conviction to the Appellant, she "could" lose her job,[15]

[15] This belief was based on the erroneous belief that her employer would have to provide her with "SR22 insurance." Please see following footnote as well.

her insurance company would have to file a form SR22 with DMV,[16] and on the date of the hearing she owned two (2) homes with mortgage payments.[17] (R. p. 63, line 7-p. 64, line 13). The Respondent argued that her constitutional right to due process was denied by the nearly five (5) year delay in reporting from the Irmo Police Department to Appellant, but failed to allege any harm other than these three (3) items. Respondent fails to address the issue that this delay is not attributable to Appellant. Rather, Appellant acted promptly (within four (4) working days) once it received the notice of conviction. Respondent further fails to recognize that Appellant cannot control the actions of, or delays by, the law enforcement agencies of this state. *See* reporting requirements in S.C. Code §56-7-30(A). Significantly, the DUI laws, in particular S.C. Code 56-5-2990, do not contain any deadlines or statutes of limitation. Rather, S.C. Code §56-5-2990(F) states "*Except as provided for in Section 56-1-365(D) and (E)*, the driver's license suspension periods under this section begin on the date the person is convicted..." (Emphasis added). S.C. Code §56-1-365(E) states "If the defendant fails to surrender his license, the suspension or revocation operates as otherwise provided by law." S.C. Code 56-5-2990(A)(1) states "The Department of Motor Vehicles shall suspend the driver's license of a person who is convicted for a violation of [DUI]...." The problem is, of course, Appellant is not going to take this action unless and until a person is convicted of DUI and that conviction is reported to Appellant. Appellant can only act, and must act, based upon what is reported to Appellant—not when the court or law enforcement agency acts. S.C. Code §56-7-30(A) merely facilitates the supplying records to the

[16] This belief is incorrect. The form SR22 is required to be filed with the DMV for three (3) years after the date of conviction. Since Respondent was convicted on June 11, 2009, her SR22 requirements ended on June 11, 2012.

[17] Appellant does not know if Respondent still owns two (2) homes with mortgage payments.

Appellant, but the Appellant's duty to act is not based upon when the court acts, unless the driver's license is surrendered to the court, but rather, is based upon when Appellant receives notice of the conviction. If the legislative intent were otherwise, the statute would have said the Appellant can only carry out the suspension "provided the department receives notice of the violation within ten days of the conviction" or some other limiting language. The legislature did not use this type of language. The statutory language is not accidental, as it very precisely mandates when the Appellant must act. Therefore, even though the Irmo Police Department failed to timely submit this notice to Appellant, once Appellant had the notice Appellant acted within four (4) working days. This cannot be considered an unreasonable or prejudicial delay.

In this case, the Circuit Court Judge relied on the case *Hipp v. South Carolina Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009) to find that the standards of fundamental fairness had been violated. Appellant asserts that the facts of this case are more closely aligned to those of the *Chavis* case. Specifically:

1) *Chavis* noted, like here, that from the evidence presented there was no reason to believe the delay was on the part of the SCDMV, but instead was on the part of the law enforcement agency.
2) Like *Chavis*, there is no contention that there was unreasonable delay on the part of the SCDMV once it received the notice of conviction, and no other suggestions of any improper conduct on the part of the Appellant itself.
3) Further, like *Chavis,* Respondent has argued that if she had known about her suspension she would have served the suspension earlier and it would be over.

Respondent essentially sought equitable relief from the Circuit Court. In doing so, she needed to seek that relief with clean hands. See, for example, *Emery v. Smith*, 361 S.C. 207, 603 S.E.2d 598 (2004). When the Respondent pled guilty, she knew that her DUI conviction led to a driver's license suspension. (R. p. 56, lines 10-20; p. 57, lines 7-17; and p. 69, lines 10-15). Despite this knowledge, the Respondent did not take action to rectify her situation. Rather, Respondent got a temporary alcohol license from December 8, 2008 through June 8, 2009, got a route restricted license on September 22, 2009 through November 11, 2009, and then got a regular license on November 12, 2009. (R. p. 78, lines 2-17). So, the only times Respondent was without a license of any kind was November 23, 2008 through December 8, 2008 (time between original arrest and implied consent violation and issuance of temporary alcohol license) and June 8, 2009 through September 22, 2009 (time between expiration of the temporary alcohol license and when Respondent obtained her route restricted license). *Id.* Respondent testified she did go to a DMV field office and was informed that DMV had not been notified of her DUI conviction (R. p. 58, line 23-p. 59, line 2). Despite this knowledge, Respondent did not supply a copy of her conviction to the DMV for processing. Rather, the Respondent asked her insurance agent to check into what was needed. Respondent's insurance agent was also informed that the DMV had not been notified of a DUI conviction for Respondent (R. p. 70, line 21-p. 72, line 4). Again, despite this knowledge, Respondent took no action to supply a copy of her conviction to the DMV for processing. Respondent did not even contact her attorney regarding this matter. Yet Respondent was, at that time, the only one that knew her DUI conviction had not been reported to the DMV as required.

The *Hipp* case held "that imposition of a suspension after more than twelve years delay, where Respondent bears no fault for the delay, is manifestly a denial of fundamental fairness." (Emphasis added). It is clear from the above facts, that Respondent was the only one that knew, at that time, her DUI conviction had not been reported to the DMV as required. Respondent took no action to correct this error, i.e. she bears fault in this delay by not alerting the DMV or the Irmo Police Department of the error. Additionally, although not stated explicitly, Respondent's primary argument before the Circuit Court that her suspension should be estopped by the doctrine of laches. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Mid-State Trust, II v. Wright,* 323 S.C. 303, 474 S.E.2d 421 (1996); *Hallums v. Hallums,* 296 S.C. 195, 371 S.E.2d 525 (1988); *Muir v. C.R. Bard, Inc.,* 336 S.C. 266, 519 S.E.2d 583 (Ct.App.1999). Laches is an equitable doctrine, which arises upon the failure to assert a known right. *All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C.,* 358 S.C. 209, 235, 595 S.E.2d 253, 267 (Ct.App.2004). Under the doctrine of laches, if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. *Muir* at 296, 519 S.E.2d at 599. The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums* at 199, 371 S.E.2d 525, 371 S.E.2d at 528; *All Saints* at 235, 595 S.E.2d at 267.

"Importantly, delay alone in assertion of a right does not, in and of itself, constitute laches. Rather, so long as there is no knowledge of the wrong committed and

no refusal to embrace an opportunity to ascertain facts, there can be no laches." *Muir* at 296, 519 S.E.2d at 599 (citations omitted); *see Brown v. Butler* 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct.App.2001); *compare Wall v. Huguenin* 305 S.C. 100, 406 S.E.2d 347 (1991) (holding the failure to exercise an option to purchase land for thirteen years was not unreasonable and laches did not apply) *with Chambers of S.C., Inc. v. County Council for Lee County,* 315 S.C. 418, 434 S.E.2d 279 (1993) (finding contractor's six-month delay in taking action on its objection to a contract awarded by county to another contractor was barred by laches).

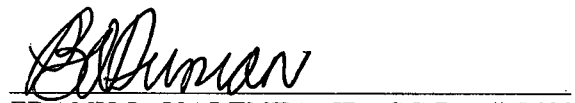
The inquiry into the applicability of laches is highly fact-specific and each case must be judged by its own merits. *Muir* at 297, 519 S.E.2d at 599. Thus, the determination of whether laches has been established is largely within the discretion of the trial court. *Brown v. Butler,* 347 S.C. at 265, 554 S.E.2d at 434 (Ct.App.2001); *Gibbs v. Kimbrell,* 311 S.C. 261, 269, 428 S.E.2d 725, 730 (Ct.App.1993). The burden of proof is on the party asserting laches. *Muir,* 336 S.C. at 297, 519 S.E.2d at 599. Finally, laches is an affirmative defense and must be pled. *Mack v. Edens,* 306 S.C. 433, 412 S.E.2d 431 (Ct.App.1991). There is nothing in the record of the Circuit Court that indicates Appellant knew of any right prior to May 20, 2014, when Appellant received notice of Respondent's conviction from the Irmo Police Department.

CONCLUSION

For the reasons set forth above, the order of the Circuit Court should be set aside and Respondent's DUI suspension reinstated.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The Undersigned Counsel certifies that the attached Final Brief is in compliance with SCACR 211(b).

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December 18, 2015
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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that Appellant's Final Brief complies with South Carolina Supreme Court Order 2007-08-13-02 Amended by Order 2014-04-15-02, filed April 15, 2104.

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December 18, 2015
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CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, December 18, 2015, I served one (1) copy of the Appellant's Final Brief by depositing with the United States Postal Service, correct postage prepaid, to Counsel for the Respondent at the address indicated below:

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