

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge

Appellate Case No. 2017-001575

South Carolina Department of Motor Vehicles Appellant,

v.

Christopher McMahan Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Motor Vehicles,	)	Docket No. 16-ALJ-21-0255-AP
	)	
Appellant,	)	
	)	
vs.	)	ORDER AFFIRMING AS MODIFIED
	)	
Christopher McMahan,	)	
	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE

This is an appeal before the Administrative Law Court ("ALC" or "Court") from an Amended Final Order and Decision ("Order") dated July 21, 2016, issued by Tracy G. Holland, an Administrative Hearing Officer of the Office of Motor Vehicle Hearings ("OMVH"). The ALC has jurisdiction to review the appeal of the South Carolina Department of Motor Vehicles ("Department" or "Appellant") pursuant to S.C. Code Ann. §§ 1-23-660(D) (Supp. 2014) and 56-1-1030(B) (Supp. 2016). The Department filed its notice of appeal contending that the OMVH's decision, rescinding the Habitual Offender driver's license suspension of Christopher McMahan ("Respondent" or "McMahan"), was erroneous as a matter of fact and law.

BACKGROUND

On April 17, 2009, the Department mailed an Official Notice ("Notice") to Respondent, declaring him an habitual offender for having accumulated three driving under suspension ("DUS") convictions within a three year period. R at 107. The Notice showed that his driver's license would be suspended for a five year period commencing on May 17, 2009 and ending on May 5, 2014. The Record on Appeal in this case indicates that Respondent's DUS convictions precipitated from a failure to pay his motor vehicle property tax in 2004, which resulted in the initial suspension of his driver's license beginning on August 31, 2004. R at 85, 112.

FILED

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SC ADMIN. LAW COURT

Pursuant to Section 56-1-1030, Respondent requested an OMVH hearing to contest his habitual offender suspension. On July 9, 2009, Respondent and his attorney appeared before OMVH hearing officer Robert Harley, who was substituting for hearing officer Tracey Holland. The Department did not appear, but it submitted a packed of documents containing Respondent's traffic tickets, the habitual offender warning letter, the habitual offender suspension letter, and the Department's 10-year driving record. R at 9.

The OMVH never issued a final order following the hearing and this oversight was not discovered until January of 2016, over 7 years later, when the Department contacted the OMVH after noticing that the appeal was still pending. An attempt was made to recover the original hearing transcript so that a decision could be made in the case. Unfortunately, the OMVH office discovered that the audio equipment had failed. As a result, on February 9, 2016, the OMVH issued an Order of Continuance and Notice of New Hearing to rehear Respondent's appeal of his habitual offender suspension.

Meanwhile, on December 17, 2009, the Department had reissued McMahan a new driver's license after he paid his motor vehicle property taxes and reinstatement fees. He has been driving lawfully ever since.

On May 19, 2016, Respondent and his attorney appeared before OMVH hearing officer Tracy Holland for the new hearing. The Department was not present but it submitted a new packet of documents for the record, which included the items that were previously submitted at the first hearing plus twelve pages of supplemental materials. During the hearing, Respondent raised numerous objections, namely to the OMVH conducting a new hearing; he also objected to the Department including additional documents that were not submitted at the first hearing, the lack of notice due to the Department's failure to mail the notices of the DUS violations to the McMahan's correct address, and the denial of due process based upon the fundamental unfairness of suspending Respondent's driver's license seven years later.

In further support of the due process argument, Respondent contended that he paid his property tax and reinstatement fees based upon the advice of the OMVH hearing officer after the first hearing, in 2009. Respondent alleged that the hearing officer informed him that the suspension would be rescinded and that he could proceed with taking the necessary steps to reinstate his driver's license.

On July 21, 2016, an Amended Final Order and Decision ("Decision") was issued by the OMVH, rescinding Respondent's habitual offender suspension. However, the rescission was not based upon any of Respondent's objections. Instead, the OMVH hearing concluded *sua sponte* that "the State of South Carolina does not have a statute numbered § 56-1-520; therefore, the Petitioner cannot use the statute documented on ticket 64031DW to declare the Respondent a habitual offender".

The Department now appeals the Decision.

STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. See S.C. Code Ann. § 1-23-660 (Supp. 2010). Therefore, the OMVH is an "agency" under the Administrative Procedures Act (APA). See S.C. Code Ann. § 1-23-310(2) (2005 & Supp. 2016). As such, the APA's standard of review governs appeals from decisions of the OMVH. See S.C. Code Ann. § 1-23-380 (Supp. 2016); see also Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5). See S.C. Code Ann. § 1-23-600(D) (Supp. 2016) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). This section provides:

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 [of the agency] 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.

S.C. Code Ann. § 1-23-380(5). Thus, pursuant to the APA, this Court's review is limited to deciding whether the OMVH's Order of Dismissal is unsupported by substantial evidence or is

affected by an error of law. Bass v. Kenco Group, 366 S.C. 450, 457, 622 S.E.2d 577, 581 (Ct. App. 2005).

The findings of the agency are presumed correct and must be affirmed if supported by substantial evidence. Substantial evidence is something less than the weight of the evidence. It is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached. Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

An abuse of discretion occurs when an administrative agency's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or, when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006). A decision is arbitrary if no rational basis for the conclusion exists, or when it is based on one's will and not upon any course of reasoning and exercise of judgment. A decision may also be arbitrary if it is made at pleasure without adequate determining principles or is governed by no fixed rules or standards. Converse Power Corp v. S.C. Dep't of Health and Envtl. Control, 350 S.C. 39, 564 S.E.2d 341 (Ct. App. 2002).

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).

ISSUES ON APPEAL

Did the OMVH Hearing Officer err in finding that Respondent was not charged with Driving Under suspension on March 18, 2007 and later convicted of that same offense?

The Department contends that it established a *prima facie* case against Respondent and that the OMVH hearing officer erred by making a final decision based on an issue that was raised *sua sponte*.

Section 56-1-1030 provides that when a person is convicted of one or more of the offenses outlined in Section 56-1-1020(a), the Department must review its records for that person. S.C. Code Ann. § 56-1-1030 (Supp. 2016). If the Department determines after a review of its records that the person is an habitual offender, as defined in Section 56-1-1020, the Department must revoke or suspend the person's driver's license. The suspension shall last five years. S.C. Code Ann. § 56-1-1090 (Supp. 2016). A person is a habitual offender if he or she is convicted of any three of the following offenses within a three-year period:

- (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 identify...

S.C. Code Ann. § 56-1-1020(a) (2006).

Rule 15(B) of the Rule of Procedure for the Office of Motor Vehicle Hearings states that in matters involving the suspension or revocation of a license that the Department shall have the burden of proof, which must be met by a preponderance of the evidence. OMVH Rule 15(B). Here, the Department entered copies of its records into the hearing record, which included Respondent's 10 Year Driver Record. These records evidence that, within a three-year period, Respondent was convicted of three distinct offenses arising out of separate acts pursuant to Section 56-1-1020(a). The Department's records established a *prima facie* case against Respondent, shifting the burden of proof to Respondent to present evidence in rebuttal. Daisy Outdoor Advertising Co., Inc. v. South Carolina Dep't of Transp., 352 S.C. 113, 118, 572 S.E.2d 462, 465 (Ct. App. 2002).

The record on appeal shows that Respondent raised several objections during the hearing, however none of the objections pertained to the driving under suspension violations contained in the Department's records or to the traffic tickets that precipitated the habitual offender suspension. The Court finds that the OMVH hearing officer committed error by ruling *sua sponte* on an issue that Respondent never raised. See SCDMV and SCDPS vs. Marshall Heyward, 07-ALJ-21-0171-AP (March 16, 2009). Furthermore, Respondent failed to present any evidence to overcome the presumption that was established after the Department's established a prima facie case for upholding the suspension. See Arkwright Mills v. Clearwater Mfg. Co., 217 S.C. 530, 539, 61 S.E.2d 165, 168-9 (1950) (stating that "It is the settled rule of law that once a party establishes a prima facie case, judgment will go in his favor unless the opposite party produces evidence sufficient to overcome the prima facie presumption.").

However, Respondent argues in his reply brief that he was not responsible for the delay and that the imposition of the license suspension more than seven years after the last conviction violates the principles of fairness and due process. For the following reasons, the Court agrees.

Generally, procedural due process and fundamental fairness issues pertaining to a driver's license suspensions have come before the South Carolina courts in the posture of whether there was a violation as a result of a lapse in time between the conviction and the notification of suspension by the Department. See *State v. Chavis*, 261 S.C. 408 (1973), see *Hipp, III v. SCDMV*, 381 S.C. 323 (2009), see *Wilson v. SCDMV*, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017), and see *Davis v. SCDMV*, 2017 WL 1717217 (2017).

In *Chavis*, the Supreme Court found that there was no evidence of prejudice shown by Chavis from a one year delay between the date of the conviction and the date the Department sent the notice of suspension. The Court found that Chavis remained quiet and continued to drive while hoping that the suspension would be overlooked and never be imposed. However, the Court noted that there might be an instance where one could successfully argue that the State would not have a right to suspend a license after a long delay, but this was not the case. *Chavis*, 261 S.C. at 411, 200 S.E.2d at 391.

The South Carolina Supreme Court revisited this issue again in *Hipp, supra*, but this time there had been a twelve-year delay between the date of the conviction and the date the Department sent its the notice of suspension to Hipp. The Court noted that "A person's interest in his driver's license is property that a state may not take away without satisfying the requirements of due

process”, and “Due process is violated when a party is denied fundamental unfairness. *Hipp*, 381 S.C. at 325, 673 S.E.2d at 714. The court found that the circumstances in *Hipp* were an example of the extreme situation that was contemplated in the *Chavis* decision. Without setting a bright line rule, the court found that “the imposition of a suspension after more than twelve-years delay, where the Respondent bears no fault for the delay, is manifestly a denial of fundamental fairness.” *Id.*

More recently, the South Carolina Court of Appeals addressed this issue again in its *Davis* decision, where there was more than a six-year delay between the conviction and the time the Department received notice of the violation and subsequently issued a notice of suspension. Davis surrendered his driver’s license on February 14, 2005 following a driving under suspension violation and it was not reinstated until April 26, 2010, after he paid all the fees and met all the requirements to reinstate his license. However, in May of 2005, Davis had received two driving under suspension violations that qualified him as an habitual offender. He was convicted of the third violation on October 20, 2006, but it was not fully reported to the Department until December 5, 2012, at which time the violations were posted to his record and the Department sent a notice of suspension to Davis. Davis argued that he did not have a license from 2005 to 2010 and that he had complied with all the requirements to reinstate his license in 2010.

Based upon the substantial evidence in the record, the Court of Appeals determined that Davis showed he would be prejudiced by the habitual offender suspension, because he had met all the license reinstatement requirements and his license had been reinstated for twenty months. The court also noted that the six-year delay exceeded the amount of time that Davis’s suspension would have run if it had been timely imposed. *Davis*, 2017 WL 1717217 at 4. Lastly, the Court found that neither Davis nor the Department was at fault for the delay and concluded that a suspension after such a lengthy delay would violate his due process rights.

The facts in *Davis* are akin to those of Respondent’s appeal, however this matter comes before the ALC in a posture that differs from the aforementioned South Carolina cases. In this instance, the delay resulted from an administrative error that occurred after the notice of suspension was issued but while Respondent’s appeal was pending before the OMVH. Despite the differences in the procedural posture, this Court finds that the same due process analysis applies.

In *Alvarez v. State*, 249 P.3d 286 (Alaska 2011), Alvarez filed an administrative appeal after she failed a breath test and her driver’s license was suspended. The hearing was scheduled for March 22, 2004, almost six months the appeal was filed. However, by that time, the arresting

officer had been deployed for military service overseas and was unavailable. The hearing was held as scheduled, but the hearing officer ultimately decided to continue the matter until March 10, 2006, almost two years later, at which time the arresting officer would be available. After another continuance, the hearing was finally held by telephone on April 27, 2006. The hearing officer upheld Alvarez's 90-day suspension, which she appealed.

Before the Alaska Supreme Court, Alvarez argued that the delay between her arrest and suspension was a denial of due process. The court looked to the framework set forth by the United States Supreme Court in *Mathews v. Eldridge*, 93 S.Ct. 893 (1976), to evaluate whether administrative proceedings satisfy due process. *Alvarez*, 249 P.3d at 292. The court considered the following three factors, (1) the private interest that the official action affects, (2) the risk of erroneous deprivation of that interest through the procedures used and the probable value, if any, of additional safeguards, and (3) the government's interest, including fiscal and administrative burdens, in implementing additional safeguards. *Id.*

Applying the first factor, the court considered that Alvarez had a property interest in the driver's license. For the second factor, the court determined that the delay did not increase the risk of erroneous deprivation, especially considering that Alvarez was driving with a temporary license while the appeal was pending. *Id.* at 293. With regard to the third factor, the court found that there is a high interest in removing unsafe drivers from the road. *Id.* Finally, the court considered whether Alvarez had been prejudiced and determined that any existence of it was slight. Alvarez had been driving with a temporary permit while the appeal was pending. Secondly, the arresting officer had an audio tape and partial video of the arrest, which the court found mitigated any prejudice due to a lapse in memory.

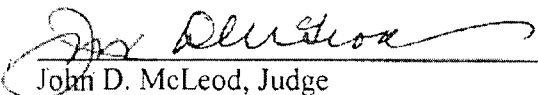
In applying the *Mathews v. Eldridge* analysis to Respondent's appeal, this Court finds that Respondent has a property interest in his driver's license. See also, *Hipp, supra*. Secondly, I find that there was no erroneous deprivation of that interest as a result of the delay, as Respondent had been driving since reinstating his license in 2009. As to the government's interests, the State of South Carolina has a fiscal interest in its citizens paying their property tax on their cars. See S.C. Code Ann. § 12-37-2740 (Setting forth that "The Department of Motor Vehicles shall suspend the driver's license and vehicle registration of a person who fails to pay personal property tax on a vehicle...").

However, the Court finds that the evidence in the record of the delay of Respondent's OMVH appeal shows that the imposition of the suspension, after a period of more than seven years, would be "manifestly a denial of fundamental fairness." *Hipp*, 673 S.E.2d at 417. Respondent paid his motor vehicle property tax and driver's license reinstatement fees in 2009, thus remediating the underlying issue that resulted in the suspension. Furthermore, Respondent did so under the belief that all the administrative issues pertaining to the suspension would be resolved.

THEREFORE, IT IS HEREBY ORDERED that the decision appealed from is **AFFIRMED AS MODIFIED.**

AND IT IS SO ORDERED.

June 26, 2017
Columbia, SC

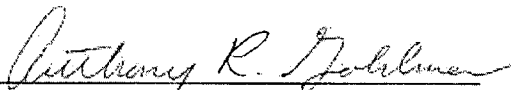


John D. McLeod, Judge
South Carolina Administrative Law Court

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).

June 26, 2017
Columbia, S.C.


Anthony R. Goldman
Judicial Law Clerk

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).

January 18, 2017
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk

Duncan, Brandy A

From: Anthony Goldman <agoldman@scalcn.net>
Sent: Wednesday, October 19, 2016 2:19 PM
To: rauchwise@gmail.com
Cc: Duncan, Brandy A
Subject: 16-0255, McMahan (Request for Extension of Time)

Importance: High

Mr. Wise,

The Court will grant your request for a 30 day extension of time to file Respondent's Brief.

Respondent's Brief is due on or before Wednesday, November 16, 2016.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
ALJ DOCKET NO: 2016-ALJ-0255-AP**

HONORABLE TRACY HOLLAND, HEARING OFFICER

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES : : : : : APPELLANT

V.

CHRISTOPHER MCMAHAN : : : : : RESPONDENT

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

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

South Carolina Department of Motor Vehicles,

Appellant,

v.

Christopher McMahan,

Respondent.

Docket No. 16-ALJ-21-0255-AP

SCDL No. 4172712

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

This matter comes before the Administrative Law Court pursuant to the appeal of South Carolina Department of Motor Vehicles, which seeks review of the July 21, 2016 Amended Final Order & Decision rescinding the Respondent's habitual offender suspension. The Appellant South Carolina Department of Motor Vehicles (SCDMV) seeks to have the Amended Final Order & Decision overturned in part and the habitual offender suspension reinstated.

STATEMENT OF THE ISSUE ON APPEAL

1. *THE HEARING OFFICER ERRORED IN FINDING THAT RESPONDENT WAS NOT CHARGED WITH DRIVING UNDER SUSPENSION ON MARCH 18, 2007 AND LATER CONVICTED OF THAT SAME OFFENSE.*
2. *THE FACTS OF THE HIPPEL CASE ARE NOT SIMILAR TO THIS CASE.*

STATEMENT OF THE CASE

Appellant maintains its' Statement of the Case as set forth in Appellant's Brief.

STANDARD OF REVIEW

Appellant maintains its' Standard of Review as set forth in Appellant's Brief.

REPLY ARGUMENT

1. *THE HEARING OFFICER ERRORED IN FINDING THAT RESPONDENT WAS NOT CHARGED WITH DRIVING UNDER SUSPENSION ON MARCH 18, 2007 AND LATER CONVICTED OF THAT SAME OFFENSE.*



State law defines a habitual offender as any person whose record as maintained by the Department of Motor Vehicles shows that he has accumulated the convictions for three or more separate and distinct major offenses or ten or more separate and distinct minor offenses committed within a three (3) year period. S. C. Code Ann. § 56-1-1020 (2006). The Respondent, according to his driving record, as maintained by the Appellant, was charged with and convicted in three separate and distinct major traffic offenses committed within a three year period (ROA pp. 89, 92-93, 97-98, 106-107, 110-112, 120-125). The Record on Appeal shows that he was charged with Driving Under Suspension (DUS) on February 25, 2007, and convicted of this violation on April 3, 2007; charged with DUS on March 18, 2007, and convicted of this violation on April 9, 2007; and, charged with DUS on October 26, 2008, and convicted of this violation on April 1, 2009 (ROA pp. 82-125). It is therefore undisputed that the record as maintained by the SCDMV establishes a prima facie case and supports a finding that the Respondent is a habitual offender as defined by the statute. Despite these facts the Office of Motor Vehicle Hearings (OMVH) Hearing Officer held that because the statute listed on ticket 64031DW was "56-1-520," rather than "56-1-460" it was "not clear from the evidence what the Respondent was supposed to be convicted of." Respondent argues that the proper charge for ticket 64031DW could just as easily be a charge under "S.C. Code §56-1-440, driving with no South Carolina driver's license." This simply does not make sense given the facts in this case. Ticket 64031DW specifically lists the violation as "DUS," which is the common abbreviation used by attorneys, courts, and law enforcement officers for the charge of Driving Under Suspension, S.C. Code §56-1-460. If ticket 64031DW had listed the violation as "No DL" or "No License," then Respondent's argument might make sense. In this appeal, SCDMV is merely asking this Court to exam the record as a whole to determine whether it was reasonable for the OMVH Hearing

Officer to determine that it was "not clear from the evidence what the Respondent's was supposed to be convicted of."

Next, Respondent argues that SCDMV and the summary court simply re-wrote the code section without notice to Respondent. There is no evidence that this is what took place. Rather, the evidence shows that the law enforcement officer simply wrote a typo in the code section when writing this ticket. Further, it seems clear that the law enforcement officer, the summary court, Respondent, Respondent's Counsel, and the SCDMV did not even realize this typo existed on this ticket until the OMVH Hearing Officer discovered it and pointed it out in her Final Order and Decision. This is why SCDMV pointed out the facts listed on pages 5-7 of Appellant's Brief. Thus, there is no evidence that the law enforcement officer, the summary court, or the SCDMV "re-wrote" the code section from the original ticket. Rather, the code section was merely a typo; the law enforcement officer, the summary court, SCDMV, and Respondent were all aware that Respondent was charged with DUS under S.C. Code §56-1-460 and no one corrected the typo in the code section of the ticket.

Respondent then argues that ticket 64031DW could not be considered by the OMVH Hearing Officer because "the only notice of the charge given to [Respondent] was the ticket." Respondent goes on to argue that he was not given notice, an opportunity to be heard in a meaningful way, and judicial review. This argument is baseless. Ticket 64031DW clearly stated the charge was for "DUS." R. p. 116. Respondent was given a court date (April 9, 2007 at 2:00 p.m.). *Id.* Respondent elected to not appear at his court date. *Id.* As a result he was tried in his absence and found guilty of the charge of "DUS." *Id.* Thus, Respondent was given notice of the charge against him ("DUS"), given an opportunity to be heard in a meaningful way (his April 9, 2007 court date), and given juridical review (his trial in absence). Moreover, even after his trial,

Respondent had an opportunity to request this ticket be recalled and/or retried. It does not appear that Respondent even requested such a recall/retrial, despite the SCDMV Official Notice sent to him on June 5, 2007, which notified Respondent of his suspension related to this conviction. R. p. 98. Furthermore, Respondent then had a second opportunity to be given notice, an opportunity to be heard in a meaningful way, and judicial review with regard to his habitual offender declaration. Respondent was notified by SCDMV that he had been declared a habitual offender, but that he could appeal this finding. R. p. 137. Respondent appealed this finding by requesting a contested case hearing before the OMVH. R. p. 137. Respondent was then granted his contested case hearing before the OMVH. Entire Record on Appeal.

Respondent goes on to argue that his habitual offender suspension should be rescinded because SCDMV sent Official Notices to Respondent at "435 Haltiwanger Rd, Apt. 22, Greenwood, SC." R. p. 85, 89, 92, 93, 94, and 98. This argument blindly ignores S.C. Code §56-1-360, which states:

When notice is required concerning a person's driver's license, the notice must be given by the Department of Motor Vehicles by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the driver's license records of the department. The giving of notice by mail is complete ten days after the deposit of the notice. A certificate by the director of the department or his designee that the notice has been sent as required in this section is presumptive proof that the requirements as to notice of suspension have been met even if the notice has not been received by the addressee.

Respondent's driving record listed his address as "435 Haltiwanger Rd, Apt. 22, Greenwood, SC 29649-1717" until December 17, 2009. R. p. 110 & 122. Thus, SCDMV complied with the requirements of S.C. Code §56-1-360 and, as a result, even if Respondent did not receive the notices sent to him from SCDMV, by law they are presumed received ten (10) days after mailing. Despite Respondent's testimony to the contrary, there is no evidence that Respondent changed his address with the SCDMV from "435 Haltiwanger Rd, Apt. 22, Greenwood, SC

29649-1717" to "219 Greenway Dr., Greenwood, SC 29649-9564" until December 17, 2009. R. p. 110 & 122. Respondent attempts to further his argument in this area by citing to Article I, §22 of the South Carolina Constitution. The fact is, whether Respondent still resided at 435 Haltiwanger Road or not, whether Respondent received these notices or not, SCDMV complied fully the notice requirements of S.C. Code §56-1-360 and, as a result, by law these notices are presumed received ten (10) days after they were mailed by SCDMV to Respondent.

S.C. Code §56-1-1020 defines a habitual offender as any person whose record as maintained by the Department of Motor Vehicles shows that he has accumulated the convictions for three or more separate and distinct major offenses or ten or more separate and distinct minor offenses committed within a three (3) year period. As already stated above, the Respondent, according to his driving record, as maintained by the Appellant, was charged with and convicted in three separate and distinct major traffic offenses committed within a three year period (ROA pp. 89, 92-93, 97-98, 106-107, 110-112, 120-125). Moreover, the Record on Appeal shows that Respondent was charged with DUS on February 25, 2007, and convicted of this violation on April 3, 2007; charged with DUS on March 18, 2007, and convicted of this violation on April 9, 2007; and, charged with DUS on October 26, 2008, and convicted of this violation on April 1, 2009 (ROA pp. 82-125). It is, therefore, undisputed that the record as maintained by the SCDMV establishes a prima facie case and supports a finding that the Respondent is a habitual offender as defined by the statute. For this reason alone, the OMVH Hearing Officer's findings were in error and should be reversed.

2. *THE FACTS OF THE HIPPI CASE ARE NOT SIMILAR TO THIS CASE.*

Respondent argues that the OMVH Hearing Officer "improperly did not sustain the objection of defense counsel that *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d

416 (2009) prevented the Department from revoking the license of" Respondent. First, SCDMV did not and has not "revoked" Respondent's license. The term "revoked" is a term of art that is statutorily defined in Title 56. See S.C. Code §56-1-10(13). Rather, in this case, SCDMV suspended Respondent's driver's license and driving privileges for a period of five (5) years as required by S.C. Code §56-1-1010 et seq.

Second, the *Hipp* case is factually very different from this case. In the *Hipp* case, the SCDMV attempted to suspend Mr. Hipp's driver's license and driving privileges in South Carolina approximate twelve (12) years after Mr. Hipp was convicted of DUI in Georgia. In the *Hipp* case, Georgia simply did not send notice of the Georgia DUI conviction to SCDMV until twelve (12) years after the conviction occurred. Significant to the *Hipp* case was the fact that Mr. Hipp had been convicted in South Carolina of DUI after his Georgia DUI conviction, but prior to SCDMV receiving notice of the Georgia conviction. So, when the Georgia DUI conviction came in, Mr. Hipp was subject to a hard suspension of one (1) year.¹ In addition to the *Hipp* case, the cases *State v. Chavis*, 261 S.C. 408, 200 S.E.2d 390 (1973) and *Wilson v. S.C. Dep't. of Motor Vehicles*, 2017 WL 105019 both held that in determining if a delay in imposing a driver's license and/or driving privilege suspension violated due process there had to be evidence of prejudice as a result of the delay. In the *Chavis* case the Supreme Court held there was no evidence of prejudice to Mr. Chavis and, as a result, there was no violation of due process. *Chavis*, 261 S.C. 408 at 410. In the *Wilson* case, the Court of Appeals held there was

¹ A "hard" suspension is one where the driver has no alternative driving privileges available to him or her. Examples of alternative driving privileges are provisional driver's licenses, route restricted driver's licenses, and ignition interlock restricted driver's licenses.

evidence of prejudice to Ms. Wilson and, as a result, there was a due process violation.² *Wilson*, 2017 WL 105019, 7th paragraph of the "Law/Analysis" section.

In this case, Respondent was convicted of his offense triggering his habitual offender suspension on April In 2009. R. p. 107. SCDMV was notified of this conviction and promptly notified Respondent that he had been declared a Habitual Offender and would undergo a five (5) year suspension as required by law. *Id.* Respondent timely requested a hearing for the OMVH, but the OMVH did not issue their decision in this case until July 21, 2016. R. pp. 44-51. In fact, the OMVH Hearing Officer included a discussion in the Final Order about why this decision was delayed in being issued. R. p. 46 under "Case History." Thus, this suspension was not delayed by Respondent, SCDMV, a law enforcement officer, a criminal trial court, a trial court clerk, or anyone else of the like. This suspension has been delayed in going into effect solely because Respondent elected to utilize his statutory right to challenge the suspension, SCDMV complied with the statutes that required the suspension to be stayed pending the challenge, and the OMVH had not yet issued its' final decision in the case. In other words, the suspension was appealed and the appellate court had not issued a decision on how that appeal should turn out. For this reason alone, this case is grossly different from the *Hipp*, *Chavis*, and *Wilson* cases. In fact, Hearing Officer Holland summed up the difference between this case and the *Hipp* case very succinctly:

I conclude that this matter is distinguishable because this was a delay of the hearing body, not of the department. Hipps [sic] dealt with a time delay in departmental action being taken. This case involves a delay which would be tantamount to a court delay. There is no statutory requirement of when the OMVH must render a decision.

² SCDMV filed a Petition for Rehearing in the *Wilson* case on Thursday, January 26, 2017.

Respondent further argues that because SCDMV was "the moving party they had the obligation to follow up on the absence of an order." Significantly, Respondent does not cite any case law, statute, or other guidance that requires the SCDMV (or any moving party for that matter) to hound any court for a decision in a case pending before it.³ In fact, Hearing Officer Holland also addressed this issue in her Final Order, stating, this was "a matter which [Respondent] requested and clearly knew was pending."

Further, there is no evidence to support Respondent's repeated statements that Hearing Officer Robert F. Harley "informed [him] at the hearing in 2009 that he could obtain a regular license." There is no recording of this hearing and Hearing Officer Harley never issued any Order or other document stating Respondent "could obtain a regular license." Thus, there is no evidence to support this statement from Respondent. As required by State law, when Respondent requested his contested case hearing for this habitual offender suspension, SCDMV placed the suspension in hearing request status and awaited a decision from the OMVH. In early January 2016, the undersigned discovered SCDMV records indicated this case was still pending before Hearing Officer Tracy Holland and, although not required to so, the undersigned wrote to Hearing Officer Tracy Holland to inquire about the status of this case. R. p. 138. Thereafter, the events documented by Hearing Officer Holland in her Final Order were discovered and a new hearing was scheduled.

The issue regarding Hearing Officer Holland's inability to hear this case on the date it was original scheduled was not within the control of SCDMV. The issue regarding the failure of the recording equipment on the date of the original hearing was not within the control of

³ In fact, anecdotally, in at least one case an SCDMV attorney was scolded by Judges from the Court of Appeals for asking a lower court for a ruling in case. See *SCDMV v. Russo Dumpster, Inc*, Appellate Case No. 2014-001170.

SCDMV. The issue of this case not being reassigned to Hearing Officer Robert Harley in OMVH's case management system was not within the control of SCDMV. The issue of Hearing Officer Robert Harley not issuing a Final Order prior to forgetting the facts of this case was not within the control of SCDMV. The fact that because of these issues this case had to be scheduled for a redo of this hearing was not within the control of SCDMV. In fact, if it were not for SCDMV realizing that it had not received a final order in this case, this case might still be lingering without a final decision from the OMVH. Thus, for all of the reasons stated above, this case is not similar to the *Hipp* case and the OMVH Hearing Officer properly ruled that *Hipp* was not applicable in this situation.

Finally, Respondent stated in his Affidavit dated May 19, 2016 that he would be prejudiced if the OMVH issues a decision now and he is suspended. R. pp. 79-81. Any prejudice that may come from such a holding being issued now and the suspension that would be triggered is solely because of the delay in the OMVH issuing its' final decision. SCDMV had no control over when the OMVH would issue its' final decision, thus any prejudice that may result is in no way the fault of SCDMV. Furthermore, because there is no statutory requirement that the OMVH issue its' decisions within a certain amount of time after a hearing is held, it is tacitly understood that the OMVH can take as short or as long a time as it wants to issue its decisions. Therefore, the relief Respondent has requested under *Hipp* is grossly misplaced and should be denied in full.

CONCLUSION

Based upon the foregoing arguments, the Appellant SCDMV respectfully requests that the Amended Final Order and Decision issued July 21, 2016, be overturned in part and the habitual offender suspension be reinstated.

9 

Respectfully submitted,



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January 27, 2017

Blythewood, South Carolina

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

South Carolina Department of Motor Vehicle,

Appellant,

v.

Christopher McMahan,

Respondent.

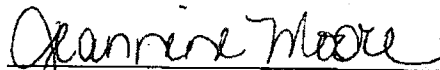
Docket No. 16-ALJ-0255-AP
SCDL No. 4172712

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 27, 2017, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing Respondent's Reply Brief to the following:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

as Counsel for the Appellant.



Jeannine (Nina) Moore, Paralegal
Office of General Counsel

January 27, 2017
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
ALIBOCKET N 2016-HJ-0255-AP

HONORABLE TRACY HOLLAND, HEARING OFFICER

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES, APPELLANT

V.

CHRISTOPHER MCMAHAN, RESPONDENT

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Attorney for Respondent

South Carolina Department of Motor Vehicles,	)	Docket № 16-ALJ-21-0255-AP
	)	SCDL № 4172712
Appellant,	)	
	)	Brief of Respondent
v.	)	Christopher McMahan
	)	
Christopher McMahan,	)	
	)	
Respondent.	)	

STATEMENT OF THE CASE

The Respondent agrees with the Statement of the Case as set forth in the Appellant's Brief.

ARGUMENT

Question I

Did the hearing officer err in finding that Respondent was not charged with driving under suspension on March 18, 2007 and was later erroneously convicted of that offense?

The question before the hearing officer was not what charge did the arresting intend to place against Christopher McMahan. The officer's intent is simply not relevant when the hearing officer determined that the code section controls the charge actually placed against Mr. McMahan. In this case, the code section used by the arresting officer did not charge Mr. McMahan with driving under suspension. Based upon the findings of the hearing officer, Mr. McMahan did not appear before a judge to be informed of the fact that the code section on his ticket was not the charge against him nor was he informed of the collateral consequences of his plea. Rec. on App. at 49. He was not required to appear and could rely upon the code section used by the arresting officer on the ticket. For purposes of this appeal, he need not know exactly

what charge was placed against him as long as the charge was not driving under suspension.

The Department argues that the proper charge was S.C. Code § 56-1-460. The argument could just as easily be made that the proper charge was S.C. Code 56-1-440, driving with no South Carolina driver's license. Neither charge is close to 56-1-520, which is the code section written on the ticket. The Department upon receiving the ticket with no valid code section simply did not have the authority to re-write the code section. The fact that the trial court, without notice to Mr. McMahan, also re-wrote the code section from the original ticket does not authorize the Department to perpetuate the same error.

The hearing officer here did not "weight" the evidence nor did she substitute her judgment for that of the Department. The hearing officer simply held that when the Department receives a ticket citing a violation of code section 56-1-520, that is not a ticket for driving under suspension. The Department concedes this fact. Br. of App. at 8. But conceding there is no such code section does not mean it is a ticket for driving under suspension. Without three tickets for driving under suspension, the Department has no authority to declare Mr. McMahan an habitual offender.

The Department fairs no better by contending that the hearing officer decided this case on an issue not raised by Mr. McMahan. As the South Carolina Supreme Court has said "In determining whether the ALJ's decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALJ reached." *Hill v. South Carolina Dept. of Health and Environmental Control*, 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010). Thus, in affirming a hearing officer an appellate court is entitled to consider the entire record. The hearing officer is

also entitled to consider the entire record. Surely the Department does not mean that a citizen should be deprived of a right when evidence in the record supports the position of the hearing officer in ruling for the citizen, but the hearing officer, rather than the lawyer, raises it.

In its brief, the Department declares "Despite these numerous documents, the OMVH Hearing Officer decided to focus on only one document, the ticket itself." Br. of App. at 7. The reason for this is simple. The only notice of the charge given to Mr. McMahan was the ticket. To punish a citizen for a charge for which he did not have notice is a basic violation of due process. As the Court of Appeals has said "The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Ogburn Matthews v. Loblolly Partners (Ricefields Subdivision)* 332 S.C. 551, 562, 505 S.E.2d 598, 603, (S.C.App.1998). The Department simply cannot change the charges against Mr. McMahan without giving him some type of notice as to their intent to change the charges and providing him an opportunity to be heard.

The Department fails no better by contending that the Department sent a notice of the suspension to Mr. McMahan. Every ticket issued to Mr. McMahan had his correct address. Rec. on App. at 87, 90, and 104. That address was "219 Greenway Drive, Greenwood, SC." The notices sent by the Department, however, had an incorrect address - "435 Haltiwanger Rd, Apt. 22, Greenwood, SC." Rec. on App. at 85, 89, 92, 93, 94, and 98. The first notice to the correct address was on April 17, 2009. Rec. on App. at 106 and 107. When Mr. McMahan received this notice of being an Habitual Offender, he requested a hearing. Rec. on App. at 134. The Department, for reasons never explained, did not change the address of Mr. McMahan even though the record establishes that the address on his driver's license has been changed for a

number of years before 2009. Rec. on App. at 22, ll 8-24.

The Department further argues that the hearing officer should have examined the whole record. They argue "This finding is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Br. of App. at 8 (emphasis in the original).¹ As noted above, the Department fails to consider that through their error, Mr. McMahan was never given notice of any of the suspensions because the department used the wrong address.

The Department relies upon notices sent to an incorrect address to contend that Mr. McMahan should have known about the license suspension. This argument violates the spirit, if not the letter, of Article I, § 22 of the Constitution of the State of South Carolina. This section provides:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

Due to the fact that the notices were sent to the wrong address when the Department had the correct address, Mr. McMahan had neither "due notice" nor "an opportunity to be heard" as required by this provision of our state constitution. The record supports the position of the hearing officer.

As the decision of the hearing officer is supported by the evidence in the record, this Court should uphold the decision of the hearing officer.

¹ Ironically, the Department is critical of the hearing officer for considering the "whole record" and raising an issue not raised by the attorney for Mr. McMahan.

Additional Sustaining Grounds

The South Carolina Supreme Court has said "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000). This Court should also rescind the suspension on the ground that the hearing officer improperly did not sustain the objection of defense counsel that *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009) prevented the Department from revoking the license of Mr. McMahan. In *Hipp* the Court said "While we do not intend to set forth a bright line rule, we find that imposition of a suspension after more than twelve years delay, where Respondent bears no fault for the delay, is manifestly a denial of fundamental fairness." *Id.* at 325, 673 S.E.2d at 417. The Court did not base its decision on the ground that the Department had any responsibility for the delay. They decided it based upon only that the driver had no fault in causing the delay. A review of the facts in the case shows that the Court was not concerned as whether the delay was caused by the Department or the State of Georgia, as long as the driver was not responsible for the delay. The same principle should apply here.

The Department is the party moving to suspend the driver's license of Mr. McMahan. Mr. McMahan was informed at the hearing in 2009 that he could obtain a regular license. He acted upon that advice and did in fact obtain a regular license issued by the Department. He had no reason to either know an order had not been issued or even to inquire as to whether an order had been issued. The Department, however, knew or should have known, that an order had not been issued. As the moving party they had the obligation to follow up on the absence of an

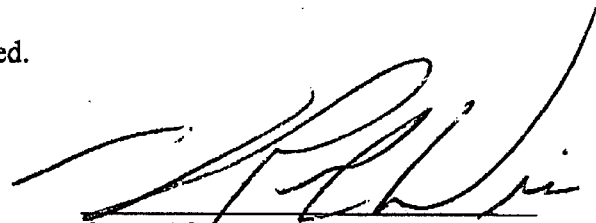
order. For almost seven years the Department ignored the fact that an order had not been issued. During that same period of time, Mr. McMahan only knew that he had been told the suspension had been lifted and that he had obtained a regular driver's license. Under these fact, the principle set forth in *Hipp* applicable.

As the Department failed to take any action for almost seven years after the hearing in 2009, the Department should not be able to now suspend the driver's license of Mr. McMahan.

CONCLUSION

For the forgoing reasons, the decision of the hearing officer that the suspension of the driver's license of Christopher McMahan be rescinded.

December 27, 2016



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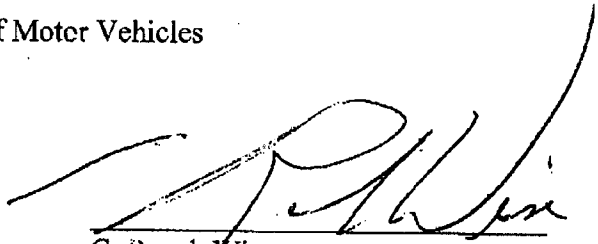
STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

CERTIFICATE OF MAILING

I, C. Rauch Wise, hereby certify that on December 27, 2016 I did place a copy of the Brief of the Appellant, Christopher McMahan, in the mail, with proper postage affixed thereto, to:

Brandy Duncan
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Attorney for Appellant.

**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
ALJ DOCKET NO: 2016-ALJ-0255-AP**

HONORABLE TRACY HOLLAND, HEARING OFFICER

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES APPELLANT

V.

CHRISTOPHER MCMAHAN RESPONDENT

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

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

South Carolina Department of Motor Vehicles,

Appellant,

v.

Christopher McMahan,

Respondent.

Docket No. 16-ALJ-21-0255-AP

SCDL No. 4172712

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

This matter comes before the Administrative Law Court pursuant to the appeal of South Carolina Department of Motor Vehicles, which seeks review of the July 21, 2016 Amended Final Order & Decision rescinding the Respondent's habitual offender suspension. The Appellant South Carolina Department of Motor Vehicles (SCDMV) seeks to have the Amended Final Order & Decision overturned in part and the habitual offender suspension reinstated.

STATEMENT OF THE ISSUE ON APPEAL

*THE HEARING OFFICER ERRORED IN FINDING THAT RESPONDENT WAS
NOT CHARGED WITH DRIVING UNDER SUSPENSION ON MARCH 18, 2007
AND LATER CONVICTED OF THAT SAME OFFENSE.*

STATEMENT OF THE CASE

The Respondent was arrested on February 25, 2007 for Driving Under Suspension (hereinafter, "DUS") (ticket # Z334691). He was convicted of this offense on April 3, 2007. Subsequently, on March 18, 2007, the Respondent was charged with another DUS (ticket # 64031DW), and was convicted of this violation on April 9, 2007. Later, the Respondent was arrested on October 26, 2008 for DUS (ticket # 10065EO). He was convicted of this offense on April 1, 2009. Thus, the Respondent was charged and convicted of three (3) separate and distinct major traffic violations within a three (3) year period. Despite these convictions, the



Office of Motor Vehicle Hearings (hereinafter, "OMVH") held that because the statute listed on ticket 64031DW was "56-1-520," rather than "56-1-460" it was "not clear from the evidence what the Respondent was supposed to be convicted of." Therefore, the OMVH Hearing Officer concluded that the Respondent's driver's record as maintained by Appellant SCDMV did not meet the criteria of a Habitual Offender as defined by S.C. Code Ann. § 56-1-1020 (2006) and § 56-1-1030 (Suppl. 2012). Appellant timely filed a motion for reconsideration. This motion for reconsideration was granted in part and denied in part. Appellant timely filed this appeal.

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 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 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 FINDING THAT RESPONDENT WAS NOT CHARGED WITH DRIVING UNDER SUSPENSION ON MARCH 18, 2007 AND LATER CONVICTED OF THAT SAME OFFENSE.

State law defines a habitual offender as any person whose record as maintained by the Department of Motor Vehicles shows that he has accumulated the convictions for three or more

separate and distinct major offenses or ten or more separate and distinct minor offenses committed within a three (3) year period. S. C. Code Ann. § 56-1-1020 (2006). The Respondent, according to his driving record, as maintained by the Appellant, was charged with and convicted in three separate and distinct major traffic offenses committed within a three year period (ROA pp. 89, 92-93, 97-98, 106-107, 110-112, 120-125). The Record on Appeal shows that he was charged with DUS on February 25, 2007, and convicted of this violation on April 3, 2007; charged with DUS on March 18, 2007, and convicted of this violation on April 9, 2007; and, charged with DUS on October 26, 2008, and convicted of this violation on April 1, 2009 (ROA pp. 82-125). It is therefore undisputed that the record as maintained by the SCDMV establishes a prima facie case and supports a finding that the Respondent is a habitual offender as defined by the statute. Despite these facts the OMVH Hearing Officer held that because the statute listed on ticket 64031DW was "56-1-520," rather than "56-1-460" it was "not clear from the evidence what the Respondent was supposed to be convicted of." This holding, however, ignores several pieces of evidence that were before the OMVH Hearing Officer. Specifically, pages 92, 99-100, 107, 111, 120, and 124 of the Record on Appeal. Reviewing the pieces of evidence reveals the following:

- 1) An Official Notice of suspension dated May 24, 2007 was sent to Respondent. This notice of suspension stated Respondent would undergo a suspension for "Driving Under Suspension" pursuant to S.C. Code §56-1-460 for ticket # 64031DW. This is a letter generated by Appellant and maintained as part of the driver records of Respondent (R. p. 92);
- 2) A Notice of Suspension was submitted to Appellant by Judge W. Frank Partridge of the City of Newberry. This Notice of Suspension noted that Respondent should be

suspended for failure to respond to a citation or pay a fine for the violation "described herein." This Notice of Suspension was for ticket #64031DW. This Notice of Suspension stated the code section violated was "56-01-0460(1)" and described the violation as "Driving Under Suspension – 1st." Although this Notice of Suspension is not generated by Appellant, it is maintained as part of the driver records of Respondent (R. p. 99);

- 3) A Notice of Withdrawal of Suspension was submitted to Appellant. This Notice of Withdrawal of Suspension stated that Respondent had made payment of ticket #64031DW. This Notice of Withdrawal of Suspension stated the code section violated was "56-01-0460(1)" and the described the violation as "Driving Under Suspension – 1st." Although this Notice of Withdrawal of Suspension is not generated by Appellant, it is maintained as part of the driver records of Respondent (R. p. 100);
- 4) An Official Notice of suspension dated April 17, 2009 was sent to Respondent. This notice of suspension stated Respondent would undergo a suspension for being declared a habitual offender pursuant to S.C. Code §56-1-1090. This Official Notice listed the three (3) major offenses that lead to Respondent being declared a habitual offender. One of the major offenses listed was "Driving Under Suspension" for ticket #64031DW." This is a letter generated by Appellant and maintained as part of the driver records of Respondent (R. p. 107);
- 5) Page 2 of Respondent's 10 Year Driver Record – External, reveals that Appellant recorded ticket # 64031DW as a conviction for "Driving Under Suspension." This is

a report created and maintained by Appellant that consolidates the driver records of Respondent (R. p. 111);

- 6) Page 2 of Respondent's 10 Year Driver Record – External, also reveals that Appellant recorded the failure to pay traffic ticket for ticket # 64031DW as a conviction for "Driving Under Suspension – FTPPT." This is a report created and maintained by Appellant that consolidates the driver records of Respondent (R. p. 111);
- 7) Page 120 of the Record on Appeal reveals a second copy of the document described in #4, above;
- 8) Page 3 of Respondent's "Certification for Court" driver record, reveals that Appellant recorded ticket # 64031DW as a conviction for "Driving Under Suspension." This is a report created and maintained by Appellant that consolidates the driver records of Respondent (R. p. 124);
- 9) Page 3 of Respondent's "Certification for Court" driver record, reveals that Appellant recorded the failure to pay traffic ticket for ticket # 64031DW as a conviction for "Driving Under Suspension – FTPPT." This is a report created and maintained by Appellant that consolidates the driver records of Respondent (R. p. 124);
- 10) All three of the tickets in this case list an "Offense Code" of "96" (see the bottom right corner of R. pp. 87, 90, 101, 104, 114, 116, and 118).

Each of these pieces of evidence directly state or indicate that for ticket # 64031DW Respondent was convicted of DUS. Despite these numerous documents, the OMVH Hearing Officer decided to focus on only one document, the ticket itself. This ticket itself stated Respondent was charged with "DUS," but erroneously listed the "violation section no" as "56-1-520." The OMVH Hearing Officer correctly noted that the South Carolina Code of Law does not contain a section

"56-1-520." Then despite this notation and the other evidence detailed above, including the fact that ticket # 64031DW itself stated the charge was for "DUS," the OMVH Hearing Officer held that "it is not clear from the evidence what the Respondent was supposed to be convicted of." This finding is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Significantly, Respondent has never asserted that ticket # 64031DW was a conviction for any offense other than DUS. Rather, this was an issue raised *sua sponte* by the OMVH Hearing Officer. The fact that Respondent has never alleged that ticket # 031DW is not a conviction for DUS is further evidence that, despite the typo in the "violation section no" part of ticket # 64031DW, the conviction was, in fact, a conviction for DUS. Further supporting the conclusion that there was merely a typo on ticket # 64031DW is the fact that there is no statute by the number of 56-1-520. There simply is not any traffic violation, or any statute at all, that is contained in S.C. Code §56-1-520. It just doesn't exist. Given these facts and all the other evidence in this case, it was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record for the OMVH Hearing Officer to conclude that "it is not clear from the evidence what the Respondent was supposed to be convicted of... [r]egardless of the fact that the officer wrote the letters DUS." Contrary to this finding by the OMVH Hearing Officer, the evidence leads only to the conclusion that Respondent was convicted of DUS for ticket # 64031DW.

Importantly, in this regard, once a prima facie case is established against a motorist, the burden shifts to the motorist to present evidence to rebut the prima facie case. *Daisy Outdoor Advertising Co., Inc. v. South Carolina Dep't of Transp.*, 352 S.C. 113, 118, 572 S.E.2d 462, 465 (Ct.App. 2002). See also, *S.C. Dep't of Motor Vehicles v. Powers*, 06-ALJ-21-0578-AP (January 10, 2007) (explaining the application of this principle throughout the states). A prima facie case

is made by presenting evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted. *LaCount v. Gen. Asbestos & Rubber Co.*, 184 S.C. 232, 240, 192 S.E. 262, 266 (1937); see also, *Mack v. Branch No. 12, Post Exchange, Fort Jackson*, 207 S.C. 258, 272, 35 S.E.2d 838, 844 (1945) ("The words [prima facie evidence] import that the evidence produces for the time being a certain result; but that result may be repelled.")

Thus, if a prima facie case is established against the motorist and the motorist fails to present any evidence to rebut it, then judgment must go against the motorist. See *Arkwright Mills v. Clearwater Mfg. Co.*, 217 S.C. 530, 539, 61 S.E.2d 165, 168-69 (1950) ("It is the settled rule of law that once a party establishes a prima facie case, judgment will go in his favor unless the opposite party produces evidence sufficient to overcome the prima facie presumption.") As stated above, Respondent has never asserted that he was not convicted of these three (3) DUS offenses.

Thus, in this case, despite the finding of the OMVH Hearing Officer, Respondent did not provide any evidence to contradict and/or rebut the evidence submitted by SCDMV that he was convicted of three (3) separate DUS offenses within a three (3) year period.

Further, in making her ruling the OMVH Hearing Officer relied on the case *State v. Bennett*, 375 S.C. 165, 650 S.E.2d 490 (Ct. App. 2007). The *Bennett* case dealt with the use of CDR codes for classification of a criminal's sentence. In particular, the *Bennet* case held that

While the [CDR] codes were developed and 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.

Bennett, 375 at 173-174. The *Bennett* case is distinguishable from this case. In this case, no one relied on a code to provide an administrative shortcut. Rather, this conviction was entered as it

was listed on the ticket, as a DUS. Using the name of a criminal offense or the commonly used abbreviation for the criminal offense to enter that conviction in a person's driver record is not the same as relying on a CDR code to determine a person's criminal sentence. For these reasons, the *Bennett* case is inapplicable to this case and should not have been relied on by the OMVH Hearing Officer in making her ruling.

CONCLUSION

Based upon the foregoing arguments, the Appellant SCDMV respectfully requests that the Amended Final Order and Decision issued July 21, 2016, be overturned in part and the habitual offender suspension be reinstated.

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
11311 Wilson Boulevard
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September 16, 2016
Blythewood, South Carolina

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

South Carolina Department of Motor Vehicle,

Appellant,

v.

Christopher McMahan,

Respondent.

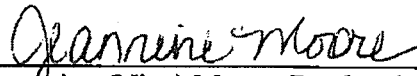
Docket No. 16-ALJ-0255-AP
SCDL No. 4172712

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 16, 2016, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing Respondent's Brief to the following:

Thomas P. Austin, Esquire
P.O. Drawer 799
Greenwood, SC 29648-0799

as Counsel for the Appellant.


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

September 16 2016
Blythewood, South Carolina

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

South Carolina Department of Motor Vehicle,

Appellant,

v.

Christopher McMahan,

Respondent.

Docket No. 16-ALJ-21-0255-AP
SCDL No. 4172712

**RETURN TO MOTION TO
FILE OUT OF TIME**

TO: RESPONDENT CHRISTOPHER MCMAHAN AND HIS ATTORNEY(S), PLEASE TAKE NOTICE that Appellant South Carolina Department of Motor Vehicles ("SCDMV") hereby returns to Respondent's *Motion to File Out of Time* pursuant to Rules 19(A) and 68, SCALCR and Rule 240(e), SCACR. The grounds for this return are set forth below.

This return makes specific reference to the Affidavits of Philip Porter and Brandy A. Duncan and asks that both of these Affidavits be considered as part of this return as they were restated verbatim.

Respondent has requested that he be granted an extension and permission to file his brief out of time on or before December 27, 2016. Respondent bases this request on the affidavit of his attorney, C. Rauch Wise. Mr. Wise stated in his affidavit that around November 10, 2016 he received a phone call from SCDMV Deputy General Counsel Philip Porter and that during this conversation he believe that he and Mr. Porter were discussing a "Consent Order being issued by the S.C. Department of Motor Vehicles dismissing the appeal" in this case. Mr. Wise goes on to state that he was under the "distinct impression that Mr. Porter was referring to the McMahan



case and not the Stewart case..." (emphasis added).¹ Contrary to Mr. Wise's statements in his affidavit are his statements in an e-mail sent to the undersigned on December 5, 2016 at 3:56 p.m. This e-mail stated:

I am totally confused. I thought **both McMahan and Stewart were going to be dismissed** without prejudice to the Department of Motor Vehicles. Obviously I have misread some communication in this case.

(emphasis added). Therefore, Mr. Wise's communications regarding what he thought was going on with the McMahan and Stewart cases are not consistent from day to day.

Furthermore, as outlined in detail in the *Affidavit of Brandy A. Duncan*, no SCDMV attorney other than Brandy A. Duncan has signed any pleadings in this case since the case's inception in the Office of Motor Vehicle Hearings (hereinafter, "OMVH"). Thus, it would be unreasonable for Mr. Wise to suddenly expect that he would have discussions about dismissing or settling this appeal when he is speaking with a different SCDMV attorney, i.e. Philip Porter, an SCDMV attorney that had not performed any work on this case.

Deputy General Counsel Philip Porter makes it clear in his affidavit that he in no way stated or indicated that the SCDMV was willing the dismiss or settle this case. In fact, Deputy General Counsel Philip Porter states he did not even know the Christopher McMahan case even existed until he reviewed Mr. Wise's affidavit and began preparing his attached affidavit in response.

Additionally, Mr. Wise's Affidavit does not explain why he failed to response to Mr. Goldman's December 1, 2016 e-mail regarding the Court having not received Respondent's Brief in this case. In fact, no response came in any form until after SCDMV filed its' *Motion to Resolve Appeal Adversely to Respondent and in Appellant's Favor* on December 5, 2016.

¹ The Stewart case referred to in Mr. Wise's affidavit and in this document is S.C. Dept. of Motor Vehicles v. Robby Lee Stewart, 15-ALJ-21-0471-AP, which was dismissed on November 28, 2016.



Furthermore, although Mr. Wise's December 5, 2016 e-mail stated "Obviously I have misread some communication in this case," his affidavit and Respondent's *Motion to File Out of Time* contain no copy of any communication from SCDMV that would indicate that SCDMV and Respondent had any sort of discussion to dismiss or settle this appeal. Given the ease with which e-mails can be sent, if SCDMV and Respondent had any sort of discussion to dismiss or settle this appeal and, as a result, it was not necessary for Respondent to timely file his brief, then it would have been reasonable and prudent for Respondent's Counsel to document such an agreement in an e-mail to the Court and SCDMV. No such action was taken, which further indicates that no such agreement or understanding had taken place between the parties.

For these reasons, and for the reasons outlined in detail in SCDMV's *Motion to Resolve Appeal Adversely to Respondent and in Appellant's Favor*, SCDMV opposes the *Motion for File Out of Time* and asks this Court to deny the motion in full.


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
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Post Office Box 1498
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Telephone: 803.896.9900
Fax: 803.896.9901
Email: hearingsprocessingunit@scdmv.net

December 13, 2016
Blythewood, South Carolina

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

South Carolina Department of Motor Vehicles,

Appellant,

v.

Christopher McMahan,

Respondent.

Docket No. 16-ALJ-21-0255-AP
DL# 4172712

AFFIDAVIT OF PHILIP S. PORTER

PERSONALLY APPEARED before me, a Notary Public in and for the State of South Carolina, Philip S. Porter, who first being duly sworn, deposes and says:

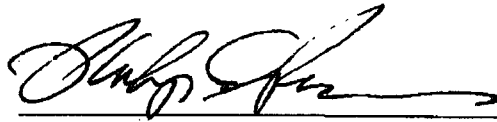
1. I am employed by the South Carolina Department of Motor Vehicles (hereinafter, "DMV"), an agency of the State of South Carolina, as Deputy General Counsel in the Office of General Counsel.
2. I have reviewed the *Affidavit of C. Rauch Wise* dated December 6, 2016, which was attached to a *Motion to File Out of Time* in the above referenced case.
3. Mr. Wise's affidavit, referenced in #2 above, in paragraph #2 is in error regarding the case we were discussing dismissing the ALC appeal on. The case we were discussing was the Stewart case.¹
4. Prior to the preparation of this Affidavit, I have never handled anything regarding the Christopher McMahan case, never signed any pleadings in the Christopher McMahan case, never discussed the Christopher McMahan case with anyone, and, quite frankly, did not know the Christopher McMahan case existed.
5. The only case I have handled recently that involved Mr. Wise is the Stewart case and that is the only case Mr. Wise and I would have discussed in the past couple of

¹ S.C. Dept. of Motor Vehicles v. Robby Lee Stewart, 15-ALJ-21-0471-AP, dismissed November 28, 2016.

months.

6. I never discussed or consented to a dismissal tlf the Christopher McMahan case with Mr. Wise or anyone else.

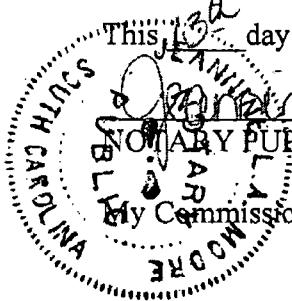
FURTHER AFFIANT SAYETH NOT



PHILIP S. PORTER

SWORN TO and subscribed before me

This 13th day of December, 2016.



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 5/23/2024

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

South Carolina Department of Motor Vehicles,

Appellant,

v.

Christopher McMahan,

Respondent.

Docket No. 16-ALJ-21-0255-AP

DL# 4172712

AFFIDAVIT OF BRANDY A. DUNCAN

PERSONALLY APPEARED before me, a Notary Public in and for the State of South Carolina, Brandy A. Duncan, who first being duly sworn, deposes and says:

1. I am employed by the South Carolina Department of Motor Vehicles (hereinafter, "DMV"), an agency of the State of South Carolina, as Assistant General Counsel in the Office of General Counsel.
2. I have reviewed the *Affidavit of C. Rauch Wise* dated December 6, 2016, which was attached to a *Motion to File Out of Time* in the above referenced case.
3. To my knowledge, no one in the SCDMV Office of General Counsel ever discussed or consented to a dismissal of the Christopher McMahan case with Mr. Wise or anyone else.
4. I am the SCDMV attorney assigned to the Christopher McMahan case. This means that absent an emergency or extreme circumstances, I make all decisions for how the SCDMV handles the Christopher McMahan case. This would include, of course, any discussion of dismissing the appeal or settling the appeal.
5. In regard to #4 above, please note the following facts:



- a. I signed the letter dated February 29, 2016 submitting new/additional documents for introduction into the record at the habitual offender hearing before the Office of Motor Vehicle Hearings (hereinafter, "OMVH") in this case (Exhibit A);
- b. I signed the *Motion for Reconsideration* filed with the OMVH in this case (Exhibit B);
- c. I signed the *Notice of Appeal* to the ALC in this case (Exhibit C);
- d. I signed the ALC *Brief of Appellant* in this case (Exhibit D);
- e. I was the only SCDMV attorney copied on Mr. Goldman's e-mail on October 19, 2016 regarding SCDMV's position on Mr. Wise's request for an extension of time to file Respondent's Brief in this case. I was the SCDMV attorney that responded to this request. I was also the only SCDMV attorney copied on Mr. Goldman's e-mail advising the parties that the extension had been granted and Respondent's Brief was now due on or before November 19, 2016 (Exhibit E);
- f. I was the only SCDMV attorney copied on Mr. Goldman's e-mail to Mr. Wise on December 1, 2016 regarding Respondent's failure to file Respondent's Brief (Exhibit F);
- g. I signed the *Motion to Resolve Appeal Adversely to Respondent and in Appellant's Favor*, including the cover letter and certificate of service (Exhibit G); and
- h. No SCDMV attorney other than me has signed any documents or pleadings in this case since its inception.

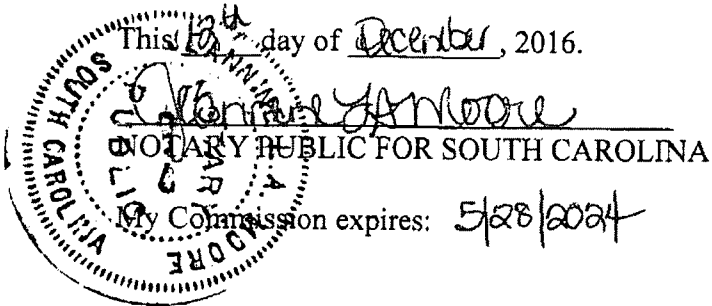
6. On Monday, December 5, 2016 at 3:56 p.m., in response to my e-mail sending Mr. Goldman and Mr. Wise SCDMV's *Motion to Resolve Appeal Adversely to Respondent and in Appellant's Favor*, I received an e-mail from Mr. Wise that stated "I am totally confused. I thought both McMahan and Stewart were going to be dismissed without prejudice to the Department of Motor Vehicles. Obviously I have misread some communication in this case." (Exhibit H).
7. Any phone calls made to the SCDMV Office of General Counsel regarding dismissal or settlement of this appeal would have been referred to me, since I am the SCDMV attorney assigned to this case.
8. I never discussed or consented to a dismissal of the Christopher McMahan case with Mr. Wise or anyone else.

FURTHER AFFIANT SAYETH NOT


BRANDY A. DUNCAN

SWORN TO and subscribed before me

This 13th day of December, 2016.



Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

February 29, 2016

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

RE: *Christopher Eric McMahan v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 09-OMVH-02-2132-CC
SCDL 4172712

Dear Ms. Williams:

In addition to any documents previously provided in past mailings, 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.

The Suspension letter for Failure to Pay Motor Vehicle Property Tax dated 8/11/2004 is included to demonstrate why Mr. McMahan was suspended at the time of his Driving Under Suspension violations. Mr. McMahan never challenged this suspension. The electronic transmission re Failure to Pay Motor Vehicle Property Tax is enclosed to demonstrate why the Department suspended Mr. McMahan for failure to pay motor vehicle property tax, i.e. the communication the Department received from the County.

UTT Z334691 and the Suspension letter for Driving Under Suspension dated 5/2/2007 are enclosed as evidence of Mr. McMahan's first major offense as defined by the Habitual Offender law.

UTT 64031DW and the Suspension letter for Driving Under Suspension dated 5/24/2007 are enclosed as evidence of Mr. McMahan's second major offense as defined by the Habitual Offender law.

Habitual Offender warning letter dated May 24, 2007 is enclosed as evidence that the Department did provide Mr. McMahan notice that he was at risk of being declared a habitual offender.

A handwritten signature in black ink, appearing to be "KAS" or similar, located above the mailing address.

Post Office Box 1498, Bluffton, South Carolina 29916

Yolanda P. Williams, Administrative Coordinator

February 29, 2016

RE: *Christopher Eric McMahan v. South Carolina Department of Motor Vehicles*

Habitual Offender Declaration Hearing

Docket No.: 09-OMVH-02-2132-CC

SCDL 4172712

UTT 10065EO and the Suspension letter for Driving Under Suspension dated 4/17/2009 are enclosed as evidence of Mr. McMahan's third major offense as defined by the Habitual Offender law.

Suspension letter for Habitual Offender dated April 17, 2009 is enclosed as evidence the Department notified Mr. McMahan that he had been declared a Habitual Offender.

The 5/18/2009 Amended Notice of Driving Status for Habitual Offender Suspension is enclosed as evidence that the Department did notify Mr. McMahan that due to his request for a hearing before the Office of Motor Vehicle Hearings (OMVH) his driving status had changed and he was allowed to drive at least until the OMVH determined the outcome of his challenge.

10 Year Driver Record - External is enclosed as evidence to support the other documents provided and provide the OMVH a clear picture of Mr. McMahan's driving history. The Certification for Court version did not include the information about Mr. McMahan's suspension for Failure to Pay Property Tax as that is not a suspension related to a driving offense.

Sincerely,



Brandy A. Duncan

Assistant General Counsel

Enclosures: Suspension letter for Failure to Pay Motor Vehicle Property Tax dated 8/11/2004
Electronic Transmission re Failure to Pay Motor Vehicle Property Tax
UTT Z334691
Suspension letter for Driving Under Suspension dated 5/2/2007
UTT 64031DW
Suspension letter for Driving Under Suspension dated 5/24/2007
Habitual Offender warning letter dated May 24, 2007
Suspension letter for Failure to Pay Traffic Ticket dated 6/5/2007 for 64030DW
Notice of Suspension for Failure to Pay Traffic Ticket for UTT 64030DW
Notice of Withdrawal of Suspension for UTT 64030DW
Reinstatement Screen for Suspension for Failure to Pay Traffic Ticket 64030DW
Suspension letter for Failure to Pay Traffic Ticket dated 6/5/2007 for 64031DW
Notice of Suspension for Failure to Pay Traffic Ticket for UTT 64031DW
Notice of Withdrawal of Suspension for UTT 64031DW
UTT 64031DW
Reinstatement Screen for Suspension for Failure to Pay Traffic Ticket 64031DW

EXHIBIT A

Yolanda P. Williams, Administrative Coordinator

February 29, 2016

RE: *Christopher Eric McMahan v. South Carolina Department of Motor Vehicles*

Habitual Offender Declaration Hearing

Docket No.: 09-OMVH-02-2132-CC

SCDL 4172712

UTT 10065EO

Suspension letter for Driving Under Suspension dated 4/17/2009

Suspension letter for Habitual Offender dated April 17, 2009

5/18/2009 Amended Notice of Driving Status for Habitual Offender Suspension

10 Year Driver Record – External

cc: Thomas P. Austin, Esquire
Post Office Box 799
Greenwood, SC 29648-0799

10. For the above stated reasons, the SCDMV respectfully requests that the Hearing Officer reconsider this matter and, specifically, requests the Hearing Officer reconsider her ruling that the February 29, 2016 certified documents were not admissible into evidence.

Respectfully submitted,



BRANDY A. DUNCAN, SC Bar #72052

Assistant General Counsel

PHILIP S. PORTER, SC Bar # 5682

Deputy General Counsel

FRANK L. VALENTA, JR., SC Bar # 4526

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

June 24, 2016

Blythewood, South Carolina

Respectfully submitted,



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

General Counsel

PHILIP S. PORTER, SC Bar # 4526

Deputy General Counsel

BRANDY A. DUNCAN, SC Bar # 72052

South Carolina Department of Motor Vehicles

10311 Wilson Boulevard

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Telephone: 803.896.9900

Fax: 803.896.9901

Email: hearingsprocessingunit@scdmv.net

July 26, 2016

Blythewood, South Carolina

was listed on the ticket, as a DUS. Using the name of a criminal offense or the commonly used abbreviation for the criminal offense to enter that conviction in a person's driver record is not the same as relying on a CDR code to determine a person's criminal sentence. For these reasons, the *Bennett* case is inapplicable to this case and should not have been relied on by the OMVH Hearing Officer in making her ruling.

CONCLUSION

Based upon the foregoing arguments, the Appellant SCDMV respectfully requests that the Amended Final Order and Decision issued July 21, 2016, be overturned in part and the habitual offender suspension be reinstated.

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

11311 Wilson Boulevard

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Blythewood, South Carolina 29016-0020

Telephone: 803.896.9900

Fax: 803.896.9901

Email: hearingsprocessingunit@scdmv.net

September 16, 2016
Blythewood, South Carolina

Duncan, Brandy A

From: Anthony Goldman <agoldman@scal.c.net>
Sent: Wednesday, October 19, 2016 1:58 PM
To: Duncan, Brandy A
Cc: rauchwise@gmail.com
Subject: 16-0255, McMahan (Request for Extension)

Ms. Duncan,

Counsel for the Respondent mailed a letter to the Court, with copy to the Department, requesting an extension of 30 days to file Respondent's Brief.

Could you please let me know the Department's position regarding this request.

Thank you.

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

Duncan, Brandy A

From: Duncan, Brandy A
Sent: Wednesday, October 19, 2016 2:11 PM
To: 'Anthony Goldman'
Cc: rauchwise@gmail.com
Subject: RE: 16-0255, McMahan (Request for Extension)

Mr. Goldman,

We received the letter in today's mail. SCDMV consents to the requested continuance.

Thanks,

Brandy A. Duncan, Asst. General Counsel
S.C. Department of Motor Vehicles
P. O. Box 1498
Blythewood, South Carolina 29016
(803) 896-9937
(803) 896-9901 (fax)

Notice of Confidentiality: The information contained in this e-mail may be legally privileged and/or confidential. It is intended only for the use of the individual(s) or entity named in the body of the e-mail. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of the information contained in this e-mail or the e-mail itself is strictly prohibited. If you have received this e-mail in error, please notify me immediately by telephone at the number listed above, delete the original e-mail, and return any printed copies of the e-mail to me at the address listed above via the United States Postal Service. Thank you.

From: Anthony Goldman [mailto:agoldman@scalco.net]
Sent: Wednesday, October 19, 2016 1:58 PM
To: Duncan, Brandy A <Brandy.Duncan@scdmv.net>
Cc: rauchwise@gmail.com
Subject: 16-0255, McMahan (Request for Extension)

Ms. Duncan,

Counsel for the Respondent mailed a letter to the Court, with copy to the Department, requesting an extension of 30 days to file Respondent's Brief.

Could you please let me know the Department's position regarding this request.

Thank you.

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

Duncan, Brandy A

From: Anthony Goldman <agoldman@scal.c.net>
Sent: Wednesday, October 19, 2016 2:19 PM
To: rauchwise@gmail.com
Cc: Duncan, Brandy A
Subject: 16-0255, McMahan (Request for Extension of Time)

Importance: High

Mr. Wise,

The Court will grant your request for a 30 day extension of time to file Respondent's Brief.

Respondent's Brief is due on or before Wednesday, November 16, 2016.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

Duncan, Brandy A

From: Anthony Goldman <agoldman@scalp.net>
Sent: Thursday, December 01, 2016 3:31 PM
To: rauchwise@gmail.com
Cc: Duncan, Brandy A; Moore, Jeannine (Nina)
Subject: FW: 16-0255, McMahan (Request for Extension of Time)
Importance: High

Mr. Wise,

The Court has not received Respondent's brief in Docket No. 16-AJ-21-0255-AP.

I am forwarding an email from October 19th in which the Court granted you an extension until November 19th to file a brief.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John L. McLeod
S.C. Administrative Law Court

From: Anthony Goldman
Sent: Wednesday, October 19, 2016 2:19 PM
To: 'rauchwise@gmail.com' <rauchwise@gmail.com>
Cc: 'Duncan, Brandy A' <Brandy.Duncan@scdmv.net>
Subject: 16-0255, McMahan (Request for Extension of Time)
Importance: High

Mr. Wise,

The Court will grant your request for a 30 day extension of time to file Respondent's Brief.

Respondent's Brief is due on or before Wednesday, November 16, 2016.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

December 5, 2016

The Honorable John D. McCloud
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: *Notice of Motion and Motion to Resolve Appeal Adversely to Respondent and in Appellant's Favor*
South Carolina Department of Motor Vehicles v. Christopher McMahan
Docket No. 16-ALJ-21-0255-AP
OMVH Docket No. 09-OMVH-02-2132-CC
SCDL No. 4172712

Dear Judge McCloud:

In regard to the above -referenced matter, enclosed for filing please find one original and one copy of the South Carolina Department of Motor Vehicles' Notice of Motion and Motion to Resolve Appeal Adversely to Respondent and in Appellant's Favor. 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,

A handwritten signature in cursive script, appearing to read "Brandy A. Duncan".

Brandy A. Duncan
Assistant General Counsel

Enclosure

cc: C. Rauch Wise, Esquire

also not received a brief from Respondent in this case. Further, as of the filing of this motion Respondent's Counsel had not responded to Mr. Goldman's December 1, 2016 e-mail (Exhibit A).

Rule 38, SCALCR provides that "an administrative law judge may... resolve the appeal adversely to the offending party for failure to comply with any 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 file and serve his brief within the time limits set by Rule 37 and this Court's Order dated July 29, 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
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

December 5, 2016
Blythewood, South Carolina

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

South Carolina Department of Motor Vehicle,

Appellant,

v.

Christopher McMahan,

Respondent.

Docket No. 16-ALJ-21-0255-AP
SCDL No. 4172712

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 5, 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:

C. Rauch Wise, Esquire
Law Office of C. Rauch Wise
305 Main Street
Greenwood, South Carolina 29646

as Counsel for Respondent.



Brandy A. Duncan
Assistant General Counsel

December 5, 2016
Blythewood, South Carolina

Duncan, Brandy A

From: Rauch Wise <rauchwise@gmail.com>
Sent: Monday, December 05, 2016 3:56 PM
To: Duncan, Brandy A
Subject: Re: 16-0255, McMahan (Request for Extension of Time)
Attachments: rauchwise.vcf

I am totally confused. I thought both McMahan and Stewart were going to be dismissed without prejudice to the Department of Motor Vehicles. Obviously I have misread some communication in this case.

Rauch

On 12/5/2016 11:22 AM, Duncan, Brandy A wrote:

Mr. Goldman & Mr. Wise,

Attached please find a PDF of SCDMV's Motion for Adverse Decision for Respondent based on failure to file Respondent's Brief. The original is in the mail to Mr. Goldman and a hard copy is in the mail to Mr. Wise.

Please let me know if you have any questions or concerns.

Thanks,

Brandy A. Duncan, Asst. General Counsel
 S.C. Department of Motor Vehicles
 P. O. Box 1498
 Blythewood, South Carolina 29016
 (803) 896-9937
 (803) 896-9901 (fax)

Notice of Confidentiality: The information contained in this e-mail may be legally privileged and/or confidential. It is intended only for the use of the individual(s) or entity named in the body of the e-mail. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of the information contained in this e-mail or the e-mail itself is strictly prohibited. If you have received this e-mail in error, please notify me immediately by telephone at the number listed above, delete the original e-mail, and return any printed copies of the e-mail to me at the address listed above via the United States Postal Service. Thank you.

From: Anthony Goldman [<mailto:agoldman@scalv.net>]
Sent: Thursday, December 01, 2016 3:31 PM
To: rauchwise@gmail.com
Cc: Duncan, Brandy A <Brandy.Duncan@scdmv.net>; Moore, Jeannine (Nina) <Jeannine.Moore@scdmv.net>
Subject: FW: 16-0255, McMahan (Request for Extension of Time)
Importance: High

Mr. Wise,

The Court has not received Respondent's brief in Docket No. 16-AJ-21-0255-AP.

I am forwarding an email from October 19th in which the Court granted you an extension until November 19th to file a brief.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

From: Anthony Goldman
Sent: Wednesday, October 19, 2016 2:19 PM
To: 'rauchwise@gmail.com' <rauchwise@gmail.com>
Cc: 'Duncan, Brandy A' <Brandy.Duncan@scdmv.net>
Subject: 16-0255, McMahan (Request for Extension of Time)
Importance: High

Mr. Wise,

The Court will grant your request for a 30 day extension of time to file Respondent's Brief.

Respondent's Brief is due on or before Wednesday, November 16, 2016.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

--
C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

South Carolina Department of Motor Vehicle,

Appellant,

v.

Christopher McMahan,

Respondent.

Docket No. 16-ALJ-21-0255-AP
SCDL No. 4172712

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 13, 2016, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing **Return to Motion to File Out of Time** to the following:

C. Rauch Wise, Esquire
Law Office of C. Rauch Wise
305 Main Street
Greenwood, South Carolina 29646

as Counsel for Respondent.



Brandy A. Duncan
Assistant General Counsel

December 13, 2016
Blythewood, South Carolina

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauchwise@gmail.com

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

December 6, 2016

Hon. John McLeod
Administrative Law Judge
1205 Pendleton st., Ste. 224
Columbia, SC 29201

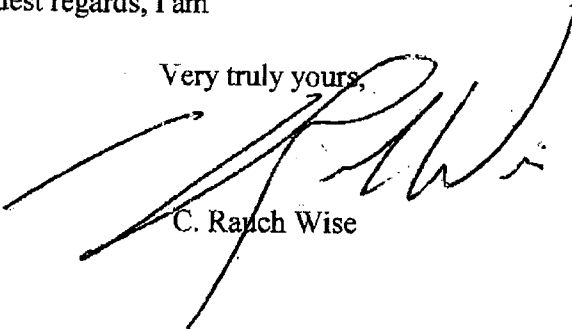
Re: SC Dept. of Motor Vehicles vs. Christopher McMahan

Dear Judge McLeod:

I am enclosing herewith for filing the original and one copy of the Motion to File Out of Time together with the original Affidavit of Service and the filing fee regarding the above matter.

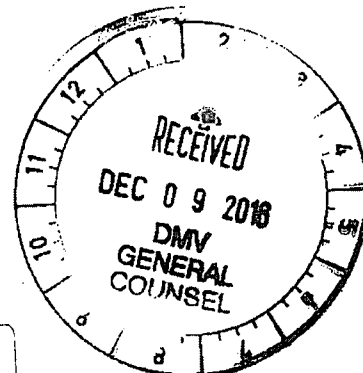
With kindest regards, I am

Very truly yours,


C. Rauch Wise

CRW/slt
Enclosure

cc Frank L. Valenta
Brandy A. Duncan



0070

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
ALJ DOCKET NO: 2016-ALJ-0255-AP

South Carolina Department of Motor Appellant

vs.

Christopher McMahan Respondent.

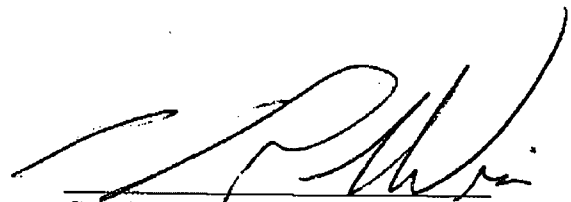
MOTION TO FILE OUT OF TIME

TO: BRANDY A. DUNCAN, ASST. GENERAL COUNSEL, SC DEPARTMENT OF
MOTOR VEHICLES:

PLEASE TAKE NOTICE that Respondent Christopher McMahan, through his attorney,
hereby moves the Court to permit the late filing of the Brief in this matter. This Motion is based
on the attached Affidavit and requests that the Respondent be given until December 27, 2016, to
file the Brief.

Greenwood, South Carolina

December 6th, 2016



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

AFFIDAVIT

PERSONALLY comes before me, C. Rauch Wise, who, after being duly sworn, deposes and says:

1. He has been retained by Christopher McMahan to represent him on an appeal from a ruling by the hearing officer. Counsel requested an extension of time until November 16, 2016, to file the Respondent's Brief.

2. Approximately one week before the date due for the Brief, the Attorney from Respondent received a phone call from Phillip S. Porter. The conversation centered around a Consent Order being issued by the S.C. Department of Motor Vehicles dismissing the appeal. Counsel for Mr. McMahan was under the distinct impression that Mr. Porter was referring to the McMahan case and not the Stewart case which is also an appeal pending in the South Carolina Administrative Law Court. Believing he was discussing a dismissal in the McMahan case, Counsel did not file the brief. He recently learned that it was the case of Robby Lee Stewart that Mr. Porter was referring that would be a dismissal.

3. Counsel requests that he be permitted to file a late brief on or before December 27, 2016. Undersigned counsel is in Court in trial on Wednesday of this week and has a post conviction relief petition hearing scheduled in Berkeley County for Friday of this week. The week of December 12, 2016, Counsel has a trial in Laurens County and an appearance before the South Carolina Supreme Court. Due to this schedule, Counsel will not be able to complete the brief until the 27th of December.

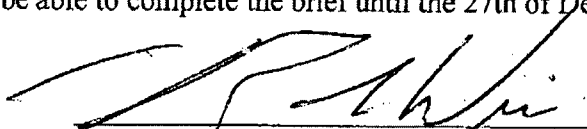
SWORN to and Subscribed

before me this 6th day

of December, 2016

Sandra Tracy (L.S.)
(Notary Public for South Carolina)

My Commission expires: 2-12-25


C. RAUCH WISE
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
ALJ DOCKET NO: 2016-ALJ-0255-AP

South Carolina Department of Motor Appellant

vs.

Christopher McMahan Respondent.

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Michelle Collins who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Respondent in the above entitled case. That on December 6, 2016, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Motion to File Out of Time in the above case addressed to Brandy A. Duncan, Asst. General Counsel, Frank L. Valenta, Jr, General Counsel, Phillip S. Porter, Deputy General Counsel, SC Department of Motor Vehicles, P.O. Box 1498, Blythewood, South Carolina 29622.

SWORN to and Subscribed

before me this 6th day

of December, 2016.

Michelle Q Collins

Sandra Traynor (L.S.)

Notary Public for South Carolina

My Commission expires: 2-12-25 St

St 2-12-25

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

December 5, 2016

The Honorable John D. McCloud
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: *Notice of Motion and Motion to Resolve Appeal Adversely to Respondent and in Appellant's Favor*
South Carolina Department of Motor Vehicles v. Christopher McMahan
Docket No. 16-ALJ-21-0255-AP
OMVH Docket No. 09-OMVH-02-2132-CC
SCDL No. 4172712

Dear Judge McCloud:

In regard to the above –referenced matter, enclosed for filing please find one original and one copy of the South Carolina Department of Motor Vehicles' Notice of Motion and Motion to Resolve Appeal Adversely to Respondent and in Appellant's Favor. 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,

A handwritten signature in black ink, appearing to read "Brandy A. Duncan".

Brandy A. Duncan
Assistant General Counsel

Enclosure

cc: C. Rauch Wise, Esquire

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

South Carolina Department of Motor Vehicle,

Appellant,

v.

Christopher McMahan,

Respondent.

Docket No. 16-ALJ-21-0255-AP
SCDL No. 4172712

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

TO: RESPONDENT CHRISTOPHER MCMAHAN AND HIS ATTORNEY(S), 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 his brief within thirty (30) days after the filing of Appellant's brief. Additionally, Rule 37(C), SCALCR requires Respondent to serve a copy of his brief on all parties to the appeal at the time of filing her brief with the Court. Moreover, the *Notice of Assignment* issued July 29, 2016 required Respondent to file his brief within thirty (30) days from the date Appellant's brief was filed. Furthermore, on October 19, 2016 this Court granted Respondent a thirty (30) day extension of time to file Respondent's Brief, explicitly stating Respondent's Brief would be "due on or before **Wednesday, November 16, 2016.**" (Emphasis in the original).

Appellant's Brief was filed on September 16, 2016. Thirty (30) days from September 16, 2016 was October 17, 2016. On October 17, 2016, Respondent's Counsel mailed a letter to the Court and parties requesting a thirty (30) day extension to file Respondent's Brief. SCDMV consented to the extension and the Court granted the extension. In granting the extension the Court explicitly stated Respondent's Brief would be "due on or before **Wednesday, November 16, 2016.**" (Emphasis in the original). 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 Anthony R. Goldman, Judicial Law Clerk to Judge John D. McCloud, on December 1, 2016, this Court has



also not received a brief from Respondent in this case. Further, as of the filing of this motion Respondent's Counsel had not responded to Mr. Goldman's December 1, 2016 e-mail (Exhibit A).

Rule 38, SCALCR provides that "an administrative law judge may... resolve the appeal adversely to the offending party for failure to comply with any 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 file and serve his brief within the time limits set by Rule 37 and this Court's Order dated July 29, 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
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

December 5, 2016
Blythewood, South Carolina

Duncan, Brandy A

From: Anthony Goldman <agoldman@scalp.net>
Sent: Thursday, December 01, 2016 3:31 PM
To: rauchwise@gmail.com
Cc: Duncan, Brandy A; Moore, Jeannine (Nina)
Subject: FW: 16-0255, McMahan (Request for Extension of Time)

Importance: High

Mr. Wise,

The Court has not received Respondent's brief in Docket No. 16-AJ-21-0255-AP.

I am forwarding an email from October 19th in which the Court granted you an extension until November 19th to file a brief.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

From: Anthony Goldman
Sent: Wednesday, October 19, 2016 2:19 PM
To: 'rauchwise@gmail.com' <rauchwise@gmail.com>
Cc: 'Duncan, Brandy A' <Brandy.Duncan@scdmv.net>
Subject: 16-0255, McMahan (Request for Extension of Time)
Importance: High

Mr. Wise,

The Court will grant your request for a 30 day extension of time to file Respondent's Brief.

Respondent's Brief is due on or before **Wednesday, November 16, 2016.**

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

South Carolina Department of Motor Vehicle,

Appellant,

v.

Christopher McMahan,

Respondent.

Docket No. 16-ALJ-21-0255-AP
SCDL No. 4172712

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 5, 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:

C. Rauch Wise, Esquire
Law Office of C. Rauch Wise
305 Main Street
Greenwood, South Carolina 29646

as Counsel for Respondent.



Brandy A. Duncan
Assistant General Counsel

December 5, 2016
Blythewood, South Carolina

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor
Vehicles,

Appellant,

vs.

Christopher McMahan,

Respondent.

Docket No. 16ALJ-21-0255-AP

RECORD ON APPEAL

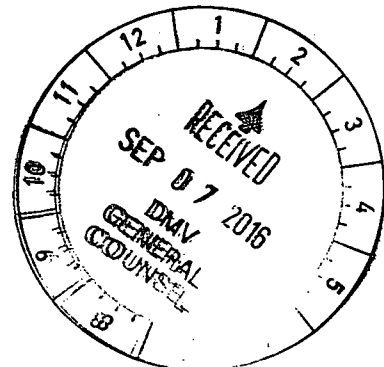
THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM
SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Tracy Holland, Hearing Officer

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, South Carolina
(803) 896-9902
Attorney for Appellant

Thomas P. Austin, Esquire
P.O. Drawer 799
Greenwood, SC 29648-0799
864-229-2569
Attorney for Respondent



060601

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- ☒ Request for Transcript
- ☐ No Transcript Request Received
- ☐ No appeal served on OMVH as required in accordance with ALC Rule 33
- ☐ Transcript Ordered/Pending
- ☒ Audiotape Request
- ☐ Brief of Appellant
- ☒ Notice of Appeal
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- ☒ Final Order and Decision *Amended / Original*
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- ☐ Character Affidavits
- ☒ Official 10-year Driver Record
- ☐ VHS/DVD available in OMVH office
- ☒ Other Exhibits *Traffic Tickets, DMV Letters, Motions*
Affidavit of Resp.

Pre-Hearing 3

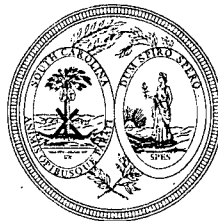
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- ☐ PPP Suspension Notice
- ☐ Official 10-year Driver Record
- ☒ Written Request for Hearing
- ☒ SCDMV Notice of Suspension
- ☒ General Correspondence

Certificate of Service 4

060602

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 6, 2016

Jana Shealy, Clerk
SC Administrative Law Court
1205 Pendleton Street, Ste 224
Columbia, SC 29201

Re: S.C. Dept of Motor Vehicles
vs
Christopher McMahan
SCDL/Customer NO. 004172712

Dear Ms. Shealy:

In compliance with Section 1-23-380 (d) of the 1976 Code of Laws of South Carolina, please find enclosed a certified copy of the record for the Judge's review. Please file in the appropriate case file. This is a petition for judicial review of the administrative decision, which was filed in the South Carolina Administrative Law Court.

If we can be of any further assistance, please advise.

Sincerely,

Yolanda P. Williams
Administrative Coordinator, OMVH

Cc: Thomas P. Austin, Equire
Frank L. Valenta, SCDMV General Counsel

000003

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Motor
Vehicles,

Appellant,

vs.

Christopher McMahan,

Respondent.

NOTICE OF ASSIGNMENT
(Appeal)

DOCKET NO. 16-ALJ-21-0255-AP

NOTICE IS GIVEN that a notice of appeal seeking review of a decision of the Office of Motor Vehicle Hearings was filed on July 26, 2016. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2015), the **Honorable John D. McLeod**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

FURTHER, NOTICE IS GIVEN that the parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

Record on Appeal	Due within forty-five (45) days of the date of this Notice
Appellant's Brief	Due within thirty (30) days after the Record on Appeal is filed
Respondent's Brief	Due within thirty (30) days after the Appellant's Brief is filed
Reply Brief	Due within ten (10) days after the Respondent's Brief is filed

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

This the twenty-ninth day of July, 2016.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy

Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

JUL 29 2016

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of)
Motor Vehicles,)
)
Petitioner,)
)
vs.)
)
Christopher Eric McMahan,)
)
Respondent.)
-----)

COPY

HEARING

May 19, 2016



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

0083

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1 **HEARING OFFICER:** My name is Tracy Holland and I've
2 been appointed by the Office of Motor Vehicle
3 Hearings and Administrative Law Court to
4 preside over this contested case hearing. For
5 departmental reference, this is docket number
6 09-OMVH-02-2132 in reference to the issuance of
7 a notice of suspension to Christopher Eric
8 McMahan issued a notice of suspension on April
9 17th, 2009, for first -- being declared a
10 habitual offender issued by the Department of
11 Motor Vehicles. All parties have been notified
12 this is a rescheduled hearing for May 19, 2016,
13 here at the Greenwood County Park Plaza,
14 Greenwood, South Carolina. All parties have
15 been notified of this hearing for today. Let
16 the record show that Mr. McMahan is present.
17 He's also represented by legal counsel,
18 Attorney Thomas P. Austin. Let the record show
19 that the Department of Motor Vehicles is
20 present pursuant to the filing of
21 documentation. I received several. I got
22 three one -- well, the first one is 19 pages
23 and then the second document that they sent is
24 31 pages. This was February -- February 29th,
25 2016, and the other one is dated -- for the

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1 beginning date, because like I said, this is 19
2 pages, this is dated January 27th, 2016. Having
3 -- because they're not required pursuant to the
4 law to be present at this -- these
5 administrative hearings since they filed
6 certified to be true and correct documentation.
7 This hearing is tape recorded for departmental
8 reference and it is a matter of public record.
9 You have been afforded this hearing pursuant to
10 your request back in 2009. So, if the
11 respondent would please state your full name
12 and your address for the record.

13 **MR. McMAHAN:** Christopher Eric McMahan. 105 Rock
14 Creek Drive, Greenwood, South Carolina.

15 **THE COURT:** 29 --

16 **MR. McMAHAN:** 29646.

17 **THE COURT:** Please raise your right hand. Do you
18 solemnly swear the testimony you give in this
19 matter will be the truth, the whole truth, and
20 nothing but the truth?

21 **MR. McMAHAN:** I do.

22 **THE COURT:** Thank you. Attorney Austin, you stated
23 you had an opening statement or objection?

24 **OPENING REMARKS:**

25 **MR. AUSTIN:** I do. I have a few matters. First



1 off, I'm objecting to the -- the hearing being
2 conducted today. The record will show that a
3 hearing request was actually hand delivered to
4 the Department of Motor Vehicles back in May of
5 2009. Pursuant to that request for a hearing,
6 in which we actually put the -- and I have
7 submitted to Your Honor a Motion to Compel
8 Production of Order, Motion to Dismiss, Motion
9 to Rescind, and Notice of Objections, and I'd
10 like that to be made part of the record in this
11 case. In any event, I have included in the
12 packet a copy of my May 14, 2009, letter, and
13 I actually put the Department on notice that
14 one of the reasons we were objecting to the
15 declaration of habitual offender was because my
16 client had not been properly informed or
17 notified of his suspensions. The Department
18 then produced a packet, which was submitted at
19 the July 9, 2000, hearing and as you have
20 indicated, that was a packet containing 19
21 pages of documentation. We have submitted to
22 you not only this motion, but also affidavit of
23 my client wherein the gist of it being that we
24 came to the hearing, that there were several
25 basis or grounds made for objecting to the

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1 declaration or attempted declaration of
2 habitual offender of my client that after the
3 hearing was completed, which we had thought was
4 being recorded, we actually had that hearing
5 with a Mr. Harley --

6 **THE COURT:** Uh-huh (affirmative response).

7 **MR. AUSTIN:** -- and afterwards, he informed us that
8 my client would be getting a letter in the mail
9 that would indicate that he was not being
10 declared as a habitual offender because the
11 State had failed to produce the proper
12 evidence, most importantly, the tax notice as
13 required by Section 12-37-2740. As indicated
14 in our brief and our affidavit of my client and
15 myself and his -- actually his stepfather was
16 here, too, sat here and talked with Mr. Harley,
17 he was incredibly nice. My client asked him
18 what he needed to do to go ahead and reinstate
19 his driver's license. He gave him all of the
20 information. My client then undertook to go
21 ahead and have all of that done. He paid the
22 taxes; he paid all of the reinstatement fees
23 and my client has been driving lawfully now
24 since 2009. I then received an e-mail on I
25 believe it was about February 9th of 2016 with



1 a notice -- it was an order of continuance and
2 notice of new hearing. I had thought that the
3 matter had been resolved and closed my file.
4 We had to actually go to another building to
5 get my file back out, contacted Eric McMahan
6 and asked him if he had his driver's license.
7 He indicated he had. He could not recall
8 whether or not he had received the order and I
9 did not have a copy of the order in my file,
10 but it didn't make sense that he had gotten his
11 driver's license back seven years ago and they
12 were doing this. I then -- I don't know how I
13 ended up contacting Brandy Duncan, but I ended
14 up contacting Brandy Duncan. I have included
15 my e-mail correspondence with both her and a
16 lady named Esther Hayman, I think is her name.

17 **THE COURT:** Yes, uh-huh (affirmative response).
18 She's the senior -- let me address who these
19 persons are you you're speaking of.

20 **MR. AUSTIN:** Okay.

21 **THE COURT:** Esther Hayman is a senior staff counsel
22 with the Office of Motor Vehicle Hearings.

23 **MR. AUSTIN:** Okay.

24 **THE COURT:** And Ms. Brandy --

25 **MR. AUSTIN:** Duncan.



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1 **THE COURT:** -- Duncan, she's with the Department of
2 Motor Vehicles General Counsel.

3 **MR. AUSTIN:** Okay.

4 **THE COURT:** Is who her official title so we can --
5 so she's representation -- legal counsel for
6 the SCDMV General Counsel is who she is.

7 **MR. AUSTIN:** Ms. Duncan was very nice. We talked on
8 the phone and then I actually -- we had a
9 follow-up e-mail exchange and I have also
10 included the e-mail exchange which eventually
11 included Ms. Hayman and in that e-mail exchange
12 which took place on February 24th of 2016, and
13 this was also in the phone conversation, Ms.
14 Duncan asked me how did I know that we had had
15 a hearing and I explained to her that my client
16 remembered who actually -- that there was
17 actually an African American male that did the
18 hearing. To be honest with you, it's been so
19 long, I forgot and thought it was you.

20 **THE COURT:** Uh-huh (affirmative response).

21 **MR. AUSTIN:** And then as we went through it, it
22 started kind of coming back to us. And she
23 asked me how I knew that the case -- that the
24 ruling was that the habitual offender
25 declaration would be rescinded and I told her



1 that was because when we went to the hearing,
2 there was in the packet that was given by the
3 State, they failed to include proper
4 documentation of several things, including the
5 proper notice pursuant to 12-37-2740. That is
6 actually in my e-mail to her. Ms. Hayman
7 responded at one point and indicated that
8 apparently the -- there was a failure of audio
9 equipment that day and then their IT guy can't
10 -- can't find the recordings from Mr. Harley's
11 hearings apparently. And she's sorry that this
12 happened, but that we've got to have another
13 contested hearing, which of course I'm
14 objecting to at this point. What is bothersome
15 to me, as well, and I think this is patently
16 unfair, is that seven years later, you know, I
17 explained to the petitioner through counsel
18 what the basis for the dismissal was and five
19 days later, she then sends in a packet that now
20 has 31 pages of documentation in it and is
21 including the information that the petitioner
22 failed to submit at the hearing in 2009. And
23 that is patently unfair, as well. I have
24 submitted to the -- to the tribunal my motion,
25 which sets out how everything's happened. I



1 also reference that based on all the
2 circumstances of this case, I think that we
3 have a collateral estoppel argument. I think
4 that it's patently unfair what the petitioner
5 is attempting to do at this point. I think my
6 client's due process -- there's a violation of
7 due process -- there's a violation of due
8 process and I also point to the tribunal to
9 Hipp v. South Carolina Department of Motor
10 Vehicles, which I believe is a 2009 case where
11 it was a similar case circumstance where the
12 Department is attempting after many years to go
13 back and suspend somebody's right to drive and
14 I have -- I think I got a copy -- yeah -- have
15 I copied that for you?

16 **THE COURT:** Yes, sir, you submitted. There's no one
17 here -- let the record show that there's no one
18 here from the Department of Motor Vehicles to
19 object to the offering of your -- your argument
20 in writing. This first one is four pages and
21 then you also included an affidavit from
22 respondent, which I can still hear from him,
23 he's present, which is three pages; and then
24 also your letter dated May 14th, 2009, as in
25 your representation of the respondent included



1 in that; and then printed out e-mail
2 correspondence between yourself, Ms. Duncan,
3 and Ms. Hayman, as well as a copy of the case
4 law of Charles R. Hipp v. SC Department of
5 Motor Vehicles.

6 MR. AUSTIN: Correct.

7 THE COURT: State Supreme Court ruling and decided
8 in January 2009. Okay. And so let me address
9 the first argument -- objection.

10 MR. AUSTIN: Okay.

11 THE COURT: Okay. Due to the fact that OMVH cannot
12 locate their audio, as well as any notations of
13 this administrative hearing, your position is
14 that the hearing did occur --

15 MR. AUSTIN: Correct.

16 THE COURT: -- and your objection to a second
17 hearing being held?

18 MR. AUSTIN: Correct.

19 THE COURT: So I'm going to overrule your objection
20 and hold the hearing because there was not a
21 written order documented to make the hearing
22 that occurred official. So your second
23 argument is that you -- if -- that I am to only
24 consider documentation submitted in 2009.

25 MR. AUSTIN: Correct.



1 **THE COURT:** Not any new documentation, is that
2 correct?

3 **MR. AUSTIN:** For many reasons.

4 **THE COURT:** Okay. And I will -- I will hold your
5 ruling -- that ruling in my order. I will make
6 a decision on that ruling in my order when I
7 sit and make the decision, okay. So I'm going
8 to go ahead and hold the hearing. The
9 documentation DMV submitted, like I say the
10 first one they submitted because we have on
11 record is a letter that was -- one that's 19
12 pages was dated January 27th, 2016, and it's
13 just a cover letter and then it's just a cover
14 letter saying that this is what I have in the
15 record. This is a letter, January 27, 2016,
16 and these two -- and May 18, 2009 --

17 **MR. AUSTIN:** Right, right.

18 **THE COURT:** -- these are the documents you are
19 wanting me to consider?

20 **MR. AUSTIN:** Right.

21 **THE COURT:** May 19, 2009.

22 **MR. AUSTIN:** May 18.

23 **THE COURT:** May 18, thank you.

24 **MR. AUSTIN:** And, for the record, the only
25 documentation that was submitted at the first



1 hearing was the traffic tickets, a suspension
2 letter from DMV, the habitual letter warning --
3 habitual offender warning letter, and his
4 driving record, and that was all that was
5 submitted.

6 **THE COURT:** Yes, sir. Okay. And then in your
7 second argument -- third argument is that the
8 documentation that the DMV is now trying to
9 supplement which is 31 pages because it's got
10 several enclosures, is what you're objecting
11 not to be considered?

12 **MR. AUSTIN:** Correct. I mean, after -- after I
13 point out, you know, having a conversation with
14 counsel and explaining to them how I knew that
15 the hearing had taken place and how I knew that
16 the ruling was going to be -- that there was
17 going to be a rescission of the habitual
18 offender declaration or there would be no
19 finding of habitual offender, that four days
20 later after -- and I sent an e-mail explaining
21 to her this was -- this was why I knew we had
22 this going on, then -- or five days later, the
23 Department then supplements an additional
24 eleven -- or no, twelve pages worth of
25 documentation to try to bolster their position



1 seven years later. This is almost like a
2 double jeopardy type situation.

3 **THE COURT:** Okay. So then I did make a ruling on
4 the first one that we will have a hearing and
5 your objection is still standing.

6 **MR. AUSTIN:** Yes.

7 **THE COURT:** That you're objecting to the hearing?

8 **MR. AUSTIN:** Yes, so -- yes, and based on --

9 **THE COURT:** And that because the hearing --

10 **MR. AUSTIN:** -- the Hipp case, as well.

11 **THE COURT:** And, two, the fact that a hearing was
12 actually held --

13 **MR. AUSTIN:** Yes.

14 **THE COURT:** -- not that a hearing was rescheduled
15 and it was never conducted.

16 **MR. AUSTIN:** No, we had a hearing.

17 **THE COURT:** We actually had a hearing before a
18 hearing officer, Robert Harley, which is an
19 African American male --

20 **MR. AUSTIN:** Correct.

21 **THE COURT:** And, like I said, during that
22 transition, which it was a transitional time,
23 that, you know, was unbeknownst and
24 uncontrolled -- cannot be controlled by
25 yourself or your -- or the respondent and so



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1 when -- as the record shows looking back on it,
2 an order was not written. So it's basically
3 having an order to be written, but you're
4 wanting the evidence that Hearing Officer
5 Harley looked -- the evidence that he received
6 is the same evidence you want me to receive?

7 **MR. AUSTIN:** If -- if --

8 **THE COURT:** And look at?

9 **MR. AUSTIN:** If you're going to have your hearing
10 again, it should be a hearing based on the
11 evidence --

12 **THE COURT:** -- on the same rules.

13 **MR. AUSTIN:** -- on the same evidence, not additional
14 evidence.

15 **THE COURT:** All right. And so the evidence in the
16 record, like I said, I will make my ruling in
17 my order. So the evidence that's in the record
18 for the record, we have uniform traffic ticket
19 10065EEZO, like ocean, and then uniform traffic
20 ticket 64031D, delta, W, whiskey; uniform
21 traffic ticket Z, zebra, 334691, suspension
22 letter dated April 17th, 2009; habitual offender
23 warning letter dated May 24, 2007; and a
24 certified driving record.

25 **MR. AUSTIN:** Yes.



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1 **THE COURT:** And those are the only documents that
2 you are wanting to be considered that was
3 considered at the first hearing before Hearing
4 Officer Robert Harley?

5 **MR. AUSTIN:** And I believe the other thing that we
6 had pointed out to Mr. Harley was that my
7 client, as evidenced by the -- by the tickets
8 that have been submitted, he had changed his
9 address of his driver's license to the 219
10 Greenway Drive, but for some reason, even as
11 late as 2007, they continued -- the Department
12 continued to send these notices, for example
13 the May 24th, 2007, notice, they continued to
14 send it to a 435 Halthiwanger Road, Apartment
15 22, which obviously my client's driver's
16 license had been changed because that's when
17 the trooper -- no, this was a city officer,
18 took down the information from the driver's
19 license, he put down the correct address. So
20 my client had changed his address, but for some
21 reason any notices or whatever were being sent
22 to an old address that he lived in up until I
23 think 2003.

24 **MR. MCMAHAN:** Correct.

25 **MR. AUSTIN:** 2003.



1 THE COURT: Okay. And then in that particular
2 hearing, there was an argument that you made?

3 MR. AUSTIN: That the notices were not sent to the
4 proper -- right address, that in addition, the
5 notices as required by 12-37-2740(a) was not
6 submitted to be considered and that is -- it
7 says the letter must advise them of the pending
8 suspension and steps necessary and that was not
9 submitted to the tribunal.

10 THE COURT: So then I will turn over your
11 questioning to the respondent. You've been
12 sworn in, Mr. McMahan.

13 MR. MCMAHAN: Yes, ma'am.

14 MR. AUSTIN: And you go by -- you go by Eric, is
15 that correct?

16 MR. MCMAHAN: Correct.

17 MR. MCMAHAN - DIRECT EXAMINATION BY MR. AUSTIN:

18 Q: Eric, first off, in 2004, where were you
19 living?

20 A: I was living at 2 -- 219 Greenway Drive.

21 Q: All right. And did you change your driver's
22 license information with the DMV?

23 A: I did and it's plainly stated on the ticket.

24 Q: All right. And so when you received -- when
25 you received the tickets that you received,



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1 they all have the Greenway Drive address,
2 correct?

3 A: Correct.

4 Q: It appears that pursuant to the first packet
5 that we received from DMV, not the packet we
6 just received this year, that notices were
7 being sent to a Haltiwanger address and you
8 have not lived there since 2003, is that
9 correct?

10 A: Correct.

11 Q: Subsequent to living on the Greenway Drive
12 address, you have kept up with or changed your
13 address with the DMV each time you've moved, is
14 that correct?

15 A: I have.

16 Q: So you never received any of the notices that
17 were sent to this Haltiwanger address?

18 A: I did not.

19 Q: Now, they have submitted now, over my
20 objection, a -- another -- now they've
21 submitted this tax notice, but, again, this tax
22 notice is going to the Haltiwanger address, is
23 that correct?

24 A: Correct.

25 Q: And your driver's license clearly shows --



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1 should have been on record with DMV that was
2 not your address?

3 A: That is correct.

4 Q: You never received that notice, did you?

5 A: I did not.

6 Q: In addition, another argument that was made at
7 the prior hearing was that when you were --
8 when you were paying these tickets or whatever,
9 you never went before a judge when you made the
10 -- when you paid the driving under suspension
11 tickets, is that correct?

12 A: Correct.

13 Q: You just went and they told you how much the
14 fine was and you paid the fine, is that
15 correct?

16 A: Correct.

17 Q: And for some reason, and, again, this is not in
18 the initial packet, but in the second packet
19 that they sent, the Court where you went and
20 paid the fine actually has -- has the correct
21 address, but for some reason DMV doesn't have
22 the correct address. For example, you paid
23 your ticket on the Newberry ticket and they
24 have your address listed as the -- and driver's
25 license listed as Greenway Drive, but for some



1 reason, the Department continues to send -- or
2 did continue to send notices to Haltiwanger, is
3 that correct?

4 A: Correct.

5 Q: After -- did we have a hearing back in July of
6 2009?

7 A: We did.

8 Q: Do you recall who was present at the hearing?

9 A: Mr. Harley.

10 Q: And was there anybody else that came with you?

11 A: My stepfather drove me up here.

12 Q: And why did you have your stepfather drive you
13 up here?

14 A: Because I was uncertain what was going to
15 happen with the hearing.

16 Q: All right. Did we present to Mr. Harley the
17 same objections that we have today?

18 A: We did.

19 Q: And did he have a computer sitting in front of
20 him like -- were we actually in this room?

21 A: We were in the building, but I'm not sure.
22 There again, because the time --

23 Q: But we were in this building?

24 A: Correct.

25 Q: And did he conclude the hearing at some point?



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1 A: He did.

2 Q: And did we then sit and talk with him for a few
3 minutes?

4 A: We did.

5 Q: And did he tell you what his decision was going
6 to be?

7 A: Yes, he said that he was going to deny the
8 habitual offender.

9 Q: Okay. And what else did he tell you?

10 A: Told me what I needed to do to get my license
11 reinstated.

12 Q: All right. And so after that, you went and did
13 everything you were supposed to do to get your
14 license reinstated?

15 A: Paid all back taxes and reinstatement fees.

16 Q: And then I believe the Department ended up
17 issuing you a driver's license some time later
18 in 2009, is that correct?

19 A: That's correct.

20 Q: And since 2009, you have been driving, is that
21 correct?

22 A: Correct.

23 Q: Have you had a speeding ticket or any other
24 kind of ticket since 2009?

25 A: I have not.



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1 Q: And are you -- you, likewise, object under the
2 same basis that I have to this hearing, is that
3 correct?

4 A: I do.

5 Q: And based on the information that would be
6 submitted or was submitted at the original
7 hearing, standing on that, you are making the
8 same motion to rescind the decision or attempt
9 to find you as a habitual offender, is that
10 correct?

11 A: Correct.

12 Q: All right. Thank you.

13 **THE COURT:** And so to clarify, I just have one
14 clarifying question, and I understand about the
15 addresses, so his position is that he did not
16 receive notice from the property tax office of
17 -- as pursuant to the section of law you've
18 quoted for the record, 12-37-2740, and that a
19 letter must advise a person and the letter must
20 be developed by the County Treasurer's office
21 with the DMV and use uniformity throughout the
22 State. So the -- he did not receive notice
23 from the tax office, nor Department of Motor
24 Vehicles?

25 **MR. AUSTIN:** Right.



1 THE COURT: Is that correct?

2 MR. AUSTIN: And that's not included -- that is also
3 not included in the packet that was submitted
4 to Mr. Harley.

5 THE COURT: Which is now trying to be --

6 MR. AUSTIN: Well, now, they're trying to submit it.

7 THE COURT: Okay.

8 MR. AUSTIN: But even if they were to submit it
9 today, it's still the wrong address and clearly
10 his driver's license had been changed and maybe
11 I'm making the wrong assumption, but I'm
12 assuming that when a person goes to the DMV and
13 updates their information and changes an
14 address on a driver's license, that it would go
15 into a system where they would then send
16 notices.

17 THE COURT: So 219 Greenway Drive is incorrect?

18 MR. AUSTIN: No.

19 THE COURT: That is correct?

20 MR. AUSTIN: he lived at 2 -- he lived --

21 THE COURT: Here we go.

22 MR. AUSTIN: He lived on Greenway Drive --

23 THE COURT: Okay.

24 MR. AUSTIN: -- from 2004 until 2009 --

25 MR. MCMAHAN: Yeah, that's when we bought



1 (inaudible).

2 MR. AUSTIN: Okay. And the notices were being sent
3 to a Haltiwanger -- all the notices, even as
4 late as 2007, were being sent to a Haltiwanger
5 address.

6 MR. McMAHAN: 35 (inaudible)

7 MR. AUSTIN: Yeah, and if you look at --

8 THE COURT: See, he changed that October --

9 MR. AUSTIN: -- the tickets --

10 THE COURT: -- 2008 is when you changed that
11 address. In 2008, you changed it to
12 Haltiwanger.

13 MR. AUSTIN: No, no.

14 THE COURT: No?

15 MR. AUSTIN: No, in fact, here's a --

16 THE COURT: You changed it to --

17 MR. AUSTIN: Here's a ticket from --

18 THE COURT: -- oh, 219 Greenway Drive.

19 MR. McMAHAN: I lived at Haltiwanger prior to --

20 THE COURT: To Greenway.

21 MR. McMAHAN: -- to Greenway Drive, yes, ma'am.

22 MR. AUSTIN: Right.

23 THE COURT: Okay. So you changed from Haltiwanger
24 to Greenway --

25 MR. McMAHAN: Yes.



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1 THE COURT: -- Drive?

2 MR. McMAHAN: Yes, ma'am.

3 THE COURT: So that's the last known address is
4 Greenway Drive and when did you change to
5 Greenway Drive? When did you change that?

6 MR. McMAHAN: That would have been --

7 MR. AUSTIN: 2004?

8 MR. McMAHAN: Yeah, 2004.

9 THE COURT: 2004?

10 MR. McMAHAN: Because we looked up the --

11 MR. AUSTIN: Yeah.

12 MR. McMAHAN: On GIS.

13 THE COURT: Because this is your -- see, here, your
14 ID card was issued -- an ID card -- wait a
15 minute. '97, you got Wade Avenue in Greenwood;
16 2002, 2220 Montague Avenue; 2013, Roman Circle;
17 and in 2008, Haltiwanger.

18 MR. AUSTIN: And, see, that doesn't -- that's where
19 there seems to be a disconnect between our
20 local DMV I guess because if you look at all --
21 like, for example, the ticket in 2007, it's the
22 Greenway Drive address. That's his driver's
23 license is showing the Greenway Drive address.
24 But for some reason, the Department never
25 changed it I guess in their system.



1 THE COURT: Well, they wouldn't have changed it from
2 the ticket. See, only --

3 MR. AUSTIN: No, that was on his driver's license.

4 THE COURT: Right, exactly. You're right, on his
5 driver's license, 219 Greenway Drive.

6 MR. AUSTIN: Right, but for some reason, they're
7 sending all the notices --

8 THE COURT: To Haltiwanger.

9 MR. AUSTIN: -- to the Haltiwanger address.

10 THE COURT: And you changed that in --

11 MR. AUSTIN: In 2000 --

12 MR. MCMAHAN: And I'm trying to keep up with my
13 dates --

14 THE COURT: Yeah.

15 MR. MCMAHAN: -- but, there again, it's been so long
16 that they're expecting me to remember --

17 THE COURT: Right.

18 MR. MCMAHAN: -- dates that, you know, I've
19 forgotten about.

20 THE COURT: Right. It's -- but technically, out of,
21 you know, the -- the -- in 2009, the address on
22 your record in 2009 was Greenway Drive.

23 MR. AUSTIN: And for some reason if you look at the
24 new packet they sent, there is actually an
25 amended notice in there because apparently they



1 sent the first notice to Haltiwanger again and
2 then ended up sending it to -- I'm sorry,
3 Tracy.

4 **THE COURT:** That's okay.

5 **MR. AUSTIN:** Yeah, here's August of 2004,
6 Haltiwanger. That's where they sent it.

7 **THE COURT:** Right.

8 **MR. AUSTIN:** Let's see, they continue -- even though
9 the tickets are showing he doesn't live on
10 Haltiwanger, the driver's license wasn't
11 Haltiwanger, they continued 2007 sending to
12 Haltiwanger. 2007 --

13 **THE COURT:** But they -- but the point -- the
14 argument you're making is that the package that
15 they sent in 2009 did not include the notice of
16 his property taxes regardless of what address
17 they could have sent it to --

18 **MR. AUSTIN:** It didn't include it.

19 **THE COURT:** It -- on the date of the original
20 hearing, and that's the documentation you want
21 me to consider is the same documentation that
22 was presented to Hearing Officer Robert Harley
23 --

24 **MR. AUSTIN:** Right.

25 **THE COURT:** -- is the documentation you are wanting



1 me to consider, not this new supplemental
2 documentation --

3 MR. AUSTIN: Right.

4 THE COURT: -- that they're now wanting to introduce
5 that includes what was missing back in 2009, is
6 that your position?

7 MR. AUSTIN: Yeah, if I'm going to have to -- if I'm
8 objecting to this -- to a hearing, but if I
9 have to have --

10 THE COURT: Yes.

11 MR. AUSTIN: -- the same hearing again --

12 THE COURT: You want the same documentation.

13 MR. AUSTIN: -- then I want the same documentation.

14 THE COURT: Okay. Okay. I understand the -- I now
15 understand the dynamics of what has -- you
16 know, as all the evidence and testimony has
17 come in, I have a better understanding. And,
18 again, I'm going to wait and make my ruling in
19 my order and even -- even if I find -- I said
20 I overruled the fact because it was a written
21 order, it was not written and that we would
22 still have this, I'm going to hold that in
23 standing, as well.

24 MR. AUSTIN: Because that is part of --

25 THE COURT: We've all let it come into the record.



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060632

1 **MR. AUSTIN:** -- one of -- one of my motions is that
2 I motion to compel the Department to issue the
3 order that we were told verbally was going to
4 be issued.

5 **THE COURT:** Correct. And, yes, sir, I understand.
6 Okay. And I have -- like I say, there's no one
7 from the Department of Motor Vehicles to object
8 to your documentation. Of course, any -- any
9 case law that you introduce, there's no
10 objection can be made because that's case law,
11 but I have an affidavit, even though Mr.
12 McMahan testified. Mr. McMahan, you signed
13 this affidavit and everything you wrote in this
14 is true and correct, is that correct? Having
15 been sworn in, everything that you wrote in
16 this --

17 **MR. MCMAHAN:** Yes, ma'am.

18 **THE COURT:** And that you want me to consider, even
19 though you didn't verbally say some of the
20 things that was written, it is still to be
21 considered as part of the record, correct?

22 **MR. MCMAHAN:** Correct.

23 **THE COURT:** Okay. And then also, Attorney Austin,
24 I have your objection as to compel the
25 production of the order and dismiss, motion to



1 rescind and notices of objection, etcetera.
2 And then these e-mails, as well, I will accept
3 that as documentation as to what's transpired
4 and what -- how things -- the dynamics of
5 things, why, how, yeah. So --

6 **MR. AUSTIN:** And, in particular, the supplementation
7 of evidence that wasn't presented.

8 **THE COURT:** And can I keep this case law, please?

9 **MR. AUSTIN:** Sure.

10 **THE COURT:** I mean, this is section of law.

11 **MR. AUSTIN:** Sure.

12 **THE COURT:** I know I'm taking it from your records,
13 but --

14 **MR. AUSTIN:** That's okay.

15 **THE COURT:** I can still --

16 **MR. AUSTIN:** That's actually what I presented to Mr.
17 Harley back in 2009.

18 **THE COURT:** 2009, was this section of law and that
19 was your argument -- original argument.

20 **MR. AUSTIN:** That was one of them, yes.

21 **THE COURT:** Okay. All right. Do you have any
22 further? A closing statement?

23 **MR. AUSTIN:** No, ma'am.

24 **THE COURT:** All right. This administrative hearing
25 is adjourned and you will be notified in



1 writing as to the results.

2 MR. AUSTIN: Yeah, we will.

3 THE COURT: This hearing is adjourned. Thank you.

4 (There being nothing further, the hearing was
5 concluded.)

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CERTIFICATE

This is to certify the transcript of the hearing consists of thirty four (34) 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 August 25, 2016.

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

Yolanda Williams

Transcript Request Appeal

From: Yolanda Williams
Sent: Wednesday, July 27, 2016 12:32 PM
To: Creel Reporting (amanda@creelreporting.com); crystal@creelreporting.com
Subject: Transcript Request for Christopher McMahan- 09-OMVH-02-2132-CC
Attachments: McMahan, Christopher d092132_20160519-1157_01d1b1c5a84e1c20.wma

Tracking:	Recipient	Read
	Creel Reporting (amanda@creelreporting.com)	
	crystal@creelreporting.com	Read: 7/27/2016 12:44 PM

Attached please find the transcript request for Christopher McMahan. 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

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

June 23, 2016

Jeannine Moore,
Paralegal
SCDMV, Office of General Counsel
P.O. Box 1498
Blythewood, SC 29016

Re: Christopher McMahan
Docket No. 09-OMVH-02-2132
Hearing Date: May 19, 2016

Dear Ms. Moore:

Per your request I have enclosed a copy of the audiotape(s) for the above referenced hearing(s). Our office has recently transitioned to digital recording for all of our hearings. The audio has been converted to a Windows Media Player file and you should be able to use it for any Windows PC.

If you have any questions or any additional information, please feel free to contact our office.

Sincerely,

Yolanda P. Williams
Administrative Coordinator, SCOMVH

Enclosure

060638

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

June 22, 2016

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

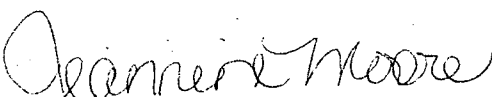
RE: SCDMV v. Christopher McMahan
Docket No.: 2009-OMVH-02-2132

Dear Ms. Williams,

This is to request a copy of the audio tape recording of the hearing held in the above matter before Hearing Officer Tracy Holland on May 19, 2016. Please find enclosed a blank CD per your instructions. We would appreciate your expediting this request as it is needed for purposes of filing a Motion to Reconsider which is due by our calculations on July 1, 2016.

As always, thank you so very much for your assistance.

Sincerely,


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Enclosure

FILED

JUN 23 2016

SCOMVH

RECEIVED

JUN 23 2016

SCOMVH

Mark Sanford
Governor



Marcia S. Adams
Director

State of South Carolina
Department of Motor Vehicles

July 26, 2016

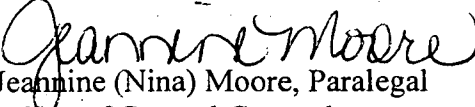
Yolanda P. Williams
Administrative Coordinator
Office of Motor Vehicles Hearings
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 325
Columbia, South Carolina 29201

RE: **Transcript Request**
South Carolina Department of Motor Vehicles v. Christopher McMahan
Docket No. 09-OMVH-02-2132-CC
SCDL No. 4172712
Hearing Date: May 19, 2016
Amended Order Date: July 21, 2016
Hearing Officer: Tracy G. Holland

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 may send it by US Mail or by interagency mail.

Sincerely,


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

cc: Thomas P. Austin, Esquire
Jana E. Shealy, Clerk, Administrative Law Court

FILED

JUL 26 2016

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JUL 27 2016

SCOMVH 000040

Post Office Box

0118

olumbia 29016

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

July 26, 2016

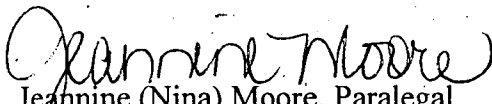
The Honorable Jana E. Shealy
Clerk, South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: *South Carolina Department of Motor Vehicles v. Christopher McMahan*
OMVH Docket No. 09-OMVH-02-2132-CC
SCDL No. 4172712

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: Thomas P. Austin, Esquire
Yolanda P. Williams, Admin. Coordinator, OMVH

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

South Carolina Department of Motor Vehicles,

Petitioner,

v.

Christopher McMahan,

Respondent.

Docket No. 09-OMVH-02-2132-CC
SCDL No. 4172712

NOTICE OF APPEAL

On or about July 21, 2016, the South Carolina Department of Motor Vehicles (SCDMV) received the Amended Final Order and Decision issued on July 21, 2016, resulting from a hearing held on May 19, 2016, before the Office of Motor Vehicle Hearing Officer Tracy G. Holland (copy attached). The SCDMV respectfully petitions this Court for review of the Amended Final Order and Decision based upon the following:

The holding by the Hearing Officer that the Respondent's conviction under S.C. Code Ann. § 56-1-520, does not qualify as a major traffic offense for Driving Under Suspension pursuant to S.C. Code § 56-1-1020, and thereby does not qualify Respondent as a habitual offender is erroneous as a matter of fact and of law. Therefore, it was error for the Hearing Officer to rescind the Respondent's suspension on those grounds in view of the reliable, probative and substantial evidence produced at the hearing and characterized by an arbitrary or capricious abuse of discretion or a clearly unwarranted exercise of discretion.

[signature on next page]

Respectfully submitted,



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

General Counsel

PHILIP S. PORTER, SC Bar # 4526

Deputy General Counsel

BRANDY A. DUNCAN, SC Bar # 72052

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

July 26, 2016
Blythewood, South Carolina

FILED

JUL 26 2016

SCOMVH

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

South Carolina Department of Motor Vehicles,	)	Docket No. 09-OMVH- 02-2132- CC
	)	
Petitioner,	)	
	)	
v.	)	AMENDED
	)	FINAL ORDER AND DECISION
	)	
Christopher McMahan,	)	
	)	
Respondent.	)	
_____	)	

This Amended Final Order and Decision is being issued after reconsideration of the case based on the Petitioner's Motion for Reconsideration filed on June 24, 2016. After reconsideration, parts of the original Final Order and Decision were amended and therefore, this order is being issued. The result remains the same.

Appearances:

For the Respondent: Thomas P. Austin, Esq. and Christopher McMahan
For the Petitioner: Certified Documentation dated: May 19, 2009

Other information:

Respondent's Driver's License No: 004172712
Type of Hearing: Habitual Traffic Offender Suspension Hearing
S. C. Code Ann. §56-1-1020 (2006) and §56-1-1030 (Supp. 2015)

INTRODUCTION

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) upon request by the Respondent, Christopher McMahan, for a hearing. Petitioner, SC Department of Motor Vehicles (SCDMV), issued an Official Notice of Suspension to the Respondent on April 17, 2009 informing him that his driver's license or driving privileges were subject to being suspended for a period of five (5) years. The Petitioner alleges that the Respondent's driving record reflects that Respondent was convicted of three separate and distinct major traffic violations or ten (10) separate and distinct minor violations committed within a three (3) year period. Pursuant to S.C. Code Ann. §1-23-660 (Supp. 2015), the SCDMV is not required to appear except through certified documents.

Pursuant to a written notice to the parties, a hearing was held before me on May 19, 2016 at the Greenwood County Park Plaza, Room 104 in Greenwood, South Carolina. The Petitioner filed documentation in the matter.

After reviewing the entire record and considering all the evidence, I find that the suspension of the Respondent's driver's license or driving privilege must be rescinded.

ANSWER to MOTION FOR RECONSIDERATION

The Petitioner ("SCDMV") submitted a Motion For Reconsideration on June 24, 2016. The Petitioner objected that evidence submitted on February 29, 2016 was erroneously excluded and that the Respondent cited no statutes, cases, or other authorities to support his opinion that the admission of said documentation date February 29, 2016 from SCDMV was 'patently unfair'. I have reconsidered and find that the documentation submitted by the Petitioner dated February 29, 2016 will be included as evidence.

EXHIBITS

The following exhibits were introduced and made part of the record:

Petitioner: (1) 31-page documentation offered for the record from SCDMV as follows; Suspension Letter for Failure to Pay Motor Vehicle Property Tax dated 08/11/2004; Electronic Transmission re Failure to Pay Motor Vehicle Property Tax; **UTT Z334691**; Suspension letter for Driving Under Suspension ("DUS") dated 05/2/2007; **UTT 64031DW**; Suspension letter for DUS dated 05/24/2007; Habitual Offender warning letter dated May 24, 2007; Suspension letter for Failure to Pay Traffic Ticket ("FTPPTT") dated 06/5/2007 for 64030DW; Notice of Suspension for FTPPTT UTT 64030DW; Notice of Withdrawal of Suspension for UTT 64030DW; Reinstatement Screen for Suspension for FTPPTT for UTT 64030DW; Notice of Suspension for FTPPTT for UTT 64031DW; Notice of Withdrawal of Suspension for UTT 64031DW; UTT 64031DW; Reinstatement Screen for Suspension for FTPPTT 64031DW; **UTT 10065EO**; Suspension letter for DUS dated 04/17/2009; Suspension letter for Habitual Offender dated April 17, 2009; 05/18/2009 Amended Notice of Driving Status for Habitual Offender Suspension; 10 Year Driver Record - External.

Respondent: (1) Motion to Compel Production of Order, Motion to Dismiss, Motion to Rescind and Notice of Objections; (2) Affidavit of Respondent.

CASE HISTORY

This hearing was initially scheduled before me on July 9, 2009, at the Greenwood County Park Plaza. However, due to unexpected circumstances, I was not able to hold the hearing. Hearing Officer Robert F. Harley, Jr. held the hearings in Greenwood that day. There was a failure of the audio equipment on the date of the hearing and there was no record in the case. Because the case was not officially reassigned to Mr. Harley on the case management system until sometime much later, it erroneously did not get rescheduled once the problem with the record was determined. The matter was ultimately rescheduled for March 24, 2016. After one continuance was granted to the parties, it was heard on May 19, 2016.

FINDINGS OF FACT

Having observed the witness, reviewed the exhibits, considered their credibility and, taken into consideration the burden of persuasion by the parties, by a preponderance of the evidence I make the following findings of fact:

1. Notice of the date, time, place and subject matter of the hearing was given to the parties; Petitioner, South Carolina Department of Motor Vehicle (SCDMV) and Respondent, Christopher McMahan.
2. Respondent's driver's license number is 004172712.
3. Respondent was charged on October 26, 2008 with violation of Driving Under Suspension (DUS), Violation Section No. §56-1-460, ticket number 10065EO. He was convicted on April 1, 2009. (Petitioner's Exhibit #1)
4. Respondent was charged on March 18, 2007 with Violation Section No. §56-1-520, ticket number 64031DW. He was convicted on April 9, 2007. (Petitioner's Exhibit #1)
5. This March 18, 2007, violation was issued by the City of Newberry. The ticket listed the violation as "DUS"; however, the corresponding statute detailing the offense is not for driving under suspension (or DUS). South Carolina Code of Laws does not have a statute numbered §56-1-520.

6. Petitioner is applying Uniform Traffic Ticket 64031DW with Violation Section No: §56-1-520 to declare the Respondent a habitual offender. (Petitioner's Exhibit #1)
7. Respondent was charged on February 25, 2007 with violation of Driving Under Suspension, Violation Section No. §56-1-460, ticket number Z334691. He was convicted on April 3, 2007. (Petitioner's Exhibit #1)
8. Respondent's driving record dated February 24, 2016, which was submitted into evidence, does show that the Respondent's driver's license was suspended for Failure to Pay Property Tax that began on August 31, 2004 and ended April 13, 2009. (Petitioner Exhibit #1)
9. Petitioner sent an Official Notice of Suspension to Respondent suspending Respondent's driver's license or driving privilege on April 17, 2009. (Petitioner's Exhibit #1)

CONCLUSIONS OF LAW

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

1. In S. C. Code Ann. §1-23-660 (Supp.2015), the General Assembly provided for the creation of the South Carolina Department of Motor Vehicle Hearings (DMVH). Effective January 1, 2006, the DMVH was authorized to employ Hearing Officers to preside over contested case hearings involving suspensions, cancellations, or revocations of drivers licenses. Effective October 1, 2008, the General Assembly changed the name to the Office of Motor Vehicle Hearings (OMVH).
2. All hearings presided over by Hearing Officers of OMVH must be conducted in accordance with the Administrative Procedures Act (APA) and the rules of procedure of the South Carolina Office of Motor Vehicle Hearings (SCOMVH). A filing of a request for a hearing with the OMVH stays the suspension of the driver's license until a final decision is issued. S. C. Code Ann. §56-5-2951(G)
3. Pursuant to S. C. Code Ann. §1-23-660 (Supp. 2015), all appeals from final decisions of the Hearing Officers shall be to the South Carolina Administrative Law Court (SCALC) after January 2, 2006 in accordance with its rules of procedure.
4. Petitioner, South Carolina Department of Motor Vehicles (SCDMV), is an administrative agency of the State of South Carolina and is charged with administering the motor vehicle laws and

delivering accurate and secure credentials and transaction documents to the citizens of this state. S.C. Code Ann. §56-1-5 (2006).

5. 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 since 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.

Habitual Offender and Conviction Defined

6. Pursuant to S. C. Code Ann. § 56-1-1020 (2006), a conviction mean a final conviction, forfeiture of bail or a plea of guilty or nolo contendere.

7. Pursuant to S.C. Code Ann 56-1-1020 (2006), a habitual offender is any person whose record as maintained by the Petitioner shows that he has accumulated the convictions for separate and distinct offenses as defined in subsection (a), (b) and (c) committed within 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 as one offense.

a. Major violations are: voluntary manslaughter, involuntary manslaughter, reckless homicide from the operating of a motor vehicle, driving under the influence, driving in a reckless manner, driving under suspension except for failure to file proof of financial responsibility; a felony under the motor vehicle laws or any felony in the commission of which a motor vehicle is used and failure to stop close to the scene of accident that resulted in an injury or death.

b. Minor violations are those violations, which are required to be reported to the Petitioner in which four (4) or more points are assigned pursuant to §56-1-720.

c. For purpose of determining the number of convictions for separate and distinct offenses committed during any three (3) year period, a person shall be deemed to be convicted of an offense on the date the offenses was committed.

8. After reviewing the facts of the case and the applicable law, I find and conclude that pursuant to 56-1-1020(a) the Respondent, Christopher McMahan, driver's license number 004172712 as

maintained by the Petitioner ("SCDMV"), must not be declared an Habitual Offender. The Respondent was charged on March 18, 2007 with a South Carolina Code of Law §56-1-520. This ticket was before the Municipal Court and the Defendant (Respondent) did not appear and the disposition of the trial was by a Trial Officer and the verdict of the trial was guilty. The State of South Carolina does not have a statute in the Code of Laws numbered as §56-1-520. Therefore, it is not clear from the evidence what the Respondent was supposed to be convicted of because this statute does not exist. Regardless of the fact that the officer wrote the letters DUS, it is the statute with which a person is charged and convicted that can be applied to declare a person a habitual offender. 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 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.") I conclude there is not sufficient evidence that this was a conviction for a major offense under the habitual offender law.

Counsel for the Respondent filed a Motion to Compel Production of Order for the hearing that was initially scheduled for July 9, 2009 before Hearing Officer Tracy Holland; however, another hearing officer appeared and for reasons unknown, there is no record of the case being heard. The Respondent argued that the hearing on July 9, 2009, convened and adjourned and afterwards the Respondent followed all requirements of reinstating his driving privileges and has been driving for the past seven (7) years. The Respondent now argues that this matter be dismissed pursuant to the doctrine of laches and that this is fundamentally unfair citing Hipp vs. S.C. Dep't. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009). The Respondent also argued that, if the matter is heard again, that the documentation submitted by the Petitioner at initial hearing on July 9, 2009, should be the only documentation considered and that the Petitioner not be allowed to place in any addition or new documentation. Having reconsidered, I agree that the SCDMV documentation submitted on February 29, 2016, be included, and was considered in evidence. The documentation submitted by the Petitioner does show why the Respondent was initially suspended, which was for failure to pay

property taxes.

In Hipp vs. S.C. Dep't. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009), the court stated that a twelve-year gap between the time of Mr. Hipp's Georgia DUI conviction and the suspension imposed by the SC DMV, denied Mr. Hipp due process because the actions were fundamentally unfair. However, in Hipp the Supreme Court did say "while we do not intend to set forth a bright line rule, we find that imposition of a suspension after more than twelve years' delay, where Respondent bears no fault for the delay, is manifestly a denial of fundamental fairness." Hipp, 381 S.C. at 325, 673 S.E.2d at 417. The Court also said, "[t]hough neither dispositive nor directly applicable to the instant case, we note that Title 56 of the South Carolina Code, which addresses "Motor Vehicles," is replete with ten-year limitations for purposes of sentence enhancement and keeping record of convictions." Id. at 326, 673 S.E.2d at 417. Without reaching the issue of whether a seven (7) year delay is the same as Hipps, I conclude that this matter is distinguishable because this was a delay of the hearing body, not of the department. Hipps dealt with a time delay in departmental action being taken. This case involves a delay which would be tantamount to a court delay. There is no statutory requirement of when the OMVH must render a decision. Also, in this case, the suspension had been imposed by the SCDMV; the Respondent was waiting for his challenge to that suspension to be decided. It was a matter which he requested and clearly knew was pending. Therefore, I do not conclude there was a denial of due process because of the delay.

Nonetheless, as previously stated the State of South Carolina does not have a statute numbered §56-1-520; therefore, the Petitioner cannot use the statute documented on ticket 64031DW to declare the Respondent a habitual offender.

Therefore, I find that pursuant to South Carolina Code of Law, Section 56-1-1020 (2006), the Respondent should not be declared a Habitual Offender. Accordingly, the relief requested by the Respondent must be granted.

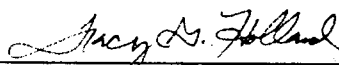
ORDER

Based upon the above findings of facts and conclusions of law, it is hereby:

ORDERED that the suspension of Respondent, Christopher McMahan, driver's license or driving privilege be rescinded; and it is further

ORDERED upon Petitioner's compliance with the law of this State, that the SCDMV must immediately lift the suspension and restore the Respondent's driver's license or driving privilege.

AND IT IS SO ORDERED.



Tracy G. Holland
OMVH Hearing Officer

July 21, 2016
Greenwood, South Carolina

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

South Carolina Department of Motor Vehicles,

Petitioner,

v.

Christopher McMahan,

Respondent.

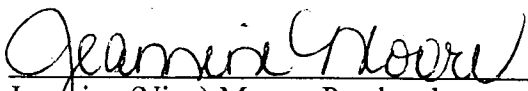
Docket No. 09-OMVH-02-2132-CC
SCDL No. 4172712

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 26, 2016, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing **Notice of Appeal** to the following:

Thomas P. Austin, Esquire
Post Office Box 799
Greenwood, South Carolina 29648-0799

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


Jeanine (Nina) Moore, Paralegal
Office of General Counsel

July 26, 2016
Blythewood, South Carolina

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

South Carolina Department of Motor Vehicles,	)	Docket No. 09-OMVH- 02-2132- CC
	)	
Petitioner,	)	
	)	
v.	)	FINAL ORDER AND DECISION
	)	
Christopher McMahan,	)	
	)	
Respondent.	)	

Appearances:

For the Respondent: Thomas P. Austin, Esq. and Christopher McMahan

For the Petitioner: Certified Documentation dated: May 19, 2009

Other information:

Respondent's Driver's License No: 004172712

Type of Hearing: Habitual Traffic Offender Suspension Hearing

S. C. Code Ann. §56-1-1020 (2006) and §56-1-1030 (Supp. 2015)

INTRODUCTION

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) upon request by the Respondent, Christopher McMahan, for a hearing. Petitioner, SC Department of Motor Vehicles (SCDMV), issued an Official Notice of Suspension to the Respondent on April 17, 2009 informing him that his driver's license or driving privileges were subject to being suspended for a period of five (5) years. The Petitioner alleges that the Respondent's driving record reflects that Respondent was convicted of three separate and distinct major traffic violations or ten (10) separate and distinct minor violations committed within a three (3) year period. Pursuant to S.C. Code Ann. §1-23-660 (Supp. 2015), the SCDMV is not required to appear except through certified documents.

Pursuant to a written notice to the parties, a hearing was held before me on May 19, 2016 at the Greenwood County Park Plaza, Room 104 in Greenwood, South Carolina. The Petitioner filed documentation in the matter.

After reviewing the entire record and considering all the evidence, I find that the suspension of the Respondent's driver's license or driving privilege must be rescinded.

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EXHIBITS

The following exhibits were introduced and made part of the record:

Petitioner: (1) 14-page documentation offered for the record from SCDMV; (a) UTT 10065EO; (b) UTT 64031DW; (c) UTT Z334691; (d) Notice of Suspension dated April 17, 2009; (e) Habitual Offender warning letter dated May 24, 2007; (f) Certified Driving Record dated May 18, 2009.

Respondent: (1) Motion to Compel Production of Order, Motion to Dismiss, Motion to Rescind and Notice of Objections; (2) Affidavit of Respondent.

CASE HISTORY

This hearing was initially scheduled before me on July 9, 2009, at the Greenwood County Park Plaza. However, due to unexpected circumstances, I was not able to hold the hearing. Hearing Officer Robert F. Harley, Jr. held the hearings in Greenwood that day. There was a failure of the audio equipment on the date of the hearing and there was no record in the case. Because the case was not officially reassigned to Mr. Harley on the case management system until sometime much later, it erroneously did not get rescheduled once the problem with the record was determined. The matter was ultimately rescheduled for March 24, 2016. After one continuance was granted to the parties, it was heard on May 19, 2016.

FINDINGS OF FACT

Having observed the witness, reviewed the exhibits, considered their credibility and, taken into consideration the burden of persuasion by the parties, by a preponderance of the evidence I make the following findings of fact:

1. Notice of the date, time, place and subject matter of the hearing was given to the parties; Petitioner, South Carolina Department of Motor Vehicle (SCDMV) and Respondent, Christopher McMahan.
2. Respondent's driver's license number is 004172712.
3. Respondent was charged on October 26, 2008 with violation of Driving Under Suspension (DUS), Violation Section No. §56-1-460, ticket number 10065EO. He was convicted on April 1, 2009. (Petitioner's Exhibit #1(a))

4. Respondent was charged on March 18, 2007 with Violation Section No. §56-1-520, ticket number 64031DW. He was convicted on April 9, 2007. (Petitioner's Exhibit #1(b))
5. This March 18, 2007, violation was issued by the City of Newberry. The ticket listed the violation as "DUS"; however, the corresponding statute detailing the offense is not for driving under suspension (or DUS). South Carolina Code of Laws does not have a statute numbered §56-1-520.
6. Petitioner is applying Uniform Traffic Ticket 64031DW with Violation Section No: §56-1-520 to declare the Respondent a habitual offender. (Petitioner's Exhibit #1(b) and (d))
7. Respondent was charged on February 25, 2007 with violation of Driving Under Suspension, Violation Section No. §56-1-460, ticket number Z334691. He was convicted on April 3, 2007. (Petitioner's Exhibit #1(c))
8. Respondent's driving record dated May 18, 2009, which was submitted into evidence, does not show why the Respondent's driver's license was suspended when he was stopped on February 25, 2007, or March 18, 2007.
9. Petitioner sent an Official Notice of Suspension to Respondent suspending Respondent's driver's license or driving privilege on April 17, 2009. (Petitioner's Exhibit #1(d))

CONCLUSIONS OF LAW

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

1. In S. C. Code Ann. §1-23-660 (Supp.2015), the General Assembly provided for the creation of the South Carolina Department of Motor Vehicle Hearings (DMVH). Effective January 1, 2006, the DMVH was authorized to employ Hearing Officers to preside over contested case hearings involving suspensions, cancellations, or revocations of drivers licenses. Effective October 1, 2008, the General Assembly changed the name to the Office of Motor Vehicle Hearings (OMVH).
2. All hearings presided over by Hearing Officers of OMVH must be conducted in accordance with the Administrative Procedures Act (APA) and the rules of procedure of the South Carolina Office of Motor Vehicle Hearings (SCOMVH). A filing of a request for a hearing with the OMVH stays the suspension of the driver's license until a final decision is issued. S. C. Code Ann. §56-5-2951(G)

3. Pursuant to S. C. Code Ann. §1-23-660 (Supp. 2015), all appeals from final decisions of the Hearing Officers shall be to the South Carolina Administrative Law Court (SCALC) after January 2, 2006 in accordance with its rules of procedure.

4. Petitioner, South Carolina Department of Motor Vehicles (SCDMV), is an administrative agency of the State of South Carolina and is charged with administering the motor vehicle laws and delivering accurate and secure credentials and transaction documents to the citizens of this state. S.C. Code Ann. §56-1-5 (2006).

5. 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 since 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.

Habitual Offender and Conviction Defined

6. Pursuant to S. C. Code Ann. § 56-1-1020 (2006), a conviction mean a final conviction, forfeiture of bail or a plea of guilty or nolo contendere.

7. Pursuant to S.C. Code Ann 56-1-1020 (2006), a habitual offender is any person whose record as maintained by the Petitioner shows that he has accumulated the convictions for separate and distinct offenses as defined in subsection (a), (b) and (c) committed within 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 as one offense.

a. Major violations are: voluntary manslaughter, involuntary manslaughter, reckless homicide from the operating of a motor vehicle, driving under the influence, driving in a reckless manner, driving under suspension except for failure to file proof of financial responsibility; a felony under the motor vehicle laws or any felony in the commission of which a motor vehicle is used and failure to stop close to the scene of accident that resulted in an injury or death.

b. Minor violations are those violations, which are required to be reported to the Petitioner in which four (4) or more points are assigned pursuant to §56-1-720.

c. For purpose of determining the number of convictions for separate and distinct offenses committed during any three (3) year period, a person shall be deemed to be convicted of an offense on the date the offenses was committed.

8. After reviewing the facts of the case and the applicable law, I find and conclude that pursuant to 56-1-1020(a) the Respondent, Christopher McMahan, driver's license number 004172712 as maintained by the Petitioner ("SCDMV"), must not be declared an Habitual Offender. The Respondent was charged on March 18, 2007 with a South Carolina Code of Law §56-1-520. This ticket was before the Municipal Court and the Defendant (Respondent) did not appear and the disposition of the trial was by a Trial Officer and the verdict of the trial was guilty. The State of South Carolina does not have a statute in the Code of Laws numbered as §56-1-520. Therefore, it is not clear from the evidence what the Respondent was supposed to be convicted of because this statute does not exist. Regardless of the fact that the officer wrote the letters DUS, it is the statute with which a person is charged and convicted that can be applied to declare a person a habitual offender.

Counsel for the Respondent filed a Motion to Compel Production of Order for the hearing that was initially scheduled for July 9, 2009 before Hearing Officer Tracy Holland; however, another hearing officer appeared and for reasons unknown, there is no record of the case being heard. The Respondent argued that the hearing on July 9, 2009, convened and adjourned and afterwards the Respondent followed all requirements of reinstating his driving privileges and has been driving for the past seven (7) years. The Respondent now argues that this matter be dismissed pursuant to the doctrine of laches and that this is fundamentally unfair citing Hipp vs. S.C. Dep't. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009). The Respondent also argued that, if the matter is heard again, that the documentation submitted by the Petitioner at initial hearing on July 9, 2009, should be the only documentation considered and that the Petitioner not be allowed to place in any addition or new documentation.

In Hipp vs. S.C. Dep't. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009), the court stated that a twelve-year gap between the time of Mr. Hipp's Georgia DUI conviction and the suspension imposed by the SC DMV, denied Mr. Hipp due process because the actions were fundamentally unfair. However, in Hipp the Supreme Court did say "while we do not intend to set

forth a bright line rule, we find that imposition of a suspension after more than twelve years delay, where Respondent bears no fault for the delay, is manifestly a denial of fundamental fairness.” Hipp, 381 S.C. at 325, 673 S.E.2d at 417. The Court also said, “[t]hough neither dispositive nor directly applicable to the instant case, we note that Title 56 of the South Carolina Code, which addresses “Motor Vehicles,” is replete with ten-year limitations for purposes of sentence enhancement and keeping record of convictions.” Id. at 326, 673 S.E.2d at 417. Without reaching the issue of whether a seven (7) year delay is the same as Hipps, I conclude that this matter is distinguishable because this was a delay of the hearing body, not of the department. Hipps dealt with a time delay in departmental action being taken. This case involves a delay which would be tantamount to a court delay. There is no statutory requirement of when the OMVH must render a decision. Also, in this case, the suspension had been imposed by the SCDMV; the Respondent was waiting for his challenge to that suspension to be decided. It was a matter which he requested and clearly knew was pending. Therefore, I do not conclude there was a denial of due process because of the delay.

Furthermore, I agree that only the SCDMV documentation submitted in the initial hearing on July 9, 2009, should be considered in evidence. The documentation submitted by the Petitioner does not show why and what the Respondent’s driving privileges were suspended for on February 25, 2007, or March 18, 2007, when he was charged with driving under suspension. A driving under suspension that falls under the exception for failure to file proof of financial responsibility cannot be used to declare a person a habitual offender. Without evidence before me, I cannot determine why the Respondent was under suspension on those dates.

Nonetheless, as previously stated the State of South Carolina does not have a statute numbered §56-1-520; therefore, the Petitioner cannot use the statute documented on ticket 64031DW to declare the Respondent a habitual offender.

Therefore, I find that pursuant to South Carolina Code of Law, Section 56-1-1020 (2006), the Respondent should not be declared a Habitual Offender. Accordingly, the relief requested by the Respondent must be granted.

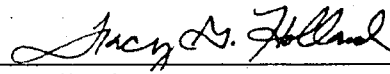
ORDER

Based upon the above findings of facts and conclusions of law, it is hereby:

ORDERED that the suspension of Respondent, Christopher McMahan, driver's license or driving privilege be rescinded; and it is further

ORDERED upon Petitioner's compliance with the law of this State, that the SCDMV must immediately lift the suspension and restore the Respondent's driver's license or driving privilege.

AND IT IS SO ORDERED.



Tracy G. Holland
OMVH Hearing Officer

June 21, 2016
Greenwood, South Carolina

CERTIFICATE OF SERVICE

I, Yolanda P. Williams, hereby certify that I have this date served this Order upon all parties to this caused 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).

Yolanda P. Williams

Yolanda P. Williams

June 21, 2016
Columbia, South Carolina

Yolanda Williams

From: Yolanda Williams
Sent: Tuesday, June 21, 2016 3:09 PM
To: Thomas P. Austin (tom.austin@gwdattorney.com); Thomas P. Austin (brandi.carr@gwdattorney.com); HPU@scdmv.net
Subject: 06-21-16 Christopher McMahan, HO Final Order
Attachments: 06-21-16 CERTIFICATE OF SERVICE.pdf; HOD McMahan Christopher d09-2132.pdf

Attached is a copy of the hearing officer's decision. Your client will receive additional information via mail from the DMV regarding their driving privileges.

Yolanda P. Williams
Administrative Coordinator
Scheduling Assistant for
Brigette 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
www.scomvh.net

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Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

June 24, 2016

Tracy G. Holland, Administrative Hearing Officer
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, South Carolina 29201

RE: *South Carolina Department of Motor Vehicles vs. Christopher McMahan*
Docket No.: 09-OMVH-02-2132-CC
SCDL No.: 4172712

Dear Ms. Holland:

Enclosed for filing, please find one original and one copy of SCDMV's Notice of Motion and Motion for Reconsideration 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 (Nina) Moore
Jeannine (Nina) Moore, Paralegal
Office of General Counsel

cc: Thomas P. Austin, Esquire

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Post Office Box 1700, Columbia, South Carolina 29016

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

South Carolina Department of Motor Vehicles,

Petitioner,

v.

Christopher McMahan,

Respondent.

Docket No. 09-OMVH-02-2132-CC

SCDL No. 4172712

**NOTICE OF MOTION
AND
MOTION FOR RECONSIDERATION**

On June 21, 2016, the South Carolina Department of Motor Vehicles (SCDMV) received the Final Order and Decision filed on June 21, 2016. A copy of that Final Order and Decision is attached. The SCDMV respectfully moves the Office of Motor Vehicle Hearings for reconsideration based upon the following:

1. Following a hearing on May 19, 2016, the Hearing Officer issued a Final Order and Decision on June 21, 2016, rescinding the Respondent's habitual offender suspension stating that "the Respondent should not be declared a Habitual Offender."
2. The Hearing Officer erroneously excluded from evidence documents submitted by SCDMV on February 29, 2016. Respondent's only objection to the admission of the documents submitted by the SCDMV on February 29, 2016 was the statement "This is patently unfair." See Respondent's *Motion to Compel Production of Order, Motion to Dismiss, Motion to Rescind and Notice of Objections*, p. 3. Respondent cited no statutes, cases, or other authorities to support his opinion that admission of the February 29, 2016 documents from SCDMV was "patently unfair." There is no question that it is within the Hearing Officer's authority to rule on the admissibility of evidence. Rule 9(c), OMVH Rules. Rule 14(C), OMVH Rules, however, states that for matters in which the SCDMV

is not required to appear at the hearing, any records submitted by the SCDMV as documentary evidence prior to hearing merely have to be in the form of a certified copies. The February 29, 2016 documents submitted by the SCDMV were all certified copies. Moreover, there is no explicit time limit in the Administrative Procedures Act (APA) or the OMVH Rules for the submission of documentary evidence by any party. Thus, by practical function, the hearing would be the last opportunity for the parties to submit evidence. In this regard, SCDMV notes that Respondent submitted an Affidavit into evidence on the date of the hearing. To be cliché, what is good for the goose is good for the gander. If Respondent is allowed to submit additional documents into evidence that were not submitted during the hearing before Hearing Officer Harley, then SCDMV should also be allowed to submit additional documents into evidence as well. Supporting this position is the fact that this case was scheduled for a new hearing. See *Order of Continuance and Notice of New Hearing* dated February 9, 2016. Thus, this case was not to be decided solely on the documents and the record already created before Hearing Officer Harley, primarily due to the fact that there was no recording of the hearing. Therefore, since this was to be a whole new hearing, i.e. a de novo hearing, it is axiomatic that the parties should be allowed to submit new, additional, or other evidence at the hearing, which both parties did in this case and yet, only SCDMV's additional evidence was excluded. Moreover, SCDMV asserts that at the very least when it submits certified copies of documents for entry into evidence at hearings before the OMVH, should the Hearing Officer rule that evidence is inadmissible, the evidence must still be marked as an offer of proof and inserted into the record as required by Rule 14(B), OMVH Rules. It does not appear that was done in this case. For the reasons outlined above, there was no

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reasonable ground for the exclusion of the documents submitted by the SCDMV on February 29, 2016 and, as a result, the Hearing Officer committed error by excluding them. Alternatively, at the very least, since the Hearing Officer found the February 29, 2016 documents inadmissible into evidence, those documents should have been marked as an offer of proof and inserted into the record as required by Rule 14(B), OMVH Rules.

3. The Hearing Officer's finding that "Without evidence before me, I cannot determine why the Respondent was under suspension on [February 25, 2007 and March 18, 2007]" ignores the evidence that was before the Hearing Officer, even in light of the exclusion of SCDMV's February 29, 2016 document submittal (although admission of SCDMV's February 29, 2016 document submittal would have more fully explained Respondent's suspension on these dates). According to the Affidavit of Respondent, at the time of these suspensions Respondent was suspended for failure to pay his taxes. See *Affidavit of Respondent*, p. 1-2. Respondent even stated that after the hearing with Hearing Officer Harley and at the advice of Hearing Officer Harley he paid his taxes, got his receipt for paying the taxes, took that receipt to the SCDMV, and got his driver's license reinstated.¹ See *Affidavit of Respondent*, p. 2. Further, in *Motion to Compel Production of Order, Motion to Dismiss, Motion to Rescind and Notice of Objections*, Respondent admits "The catalyst of this action stemmed from when Respondent purchased a new truck and when [Respondent] transferred his tags, he failed to pay the taxes on the vehicle. The Petitioner suspended his drivers license." See *Motion to Compel*, etc... at p. 1, paragraph 1. Additionally, ticket Z334691, which was issued on February 25, 2007, has written on the bottom left corner "Prop Tax," specifically indicating that Respondent's license was

¹ Because Respondent had requested an OMVH hearing with regard to his habitual offender declaration, the pending habitual offender case would not have prevented Respondent from being reissued a driver's license.

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suspended at the time of that ticket for failure to pay property taxes. So, there is no factual question as to what Respondent was suspended for on February 25, 2007 and March 18, 2007, because Respondent has admitted he was suspended for failure to pay to his vehicle taxes and one of the tickets also notes this fact. Thus, based solely on the evidence the Hearing Officer did admit, this habitual offender suspension should have been sustained.

An examination of the February 29, 2016 certified documents submitted to the OMVH by the SCDMV for admission into evidence in this hearing also shows Respondent was suspended on February 25, 2007 and March 18, 2007 for failure to pay his vehicle taxes. See, for example, pages 4, 5, and 31 of the February 29, 2016 certified documents.

4. The Hearing Officer's finding that "it is not clear from the evidence what the Respondent was supposed to be convicted of... [r]egardless of the fact that the officer wrote the letters DUS" ignores the evidence that was before the Hearing Officer, even in light of the exclusion of SCDMV's February 29, 2016 document submittal (although admission of SCDMV's February 29, 2016 document submittal would have more fully explained the March 18, 2007 conviction). A review of just the May 18, 2009 certified documents that were submitted by SCDMV and accepted into evidence in this case reveals the following facts:

- a. All three (3) of the tickets at issue in this case are Driving Under Suspension tickets;
- b. Ticket Z334691 was issued in Anderson County by Trooper MD Looney;
- c. Ticket 64031DW was issued in Newberry County by Lt. Kemroy;
- d. Ticket 10065EO was issued in Greenwood County by Officer Sathre;
- e. Tickets Z334691 and 64031DW were both marked in the Violation box of the ticket as "DUS;"

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- f. Ticket 10065EO was marked in the Violation box of the ticket at "Driving Under Suspension (2nd);"
- g. All three (3) of the tickets at issue in this case list an "Offense Code" of "96" (see bottom right corner of tickets);
- h. Page 3 of the Certification for Court driving record for Respondent which was printed on May 18, 2009 and part of the May 18, 2009 documents admitted into evidence reflects that on June 25, 2007 Respondent began a suspension for Failure to Pay a Traffic Ticket related to ticket 64031DW. Further, this Failure to Pay Traffic Ticket was submitted to SCDMV by the Court of conviction as a Failure to Pay Traffic Ticket for "Driving Under Suspension." See Exhibit A to this Motion and page 18 of the February 29, 2016 certified documents submitted by SCDMV. Additionally, despite the typo on the actual ticket issued by the Lt. Kemroy, the Court of conviction listed this offense as a conviction under "56-1-460(1)," which is Driving Under Suspension. *Id* in top right corner. The Court of conviction also listed the description of the violation as "DRIVING UNDER SUSPENSION - 1ST." *Id* in top left corner.

In addition to these facts, it is significant that Respondent never objected to the suspension he was issued for "Driving Under Suspension" related to ticket 64031DW. If ticket 64031DW was not a conviction for Driving Under Suspension, in the experience of the undersigned, it is extremely unlikely that Respondent have simply accepted this suspension without raising a fuss.

Moreover, it appears the Hearing Officer *sua sponte* assumed that ticket 64031DW was not a conviction for Driving Under Suspension. It does not appear this issue was ever



raised by Respondent. The fact that Respondent never alleged that ticket 64031DW was not a conviction for Driving Under Suspension is just further evidence that, despite Lt. Kemroy's typo on the actual ticket, the conviction was, in fact, a conviction for Driving Under Suspension. Further supporting the conclusion that Lt. Kemroy merely made a typo on the actual ticket is the fact that there is no statute by the number of 56-1-520. There simply is not any traffic violation that is contained in S.C. Code §56-1-520 that Respondent could have been convicted of, because there simply is no S.C. Code §56-1-520. It just doesn't exist. Given this fact, all the other facts in this case, and the other evidence surrounding this ticket specifically, it is an unreasonable interpretation for the Hearing Officer to conclude that "it is not clear from the evidence what the Respondent was supposed to be convicted of... [r]egardless of the fact that the officer wrote the letters DUS." Contrary to this finding, the evidence leads only to the conclusion that Respondent was convicted of Driving Under Suspension for ticket 64031DW.

5. Thus, because the evidence before the Hearing Officer and the February 29, 2016 certified documents that should have been entered into evidence demonstrate that Respondent was convicted of three (3) violations for driving under suspension within a three (3) year period, his habitual offender suspension should have been sustained.
6. In a S.C. Code Ann. §56-1-1020 (2006) and §56-1-1030 (Supp. 2013) hearing, the initial burden of proof is borne by the Department and/or the applicable law enforcement agency. Randolph R. Lowell, South Carolina Administrative Practice & Procedure 178 (2d ed. 2008). However, once a prima facie case is established against the motorist, the burden shifts to the motorist to present evidence to rebut the prima facie case. Daisy Outdoor Advertising Co., Inc. v. South Carolina Dep't of Transp., 352 S.C. 113, 118, 572 S.E.2d



462, 465 (Ct.App. 2002). See also, S.C. Dep't of Motor Vehicles v. Powers, 06-ALJ-21-0578-AP (January 10, 2007) (explaining the application of this principle throughout the states). A prima facie case is made by presenting evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted. LaCount v. Gen. Asbestos & Rubber Co., 184 S.C. 232, 240, 192 S.E. 262, 266 (1937); see also, Mack v. Branch No. 12, Post Exchange, Fort Jackson, 207 S.C. 258, 272, 35 S.E.2d 838, 844 (1945) ("The words [prima facie evidence] import that the evidence produces for the time being a certain result; but that result may be repelled.")

7. Thus, if a prima facie case is established against the motorist and the motorist fails to present any evidence to rebut it, then judgment must go against the motorist. See Arkwright Mills v. Clearwater Mfg. Co., 217 S.C. 530, 539, 61 S.E.2d 165, 168-69 (1950) ("It is the settled rule of law that once a party establishes a prima facie case, judgment will go in his favor unless the opposite party produces evidence sufficient to overcome the prima facie presumption.")
8. In this instant case, Respondent did not provide any evidence to contradict and/or rebut the evidence submitted by SCDMV that he was convicted of three (3) separate Driving Under Suspension offenses within a three (3) year period.
9. Finally, to the extent the Hearing Officer relied on Respondent's *Motion to Compel Production of Order, Motion to Dismiss, Motion to Rescind and Notice of Objections* to make her rulings in this case, those rulings should be reconsidered without any consideration to Respondent's *Motion to Compel*, etc... Respondent's *Motion to Compel*, etc... was filed with the OMVH has Respondent's Exhibit #1 at the May 19, 2016 hearing. This motion was never served on SCDMV by Respondent. Rule 5, OMVH Rules requires



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"Any document, pleading, motion, brief or memorandum or other paper filed with the Office... shall be served by the proponent of the document upon all parties to the proceeding... Service is deemed complete upon mailing." The motion entered into evidence as Respondent's Exhibit 1 did not contain any certificate of service indicating service to the SCDMV, nor did the SCDMV ever receive a copy of this motion from Respondent or Respondent's Counsel.² For this reason alone the OMVH should not consider any arguments in the *Motion to Compel*, etc... for purposes of making rulings in this case. Rather, the Hearing Officer should limit her consideration to only those arguments that were made orally by Respondent's Counsel during the May 19, 2016 hearing. Further, Rule 10(A), OMVH Rules requires all motions "pertaining to the hearing" to "be filed not later than ten days before the hearing date." For this reason, as well, the Hearing Officer should limit her consideration to only those arguments that were made orally by Respondent's Counsel during the May 19, 2016 hearing. The undersigned notes that if Respondent had complied with both Rule 10(A), OMVH Rules and Rule 5, OMVH Rules, then Petitioner SCDMV would have had an opportunity to either file a written response to Respondent's Motion to Compel, etc... or, in light of the motion, elected to appear in person at the May 19, 2016 hearing. Because Respondent failed to comply with either of these rules, he stripped SCDMV of these options and placed SCDMV and the Hearing Officer in the position of a Motion for Reconsideration being SCDMV's only way to respond to his untimely motion.

² In fact, SCDMV obtained a copy of this motion from the OMVH via e-mail after the Final Order and Decision was issued in this case.

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10. For the above stated reasons, the SCDMV respectfully requests that the Hearing Officer reconsider this matter and, specifically, requests the Hearing Officer reconsider her ruling that the February 29, 2016 certified documents were not admissible into evidence.

Respectfully submitted,



BRANDY A. DUNCAN, SC Bar #72052

Assistant General Counsel

PHILIP S. PORTER, SC Bar # 5682

Deputy General Counsel

FRANK L. VALENTA, JR., SC Bar # 4526

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

June 24, 2016

Blythewood, South Carolina

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STATE OF
SOUTH CAROLINANOTICE OF SUSPENSION
(FAILURE TO RESPOND TO CITATION, APPEAR IN COURT, OR PAY FINE)

THE DEFENDANT HAS FAILED TO RESPOND TO A CITATION OR PAY A FINE FOR THE VIOLATION DESCRIBED HEREIN WITHIN THE PRESCRIBED TIME LIMIT. INITIATE ACTION TO SUSPEND THE DEFENDANT'S DRIVER'S LICENSE IN ACCORDANCE WITH THE LAWS OF THIS STATE OR THE PROVISIONS OF THE NONRESIDENT VIOLATOR COMPACT.

CITATION NO. 64031DW	DATE OF VIOLATION 03/18/2007	LOCATION OF VIOLATION DIXIE / GLENN	SECTION VIOLATED 56-01-0460(1)
DESCRIPTION OF VIOLATION DRIVING UNDER SUSPENSION - 1ST		FINE AND COSTS 440.00	TRIAL DATE 04/09/2007
DOCKET NO.		COURT NO.	

DRIVER'S LICENSE NO. 04172712	STATE SC	DATE OF BIRTH 10/31/1974
NAME LAST MCMAHAN, CHRISTOPHER E	FIRST E	MIDDLE E
SEX M		
STREET ADDRESS 219 GREENWAY DRIVE		
CITY GREENWOOD	STATE SC	ZIP CODE 29649
REGIS. (TAG) NO. 875VDH	STATE SC	YEAR 1999
MAKE FORD		

COURT INFO	NAME OF COURT CITY OF NEWBERRY		
	MAILING ADDRESS 1507 NANCE STREET		
	CITY NEWBERRY	STATE SC	ZIP CODE 29108
	TELEPHONE AREA CODE (803) NUMBER 321-1010		
	AUTHORIZED BY JUDGE W. FRANK PARTRIDGE		DATE 05/04/2007

FORM DL-63

#2 HOME JURISDICTION COPY

MAIL THIS COPY TO:

S.C. DEPT. OF HWYS. & PUBLIC TRANSPORTATION
DIVISION OF MOTOR VEHICLES
PO BOX 1498
BLYTHEWOOD, S.C. 29016-1498
ATTENTION: MANAGER, DRIVER RECORDS

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STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles,

Petitioner,

v.

Christopher McMahan,

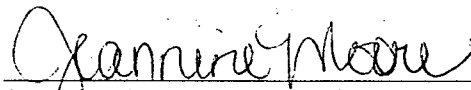
Respondent.

Docket No. 09-OMVH-02-2132-CC
SCDL No. 4172712

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 24, 2016, I mailed, via USPS first class mail, a true and correct copy of the foregoing *Notice of Motion and Motion for Reconsideration* upon the following:

Thomas P. Austin, Esquire
Post Office Box 799
Greenwood, South Carolina 29648-0799



Jeannine Moore, Paralegal
Office of General Counsel
SCDMV

Blythewood, South Carolina

FILED

JUN 24 2016

SCOMVH

Exhibits for 1st Declare Habitual Offender

Hearing: SC Dept. of Motor Vehicles v. Christopher McMahan
Petitioner Respondent
Attorney: Thomsa P. Austin, Esq.

Docket No.: 09-OMVH-02-2132

Date of Hearing: May 19, 2016 Location: Greenwood Cty Park Plaza, Room 104

Hearing Officer: Tracy G. Holland

() I hereby certify that neither party offered exhibits into the record.

(☒) I hereby certify that exhibit(s) were offered into the record and are indicated below.

PETITIONER:
Total pages: <u>14</u>
(☒) Notice of Suspension
(☒) Certified 10-year Driving Record <u>5/18/09</u>
<u>3</u> Copies of Traffic Violations (Tickets)
(☒) Letter by DMV dated <u>5/24/09</u> , advising of status under HO law.
() Other: _____

RESPONDENT
(☒) Other <u>Motion's</u>
(☒) Other <u>Affidavit of Respondent</u>
() Other _____
() Other _____

() I hereby certify that no exhibits were attached to this form and it was delivered to the OMVH Office by either _____ hand delivery or _____ mail courier.

() I hereby certify that the listed exhibits were attached to this form and delivered to the OMVH Office by either _____ hand delivery or _____ mail courier.

Date placed in the mail _____ or Date hand delivered SCAN

Signature Tracy G. Holland

0152

060074

South Carolina Department of Motor
Vehicles,

Petitioner,

VS.

Christopher McMahan,

Respondent.

Docket No. 09-OMVH-02-2132-CC

DL# 004172712

Motion to Compel Production of Order,
Motion to Dismiss, Motion to Rescind
and Notice of Objections

COMES NOW the Respondent, and would show unto this Court as follows:

1. The catalyst of this action stemmed from when Respondent purchased a new truck, and when he transferred his tags, he failed to pay the taxes on the vehicle. The Petitioner suspended his drivers license.

2. Respondent also moved to a new home in the interim period.

3. Respondent never received the proper notice(s) pursuant to S.C. Code Ann. §12-37-2740.

4. Respondent was subsequently stopped and issued a ticket for Driving Under Suspension. Based on the prior record, this triggered the Habitual Offender Notice.

5. Respondent timely requested a hearing to contest the matter (see letter dated May 14, 2009).

6. Respondent, his father, and his attorney appeared at a hearing on July 9, 2009. For reasons not known, the normal hearing officer did not appear, but hearing officer Robert Harley, Jr. presided.

7. The hearing commenced, and at the recollection of the Respondent (see attached affidavit) and his file, Mr. Harley found that the proper notices had not been issued to Respondent, and that his prior offenses were entered into without the benefit of counsel, he was not advised of any of his constitutional rights, he was not advised of the possible consequences of his pleas, and therefore, he did not enter his pleas knowingly, intelligently, or freely. Mr. Harley then informed the Respondent that he would not declare Respondent a habitual offender.

8. Mr. Harley concluded the hearing and informed Respondent he would receive a letter by mail of his decision. Mr. Harley was then kind enough after the hearing to inform Respondent of the steps he needed to take to reinstate his drivers license. Thereafter, Respondent did take all proper steps to reinstate his drivers license, and Respondent has been lawfully driving for the past seven (7) years.

9. On or about February 9, 2016, counsel received an Order of Continuance and Notice of New Hearing via email from the Petitioner.

10. Counsel then contacted counsel for the Petitioner, and the exchange is attached hereto.

11. It appears that Petitioner has lost their notes of the hearing, they have either misplaced or failed to properly record the hearing as required by law. This is not the fault of the Respondent.

12. The Petitioner has either misplaced or failed to prepare a written order, and again, this is not the fault of the Respondent.

13. In an attempt to work out the matter, counsel informed Petitioner of what he recalls being presented at the first hearing, and in particular, what was missing for Petitioner's case.

When it was determined that the Petitioner was going to have another hearing, Petitioner then supplemented it's evidence packet to include information which was not presented at the first hearing. This is patently unfair.

13. Respondent has relied on and operated under the July 9, 2009 ruling now for almost seven (7) years. Respondent is informed and believes that he is entitled to an order compelling production of the order from that hearing wherein the action was rescinded and he was declared to not be a habitual offender.

14. Respondent is informed and believes that he is entitled to this matter being dismissed pursuant to the doctrine of laches.

15. Respondent is informed and believes he is entitled this matter being dismissed since Petitioner has waited nearly seven years to re-hear this matter, and this is fundamentally unfair and deprives Respondent of due process.

16. Respondent is informed and believes the controlling case of *Charles R. Hipp, III vs. South Carolina Department of Motor Vehicles* (copy attached) is the law in this case.

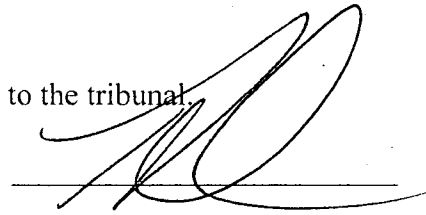
17. Respondent objects to the new hearing, and as such enters this as his written notice of said objection to be made part of the record.

WHEREFORE Respondent prays for an order as follows:

- a. For dismissal of this action, and, or;
- b. For an order compelling production of the order from the July 9, 2009 hearing, and; or,
- c. For a finding that he shall not be declared as a habitual offender, and;
- d. For an injunction prohibiting the Petitioner from declaring Respondent as a habitual offender, and;

e. For such other relief as deemed equitable to the tribunal.

Respectfully submitted,



Thomas Austin, Attorney for Respondent

May 19, 2016

Greenwood, South Carolina.

060078

RESPONDENT'S

EXHIBIT # 1

4 34

EXHIBIT # 2
103

court dates, I just went in and paid a fine and was never told anything about having a trial or what could happen.

6. At the end, my attorney said he was opposed to a declaration that I was a habitual offender. After that, my attorney, the hearing officer and I sat at the table and talked for some time. The hearing officer was incredibly nice, and he told me that I was going to get a letter in the mail that said I was not going to be a habitual offender. I recall that I asked him what I needed to do to get all of this straightened out. He told me that I had to make sure the taxes were paid, and once I got my receipt, then I could go down to the DMV and I would have to bring enough money with me to pay to have a reinstatement done. I shook his hand when we left.

7. My stepfather had to get back to work, so my mother and I went to the courthouse, and we went to DMV. I did what the hearing officer told me to do, and I was given all the paperwork showing my driver license was reinstated. I have been driving now for nearly seven years.

8. I wish I could say that I got a letter or an order from the hearing officer, but I truly do not recall getting one. Based on what has been sent in the second packet of information, I am wondering if the order went to the old address. If I did get it, I would have thrown it away since I already had done everything to get my license back.

9. It has been a long time, and because so much time has gone by, I am sure there are things I am forgetting.

10. I do not believe it is right or fair that I went to the hearing, paid my attorney to be present, was successful at the hearing, have been operating under the ruling of the hearing officer all this time, and now they want to try me a second time. I have a business now that relies on my ability to drive, and if my license is suspended now, I will lose my entire business and my ability

060680

to support my family.

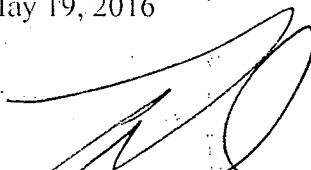
STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF GREENWOOD)

The undersigned, being duly sworn, says that (s)he is the AFFIANT and that he has read the foregoing and knows the contents thereof, and that the same is true to the affiant's own knowledge, except as to those matters therein stated upon information and belief, and as to those matters (s)he believes them to be true.



Sworn to before me this

May 19, 2016



Notary Public for South Carolina
My Commission Expires 10-30-17

060081

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina

Department of Motor Vehicles

February 29, 2016

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

RE: *Christopher Eric McMahan v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 09-OMVH-02-2132-CC
SCDL 4172712

Dear Ms. Williams:

In addition to any documents previously provided in past mailings, 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.

The Suspension letter for Failure to Pay Motor Vehicle Property Tax dated 8/11/2004 is included to demonstrate why Mr. McMahan was suspended at the time of his Driving Under Suspension violations. Mr. McMahan never challenged this suspension. The electronic transmission re Failure to Pay Motor Vehicle Property Tax is enclosed to demonstrate why the Department suspended Mr. McMahan for failure to pay motor vehicle property tax, i.e. the communication the Department received from the County.

UTT Z334691 and the Suspension letter for Driving Under Suspension dated 5/2/2007 are enclosed as evidence of Mr. McMahan's first major offense as defined by the Habitual Offender law.

UTT 64031DW and the Suspension letter for Driving Under Suspension dated 5/24/2007 are enclosed as evidence of Mr. McMahan's second major offense as defined by the Habitual Offender law.

Habitual Offender warning letter dated May 24, 2007 is enclosed as evidence that the Department did provide Mr. McMahan notice that he was at risk of being declared a habitual offender.

Post Office Box

0160

rolina 29016

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Yolanda P. Williams, Administrative Coordinator

February 29, 2016

RE: *Christopher Eric McMahan v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 09-OMVH-02-2132-CC
SCDL 4172712

UTT 10065EO and the Suspension letter for Driving Under Suspension dated 4/17/2009 are enclosed as evidence of Mr. McMahan's third major offense as defined by the Habitual Offender law.

Suspension letter for Habitual Offender dated April 17, 2009 is enclosed as evidence the Department notified Mr. McMahan that he had been declared a Habitual Offender.

The 5/18/2009 Amended Notice of Driving Status for Habitual Offender Suspension is enclosed as evidence that the Department did notify Mr. McMahan that due to his request for a hearing before the Office of Motor Vehicle Hearings (OMVH) his driving status had changed and he was allowed to drive at least until the OMVH determined the outcome of his challenge.

10 Year Driver Record – External is enclosed as evidence to support the other documents provided and provide the OMVH a clear picture of Mr. McMahan's driving history. The Certification for Court version did not include the information about Mr. McMahan's suspension for Failure to Pay Property Tax as that is not a suspension related to a driving offense.

Sincerely,



Brandy A. Duncan
Assistant General Counsel

Enclosures: Suspension letter for Failure to Pay Motor Vehicle Property Tax dated 8/11/2004
Electronic Transmission re Failure to Pay Motor Vehicle Property Tax
UTT Z334691
Suspension letter for Driving Under Suspension dated 5/2/2007
UTT 64031DW
Suspension letter for Driving Under Suspension dated 5/24/2007
Habitual Offender warning letter dated May 24, 2007
Suspension letter for Failure to Pay Traffic Ticket dated 6/5/2007 for 64030DW
Notice of Suspension for Failure to Pay Traffic Ticket for UTT 64030DW
Notice of Withdrawal of Suspension for UTT 64030DW
Reinstatement Screen for Suspension for Failure to Pay Traffic Ticket 64030DW
Suspension letter for Failure to Pay Traffic Ticket dated 6/5/2007 for 64031DW
Notice of Suspension for Failure to Pay Traffic Ticket for UTT 64031DW
Notice of Withdrawal of Suspension for UTT 64031DW
UTT 64031DW
Reinstatement Screen for Suspension for Failure to Pay Traffic Ticket 64031DW

Yolanda P. Williams, Administrative Coordinator

February 29, 2016

RE: *Christopher Eric McMahan v. South Carolina Department of Motor Vehicles*

Habitual Offender Declaration Hearing

Docket No.: 09-OMVH-02-2132-CC

SCDL 4172712

UTT 10065EO

Suspension letter for Driving Under Suspension dated 4/17/2009

Suspension letter for Habitual Offender dated April 17, 2009

5/18/2009 Amended Notice of Driving Status for Habitual Offender Suspension

10 Year Driver Record – External

cc: Thomas P. Austin, Esquire
Post Office Box 799
Greenwood, SC 29648-0799

RECEIVED

MAR 01 2016

SCOMVH

FILED

MAR 01 2016

SCOMVH

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South Carolina
Department of Motor Vehicles



08/11/2004

MCAHAN, CHRISTOPHER ERIC
435 HALTIWANGER RD APT 22
GREENWOOD, SC 29649-1717

CUSTOMER NO: 24607713
FILE NO: 1529057
DL NO: 4172712

OFFICIAL NOTICE

You may not drive commercial or non-commercial vehicles.

REASON: The County Treasurer's Office has directed the Division of Motor Vehicles to suspend your privilege to drive.

SECTION OF LAW: 12-37-2740

VIOLATION: Failure to pay motor vehicle property tax.

BEGINNING: 12:01 AM 08/31/2004 ENDING: INDEFINITE

The Department has received an affidavit filed by the court or municipal clerk/treasurer listed below, stating that motor vehicle property taxes owed on the vehicle described have not been paid within the time limit.

MOTOR VEHICLE: DODG 2004
AFFIDAVIT FILED BY: 024
CLERK/TREASURER OF: GREENWOOD

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:

NOTICE OF WITHDRAWAL:

Notice of withdrawal of non-payment of property tax affidavit must be submitted by the above named clerk/treasurer.

REINSTATEMENT FEE:

You must pay a \$50 reinstatement fee, if your compliance notice shows payment on or after the suspension date. This fee can be paid at any DMV or mailed to the Driver Records Office, Post Office Box 1498, Columbia, S.C. 29216-0028. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

Any questions relating to the property tax suspension should be directed to the County Treasurer listed above.

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 handwritten signature in dark ink, appearing to read "D. L. Phelps", is written over a horizontal line.

Driver Services, Deputy Director

CUSTOMER_...	SUSP_CAUSAL_DA...	SUSP_BEGIN_DATE	SUSP_POST_DATE	USER_ID
24607713	8/11/2004	8/31/2004	8/11/2004	COUNTY24USER...

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

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME CHRISTOPHER MIDDLE NAME ERIC LAST NAME McMahan
STREET AND NO. 219 GREENWAY DR. CITY GREENWOOD STATE SC ZIP CODE 29649

STATE LICENSED SC DRIVER'S LICENSE NO. 04172712 DRI LIC. CLASS D
VEH. LIC. NO. R/S STATE - MAKE OF VEH Ford YEAR 89 COMM VEH HAZMT AUTO MOPED TRUCK MTRCYCL COMB. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER Summary Court STREET AND NO. 107 S. Main St
DATE OF TRIAL 4/3/07 TIME OF TRIAL 1400 CITY Anderson STATE SC ZIP CODE 29624

VIOLATION - COURT APPEARANCE REQUIRED YES VIOLATION SECTION NO. 56-1-460
D. U.S.

OWNER OF VEHICLE SAMP DATE OF ARREST 2/25/07
ADDRESS OF OWNER SAMP DATE OF VIOLATION 2/25/07

BAIL DEPOSITED NONE NAME OF ARRESTING OFFICER MD Lounsbury RANK TRP
RACE W SEX M BIRTH DATE 1/9/31 HT. 5'09" WT 170 EYES B COUNTY Anderson NUMBER 04
DATE BAIL RECD. 20 BY 714 DISTRICT 3

CASE BEFORE MAGISTRATE ☒ MUN. COURT ☐
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐
NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☒
NOLLE PROSSED ☐ DISPOSITION ☒ GUILTY
FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐

TRIAL BY TRIAL OFFICER ☐ JURY ☐
VERDICT OF TRIAL IF ANY GUILTY ☐ NOT GUILTY ☐ DATE OF TRIAL IF ANY 20

JAIL ☐ SUSPEND ☐ FINE 75 AMT COLLECTED 75 AMT SUSPENDED ☐
COMMITTED TO: Vehicle Searched N Arrest on Result of Collision N
OFFENSE CODE 96 B.A. LEVEL 1

CERTIFIED CORRECT [Signature] DATE 4/3/07 Z 334691

DRIVER RECORDS COPY

PROP Tax

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

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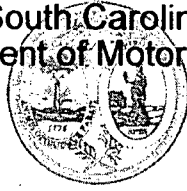
A. L. Phelps
Driver Services, Deputy Director

This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf of a book. The paper has a slightly textured appearance with some minor discoloration and faint, illegible markings, possibly from a previous page or a binding label. On the right edge, there is a vertical strip of text, which appears to be part of a binding or spine label. The text is partially visible and reads "THE END OF THE WORLD". The overall tone of the page is warm and vintage.

A. L. Phelps

[illegible]

South Carolina
Department of Motor Vehicles



05/02/2007

MCAHAN, CHRISTOPHER ERIC
435 HALTIWANGER RD APT 22
GREENWOOD, SC 29649-1717

CUSTOMER NO: 24607713
FILE NO: 6115001
DL NO: 4172712

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: You have been convicted of the offense listed below.

SECTION OF LAW: 56-1-460

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
02/25/2007	04/03/2007	Z334691	Driving Under Suspension

BEGINNING DATE: 12:01 AM 04/03/2007 ENDING DATE: MIDNIGHT 07/03/2007

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:

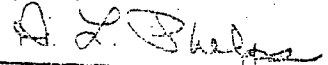
REINSTATEMENT FEE:

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.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

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.


Driver Services, Deputy Director

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FIRST NAME
 MIDDLE NAME
 LAST NAME
 CITY OR COUNTY OF RESIDENCE
 VERBOS

FIRST NAME
 MIDDLE NAME
 LAST NAME

STREET AND NO. 219 GREENWAY DE GREENWOOD ST
CITY STATE

STATE LICENSED	DRIVER'S LICENSE NO.	DR. IN CLASS
52	2121160	0

VEH LIC NO	875004	STATE	MAE OF VEH YEAR	1960	HAZ MT	MOPED	MTRCYCL	OTHER
						AUTO	TRUCK	COMB

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

DATE OF TRAIL	3001714	DATE OF TRAIL	3001714
TIME OF TRAIL	1507	TIME OF TRAIL	1507
CITY	LAUREL	CITY	LAUREL
STATE	MD	STATE	MD
ZIP CODE	20631	ZIP CODE	20631

DATE	7	OF	1	THAL	20	TIME OF THAL	7:00 PM	CITY	NEW YORK	STATE	NY	ZIP CODE	10018
------	---	----	---	------	----	--------------	---------	------	----------	-------	----	----------	-------

VIOLATION COURT APPEARANCE REQUIRED YES NO	56-1-520
--	----------

OWNER OF VEHICLE	318
DATE OF ARREST	318

177 WINDY HILLS ST	DATE OF VIOLATION
ADDRESS OF OWNER	2025

BAIL DEPOSITED	NAME OF ARRESTING OFFICER	RANK

NUMBER	COUNTY	DESCRIPTION OF ACCUSED	DATE	TIME	PLACE	REMARKS
1	Alameda	...	...	...	...	...

DATE REC'D	BY	BADGE	DISPATCH
WM 10:31	7450	15	04

CASE BEFORE		NIGHTMARE		MIN COURT		A D		M T W T F S	
	20						108		

CIRCUIT COURT ☐		FAMILY COURT ☐		FEDERAL COURT ☐		TIME OF VIOLATION		WEATHER	
Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
1	2	3	4	5	6	7	8	9	10

NAME OF TRIAL OFFICER		☒ DEFENDANT AND NOT ABBAS	☐ ABBAS	DISTANCE IN FEET FROM INTERSECTION
IF DIFFERENT FROM ABOVE	NAME AND INITIALS	DATE	TIME	

DEFENDANT DID NOT APPEAR	APPEARED	DISPOSITION
☒	☐	GUilty

US SPACE MEET FROM INTERSECTION

FORFEITED BOND	☐	PLED NOLO CONTENDERE	☐	AND	☐	TRIAL BY	☒	JURY	☐
----------------	--------------------------	----------------------	--------------------------	-----	--------------------------	----------	-------------------------------------	------	--------------------------

☐	DATE OF TRIAL IF ANY	MILES	N	E	S	W
☐						

TRIAL IF ANY	NOT GUILTY	☐	7	20	1	2	3	4
DATE	AMT COLLECTED	AMT SUSPENDED	HWY NO	CITY	JUL	SUBS NO	TIME	AMT COLLECTED

COMMITTED TO	4460-NEWA	ARREST AS	OFFENSE CODE	DATE/LEVEL
				01/10/10

COMMITTEE	Result of Accident	DATE	CERTIFIED CORRECT
	W0		
	40		

64031 DW

DRIVERS RECORD COPY

copy of the original document on a
with the South Carolina Department of

Motor Vehicles.

000000

0168 Driver Services, Deputy Director

2007

MAY 9

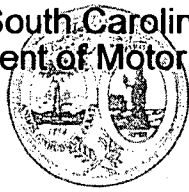
[Faint, mostly illegible text, possibly a list or table of data]

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

South Carolina
Department of Motor Vehicles



05/24/2007

MCAHAN, CHRISTOPHER ERIC
435 HALTIWANGER RD APT 22
GREENWOOD, SC 29649-1717

CUSTOMER NO: 24607713
FILE NO: 6233002
DL NO: 4172712

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: You have been convicted of the offense listed below.

SECTION OF LAW: 56-1-460

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
03/18/2007	04/09/2007	64031DW	Driving Under Suspension

BEGINNING DATE: 12:01 AM 07/04/2007 ENDING DATE: MIDNIGHT 10/04/2007

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:

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.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

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.

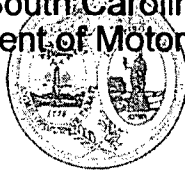
A. L. Phelps

Driver Services, Deputy Director

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South Carolina
Department of Motor Vehicles



05/24/2007

MCPAHAN, CHRISTOPHER ERIC
435 HALTIWANGER RD APT 22
GREENWOOD, SC 29649-1717

CUSTOMER NO: 24607713
FILE NO: 6233004
DL NO: 4172712

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 or ten minor violations within a three year period will be classified as an 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

Child Endangerment	*Reckless driving
Driving Under Suspension	Reckless Homocide
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-BI	
Passing Stopped School Bus/BI/Death	
Negligent or Criminal Operation of CMV-Fatality	
Failure to Stop for Blue Light with BI/Death	

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	

*Reckless driving will be considered a major and minor violation

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.

[Signature]
Driver Services, Deputy Director

South Carolina
Department of Motor Vehicles



06/05/2007

MCAHAN, CHRISTOPHER ERIC
435 HALTIWANGER RD APT 22
GREENWOOD, SC 29649-1717

CUSTOMER NO: 24607713
FILE NO: 6303208
DL NO: 4172712

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: FAILURE TO PAY TRAFFIC TICKET SECTION OF LAW: 56-25-10

VIOL DATE	TICKET#	VIOLATION
03/18/2007	64030DW	Speeding - Over 10 MPH

COURT:
CITY OF NEWBERRY
1507 NANCE STREET
NEWBERRY, SC 29108
803 321 1010

BEGINNING DATE: 12:01 AM 06/25/2007

ENDING DATE: When you receive notice from the Department that this action has been cleared.

SPECIAL DRIVING PRIVILEGES:

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

COMPLIANCE:

Pay the fine for the ticket to the court. When the fine is paid, the court will give you a compliance notice which shows the description of the violation, the date of the violation, the date the ticket was paid, and the ticket number. You must bring this compliance to your local DMV Office or mail it to Driver Records, Post Office Box 1498, Blythewood, SC 29016-0028. Note: It is your responsibility to give the Department proof that this ticket has been paid.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee if your compliance notice shows payment on or after the suspension date. 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 online at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

Your license must be returned to any DMV Office or mailed to Driver Records if this suspension is not cleared before the suspension date listed above.

THIS NOTICE CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

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. J. Phelps
Driver Services, Deputy Director

0172

060694

STATE OF
SOUTH CAROLINA



NOTICE OF SUSPENSION
(FAILURE TO RESPOND TO CITATION, APPEAR IN COURT, OR PAY FINE)

THE DEFENDANT HAS FAILED TO RESPOND TO A CITATION OR PAY A FINE FOR THE VIOLATION DESCRIBED HEREIN WITHIN THE PRESCRIBED TIME LIMIT. INITIATE ACTION TO SUSPEND THE DEFENDANTS DRIVER'S LICENSE IN ACCORDANCE WITH THE LAWS OF THIS STATE OR THE PROVISIONS OF THE NONRESIDENT VIOLATOR COMPACT.

CITATION NO. 64030DW	DATE OF VIOLATION 03/18/2007	LOCATION OF VIOLATION DIXIE / GLENN	SECTION VIOLATED 00-00-0000
DESCRIPTION OF VIOLATION CITY ORDINANCE		FINE AND COSTS 150.00	TRIAL DATE 04/09/2007
DOCKET NO.		COURT NO.	

DRIVER'S LICENSE NO. 04172712		STATE SC	DATE OF BIRTH 10/31/1974	
NAME LAST MCMAHAN, CHRISTOPHER E	FIRST E	MIDDLE 	SEX M	
STREET ADDRESS 219 GREENWAY DRIVE				
CITY GREENWOOD	STATE SC	ZIP CODE 29649		
REGIS. (TAG) NO. 875VDH	STATE SC	YEAR 1999	MAKE FORD	MODEL

C O U R T I N F O	NAME OF COURT CITY OF NEWBERRY		
	MAILING ADDRESS 1507 NANCE STREET		
	CITY NEWBERRY	STATE SC	ZIP CODE 29108
	TELEPHONE AREA CODE (803) NUMBER 321-1010		
	AUTHORIZED BY JUDGE W. FRANK PARTRIDGE		DATE 05/03/2007

FORM DL-63

#2 HOME JURISDICTION COPY

RECEIVED
JUN 04 2007
DMV

MAIL THIS COPY TO:

S.C. DEPT. OF HWYS. & PUBLIC TRANSPORTATION
DIVISION OF MOTOR VEHICLES
PO BOX 1498
BLYTHEWOOD, S.C. 29016-1498
ATTENTION: MANAGER, DRIVER RECORDS

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

A. L. Bledsoe
Driver Services, Deputy Director

0173

000095

STATE OF
SOUTH CAROLINA



NOTICE OF WITHDRAWAL OF SUSPENSION

To have this suspension withdrawn, you must take this form to the local DMV office. For mailing instructions, please see the back of this form.

520024 NC 4/13/09

PAYMENT HAS BEEN MADE IN THE AMOUNT OF	
\$ 150.00	COVERING THE FINE AND COSTS FOR THE VIOLATION DESCRIBED HEREIN.
AUTH. SIGNATURE <i>[Signature]</i>	DATE 4/13/09

CITATION NO. 64030DW	DATE OF VIOLATION 03/18/2007	LOCATION OF VIOLATION DIXIE / GLENN	SECTION VIOLATED 00-00-0000
DESCRIPTION OF VIOLATION CITY ORDINANCE-CARELESS 60-45		FINE AND COSTS 150.00	TRIAL DATE 04/09/2007
DOCKET NO.		COURT NO.	

DRIVER'S LICENSE NO. 04172712		STATE SC	DATE OF BIRTH 10/31/1974	
NAME LAST MCMAHAN, CHRISTOPHER E	FIRST E	MIDDLE E	SEX M	
STREET ADDRESS 219 GREENWAY DRIVE				
CITY GREENWOOD	STATE SC	ZIP CODE 29649		
REGIS. (TAG) NO. 875VDH	STATE SC	YEAR 1999	MAKE FORD	MODEL

C O U R T I N F O	NAME OF COURT CITY OF NEWBERRY		
	MAILING ADDRESS 1507 NANCE STREET		
	CITY NEWBERRY	STATE SC	ZIP CODE 29108
	TELEPHONE AREA CODE (803) NUMBER 321-1010		
	AUTHORIZED BY JUDGE W. FRANK PARTRIDGE		DATE 05/03/2007

FORM DL-53

#3 HOME JURISDICTION (SUSPENSION WITHDRAWAL)
(SEE INSTRUCTIONS ON REVERSE SIDE)

TRIAL OFFICER INSTRUCTIONS: Upon the defendant complying with the citation, the top portion of Form DL-53 (blue & pink) copies are completed and the blue copy is forwarded to the defendant.

IMPORTANT DRIVER INSTRUCTIONS

SOUTH CAROLINA DRIVERS: DMV MUST RECEIVE THIS FORM. You may take this blue form to a DMV office or mail it to the address below. If this form is not received, your driving privilege will remain suspended. If this fine is paid on or after the beginning date of the suspension, a \$100 reinstatement fee must also be paid before the suspension is withdrawn.

MAILING INSTRUCTIONS: This form and reinstatement fee, if required, must be mailed to:
South Carolina Department of Motor Vehicles
Driver Record
Post Office Box 1498
Blythewood South Carolina 29016-0028

OUT-OF-STATE DRIVERS: YOU must present or mail this blue copy of Form DL-53 along with any applicable reinstatement fees to the state in which you are a licensed driver. Any question you may have concerning reinstatement fees or driver license suspension must be directed to your home state.

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

000096

REINSTATEMENT SCREEN

Cancel Previous Next Finish

PRODUCTION ENVIRONMENT <---

Customer

Name **MCMAHAN, CHRISTOPHER ERIC**

Customer No **24607713**

DOB **10/31/1974**

Suspension

Suspension Code **097 Failure to Pay Traffic Ticket (64030DW, 541, 03/18/2007)**

Suspension No **5**

Compliance No **4921928**

License No **0004172712**

Action **SUSPENDED**

Moped Susp **N**

Compliance Status **CLEARED**

Casual Date **03/18/2007**

Begin Date **06/25/2007**

End Date

☐ Show all Clearance Possibilities

Failure to Pay Traffic Ticket

Ticket No **64030DW**

Violation Date

03/18/2007

Violation Code

541

Compliance Detail

Type	Has	Date Compliant	Fee Amount	User	Office
30	COMPLIANCE FINE PAID FOR TRAFFIC TICKET	04/13/2009	\$0.00	COLEMAN_SHAROND	0024
8	BASIC REINSTATEMENT FEE	04/13/2009	\$100.00	COLEMAN_SHAROND	0024

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

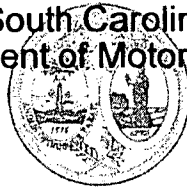
A. L. Phelps

Driver Services, Deputy Director

0175

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South Carolina
Department of Motor Vehicles



06/05/2007.

MCMAHAN, CHRISTOPHER ERIC
435 HALTIWANGER RD APT 22
GREENWOOD, SC 29649-1717

CUSTOMER NO: 24607713
FILE NO: 6303253
DL NO: 4172712

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: FAILURE TO PAY TRAFFIC TICKET SECTION OF LAW: 56-25-10

VIOL DATE	TICKET#	VIOLATION
03/18/2007	64031DW	Driving under Suspension

COURT:
CITY OF NEWBERRY
1507 NANCE STREET
NEWBERRY, SC 29108
803 321 1010

BEGINNING DATE: 12:01 AM 06/25/2007.

ENDING DATE: When you receive notice from the Department that this action has been cleared.

SPECIAL DRIVING PRIVILEGES:

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

COMPLIANCE:

Pay the fine for the ticket to the court. When the fine is paid, the court will give you a compliance notice which shows the description of the violation, the date of the violation, the date the ticket was paid, and the ticket number. You must bring this compliance to your local DMV Office or mail it to Driver Records, Post Office Box 1498, Blythewood, SC 29016-0028. Note: It is your responsibility to give the Department proof that this ticket has been paid.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee if your compliance notice shows payment on or after the suspension date. 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 online at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

Your license must be returned to any DMV Office or mailed to Driver Records if this suspension is not cleared before the suspension date listed above.

THIS NOTICE CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

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. Shadys
Driver Services, Deputy Director

0176

060698

**STATE OF
SOUTH CAROLINA**



**NOTICE OF SUSPENSION
(FAILURE TO RESPOND TO CITATION, APPEAR IN COURT, OR PAY FINE)**

THE DEFENDANT HAS FAILED TO RESPOND TO A CITATION OR PAY A FINE FOR THE VIOLATION DESCRIBED HEREIN WITHIN THE PRESCRIBED TIME LIMIT. INITIATE ACTION TO SUSPEND THE DEFENDANTS DRIVER'S LICENSE IN ACCORDANCE WITH THE LAWS OF THIS STATE OR THE PROVISIONS OF THE NONRESIDENT VIOLATOR COMPACT.

CITATION NO. 64031DW	DATE OF VIOLATION 03/18/2007	LOCATION OF VIOLATION DIXIE / GLENN	SECTION VIOLATED 56-01-0460(1)
DESCRIPTION OF VIOLATION DRIVING UNDER SUSPENSION - 1ST		FINE AND COSTS 440.00	TRIAL DATE 04/09/2007
DOCKET NO.		COURT NO.	

DRIVER'S LICENSE NO. 04172712		STATE SC	DATE OF BIRTH 10/31/1974	
NAME LAST MCMAHAN, CHRISTOPHER E	FIRST E	MIDDLE 	SEX M	
STREET ADDRESS 219 GREENWAY DRIVE				
CITY GREENWOOD		STATE SC	ZIP CODE 29649	
REGIS. (TAG) NO. 875VDH	STATE SC	YEAR 1999	MAKE FORD	MODEL

COURT INFO	NAME OF COURT CITY OF NEWBERRY		
	MAILING ADDRESS 1507 NANCE STREET		
	CITY NEWBERRY	STATE SC	ZIP CODE 29108
	TELEPHONE AREA CODE (803) NUMBER 321-1010		
	AUTHORIZED BY JUDGE W. FRANK PARTRIDGE		DATE 05/04/2007

FORM DL-63

#2 HOME JURISDICTION COPY

MAIL THIS COPY TO:

**S.C. DEPT. OF HWYS. & PUBLIC TRANSPORTATION
DIVISION OF MOTOR VEHICLES
PO BOX 1498
BLYTHEWOOD, S.C. 29016-1498
ATTENTION: MANAGER, DRIVER RECORDS**

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

060699

0177

STATE OF
SOUTH CAROLINA



NOTICE OF WITHDRAWAL OF SUSPENSION

To have this suspension with-
drawn, you must take this form
to the local DMV office. For mail-
ing instructions, please see the
back of this form.

PAYMENT HAS BEEN MADE IN THE AMOUNT OF
\$ 440.00
COVERING THE FINE AND COSTS FOR
THE VIOLATION DESCRIBED HEREIN.

AUTH. SIGNATURE

DATE 4/13/09

CITATION NO. 64031DW	DATE OF VIOLATION 03/18/2007	LOCATION OF VIOLATION DIXIE / GLENN	SECTION VIOLATED 56-01-0460(1)
DESCRIPTION OF VIOLATION DRIVING UNDER SUSPENSION - 1ST		FINE AND COSTS 440.00	TRIAL DATE 04/09/2007
DOCKET NO.		COURT NO.	

DRIVER'S LICENSE NO. 04172712		STATE SC	DATE OF BIRTH 10/31/1974
NAME LAST MCMAHAN, CHRISTOPHER E	FIRST CHRISTOPHER	MIDDLE E	SEX M
STREET ADDRESS 219 GREENWAY DRIVE			
CITY GREENWOOD	STATE SC	ZIP CODE 29649	
REGIS. (TAG) NO. 875VDH	STATE SC	YEAR 1999	MAKE FORD

C O U R T I N F O	NAME OF COURT CITY OF NEWBERRY		
	MAILING ADDRESS 1507 NANCE STREET		
	CITY NEWBERRY	STATE SC	ZIP CODE 29108
	TELEPHONE AREA CODE (803) NUMBER 321-1010		
	AUTHORIZED BY JUDGE W. FRANK PARTRIDGE		DATE 05/04/2007

FORM DL-53

#3 HOME JURISDICTION (SUSPENSION WITHDRAWAL;
(SEE INSTRUCTIONS ON REVERSE SIDE)

TRIAL OFFICER INSTRUCTIONS: Upon the defendant complying with the citation, the top portion of Form DL-53 (blue & pink) copies are completed and the blue copy is forwarded to the defendant.

IMPORTANT DRIVER INSTRUCTIONS

SOUTH CAROLINA DRIVERS: DMV MUST RECEIVE THIS FORM. You may take this blue form to a DMV office or mail it to the address below. If this form is not received, your driving privilege will remain suspended. If this fine is paid on or after the beginning date of the suspension, a \$100 reinstatement fee must also be paid before the suspension is withdrawn.

MAILING INSTRUCTIONS: This form and reinstatement fee, if required, must be mailed to:
South Carolina Department of Motor Vehicles
Driver Record
Post Office Box 1498
Blythewood South Carolina 29016-0028

OUT-OF-STATE DRIVERS: YOU must present or mail this blue copy of Form DL-53 along with any applicable reinstatement fees to the state in which you are a licensed driver. Any question you may have concerning reinstatement fees or driver license suspension must be directed to your home state.

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

A. L. Shepherd
Driver Services, Deputy Director

060100

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF UNIVERSITY VERSUS
FIRST NAME CHRISTOPHER MIDDLE NAME E. LAST NAME McMANAN

STREET AND NO. 219 GREENWAY DR CITY GREENWOOD SC STATE 29649

STATE LICENSED SC DRIVER'S LICENSE NO. 04172712 DRI LG CLASS D

VEH LIC NO 815UDH STATE SC MAKE OF VEH FORD YEAR 99 COMM VEH ☐ AUTO ☒ TRUCK ☐ COMB. ☐
HAZ MT ☐ MOPED ☐ MTRCYCL ☐ OTHER ☐

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER VALTIOGE STREET AND NO. 1507 RANCE ST

DATE OF TRIAL 4/9/07 TIME OF TRIAL 1PM CITY UNIVERSITY STATE SC ZIP CODE 29108

VIOLATION DUS COURT APPEARANCE REQUIRED YES ☐ NO ☒ VIOLATION SECTION NO 56-1-520

OWNER OF VEHICLE BURTON - BEADFORD DATE OF ARREST 3/18/07

ADDRESS OF OWNER 672 WINDSOLO RD HODGES SC DATE OF VIOLATION 3/18/07

BAIL DEPOSITED 0 NAME OF ARRESTING OFFICER KENNEY RANK 1

DESCRIPTION OF ACCUSED WM DOB 10/31/74 SEX M HT 5'10" WT 185 EYES BROWN COUNTY UNIVERSITY NUMBER 36

DATE BAIL RECD 20 BY 0 BADGE 308 DISTRICT 2

CASE BEFORE MAGISTRATE ☐ MUN COURT ☒ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE 1400 AM WEATHER OK

DEFENDANT DID NOT APPEAR ☒ APPEARED ☐ DISTANCE IN FEET FROM INTERSECTION OF DIVE

DISPOSITION GUILTY ☐ PLED NOLO CONTENDERE ☐ TRIAL BY TRIAL OFFICER ☒ JURY ☐

VERDICT OF TRIAL IF ANY GUILTY ☐ NOT GUILTY ☒ DATE OF TRIAL IF ANY 4/9/07

JAIL ☐ SUSP NC ☐ FINE 440.00 AMT COLLECTED NRVC AMT SUSPENDED 0 HWY NO 0 CITY UNITS

COMMITTED TO 0 Arrest as Result of Accident NO OFFENSE CODE 40 DATE LEVEL 0

CERTIFIED CORRECT W.J. Portledge Jr. DATE 4/09/2007 64031 DW

DRIVER'S RECORD COPY

496
This is a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

060101

A. L. Phelps
Driver Services, Deputy Director

2007

MAY 4

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the Department of Motor Vehicles, at Columbia, South Carolina, this 1st day of May, 2007.

Very truly yours,
[Signature]
[Title]
Department of Motor Vehicles
Columbia, South Carolina

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

A. L. Phillips

Driver Services, Deputy Director

FILED

MAR 01 2016

SCOMVH

0180

060102

REINSTATEMENT SCREEN

Cancel Previous Next Print

Customer

Name **MCMAHAN, CHRISTOPHER ERIC**

PRODUCTION ENVIRONMENT <---

Customer No **24607713**

DOB **10/31/1974**

Suspension

Suspension Code **097 Failure to Pay Traffic Ticket (64031DW, 596, 03/18/2007)**

Suspension No **6**

Compliance No **4921947**

License No **0004172712**

Action **SUSPENDED**

Moped Susp **N**

Compliance Status **CLEARED**

Casual Date **03/18/2007**

Begin Date **06/25/2007**

End Date

☐ Show all Clearance Possibilities

Failure to Pay Traffic Ticket

Ticket No **64031DW**

Violation Date

03/18/2007

Violation Code

596

Compliance Detail

Type	Has	Date Compliant	Fee Amount	User	Office
30	COMPLIANCE FINE PAID FOR TRAFFIC TICKET	04/13/2009	\$0.00	COLEMAN_SHAROND	0024
8	BASIC REINSTATEMENT FEE	04/13/2009	\$100.00	COLEMAN_SHAROND	0024

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

A. L. P. [Signature]

Driver Services, Deputy Director

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STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Greenwood VERSUS
FIRST NAME Christopher MIDDLE NAME Eric LAST NAME McMahan
STREET AND NO 219 Greenwood Dr CITY Greenwood STATE SC ZIP CODE 29649
STATE LICENSED SC DRIVER'S LICENSE NO 004172712 CDL ☐ YES ☒ NO DRI LIC CLASS 1. D
VEH LIC NO 441 W PB STATE SC MAKE OF VEH Dodge YEAR 00 COMM VEH ☒ AUTO ☐ 16 PSGR VEH ☐ COMB
HAZ MT ☐ MOPED ☐ MTRCYCL ☐ OTHER ☐

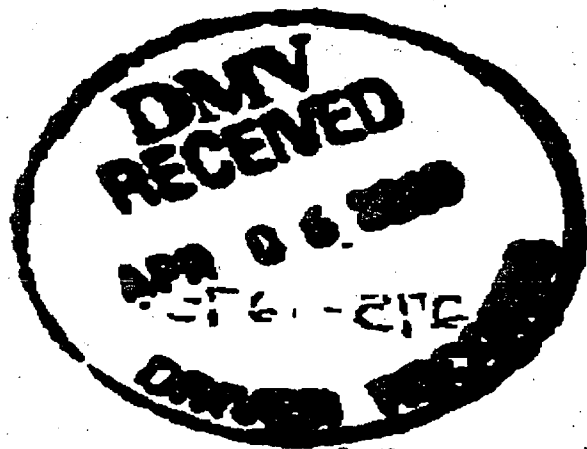
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER City Court STREET AND NO 570 Monument St P.O. Box 40
DATE 12-21-08 OF 01 TRIAL 2008 TIME OF TRIAL 9:00 AM CITY Greenwood STATE SC ZIP CODE 29648

VIOLATION Driving Under Suspension (2nd) COURT APPEARANCE REQUIRED ☒ YES ☐ NO VIOLATION SECTION NO. 56-1-4160
OWNER OF VEHICLE State DATE OF ARREST 10/26/2008
ADDRESS OF OWNER State DATE OF VIOLATION 10/26/2008

BAIL DEPOSITED JAIL NAME OF ARRESTING OFFICER SATHRE RANK Pt
DESCRIPTION OF ACCUSED
RACE W SEX M BIRTH DATE 10/31/1975 HT 5'10" HAIR BRN WT 150 EYES BLU COUNTY Greenwood NUMBER 241
DATE BAIL RECD 20 BY 20 BADGE 1360 DISTRICT 2
CASE BEFORE
CIRCUIT COURT ☐ MAGISTRATE ☐ MUN COURT ☒ FEDERAL COURT ☐
FAMILY COURT ☐
NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE
DEFENDANT DID NOT APPEAR ☐ APPEARED ☒
DISPOSITION
NOLLE PROSSED ☐ GUILTY ☒
FORFEITED BOND ☐ PLED NOLO-CONTENDERE ☐
TRIAL BY Magistrate TRIAL OFFICER ☐ JURY ☐
VERDICT OF TRIAL IF ANY
GUILTY ☐ NOT GUILTY ☐
DATE OF TRIAL IF ANY 20
FINE 1275 AMT COLLECTED 1275 AMT SUSPENDED 0
COMMITTED TO State Vehicle Searched Yes Arrest as Result of Collision No
CERTIFIED CORRECT ALL DATE 4/1/09 OFFENSE CODE 96 B A LEVEL 10065 EO

DRIVER'S RECORD COPY



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

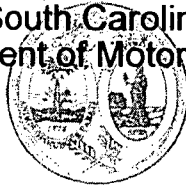
060105

A. L. Phelps

Driver Services, Deputy Director

0183

South Carolina
Department of Motor Vehicles



04/17/2009

MCAHAN, CHRISTOPHER ERIC
219 GREENWAY DR
GREENWOOD, SC 29649-9564

CUSTOMER NO: 24607713
FILE NO: 9662000
DL NO: 4172712

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: You have been convicted of the offense listed below.

SECTION OF LAW: 56-1-460

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
10/26/2008	04/01/2009	10065EO	Driving Under Suspension

BEGINNING DATE: 12:01 AM 04/01/2009 ENDING DATE: MIDNIGHT 07/01/2009

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 test.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

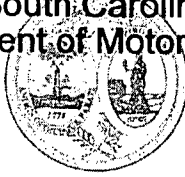
Driver Records Manager

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

A handwritten signature in black ink, appearing to read "D. L. Phelps", is written over a horizontal line.

Driver Services Deputy Director

South Carolina
Department of Motor Vehicles



04/17/2009

MCAHAN, CHRISTOPHER ERIC
219 GREENWAY DR
GREENWOOD, SC 29649-9564

CUSTOMER NO: 24607713
FILE NO: 9662002
DL NO: 4172712

OFFICIAL NOTICE

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

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
10/26/2008	04/01/2009	10065EO	Driving Under Suspension
03/18/2007	04/09/2007	64031DW	Driving Under Suspension
02/25/2007	04/03/2007	Z334691	Driving Under Suspension

BEGINNING DATE: 12:01 AM 05/17/2009 ENDING DATE: MIDNIGHT 05/17/2014

HEARING:

Section 56-1-1030 allows you to have a hearing to show why you should not be declared an Habitual Offender. There is a \$150 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

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

FILED

MAR 01 2016

SCOMVH

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A. L. Phelps
Driver Services, Deputy Director

South Carolina
Department of Motor Vehicles



05/18/2009

MCMAHAN, CHRISTOPHER ERIC
219 GREENWAY DR
GREENWOOD, SC 29649-9564

CUSTOMER NO: 24607713
FILE NO: 9770290
DL NO: 4172712

AMENDED NOTICE OF DRIVING STATUS

This is official notification that the information on your driving record has changed effective 05/18/2009. This official notice cancels previous notices of suspension, cancellation, revocation or disqualification concerning the listed description(s).

Your request concerning the Department's action has been received. You will receive notification from the Hearings or Review Office advising you of the date, time and location of the hearing/review.

DRIVING STATUS: Suspended Disqualified

Hearing/Review Requested for:

Date	Begin Date	End Date	Susp Description
10/26/2008	05/17/2009	05/17/2014	Habitual Offender

Suspension, cancellation, revocation and/or disqualification modified or deleted.

Date	Begin Date	End Date	Action	Susp Description
------	------------	----------	--------	------------------

IMPORTANT INFORMATION
DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS

DRIVING STATUS:

NO SUSPENSION-Your driving privileges are clear.

SUSPENDED/DISQUALIFIED-All driving privileges to operate commercial and non-commercial vehicles are suspended and disqualified.

DISQUALIFIED-All driving privileges to operate commercial vehicles are disqualified.

SUSPENDED-Provisional, Route Restricted or Temporary Alcohol- You have special driving privileges.

MODIFIED-The violation has been changed and is still on your official driving record.

DELETED-The violation has been removed from your driving record.

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with the South Carolina Department of
Motor Vehicles.

A. L. Bluff 060108

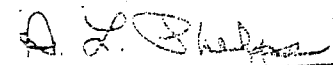
Driver Services Deputy Director

0186

If your driving status is suspended and/or disqualified, you are required to meet all reinstatement requirements for any suspension, revocation, cancellation or disqualification. For reinstatement requirements or eligibility for special driving privileges, please refer to previous notices or contact a DMV Customer Service Representative at (803)896-5000. Information may also be obtained by visiting our website at www.scdmvonline.com.

Driver Records Manager

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with the South Carolina Department of
Motor Vehicles.



Driver Services, Deputy Director

060109



10 YEAR DRIVER RECORD - External - Departmental Use Only

Customer No: 24607713 Driver License No: 4172712
Name: MCMAHAN, CHRISTOPHER ERIC
Address: 105 ROCK CREEK DR
City: GREENWOOD State: SC Zip: 296469245
County: GREENWOOD
DOB: 10/31/1974 Sex: M 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	12/17/2009	10/31/2019	10/22/1993	N	N	N/A
Prior								
DL	D	Renewal	11/01/2002	10/31/2007	10/22/1993	N	N	N/A
DL	D	Duplicate	12/20/2002	10/31/2007	10/22/1993	N	N	N/A
DL	D	Returned	11/01/2002	10/31/2007	10/22/1993	N	N	N/A
DL	D	Renewal	10/31/1997	10/31/2002	10/22/1993	N	N	N/A
DL	D	Duplicate	05/01/2000	10/31/2002	10/22/1993	N	N	N/A

Address Change -

Address: 435 HALTIWANGER RD APT 22 Date Changed: 10/23/2008
City: GREENWOOD State: SC Zip: 296491717

Address Change -

Address: 219 GREENWAY DR Date Changed: 12/17/2009
City: GREENWOOD State: SC Zip: 296499564

Address Change -

Address: 111 PORTER CT Date Changed: 02/04/2016
City: HODGES State: SC Zip: 296539104

Point Summary

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

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Motor Vehicles.

SUSP: 047 - Accident - Uninsured
Suspension Beg: 04/13/2010
Accident: 10/20/2005
Reinstatement Requirements Met: 07/15/2010
ACD: D36 Withdrawal Loc Ref:
SR 22 Required Until:

Suspension End: 07/15/2010
Post: 03/29/2010
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

SUSP: 013 - Driving Under Suspension
Special Driving Privilege: NONE
Suspension Beg: 04/01/2009
Causal: 10/26/2008
Reinstatement Requirements Met: 12/17/2009
ACD: B26 Withdrawal Loc Ref:

Ticket#: 10065EO
Suspension End: 07/01/2009
Post: 04/17/2009
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

060110

10 YEAR DRIVER RECORD - External - Departmental Use Only

Customer No: 24607713

Driver License No: 4172712

Name: MCMAHAN, CHRISTOPHER ERIC

VIOL: 496 - Driving Under Suspension
Violation: 10/26/2008 **Conviction:** 04/01/2009
ACD: B26 **Conviction Loc Ref:**
Conviction State: SC

Ticket#: 10065EO
Recd: 04/06/2009 **Post:** 04/17/2009
Conviction Reference:
Court Type: MUNICIPAL COURT

VIOL: 560 - Failure to Pay Traffic Ticket or Appear
Violation: 03/18/2007 **Conviction:** 04/09/2007
ACD: D56 **Conviction Loc Ref:** 596
Conviction State: SC

Ticket#: 64031DW
Recd: 06/05/2007 **Post:** 06/05/2007
Conviction Reference:
Court Type: UNKNOWN

SUSP: 097 - Failure to Pay Traffic Ticket
Suspension Beg: 06/25/2007
Causal: 03/18/2007
Ticket Paid: 04/13/2009
ACD: D56 **Court Name:** CITY OF NEWBERRY
Court Address: 1507 NANCE STREET
City: NEWBERRY

Ticket#: 64031DW
Suspension End: 04/13/2009
Post: 06/05/2007
Compliance Received: 04/13/2009

State: SC **Zip:** 29108
Phone No: 803 321 1010

VIOL: 560 - Failure to Pay Traffic Ticket or Appear
Violation: 03/18/2007 **Conviction:** 04/09/2007
ACD: D56 **Conviction Loc Ref:** 541
Conviction State: SC

Ticket#: 64030DW
Recd: 06/05/2007 **Post:** 06/05/2007
Conviction Reference:
Court Type: UNKNOWN

SUSP: 097 - Failure to Pay Traffic Ticket
Suspension Beg: 06/25/2007
Causal: 03/18/2007
Ticket Paid: 04/13/2009
ACD: D56 **Court Name:** CITY OF NEWBERRY
Court Address: 1507 NANCE STREET
City: NEWBERRY

Ticket#: 64030DW
Suspension End: 04/13/2009
Post: 06/05/2007
Compliance Received: 04/13/2009

State: SC **Zip:** 29108
Phone No: 803 321 1010

VIOL: 496 - Driving Under Suspension
Violation: 03/18/2007 **Conviction:** 04/09/2007
ACD: B26 **Conviction Loc Ref:**
Conviction State: SC

Ticket#: 64031DW
Recd: 05/09/2007 **Post:** 05/24/2007
Conviction Reference:
Court Type: MUNICIPAL COURT

SUSP: 029 - Driving Under Suspension - FTPPT
Special Driving Privilege: NONE
Suspension Beg: 07/04/2007
Causal: 03/18/2007
Reinstatement Requirements Met: 04/13/2009
ACD: B26 **Withdrawal Loc Ref:**

Ticket#: 64031DW
Suspension End: 10/04/2007
Post: 05/24/2007
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

VIOL: 496 - Driving Under Suspension
Violation: 02/25/2007 **Conviction:** 04/03/2007
ACD: B26 **Conviction Loc Ref:**
Conviction State: SC

Ticket#: Z334691
Recd: 04/24/2007 **Post:** 05/02/2007
Conviction Reference:
Court Type: MAGISTRATE COURT

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Motor Vehicles.

060111

10 YEAR DRIVER RECORD - External - Departmental Use Only

Customer No: 24607713

Driver License No: 4172712

Name: MCMAHAN, CHRISTOPHER ERIC

SUSP: 029 - Driving Under Suspension - FTPPT

Ticket#: Z334691

Special Driving Privilege: NONE

Suspension Beg: 04/03/2007

Suspension End: 07/03/2007

Causal: 02/25/2007

Post: 05/02/2007

Reinstatement Requirements Met: 04/13/2009

Reinstatement Fee Paid: Y

ACD: B26 Withdrawal Loc Ref:

Withdrawal Reason Ref:

VIOL: 473 - Failure to surrender suspended vehicle reg or plate

Ticket#: C683836

Violation: 10/06/2006 **Conviction:** 12/07/2006

Recd: 01/29/2007

Post: 02/08/2007

ACD: NAC Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: MAGISTRATE COURT

SUSP: 015 - Failure to Pay Property Tax

Special Driving Privilege: NONE

Suspension Beg: 08/31/2004

Suspension End: 04/13/2009

Causal: 08/11/2004

Post: 08/11/2004

Reinstatement Requirements Met: 04/13/2009

Reinstatement Fee Paid: Y

ACD: W00 Withdrawal Loc Ref:

Withdrawal Reason Ref:

End of Report

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Motor Vehicles.

A. L. Phelps
Driver Services, Deputy Director

FILED

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SCOMVH

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Mark Sanford
Governor



Marcia S. Adams
Director

State of South Carolina
Department of Motor Vehicles

RECEIVED
MAY 19 2009
SCOMVH

May 18, 2009

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

RE: *Christopher Eric McMahan v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 09-OMVH-02-2132-CC
SCDL 4172712

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,

A handwritten signature in cursive script, appearing to read "Kristy Cockrell".

Kristy Cockrell
Administrative Specialist
Office of General Counsel

Enclosures: UTT 10065EO
UTT 64031DW
UTT Z334691
Suspension letter dated April 17, 2009
Habitual Offender warning letter dated May 24, 2007
Certified Driving Record

cc: Thomas P. Austin, Esquire
Post Office Box 799
Greenwood, SC 29648-0799

0191

Post Office Box 1498, Blythewood, South Carolina 29016

000113

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Greenwood VERSUS
FIRST NAME Christopher MIDDLE NAME Eric LAST NAME McMahan
STREET AND NO 219 Greenwood Dr CITY Greenwood STATE SC ZIP CODE 29649
STATE LICENSED SC DRIVER'S LICENSE NO 004172712 CDL ☐ YES ☒ NO DRI LIC CLASS 1. D
VEH LIC NO 441W PB STATE SC MAKE OF VEH Dodge YEAR 00 COMB VEH AUTO 18 PSGR VEH ☐ COMB
HAZ MT ☐ MOPED ☐ MTRCYCL ☐ OTHER ☐
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER City Court STREET AND NO 570 Monument St P.O. Box 40
DATE OF TRIAL 01/20/08 TIME OF TRIAL 9:00 AM CITY Greenwood STATE SC ZIP CODE 29648
VIOLATION COURT APPEARANCE REQUIRED YES VIOLATION SECTION NO. 56-1-4160
OWNER OF VEHICLE STATE DATE OF ARREST 10/20/08
ADDRESS OF OWNER STATE DATE OF VIOLATION 10/26/08

BAIL DEPOSITED JAIL NAME OF ARRESTING OFFICER SA THRE RANK Pri
DESCRIPTION OF ACCUSED
RACE W SEX M BIRTH DATE 10/31/1975 HT 5'10" HAIR BRN WT 175 EYES BRN COUNTY Greenwood NUMBER 24
DATE BAIL RECD 20 BY BADGE 1360 DISTRICT 2
CASE BEFORE
CIRCUIT COURT ☐ MAGISTRATE ☐ MUN COURT ☒ FEDERAL COURT ☐
NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE TIME OF VIOLATION 12:18 AM ☒ PM ☐ WEATHER Clear
DISTANCE IN FEET FROM INTERSECTION OF Montague Ave AND
DEFENDANT DID NOT APPEAR ☐ APPEARED ☒
DISPOSITION
NOLLE PROSSED ☐ GUILTY ☒ MILES 1 2 3 4
FORFEITED BOND ☐ PLED NOLO-CONTENDERE ☐
TRIAL BY TRIAL OFFICER ☐ JURY ☐ HWY NO 6W CITY Greenwood
VERDICT OF TRIAL IF ANY
GUILTY ☐ NOT GUILTY ☐ DATE OF TRIAL IF ANY 20
JAIL SUSPEND FINE AMT COLLECTED AMT SUSPENDED
60 Days 1275- 1275-
COMMITTED TO Vehicle Searched Arrest as Result of Collision NO
OFFENSE CODE 96 B A LEVEL
CERTIFIED CORRECT BL DATE 4/11/09 10065 EO

DRIVER'S RECORD COPY

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BLO

FILED

MAY 19 2009

SCOMVH

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with the South Carolina Department of
Motor Vehicles.

A. L. Phillips
Driver Services, Deputy Director

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*just
fine*

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Motor Vehicles.

A. L. Phelps

Driver Services, Deputy Director

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060115

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Greenville VERSUS
FIRST NAME CHRISTOPHER MIDDLE NAME E. LAST NAME McMANAN

STREET AND NO. 219 GREENWAY DR CITY GREENWOOD SC STATE 29649

STATE LICENSED 3C DRIVER'S LICENSE NO. 89172712 ORI CLASS D

VEH LIC NO. 815UDH STATE SC MAKE OF VEH FORD YEAR 99 COMM VEH ☒ AUTO ☒ BUSK ☐ COMB.
HAZ MT ☐ MOPED ☐ MTRCYCL ☐ OTHER ☐

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER WATKINS STREET AND NO. 1507 RANCE ST

DATE OF TRIAL 4/9/07 TIME OF TRIAL 7pm CITY Greenville STATE SC ZIP CODE 29615

VIOLATION COURT APPEARANCE REQUIRED YES ☒ NO ☐ VIOLATION SECTION NO. 56-1-520

OWNER OF VEHICLE BURTON - BEAUFORD DATE OF ARREST 3/18/07

ADDRESS OF OWNER 672 WINDSOR LN HOOVER SC 29655 DATE OF VIOLATION 3/18/07

BAIL DEPOSITED Kennedy NAME OF ARRESTING OFFICER Kennedy RANK C

DESCRIPTION OF ACCUSED WM 10/31/74 5'10" 150 lbs BROWN EYES COUNTY Greenville NUMBER 36

DATE BAIL RECD 3/20/07 BY [Signature] BADGE 308 DISTRICT 2

CASE BEFORE MAGISTRATE ☐ MUN COURT ☒ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER WATKINS TIME OF VIOLATION 1400 AM WEATHER OK

DEFENDANT DID NOT APPEAR ☒ APPEARED ☐ DISPOSITION DIVE

FORFEITED BOND ☐ PLED NOLO CONTENDERE ☐ AND Blenn

TRIAL BY TRIAL OFFICER ☒ JURY ☐ VERDICT OF TRIAL IF ANY 4/9/07 MILES 49 N 1 E 2 S 3 W 4

JAIL 440 SUSPENSE NRVC FINE 440 AMT COLLECTED 440 AMT SUSPENSE 440 HWY NO 40 CITY UNIT5

COMMITTED TO NO Arrest as Result of Accident NO OFFENSE CODE 40 BAIL LEVEL 40

CERTIFIED CORRECT W.J. Portada Jr DATE 4/9/07 64031 DW

DRIVER'S RECORD COPY

496

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A. L. Phelan
Driver Services, Deputy Director

MAY 9 2007

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Motor Vehicles.

A. L. Phelps

Driver Services, Deputy Director

060117

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

4647

FIRST NAME CHRISTOPHER		MIDDLE NAME ERIC		LAST NAME McMahan	
STREET AND NO. 219 Greenway Dr.		CITY Greenwood	STATE SC	ZIP CODE 29649	
STATE LICENSED SC	DRIVER'S LICENSE NO. 04172712		DRI LIC. CLASS D		
VEH. LIC. NO. B/S	STATE -	MAKE OF VEH Ford	YEAR 89	COMM VEH HAZMT	AUTO MOPED
		TRUCK INTRCYCL		COMB. OTHER	

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER Summary Court		STREET AND NO. 107 S. Main St			
DATE OF TRIAL 4/3/07	TIME OF TRIAL 1400	CITY Anderson	STATE SC	ZIP CODE 29624	
VIOLATION - COURT APPEARANCE REQUIRED (YES/NO) D. U.S.			VIOLATION SECTION NO. 56-1-460		

OWNER OF VEHICLE	DATE OF ARREST 2/25/07
ADDRESS OF OWNER SAMP	DATE OF VIOLATION 2/25/07

BAIL DEPOSITED NONE	NAME OF ARRESTING OFFICER MD Lounyon		RANK TRP
DESCRIPTION OF ACCUSED		COUNTY Anderson	NUMBER 04
RACE W	SEX M	DATE BAIL RECD. 20	DISTRICT 3
HT 5'11"	WT 170	EYES B	BRIDGE 714

CASE BEFORE	MAGISTRATE ☒	MUN. COURT ☐
CIRCUIT COURT ☐	FAMILY COURT ☐	FEDERAL COURT ☐
NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE		
DEFENDANT: DID NOT APPEAR ☐ APPEARED ☒		

NOLLE PROSSED ☐	DISPOSITION GUILTY ☒	FILED: NOLLO CONTENDERE ☐
FORFEITED BOND ☐	MILES 2	
TRIAL BY	TRIAL OFFICER ☐	JURY ☐
CITY Anderson		

VERDICT OF TRIAL IF ANY	GUILTY ☐	NOT GUILTY ☒	DATE OF TRIAL IF ANY 20
JAIL	SUSPEND	FINE 75	AMT COLLECTED 75
COMMITTED TO:		Vehicle Searcher N	Assess. Result of Collision N
Latitude 34°28'33.30"		Longitude 82°39'08.50"	
OFFENSE CODE 96		B.A. LEVEL	

CERTIFIED CORRECT	DATE 4/3/07	Z 334691
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DRIVER RECORDS COPY

Prop Tax

496

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A. L. Phelps
Driver Services, Deputy Director

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Motor Vehicles.

A. L. Phelps
Driver Services, Deputy Director

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South Carolina
Department of Motor Vehicles



04/17/2009

MCMAHAN, CHRISTOPHER ERIC
219 GREENWAY DR
GREENWOOD, SC 29649-9564

CUSTOMER NO: 24607713
FILE NO: 9662002
DL NO: 4172712

OFFICIAL NOTICE

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

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
10/26/2008	04/01/2009	10065EO	Driving Under Suspension
03/18/2007	04/09/2007	64031DW	Driving Under Suspension
02/25/2007	04/03/2007	Z334691	Driving Under Suspension

BEGINNING DATE: 12:01 AM 05/17/2009 ENDING DATE: MIDNIGHT 05/17/2014

HEARING:

Section 56-1-1030 allows you to have a hearing to show why you should not be declared an Habitual Offender. There is a \$150 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 SC DMV. Do not send cash through the mail.

TESTS:

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

Driver Records Manager

Driver Services, Deputy Director

060120

South Carolina
Department of Motor Vehicles



05/24/2007

MCMAHAN, CHRISTOPHER ERIC
435 HALTIWANGER RD APT 22
GREENWOOD, SC 29649-1717

CUSTOMER NO: 24607713
FILE NO: 6233004
DL NO: 4172712

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 or ten minor violations within a three year period will be classified as an 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

Child Endangerment	*Reckless driving
Driving Under Suspension	Reckless Homocide
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-BI	
Passing Stopped School Bus/Bi/Death	
Negligent or Criminal Operation of CMV-Fatality	
Failure to Stop for Blue Light with BI/Death	

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	

*Reckless driving will be considered a major and minor violation.

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

0199

000121



Certification for Court

Customer No.: 24607713 Driver License No.: 4172712
Name : MCMAHAN, CHRISTOPHER ERIC
Address : 219 GREENWAY DR
City : GREENWOOD State: SC Zip: 296499564
County : GREENWOOD
DOB: 10/31/1974 Height: 5'10 Weight: 190 Sex: M Race: WHITE Driver Training: N
Status - DL: SUSPENDED CDL: DISQUALIFIED

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.
Current							
ID		Original	10/23/2008	10/23/2013		N	N
Prior							
DL	D	Returned	11/01/2002	10/31/2007	10/22/1993	N	N
DL	D	Renewal	11/01/2002	10/31/2007	10/22/1993	N	N
DL	D	Duplicate	12/20/2002	10/31/2007	10/22/1993	N	N
DL	D	Renewal	10/31/1997	10/31/2002	10/22/1993	N	N
DL	D	Duplicate	05/01/2000	10/31/2002	10/22/1993	N	N

Address Change -

Address: 322 WADE AV
City: GREENWOOD

State: SC

Date Changed: 10/31/1997

Zip: 296460000

Address Change -

Address: 2220 MONTAGUE AVENUE EXT
City: GREENWOOD

State: SC

Date Changed: 11/01/2002

Zip: 296499127

Address Change -

Address: 131 ROMAN CIRCLR
City: GREENWOOD

State: SC

Date Changed: 08/12/2003

Zip: 296499127

Address Change -

Address: 435 HALTIWANGER RD APT 22
City: GREENWOOD

State: SC

Date Changed: 10/23/2008

Zip: 296491717

Point Summary

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

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

Suspension Summary

Driving Under The Influence:
Driving Under Suspension:
Unlawful Alcohol Concentration:
Failure To Make Payment For Gasoline:

Total 0 DUI Suspensions
Total 1 DUS Suspensions
Total 0 Per Se Suspensions
Total 0 Gasoline Suspensions

Driver Services, Deputy Director

060122

Certification for Court

Customer No.: 24607713

Driver License No.: 4172712

Name: MCMAHAN, CHRISTOPHER ERIC

Uninsured Motorist:

Total 0 UM Violations

SUSP: 013-Driving Under Suspension
Special Driving Privilege: NONE
Suspension Beg: 04/01/2009
Causal: 10/26/2008
Reinstatement Requirements Met: INDEFINITE
ACD: B26 Withdrawal Loc Ref:
Suspension No: 7 **Violation No:** 13
Status: Active **Reason:**

Ticket#: 10065EO

Suspension End: 07/01/2009
Post: 04/17/2009
Reinstatement Fee Paid: N
Withdrawal Reason Ref:

Last Change: 04/17/2009

SUSP: 022-Habitual Offender
Special Driving Privilege: NONE
Suspension Beg: 05/17/2009
Causal: 10/26/2008
Reinstatement Requirements Met: INDEFINITE
ACD: W01 Withdrawal Loc Ref:
Suspension No: 8
Status: Active **Reason:**

Suspension End: 05/17/2014
Post: 04/17/2009
Reinstatement Fee Paid: N
Withdrawal Reason Ref:

Last Change: 04/17/2009

VIOL: 496-Driving Under Suspension
Violation: 10/26/2008 **Conviction:** 04/01/2009
ACD: B26 Conviction Loc Ref:
Conviction State: SC
Violation No: 13
Status: Active

Ticket#: 10065EO

Recd: 04/06/2009 **Post:** 04/17/2009
Conviction Reference:
Court Type: Municipal Court

Last Change: 04/17/2009

VIOL: 560-Failure to Pay Traffic Ticket or Appear
Violation: 03/18/2007 **Conviction:** 04/09/2007
ACD: D56 Conviction Loc Ref: 596
Conviction State: SC
Violation No: 12
Status: Active

Ticket#: 64031DW

Recd: 06/05/2007 **Post:** 06/05/2007
Conviction Reference:
Court Type: Unknown

Last Change: 06/05/2007

SUSP: 097-Failure to Pay Traffic Ticket
Suspension Beg: 06/25/2007
Causal: 03/18/2007
Ticket Paid: 04/13/2009
ACD: D56 Court Name: CITY OF NEWBERRY
Court Address: 1507 NANCE STREET
City: NEWBERRY
Suspension No: 6 **Phone No:** 803 321 1010
Status: Active **Reason:**

Ticket#: 64031DW

Suspension End: 04/13/2009
Post: 06/05/2007
Compliance Received: 04/13/2009

Last Change: 04/13/2009

VIOL: 560-Failure to Pay Traffic Ticket or Appear
Violation: 03/18/2007 **Conviction:** 04/09/2007
ACD: D56 Conviction Loc Ref: 541
Conviction State: SC
Violation No: 11
Status: Active

Ticket#: 64031DW
Recd: 06/05/2007 **Post:** 06/05/2007
Conviction Reference:
Court Type: Unknown

Last Change: 06/05/2007

Driver Services, Deputy Director

Certification for Court

Customer No.: 24607713

Driver License No.: 4172712

Name: MCMAHAN, CHRISTOPHER ERIC

SUSP: 097-Failure to Pay Traffic Ticket

Suspension Beg: 06/25/2007

Causal: 03/18/2007

Ticket Paid: 04/13/2009

ACD: D56 **Court Name:** CITY OF NEWBERRY

Court Address: 1507 NANCE STREET

City: NEWBERRY

State: SC

Zip: 29108

Suspension No: 5

Phone No: 803 321 1010

Status: Active

Reason:

Ticket#: 64030DW

Suspension End: 04/13/2009

Post: 06/05/2007

Compliance Received: 04/13/2009

Last Change: 04/13/2009

SUSP: 029-Driving Under Suspension - FTPPT

Special Driving Privilege: NONE

Suspension Beg: 07/04/2007

Causal: 03/18/2007

Reinstatement Requirements Met: 04/13/2009

ACD: B26 **Withdrawal Loc Ref:**

Suspension No: 4

Violation No: 10

Status: Active

Reason:

Ticket#: 64031DW

Suspension End: 10/04/2007

Post: 05/24/2007

Reinstatement Fee Paid: Y

Withdrawal Reason Ref:

Last Change: 04/13/2009

VIOL: 496-Driving Under Suspension

Violation: 03/18/2007 **Conviction:** 04/09/2007

ACD: B26 **Conviction Loc Ref:**

Conviction State: SC

Violation No: 10

Status: Active

Ticket#: 64031DW

Recd: 05/09/2007

Post: 05/24/2007

Conviction Reference:

Court Type: Municipal Court

Last Change: 05/24/2007

SUSP: 029-Driving Under Suspension - FTPPT

Special Driving Privilege: NONE

Suspension Beg: 04/03/2007

Causal: 02/25/2007

Reinstatement Requirements Met: 04/13/2009

ACD: B26 **Withdrawal Loc Ref:**

Suspension No: 3

Violation No: 9

Status: Active

Reason:

Ticket#: Z334691

Suspension End: 07/03/2007

Post: 05/02/2007

Reinstatement Fee Paid: Y

Withdrawal Reason Ref:

Last Change: 04/13/2009

VIOL: 496-Driving Under Suspension

Violation: 02/25/2007 **Conviction:** 04/03/2007

ACD: B26 **Conviction Loc Ref:**

Conviction State: SC

Violation No: 9

Status: Active

Ticket#: Z334691

Recd: 04/24/2007

Post: 05/02/2007

Conviction Reference:

Court Type: Magistrate Court

Last Change: 05/02/2007

VIOL: 473-Failure to surrender suspended vehicle reg or plate

Violation: 10/06/2006 **Conviction:** 12/07/2006

ACD: NAC **Conviction Loc Ref:**

Conviction State: SC

Violation No: 8

Status: Active

Certified to be a true and correct copy of the original with the South Carolina Department of

Recd: 01/29/2007

Post: 02/08/2007

Conviction Reference:

Court Type: Magistrate Court

Last Change: 02/08/2007

Driver Services, Deputy Director

Certification for Court

Customer No.: 24607713

Driver License No.: 4172712

Name: MCMAHAN, CHRISTOPHER ERIC

SC Driver License/ID Surrendered

Credential Type: DL Class: D

Function: Duplicate

Posted: 10/09/2006

Issued: 11/01/2002

Date Surrendered: 10/09/2006

Duplicate DOI: 12/20/2002

Reason For Return: SUSPENDED LICENSE

Returning State: SC

End of Report

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



Driver Services, Deputy Director

060125

0204

Yolanda Williams

From: Yolanda Williams
Sent: Thursday, March 24, 2016 9:11 AM
To: Thomas P. Austin (tom.austin@gwdattorney.com); Thomas P. Austin (brandi.carr@gwdattorney.com); HPU@scdmv.net
Subject: Order of Continuance, Christopher McMahan, 05-19-16 dk# 09-2132
Attachments: Order of Continuance, Christopher McMahan, 05-19-16 dk# 09-2132.pdf

Yolanda P. Williams
Administrative Coordinator
Scheduling Assistant for
Brigette 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
www.scomvh.net

000127

Yolanda Williams

From: Brandi Carr <brandi.carr@gwdattorney.com>
Sent: Wednesday, March 23, 2016 3:26 PM
To: Yolanda Williams
Cc: Hpu
Subject: Christopher Eric McMahan, 03-24-16 dk# 09-OMVH-02-2132-CC
Attachments: notice of hearing.pdf; ATT00001.htm

Ms. Williams,

Attached please find a copy of the requested Notice of Hearing.

case name, **Moreno v. Corbin**

the court, the county, **Greenwood County – Family Court**

the docket number : **2015-DR-24-01**

the presiding judge's name and telephone number: **The Honorable Joseph C. Smithdeal , 864-942-8643**

the date the attorney received notice of the conflicting court appearance. **Please see the clocked date and time on the Notice of Hearing**

*Dward
5-19
11:30*

060128

Yolanda Williams

From: Brandi Carr <brandi.carr@gwdattorney.com>
Sent: Wednesday, March 23, 2016 2:14 PM
To: Yolanda Williams
Subject: RE: Christopher Eric McMahan, 03-24-16 dk# 09-OMVH-02-2132-CC
Attachments: notice of hearing.pdf

Ms. Williams,
Attached please find a copy of the requested Notice of Hearing.

case name, **Moreno v. Corbin**
the court, the county, **Greenwood County – Family Court**
the docket number : **2015-DR-24-01**
the presiding judge's name and telephone number: **The Honorable Joseph C. Smithdeal , 864-942-8643**
the date the attorney received notice of the conflicting court appearance. **Please see the clocked date and time on the Notice of Hearing**

I do not have any contact information for DMV, if you have contact information please provide the information to me.

Brandi Carr
Watson Law Firm
333 Main Street
P.O. Drawer 799
Greenwood, SC 29648

Telephone: 864-229-2569
Fax: 864-229-1819
E-mail: brandi.carr@gwdattorney.com

This e-mail transmission is confidential. It may contain information which is privileged or subject to other confidentiality requirements and exemptions from disclosure under applicable law. It is intended solely for the use of the individual named above. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution or copying of this communication is prohibited. If you have received this e-mail transmission in error, please immediately notify the sender by telephone collect and return the original transmission to the sender by U.S. Mail. Thank you.

From: Yolanda Williams [mailto:ywilliams@scalc.net]
Sent: Wednesday, March 23, 2016 1:23 PM
To: Brandi Carr
Subject: RE: Christopher Eric McMahan, 03-24-16 dk# 09-OMVH-02-2132-CC

In accordance with OMVH Rule 10(B) (www.scomvh.net), when making a continuance based upon a court conflict, the attorney must include documentation of the conflicting call to court that must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance. The documentation must be submitted before the Hearing Officer will consider your request.

You also need to notify the DMV. Thanks

Yolanda P. Williams
Administrative Coordinator
Scheduling Assistant for
Brigette 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
www.scomvh.net

From: Brandi Carr [mailto:brandi.carr@gwdattorney.com]
Sent: Wednesday, March 23, 2016 12:34 PM
To: Yolanda Williams <ywilliams@scalc.net>
Subject: Christopher Eric McMahan, 03-24-16 dk# 09-OMVH-02-2132-CC

Ms. Williams,
I called and left you a voicemail (803-734-3201).

I received a call from Family Court and Tom will be in an emergency hearing tomorrow morning at 9:30 a.m. Please let me know what day the hearing for Christopher Eric McMahan can be reschedule.

Thanks
Brandi Carr
Watson Law Firm
333 Main Street
P.O. Drawer 799
Greenwood, SC 29648

Telephone: 864-229-2569
Fax: 864-229-1819
E-mail: brandi.carr@gwdattorney.com

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Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

Yolanda Williams

From: Yolanda Williams
Sent: Wednesday, March 23, 2016 1:23 PM
To: 'Brandi Carr'
Subject: RE: Christopher Eric McMahan, 03-24-16 dk# 09-OMVH-02-2132-CC

In accordance with OMVH Rule 10(B) (www.scomvh.net), when making a continuance based upon a court conflict, the attorney must include documentation of the conflicting call to court that must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance. The documentation must be submitted before the Hearing Officer will consider your request.

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Yolanda P. Williams
Administrative Coordinator
Scheduling Assistant for
Brigette 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
www.scomvh.net

From: Brandi Carr [<mailto:brandi.carr@gwdattorney.com>]
Sent: Wednesday, March 23, 2016 12:34 PM
To: Yolanda Williams <ywilliams@scalc.net>
Subject: Christopher Eric McMahan, 03-24-16 dk# 09-OMVH-02-2132-CC

Ms. Williams,
I called and left you a voicemail (803-734-3201).

I received a call from Family Court and Tom will be in an emergency hearing tomorrow morning at 9:30 a.m. Please let me know what day the hearing for Christopher Eric McMahan can be reschedule.

Thanks
Brandi Carr
Watson Law Firm
333 Main Street
P.O. Drawer 799
Greenwood, SC 29648

Telephone: 864-229-2569
Fax: 864-229-1819
E-mail: brandi.carr@gwdattorney.com

000131

0210

Ester Haymond

From: Ester Haymond
Sent: Tuesday, February 09, 2016 12:08 PM
To: 'tom.austin@gwdattorney.com'; 'brandi.carr@gwdattorney.com'; hpu@scdmv.net
Subject: Christopher McMahan
Attachments: Christopher McMahan.PDF

Please find attached an order issued in the referenced matter today.

This order is also being mailed to Mr. McMahan at :

219 Greenway Drive
Greenwood, SC 29649

060133

Watson Law Firm, P.A.

333 Main Street
P.O. Drawer 799
Greenwood, South Carolina 29648-0799

Marvin R. Watson
Charles E. Lober
Charles M. Watson Jr.
Thomas P. Austin
Velvet B. Moore

Tel: (864) 229-2569
Fax: (864) 229-1819

May 14, 2009

VIA HAND DELIVERY

S.C. Office of Motor Vehicle Hearings
1205 Pendelton St. Ste 325
Columbia, SC 29201

Re: Customer #: 24607713
File No.: 9662002
DL NO: 4172712

Dear To Whom it May Concern:

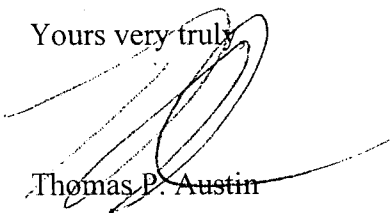
Please accept this letter as our formal request for a hearing in the above referenced matter.

My client was not properly informed OR notified of his suspensions. Further, he was not counseled for any of his pleas nor advised of his constitutional rights. For these and other reasons to be presented at a hearing, he believes the declaration of habitual offender is in error.

Enclosed herewith is the fee for the hearing.

If you have any questions, please feel free to contact me.

Yours very truly


Thomas P. Austin

TPA:kp
enclosures

RECEIVED

MAY 15 2009

SCOMVH

060134

MAY 18 2009

Cash Receipt

Number: CR0905-0264
Till: OMVH Till
Posted: Yes

Dated: 05-15-2009
Total Paid \$150.00

Void Information

Void Method:

Voided:

No

Void Posted: No

Void Explanation:

Generate

Cash Receipt

Generate

Invoices (1)				
Date	Number	Item Type	Customer	Paid
05-15-2009	NV0905-0263	Case Filing Fee - \$150	McMahan, Christopher	150.00

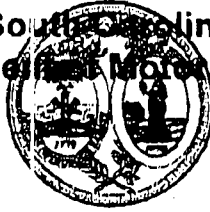
Payments (1)		
Payment Method	Reference	Paid
Cash		150.00

000136

0214

09-01114-00-2132

South Carolina
Department of Motor Vehicles



04/17/2009

MCMAHAN, CHRISTOPHER ERIC
219 GREENWAY DR
GREENWOOD, SC 29649-9564

CUSTOMER NO: 24607713
FILE NO: 9662002
DL NO: 4172712

OFFICIAL NOTICE

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

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
10/26/2008	04/01/2009	10065EO	Driving Under Suspension
03/18/2007	04/09/2007	64031DW	Driving Under Suspension
02/25/2007	04/03/2007	Z334691	Driving Under Suspension

RECEIVED

MAY 15 2009

SCOMVH

BEGINNING DATE: 12:01 AM 05/17/2009 ENDING DATE: MIDNIGHT 05/17/2014

HEARING:

Section 56-1-1030 allows you to have a hearing to show why you should not be declared an Habitual Offender. There is a \$150 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 1493, 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

C. E. McPherson

060137



Nikki R. Haley
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

January 27, 2016

Hearing Officer Tracy Holland
SC Administrative Law Court
SC Office of Motor Vehicle Hearings
1205 Pendleton Street
Suite 325
Columbia, South Carolina 29201

RE: Christopher Eric McMahan v. South Carolina Department of Motor Vehicles
Habitual Offender Declaration Hearing
Docket No.: 09-OMVH-02-2132-CC
SCDL: 4172712

Dear Hearing Officer Holland,

According to SCDMV records the above referenced case is still pending before you and the hearing was held on July 9, 2009. I have checked with Ester Haymond of your office to determine if a final order had been issued and she also did not show a final order having been issued. Thus, this letter is written to inquire if this case is still pending or if your order has been lost or overlooked somehow. Any assistance you can provide regarding this matter would be greatly appreciated.

Sincerely,

Brandy A. Duncan
Assistant General Counsel

c: Thomas P. Austin, Esquire
Post Office Box 799
Greenwood, South Carolina 29648-0799

RECEIVED

JAN 27 2016

SCOMVH
FILED

JAN 26 2016

SCOMVH

060138

Ester Haymond

From: Ester Haymond
Sent: Thursday, February 25, 2016 10:23 AM
To: 'Thomas Austin'; Duncan, Brandy A
Subject: RE: 09-OMVH-02-2132-CC, Christopher E. McMahan, SCDL 4172712

Mr. Austin and Ms. Duncan,

I can assure you we have tried everything we can to conclude this case without having to reschedule it. This case was initially assigned to Tracy Holland for a hearing on July 9, 2009. Ms. Holland left employment with the OMVH for a period beginning June 30, 2009. In an attempt to keep things running smoothly, hearing officers were rearranged throughout the state and Mr. Harley took over the Anderson cases that were already scheduled. Despite the assignment to Ms. Holland, Mr. Harley was the hearing officer in Anderson on July 9, 2009. Unfortunately, there was a failure of the audio equipment that day and there is no record in the case. I have talked with our IT guy several times and it just isn't there.

I understand your concerns and we are sorry that this has happened in this case and sorry that we didn't realize it long before now. However, it does not appear that the hearing officer has any choice at this point but to reschedule and rehear the matter. This is an habitual offender case for which the DMV sought suspension. The Respondent contested that suspension and until the case is presented – or unless either party withdraws – the hearing officer cannot reach a decision. Therefore, it will remain on the calendar for March 24th.

Ester

*Ester Haymond
Senior Staff Counsel
Office of Motor Vehicle Hearings
SC Administrative Law Court
1205 Pendleton Street, Suite 325
Columbia, SC 29201*

From: Thomas Austin [mailto:tom.austin@gwdattorney.com]
Sent: Wednesday, February 24, 2016 3:29 PM
To: Duncan, Brandy A <Brandy.Duncan@scdmv.net>
Cc: Ester Haymond <ehaymond@scal.net>
Subject: Re: 09-OMVH-02-2132-CC, Christopher E. McMahan, SCDL 4172712

Brandy,

Thank you for speaking with me today.

My client remembers MUCH more about the hearing than I do since it was seven years ago. He indicated that after the hearing, he understood the action was not going to be sustained, and we asked what he needed to do. I do recall that Mr. Harley was very nice and told him to go ahead and pay whatever he needed to pay to the tax office and DMV and get his license, which he did. Recall that his suspension was due to non-payment of taxes on a new truck he purchased. My client recalls Mr. Harley telling us he would get an order by mail. This may not be on the recording since I do recall we all sat at the table for some time and talked. At some point, I actually closed my file, but I do not see an order in my file.

In looking in my notes, I have that my client never received the required notice from the tax assessor, and notices from DMV were being sent to another address. Unfortunately, I do not have very detailed notes about the hearing.

Ms. Haymond, please let me know if we are going to have another hearing on March 24 or if someone finds the notes of the hearing officer from the July, 2009 hearing. Obviously, seven years later and no problems with my client...I hope we can dismiss.

Thank you. Tom.

On Wed, Feb 24, 2016 at 2:56 PM, Duncan, Brandy A <Brandy.Duncan@scdmv.net> wrote:

Ms. Haymond,

I was contacted by Tom Austin, Esquire a short time ago regarding Mr. McMahan and the status of his pending OMVH challenge to his 2009 Habitual Offender designation. DMV was under the impression that Tracy Holland was the hearing officer for this case. Mr. Austin has informed me, however, that due to unforeseen circumstances Robert Harley ended up being the hearing officer at the hearing on July 9, 2009. It is my understanding that Hearing Officer Holland was not able to locate a recording of the July 9, 2009 hearing, but perhaps Hearing Officer Harley has the recording or perhaps Hearing Officer Harley had already written his Order and not transmitted it to the OMVH. Either way, I wanted to provide this additional information to you to assist in determining if we can locate the original hearing recording or perhaps the OMVH Order.

Further, please be advised that it is my understanding that this matter has been scheduled for a new hearing on March 24, 2016 due to the inability to locate the recording of the original hearing. I have attached the Order of Continuance and Notice of New Hearing to assist you.

Thanks,

Brandy A. Duncan, Asst. General Counsel

S.C. Department of Motor Vehicles

P. O. Box 1498

Blythewood, South Carolina 29016

(803) 896-9937

060140

(803) 896-9901 (fax)

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--
Thomas P. Austin
The Watson Law Firm
333 Main Street
Greenwood, SC 29646
Phone: 864-229-2569
Fax: 864-229-1819

060141

Certificate of Service

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage aid, or in the interagency Mail Service addressed to the party (ies) or their attorney(s).

This 6th day of September 2016

By: Glenn W. White

Title: Administrative Coordinator, OMVH

060142

Duncan, Brandy A

From: Anthony Goldman <agoldman@scalp.net>
Sent: Thursday, December 01, 2016 3:31 PM
To: rauchwise@gmail.com
Cc: Duncan, Brandy A; Moore, Jeannine (Nina)
Subject: FW: 16-0255, McMahan (Request for Extension of Time)
Importance: High

Mr. Wise,

The Court has not received Respondent's brief in Docket No. 16-AJ-21-0255-AP.

I am forwarding an email from October 19th in which the Court granted you an extension until November 19th to file a brief.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John L. McLeod
S.C. Administrative Law Court

From: Anthony Goldman
Sent: Wednesday, October 19, 2016 2:19 PM
To: 'rauchwise@gmail.com' <rauchwise@gmail.com>
Cc: 'Duncan, Brandy A' <Brandy.Duncan@scdmv.net>
Subject: 16-0255, McMahan (Request for Extension of Time)
Importance: High

Mr. Wise,

The Court will grant your request for a 30 day extension of time to file Respondent's Brief.

Respondent's Brief is due on or before Wednesday, November 16, 2016.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

Duncan, Brandy A

From: Duncan, Brandy A
Sent: Wednesday, October 19, 2016 2:11 PM
To: 'Anthony Goldman'
Cc: rauchwise@gmail.com
Subject: RE: 16-0255, McMahan (Request for Extension)

Mr. Goldman,

We received the letter in today's mail. SCDMV consents to the requested continuance.

Thanks,

Brandy A. Duncan, Asst. General Counsel
S.C. Department of Motor Vehicles
P. O. Box 1498
Blythewood, South Carolina 29016
(803) 896-9937
(803) 896-9901 (fax)

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From: Anthony Goldman [mailto:agoldman@scalc.net]
Sent: Wednesday, October 19, 2016 1:58 PM
To: Duncan, Brandy A <Brandy.Duncan@scdmv.net>
Cc: rauchwise@gmail.com
Subject: 16-0255, McMahan (Request for Extension)

Ms. Duncan,

Counsel for the Respondent mailed a letter to the Court, with copy to the Department, requesting an extension of 30 days to file Respondent's Brief.

Could you please let me know the Department's position regarding this request.

Thank you.

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

Duncan, Brandy A

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Sent: Wednesday, October 19, 2016 1:58 PM
To: Duncan, Brandy A
Cc: rauchwise@gmail.com
Subject: 16-0255, McMahan (Request for Extension)

Ms. Duncan,

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Could you please let me know the Department's position regarding this request.

Thank you.

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
email rauchwise@gmail.com

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

October 17, 2016

Honorable John McLeod
Administrative Law Judge
1205 Pendleton St., Suite 224
Columbia, SC 29201

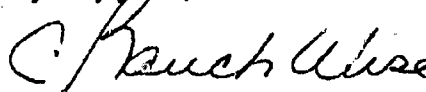
Re: SC Dept. of Motor Vehicles vs. Christopher McManhan

Dear Judge McLeod:

The Brief of Respondent is due today in the above matter. I have a hearing before the SC Supreme Court on October 19, 2016 and a Federal trial starting in Anderson on October 26, 2016. Therefore, I would like to request a thirty (30) day extension in which to file the Brief of Respondent in this matter. Your help in this matter is great appreciated.

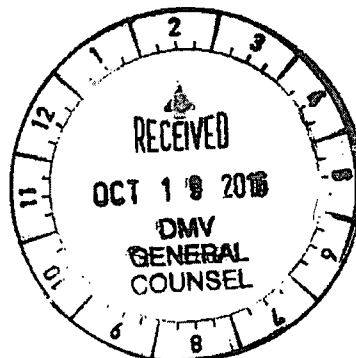
With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/mjh
cc: Frank L. Valenta



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable John D. McLeod, Administrative Law Judge

Appellate Case No. 2017-001575

South Carolina Department of Motor Vehicles Appellant,

v.

Christopher McMahan 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

September 13, 2017
Blythewood, SC

RECEIVED

SEP 18 2017

SC Court of Appeals