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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2016-001030

South Carolina Department of Motor Vehicles Appellant,

v.

Michelle Dover Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Motor
Vehicles,

Docket No. 15-ALJ-21-0542-AP

Appellant,

vs.

ORDER

Michelle Dover,

Respondent.

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed November 25, 2015 by the South Carolina Department of Motor Vehicles (Department or DMV). The Department requests review of a contested case decision issued by a hearing officer with the Office of Motor Vehicle Hearings (OMVH). The hearing officer found in favor of Michelle Dover, after she contested the Department's decision to suspend her license pursuant to South Carolina Code Section 56-1-1030.

The Record on Appeal in this matter was filed on January 21, 2016. The Department timely filed its Brief of Appellant on February 19, 2016. Pursuant to ALC Rule 37(A), Respondent's brief was due by March 21, 2016. Respondent has not filed a brief. On April 7, 2016, the Department filed a Motion to Resolve Appeal Adversely to Respondent, pursuant to ALC Rule 38. This rule allows the Court to resolve an appeal against a party who fails to meet the time limits imposed by the rules of procedure. However, application of this rule is within the discretion of the Court. In this case, which turns upon a matter of law, the Court finds that it would be inappropriate to resolve the appeal on procedural grounds, and thus denies Appellant's motion. See Micronics, Inc. v. S.C. Dept. of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (noting South Carolina courts favor deciding cases on the merits).

BACKGROUND

Respondent has two prior convictions that qualify as "major" violations under Section 56-1-1020, which defines habitual offender. Respondent does not contest these two prior convictions, but instead contests the third "major" violation which the Department has attributed to her. On May 3, 2015, Respondent was issued a ticket in Virginia. On July 21, 2015, she was

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SC ADMIN. LAW COURT

convicted of speeding in excess of eighty miles-per-hour. Under Virginia law, speeding over eighty miles-per-hour is *per se* “reckless driving.” See Va. Code Ann. § 46.2-862 (West 2015).

The conviction was reported to the South Carolina DMV by Virginia on August 10, 2015, pursuant to a reciprocal agreement between the states. The information provided by Virginia includes, among other things, the reason for conviction as “RECKLS DRV-SPEEDING EXCESS OF 80MPH-MISD” and an ACD code¹ of “M84.” The Department applied the conviction to Respondent’s driving record as a conviction for reckless driving. Reckless driving qualifies as a major violation under Section 56-1-1020. Because Respondent then had three total major violations on her record, the Department issued a Notice of Suspension declaring Respondent a Habitual Offender. The suspension was to run from September 18, 2015 until September 18, 2020.

After receiving the Notice of Suspension, Respondent filed for a contested case with the OMVH on September 4, 2015, pursuant to South Carolina Code Section 56-1-1030. A hearing was held before an OMVH hearing officer on November 4, 2015. After reviewing the evidence presented by the parties, the hearing officer concluded that the Department’s Notice of Suspension must be rescinded. Specifically, the hearing officer concluded that the Department had incorrectly categorized Respondent’s conviction pursuant to South Carolina law, and that the Respondent therefore did not have three qualifying major offenses under the habitual offender statute.

ISSUE ON APPEAL

Whether the hearing officer erred in concluding that Respondent’s Virginia conviction does not qualify as reckless driving, pursuant to South Carolina law.

STANDARD OF REVIEW

Pursuant to Section 56-1-1030, the OMVH has exclusive jurisdiction over contested cases arising from habitual offender revocations or suspensions executed by the Department. See S.C. Code Ann. § 56-1-1030(B) (Supp. 2015). The ALC hears appeals from the OMVH, under the Administrative Procedures Act (APA).² See S.C. Code Ann. § 1-23-660(D) & § 1-23-600(E)

¹ ACD stands for the Administrators Code Dictionary, published by the American Association of Motor Vehicle Administrators. The manual defines “M84” as “Reckless driving,” under the “Reckless, Careless, or Negligent Driving” heading. See AAMVA Code Dictionary (ACD) Manual, Release 5.1.0, Appendix A at A-6 (effective Sept. 1, 2013), available at <http://www.aamva.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=4390&libID=4367>. Some of the ACD codes, including M84, are also listed in federal regulations regarding the National Driver Register Problem Driver Pointer System. See 23 C.F.R. Pt. 1327, App. A (2015).

² The Court notes that for the purposes of the APA, the OMVH functions as an “agency.” See S.C. Dept. of Motor Vehicles v. Brown, 406 S.C. 626, 636, 753 S.E.2d 524, 529 (2014) (Beatty, J., dissenting) (quoting S.C. Dept. of Motor Vehicles v. McCarson, 391 S.C. 136, 144, 705 S.E.2d 425, 429 (2011)).

(Supp. 2015). Consequently, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2015). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

DISCUSSION

Appellant begins by arguing that it did not make a discretionary decision to suspend Respondent's license, but rather acted according to the statutory mandate contained in Section 56-1-1030. See S.C. Code Ann. § 56-1-1030(A) (Supp. 2015). The Court agrees. Insofar as a driver in this state has three qualifying major violations under Section 56-1-1020, and is thus a habitual offender, the Department must suspend or revoke that person's license. Id. However, the question presented by this case is not whether such action is mandatory, but whether the respondent in this case had three qualifying major violations. See S.C. Code Ann. § 56-1-1020 (2008). That Respondent had two qualifying South Carolina convictions is undisputed. What is disputed is whether the Virginia conviction utilized by the Department to suspend Respondent's license may properly be considered a qualifying conviction.

The Virginia conviction was added to Respondent's South Carolina driving record pursuant to a reciprocal agreement between the states authorized by South Carolina law, which provides:

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^[3] be recorded against a driver the same as if the conviction had been made in the courts of this State. When a resident of this State has been convicted of a motor vehicle violation in another state for which there is no corresponding offense in this State, excluding the offenses listed

³ The Court interprets this "may" to mean "must," inasmuch as the principle of equal protection requires. See S.C. Att'y Gen. Op. dated May 29, 1978, 1978 WL 207615 at *1; S.C. Att'y Gen. Op. No. 3835, dated Aug. 6, 1974, 1974 WL 21339 at *1-3.

in Section 56-1-650(A), the conviction must not be recorded on the person's driving record in this State.

S.C. Code Ann. § 56-1-790 (2008).⁴ In accordance with the reciprocal agreement, Virginia provided the Department with a summary of Respondent's conviction, which is contained in the record. Relying on the ACD code provided in the summary, and not the Virginia statute cited in the summary, the Department added reckless driving to Respondent's record. Because reckless driving constitutes a major violation under Section 56-1-1020, the Department proceeded to suspend Respondent's license.

Thus, the question is whether the Department properly relied on the code when attributing a reckless driving conviction to Respondent. As stated by Section 56-1-790, an out-of-state conviction is applied if the offense committed out-of-state "would be a violation of the traffic laws of this State" if it were "committed in this State." By relying solely on a code that is not part of state law, the Department failed to determine whether the offense committed by Respondent would be an offense under South Carolina law.

At the hearing in this case, the hearing officer determined that the burden of proof was on the Department to show that Respondent has three qualifying major convictions. As *prima facie* proof of their position the Department presented Respondent's two South Carolina convictions and the summary of her Virginia conviction that was provided by that state. However, Respondent rebutted the Department's position by correctly pointing out that the offense she was convicted of concerned speeding. As the summary shows, Respondent was convicted under Virginia Code Section 46.2-862, entitled "Exceeding speed limit:"

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.

Va. Code Ann. § 46.2-862 (West 2015). As the Department argues in its brief, Virginia has determined that exceeding eighty miles-per-hour constitutes reckless driving *per se*. However, South Carolina law specifically requires that an out-of-state offense must be recorded as if it were a conviction under South Carolina law. Therefore, the question is whether, on a charge of

⁴ The Court reverses the hearing officer's decision insofar as it relied on South Carolina Code Sections 56-1-650 and 56-1-320 instead of Section 56-1-790 for the procedure by which the Department applies out-of-state convictions. The Court notes that reliance on these statutes did not prevent the hearing officer from reaching the correct result.

exceeding eighty miles-per-hour, Respondent would be charged with reckless driving under South Carolina law. Contrary to the Department's arguments, the outcome of this case is controlled by the South Carolina statutes and the intent of the South Carolina legislature, not the policies advanced by the Virginia legislature. The question is not whether Virginia considers Respondent's offense a major violation, but whether it is defined as such in South Carolina law. In South Carolina, reckless driving is defined as: "Any person who drives any vehicle in such a manner as to indicate either a wilful or wanton disregard for the safety of persons or property is guilty of reckless driving." S.C. Code Ann. § 56-5-2920 (2008); compare Va. Code Ann. § 46.2-852 (West 2015) ("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."). Upon comparison, it is clear that the Virginia statute that Respondent was charged under is more analogous to South Carolina's speeding laws, which require:

(A) A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled to avoid colliding with a person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.

S.C. Code Ann. § 56-5-1520 (2008). Subsection (G) provides stepped penalties depending on how much the driver is exceeding the speed limit. If, as Respondent testified, she was only going ten miles over the limit, under South Carolina law she would likely have been charged with Subsection (G)(2), which provides for a fine.⁵ Even at the highest level of speeding (more than twenty-five miles per hour) speeding, without more, does not rise to the level of the major violations defined in Section 56-1-1020(a). South Carolina requires that an offense be applied as it would have been convicted under South Carolina law. A review of the applicable statutes shows that Respondent would have been convicted of speeding, not reckless driving. Therefore, the Court concludes that

⁵ The Department argues that the Court should take into consideration that Respondent could have been, but was not, charged under VA Code Section 46.2-874. The Department claims that this statute covers "speeding more than twenty miles over the speed limit." However, a review of the Virginia Code shows that this statute merely sets the speed limit at twenty-five miles-per-hour for "highways in business or residence districts." Va. Code § 46.2-874 (West 2015). Possibly, the Department meant to refer to Section 46.2-874.1, which allows towns with a population between 14,000 and 15,000 to prohibit speeding in excess of twenty miles-per-hour by passage of an ordinance. Id. at § 46.2-874.1 (West 2015). There is no indication that Respondent was in such a town with such an ordinance at the time of the violation.

B/c of language
in case but
point still stands.⁵

the hearing officer did not err in determining that the Department incorrectly suspended Respondent's license.

Appellant argues that public policy prevents this Court from following the law as set forth in Section 56-1-790. The Court disagrees. The result reached by the hearing officer and this Court in this case does not require the Department to ignore any out-of-state convictions or to delve into the specific facts of every out-of-state conviction. Nothing in this opinion prevents the Department from relying on the ACD Codes in making an initial decision under the habitual offender statute. Instead, the Department must simply compare the statutes involved in a given case when the driver in question successfully challenges the Department's classification in a contested case.

The Department argues that, instead of making a statutory comparison as required by South Carolina law, it should be allowed to rely solely on the ACD codes without reference to statutes. Administrative codes, such as those used by motor vehicle agencies, are for convenience and are not meant to supersede or replace statutory law. The South Carolina Court of Appeals has held that statutes, not administrative codes, determine a criminal's sentence. See State v. Bennett, 375 S.C. 165, 173-4, 650 S.E.2d 490, 495 (Ct. App. 2007) ("While the codes were developed and are used to provide an administrative shortcut, they were never intended to replace statutory law Because the South Carolina Code of Laws is the controlling authority for classifications, definitions and penalties for criminal offenses, a statute listed on a sentencing sheet, and not a CDR code, will dictate a criminal's sentence.").

The Department further argues that the Court engages in speculation to assume that Respondent would be charged with speeding under South Carolina law. To the contrary, the Court concludes that the Department engages in speculation in assuming that Respondent was driving recklessly when the statute under which she was convicted merely calls for going in excess of eighty miles-per-hour. Because Virginia has defined reckless driving as speeding, does not mean that Respondent was driving recklessly, as defined by South Carolina law. To assume as much without evidence or legal substantiation deprives Respondent of the due process she is owed before she loses her driver's license.

ORDER

IT IS THEREFORE ORDERED that Appellant's Motion to Resolve Appeal Adversely to Respondent is **DENIED**.

IT IS FURTHER ORDERED that the decision of the OMVH is **AFFIRMED** as **MODIFIED**.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Deborah Brooks Durden".

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

May 4, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

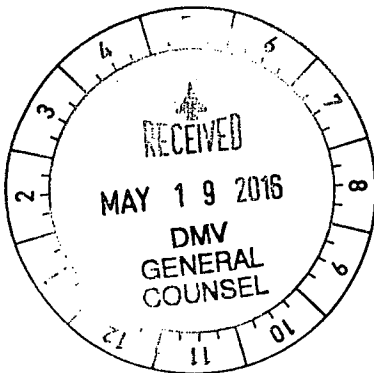
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APPEAL FROM RICHLAND COUNTY
Administrative Law Court

SC Court of Appeals

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No. 15-ALJ-21-0542-AP

South Carolina Department of Motor Vehicles Appellant,

v.

Michelle Dover Respondent.

NOTICE OF APPEAL

The South Carolina Department of Motor Vehicles hereby appeals from the Order of the Honorable Deborah Brooks Durden dated May 4, 2016 (copy attached). Appellant received written notice of entry of this Order on May 4, 2016.

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ATTORNEY FOR APPELLANT

May 12, 2016
Blythewood, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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Vehicles,

Docket No. 15-ALJ-21-0542-AP

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BACKGROUND

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DISCUSSION

Appellant begins by arguing that it did not make a discretionary decision to suspend Respondent's license, but rather acted according to the statutory mandate contained in Section 56-1-1030. See S.C. Code Ann. § 56-1-1030(A) (Supp. 2015). The Court agrees. Insofar as a driver in this state has three qualifying major violations under Section 56-1-1020, and is thus a habitual offender, the Department must suspend or revoke that person's license. Id. However, the question presented by this case is not whether such action is mandatory, but whether the respondent in this case had three qualifying major violations. See S.C. Code Ann. § 56-1-1020 (2008). That Respondent had two qualifying South Carolina convictions is undisputed. What is disputed is whether the Virginia conviction utilized by the Department to suspend Respondent's license may properly be considered a qualifying conviction.

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the hearing officer did not err in determining that the Department incorrectly suspended Respondent's license.

Appellant argues that public policy prevents this Court from following the law as set forth in Section 56-1-790. The Court disagrees. The result reached by the hearing officer and this Court in this case does not require the Department to ignore any out-of-state convictions or to delve into the specific facts of every out-of-state conviction. Nothing in this opinion prevents the Department from relying on the ACD Codes in making an initial decision under the habitual offender statute. Instead, the Department must simply compare the statutes involved in a given case when the driver in question successfully challenges the Department's classification in a contested case.

The Department argues that, instead of making a statutory comparison as required by South Carolina law, it should be allowed to rely solely on the ACD codes without reference to statutes. Administrative codes, such as those used by motor vehicle agencies, are for convenience and are not meant to supersede or replace statutory law. The South Carolina Court of Appeals has held that statutes, not administrative codes, determine a criminal's sentence. See State v. Bennett, 375 S.C. 165, 173-4, 650 S.E.2d 490, 495 (Ct. App. 2007) ("While the codes were developed and are used to provide an administrative shortcut, they were never intended to replace statutory law Because the South Carolina Code of Laws is the controlling authority for classifications, definitions and penalties for criminal offenses, a statute listed on a sentencing sheet, and not a CDR code, will dictate a criminal's sentence.").

The Department further argues that the Court engages in speculation to assume that Respondent would be charged with speeding under South Carolina law. To the contrary, the Court concludes that the Department engages in speculation in assuming that Respondent was driving recklessly when the statute under which she was convicted merely calls for going in excess of eighty miles-per-hour. Because Virginia has defined reckless driving as speeding, does not mean that Respondent was driving recklessly, as defined by South Carolina law. To assume as much without evidence or legal substantiation deprives Respondent of the due process she is owed before she loses her driver's license.

ORDER

IT IS THEREFORE ORDERED that Appellant's Motion to Resolve Appeal Adversely to Respondent is **DENIED**.

IT IS FURTHER ORDERED that the decision of the OMVH is **AFFIRMED** as **MODIFIED**.

IT IS SO ORDERED.

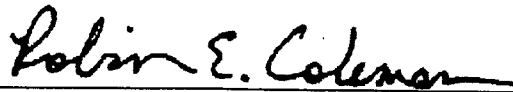
A handwritten signature in cursive script, reading "Deborah Brooks Durden".

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

May 4, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

May 4, 2016
Columbia, South Carolina

0017

FILED

May 4, 2016

SC ADMIN. LAW COURT

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 Deborah Brooks Durden, Administrative Law Judge

Case No. 15-ALJ-21-0542-AP

South Carolina Department of Motor Vehicles Appellant,

v.

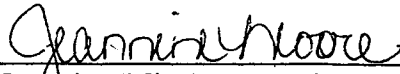
Michelle Dover Respondent.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Appellant's Notice of Appeal by depositing a copy of same in the United States Mail, postage prepaid, on this 12th day of May, 2016, addressed to the Respondent and the South Carolina Administrative Law Court as follows:

Michelle Dover, *Pro se* Respondent
35 Railroad Avenue
York, South Carolina 29745

The Honorable Jana Shealy, Clerk
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

May 12, 2016
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

South Carolina Department of Motor Vehicle,

Docket No. 15-ALJ-21-0542-AP
SCDL No.

Appellant,

v.

Michelle Dover,

Respondent.

NOTICE OF MOTION
AND MOTION TO RESOLVE
APPEAL ADVERSELY TO RESPONDENT
AND IN APPELLANT'S FAVOR

TO: RESPONDENT MICHELLE DOVER, PLEASE TAKE NOTICE that Appellant South Carolina Department of Motor Vehicles ("SCDMV") will move before this Honorable Court ten (10) days from this notice or as soon thereafter as the matter may be heard or determined, to resolve the above-referenced action in Appellant's favor. The grounds of this motion are set forth below.

Rule 37(A), SCALCR requires Respondent to file an original and one copy of her brief within thirty (30) days after the filing of Appellant's brief. Additionally, Rule 37(C), SCALCR requires Respondent to serve a copy of her brief on all parties to the appeal at the time of filing her brief with the Court. Moreover, *Order Denying Appellant's Motion to Hold Case in Abeyance* issued January 11, 2016 required Respondent to file her brief within thirty (30) days from the date Appellant's brief was filed.

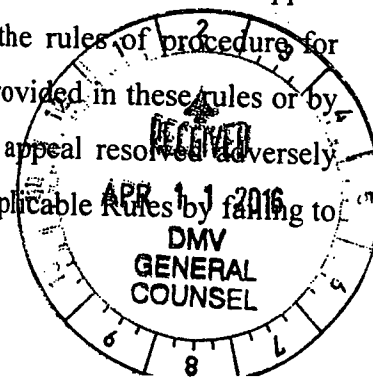
Appellant's Brief was filed on February 19, 2016. Thirty (30) days from February 19, 2016 was March 21, 2016. As of the filing of this motion, SCDMV has not received a copy of Respondent's Brief in this matter. Moreover, pursuant to an e-mail from Robin E. Coleman, Judicial Aide to Judge Deborah Brooks Durden, on April 4, 2016, this Court has also not received a brief from Respondent in this case.

Rule 38, SCALCR provides that "an administrative law judge may... resolve the appeal adversely to the offending party for failure to comply with an of the rules of procedure for appeals, including the failure to comply with any of the time limits provided in these rules or by order of the Court." Thus, Appellant SCDMV moves to have this appeal resolved adversely against Respondent due to Respondent's failure to comply with the applicable Rules by failing to

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file and serve her brief within the time limits set by Rule 37 and this Court's Order dated January 11, 2016.

And we so move.



BRANDY A. DUNCAN, SC Bar #72052

Assistant General Counsel

FRANK L. VALENTA, JR., SC Bar # 5682

General Counsel

PHILIP S. PORTER, SC Bar # 4526

Deputy General Counsel

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April 6, 2016

Blythewood, South Carolina

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SC ADMIN. LAW COURT

**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

South Carolina Department of Motor Vehicle,

Docket No. 15-ALJ-21-0542-AP
SCDL No.

Appellant,

v.

CERTIFICATE OF SERVICE

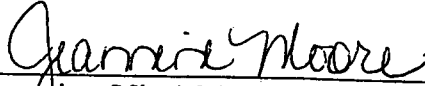
Michelle Dover,

Respondent.

I HEREBY CERTIFY that on April 6, 2016, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing **Notice of Motion and Motion to Resolve Appeal Adversely to Respondent and in Appellant's Favor** to the following:

Michelle Dover
35 Railroad Avenue
York, South Carolina 29745

as *Pro Se* Respondent.


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

April 6, 2016
Blythewood, South Carolina

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SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
ALJ DOCKET NO. 15-ALJ-21-0542-AP

HONORABLE PHILLIP T. ADDINGTON, HEARING OFFICER

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES APPELLANT

V

MICHELLE DOVER RESPONDENT

BRIEF OF APPELLANT

FRANK L. VALENTA, JR., SC Bar # 5682
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Counsel for the Appellant

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SC ADMIN. LAW COURT

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**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

South Carolina Department of Motor Vehicles,

Appellant,

v.

Michelle Dover,

Respondent.

Docket No. 15-ALJ-21-0542-AP
SCDL No.

**BRIEF OF APPELLANT
SOUTH CAROLINA DEPARTMENT
OF MOTOR VEHICLES**

This matter comes before the Administrative Law Court pursuant to the appeal of the South Carolina Department of Motor Vehicles (hereinafter, "DMV" or "SCDMV"), which seeks review of the November 12, 2015 Final Order & Decision of the Office of Motor Vehicle Hearings (hereinafter, "OMVH") rescinding the Respondent's habitual offender suspension. The SCDMV seeks to have the Final Order & Decision reversed and the suspension reinstated.

STATEMENT OF THE ISSUE ON APPEAL

THE HEARING OFFICER ERRORED IN HOLDING THAT RESPONDENT'S VIRGINIA CONVICTION FOR RECKLESS DRIVING DID NOT CONSTITUTE A MAJOR CONVICTION UNDER S.C. CODE §56-1-1010, ET SEQ.¹

STATEMENT OF THE CASE

Respondent, Michelle Dover, was arrested on July 12, 2012, for driving under suspension (ticket # 21132FV). She was convicted of this violation on August 14, 2012.

Respondent was arrested on March 1, 2014 for driving under the influence (ticket # G697424). She pled guilty to this violation on August 12, 2014.

On May 3, 2015, Respondent was arrested in Virginia for reckless driving, speeding in excess of 80 miles per hour (ticket # 1500394200). She was convicted of this violation on July

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

21, 2015. This violation was reported to DMV on August 10, 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 (hereinafter, "AAMVA") Code Dictionary (hereinafter, "ACD"). *Id.*

Respondent has not contested her two (2) South Carolina convictions or their classification as major violations for purposes of the habitual offender suspension. R. p. 19, line 6 - p. 21, line 23. Moreover, Respondent has not contested the veracity of the Virginia conviction. *Id.* Respondent has, however, contested the classification of the Virginia conviction as a major violation for purposes of the habitual offender suspension.

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

Respondent requested a contested case hearing pursuant to a Notice of Suspension issued by the DMV finding that she is a habitual offender as outlined in S.C. Code §56-1-1020. The contested case hearing was held on November 4, 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 Section 1-23-380(A)(6).

(A) 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....

(6) The court shall not substitute its judgment for that 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(g)(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 Telephone & Telegraph 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).

ARGUMENT

THE HEARING OFFICER ERRORED IN HOLDING THAT RESPONDENT'S VIRGINIA CONVICTION FOR RECKLESS DRIVING DID NOT CONSTITUTE A MAJOR CONVICTION UNDER S.C. CODE §56-1-1010, ET SEQ.

- I. THE DMV DID NOT MAKE A DESCRETIONARY DECISION TO SUSPEND RESPONDENT'S LICENSE UNDER S.C. CODE §56-1-1020.**

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

The Department of Motor Vehicles may, in its discretion, suspend or revoke the license of any resident of this State of 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.*

(Emphasis added). 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 with a five (5) year period of time (S.C. Code §56-5-2920); 2) lost too many points from their license (S.C. Code §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 §56-1-1010 et seq.), as occurred in this case. Therefore, it was error for the Hearing Officer to hold that SCDMV made a *discretionary* decision under S.C. Code §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 merely entered the "M84" violation onto Respondent's South Carolina driving record as allowed by S.C. Code §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

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

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 §56-5-1030(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, the department must revoke or suspend the person's driver's license.

(Emphasis added). Because of how this process actually works, the statutes that each step functions under, and pursuant to S.C. Code §56-1-370, the DMV 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.

II. THE SCDMV CAN RELY ON VIRGINIA'S CATEGORIZATION OF THIS OFFENSE AS RECKLESS DRIVING PURSUANT TO ACD CODE M84.

SCDMV can rely on Virginia's categorization of this offense as reckless driving pursuant to ACD code M84 and public policy demands this suspension be upheld.

a. THE SCDMV CAN RELY ON VIRGINIA'S CATEGORIZATION OF THIS OFFENSE 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 will reveal that there is only one (1) code for anything related to reckless driving. There is a second code titled "Reckless, careless, or negligent driving:" M80. M80 immediately proceeds 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.

Further, 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 DMV did in this case. DMV 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 her South Carolina convictions for driving under suspension and driving under the influence required DMV to suspend Respondent's driver's license pursuant to S.C. Code §56-1-1020.

Moreover, SCDMV must be given the ability to rely on reports from other states made through the PDPS or the Driver's License Compact is rendered wholly ineffective.

[S.C. Code §56-1-640] is clearly mandatory for a party state reporting a conviction within its jurisdiction. [S.C. Code §56-1-640] therefore imposes an obligation on [DMV] only when it is the state reporting the conduct, not when it is the home state. It does not prohibit [DMV], 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 §56-1-640]. Nor does anything in [S.C. Code §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 in the instant case. Nothing in the Driver License Compact prohibits DMV 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 §56-1-640. This is

an indication that the legislative intent is for DMV 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 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 §56-1-320 to effectuate the purposes of the Driver License Compact as expressly stated in S.C. Code §56-1-620.

b. PUBLIC POLICY DEMANDS THIS SUSPENSION BE UPHELD.

In this case, as is typical of these reports, DMV received minimal information from Virginia, including the ACD Code and information regarding Respondent, the driver that received the conviction. DMV did not receive detailed information from Virginia regarding this conviction. As result, as is typical for 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 DMV 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 should be reversed and Respondent's suspension upheld for public policy reasons, i.e. DMV 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.

Moreover, 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 DMV to be used by drivers in this fashion.

It is critical that this Court understand Virginia has numerous reckless driving offenses, which are discussed in more detail below, 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 to assume that Respondent’s conviction to reckless driving, exceeding speed limit equated to mere speeding in South Carolina.

III. IF THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES CANNOT RELY ON VIRGINIA’S CATEGORIZATION OF THIS OFFENSE AS RECKLESS DRIVING PURSUANT TO ACD CODE M84, A CONVICTION UNDER VA CODE §46.2-862 IS EQUIVALENT TO A SOUTH CAROLINA CONVICTION UNDER S.C. CODE §56-5-2920.

If this Court finds the SCDMV cannot rely on Virginia’s categorization of this offense as reckless driving pursuant to ACD Code M84, this Court should find that a conviction under VA Code §46.2-862 is equivalent to a South Carolina conviction under S.C. Code §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 take the offenses of reckless driving.
 - a. THIS COURT MUST FOLLOW THE RULES OF STATUTORY CONSTRUCTION & EFFECTUATE THE LEGISLATIVE INTENT OF THE DRIVER LICENSE COMPACT.

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, this Court should take a close look at S.C. Code §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 the legislative intent is that an appropriate number and type of convictions for traffic offenses will result in a habitual offender suspension. The evil the Legislature is endeavoring to remedy is dangerous driving. This is abundantly clear 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 §56-1-320 and the Driver License Compact (S.C. Code 56-1-610 et seq.).

The Legislature specified its findings and intent of the Driver License Compact in S.C. Code §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. Based on the case law discussed above, any analysis of out-of-state offenses must keep these intents in mind.

S.C. Code §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 §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 of 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 §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 makes it explicitly clear 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. Based on the case law discussed above, any analysis of the out-of-state conviction at issue in this case must also keep these Legislative intents in mind.

In this case, the focus must be on the legislative intents of S.C. Code §§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 §56-1-320 that "discretion" applies to out-of-state reckless driving convictions would *grossly* frustrate the legislative intent of S.C. Code §56-1-1010 et seq. and the Driver License Compact.

b. VIRGINIA LAW AND THE DRIVER LICENSE COMPACT MAKE CLEAR THAT THIS CONVICTION MUST BE RECOGNIZED IN SOUTH CAROLINA AS A RECKLESS DRIVING CONVICTION

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 6-5-2920 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 §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 §56-5-2920.

Speeding, as is traditionally recognized in South Carolina, is not even mentioned until Article 8 of the Virginia Motor Vehicles Title. This makes it clear that Virginia considers speeding to be a different offense than reckless driving, exceeding speed limit (VA Code §46.2-862), the Virginia statute at issue in this case.

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 translates 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* Respondent 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.

c. IT IS SPECULATION TO ASSUME THAT RESPONDENT WOULD HAVE BEEN CHARGED WITH SPEEDING IN SOUTH CAROLINA.

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 §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 §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 §56-1-850 is in the same section of the South Carolina Code of Law as S.C. Code §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 §56-5-2920.

d. THE POTENTIAL PENALTIES IN VIRGINIA DEMONSTRATE THE
SERIOUSNESS WITH WHICH VIRGINIA TAKES THE OFFENSES OF
RECKLESS DRIVING.

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.

CONCLUSION

For the reasons stated above, DMV asserts there was substantial evidence to support the suspension of Respondent's driver's license or driving privileges and DMV respectfully requests that the Final Order and Decision issued October 27, 2015, be reversed and the suspension reinstated.

Respectfully submitted,



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February 19, 2016
Blythewood, South Carolina

**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

South Carolina Department of Motor Vehicle,

Appellant,

v.

Michelle Dover,

Respondent.

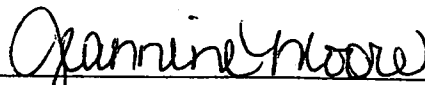
Docket No. 15-ALJ-21-0542-AP
SCDL No.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 19, 2016, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing Respondent's Brief to the following:

Michelle Dover
35 Railroad Avenue
York, South Carolina 29745

as *Pro Se* Respondent.



Jeannine (Nina) Moore, Paralegal
Office of General Counsel

February 19, 2016
Blythewood, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department)
of Motor Vehicles,)
)
Petitioner,)
)
vs.)
)
Michelle Dover,)
)
Respondent.)
-----)

HEARING



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1 HEARING OFFICER: My name is Phil Addington and I
2 have been appointed by the South Carolina
3 Administrative Law Court to preside at this
4 contested case. The entire proceedings are
5 being tape recorded for departmental reference
6 and are a matter of public record. If you'd
7 stand for me, Ms. Dover, and give for me your
8 full name and your address, please, ma'am.

9 MS. DOVER: Michelle Renee Dover. 35 Erwin Avenue,
10 York, South Carolina 29745.

11 HEARING OFFICER: Okay. If you'd raise your right
12 hand for me. Do you solemnly swear the
13 testimony you're about to give in this matter
14 will be the truth, the whole truth, and nothing
15 but the truth?

16 MS. DOVER: I do.

17 HEARING OFFICER: Okay. You may be seated. The
18 lady that's with you, is she here just as far
19 as she brought you down, moral support, or --

20 MS. DOVER: Support. My mama.

21 HEARING OFFICER: Okay. And her name is?

22 MS. DOVER: Margaret Darty.

23 HEARING OFFICER: D-A-U-G-H --

24 MS. DARTY: No, D-A-R-T-Y.

25 HEARING OFFICER: D-A-R-T-Y, okay. At this time, do



1 you have testimony that you'd like to enter,
2 evidence at this time?

3 **PETITIONER'S ATTORNEY:** No, sir. We don't have any
4 testimony that we'd like to enter. We did send
5 documents ahead, which have been provided to
6 Ms. Dover, that we had asked be entered into
7 evidence. Those include copies of her three
8 tickets, her habitual suspension letter, and
9 her habitual offender warning letter, a copy of
10 the ACD code and a copy of her certified
11 driving record. As far as evidence, that's all
12 that we would ask that be entered. We do have
13 a legal argument --

14 **HEARING OFFICER:** Okay.

15 **PETITIONER'S ATTORNEY:** -- that I would -- I would
16 be prepared to do that at --

17 **HEARING OFFICER:** Okay. That'd be fine.

18 **PETITIONER'S ATTORNEY:** -- whenever.

19 **HEARING OFFICER:** You can do that now if you want
20 to.

21 **PETITIONER'S STATEMENT**

22 **PETITIONER'S ATTORNEY:** Okay. All right.
23 Essentially, we've appeared before you, of
24 course, in a prior case involving this same
25 issue. I'm going to go back through for



1 purposes of the record, all the -- all the same
2 arguments, though, to make sure that this
3 record is going to be -- but this case tracks
4 almost identically with the Ashby Hiser case
5 that we were up here a couple weeks ago for.
6 Ms. Dover had a conviction in August of 2002
7 for a driving under suspension. She had a DUI
8 in August of -- excuse me, let me start over.
9 She had a DUI in August -- no, DUS in August of
10 2012; then she had a DUI in August of 2014;
11 then after that, she incurred a reckless
12 driving offense in Virginia in July of 2015.
13 And the Department is taking the position that
14 these three offenses together designate Ms.
15 Dover a habitual offender in South Carolina.
16 Of course, the offense that is in contention
17 today is the reckless driving offense from
18 Virginia and whether that should or should not
19 count towards habitual offender suspension or
20 not. For purposes of argument, we want it to
21 be clear to this Court that the DMV did not
22 make a discretionary decision in this case.
23 What happens when we have out-of-state
24 convictions come in, we're given permission
25 under the statute to either apply it or not

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1 apply it to a driver's record. It is almost
2 always the position of the agency that we are
3 going to apply those out-of-state convictions
4 to a driver's record. The only time we don't
5 is if we just truly cannot find any sort of a
6 -- the only time we don't is if we truly just
7 don't have any sort of a similar offense in
8 South Carolina that would line up with whatever
9 they were convicted for out-of-state. So, in
10 this case, once we took Ms. Dover's reckless
11 driving conviction from Virginia and applied it
12 to her record down here, of course, we have a
13 reckless driving provision in South Carolina
14 and once we added that, that made her
15 suspension under the habitual offender law
16 mandatory on the Department. The reason we
17 included the ACD codes is essentially so the
18 Court can see how those codes line up so the
19 Court can see that there is only one
20 designation for reckless driving in all those
21 ACD codes. So the Department receives a
22 notification from Virginia that essentially
23 says Ms. Dover, with this driver's license
24 number, committed reckless driving in Virginia
25 and it's a code M84 in the ACD codes. So

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1 that's the information we have; that's the
2 information we used to apply it to her record.
3 We don't get details on the event. And in this
4 case, I have no idea -- this particular statute
5 in Virginia, somebody can be convicted of it
6 for driving over 80 miles per hour on any
7 roadway, or for driving 20 miles per hour on it
8 -- over the maximum speed limit on any roadway.
9 I don't know which one of those was the case in
10 this situation because that information didn't
11 come from Virginia. We would also argue that,
12 of course, our Department can rely on
13 Virginia's categorization of this offense as
14 reckless driving and an M84 violation. We
15 argue that on the basis that essentially this
16 is the only way that we can communicate with
17 the other state. We don't get detailed
18 reports; we don't get detailed incident reports
19 or detailed charging documents. We essentially
20 get a summary of what occurred and we need to
21 be able to rely on those summaries. And there
22 is some case law that backs that up,
23 specifically Taddy v. Commonwealth, essentially
24 said that because the -- the states have gone
25 to this problem pointer -- excuse me, problem



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1 driver pointer system, that we can rely on
2 reports from other states even if the report
3 from the other state doesn't contain all the
4 same information that South Carolina is
5 required by our laws to put on our reports when
6 we send them out-of-state. The other reason we
7 would say that we need to be able to rely on
8 this report is simply because if we're not
9 allowed to rely on the report, it essentially
10 makes the problem driver (inaudible) system
11 wholly ineffective. We would be in a position
12 where it wouldn't matter how many convictions
13 somebody got in another state. We wouldn't be
14 able to apply those convictions to peoples'
15 driving records here, which would clearly
16 become a problem as far as having dangerous
17 drivers on the roads in South Carolina. We
18 would also argue that even if we cannot rely on
19 Virginia's categorization of this offense as a
20 reckless driving pursuant to the ACD code M84,
21 that the conviction under this particular
22 Virginia code, which is 46.2-862 would still be
23 equivalent to a South Carolina conviction under
24 56-5-2920. In Virginia, essentially they've
25 got about 14 different kinds of reckless

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1 driving, but all of them contain essentially
2 elements where it's presumed if you engage in
3 this behavior, you are reckless driving in the
4 State of Virginia. All of these behaviors are
5 things which in South Carolina we may or may
6 not have specific laws that also address these
7 that aren't specifically categorized under
8 reckless driving, but they all could be charged
9 as reckless driving instead of the other
10 specific statute. And a great example of this
11 is passing a stopped school bus. Clearly, we
12 have a law that prohibits that in South
13 Carolina, but Virginia has theirs written under
14 the reckless driving statutes and has made it
15 presumptive that if you pass a stopped school
16 bus, that you're considered to be reckless
17 driving no matter the speed you pass that bus
18 at. So while we may have some equivalencies in
19 South Carolina, certainly although you could
20 just charge passing a stopped school bus, given
21 the right facts and circumstances, an officer
22 can still charge that as reckless driving even
23 in South Carolina if they chose to. In looking
24 at the equivalency that we're talking about
25 here, we would ask this Court to look at the



1 general rules of statutory construction, as
2 well as the legislative intent of the Driver's
3 License Compact. We would encourage you to
4 consider that substantially similar is not the
5 standard for determining if these statutes are
6 equivalent to each other or not. We would also
7 say that speculation to assume that Ms. Dover
8 would have been charged with speeding had this
9 offense occurred in South Carolina. We would
10 ask you to look at the penalties that Virginia
11 gives for this particular offense to determine
12 the seriousness with which they took her
13 offense. Of course, the normal rules of
14 statutory construction essentially tell us you
15 have to look at the statutes, giving them their
16 plain meaning if there is one, and if there
17 isn't one, try to look at that statutory intent
18 to try to get to what the courts were trying
19 to do. So it's very clear when you look at 56-
20 110-30 that the courts say any time somebody's
21 convicted of an offense, the Department of
22 Motor Vehicles must review its records for that
23 person and if they determine that the person is
24 a habitual offender, they must revoke or
25 suspend the person's driver's license. So even



1 though it is discretionary whether we apply an
2 out-of-state conviction to somebody's record,
3 once we apply something, if it then pushes that
4 person into the habitual offender area, we have
5 to engage that suspension. When you start
6 looking at the legislative findings, and this
7 is straight out of the Driver's License
8 Compact, the General Assembly said that the
9 purpose for the compact was to provide safety
10 over the streets and highways, to -- to
11 discourage contact which is likely to endanger
12 the safety of persons or property, and to
13 provide continuous enforceable license to drive
14 being predicated upon compliance with laws and
15 ordinances relating to the operation of motor
16 vehicles in whichever jurisdiction the vehicle
17 was operated, so it's very clear that they are
18 intending for us to consider these out-of-state
19 convictions when we are determining that
20 somebody is an habitual offender. Then they go
21 on to say that it is the policy of the General
22 Assembly to promote compliance with the laws
23 and ordinances and to make reciprocal
24 recognition of licenses to drive and
25 eligibility, therefore, more just and equitable



1 by considering the overall compliance as a
2 condition precedent to the continuance of
3 issuance of a driver's license. So it -- the
4 -- so the statutory construction for the
5 purposes and intent of the Driver's License
6 Compact is very clear that they're trying to
7 promote safety and they're trying to ensure
8 that we are considering those out-of-state
9 offenses when determining if somebody is a safe
10 driver or not. Additionally, if you go and
11 look at the declared policy and the habitual
12 offender law, it says in that that the purpose
13 of the habitual offender law is to provide
14 maximum safety for all persons who use the
15 public highways of the State, to deny the
16 privilege of operating a motor vehicle on such
17 highways to persons who, by their conduct and
18 record, have demonstrated their indifference to
19 the safety and welfare for others and their
20 disrespect for the laws of this state and to
21 discourage repetition of unlawful acts and to
22 impose additional penalties. So, again, the
23 State's looking at safety; they're looking at
24 trying to discourage people from driving
25 dangerously on the roads and we would ask you



1 to consider all of that as you go forward. I
2 would also specifically -- when you're
3 considering how the Department applied this
4 reckless driving conviction in this specific
5 case, I would ask you specifically to look at
6 the case Commonwealth v. Turner, which is out
7 of Virginia, and essentially in that case it
8 was a DUI case and Mr. Turner was charged with
9 DUI and reckless driving under Virginia's
10 statutes Mr. Turner argued "I shouldn't have
11 been charged with reckless driving because
12 there was also a speeding statute I could have
13 been charged with," and had the State charged
14 that, they would not have been able to proceed
15 with his DUI prosecution. And the Virginia
16 Supreme Court said no, that's not true. It's
17 the State's decision whether to charge it as
18 reckless or whether to charge it as speeding,
19 even if you meet the elements of both and
20 because they chose reckless, they can still go
21 ahead with their DUI prosecution of you. So
22 that -- that case is very significant because
23 it speaks to this court about how Virginia
24 views this. While there may still be two
25 options for how this is prosecuted in Virginia



1 even, when they choose reckless, that is backed
2 up by the courts as it is a reckless driving
3 conviction and, therefore, South Carolina
4 should give it that same recognition down here
5 and not engage in speculation that well, if the
6 offense had come down here -- had occurred down
7 here, she would have just been charged with
8 speeding. Finally, we would ask you to
9 consider the seriousness of the penalties that
10 Virginia has for this particular offense.
11 Despite the penalty Ms. Dover actually
12 received, she actually could have been
13 imprisoned for up to twelve months and received
14 a fine of \$2,500, or both, which tells us, of
15 course, that Virginia takes this offense or
16 considers this to be a very serious offense.
17 And, yes, this court should give it that same
18 deference. For all of these reasons, we would
19 ask that you would find that the reckless
20 driving is an appropriate offense to apply to
21 Ms. Dover's driving record and uphold this
22 habitual offender suspension.

23 HEARING OFFICER: Cross-examination. Are there any
24 questions that you would like to ask --

25 MS. DOVER: (Inaudible)



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1 HEARING OFFICER: Okay. No cross then?

2 MS. DOVER: No.

3 HEARING OFFICER: Okay. If you have testimony you'd
4 like to enter at this time?

5 MS. DOVER - DIRECT TESTIMONY:

6 MS. DOVER: Yes, the driver under suspension that I
7 received 2012, it was because my insurance had
8 cancelled and I wasn't aware of it and that's
9 what I got that for. The DUI, I got it last
10 year, and I hate that I got it. I handled
11 things the wrong way. My son was in prison and
12 called me to tell me that he was facing ten
13 years and I handled it the wrong way. But I
14 have paid a huge price. I had lost my job and
15 I'm just now -- just now getting it back,
16 getting my license -- I learned from that. I
17 work at the nuclear plant during outages and I
18 travel and I have to have my license to be able
19 to work. I'm a single mom. In Virginia, I was
20 going to a outage. I been traveling for five
21 hours. I've crossed over to Virginia; I was
22 speeding; I was going ten miles over. I was
23 not -- I was not -- I was following traffic.
24 I was with the flow of traffic. I didn't know
25 how Virginia was. I mean, I was tired. He



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1 stopped me for speeding and when I got back
2 home after I did the outage, I called over
3 there about the ticket. They told me that I
4 could pay it over the phone. I said, "How
5 about the reckless driving? How can I get this
6 off of here?" And they told me that I had to
7 come back. My funds was gone. My money was
8 gone because being out of work for almost a
9 year got me behind, and I did not have -- was
10 not aware that this is going to happen over a
11 speeding ticket. So I paid it over the phone
12 and I -- this is why I'm here. But I have it
13 -- I haven't got any more tickets since then.
14 I do not drink and drive no more. That was a
15 stupid mistake and I paid the price for it.
16 But like I said, I need my license and I didn't
17 know a ticket -- speeding ticket over ten miles
18 an hour was going to cost me this.

19 HEARING OFFICER: Cross-examination?

20 PETITIONER'S ATTORNEY: No cross. We would ask you
21 to review carefully the official ten-year
22 driving record, however, because, according to
23 our records, Ms. Dover was actually suspended
24 for failure to pay a traffic ticket on 7/12/12.
25 Her cancellation of insurance suspension had



1 ended on March 1st, 2011. And I was looking to
2 see which ticket that was and I don't -- I am
3 not seeing it on here. I assume it's a -- one
4 that was prior to the ten-year cut-off on here.

5 **HEARING OFFICER:** Okay. Let me make sure that I
6 understand, too, for Ms. Dover, as far as
7 actual violation that's being contested here
8 today is only the reckless driving charge and
9 the violations that you received as far as on
10 7/12, 2012, the DUS, you have no problems with
11 those violations; those were your violations
12 that you received and you were found guilty of
13 either by --

14 **MS. DOVER:** Yeah, it's not like my driving have
15 gotten -- license has got suspended on driving.
16 It's because of insurance.

17 **HEARING OFFICER:** And then the 3/1/2014, the driving
18 under the influence, that one you were found
19 guilty of or either forfeited bond on it. So
20 those two actual violations are not in -- being
21 contested here today, just the ones from
22 Virginia that came down.

23 **MS. DOVER:** Just the (inaudible)

24 **HEARING OFFICER:** Okay. I'm sorry if I interrupted.

25 **PETITIONER'S ATTORNEY:** No, and that would be our



1 understanding, as well.

2 HEARING OFFICER: Okay. Okay. Anything further
3 that you'd like to add to the record here today
4 as far as a closing argument?

5 MS. DOVER: I just need to get my license so I can
6 drive.

7 HEARING OFFICER: Anything from the State that
8 they'd like to add at this time?

9 PETITIONER'S ATTORNEY: No, sir.

10 HEARING OFFICER: Okay. We will review the evidence
11 and testimony recorded during this case. The
12 case is now closed.

13 (There being nothing further, the hearing was
14 concluded.)

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CERTIFICATE

This is to certify the transcript of the hearing consists of eighteen (18) pages. This transcript was prepared by me without the benefit of my being present during the hearing. Additionally, this transcript was prepared from a audio recording provided to me.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this January 5, 2016.

Carenn N. Moore

Carenn N. Moore
Notary Public for South Carolina
My Commission Expires: 3/24/2019

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Yolanda Williams

Transcript Request

Appeal

From: Yolanda Williams
Sent: Monday, November 30, 2015 2:13 PM
To: Creel Reporting (amanda@creelreporting.com); crystal@creelreporting.com
Subject: Transcript Request for Michelle Dover, 15-OMVH-11-4880
Attachments: Michelle Dover_20151104-0827_01d116daa88ab800.wma
Importance: High

Attached please find the transcript request for Michelle Dover. Below is the contact information for the attorney that requested the transcript. If you have any question please let me know.

Frank L. Valenta
General Counsel
SC Dept. of Motor Vehicles
P.O. Box 1498
Blythewood, SC 29016

Yolanda P. Williams
Administrative Coordinator
Scheduling Assistant for
Brigitte Autry and Tracy Holland
South Carolina Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street, Ste 325
Columbia, SC 29201
803-734-3201
803-734-3200 fax

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Mark Sanford
Governor



Marcia S. Adams
Director

State of South Carolina
Department of Motor Vehicles

November 25, 2015

Yolanda P. Williams
Administrative Coordinator
Office of Motor Vehicles Hearings
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 325
Columbia, South Carolina 29201

RE: **Transcript Request**
South Carolina Department of Motor Vehicles v. Michelle Dover
OMVH Docket No. 15-OMVH-02-4880-CC
SCDL No.
Hearing Date: November 4, 2015
Order Date: November 12, 2015
Hearing Officer: Phillip T. Addington

Dear Ms. Williams:

For use in the South Carolina Department of Motor Vehicles' appeal in this case, I request a transcript of the above-referenced hearing. You can send it by US Mail or by interagency mail.

Sincerely,

Jeannine Moore
Jeannine (Nina) Moore, Paralegal
Office of General Counsel

cc: Michelle Dover, *Pro se Respondent*
Jana E. Shealy, Clerk, Administrative Law Court

RECEIVED

NOV 30 2015

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NOV 25 2015

SCOMVH

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REDACTED

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

November 25, 2015

The Honorable Jana E. Shealy
Clerk, South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: *South Carolina Department of Motor Vehicles v. Michelle Dover*
OMVH Docket No. 15-OMVH-02-4880-CC
SCDL No.

Dear Ms. Shealy:

Enclosed for filing please find one original and one copy of the South Carolina Department of Motor Vehicle's Notice to Appeal in the above-captioned matter. Please file the original and return a clocked copy to me in the self-addressed envelope provided.

Sincerely,


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Enclosures

cc: Michelle Dover, *Pro se Respondent*

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REDACTED

**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

South Carolina Department of Motor Vehicles,

Petitioner,

v.

Michelle Dover,

Respondent.

Docket No. 15-OMVH-02-4880-CC
SCDL No.

NOTICE OF APPEAL

The Petitioner South Carolina Department of Motor Vehicles (SCDMV) hereby appeals from the Final Order and Decision of Hearing Officer Phillip T. Addington dated November 12, 2015 (copy enclosed).

Respectfully submitted,



BRANDY A. DUNCAN, SC Bar # 72052

Assistant General Counsel

FRANK L. VALENTA, JR., SC Bar # 5682

General Counsel

PHILIP S. PORTER, SC Bar # 4526

Deputy General Counsel

South Carolina Department of Motor Vehicles

10311 Wilson Boulevard

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: 803.896.9900

Fax: 803.896.9901

Email: hearingsprocessingunit@scdmv.net

November 25, 2015

Blythewood, South Carolina

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STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles,	)	Docket No. 15-OMVH-02-4880-CC
	)	DL#
	)	
Petitioner,	)	
	)	
vs.	)	FINAL ORDER AND DECISION
	)	
Michelle Dover,	)	
	)	
Respondent.	)	

Appearances:

For Petitioner: Brandy Duncan, Esq.
For Respondent: Michelle Dover, *Pro se*
Margaret Darty-Respondent's Mother

Other information:

S.C. Code Ann. §§ 56-1-370 and 56-1-320(A)

STATEMENT OF THE CASE

This matter is before the Office of Motor Vehicle Hearings ("OMVH") pursuant to a request for a contested case hearing filed by Michelle Dover. Respondent challenged the South Carolina Department of Motor Vehicles' ("Department") suspension of her driver's license or driving privilege pursuant to S.C. Code Ann. §56-1-1030 and §56-1-1090 based upon the Department's classification of one (1) Reckless Driving conviction she incurred in Virginia. Respondent argued that the Reckless Driving conviction she incurred in Virginia should not equate to a conviction for Reckless Driving under South Carolina law and that the Department's classification of that conviction is incorrect. Pursuant to written notice to the parties, a hearing was held before me on November 04, 2015, at the Chester Family Court, Chester, South Carolina. After considering the evidence presented, I conclude that the suspension of Respondent's driver's license or driving privilege must be rescinded.

FINDINGS OF FACT

Having observed the witnesses and reviewed the exhibits presented at the hearing and closely passed upon their credibility, and having taken into consideration the burden of persuasion by the parties, I make the following Findings of Fact by a preponderance of the evidence:

1. The Respondent agreed that all the violations that were being used to declare her a habitual offender are hers but she is contesting the application of the Reckless Driving conviction from the State of Virginia. On May 03, 2015, Respondent was charged with a violation of VA Code §46.2-862 for "Speeding Excess of Eighty (80) miles per hour in the State of Virginia. The Virginia Uniform Summons, ticket #1500394200, issued to Respondent lists the violation as "Reckless Driving." Respondent was convicted of this offense on July 21, 2015.

2. Respondent's conviction for ticket #1500394200 was reported to the South Carolina Department of Motor Vehicles by the State of Virginia on August 10, 2015. The transmittal lists the ACD Code/Detail as "M84." It also lists the Reason for Conviction as "RECKLS DRV-SPEEDING EXCESS OF 80MPH-MISD."

3. Through a reciprocal agreement with other states, the Department utilizes The American Association of Motor Vehicle Administrators Code Dictionary (ACD) Manual. All states are required to include an ACD Code on conviction reports sent to other states. The AAMVA Code Dictionary indicates that ACD Code M84 describes an offense of Reckless Driving. The AAMVA Code Dictionary also has multiple codes for speeding violations.

6. Upon receipt of the report of Respondent's conviction from the State of Virginia, the Department reviewed the report and the reported ACD Code. Because the ACD Code was reported to the Department as M84, the Department recorded Respondent's conviction as Reckless Driving.

7. On August 19, 2015, the Department issued a Notice of Suspension declaring the Respondent a Habitual Offender. The suspension was to be start on September 18, 2015 and ending on September 18, 2020.

8. The habitual offender suspension was also based on two other convictions: August 12, 2014, for Driving Under the Influence, and August 14, 2012, for Driving Under Suspension. Those convictions are not at issue.

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CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude as a matter of law the following:

1. Pursuant to S.C. Code Ann. §1-23-660(A) (Supp. 2014), the Hearing Officers of the OMVH, effective January 1, 2006, preside over contested case hearings involving suspensions, cancellations, or revocations of drivers licenses by the Department. All hearings presided over by the Hearing Officers of the OMVH are contested case hearings and must be conducted in accordance with the Administrative Procedures Act ("APA") and the rules of procedure for the OMVH. § 1-23-660(B) (Supp. 2014). Furthermore, all appeals from final decisions of the Hearing Officers are to the South Carolina Administrative Law Court in accordance with its rules of procedure. § 1-23-660(D) (Supp. 2014).

2. The South Carolina Department of Motor Vehicles is an administrative agency of the State of South Carolina and is charged with administering the motor vehicle laws of this state. § 56-1-5 (2006).

3. Generally, the burden of proof rests upon the party who asserts the affirmative of an issue. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. See Peabody Coal Co. v. Ralston, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e. the enforcement of a driver's license suspension, and it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this matter. See Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers, Second Edition, 2001, § 9:3, p. 366.

4. The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992); see also Doe v. Doe, 324 S.C. 492, 502, 478 S.E.2d 854, 859 (Ct. App. 1996) (holding that a trial judge, when acting as a finder of fact, "has the authority to determine the weight and credibility of the evidence before him").

5. Section 56-1-650 provides:

(A) A state that is a member of the Drivers License Compact shall report to another member state of the compact a conviction for any of the following:

(1) manslaughter or homicide resulting from the operation of a motor vehicle as provided by Sections 56-1-280 and 56-5-2910;

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(2) driving a motor vehicle while under the influence, as provided by Section 56-5-2930;

(3) any felony in the commission of which a motor vehicle is used, as provided by Section 56-1-280;

(4) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another, as provided by Section 56-5-1210.

(B) If the laws of a member state do not describe the violations listed in subsection (A) in precisely the words used in that subsection, the member state shall construe the descriptions to apply to offenses of the member state that are substantially similar to the ones described. A state that is a member of the Driver's License Compact shall report to another member state of the compact a conviction for any other offense or any other information concerning convictions that the member states agree to report.

(C) For a conviction required to be reported under subsection (A), a member state shall give the same effect to the report as if the conviction had occurred in that state. 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. For a conviction that is not required to be reported under subsection (A), notice of the conviction must be received by the Department of Motor Vehicles for purposes of suspension or revocation within one year of the date of conviction. . . .

6. Section 56-1-320(A) provides:

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.

7. Section 56-5-2920 provides:

Any person who drives any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property is guilty of reckless driving. The Department of Motor Vehicles, upon receiving satisfactory evidence of the conviction, of the entry of a plea of guilty or the forfeiture of bail of any person charged with a second and subsequent offense for the violation of this section shall forthwith suspend the driver's license of any such person for a period of three months. . . .

8. The offense of reckless driving is generally defined by Va. Code Ann. §46.2-852 as follows:

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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.

9. Va. Code Ann. §46.2-862, entitled Exceeding the speed limit, provides as follows:

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.

10. Section 56-5-1520 sets forth the maximum speed limits for roadways in South Carolina. Specifically, § 56-5-1520(B)(1) provides:

Except when a special hazard exists that requires lower speed for compliance with subsection (A), the limits specified in this section or established as hereinafter authorized are maximum lawful speeds, and a person shall not drive a vehicle on a highway at a speed in excess of these maximum limits:

(1) seventy miles an hour on the interstate highway system and other freeways where official signs giving notice of this speed are posted;

11. Further, § 56-5-1520(G) provides:

A person violating the speed limits established by this section is guilty of a misdemeanor and, upon conviction for a first offense, must be fined or imprisoned as follows:

(1) in excess of the above posted limit but not in excess of ten miles an hour by a fine of not less than fifteen dollars nor more than twenty-five dollars;

(2) in excess of ten miles an hour but less than fifteen miles an hour above the posted limit by a fine of not less than twenty-five dollars nor more than fifty dollars;

(3) in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit by a fine of not less than fifty dollars nor more than seventy-five dollars; and

(4) in excess of twenty-five miles an hour above the posted limit by a fine of not less than seventy-five dollars nor more than two hundred dollars or imprisoned for not more than thirty days.

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12. In this case, Respondent was convicted of one traffic violation in the State of Virginia which was reported to the South Carolina Department of Motor Vehicles in 2015. In reporting the conviction, Virginia utilized ACD Code M84, which represents a conviction for "Reckless Driving" according to the AAMVA ACD Code Manual. As such, the Department recorded the convictions as "Reckless Driving" on Respondent's driving record. Due to the other two (2) major violations, the Department issued a notice of suspension to Respondent, seeking to suspend her driver's license for a period of five (5) years. Respondent then filed a request for a contested case hearing to challenge the Department's decision, arguing that the convictions she incurred in the Commonwealth of Virginia do not equate to convictions for "Reckless Driving" in South Carolina, and as such, that her driver's license should not be suspended pursuant to §56-1-1030 and §56-1-1090.

Pursuant to §56-1-650 certain convictions for offenses must be reported to the Department and the Department must give the same effect to the report as if the conviction occurred in South Carolina. Those include convictions for the following offenses:

- (1) manslaughter or homicide resulting from the operation of a motor vehicle as provided by Sections 56-1-280 and 56-5-2910;
- (2) driving a motor vehicle while under the influence, as provided by Section 56-5-2930;
- (3) any felony in the commission of which a motor vehicle is used, as provided by Section 56-1-280;
- (4) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another, as provided by Section 56-5-1210.

§56-1-650(A). For all other offenses reported to the Department, § 56-1-320 governs the effect of the reported conviction in South Carolina. § 56-1-g 650(C).

In 2015, Respondent was convicted of a violation of Va. Code Ann. §46.2-862 for "Speeding Excess of Eighty (80) Miles Per Hour". This offense is not included in § 56-1-650(A). Therefore, §56-1-320 governs the effect of those reported convictions in South Carolina.

Section 56-1-320 provides:

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.* (emphasis added.)

Va. Code Ann. §46.2-852 defines the offense of reckless driving as:

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 defines the offense of reckless driving as:

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

In both instances, however, Respondent was not charged and convicted of violating Va. Code Ann. §46.2-852 but rather with violating Va. Code Ann. §46.2-862, entitled "Exceeding the Speed Limit." Va. Code Ann. §46.2-862 provides as follows:

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.

While the conviction was reported to the Department as "Reckless Driving," I conclude that the offense for which Respondent was convicted, if committed in the State of South Carolina, would not be reckless driving. Rather, if that offense had occurred in South Carolina rather than in the State of Virginia, Respondent would have been charged with violating §56-5-1520(B)(1), the penalty for which would have been a fine and the imposition of points. §§56-5-1520(G) and 56-1-720. Therefore, in accordance with § 56-1-320, I conclude that the Department should not have used the Virginia conviction to impose a habitual offender suspension because if the offense was committed in this State, it would not have been a major conviction and therefore would not have been used to suspend as a habitual offender.

ORDER

Based upon the above findings of facts and conclusions of law,

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IT IS HEREBY ORDERED that the suspension of Respondent's driver's license or driving privilege is rescinded; and

IT IS FURTHER ORDERED that upon Respondent's compliance with the laws of this State, the South Carolina Department of Motor Vehicles must immediately restore Respondent's driver's license or driving privilege.

AND IT IS SO ORDERED.



November 12 2015
Chester, South Carolina

Phillip T. Addington
OMVH Senior Hearing Officer

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REDACTED

**THE ADMINISTRATIVE LAW COURT
IN THE STATE OF SOUTH CAROLINA**

South Carolina Department of Motor Vehicles,

Petitioner,

v.

Michelle Dover,

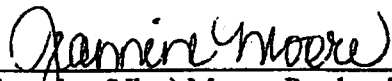
Respondent.

Docket No. 15-OMVH-02-4880-CC
SCDL No.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 25, 2015, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal to the following:

Michelle Dover, *Pro se Respondent*
35 Railroad Avenue
York, South Carolina 29745-1930



Jeannine (Nina) Moore, Paralegal
Office of General Counsel

November 25, 2015
Blythewood, South Carolina

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Nikki R. Haley
Governor



REDACTED

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

P.A.

September 23, 2015

Yolanda P. Williams, Administrative Coordinator
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street Suite 325
Columbia, South Carolina 29201

PA
11-4

RE: *Michelle D. Dover v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 15-OMVH-02-4880-CC
SCDL:

Dear Ms. Williams:

The South Carolina Department of Motor Vehicles provides the enclosed documents for introduction into the record at the habitual offender hearing. Please file the original and return a clocked copy to me in the self-addressed envelope.

Sincerely,

Frank L. Valenta, Jr., General Counsel
Brandy A. Duncan, Assistant General Counsel
Office of General Counsel

Enclosures: UTT G697424
UTT 21132FV
State of Virginia Court Docket # 1500394200
Habitual Offender suspension letter dated 08/19/2015
Habitual Offender warning letter dated 08/22/2014
ACD Codes
Certified Driving Record

cc: Michelle D. Dover

FILED

SEP 23 2015

SCOMVH

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SEP 25 2015

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REDACTED

South Carolina
Department of Motor Vehicles



08/19/2015

DOVER, MICHELLE DARTY
35 RAILROAD AVE
YORK, SC 29745-1930

CUSTOMER NO: 23056853
FILE NO: 19515856
DL NO:

OFFICIAL NOTICE

REASON: You have accumulated violations in a 3 year period that result in you being declared an Habitual Offender. SECTION OF LAW: 56-1-1030 and 56-1-1090

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
05/03/2015	07/21/2015	1500394200	Reckless driving
03/01/2014	08/12/2014	G697424	Driving Under the Influence
07/12/2012	08/14/2012	21132FV	Driving Under Suspension

BEGINNING DATE: 12:01 AM 09/18/2015 ENDING DATE: MIDNIGHT 09/18/2020

HEARING:

Section 56-1-1030 allows you to appeal the DMV's decision. There is a \$200.00 filing fee for a hearing. (Personal checks not accepted.) Should you desire a hearing, you must submit a written request within 30 days from the date of this letter. State the reasons why you believe that the Department has made an error. Mail or deliver the request and the fee to the South Carolina Office of Motor Vehicle Hearings, 1205 Pendleton St., Suite 325, Columbia, SC 29201. If you do not request a hearing, the suspension will become effective on the date indicated above. After you have completed two years of the suspension, you may request a reduction of the suspension. You can obtain an application and instructions at the Department's website at www.scdmvonline.com or by contacting a Customer Service Representative at (803)896-5000.

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. You may not drive until the suspension period has ended and you have done the following:

FINANCIAL RESPONSIBILITY:

You must do one of the following for 3 years from the ending date listed above:

1. have your insurance agent file a Certificate of Insurance(SR-22), or
2. deposit \$40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

TESTS:

You must successfully complete the vision, knowledge and skills tests.

Driver Records Manager

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

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A. L. Phelps
Driver Services, Deputy Director

REDACTED

South Carolina
Department of Motor Vehicles



08/22/2014

DOVER, MICHELLE DARTY
516 ROBERTS AVE
YORK, SC 29745-1309

CUSTOMER NO: 23056853
FILE NO: 17792670
DL NO:

Dear Customer:

This is to advise you of your present standing under the Habitual Offender Law. This law states that any person who is convicted of three major violations or is convicted of a combination of ten minor and/or major violations that occurred within a three year period will be classified as a Habitual Offender.

Our records now reveal that you have accumulated 02 major and 00 minor violations. Should you be convicted of any additional major or minor violations which would classify you as an Habitual Offender, your driving privileges will be suspended for a period of five years.

A listing of the major and minor offenses is printed below, and we earnestly request that you improve your driving habits in order to protect your privilege to drive on the streets and highways of South Carolina.

MAJOR VIOLATIONS

Felony Child Endangerment	Reckless Driving
Driving Under Suspension	Reckless Homicide
Driving Under the Influence	Felony in a Motor Vehicle
Unlawful Alcohol Concentration	Felony Controlled Substance
Felony Driving Under the Influence	
Manslaughter/Involuntary Manslaughter	
Leaving the Scene of Accident-Bodily Injury	
Passing Stopped School Bus/Bodily Injury/Death	
Negligent or Criminal Operation of CMV-Fatality	
Failure to Stop for Blue Light with Bodily Injury/Death	

Any offenses punishable as a felony under the motor vehicle laws of this State.

Subsequent offenses of:
Failure to Stop for Blue Light

MINOR VIOLATIONS

Driving on wrong side of the road	Following too closely
Reckless driving	Speeding (over 10 MPH)
Failure to yield right of way	Turning Unlawfully
Passing stopped school bus	Passing unlawfully
Hit & Run-Property and Damage only	
Disobeying official directing traffic	
Disregard Railroad Sign or Signal	
Disobedience to Signal of approaching Train	
Driving through or within a safety zone	
Driving too fast for conditions-over 10 MPH	
Failure to give or giving improper signal	
Operating vehicle with improper brakes	
Disobeying an official traffic device	
Speeding more than 25 MPH over posted speed	

Driver Records Manager

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

A. L. Phelps
Driver Services, Deputy Director

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Form 438
Rev 8/10

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME MIDDLE NAME LAST NAME

Michelle Dany Dany

STREET AND NO. CITY STATE ZIP CODE

961 E Main Street Summa SC 24743

STATE LICENSED DRIVERS LICENSE NO. CDL DRI LIC CLASS

SC [blank] YES ☒ NO ☐ 0

VEH. LIC. NO. STATE MAKE OF VEH. YEAR COMM. VEH. HAZ. MT. MOPED MTRCYCL. COMB. OTHER

IBC 255 SC Ford 2014 AUTO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT STREET AND NO.

DUT Court 524 S Cherry Rd

DATE OF TRIAL TIME OF TRIAL CITY STATE ZIP CODE

5/9/2014 8:00am DUT 144 SC 24730

VIOLATION - COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO.

DUT 111 NO 51-5-2430

OWNER OF VEHICLE DATE OF ARREST

Same 3/1/2014

ADDRESS OF OWNER DATE OF VIOLATION

3/1/2014

BAIL DEPOSITED NAME OF ARRESTING OFFICER RANK

jeal JW. Neale Jr

RACE SEX DESCRIPTION OF ACCUSED BIRTH DATE SEX

W F 5'8 156 126 126

DATE BAIL RECD BY

20

CASE BEFORE MAGISTRATE ☒ MUN. COURT ☐

CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE

DEFENDANT DID NOT APPEAR ☐ APPEARED ☒

NOLLE PROSSED ☐ DISPOSITION

FORFEITED BOND ☐ GUILTY ☒ PLED NO GUILTY ☐

TRIAL BY TRIAL JUDGE

DATE OF TRIAL IF ANY

VERDICT OF TRIAL IF ANY GUILTY ☐ NOT GUILTY ☐

JAIL SUSPEND FINE AMT COLLECTED AMT SUSPENDED

Driver Services, Deputy Director

COMMITTED TO TIME Served Vehicle Searched Arrest as Result of Collision

CERTIFIED CORRECT DATE

C. Baerth 8/12/14 G 697424

DRIVER'S RECORD COPY

499

GUILTY

TIME SERVED

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKETCITY OR COUNTY OF York

VERSUS

FIRST NAME

MIDDLE NAME

LAST NAME

MichelleDorothyDover

STREET AND NO

CITY

STATE

ZIP CODE

901 E Main StSummervilleSC29743

STATE LICENSED

DRIVER'S LICENSE NO

COL

☐ YES ☒ NO

DR LIC CLASS

D

VEH LIC NO

STATE

MAKE OF VEH

YEAR

COMB VEH

Auto

IS PSR VEH

COMB

2682 FFSCFord94HAZ MTMOPEDMTRCYCLOTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT

STREET AND NO

Berfield1675 York Hwy

DATE

OF

TRIAL

TIME OF TRIAL

CITY

STATE

ZIP CODE

081420129 00amYorkSC29745VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO

VIOLATION SECTION NO

DUI56-1-460

OWNER OF VEHICLE

DATE OF ARREST

Same07 12 2012

ADDRESS OF OWNER

DATE OF VIOLATION

Same07 12 2012

BAIL DEPOSITED

NAME OF ARRESTING OFFICER

5-JailD. Surra

RACE

SEX

DESCRIPTION OF ACCUSED

BIRTH DATE

HT

HAIR

WT

EYES

COUNTY

WFDOB11/9Black179BlueYork

DATE BAIL REC'D.

BY

BADGE

20-3333

CASE BEFORE

MAGISTRATE

MUN COURT

CIRCUIT COURT

FAMILY COURT

FEDERAL COURT

NAME OF TRIAL COURT

IF DIFFERENT FROM ABOVE

DAY

S

M

T

W

T

F

S

1

2

3

4

5

6

7

TIME OF VIOLATION

2:01

WEATHER

AM 1PM 2

DISTANCE IN FEET FROM INTERSECTION

97DEFENDANT DID NOT APPEAR ☐APPEARED ☐

NOLLE PROSSED

DISPOSITION

FORFEITED BOND

GUILTY

PLED NOLO CONTENDERE

TRIAL BY

TRIAL JUDGE

JURY

VERDICT OF

GUILTY

TRIAL IF ANY

NOT GUILTY

DATE OF TRIAL IF ANY

JAIL

SUSPEND

FINE

AMT COLLECTED

AMT SUSPENDED

HWY NO

CITY

97Summerville

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with the South Carolina Department of

Motor Vehicles.

Long

Offense Code

ELIA LEVEL

96

Driver Services

Deputy Director

COMMITTED TO

Vehicle Searched

Arrest as Result of Collision

Time Served1/4

CERTIFIED CORRECT

DATE

7/14/20128/14/12

21132 FV

DRIVER'S RECORD COPY

Reinstatement Paid

000041

0081



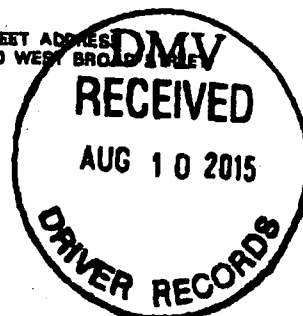
Guaranteed to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

D. L. Phillips
Driver Services, Deputy Director

COMMONWEALTH of VIRGINIA
DEPARTMENT OF MOTOR VEHICLES
POST OFFICE BOX 27412
RICHMOND, VIRGINIA 23269-0001

RICHARD D. HOLCOMB
COMMISSIONER

STREET ADDRESS
2300 WEST BROAD ST



08/04/15

DEPARTMENT OF PUBLIC SAFETY
DRIVER RECORDS
P.O. BOX 100178
COLUMBIA, SC 292023178

461^{as} JB

THIS IS TO CERTIFY THAT THIS MACHINE PRODUCED DOCUMENT IS AN ACTUAL ACCOUNT OF CONVICTION INFORMATION RECEIVED FROM THE COURT(S) INDICATED BELOW.
RICHARD D. HOLCOMB, COMMISSIONER

DRIVER LICENSE NUMBER	ST SC	NAME DOE JR, GERALD ,	DOB	SEX M
COURT ADDRESS ALEXANDRIA CITY GENERAL DISTRICT COURT 520 KING ST ALEXANDRIA, VA 22314 (703) 838-4041		COURT REPORT ID 510GT1500689100	ACD CODE/DETAIL S15 55/073	
		OFF DATE 06/09/15	CONV DATE 07/22/15	CMV N
		HAZ N		
NATIVE CONV CODE G46.2-87	CT DOCKET 1500689100	REASON FOR CONVICTION SPEEDING CITY OR TOWN 15-19 MPH ABV LT		

DRIVER LICENSE NUMBER	ST SC	NAME DORFMAN, JOSEPH, SAMUEL	DOB	SEX M
COURT ADDRESS FLOYD COUNTY GENERAL DISTRICT COURT 100 EAST MAIN STREET, RM 300 FLOYD, VA 24091 (540) 745-9327		COURT REPORT ID 063GT1500095900	ACD CODE/DETAIL M05	
		OFF DATE 06/20/15	CONV DATE 07/23/15	CMV N
		HAZ N		
NATIVE CONV CODE A46.2-80	CT DOCKET 1500095900	REASON FOR CONVICTION FAIL TO OBEY HIGHWAY LANE MARKINGS		

DRIVER LICENSE NUMBER	ST SC	NAME DOVER, MICHELLE, DARTY	DOB	SEX F
COURT ADDRESS MECKLENBURG COUNTY DISTRICT COURT JEFFERSON STREET, PO BOX 306 BOYDTON, VA 23917 (434) 738-6191 EXT: 6260		COURT REPORT ID 117GT1500394200	ACD CODE/DETAIL M84	
		OFF DATE 05/03/15	CONV DATE 07/21/15	CMV N
		HAZ N		
NATIVE CONV CODE A46.2-86	CT DOCKET 1500394200	REASON FOR CONVICTION RECKLS DRV-SPEEDING EXCESS OF 80MPH-MISD		

000042

REDACTED



Verified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

A. L. Phelps
Driver Services, Deputy Director

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 23056853 Driver License No:
Name: DOVER MICHELLE DARTY
Address:
City: YORK State: SC Zip:
County: YORK
DOB: Sex: F Driver Training: N
Status - DL: NO SUSPENSION CDL: NO DISQUALIFICATION

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.	ACN
Current								
DL	D	Re-exam	04/29/2015	09/24/2025	07/26/1994	Y	N	1011425500043394
Prior								
ProvDL	D	Returned	09/12/2014	03/12/2015	07/26/1994	N	N	N/A
ProvDL	D	Original	09/12/2014	03/12/2015	07/26/1994	N	N	1011325900045407
DL	D	Renewal	01/03/2013	09/24/2023	07/26/1994	N	N	1011216600017118
DL	D	Returned	01/03/2013	09/24/2023	07/26/1994	N	N	1011216600017118
DL	D	Renewal	07/20/2012	01/20/2013	07/26/1994	N	N	1011210100020134
DL	D	Returned	07/20/2012	01/20/2013	07/26/1994	N	N	1011210100020134
DL	D	Renewal	09/10/2007	09/24/2017	07/26/1994	N	N	N/A
DL	D	Renewal	09/24/2003	09/24/2008	07/26/1994	N	N	N/A
DL	D	Renewal	09/16/1998	09/24/2003	07/26/1994	N	N	N/A
DL	D	Duplicate	05/30/2001	09/24/2003	07/26/1994	N	N	N/A

Current Restrictions: F Previous DUI or DUAC

Address Change -

Address:
City: SMYRNA State: SC Zip: 297439763

Date Changed: 10/25/2013

Address Change -

Address:
City: YORK State: SC Zip: 297451309

Date Changed: 09/09/2014

Point Summary

Total Current Points: 7
Driver Credit: -0
Adjusted Current Points: 7

Written Test Required Upon Renewal: Y

VIOL: 461 - Reckless driving

Violation: 05/03/2015 Conviction: 07/21/2015

ACD: M84 Conviction Loc Ref:

Conviction State: VA

Recd: 08/10/2015

Ticket#: 1500394200

Post: 08/19/2015

Conviction Reference:

Court Type: DISTRICT COURT

Violation Points: 6 Current Points: 6

SC Driver License Surrendered

License Type: Class: D Function: Original

Date Surrendered: 04/29/2015

Reason for Return: ANOTHER SC LICENSE ISSUED

Posted: 04/29/2015

Issued: 09/12/2014

Returning State: SC

060643

REDACTED

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 23056853

Driver License No:

Name: DOVER, MICHELLE DARTY

SR22 - Future Proof of Financial Responsibility (Insurance)

Effective: 09/09/2014

Filing: 09/10/2014

Posted: 09/10/2014

Type: NON-RESTRICTED

Policy Number: SCPD255003152

Company Code: 42781

Company Name: DIRECT GENERAL INSURANCE COMPANY

ADSAP - Alcohol and Drug Safety Action Program

Enrolled: 09/09/2014

Status: SUCCESSFUL COMPLETION

Post Date: 09/10/2014

Enrollment No: 000299874

VIOL: 499 - Driving Under the Influence

Violation: 03/01/2014

Conviction: 08/12/2014

Ticket#: G697424

ACD: A20 Conviction Loc Ref:

Conviction State: SC

Recd: 08/19/2014

Post: 08/22/2014

Conviction Reference:

Court Type: MAGISTRATE COURT

SUSP: 001 - Driving Under the Influence

Special Driving Privilege: PROVISIONAL

Suspension Beg: 09/06/2014

Causal: 03/01/2014

Reinstatement Requirements Met: 04/29/2015

ACD: A20 Withdrawal Loc Ref:

Ticket#: G697424

Suspension End: 03/06/2015

Post: 08/22/2014

Reinstatement Fee Paid: Y

Withdrawal Reason Ref:

VIOL: 427 - Improper Backing

Violation: 05/10/2014

Conviction: 06/02/2014

Ticket#: 91176GE

ACD: N82 Conviction Loc Ref:

Conviction State: SC

Recd: 06/12/2014

Post: 06/18/2014

Conviction Reference:

Court Type: MUNICIPAL COURT

Violation Points: 2 Current Points: 1

ACC: REPORTABLE

Accident: 05/10/2014

Accident Case Number: 14016285

Accident Jurisdiction: SC Acc Loc Ref: SCHDPT

Contributed: Y

Posted: 05/23/2014

FR-10 Audit Number: C-388003

History: N

CANC: 050 - FAILURE TO MEET LICENSING REQUIREMENTS

Cancellation Beg: 03/10/2013

Causal: 01/03/2013

Reinstatement Requirements Met: 08/27/2013

ACD: W00 Withdrawal Loc Ref:

Cancellation End: 08/27/2013

Post: 01/09/2013

Reinstatement Fee Paid: Y

Withdrawal Reason Ref:

VIOL: 475 - Careless or negligent driving

Violation: 08/08/2012

Conviction: 08/30/2012

Ticket#: 15579DI

ACD: M81 Conviction Loc Ref:

Conviction State: SC

Recd: 10/29/2012

Post: 10/31/2012

Conviction Reference:

Court Type: MAGISTRATE COURT

SUSP: 025 - Driving Under Suspension - FTPPT

Special Driving Privilege: NONE

Suspension Beg: 10/24/2012

Causal: 07/12/2012

Reinstatement Requirements Met: 01/03/2013

ACD: B26 Withdrawal Loc Ref:

Ticket#: 21132FV

Suspension End: 11/22/2012

Post: 10/09/2012

Reinstatement Fee Paid: Y

Withdrawal Reason Ref:

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with the South Carolina Department of
Motor Vehicles.

060644

9/22/2015 10:08:46 AM

Driver Services, Deputy Director

0083

Page 2 of 4

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 23056853
Name: DOVER, MICHELLE DARTY

Driver License No:

VIOL: 496 - Driving Under Suspension
Violation: 07/12/2012 **Conviction:** 08/14/2012
ACD: B26 **Conviction Loc Ref:**
Conviction State: SC

Ticket#: 21132FV
Recd: 10/04/2012 **Post:** 10/09/2012
Conviction Reference:
Court Type: MAGISTRATE COURT

SC Driver License Surrendered

License Type: DL **Class:** D **Function:** Returned
Date Surrendered: 01/03/2013
Reason for Return: AFFIDAVIT / SUSPENDED LICENSE LOST

Posted: 01/03/2013
Issued: 07/20/2012

Returning State: SC

VIOL: 560 - Failure to Pay Traffic Ticket or Appear
Violation: 02/06/2012 **Conviction:** 03/16/2012
ACD: D56 **Conviction Loc Ref:** 521
Conviction State: NC

Ticket#: C1722657
Recd: 04/24/2012 **Post:** 04/24/2012
Conviction Reference:
Court Type: UNKNOWN

SUSP: 097 - Failure to Pay Traffic Ticket
Suspension Beg: 05/14/2012
Causal: 02/06/2012
Ticket Paid: 07/17/2012
ACD: D56 **Court Name:** CLEVELAND CNTY CRT
Court Address: 100 JUSTICE PL
City: SHELBY **State:** NC **Zip:** 28150
Phone No: 704 476 7900

Ticket#: C1722657
Suspension End: 01/03/2013
Post: 04/24/2012
Compliance Received: 07/20/2012

SUSP: 042 - Cancellation of Insurance
Special Driving Privilege: NONE
Suspension Beg: 02/15/2011
Causal: 12/28/2010
Reinstatement Requirements Met: 03/01/2011
ACD: D36 **Withdrawal Loc Ref:**

Suspension End: 03/01/2011
Post: 01/08/2011
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

ACC: REPORTABLE
Accident: 10/14/2010
Accident Case Number: 10117860
Accident Jurisdiction: SC **Acc Loc Ref:** SCHDPT
Contributed: N

Posted: 11/01/2010
FR-10 Audit Number: A-002376
History: N

VIOL: 421 - Speeding 10-mph or less
Violation: 03/20/2009 **Conviction:** 04/14/2009
ACD: S51 **Conviction Loc Ref:**
Conviction State: SC

Ticket#: D794487
Recd: 04/23/2009 **Post:** 05/12/2009
Conviction Reference:
Court Type: MAGISTRATE COURT
Violation Points: 2 **Current Points:** 0

VIOL: 421 - Speeding 10-mph or less
Violation: 08/05/2007 **Conviction:** 09/20/2007
ACD: S51 **Conviction Loc Ref:**
Conviction State: SC

Ticket#: 79266DY
Recd: 10/10/2007 **Post:** 10/24/2007
Conviction Reference:
Court Type: MAGISTRATE COURT
Violation Points: 2 **Current Points:** 0

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with the South Carolina Department of
Motor Vehicles.

A. L. Phelps

REDACTED

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 23056853

Driver License No:

Name: DOVER, MICHELLE DARTY

VIOL: 421 - Speeding 10-mph or less

Ticket#: 75780DY

Violation: 07/11/2007

Conviction: 08/28/2007

Recd: 09/12/2007

Post: 09/19/2007

ACD: S51 Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: MAGISTRATE COURT

Violation Points: 2 **Current Points:** 0

End of Report

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copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

A. L. Phelps

Driver Services, Deputy Director

000046

Code of Federal Regulations

Title 23. Highways

Chapter III. — National Highway Traffic Safety Administration, Department of Transportation

Part 1327. Procedures for Participating in and Receiving Information from the National Driver Register
Problem Driver Pointer System (Refs & Annos)

23 C.F.R. Pt. 1327, App. A

APPENDIX A TO PART 1327—ABRIDGED LISTING OF THE AMERICAN
ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS VIOLATIONS EXCHANGE
CODE, USED BY THE NDR FOR RECORDING DRIVER LICENSE DENIALS,
WITHDRAWALS, AND CONVICTIONS OF MOTOR VEHICLE-RELATED OFFENSES

Effective: September 27, 2005

Currentness

Code

Part I—For Cause Withdrawals

A04 Driving under the influence of alcohol with BAC at or over .04

A08 Driving under the influence of alcohol with BAC at or over .08

A10 Driving under the influence of alcohol with BAC at or over .10

A11 Driving under the influence of alcohol with BAC at or over ____ (detail field required)

A12 Refused to submit to test for alcohol—Implied Consent Law

A20 Driving under the influence of alcohol or drugs

A21 Driving under the influence of alcohol

A22 Driving under the influence of drugs

A23 Driving under the influence of alcohol and drugs

A24 Driving under the influence of medication not intended to intoxicate

A25 Driving while impaired

A26 Drinking alcohol while operating a vehicle

A31 Illegal possession of alcohol

A33 Illegal possession of drugs (controlled substances)

000047

- A35 Possession of open alcohol container
- A41 Driver violation of ignition interlock or immobilization device
- A50 Motor vehicle used in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance
- A60 Underage Convicted of Drinking and Driving at .02 or higher BAC
- A61 Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC
- A90 Administrative Per Se for .10 BAC
- A94 Administrative Per Se for .04 BAC
- A98 Administrative Per Se for .08 BAC
- B01 Hit and run—failure to stop and render aid after accident
- B02 Hit and run—failure to stop and render aid after accident—Fatal accident
- B03 Hit and run—failure to stop and render aid after accident—Personal injury accident
- B04 Hit and run—failure to stop and render aid after accident—Property damage accident
- B05 Leaving accident scene before police arrive
- B06 Leaving accident scene before police arrive—Fatal accident
- B07 Leaving accident scene before police arrive—Personal injury accident
- B08 Leaving accident scene before police arrive—Property damage accident
- B14 Failure to reveal identity after fatal or personal injury accident
- B19 Driving while out of service order is in effect and transporting 16 or more passengers including the driver and/or transporting hazardous materials that require a placard
- B20 Driving while license withdrawn
- B21 Driving while license barred
- B22 Driving while license canceled
- B23 Driving while license denied
- B24 Driving while license disqualified
- B25 Driving while license revoked

000048

B26 Driving while license suspended

B27 General, driving while an out of service order is in effect (for violations not covered by B19)

B41 Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID

B51 Expired or no driver license (includes DL, CDL, and Instruction Permit)

B56 Driving a CMV without obtaining a CDL

B63 Failed to file future proof of financial responsibility

B91 Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit)

D02 Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit)

D06 Misrepresentation of identity or other facts to obtain alcohol

D07 Possess multiple driver licenses (includes DL, CDL, and Instruction Permit)

D16 Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit)

D27 Violate limited license conditions

D29 Violate restrictions of driver license (includes DL, CDL, and Instruction Permit)

D35 Failure to comply with financial responsibility law

D38 Failure to post security or obtain release from liability

D39 Unsatisfied judgment

D45 Failure to appear for trial or court appearance

D53 Failure to make required payment of fine and costs

D56 Failure to answer a citation, pay fines, penalties and/or costs related to the original violation

D72 Inability to control vehicle

D74 Operating a motor vehicle improperly because of drowsiness

D75 Operating a motor vehicle improperly due to physical or mental disability

D78 Perjury about the operation of a motor vehicle

E03 Operating without HAZMAT safety equipment as required by law

000049

F02 Child or youth restraint not used properly as required

F03 Motorcycle safety equipment not used properly as required

F04 Seat belt not used properly as required

F05 Carrying unsecured passengers in open area of vehicle

F06 Improper operation of or riding on a motorcycle

M09 Failure to obey railroad crossing restrictions

M10 For all drivers, failure to obey a traffic control device or the directions of an enforcement official at a railroad-highway grade crossing

M20 For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train

M21 For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear

M22 For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing

M23 For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping

M24 For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance

M80 Reckless, careless, or negligent driving

M81 Careless driving

M82 Inattentive driving

M83 Negligent driving

M84 Reckless driving

S01 01–05 > Speed limit (detail optional)

S06 06–10 > Speed limit (detail optional)

S15 Speeding 15 mph or more above speed limit (detail optional)

S16 16–20 > Speed limit (detail optional)

S21 21–25 > Speed limit (detail optional)

S26 26–30 > Speed limit (detail optional)

000670

S31 31–35 > Speed limit (detail optional)

S36 36–40 > Speed limit (detail optional)

S41 41+ > Speed limit (detail optional)

S51 01–10 > Speed limit (detail optional)

S71 21–30 > Speed limit (detail optional)

S81 31–40 > Speed limit (detail optional)

S91 41+ > Speed limit (detail optional)

S92 Speeding—Speed limit and actual speed (detail required)

S93 Speeding

S94 Prima Facie speed violation or driving too fast for conditions

S95 Speed contest (racing) on road open to traffic

S97 Operating at erratic or suddenly changing speeds

U01 Fleeing or evading police or roadblock

U02 Resisting arrest

U03 Using a motor vehicle in connection with a felony (not traffic offense)

U05 Using a motor vehicle to aid and abet a felon

U06 Vehicular assault

U07 Vehicular homicide

U08 Vehicular manslaughter

U09 Negligent homicide while operating a CMV

U10 Causing a fatality through the negligent operation of a CMV

U31 Violation resulting in fatal accident

W01 Accumulation of convictions (including point systems and/or being judged a habitual offender or violator)

W14 Physical or mental disability

000151

W20 Unable to pass DL test(s) or meet qualifications

W30 Two serious violations within three years

W31 Three serious violations within three years

W40 The accumulation of two or more major offenses

W41 An additional major offense after reinstatement

W50 The accumulation of two out-of-service order general violations (violations not covered by W51) within ten years

W51 The accumulation of two out-of-service order violations within ten years while transporting 16 or more passengers, including the driver and/or transporting hazardous materials that require a placard

W52 The accumulation of three or more out-of-service order violations within ten years

W60 The accumulation of two RRGV violations within three years.

W61 The accumulation of three or more RRGV violations within three years.

W70 Imminent hazard

Part II—Convictions

A04 Driving under the influence of alcohol with BAC at or over .04

A08 Driving under the influence of alcohol with BAC at or over .08

A10 Driving under the influence of alcohol with BAC at or over .10

A11 Driving under the influence of alcohol with BAC at or over ____ (detail field required)

A12 Refused to submit to test for alcohol—Implied Consent Law

A20 Driving under the influence of alcohol or drugs

A21 Driving under the influence of alcohol

A22 Driving under the influence of drugs

A23 Driving under the influence of alcohol and drugs

A24 Driving under the influence of medication not intended to intoxicate

A25 Driving while impaired

A26 Drinking alcohol while operating a vehicle

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A31 Illegal possession of alcohol

A33 Illegal possession of drugs (controlled substances)

A35 Possession of open alcohol container

A41 Driver violation of ignition interlock or immobilization device

A50 Motor vehicle used in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance

A60 Underage Convicted of Drinking and Driving at .02 or higher BAC

A61 Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC

A90 Administrative Per Se for .10 BAC

A94 Administrative Per Se for .04 BAC

A98 Administrative Per Se for .08 BAC

B01 Hit and run—failure to stop and render aid after accident

B02 Hit and run—failure to stop and render aid after accident—Fatal accident

B03 Hit and run—failure to stop and render aid after accident—Personal injury accident

B04 Hit and run—failure to stop and render aid after accident—Property damage accident

B05 Leaving accident scene before police arrive

B06 Leaving accident scene before police arrive—Fatal accident

B07 Leaving accident scene before police arrive—Personal injury accident

B08 Leaving accident scene before police arrive—Property damage accident

B14 Failure to reveal identity after fatal or personal injury accident

B19 Driving while out of service order is in effect and transporting 16 or more passengers including the driver and/or transporting hazardous materials that require a placard

B20 Driving while license withdrawn

B21 Driving while license barred

B22 Driving while license canceled

B23 Driving while license denied

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- B24 Driving while license disqualified
- B25 Driving while license revoked
- B26 Driving while license suspended
- B27 General, driving while an out of service order is in effect (for violations not covered by B19)
- B41 Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID
- B51 Expired or no driver license (includes DL, CDL, and Instruction Permit)
- B56 Driving a CMV without obtaining a CDL
- B91 Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit)
- D02 Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit)
- D06 Misrepresentation of identity or other facts to obtain alcohol
- D07 Possess multiple driver licenses (includes DL, CDL, and Instruction Permit)
- D16 Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit)
- D27 Violate limited license conditions
- D29 Violate restrictions of driver license (includes DL, CDL, and Instruction Permit)
- D72 Inability to control vehicle
- D78 Perjury about the operation of a motor vehicle
- E03 Operating without HAZMAT safety equipment as required by law
- M09 Failure to obey railroad crossing restrictions
- M10 For all drivers, failure to obey a traffic control device or the directions of an enforcement official at a railroad-highway grade crossing
- M20 For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train.
- M21 For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear
- M22 For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing

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M23 For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping

M24 For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance

M80 Reckless, careless, or negligent driving

M81 Careless driving

M82 Inattentive driving

M83 Negligent driving

M84 Reckless driving

S95 Speed contest (racing) on road open to traffic

U07 Vehicular homicide

U08 Vehicular manslaughter

U09 Negligent homicide while operating a CMV

U10 Causing a fatality through the negligent operation of a CMV

U31 Violation resulting in fatal accident

Credits

[56 FR 57256, Nov. 8, 1991; 70 FR 43756, July 29, 2005]

SOURCE: 56 FR 41403, Aug. 20, 1991; 62 FR 63657, Dec. 2, 1997; 64 FR 19271, April 20, 1999, unless otherwise noted.

AUTHORITY: Pub.L. 97-364, 96 Stat. 1740, as amended (49 U.S.C. 30301 et seq.); delegation of authority at 49 CFR 1.50.

Current through Aug. 13, 2015; 80 FR 48468.

End of Document

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**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

South Carolina Department of Motor
Vehicles,

Petitioner,

vs.

Michelle Darty Dover,

Respondent.

Docket No. 15-OMVH-02-4880-CC
DL#

NOTICE OF HEARING

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to Respondent's request for a contested case hearing.

IT IS HEREBY NOTICED that a hearing on the merits of this action before Hearing Officer Phillip T. Addington is scheduled to begin at **8:00 AM on Wednesday, November 4 2015 at Chester Family Court 126 Wylie Street Chester SC**. All parties are to arrive at least fifteen minutes prior to the time set for the hearing.

1. This hearing will be conducted in accordance with the Rules of Procedure for the South Carolina Office of Motor Vehicle Hearings (OMVH). A copy may be obtained from the Administrative Coordinator of the OMVH or from the OMVH website, www.scomvh.net. The South Carolina Rules of Evidence apply.

2. All parties must bring to the hearing all documents, records, and witnesses needed to present their case. All exhibits moved for introduction at the hearing must be originals. Upon good cause shown at the hearing, copies may be substituted for original exhibits.

3. Subpoenas are available to the parties pursuant to S.C. Code Ann. § 1-23-320(d) (as amended) and the rules of the OMVH, to compel the attendance of witnesses or for the production of documents at the hearing. The parties are responsible for service of subpoenas and any cost involved. Subpoena may be obtained from the OMVH website.

4. A party may represent himself or may be represented by an attorney at the hearing.

5. **FOR GOOD CAUSE SHOWN**, a party may request a continuance no later than two (2) business days prior to the scheduled hearing date. All requests must be made in writing and forwarded to the scheduling assistant listed below for the assigned hearing officer of the OMVH by U.S. Mail, Fax, or email. A copy of your request must be sent to all parties.

6. In case a party settles a case or wishes to withdraw their request for a hearing, they must notify the scheduling assistant of the OMVH as soon as possible. If in the event you cannot reach the scheduling assistant then contact the Administrative Coordinator as soon as possible at (803) 734-3201.

Yolanda P. Williams, Administrative Coordinator, OMVH

By: Frances L. Inabinet

Scheduling Assistant

September 22, 2015
Columbia, South Carolina

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SEP 04 2015

SCOMVH

SEP 08 2015

SCOMVH

Dover Michelle Darby

35 Railroad Ave

York S.C. 29745

Customer no : 23056853

File no : 19515856

DL no :

I am requesting a hearing to appeal my license being suspended. I made a huge mistake and let things in my life get to me and got a DUI. I paid the price and still paying for the mistake I made. I lost my job because of it.

I went back when my time was up and took the knowledge and driving test and got my license back. When I was traveling to Virginia I got a ticket ~~for~~ because I was speeding. I paid the ticket over the phone and did not realize the officer gave me a ticket for reckless driving when it should have been for speeding.

I need my license. I have to travel for my job. I just got my license back from being took for DUI.

Driving under Suspension was in 8/14/2012 because I wasn't aware my insurance had cancelled.

Since I got my license back, I got one ticket - I was speeding - shouldn't been reckless

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REDACTED



Nikki R. Haley
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

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08/19/2015

DOVER, MICHELLE DARTY
35 RAILROAD AVE
YORK, SC 29745-1930

2015-OMVH-02-488

SCOMVH

CUSTOMER NO: 23056853
FILE NO: 19515856
DL NO:

OFFICIAL NOTICE

REASON: You have accumulated violations in a 3 year period that result in you being declared an Habitual Offender. SECTION OF LAW: 56-1-1030 and 56-1-1090

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
05/03/2015	07/21/2015	1500394200	Reckless driving
03/01/2014	08/12/2014	G697424	Driving Under the Influence
07/12/2012	08/14/2012	21132FV	Driving Under Suspension

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BEGINNING DATE: 12:01 AM 09/18/2015 ENDING DATE: MIDNIGHT 09/18/2020

HEARING:

Section 56-1-1030 allows you to appeal the DMV's decision. There is a \$200.00 filing fee for a hearing. (Personal checks not accepted.) Should you desire a hearing, you must submit a written request within 30 days from the date of this letter. State the reasons why you believe that the Department has made an error. Mail or deliver the request and the fee to the South Carolina Office of Motor Vehicle Hearings, 1205 Pendleton St., Suite 325, Columbia, SC 29201. If you do not request a hearing, the suspension will become effective on the date indicated above. After you have completed two years of the suspension, you may request a reduction of the suspension. You can obtain an application and instructions at the Department's website at www.scdmvonline.com or by contacting a Customer Service Representative at (803)896-5000.

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. You may not drive until the suspension period has ended and you have done the following:

FINANCIAL RESPONSIBILITY:

You must do one of the following for 3 years from the ending date listed above:

1. have your insurance agent file a Certificate of Insurance(SR-22), or
2. deposit \$40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

TESTS:

You must successfully complete the vision, knowledge and skills test.

Driver Records Manager

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Post Office Box 1498, Blythewood, South Carolina 29016

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
OFFICE OF MOTOR VEHICLE HEARINGS**



RALPH K. ANDERSON, III
Director

(803) 734-3201
FAX (803) 734-3200
WWW.SCOMVH.NET

September 8, 2015

Michelle Dover
35 Railroad Ave.
York, SC 29745

Dear Ms. Dover:

We are in receipt of your letter and \$200 money order. There was no additional information enclosed in your envelope so it is unclear what you are requesting. Pursuant to Rule 4 (C) of the Rules of Procedure of this office, the request will not be assigned to a hearing officer until all of the required information is received. Please submit a copy of the Notice of Suspension (NOS) or the Official Notice from the DMV within fifteen (15) days of the date of this letter. Your filing fee is being returned to you. Once we receive the written request, NOS and filing fee we will process your request for a hearing.

Please return a copy of this letter when you resubmit required information for filing purposes. Also, please be advised that any current or pending suspension with the Department of Motor Vehicles is not currently stayed. Further, please be aware that pursuant to the South Carolina Code of Laws and the Rules of Procedure of this office, all requests for hearings must be made within thirty (30) days of the notice of suspension.

If you have any questions, you may reach me at (803) 734-3201.

Sincerely,

Yolanda P. Williams
Yolanda P. Williams

Administrative Coordinator, OMVH

Enclosure

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SEP 04 2015

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REDACTED

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

September 28, 2015

Phillip T. Addington, Administrative Hearing Officer
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, South Carolina 29201

PA
11-4-15

RE: *South Carolina Department of Motor Vehicles vs. Michelle Darty Dover*
Docket No.: 15-OMVH-02-4880-CC
SCDL No.:

Dear Mr. Addington:

Enclosed for filing, please find one original and one copy of the South Carolina Department of Motor Vehicles' Memorandum of Law in the above referenced matter. As evidenced by the attached Certificate of Service, I am serving the parties with a copy of same. Please have your clerk file the original and return a clocked copy to me in the enclosed self-addressed envelope.

If you have any questions, please feel free to contact me at (803) 896-9900.

Sincerely,

Jeannine Moore
Jeannine (Nina) Moore, Paralegal
Office of General Counsel

cc: Michelle D. Dover

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**THE STATE OF SOUTH CAROLINA
IN THE OFFICE OF MOTOR VEHICLE HEARINGS**

South Carolina Department of Motor Vehicles,

Petitioner,

v.

Michelle Darty Dover,

Respondent.

Docket No. 15-OMVH-02-4880-CC
SCDL No.

MEMORANDUM OF LAW

This matter comes before the Office of Motor Vehicle Hearings (hereinafter, "OMVH") pursuant to the request of Michelle Darty Dover for a contested case hearing. The South Carolina Department of Motor Vehicles (hereinafter, "DMV" or "SCDMV") seeks to have Ms. Dover's habitual offender designation affirmed and the corresponding suspension upheld.

STATEMENT OF THE CASE

Ms. Dover was arrested on July 12, 2012, for driving under suspension (ticket # 21132FV). She was convicted of this violation on August 14, 2012.

Ms. Dover was arrested on March 1, 2014 for driving under suspension (ticket # G697424). She pled guilty to this violation on August 12, 2014.

On May 3, 2015, Ms. Dover was arrested in Virginia for reckless driving, speeding in excess of 80 miles per hour (ticket # 1500394200). She was convicted of this violation on July 21, 2015. This violation was reported to DMV on August 10, 2015 as an M84 violation. See 23 C.F.R. Pt. 1327, App. A. An M84 violation is reckless driving as defined by the ACD Codes. *Id.*

Thus, Ms. Dover was charged and convicted of three separate and distinct major traffic violations within a three year period. See S.C. Code §56-1-1020.

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Ms. Dover has requested a contested case hearing pursuant to a Notice of Suspension issued by the South Carolina Department of Motor Vehicles finding that she is a habitual offender as outlined in S.C. Code §56-1-1020.

ARGUMENT

I. THE DMV DID NOT MAKE A DISCRETIONARY DECISION TO SUSPEND MS. DOVER'S LICENSE UNDER S.C. CODE §56-1-1020.

The argument might be made that DMV made a discretionary decision to suspend Ms. Dover's license under S.C. Code §56-1-320. This is simply not accurate. S.C. Code §56-1-320 states:

The Department of Motor Vehicles may, in its discretion, suspend or revoke the license of any resident of this State of 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.

(Emphasis added). 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 with a five (5) year period of time (S.C. Code §56-5-2920); 2) lost too many points from their license (S.C. Code §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 §56-1-1010 et seq.), as occurred in this case. Therefore, it is incorrect to say and would be judicial error for OMVH to hold that SCDMV made a *discretionary* decision under S.C. Code §56-1-320 to suspend Ms. Dover's license.

Rather, what occurred is SCDMV received the notification of an "M84" violation from

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Virginia for Ms. Dover.¹ Based solely on this notification, SCDMV merely entered the "M84" violation onto Ms. Dover's South Carolina driving record as allowed by S.C. Code §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, Ms. Dover's license was required to be suspended pursuant to S.C. Code §56-5-1030(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, the department must revoke or suspend the person's driver's license.

Because of how this process actually works, the statutes that each step functions under, and pursuant to S.C. Code §56-1-370, the DMV did not make a discretionary decision to suspend Ms. Dover's license, rather the suspension is *mandatory*.

II. THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES CAN RELY ON VIRGINIA'S CATEGORIZATION OF THIS OFFENSE AS RECKLESS DRIVING PURSUANT TO ACD CODE M84.

The OMVH should find the SCDMV can rely on Virginia's categorization of this offense as reckless driving pursuant to American Association of Motor Vehicle Administrators (hereinafter, "AAMVA") AAMVA Code Dictionary (hereinafter, "ACD") code M84 and that public policy demands the suspension be upheld.

- a. THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES CAN RELY ON VIRGINIA'S CATEGORIZATION OF THIS OFFENSE AS RECKLESS DRIVING PURSUANT TO ACD CODE M84.

¹ DMV did not receive a copy of the actual traffic citation/charging document issued in Virginia.

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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 will reveal that there is only one (1) code for anything related to reckless driving. There is a second code titled "Reckless, careless, or negligent driving:" M80. M80 immediately proceeds 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.

Further, 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 conduct requires suspension under South Carolina law. That is exactly what DMV did in this case. DMV used the available interpretive tools, namely 23 C.F.R. §1327 and the ACD Codes to determine that Ms. Dover was convicted of reckless driving in Virginia. The Virginia conviction for reckless driving combined with her two (2) South Carolina convictions for driving under suspension required DMV to suspend Ms. Dover's driver's license pursuant to S.C. Code §56-1-1020.

Moreover, 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.

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[S.C. Code §56-1-640] is clearly mandatory for a party state reporting a conviction within its jurisdiction. [S.C. Code §56-1-640] therefore imposes an obligation on [DMV] only when it is the state reporting the conduct, not when it is the home state. It does not prohibit [DMV], 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 §56-1-640]. Nor does anything in [S.C. Code §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 in the instant case. Nothing in the Driver License Compact prohibits DMV 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 §56-1-640. This is an indication that the legislative intent is for DMV 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*. The OMVH should follow the sound reasoning in the *Siekierda* case and the other case law regarding interpretation of statutes discussed above by liberally construing the requirements of Driver License Compact and S.C. Code §56-1-320 to effectuate the purposes of the Driver License Compact as expressly stated in S.C. Code §56-1-620.

b. PUBLIC POLICY DEMANDS THIS SUSPENSION BE UPHELD.

Previous orders issued by the OMVH indicate that the OMVH believes DMV receives

detailed reports of the behavior that led to out-of-state traffic offense convictions. This is not accurate. DMV receives nothing more than the AAMVA ACD Code and information regarding which driver received the conviction. Therefore, if someone is convicted of any of Virginia's fourteen (14) different types of reckless driving, they will all be entered as an AAMVA ACD Code of "M84" and DMV will 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 should uphold this suspension for public policy reasons, i.e. DMV does not have the resources to individually investigate every M84 violation from Virginia and the only other option would be 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.

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 DMV 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.

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 would be unreasonable and erroneous for this Court to assume that Ms. Dover's conviction to reckless driving, exceeding speed limit equates to mere speeding in South Carolina.

III. IF THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES CANNOT RELY ON VIRGINIA'S CATEGORIZATION OF THIS OFFENSE AS RECKLESS DRIVING PURSUANT TO ACD CODE M84, A CONVICTION UNDER VA CODE §46.2-862 IS EQUIVALENT TO A SOUTH CAROLINA CONVICTION UNDER S.C. CODE §56-5-2920.

If this Court finds the SCDMV cannot rely on Virginia's categorization of this offense as reckless driving pursuant to ACD Code M84, this Court should find that a conviction under VA Code §46.2-862 is equivalent to a South Carolina conviction under S.C. Code §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 Ms. Dover 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 take the offenses of reckless driving.
- a. THIS COURT MUST FOLLOW THE RULES OF STATUTORY CONSTRUCTION & EFFECTUATE THE LEGISLATIVE INTENT OF THE DRIVER LICENSE COMPACT.

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

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

The Legislature specified its findings and intent of the Driver License Compact in S.C. Code §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. Based on the case law discussed above, any analysis of out-of-state offenses must keep these intents in mind.

S.C. Code §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 §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 of 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 §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 makes it explicitly clear 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. Based on the case law discussed above, any analysis of the out-of-state conviction at issue in this case must also keep theses intents in mind.

In this case, the OMVH must focus on the legislative intents of S.C. Code §§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. An interpretation of S.C. Code §56-1-320 that "discretion" applies to out-of-state reckless driving convictions would *grossly* frustrate the legislative intent of S.C. Code §56-1-1010 et seq. and the Driver License Compact.

- b. VIRGINIA LAW AND THE DRIVER LICENSE COMPACT MAKE CLEAR THAT THIS CONVICTION MUST BE RECOGNIZED IN SOUTH CAROLINA AS A RECKLESS DRIVING CONVICTION

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 6-5-2920 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 §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 §56-5-2920.

Speeding, as is traditionally recognized in South Carolina, is not even mentioned until Article 8 of the Virginia Motor Vehicles Title. This makes it clear that Virginia considers speeding to be a different offense than reckless driving, exceeding speed limit (VA Code §46.2-862), the Virginia statute at issue in this case.

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.

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).

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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 translates 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 the that driving is considered reckless driving specifically due to the speed involved.

c. SUBSTANTIALLY SIMILAR IS NOT THE STANDARD IN THIS CASE

Ms. Dover may argue that Virginia’s reckless driving offense under VA Code 46.2-862 is not “substantially similar” to the offense of reckless driving in South Carolina. “Substantially similar” is not, however, the test for entry of an out-of-state offense on a South Carolina driving record other than those listed under subsection (A) of S.C. Code §56-1-650.

If the laws of a member state do not describe the violations listed in *subsection (A) in precisely the words used in that subsection, the member state shall construe the descriptions to apply to offense of the member state that are substantially similar to the ones described.* A state that is a member of the Drivers License Compact shall report to another member state of the compact a conviction *for any other offense or any other information concerning convictions* that the member states agree to report.

(Emphasis added). Reckless driving is not one of the offense listed in subsection (A) of S.C. Code §56-1-650. Therefore, it is not subject to the “substantially similar” requirement under S.C. Code §56-1-650(B). Pursuant to S.C. Code §56-1-790, an out-of-state conviction “may be recorded against a driver the same as if the conviction had been made in the courts of this State.” This statute goes on to state that if there is “no corresponding offense in this State... the conviction must not be recorded on the person’s driving record in this State.” Clearly, South Carolina has a reckless driving offense. So, it was proper for SCDMV to record this violation on

Ms. Dover's driving record as a reckless driving offense.

d. IT IS SPECULATION TO ASSUME THAT MS. DOVER WOULD HAVE BEEN CHARGED WITH SPEEDING IN SOUTH CAROLINA.

Further, Ms. Dover may argue that if she had engaged in the same behavior in South Carolina she 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 §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 §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 §56-1-850 is in the same section of the South Carolina Code of Law as S.C. Code

§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 §56-5-2920.

e. THE POTENTIAL PENALTIES IN VIRGINIA DEMONSTRATE THE SERIOUSNESS WITH WHICH VIRGINIA TAKES THE OFFENSES OF RECKLESS DRIVING.

All of Virginia's reckless driving statutes are punishable as Class 1 misdemeanors. This means, pursuant to VA Code §18.2-11, that Ms. Dover 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.

CONCLUSION

For the reasons stated above, DMV respectfully requests Ms. Dover's habitual offender designation and the corresponding suspension be upheld.

Respectfully submitted,


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FILED

SEP 28 2015

SCOMVH

September 28, 2015
Blythewood, South Carolina

REDACTED

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles,

Petitioner,

v.

Michelle Darty Dover,

Respondent.

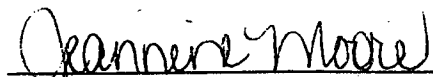
Docket No. 15-OMVH-02-4880-CC

SCDL No.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 28, 2015, I mailed, via first class mail, a true and correct copy of the foregoing *Memorandum of Law* on the following:

Michelle Darty Dover
35 Railroad Avenue
York, SC 29745-1930



Jeannine (Nina) Moore, Paralegal
Office of General Counsel

September 28, 2015
Blythewood, South Carolina

FILED

SEP 28 2015

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Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

April 13, 2016

The Honorable Deborah Brooks Durden
Administrative Law Judge
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: *South Carolina Department of Motor Vehicles v. Michelle Dover*
ALJ Docket No: 15-ALJ-21-0542-AP
SCDL No.:

Dear Judge Durden:

In regard to the above-referenced matter, enclosed please find a copy of Order Reversing Decision in the case *South Carolina Department of Motor Vehicles v. Ashby Hiser*, which addressed the exact issue which is at issue in this case. This decision was issued by another Administrative Law Judge and, as a result, holds no binding precedence over your decision in this case. I provide the decision to you for its persuasive value only and ask that you add the *Hiser* decision to those other cases previously cited in the SCDMV Brief previously filed.

As evidenced by the courtesy copy below, I am serving the parties with a copy of same.

If you have any questions, please feel free to contact me at (803) 896-9900.

Sincerely,

Brandy A. Duncan
Assistant General Counsel

Enclosure

cc: Michelle Dover, *Pro se* Respondent

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Motor Vehicles,

Appellant,

v.

Ashby Hiser,

Respondent.

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

**ORDER REVERSING
DECISION**

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

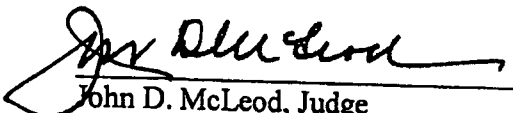
Virginia takes the offenses of reckless driving very seriously and, therefore, expect serious consideration be given to such convictions when reported to other states.

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.

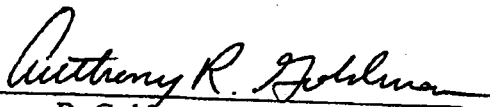
April 12, 2016
Columbia, S.C.


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

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2016-001030

South Carolina Department of Motor Vehicles Appellant,

v.

Michelle Dover Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies pursuant to SCARC Rule 210(g) that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Brandy A. Duncan, SC Bar # 72052
Assistant General Counsel
S.C. Department of Motor Vehicles

August 30, 2016
Blythewood, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT
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South Carolina Department of Motor Vehicles Appellant,

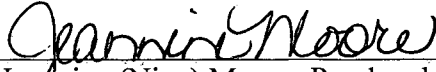
v.

Michelle Dover Respondent.

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, _____,
2015, I served one (1) copy of the Record on Appeal by depositing with the United States
Postal Service, correct postage prepaid, to Counsel for the Respondent at the address
indicated below:

Michelle Dover, Pro Se Respondent
35 Railroad Avenue
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Jeannine (Nina) Moore, Paralegal
Office of General Counsel

August 30, 2016
Blythewood, South Carolina