

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Motor Vehicles,

Docket No. 15-ALJ-21-0532-AP

Appellant,

v.

Ashby Hiser,

Respondent.

RECEIVED
ORDER REVERSING
DECISION

MAY 16 2016

SC Court of Appeals

FILED

APR 12 2016

STATEMENT OF THE CASE

SC ADMIN. LAW COURT

This is an appeal before the Administrative Law Court (“ALC” or “Court”) from a Final Order and Decision dated October 27, 2015, issued by Phillip T. Addington, an Administrative Hearing Officer of the Office of Motor Vehicle Hearings (“OMVH”). The Administrative Law Court has jurisdiction to review the appeal of South Carolina Department of Motor Vehicles (“SCDMV”) pursuant to S.C. Code Ann. § 1-23-660(D) (Supp. 2014).

BACKGROUND

Respondent was arrested in South Carolina on April 9, 2015, for reckless driving (ticket # H214341). He was convicted of this violation on April 23, 2015.

Respondent was arrested in South Carolina on May 21, 2013 for reckless driving (ticket # G312905). This reckless driving offense had a violation date of September 11, 2012. He pled guilty to this violation on June 10, 2013.

On May 22, 2015, Respondent was arrested in Virginia for reckless driving, speeding in excess of 80 miles per hour (ticket # 1500642600). He was convicted of this violation on June 29, 2015. This violation was reported to SCDMV on July 20, 2015 as an M84 violation. *See* 23 C.F.R. Pt. 1327, App. A. An M84 violation is reckless driving as defined by the American Association of Motor Vehicle Administrators (“AAMVA”) Code Dictionary (“ACD”). *Id.*

Respondent does not contest his two (2) South Carolina convictions or their classification as major violations for purposes of the habitual offender suspension. Moreover, Respondent has not contested the veracity of the Virginia conviction. Respondent has, however, contested the classification of the Virginia conviction as a major violation for purposes of the habitual offender suspension.

In the SCDMV's view, Respondent was charged and convicted of three separate and distinct major traffic violations within a three year period. *See* S.C. Code Ann. § 56-1-1020.

Respondent requested a contested case hearing pursuant to a Notice of Suspension issued by the SCDMV finding that he is a habitual offender as outlined in S.C. Code Ann. § 56-1-1020. The contested case hearing was held on October 14, 2015. After reviewing the record and considering all the evidence, the hearing officer rescinded the suspension of the Respondent's driving license or driving privileges. SCDMV appealed.

STANDARD OF REVIEW

The scope of judicial review in cases such as this is limited by the Administrative Procedures Act, S.C. Code Ann. § 1-23-380 (5) (Supp. 2015).

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981), our Supreme Court set out the standard of evidentiary review under the South Carolina Administrative Procedure Act:

[Section 1-23-380 (5)] specifically states: "The Court shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact." In addition, the statute states the decision under appeal must be "clearly erroneous" in view of the substantial evidence on the whole record.

We, therefore, caution the Bench and Bar as to the limitations upon the application of the "substantial evidence" rules in reviewing the decision of administrative agencies. As stated in *Dickinson-Tidewater, Inc. v. Supervisor of Assess.*, 273 Md. 245, 329 A.2d 18, 25, the substantial evidence test "need not and must not be either judicial fact-finding or substitution of judicial judgment for

agency judgment"; and a judgment upon which reasonable men might differ will not be set aside.

The Court further noted that:

The substantial evidence rule... means that we will not overturn a finding of fact by an administrative agency "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." (Citation omitted.)

See also Schudel v. South Carolina Alcoholic Beverage Control Commission, 276 S.C. 138, 276 S.E.2d 308 (1981); *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 18 (1981).

An appeal from action of an administrative agency must be sustained if supported by substantial evidence. *Hamm v. American Tel. & Tel. Co.*, 302 S.C. 211, 394 S.E.2d 842 (1990); *Lark v. Bi Lo, Inc.*, *supra*. In *Lark*, our Supreme Court quoted *Consolo v. Federal Maritime Commission*, 383 U.S. 611, 16 L.Ed.2d 131, 86 S.Ct. 1118 (1966), to define substantial evidence:

We have defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."... "It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury..." This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Lark, 276 S.C. at 136, 276 S.E.2d at 311. *See, also, Dorman v. DHEC*, 565 S.E.2d 119, 350 S.C. 159 (Ct. App. 2002); *Hamm v. South Carolina Public Service Commission and Wild Dunes Utilities, Inc.*, 311 S.C. 295, 422 S.E.2d 118 (1992).

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion. *Dorman v. DHEC*, *supra*; *Hamm v. American Telephone & Telegraph Co.*, *supra*; *Chemical Leaman Tank Lines v. South Carolina Public Service Commission*, 258 S.C. 518, 189 S.E.2d 296 (1972). The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. *See Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973).

On review of the acts or orders of administrative agencies, the courts will presume, among other things, that the agency action is regular and correct, and that the orders and decisions of the agency are valid and reasonable. 73A C.J.S. *Public Administrative Law and Procedure* Section 220(a) (1983). Therefore, the burden is on the Petitioner to show

convincingly that the order of the agency is without evidentiary support or is arbitrary or capricious as a matter of law. *Hamm v. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1988).

ISSUE ON APPEAL

Did the OMVH Hearing Officer err in holding that Respondent's Virginia conviction for reckless driving did not constitute a major conviction under S.C. Code Ann. §56-1-1010, et seq.?¹

DISCUSSION

I. The SCDMV did not make a discretionary decision to suspend Respondent's license under S.C. Code Ann. §56-1-1020.

The OMVH Hearing Officer held that the SCDMV made a discretionary decision to suspend Respondent's license under S.C. Code Ann. § 56-1-320. This is not accurate. S.C. Code Ann. § 56-1-320 states:

The Department of Motor Vehicles may, in its discretion, suspend or revoke the license of any resident of this State or the privilege of a nonresident to drive a motor vehicle in this State upon receiving notice of the conviction of the person in another state of an offense therein which, if committed in this State would be grounds for the suspension or revocation of the South Carolina license.

This is not, however, what occurred in this case. A reckless driving conviction alone does not lead to suspension of a license in South Carolina. There are several ways a person can have their license suspended or revoked in South Carolina related to a conviction for reckless driving. For example, if a driver: 1) received at least two (2) convictions for reckless driving within a five (5) year period of time (S.C. Code Ann. § 56-5-2920); 2) lost too many points from their license (S.C. Code Ann. §56-1-710 et seq.); or 3) was classified as a Habitual Offender due to multiple convictions only one of which might be a reckless driving conviction (S.C. Code Ann. § 56-1-1010 et seq.), as occurred in this case. Therefore, it was error for the OMVH Hearing Officer to hold that SCDMV made a *discretionary* decision under S.C. Code Ann. § 56-1-320 to suspend Respondent's license.

Rather, what occurred is SCDMV received the notification of an "M84" violation from Virginia for Respondent.² Based solely on this notification, SCDMV entered the "M84" violation

¹ This is an issue of first impression in South Carolina.

² SCDMV did not receive a copy of the actual traffic citation/charging document issued in Virginia.

onto Respondent's South Carolina driving record as allowed by S.C. Code Ann. §56-1-790, which states, in part:

The Department of Motor Vehicles may enter into a reciprocal agreement with the proper agency of any other state for the purpose of reporting convictions in one state by a person holding a driver's license in the other state. Such convictions in another state of a violation therein, which if committed in this State, would be a violation of the traffic laws of this State, may be recorded against a driver the same as if the conviction had been made in the courts of this State.

Upon entry of this conviction for reckless driving in Virginia, Respondent's license was required to be suspended pursuant to S.C. Code Ann. §56-1-1030(A), which states:

When a person is convicted of one or more of the offenses listed in Section 56-1-1020(a), (b), or (c), the Department of Motor Vehicles must review its records for that person. If the department determines after review of its records that the person is a habitual offender as defined in Section 56-1-1020,³ the department must revoke or suspend the person's driver's license.

(Emphasis added). Therefore, as a matter of procedure, the SCDMV did not make a discretionary decision to suspend Respondent's license, rather the suspension became mandatory after the conviction was added to Respondent's driving record within the Department's system.

³ S.C. Code Ann. § 56-1-1020 reads:

An habitual offender shall mean any person whose record as maintained by the Department of Motor Vehicles shows that he has accumulated the convictions for separate and distinct offenses described in subsections (a), (b) and (c) committed during a three-year period; provided, that where more than one included offense shall be committed within a one-day period such multiple offenses shall be treated for the purposes of this article as one offense:

- (a) Three or more convictions, singularly or in combination of any of the following separate and distinct offenses arising out of separate acts:
- (1) Voluntary manslaughter, involuntary manslaughter or reckless homicide resulting from the operation of a motor vehicle;
 - (2) Operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs;
 - (3) Driving or operating a motor vehicle in a reckless manner;
 - (4) Driving a motor vehicle while his license, permit, or privilege to drive a motor vehicle has been suspended or revoked, except a conviction for driving under suspension for failure to file proof of financial responsibility;
 - (5) Any offense punishable as a felony under the motor vehicle laws of this State or any felony in the commission of which a motor vehicle is used;
 - (6) Failure of the driver of a motor vehicle involved in any accident resulting in the death or injury of any person to stop close to the scene of such accident and report his identity;
- (b) Ten or more convictions of separate and distinct offenses involving moving violations singularly or in combination, in the operation of a motor vehicle, which are required to be reported to the department for which four or more points are assigned pursuant to Section 56-1-720 or which are enumerated in subsection (a) of this section.
- (c) The offenses included in subsections (a) and (b) shall be deemed to include offenses under any federal law, any law of another state or any municipal or county ordinance of another state substantially conforming to the above provisions.
- (d) For purposes of determining the number of convictions for separate and distinct offenses committed during any three-year period, a person shall be deemed to be convicted of an offense on the date the offense was committed if he is subsequently convicted of committing such offense.

II. The SCDMV can rely on Virginia's categorization of this conviction as reckless driving pursuant to ACD Code M84.

The ACD Codes used between states to indicate the violations drivers incur are set forth in federal regulations. *See* 23 C.F.R. Pt. 1327, App. A. "M84" is specifically listed in these federal regulations as the code for "Reckless driving" under Part I "For Cause Withdrawals" and Part II "Convictions." *Id.* A review of these regulations reveals there is only one (1) code for any offense related to reckless driving. There is a second code titled "Reckless, careless, or negligent driving:" M80. M80 immediately precedes four (4) other codes for "Careless driving," "Inattentive driving," "Negligent driving," and "Reckless driving." So, there is no breakdown of codes in the ACD code system to differentiate Virginia's fourteen (14) types of reckless driving, which are discussed in further detail below.

I find it is not the responsibility of SCDMV or any South Carolina court to ensure that the state of Virginia correctly files reports required under the Driver's License Compact. *Taddei v. Commonwealth*, 982 A.2d 1249 (2009). All fifty states in the United States have converted to the National Driver Register's (NDR) Problem Driver Pointer System (PDPS), which is provided for through 23 C.F.R. §1327. Under South Carolina law, SCDMV is merely responsible for determining whether the licensee's conviction requires suspension under South Carolina law. That is exactly what SCDMV did in this case. SCDMV used the available interpretive tools, namely 23 C.F.R. §1327 and the ACD Codes to determine that Respondent was convicted of reckless driving in Virginia. The Virginia conviction for reckless driving combined with his two (2) South Carolina convictions for reckless driving required SCDMV to suspend Respondent's driver's license pursuant to S.C. Code Ann. §56-1-1020.

Additionally, I find that SCDMV must be given the ability to rely on reports from other states made through the Problem Driver Pointer System (hereinafter, "PDPS"), or the Driver's License Compact is rendered wholly ineffective.

[S.C. Code Ann. §56-1-640] is clearly mandatory for a party state reporting a conviction within its jurisdiction. [S.C. Code Ann. §56-1-640] therefore imposes an obligation on [SCDMV] only when it is the state reporting the conduct, not when it is the home state. It does not prohibit [SCDMV], as the licensing authority in the home state, from *relying* on the information contained in the report even if the report lacks certain information specified in [S.C. Code Ann. §56-1-640]. Nor does anything in [S.C. Code Ann. §56-1-640] render the [out-of-state] report of conviction inadmissible if defective...

Com., Dept. of Transp. v. McCafferty, 563 Pa. 146, 758 A.2d 1155 (Pa. 2000) (Emphasis added). This same analysis applies to this case. Nothing in the Driver License Compact prohibits SCDMV from relying on information contained in a report from another state, even if the report lacks certain information that would normally be provided under S.C. Code Ann. § 56-1-640. This is an indication that the legislative intent is for SCDMV to utilize the information sent to it, even if it is just an ACD Code and the driver information.

Further, in *Siekierda v. Department of Transportation, Bureau of Driver Licensing*, 580 Pa. 259, 860 A.2d 76 (Pa. 2004), the Pennsylvania Supreme Court generally held:

That a court abstract from [out-of-state] was sufficient proof of an out-of-state conviction to authorize DOT to impose a suspension under the [Driver License] Compact. Our supreme court explained that the Compact is to be liberally construed so as to effectuate its purposes, and, upon receiving an out-of-state conviction report, even a report that does not strictly comply with the Compact's requirements, a home state's responsibility is to determine whether the conduct underlying the conviction requires the imposition of a suspension.

Roselle v. Commonwealth, 865 A.2d 308, 311 (2005), citing *Siekierda*. This Court agrees that South Carolina should follow the sound reasoning in the *Siekierda* case and the other case law regarding interpretation of statutes discussed above by construing the requirements of Driver License Compact and S.C. Code Ann. §56-1-320 to effectuate the purposes of the Driver License Compact as expressly stated in S.C. Code Ann. §56-1-620.

Additionally, in this case, which SCDMV represents is typical of these state-to-state reports, SCDMV received a short report from Virginia. (Record 000043). This report included the ACD Code and information regarding Respondent. SCDMV did not receive any detailed information from Virginia regarding this conviction. As result, as would be typical for any of these violations from Virginia, if someone is convicted of any of Virginia's fourteen (14) different types of reckless driving, they will all be entered as an ACD Code of "M84" and SCDMV will likely have no further facts related to that conviction. For example, two (2) different people could receive an "M84" reckless driving, exceeding speed limit conviction from Virginia under very different facts and they will both look exactly the same when they arrive at SCDMV. One could have received that conviction for driving 70 miles per hour through a 20 mile per hour school zone, while the other received that conviction for driving 81 miles per hour on a 70 mile per hour highway. To SCDMV, however, the paperwork will look exactly the same. Therefore, if for no other reason, the OMVH Final Order and Decision is reversed and

Respondent's suspension upheld for public policy reasons, i.e. SCDMV does not have the resources to individually investigate every M84 violation from Virginia. Thus, unless SCDMV can rely on the reports made by Virginia through the ACD codes, the only other option would be for SCDMV to disregard all M84 violations from Virginia, which would grossly undermine the legislative intent of S.C. Code §§56-1-1020, 56-1-320, and the Driver License Compact.

Further, I find that even if SCDMV were able to follow up on the specific facts behind every reckless driving conviction in Virginia, such a review would give each of these drivers more due process rights than are in place had the violation occurred in this state. This would manifest itself via the contested case hearing (a.k.a. essentially a second trial in South Carolina). There is nothing in these statutes that indicate the Legislature intended the OMVH and SCDMV to be used by drivers in this fashion.

Virginia has numerous reckless driving offenses, including exceeding eighty (80) miles per hour regardless of the applicable speed limit (VA Code § 46.2-862). Virginia is unique among jurisdictions by setting forth a Table of Speed and Stopping Distances (VA Code § 46.2-880). This Table reflects that an automobile travelling at eighty (80) miles per hour will take 481 feet to stop; whereas an automobile travelling at seventy-five (75) miles per hour will take 433 feet to stop. While the difference in stopping between an automobile travelling eighty (80) miles per hour and seventy-five (75) miles per hour may not appear that vast, it could mean the difference between a safe or tragic stop. In fact, this chart reflects that for every five (5) miles per hour in greater speed, the stopping distance for an automobile increases approximately forty (40) to fifty (50) feet. Both of these facts are indicators of the seriousness with which Virginia treats these offenses.

In this regard, the officer that issued the Virginia citation could have issued a speeding ticket pursuant to VA Code § 46.2-870. Additionally, the Court or the Commonwealth Attorney could have reduced the reckless driving charge to improper driving (a traffic infraction) if they considered the "degree of culpability" to be slight (VA Code § 46.2-869). If either of these occurred, the violations would have transferred to the SCDMV as a charge that is less than reckless driving and the resulting domino effect would not have occurred. In this case, however, none of these charging options were elected by the Virginia officials. Therefore, it was unreasonable and erroneous for the OMVH Hearing Officer to assume that Respondent's conviction to reckless driving, exceeding speed limit equates to mere speeding in South Carolina.

III. A conviction under VA Code §46.2-862 is equivalent to a South Carolina conviction under S.C. Code Ann. §56-5-2920.

Additionally, I find that a conviction under VA Code § 46.2-862 is equivalent to a South Carolina conviction under S.C. Code Ann. § 56-5-2920 because:

- 1) The rules of statutory construction and the clear Legislative intent of the Driver License Compact demand such a finding;
- 2) “Substantially similar” is not the standard in this case;
- 3) It is speculation to assume that Respondent would have been charged with speeding had this offense occurred in South Carolina; and
- 4) The potential penalties in Virginia demonstrate the seriousness with which Virginia takes the offenses of reckless driving.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature whenever possible. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998) and *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 476 S.E.2d 690 (1996). Statutory provisions should be given a reasonable and practical construction consistent with the purposes and policy of the statute. *Ocean Winds Corp. of Johns Island v. Lane*, 347 S.C. 416, 556 S.E.2d 377 (2001); see *Williamsburg Rural Water & Sewer Co. v. Williamsburg County Water & Sewer Authority*, 367 S.C. 566, 572, 627 S.E.2d 690, 693 (2006) (citing *Johnston v. S.C. Dep't of Labor, Licensing, and Reg.*, 365 S.C. 293, 617 S.E.2d 363 (2005) for the proposition that statutes should be interpreted to further, rather than frustrate, the legislature's intention). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Systems Corp. v. Leatherman*, 309 S.C. 174, 420 S.E.2d 843 (1992). Further, statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992) and *S.C. State Ports Authority v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Therefore, courts should not concentrate on isolated phrases in a statute. *Id.* Rather, the statute should be read as a whole and in a manner consonant and in harmony with its purpose. *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd*, 386 S.C. 339, 688 S.E.2d 569 (2010). Moreover, courts must give consideration to the object which the Legislature sought to attain and the evil which is

endeavored to remedy. *Woodward v. State Rural Electrification Auth.*, 190 S.C. 465, 3 S.E.2d 539 (1939).

In this regard, I have closely examined S.C. Code Ann. §56-1-1030, which states:

When a person is convicted of one or more of the offenses listed in Section 56-1-1020(a), (b), or (c), the Department of Motor Vehicles must review its records for that person. If the department determines after review of its records that the person is a habitual offender as defined in Section 56-1-1020, the department must revoke or suspend the person's driver's license.

(Emphasis added). It is clear to this Court that the legislative intent is that an appropriate number and type of convictions for traffic offenses will result in a habitual offender suspension. It is obvious to this Court that the evil the Legislature is endeavoring to remedy is dangerous driving. This is plain from the direct language of the statute. To assist in this endeavor other statutes provide requirements and authorizations for the SCDMV to recognize out-of-state convictions for reckless driving, specifically through S.C. Code Ann. §56-1-320 and the Driver License Compact (S.C. Code Ann. § 56-1-610 et seq.).

The Legislature specified its findings and intent of the Driver License Compact in S.C. Code Ann. § 56-1-620, which states:

(A) The General Assembly and the states that are party to the compact find that:

- (1) the *safety* of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;
- (2) the violation of a law or ordinance is evidence that the violator engages in conduct which is *likely to endanger the safety of persons and property*;
- (3) the continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles in whichever jurisdiction the vehicle is operated.

(B) It is the policy of the General Assembly and of each of the party states to:

- (1) *promote compliance* with the laws, ordinances, and administrative regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where the operators drive motor vehicles;
- (2) make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance as a *condition precedent to the continuance or issuance of any license* by

reason of which the licensee is authorized to operate a motor vehicle in any of the party states.

(Emphasis added).

This statute makes it abundantly clear that the Legislature's intent in passing the Driver License Compact was to: 1) increase safety; 2) decrease danger to persons and property; and 3) promote compliance with laws, ordinances, and administrative regulations related to the operation of motor vehicles. Therefore, any analysis of out-of-state offenses must keep these intents in mind.

S.C. Code Ann. § 56-1-650(C) states, in part, "For a conviction that is not required to be reported under subsection (A), the provisions of Section 56-1-320 shall govern the effect of the reported conviction in this State." S.C. Code Ann. § 56-1-320 states, in part,

The Department of Motor Vehicles may, in its discretion, suspend or revoke the license of any resident of this State or the privilege of a nonresident to drive a motor vehicle in this State upon receiving notice of the conviction of the person in another state of an offense therein which, if committed in this State, would be grounds for the suspension or revocation of the South Carolina license.

Further, the Legislature specified its findings and intent of the habitual offender statutes in S.C. Code Ann. § 56-1-1020, which states:

It is hereby declared to be the policy of this State:

- (a) To provide maximum *safety* for all person who use the public highways of this State; and
- (b) To deny the *privilege* of operating motor vehicles on such highways to persons who by their conduct and record have *demonstrated their indifference to the safety and welfare of others and their disrespect for the laws of this State*; and
- (c) To *discourage repetition of unlawful acts* by individuals against the peace and dignity of this State and her political subdivisions and to *impose additional penalties* upon habitual offenders who have been convicted repeatedly of violations of the traffic laws of this State.

(Emphasis added).

This statute is also evident that the Legislature's intent in passing the habitual offender laws was to: 1) provide maximum safety; 2) deny the privilege of operating a motor vehicle on our highways; 3) to discourage repetition of unlawful acts; and 4) to impose additional penalties.

Therefore, again, any analysis of the out-of-state conviction at issue in this case must keep these Legislative intents in mind as well.

In this case, the focus must be on the legislative intent of S.C. Code Ann. §§ 56-1-1010, et seq., 56-1-320, and how these two statutes work in conjunction to get some of the most egregious, rampant, and dangerous traffic offenders off of South Carolina's roads for safety purposes. Any interpretation of S.C. Code Ann. § 56-1-320 that "discretion" applies to out-of-state reckless driving convictions would grossly frustrate the legislative intent of S.C. Code Ann. §56-1-1010 et seq. and the Driver License Compact. For these reasons, I find that the only way to ensure the Legislative intent of these statutes is satisfied is to recognize the Virginia report of an M84, reckless driving, conviction for Respondent.

As mentioned previously, Virginia law has several different statutes for "Reckless Driving." Each of these statutes has independent elements for conviction. For example, VA Code § 46.2-852 "Reckless Driving; general rule" states:

Irrespective of the maximum speeds permitted by law, any person who drives a vehicle on any highway recklessly or at a speed or in a manner so as to endanger the life, limb, or property of any person shall be guilty of reckless driving.

Similarly, S.C. Code Ann. § 56-5-2920 states:

Any person who drives any vehicle in such a manner as to indicate either a wilful or wanton disregard for the safety of person or property is guilty of reckless driving.

Other reckless driving statutes in Virginia are:

VA Code §46.2-853 "Driving vehicle which is not under control; faulty brakes."

VA Code §46.2-854 "Passing on or at the crest of a grade or on a curve"

VA Code §46.2-855 "Driving with driver's view obstructed or control impaired."

VA Code §46.2-856 "Passing two vehicles abreast"

VA Code §46.2-857 "Driving two abreast in a single lane"

VA Code §46.2-858 "Passing at a railroad grade crossing"

VA Code §46.2-859 "Passing a stopped school bus; prima facie evidence"

VA Code §46.2-860 "Failing to give proper signals"

VA Code §46.2-861 "Driving too fast for highway and traffic conditions"

VA Code §46.2-862 "Exceeding speed limit"

VA Code §46.2-863 "Failure to yield right-of-way"

VA Code §46.2-864 “Reckless driving on parking lots, etc.”

VA Code §46.2-865 “Racing; penalty”

Any of these offenses could be charged as reckless driving under S.C. Code Ann. § 56-1-2920 in South Carolina. All of these Virginia reckless driving offenses are punished under the same code section, VA Code §46.2-868. Also, all of these statutes are listed in the same article of the Motor Vehicles title in Virginia, Article 7, which is titled “Reckless Driving and Improper Driving.” Reckless driving dominates the article, with improper driving only being mentioned in one code section, VA Code §46.2-869. These characteristics demonstrate that Virginia simply has several specific statutory definitions for what constitutes reckless driving, any of which could also be charged as reckless driving in South Carolina under S.C. Code Ann. § 56-5-2920.

Speeding, as is traditionally recognized in South Carolina, is not even mentioned until Article 8 of the Virginia Motor Vehicles Title. Thus, it is apparent that Virginia considers speeding to be a different offense than “reckless driving, exceeding speed limit.” (VA Code § 46.2-862).

“Reckless driving, exceeding speed limit” deals with one (1) of fourteen (14) specific statutory definitions for when a person is guilty of reckless driving in Virginia. VA Code §46.2-862 “Exceeding speed limit” states:

A person shall be guilty of *reckless driving* who drives a motor vehicle on the highways in the Commonwealth (i) at a speed of twenty miles per hour or more in excess of the applicable maximum speed limit or (ii) in excess of eighty miles per hour regardless of the applicable maximum speed limit.

(Emphasis added). Virginia has further defined reckless driving through case law.

In Virginia, the word ‘recklessly’ as used in the statute imparts a disregard by the driver of a motor vehicle for the consequences of his act and an indifference to the safety of life, limb, or property.” *Powers v. Commonwealth*, 211 Va. 386, 388, 177 S.E.2d 628, 630 (1970). “The essence of the offense... lies not in the act of operating a vehicle, but in the manner and circumstances of its operator.” *Id.*; *Hall v. Commonwealth*, 25 Va.App. 352, 355, 488 S.E.2d 651, 653 (1997). *Thompson v. Commonwealth*, 27 Va.App. 720, 723, 501 S.E.2d 438, 440 (1998). Further, “By statute, the speed at which he drove is *reckless driving*.” (Emphasis added). *West v. Commonwealth*, 43 Va.App. 327, 343, 597 S.E.2d 274, 283 (2004).

Moreover, Virginia also has a statute for speeding more than twenty miles over the speed limit, VA Code §46.2-874. This statute is wholly different than the reckless driving statute

related to speed, VA Code §46.2-862. This difference was explicitly and specifically recognized by the Circuit Court of Virginia in the case *Commonwealth v. Turner*, 1997 WL 33575416, which stated:

Simply because the facts of the case are such that the Defendant could have been charged with either *reckless driving* or speeding more than twenty miles per hour over the speed limit does not give him the right to elect the offense.

Id. at 1. This distinction was important in the *Turner* case because a conviction under VA §46.2-862 (reckless driving, exceeding speed limit) would have precluded the Commonwealth of Virginia from pursuing a driving under the influence of intoxicants charge against Mr. Turner. By recognizing the specific and explicit differences in VA Code § 46.2-862 (reckless driving, exceeding speed limit) and VA Code § 46.2-874 (speeding more than twenty miles per hour over the speed limit), the court allowed the driving under the influence of intoxicants charge to go forward against Mr. Turner even though he had already been convicted of VA §46.2-874 (speeding more than twenty miles per hour over the speed limit). Moreover, the logic in the *Turner* case regarding the defendant electing the offense brought against him applies to South Carolina as well. Simply because a South Carolina officer *can* choose to charge only speeding does not mean that a South Carolina officer *must* charge only for speeding. Thus, in South Carolina, as in Virginia, if the driving also supports a reckless driving charge, then the officer can elect whether to charge speeding or reckless driving. This is no different in Virginia. Therefore, the fact that Virginia has elected to charge and *convict* for “reckless driving, exceeding speed limit” and not speeding or improper driving speaks volumes about the nature of the driving that occurred.

Further, many Virginia cases and other legal resources refer to VA §46.2-862 as “reckless driving by speed” or similar terms. See *Chibikom v. Commonwealth*, 54 VA.App. 422, 680 S.E.2d 295 (2009); *Fisher v. County of Roanoke*, 31 Va.App. 215, 522 S.E.2d 392 (1999); *County of Loudoun v. Ofogh*, 68 Va. Cir. 427, 2005 WL 3369222; *MacDonald v. Com.*, 83 Va. Cir. 485; *Ford v. Com.*, 2013 WL 6478583; *Burnside v. Com.*, 2013 WL 1976110; *Com. v. Patton*, 87 Va. Cir. 215; *Com. v. Jones*, No. 04CR00062; and *In the Matter of Kelly Ralston Dennis*, 2014 WL 5115668. Moreover, the use of the term “reckless driving by speed” indicates that the driving is considered reckless driving specifically due to the speed involved.

The OMVH held that if Respondent's offense had occurred in South Carolina rather than Virginia, he would only have been charged with speeding in violation of S.C. Code § 56-5-1520(B)(1). Such an argument is speculative at best. Charges are made in the judgment of the charging officer based on the information the charging officer has before them at the time they make the charge. Simply because South Carolina doesn't have a *presumptive* charge for reckless driving due to driving 80 miles per hour or more on any roadway does not mean South Carolina is *precluded* from the possibility of such a charge being made and proven under South Carolina's reckless driving statute. For example, many highways in South Carolina have a speed limit of 70 miles per hour. Given traffic, weather, road conditions, or inability to stop in a reasonable time, however, it may be perfectly reasonable for a driver on a South Carolina highway with a speed limit of 70 miles per hour to be charged with reckless driving under S.C. Code Ann. § 56-5-2920 for simply driving 80 miles per hour or greater on that highway. So, while Virginia makes such a charge for reckless driving *presumptive*, that does not mean that South Carolina's failure to make the same charge *presumptive* precludes the charge from being made at all. For these reasons, South Carolina must defer to and accept Virginia's interpretation of their reckless driving statutes and provided full faith and credit recognition to that conviction as required by Section 1, Article IV of the U.S. Constitution.

Moreover, S.C. Code Ann. § 56-1-850 specifically states, "Nothing contained in this article shall affect the action of the Department of Motor Vehicles in suspending, revoking, or canceling any driver's license when such action is mandatory under the provisions of any law of this State." S.C. Code Ann. §56-1-850 is in the same section of the South Carolina Code of Law as S.C. Code Ann. §56-1-790. Therefore, it is clear that the South Carolina Legislature did not intend for any classification of an out-of-state conviction, whether classified correctly or not, to affect the suspension, revocation, or cancelation of any driver's license when such action is mandatory, as it is in S.C. Code Ann. §56-5-2920. For these reasons, I find that the OMVH Hearing Officer engaged in erroneous speculation in holding that this offense would have been charged as speeding if it had occurred in South Carolina.

All of Virginia's reckless driving statutes are punishable as Class 1 misdemeanors. This means, pursuant to VA Code § 18.2-11, that Respondent could have been confined in jail for not more than twelve months, fined not more than \$2,500, or both. These penalties demonstrate that

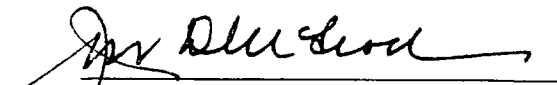
Virginia takes the offenses of reckless driving very seriously and, therefore, expect serious consideration be given to such convictions when reported to other states.

For all the reasons stated above, I find that the suspension of Appellant's driver's license as a Habitual Offender was warranted, as a matter of law and based on the substantial evidence in the record.

IT IS HEREBY ORDERED that the decision appealed from is **REVERSED** and Respondent's habitual offender suspension is **SUSTAINED**.

AND IT IS SO ORDERED.

April 12, 2016
Columbia, S.C.

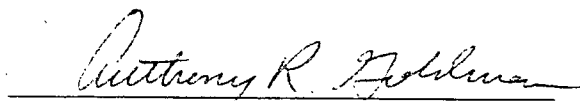


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

April 12, 2016
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk