

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable L. Casey Manning, Circuit Court Judge

Opinion No. 5464 (S.C. Ct. App. filed January 11, 2017)

Anna Dillard Wilson.....Respondent,

v.

South Carolina Department of Motor Vehicles.....Petitioner.

APPENDIX

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The South Carolina Court of Appeals

Anna Dillard Wilson, Respondent,

v.

S.C. Department of Motor Vehicles, Appellant.

Appellate Case No. 2015-000887

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bon Wille

J.

Paul C. Porter

J.

John D. Elliott

J.

Columbia, South Carolina

cc:

Frank L. Valenta, Jr., Esquire

Philip S. Porter, Esquire

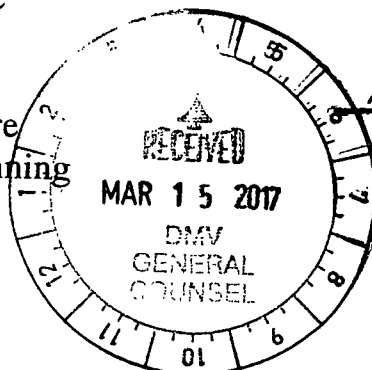
John D. Elliott, Esquire

Brandy Anne Duncan, Esquire

The Honorable L. Casey Manning

FILED

March 10, 2017



0001

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Anna Dillard Wilson, Respondent,

v.

S.C. Department of Motor Vehicles, Appellant.

Appellate Case No. 2015-000887

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Opinion No. 5464
Submitted December 1, 2016 – Filed January 11, 2017

AFFIRMED

Frank L. Valenta, Jr., Philip S. Porter, and Brandy Anne Duncan, all of Blythewood, for Appellant.

John D. Elliott, of Law Offices of John D. Elliott, P.A.,
of Columbia, for Respondent.

WILLIAMS, J.: The South Carolina Department of Motor Vehicles (the DMV) appeals the circuit court's order enjoining the DMV from suspending Anna Dillard Wilson's driver's license five years after her conviction for driving under the influence of alcohol (DUI). We affirm.

FACTS/PROCEDURAL HISTORY

On November 22, 2008, an officer with the Irmo Police Department arrested Wilson for DUI. Subsequently, on June 11, 2009, Wilson pleaded guilty to the same offense before the Irmo Municipal Court.¹ Following her conviction, Wilson paid the requisite fines and enrolled in and completed the Alcohol and Drug Safety Program (ADSAP). In August 2009, Wilson contacted a local DMV branch to obtain a restricted driver's license. However, the DMV informed her there was no DUI conviction on her record. Wilson then contacted the Irmo Town Clerk and was informed her DUI ticket was sent to the DMV on July 1, 2009. Thereafter, Wilson contacted her insurance agent, who then went to another local DMV branch to inquire about the conviction, but was similarly told that no DUI conviction existed on Wilson's record.

The DMV regularly conducts audits of all outstanding tickets for the previous year in every jurisdiction that issues a traffic citation, including the Irmo Police Department. Wilson's DUI ticket was included in the audit reports for 2010, 2011, and 2013.² The 2010 and 2011 audit reports indicated the ticket was "in court," and the 2013 audit report indicated the ticket was sent to the DMV. However, the DMV did not have a record of receiving the ticket in 2013, and that same year, the DMV requested the Irmo Police Department send a certified copy of the ticket. Eventually, on May 20, 2014, the DMV received a certified copy of Wilson's ticket. On May 27, 2014, four working days after receiving the ticket and nearly five years after the DUI conviction, the DMV notified Wilson that her driver's license would be suspended as a result of her June 2009 DUI conviction.

On June 9, 2014, Wilson brought an action against the DMV in the circuit court for declaratory and injunctive relief. Wilson also moved for a temporary restraining order, which the circuit court granted. Following a hearing on the issues, the circuit court issued an order on March 23, 2015, permanently enjoining the DMV from suspending Wilson's driver's license. In addition to finding that Wilson had no other remedy at law, the court found the five-year lapse between Wilson's

¹ As part of her conviction, Wilson's driver's license was suspended for ninety days—running from August 2009 through November 2009—due to her noncompliance with the implied consent statute, S.C. Code Ann. § 56-5-2950 (Supp. 2009).

² The DMV did not receive an audit report from Irmo in 2012.

conviction and her suspension would deprive her of fundamental fairness required by due process and cause her undue hardship. This appeal followed.

STANDARD OF REVIEW

"Actions for injunctive relief are equitable in nature." *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 324, 673 S.E.2d 416, 416 (2009) (per curiam) (quoting *Shaw v. Coleman*, 373 S.C. 485, 492, 645 S.E.2d 252, 256 (Ct. App. 2007)). In an action in equity, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Id.* at 325, 673 S.E.2d at 416.

LAW/ANALYSIS

The DMV argues the circuit court erred in ruling Wilson's driver's license suspension would violate standards of fundamental fairness, cause Wilson hardship, and leave Wilson without a remedy at law. We disagree.

"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. Due process is violated when a party is denied fundamental fairness." *Id.* at 325, 673 S.E.2d at 417 (internal citation omitted).

Our supreme court has addressed whether suspending one's driver's license after a lengthy delay following a DUI conviction violated due process on two prior occasions. In *State v. Chavis*, the supreme court did not find a due process violation when the State was not at fault for a one-year delay between William Chavis's conviction for DUI and the suspension of his driver's license by the highway department immediately upon learning of the conviction. 261 S.C. 408, 409–11, 200 S.E.2d 390, 390–91 (1973). Specifically, the court noted there was no inference or indication in the record that Chavis suffered any prejudice as a result of the one-year delay. *Id.* at 411, 200 S.E.2d at 391.

Additionally, the court found Chavis did not seek to have his suspensions "promptly ordered so that he could get [the suspensions] behind him[,] but rather, "he simply kept quiet and continued to drive in the hope that his license suspensions would somehow or other get overlooked and never be imposed." *Id.* Accordingly, the supreme court held a driver is not entitled to relief from the imposition of a suspension when an unexplained delay on the part of reporting officials is unaccompanied by a showing of real prejudice to the driver. *Id.* at 412, 200 S.E.2d at 392. The supreme court, however, acknowledged "there might be circumstances under which it could be successfully argued or soundly held that the

State had no right to suspend a driver's license after a long delay." *Id.* at 411, 200 S.E.2d at 391.

In 2009, the supreme court addressed such a circumstance in *Hipp*. 381 S.C. at 323, 673 S.E.2d at 416. In that case, Charles Hipp was convicted of DUI in Georgia in 1993, but the South Carolina DMV did not receive notice of the conviction from Georgia until 2005, and upon receipt, notified Hipp that his driver's license would be suspended. *Id.* at 324, 325 n.2, 673 S.E.2d at 416, 417 n.2. The court noted neither the South Carolina DMV nor Hipp was at fault for the delay, but instead, recognized that the State of Georgia, alone, was responsible. *Id.* at 325 n.2, 673 S.E.2d at 417 n.2. Nevertheless, the court found the imposition of a suspension after a more than twelve-year delay, when Hipp was without fault, was "manifestly a denial of fundamental fairness." *Id.* at 325, 673 S.E.2d at 417.

Under the circumstances of the instant case, we find a five-year delay between Wilson's DUI conviction and the suspension is fundamentally unfair. Indeed, while the DMV claims the facts here—that the DMV did not cause the five-year delay, Wilson cannot associate any injury to a delay attributable to the DMV, and Wilson argued she would have served her suspension earlier had she known about it—are akin to *Chavis*, we find this case falls under the circumstances envisioned by our supreme court in *Chavis*. *See* 261 S.C. at 411, 200 S.E.2d at 391 ("[T]here might be circumstances under which it could be successfully argued or soundly held that the State had no right to suspend a driver's license after a long delay . . .").

Upon our review, we note the record contains evidence of specific injuries and prejudice, which were absent in *Chavis*, that Wilson believed would result from a suspension five years after her conviction. *See id.* (finding no standing to challenge the enforcement of various statutory provisions "in the absence of injury or prejudice resulting to [Chavis] from the delay which injury he simply has not shown"). Wilson testified she lost her job after her DUI arrest, and it took her two years to find new employment as an office manager. Wilson also stated that, as part of her new job, she is required to travel on behalf of the company, and a suspension of her driver's license may cause her to lose her current job. According to Wilson, losing her current job would cause severe economic hardship because she has two mortgage payments and would not have a steady stream of income to

make these payments. Based on her statements, we find Wilson demonstrated a high likelihood of injury or potential prejudice if her driver's license is suspended.³

Additionally, the record demonstrates that Wilson, after completing the ADSAP program in 2009, approached the DMV to find out how to obtain a restricted driver's license in lieu of a suspension. Furthermore, when informed the DMV had no record of her DUI conviction, Wilson contacted the Irmo Town Clerk to inquire about the status of her conviction, and even sent her insurance agent to the DMV to inquire about filing insurance forms related to her DUI conviction. Thus, we find Wilson did not simply "keep quiet" about her suspension, but instead, actively sought a resolution to her pending suspension. *Cf. id.* ("For aught the record shows, [Chavis] simply kept quiet and continued to drive in the hope that his license suspensions would somehow or other get overlooked and never be imposed.").

Finally, the DMV asserts Wilson acted with unclean hands, and according to *Hipp*, she was not denied fundamental fairness because she was responsible for the delay as she "was the only one that knew, at that time, her DUI conviction had not been reported to the DMV as required." We, however, find this argument is not preserved for review because the DMV failed to plead the doctrine of unclean hands as an affirmative defense in its answer or raise it to the circuit court.⁴ *See*

³ The DMV notes several cases from other jurisdictions upholding suspensions after lengthy delays in support of its argument that an administrative delay must be accompanied by a showing of prejudice to a substantial right to violate due process and fundamental fairness. While we are mindful of these cases, we find them unpersuasive and distinguishable from the instant case because the outer limit of the delays in any of the other cases is three-and-a-half years, whereas here, the facts involve a five-year delay and a showing of prejudice.

⁴ We also find that any argument relating to Wilson not having another remedy at law is either unpreserved or abandoned. Initially, we note that, in its final brief, the DMV contends the circuit erred in ruling that Wilson has no other remedy at law. However, the DMV cites no legal authority and its argument is largely conclusory. Thus, we believe the DMV has abandoned this issue and we need not address its merits. *See Snow v. Smith*, 416 S.C. 72, 91 n.7, 784 S.E.2d 242, 252 n.7 (Ct. App. 2016) (finding the appellants abandoned their argument because they failed to provide legal citations or authority). To the extent the DMV argues another remedy exists or Wilson's hardship is reduced because she can now install an ignition interlock device on her car pursuant to the retroactivity clause in Emma's

Allendale Cty. Bank v. Cadle, 348 S.C. 367, 377–78, 559 S.E.2d 342, 347–48 (Ct. App. 2001) (finding an issue not preserved for review because the appellants failed to plead the doctrine of unclean hands as an affirmative defense).

CONCLUSION

In conclusion, we find, under the facts of this particular case, the imposition of a suspension after a five-year delay is a denial of fundamental fairness in violation of due process when sufficient evidence of prejudice exists in the record and neither party is at fault for the delay. Thus, based on the analysis set forth above, the circuit court's order enjoining the DMV from suspending Wilson's driver's license is

AFFIRMED.⁵

THOMAS and GEATHERS, JJ., concur.

Law, S.C. Code Ann. § 56-5-2941(T) (Supp. 2016), we find this argument is not preserved because it was first raised in the DMV's reply brief. *See Spivey ex rel. Spivey v. Carolina Crawler*, 367 S.C. 154, 161, 624 S.E.2d 435, 438 (Ct. App. 2005) (refusing to consider issues first raised in the reply brief).

⁵ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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SC Court of Appeals

Appellate Case No. 2015-000887

Anna Dillard Wilson Respondent,

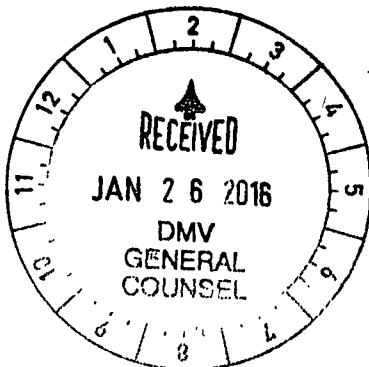
v.

South Carolina Department of Motor Vehicles Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-3750

Anna Dillard Wilson

SC Department of Motor Vehicles

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John D. Elliott

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

- DISPOSITION TYPE (CHECK ONE)**
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

ORDER INFORMATION

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge
SCRPC Form 4C (12/2011)

Judge Code

Date

SCANNED

0011

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 24 day of Mar 2015 to attorneys of record or to parties (when appearing pro se) as follows:

John D. Elliott

P.O. Box 607

Columbia SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

Frank L. Valenta, Jr.

P.O. Box 1498

Blythewood SC 29016-0020

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Jeanette W. McFadden

Court Reporter: Crystal M. Holmes

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Anna Dillard Wilson,)
Plaintiff,)

Civil Action No. 2014-CP-40-3750

vs.)

ORDER

S.C. Department of Motor Vehicles,)
Defendants.)

DATE OF HEARING:
PRESIDING JUDGE:
PLAINTIFF'S COUNSEL:
DEFENDANT'S COUNSEL:
COURT REPORTER:

January 20th, 2015
Hon. L. Casey Manning
John D. Elliott, Esquire
Frank L. Valenta, Jr., Esquire
Crystal M. Holmes

RICHLAND COUNTY
FILED
2015 MAR 23 AM 11:36
JEROME A. MCNEEL
Clerk, C.S.

This is an order granting injunctive relief to the plaintiff, a South Carolina motorist, enjoining the defendant Department of Motor Vehicles from suspending her license to drive.

The parties appeared with their counsel on the date above. After entertaining the evidence and exhibits introduced by the parties, this court arrived at the following findings and conclusions.

1. Plaintiff is a citizen and resident of South Carolina, with a license to drive issued by the South Carolina Department of Motor Vehicles, No. 8137XXX.
2. On June 11th, 2009, the plaintiff pleaded guilty to first offense driving under the influence of alcohol in the Irmo, South Carolina Municipal Court.
3. The plaintiff timely paid her fine of \$1,026.91. On June 18th, 2009, the plaintiff enrolled in the Alcohol and Drug Safety Action Program, or ADSAP, and successfully completed the program.
4. The plaintiff's privilege to drive was suspended by the Department of Motor Vehicles for her failure to comply with the implied consent statute, S.C.Code Ann. § 56-5-2950

SCANNED

(Supp.2009), beginning August 29th, 2009, and reinstated on November 11th, 2009 after the expiration of the requisite 90 day period.

5. The week following her conviction, the plaintiff contacted the Irmo Town Clerk to inquire about whether the record of conviction had been sent to the Department of Motor Vehicles so that her suspension required by conviction would commence. A notation on the record of the conviction maintained by the Irmo Town Clerk asserts the "ticket" was sent to the Department of Motor Vehicles on July 1st, 2009.

6. The plaintiff contacted the Department of Motor Vehicles to inquire about the further suspension of her driver's license required by her entry of a plea to driving under the influence. She received no response to her inquiries. The plaintiff also contacted her long-time insurance agent, who went to a branch of the Department of Motor Vehicles to inquire about the suspension and the plaintiff's need for auto insurance in the wake of her conviction for driving under the influence. These inquiries occurred in August and September, 2009. The records of the Department of Motor Vehicles apparently did not reflect a record of conviction and officers of the department informed both the plaintiff and her agent there was no such record.

7. Audits routinely conducted by the Department of Motor Vehicles for traffic citations issued by the Town of Irmo for the years 2010, 2011 and 2013 showed the plaintiff's citation for driving under the influence as "outstanding."

8. Apparently at some juncture after the last audit, the department's records were updated to show the status of the citation. On May 27th, 2014, nearly five years to the day after pleading guilty to the offense, the department notified the plaintiff of the suspension of her license to drive.

9. The plaintiff maintains she suffer significant immediate hardship and irreparable harm with the imposition of a suspension after this lapse of time. The plaintiff is in the medical

field and has a license as a registered nurse. She testified that she lost her job in the wake of her conviction and it was months before she could find employment. The plaintiff is now employed with a company which does not know of her conviction and which requires that she operate a motor vehicle in connection with her employment, without limitations. The plaintiff also now carries mortgages on two separate residences, as she tries to sell her former residence. The plaintiff has a reasonable fear that her job will be jeopardized by any suspension of her driver's license at this juncture, or upon disclosure of her conviction at this late date.

10. The department argues that it is blameless in the lapse between the entry of the conviction for driving under the influence and the imposition of the suspension of the plaintiff's license to drive. While this may be true, the test is whether the plaintiff will be deprived of fundamental fairness required by due process of law in the suspension of her driver's license after a significant lapse of time. *See, Hipp v. S.C. Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009). There, the court held that both the driver and the department were blameless in the 12 year lapse of time between the conviction there and its recording with the Department of Motor Vehicles, triggering suspension. *Id.*, at fn. 2.

11. The department argues that the plaintiff should have done more to impose the requisite suspension on herself, but it is difficult to see how much more she could have done after she and her insurance agent made several inquiries of the department about the suspension without success. Nor was it incumbent on the plaintiff's lawyer to see to it his client's license was suspended. The attorney owed his client a duty of loyalty, not the department.

12. This court finds and concludes that the lapse of time of five years between the plaintiff's conviction for driving under the influence and her suspension will deprive the plaintiff fundamental fairness of the law required by due process and cause the plaintiff hardship. The plaintiff has no other remedy at law.

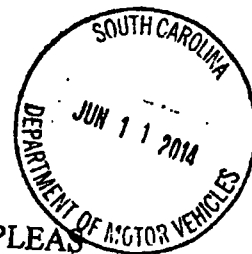
NOW THEREFORE, based on the foregoing, it is accordingly
ORDERED, ADJUDGED and DECREED that the South Carolina Department of Motor
Vehicles is permanently enjoined from suspending the plaintiff's license to drive for her
conviction for driving under the influence entered June 11th, 2009.

AND IT IS SO ORDERED.


HON. L. CASEY MANNING
Circuit Judge, Court of Common Pleas
for Richland County

Columbia, South Carolina

March 23 2015



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Anna Dillard Wilson,)

Plaintiff,)

vs.)

S.C. Department of Motor Vehicles,)

Defendants.)

IN THE COURT OF COMMON PLEAS

2014CP400 3750

Civil Action No.

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER**

RICHLAND COUNTY
CLERK OF COURT
JENNIFER V. BOHIC
C.C. & G.
2014 JUN 10 PM 2:41

This is an order granting a temporary restraining order on behalf of the plaintiff.

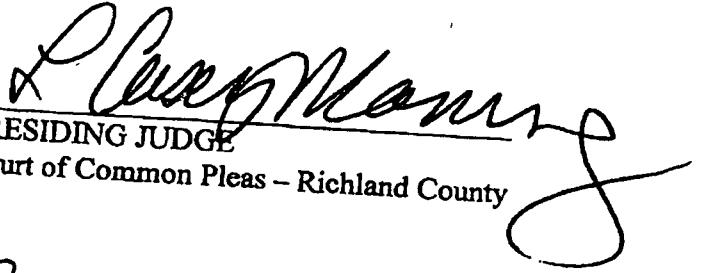
The plaintiff is facing the suspension of her license to drive, five years after her conviction for driving under the influence of alcohol. The plaintiff asserts that this is a denial of fundamental fairness under the authority of *Hipp v. South Carolina Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009).

The plaintiff has demonstrated a colorable claim, and has also demonstrated the potential for irreparable harm in the suspension of her license to drive, threatening her livelihood. Suspension is imminent, and that action is in the exclusive domain of the defendant Department of Motor Vehicles.

Good cause having been shown, pursuant to Rule 65(b) of the South Carolina Rules of Civil Procedure,

IT IS THEREFORE ORDERED that the defendant is restrained and enjoined from suspending the plaintiff's license to drive, until a hearing may be held on the plaintiff's action, on the 17th day of June, 2014, at 10:00 o'clock A M. The plaintiff is not required to post security.

AND IT IS SO ORDERED.


PRESIDING JUDGE
Court of Common Pleas - Richland County

Columbia, South Carolina
June 10 2014

ENTERED June 10, 2014 at 2:20 'o'clock P M.
BY: [Signature] for the Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ANNA DILLARD WILSON

Plaintiff(s)

vs.

SC DEPARTMENT OF MOTOR VEHICLES

Defendant(s)

(Please Print)

Submitted By: John D. Elliott

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Other:

E-mail: jayel@mindspring.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case #
20 -CP- -
☐ Notice/ File Med Mal (230)
☐ Other (299)

- ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Other (799)

- ☐ Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☒ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission
(990)
☐ Employment Security Comm (991)
☐ Other (999)

- ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature:

John D. Elliott

Date: June 9th, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Anna Dillard Wilson
☐ Plaintiff

v.

S.C. Department Of Motor Vehicles
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
John D. Elliott, Bar No. 1869
Address:
P.O. Box 607, Columbia SC 29202
phone: 252.9236 fax: 799.2079
e-mail: other:

Defendant's Attorney:
, Bar No.
Address:
phone: fax:
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

Nature of Motion:

SECTION I: Hearing Information

Estimated Time Needed: 1 Court Reporter Needed: ☐ YES / ☐ NO

- ☐ Written motion attached
☒ Form Motion/Order

SECTION II: Motion/Order Type

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

June 9, 2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Anna Dillard Wilson,)
Plaintiff,)

Civil Action No.

vs.)

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

S.C. Department of Motor Vehicles,)
Defendants.)

RICHLAND COUNTY
FILED
2014 JUN -9 PM 3:57
JEANETTE M. HOGAN
C.C.P. & U.S.

The plaintiff moves for a temporary restraining order in this action for injunctive relief, on the following grounds.

The plaintiff entered a plea of guilty to the offense of driving under the influence of alcohol on June 11th, 2009. Five years later, almost to the day, the plaintiff was notified of the suspension of her license. The notification is attached.

As can be seen, the notice requires that she surrender her license, obtain expensive SR-22 insurance, and participate in the Alcohol Drug Safety Action Program, or ADSAP.

The lengthy delay in the imposition of this suspension is a denial of fundamental fairness. *See, Hipp v. South Carolina Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009), which is attached. The plaintiff did all things expected of her in complying with the law, and in addition, took steps to insure that the suspension would take place timely. (See attached affidavit.) In response, the plaintiff was assured by the authorities the conviction was transmitted to the Department of Motor Vehicles.

Now, five years after the fact, the plaintiff is facing the loss of her driver's license – a property right secured by the federal and state constitutions – and may face the loss of her job in addition.

The plaintiff therefore moves for a temporary restraining order pursuant to Rule 65(b) of the South Carolina Rules of Civil Procedure. The plaintiff will suffer immediate and irreparable injury; the imposition of the suspension is to take place Wednesday, June 11, 2014, fully five years after her conviction. The plaintiff has no other adequate remedy at law; there is no appeal to be had to the Administrative Law Court regarding the suspension. Accordingly, the only remedy available to the plaintiff is with this court.

The plaintiff respectfully requests that she be excused from any requirement that she post security, since this request for a temporary restraining order does not involve a dispute over money or an action *in rem*.

The plaintiff therefore moves for an order of this court temporarily enjoining the defendant South Carolina Department of Motor Vehicles from suspending the plaintiff's license to drive until a hearing may be heard on her motion.



JOHN D. (JAY) ELLIOTT
Attorney for Anna Dillard Wood
1122 Lady Street - Fifth Floor
Post Office Box 607
Columbia, South Carolina 29202
Phone: (803) 252-9236
Fax: (803) 799-2079
E-Mail: jayel@mindspring.com

Columbia, South Carolina
June 9th 2014

Page 416

673 S.E.2d 416 (S.C. 2009)

381 S.C. 323

Charles R. HIPP, III, Respondent,

v.

SOUTH CAROLINA DEPARTMENT OF MOTOR
VEHICLES, Appellant.

No. 26588.

Supreme Court of South Carolina.

January 26, 2009

Heard Dec. 4, 2008.

General Counsel Frank L. Valenta, Jr., Deputy
General Counsel Philip S. Porter, and Assistant General
Counsel Linda A. Grice, all of Blythewood, for
Appellant.

Michael A. Timbes, of Thurmond, Kirchner &
Timbes, of Charleston, for Respondent.

PER CURIAM:

[381 S.C. 324] South Carolina Department of Motor
Vehicles (SCDMV) appeals the order of the circuit court
enjoining it from suspending the driver's license of
Respondent Charles R. Hipp, III (Respondent) as a
consequence of Respondent's 1993 Georgia conviction
for driving under the influence (DUI). We affirm.

FACTS

Respondent was arrested and pled guilty to DUI in
the State of Georgia in 1993. At the time of the arrest,
Respondent was a South Carolina resident attending
college in South Carolina, and a driver licensed by the
South Carolina Department of Motor Vehicles
(SCDMV). As a result of his plea, Respondent paid a fine
to the State of Georgia and fulfilled other conditions
required by Georgia. In 2005, twelve years after his
conviction, Respondent received notice from the
SCDMV that his South Carolina driver's license was
being suspended as a consequence of his 1993 Georgia
DUI conviction. Respondent filed a declaratory judgment
action asking the court to enjoin suspension of his
license. The circuit court issued an order enjoining the
SCDMV from suspending Respondent's driver's license.

ISSUE

Did the circuit court err in enjoining the suspension

of Respondent's driver's license?

STANDARD OF REVIEW

"Actions for injunctive relief are equitable in
nature." ---

[381 S.C. 325] *Shaw v. Coleman*, 373 S.C. 485, 492, 645
S.E.2d 252, 256 (Ct.App.2007). In actions in equity this
Court may find facts in accordance with its own view of
the preponderance of the evidence. *Id.*

ANALYSIS

The circuit court cited three grounds for enjoining
suspension of Respondent's driver's

Page 417

license: (1) that the applicable statute is ambiguous; (2)
the doctrine of laches; and (3) that suspension twelve
years after conviction violates the "fundamental fairness"
required by due process. We find the circuit court's
conclusion as to fundamental fairness to be persuasive
and so, affirm.[1]

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. *Bell v. Burson*, 402 U.S.
535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971). Due process is
violated when a party is denied fundamental fairness.
City of Spartanburg v. Parris, 251 S.C. 187, 191, 161
S.E.2d 228, 230 (1968).

This Court addressed facts similar to those in the
case at hand in *State v. Chavis*, 261 S.C. 408, 200 S.E.2d
390 (1973). While we found fundamental fairness was
not violated by suspension after a one-year delay, we
allowed that there might be circumstances under which it
could be soundly held that the State had no right to
suspend a driver's license after a lengthy delay. *Id.* at 411,
200 S.E.2d at 391. We find in the instant case the extreme
circumstances contemplated by *Chavis*.

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.[2] Though neither dispositive nor directly
applicable to the instant case, we note

[381 S.C. 326] 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. See, e.g.,
S.C.Code Ann. § § 56-1-746 (for purposes of determining
a prior offense for sentence enhancement of
alcohol-related offenses, only convictions within ten
years of the date of the most recent violation are

considered prior offenses); 56-1-1340 (violation convictions shall be entered in the records of the SCDMV for a period of ten years); 56-5-2940 (for sentence enhancement of convictions for operating motor vehicle under influence of alcohol or drugs, only those violations which occurred within ten years preceding date of last violation constitute prior violations); 56-5-1990 (in determining time of suspension of driver's license, only violations which occurred within ten years of the last violation shall constitute prior violations).

CONCLUSION

We agree with the circuit court that under the unique circumstances of this case, the attempted suspension of Respondent's driver's license twelve years after conviction constitutes a denial of fundamental fairness. The order enjoining suspension is therefore

AFFIRMED.

TOAL, C.J., WALLER, PLEICONES, BEATTY
and KITTREDGE, JJ., concur.

Notes:

[1] Having found the circuit court's decision supported by its finding that Respondent was denied fundamental fairness, we do not address the remaining grounds. See *Wilson v. Moseley*, 327 S.C. 144, 147, 488 S.E.2d 862, 864 (1997).

[2] It should be noted that neither Respondent nor SCDMV is at fault for the delay. The unexplained delay in reporting the 1993 violation appears to be solely attributable to the inaction of the State of Georgia.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Anna Dillard Wilson,

Plaintiff,

vs.

S.C. Department of Motor Vehicles,

Defendants.

Civil Action No. _____

S U M M O N S
(Declaratory and Injunctive Relief)

FILED
2014 JUN -9 PM 3:57
JEROME H. HARRIS
C.C.P. & C.S.

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber at his office, 1122 Lady Street, NBSC Building, Fifth Floor, Columbia, South Carolina 29201 within thirty (30) days after the date of service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint, and an Order of Default and Judgment against you will be rendered for that relief so demanded in the Complaint.


JOHN D. (JAY) ELLIOTT
Attorney for Anna Dillard Wood
1122 Lady Street - Fifth Floor
Post Office Box 607
Columbia, South Carolina 29202
Phone: (803) 252-9236
Fax: (803) 799-2079
E-Mail: jayel@mindspring.com

Columbia, South Carolina
June 27, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Anna Dillard Wilson,
Plaintiff,

Civil Action No.

vs.

S.C. Department of Motor Vehicles,
Defendants.

COMPLAINT
(Declaratory and Injunctive Relief)

RICHLAND COUNTY
FILED
2014 JUN -9 PM 3:54
JEANETTE B. HARRIS
C.C.P. & C.S.

Plaintiff, complaining of the defendant herein, would respectfully show this court as follows:

1. Plaintiff is a citizen and resident of Lexington County, South Carolina. At all times material to this complaint the plaintiff was a citizen and resident of Richland County, South Carolina.
2. At all times material to this complaint, Defendant South Carolina Department of Motor Vehicles is the state department charged with, among other duties, the issuance and suspension of licenses held by the motoring public to drive on the roads and highways of South Carolina. Its principal place of business is Richland County, South Carolina.
3. The plaintiff brings this action for declaratory and injunctive relief under the equitable powers of this court, and pursuant to S.C. Code Ann. Section
4. The plaintiff has a license to drive issued by the South Carolina Department of Motor Vehicles, No.
5. On June 11th, 2009, the plaintiff pleaded guilty to first offense driving under the influence of alcohol in the Irmo, South Carolina Municipal Court.
6. Thereafter, the plaintiff did all things expected of her to comply with the law. (See attached affidavit of plaintiff, with exhibits.)

7. On May 27th, 2014, nearly five years to the day after pleading guilty to the offense, suddenly and without warning, the defendant notified the plaintiff of the suspension of her license to drive.

8. The extreme lapse of time between the conviction, and now the suspension of the plaintiff's license to drive a motor vehicle is a deprivation of due process of law secured by the federal and state constitutions, amounting to a denial of fundamental fairness.

9. The plaintiff will suffer significant immediate hardship and irreparable harm with the imposition of a suspension after such an extreme lapse of time. The plaintiff has no other adequate remedy at law.

10. Accordingly, the plaintiff requests this court issue an order declaring the action of the department a violation of due process of law, depriving the plaintiff of fundamental fairness, and enjoining the department from suspending her license to drive a motor vehicle, temporarily and permanently.

WHEREFORE the plaintiff prays declaratory and injunctive relief, including a temporary and permanent restraining order enjoining the defendant from suspending her license to drive a motor vehicle, together with such other and further relief as this court deems just and equitable.


JOHN D. (JAY) ELLIOTT
Attorney for Anna Dillard Wilson
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Post Office Box 607
Columbia, South Carolina 29202
Phone 803.252.9236
Fax 803.799.2079
E-Mail: jayel@mindspring.com

Columbia, South Carolina
June 27, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Anna Dillard Wilson,

Plaintiff,

Civil Action No.

vs.

S.C. Department of Motor Vehicles,

Defendants.

AFFIDAVIT OF ANNA DILLARD WILSON

2014 JUN -9 PM 3:57
JANETTE A. JOHNSON
C.C.P. & G.S.

RICHLAND COUNTY
FILED

PERSONALLY appeared before me ANNA DILLARD WILSON, who being duly sworn, deposes and says as follows:

1. I am Anna Dillard Wilson, the plaintiff in this action. I reside at One Paddock Chase, Irmo, South Carolina. I have a license to drive issued by the South Carolina Department of Motor Vehicles.
2. On November 22nd, 2008 I was arrested and charged with driving under the influence of alcohol by the Irmo Police Department. On June 11, 2009 I pleaded guilty to the offense in the Irmo Municipal Court.
3. In order to obtain a license to drive with restrictions, I obtained paperwork that day to do so. The week following the conviction I went to enroll in the Alcohol Drug Safety Action Program or ADSAP. I was told by an official there that they had no paperwork from the Irmo court and could not enroll until they had the paperwork. The official told me she would call the Irmo court to confirm the conviction. She called me that afternoon and instructed me to report for orientation the next morning. I did so, and enrolled in the program.
4. I began the program on June 18, 2009 and paid \$500.00 to enter the program. The receipt is attached.

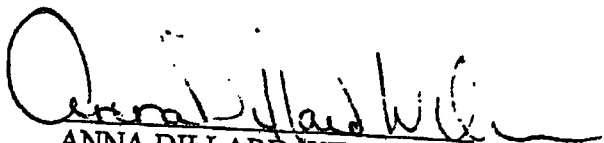
5. I completed the program on August 20, 2009, with an exit interview on September 3, 2009. That date, I paid \$160.00 for a random drug and alcohol screen. The receipt is attached.

6. The day after I completed the program, August 21, 2009, I called the Department of Motor Vehicles to inquire about obtaining a restricted license. I was told they had no conviction for driving under the influence on record. I then called the Irmo clerk for the town court. The clerk informed me that she had sent the conviction to the Department of Motor Vehicles on June 11, 2009 and that there was nothing else for her to do – her job was done.

7. In connection with the arrest, my license to drive was suspended for failure to comply with the implied consent statutes regarding the taking of a Breathalyzer test. That suspension ended on November 12, 2009.

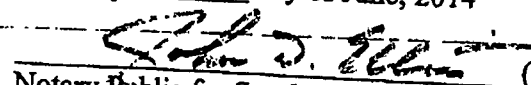
8. On May 27, 2014, I received the attached notice of suspension of my driver's license, five years after the conviction. The notice directs me to, among other things, surrender my driver's license, obtain expensive SR-22 insurance, and participate in the ADSAP program. This notice was issued despite the fact I had done everything asked of me or directed to do so in order to comply with the law.

9. I am a registered nurse by training and I am the patient care coordinator for Bulow Orthotics and Prosthetic Solutions. I have been there three years. It took me two years after the incident to find a decent job. My job requires that I travel on behalf of the company to deliver needed medical devices to patients. A suspension of my driver's license would work a great hardship on me and potentially deprive me of my job.


ANNA DILLARD WILSON

SWORN TO and Subscribed Before Me

This 8th day of June, 2014


(L.S.)

Notary Public for South Carolina

My Commission Expires: 7.29.2020

REDACTED

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina

Department of Motor Vehicles

05/27/2014

WILSON, ANNA DILLARD
1 PADDOCK CHASE
IRMO, SC 29063-2937

CUSTOMER NO: 26288811
FILE NO: 17354768
DL NO:

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: 56-5-2990

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
11/22/2008	06/11/2009	31588EE	Driving Under the Influence

BEGINNING DATE: 12:01 AM 06/11/2014 ENDING DATE: MIDNIGHT 12/11/2014

SPECIAL DRIVING PRIVILEGES:

If you are a licensed driver, you may be eligible for a special driving credential, (provisional driver's license for SC drivers or provisional permit for out-of-state drivers), if you enroll in ADSAP and provide proof of financial responsibility. Special driving privileges can only be issued for non-commercial class licenses and US Citizens or permanent resident card holders. If you do not receive special driving privileges, 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.

ALCOHOL DRUG SAFETY ACTION PROGRAM:

You must successfully complete the ADSAP Program within one year of enrollment. The SC Department of Alcohol and Other Drug Abuse Services will notify the Department or you have completed this requirement. If you have not successfully completed the program within this time, your driving privilege will be subject to suspension for Failure to Successfully Complete ADSAP. If you need information concerning this program, you may call the Department of Alcohol and Other Drug Abuse Services in your county.

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.

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

If you have not already turned in your license, you must return it to Driver Record or your local DMV office.

LEWINGTON / RICHLAND
ALCOHOL AND DRUG ABUSE COUNCIL

Phone (803) 252-8717
P.O. Box 50567 Columbia, S.C. 29260

Acct. No. 55349		Date 6/18/03	
Received Of DILLARD, ANNA			
Address _____			
City _____			
Dollars 500		Cents 00	
Old Balance	On A/C	Paid In Full	100 Dollars New Balance
Draft	I.O.	Check: #5549	Cash
For ADSAP			
Thank You Please keep this copy for reference.			

No. 62500

Rec'd by

Anna Ruff

LEWINGTON PRINTING SERVICES WEST COLUMBIA SC 29171 25157477

LRADAC

1325 Harden St.

P. O. Box 50597

Columbia, SC 29250

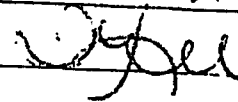
Telephone: 803-256-3100

FAX: 803-540-7682

E-Mail: mail@lradac.org

Check Payment Receipt

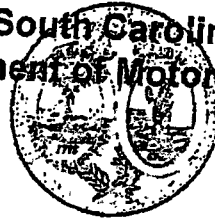
Receipt Number:	1169
Receipt Date:	9/3/2009
Account Number:	55349
Payment Amount:	**160.00**

****One Hundred Sixty Dollars And NO Cents****Balance Remaining on 9/3/2009 - 9:25am: **** (35.00) *****Received by (signature):*

N a m e	Anna R. Dillard
	119 Weston Watch Rd
	Irmo, SC 29063

REDACTED

South Carolina
Department of Motor Vehicles



11/12/2009

DILLARD, ANNA RUTH
119 WESTON WATCH RD
IRMO, SC 29063-2006

CUSTOMER NO: 26288811
FILE NO: 10465164
DL NO:

DEAR CUSTOMER:

DMV records indicate that the period of your South Carolina suspension(s) has ended. You have met the requirements to fully clear the suspension(s).

If you are eligible to obtain a South Carolina driver's license, you must apply at a local DMV Office. You may be required to take the following tests:

Vision
Knowledge
Skills

Driver Records Manager

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Anna Dillard Wilson,

Plaintiff,

-vs-

South Carolina Department of
Motor Vehicles,

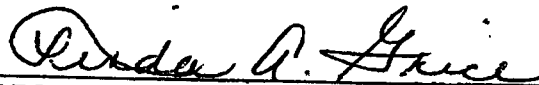
Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-40-03750

**DEFENDANT'S RESPONSE
TO PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER**

The Defendant South Carolina Department of Motor Vehicles (SCDMV) hereby responds to Plaintiff's Motion for Temporary Restraining Order filed with this Court on June 9, 2014. Defendant SCDMV does not object to a stay of suspension of Plaintiff's driving privileges pending the outcome of the merits in this matter.



LINDA ANNETTE GRICE, SC Bar # 2260

Assistant General Counsel

linda.grice@scdmv.net

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

General Counsel

PHILIP S. PORTER, SC Bar # 4526

Deputy General Counsel

South Carolina Department of Motor Vehicles

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: 803.896.9900

Facsimile: 803.896.9901

Blythewood, South Carolina
June 13, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Anna Dillard Wilson,

Plaintiff,

-vs-

State of South Carolina Department of
Motor Vehicles,

Defendant.

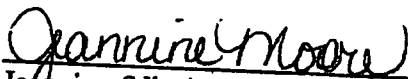
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-40-03750

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 13, 2014, I served a copy of Defendant's Response to Plaintiff's Motion for Temporary Restraining Order on the Plaintiff, through his attorney, by depositing a copy of same in the United States Mail, postage prepaid, and via facsimile addressed as follows:

John D. Elliott, Esquire
Post Office Box 607
Columbia, South Carolina 29202
Via Facsimile @ (803)799-2079


Jeannine (Nina) Moore, Paralegal
Office of General Counsel
South Carolina Department of Motor Vehicles

REDACTED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Anna Dillard Wilson,

Plaintiff,

-vs-

South Carolina Department of
Motor Vehicles,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-40-03750

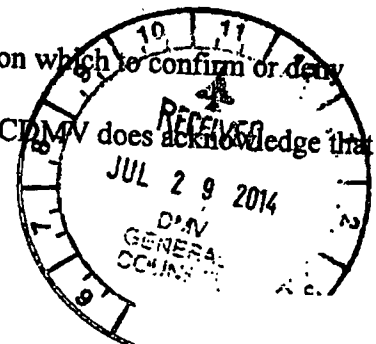
ANSWER

FILED AND
2014 JUL 23 PM 10:15
CLERK OF COURT
JUL 23 2014

The Defendant South Carolina Department of Motor Vehicles (SCDMV), answers the Complaint as follows. Defendant SCDMV hereby denies any and all claims in the Complaint not specifically admitted, explained or otherwise qualified herein and demands strict proof of same.

1. Upon information and belief, Defendant SCDMV admits the allegations of paragraph 1 of the Complaint regarding the Plaintiff's residence.
2. Defendant SCDMV does not contest the allegations of paragraph 2 of the Complaint and admits that it is an agency of State government which issues driver's licenses in the State of South Carolina, with its headquarters located in Richland County.
3. Defendant SCDMV is without sufficient knowledge upon which to confirm or deny the allegations in paragraph 3 of the Complaint.
4. Upon information and belief, Defendant SCDMV admits so much of the allegations of paragraph 4 of the Complaint that Defendant SCDMV's records reflect that Plaintiff's driver's license number is
5. Defendant SCDMV is without sufficient knowledge upon which to confirm or deny the allegations in paragraph 5 of the Complaint, however, Defendant SCDMV does acknowledge that

102
JAY



its records reflect that the Plaintiff was found guilty of driving under the influence (DUI) on June 11, 2009, in the Municipal Court of Irmo as evidenced by copy of ticket number 31588EE.

6. Defendant SCDMV is without sufficient knowledge upon which to confirm or deny the allegations in paragraph 6 of the Complaint.

7. In regard to paragraph 7 of the Complaint, on May 20, 2014, Defendant, SCDMV received a copy of ticket number 31588EE from the Irmo Municipal Court reflecting the Plaintiff's guilty conviction (Exhibit A). Accordingly, on May 27, 2014, Defendant SCDMV issued Plaintiff a notice of suspension for the DUI conviction. The Plaintiff did not surrender her license to the court on the date of her conviction therefore, pursuant to S.C. Code Ann. § 56-1-365, the suspension did not begin until the ticket was received and processed by the SCDMV.

8. The ticket, #31588EE was included in the SCDMV audit reports completed by the Irmo Police Department for 2010, 2011 and 2013. (Exhibits B, C and D) The ticket was reported as being in court of the 2010 and 2011 audits and as signed off (sent to SCDMV) in the 2013 report. There was no audit report submitted in 2012.

9. The Plaintiff's record as maintained by the SCDMV shows that the Plaintiff did not serve the suspension or go without her license after her DUI conviction. (Exhibit E).

10. Defendant SCDMV denies the allegations contained in paragraph 8 of the Complaint.

11. Defendant SCDMV denies the allegations contained in paragraph 9 of the Complaint. The Plaintiff was convicted of a first offense DUI, therefore, pursuant to S.C. Code Ann. § 56-1-1320, she may apply to the Department of Motor Vehicles to obtain a provisional license to operate a motor vehicle. Plaintiff has already completed ADSAP and upon furnishing proof of responsibility as provided in S.C. Code Ann. § 56-1-1350 and payment of the required fee, she may be issued a provisional license for the duration of the suspension.

LSY

12. Paragraph 10 of the Complaint is the recitation of the relief being sought by the Plaintiff and the Defendant SCDMV denies that the Plaintiff is entitled to the requested relief and asserts that there is an appropriate remedy available to the Plaintiff as outlined above.

WHEREFORE, the Defendant SCDMV, having fully answered the Complaint prays unto this Court that the same be dismissed with prejudice, with costs being assessed against the Plaintiff, and for such other and further relief as this Court may deem just and appropriate.



LINDA ANNETTE GRICE, SC Bar # 2260

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

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: 803.896.9900

Facsimile: 803.896.9901

Email: linda.grice@scdmv.net

Blythewood, South Carolina
July 24, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Anna Dillard Wilson,

Plaintiff,

-vs-

State of South Carolina Department of
Motor Vehicles,

Defendant.

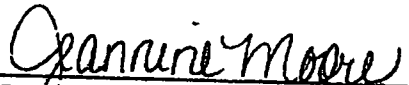
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-40-03750

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 2014, I served a copy of the Answer on the Plaintiff, through her attorney, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

John D. Elliott, Esquire
Post Office Box 607
Columbia, South Carolina 29202


Jeannine (Nina) Moore, Paralegal
Office of General Counsel
South Carolina Department of Motor Vehicles

REDACTED

FORM S-438

REV 3/09

STATE OF SOUTH CAROLINA
Uniform Traffic Ticket

CITY OF IRMO

VERSUS

First Name ANNA RUTH DILLARD		Middle Name		Last Name	
Street and Number 119 WESTON WATCH ROAD,		City IRMO, SC 29063		State SC	
Zip Code		Driver's License Number		Veh Lic Number 356VXW-SC	
Model NISSAN ALTIMA 4 DOOR		Make of Veh NISS		Year 0000	
N					

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

Name of Trial Officer CITY OF IRMO		Street and Number 7300 WOODROW ST.	
Date of Trial 7/01/2009	Time of Trial 12:12 PM	City IRMO, SC 29063	State SC
Violation-Court Appearance Required DUI 1ST OFFENSE < 10		Violation Sect Code 56-5-3930	
Owner of Vehicle		Date of Arrest 11/22/2008	
Address of Owner		Date of Violation 11/22/2008	
Bail deposited	Name of Arrest Officer GRINSTEAD, ANDREA A	Rank	
Description of Accused Race W Sex F Birth Date 0 FL 6 IN Height 0 Weight 0 Hair 0 Eyes 0		County LEXINGTON	Number
Date Bail Red'd	By	Badge ISAAG	District
CASE BEFORE Circuit Court _____ Magistrate _____ Municipal Judge X Family Court _____ Federal Court _____		Day: Saturday Time of Violation / 23:54 Weather / Distance in feet from Intersection of THE 1300 BLOCK OF LAKE MURRAY BOULEVARD	
Name of Trial Officer if Different from above:		And	
Defendant Did not appear _____ Appeared _____		Distance in Feet from the intersection of	
DISPOSITION NOLLE PROSSED _____ PLED GUILTY _____ FORFEITED BOND _____ NOL CONTENDERE _____		Hwy No	
TRIAL BY Judge		Lat	
Verdict of Trial if Any DOCKET CLOSED - FOUND GUILTY		Long	
Jail	Suspend	Fine \$1026.91	Amt Collected 997.00
Committed to		Vehicle Searched	
Arrest result of Collision No		Offense Code	
B A Level		TICKET NUMBER 31588EE	
CERTIFIED CORRECT JOSEPH M EPTING		DATE 6/11/2009	

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



A TRUE COPY

K. H. H. H.
LEXINGTON/IRMO MUNICIPAL COURT

499 AM

EXHIBIT A

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2010
IRMO POLICE DEPT (131)

07/15/2010 PAGE 4,552

CITATION STATUS CODES:

C-COURT

U-UNUSED

N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

S-SIGNED OFF (SENT TO SCDMV)

X-VOID (SENT TO SCDMV)

N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

<u>C</u> 60162CE	<u>C</u> 60164CE	<u>U</u> 60167CE	<u>U</u> 60168CE	<u>U</u> 60169CE	<u>U</u> 60160CE	<u>U</u> 60161CE	<u>U</u> 60162CE	<u>U</u> 60163CE	<u>U</u> 60164CE
<u>U</u> 60165CE	<u>U</u> 60166CE	<u>U</u> 60167CE	<u>U</u> 60168CE	<u>U</u> 60169CE	<u>U</u> 60170CE	<u>U</u> 60171CE	<u>U</u> 60172CE	<u>U</u> 60173CE	<u>U</u> 60174CE
<u>U</u> 60175CE	<u>U</u> 60176CE	<u>U</u> 60177CE	<u>U</u> 60178CE	<u>U</u> 60179CE	<u>U</u> 60180CE	<u>U</u> 60181CE	<u>U</u> 60182CE	<u>U</u> 60183CE	<u>U</u> 60184CE
<u>U</u> 60185CE	<u>U</u> 60186CE	<u>U</u> 60187CE	<u>U</u> 60188CE	<u>U</u> 60189CE	<u>U</u> 60190CE	<u>U</u> 60191CE	<u>U</u> 60192CE	<u>U</u> 60193CE	<u>U</u> 60194CE
<u>U</u> 60195CE	<u>U</u> 60196CE	<u>U</u> 60197CE	<u>U</u> 60198CE	<u>U</u> 60199CE	<u>U</u> 60200CE				

FIRST OUTSTANDING TICKET 60152CE LAST OUTSTANDING TICKET 60200CE 01/24/2002 46

C44143DF FIRST OUTSTANDING TICKET 44143DF LAST OUTSTANDING TICKET 44143DF 12/31/2004 1

X37287DO X37292DO U37293DO U37294DO U37300DO 11/14/2005 5

FIRST OUTSTANDING TICKET 37287DO LAST OUTSTANDING TICKET 37300DO

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C57223EA U57233EA U57234EA U57235EA U57236EA U57237EA U57238EA U57239EA U57240EA U57241EA

U57242EA U57243EA U57244EA U57245EA U57246EA U57247EA U57248EA U57249EA U57250EA U57251EA

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U57567EA C57568EA C57569EA C57570EA 01/31/2007 4

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FIRST OUTSTANDING TICKET 58090EA

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FIRST OUTSTANDING TICKET 58335EA

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FIRST OUTSTANDING TICKET 31151EE LAST OUTSTANDING TICKET 31174EE

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U31211EE U31212EE U31213EE U31214EE U31215EE U31216EE U31217EE U31218EE U31219EE U31220EE

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OCT 12 2010

DMV

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

EXHIBIT B

VS22BTKT

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2010
IRMO POLICE DEPT (131)

07/13/2010 PAGE 4,553

CITATION STATUS CODES:
C-COURT S-SIGNED OFF (SENT TO SCDMV)
U-UNUSED X-VOID (SENT TO SCDMV)
N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

U31221EE	U31222EE	U31223EE	U31224EE	U31225EE	U31226EE	U31227EE	U31228EE	U31229EE	U31230EE
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C31501EE	C31502EE	C31503EE	FIRST OUTSTANDING TICKET 31501EE LAST OUTSTANDING TICKET 31503EE 05/21/2008 3						
C31588EE	C31589EE	C31590EE	FIRST OUTSTANDING TICKET 31588EE LAST OUTSTANDING TICKET 31590EE 05/21/2008 3						
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EXHIBIT B

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

D. L. Phelps
Driver Services, Deputy Director

/S22BTKT

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2011
IRMO POLICE DEPT (131)

07/01/2011 PAGE 4,568

CITATION STATUS CODES:

C-COURT

U-UNUSED

N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

S-SIGNED OFF (SENT TO SCDMV)

X-VOID (SENT TO SCDMV)

U31393EE	U31394EE	U31395EE	U31396EE	U31397EE	U31398EE	U31399EE	U31400EE	
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FIRST OUTSTANDING TICKET 31501EE			LAST OUTSTANDING TICKET 31535EE			05/21/2008	3	
U31588EE								
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U31739EE	U31740EE	U31741EE	U31742EE	U31743EE	U31744EE	U31745EE	U31746EE	U31747EE
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FIRST OUTSTANDING TICKET 31807EE			LAST OUTSTANDING TICKET 31818EE			05/21/2008	3	
U31862EE								
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U31957EE								
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U32006EE	U32017EE							
FIRST OUTSTANDING TICKET 32006EE			LAST OUTSTANDING TICKET 32017EE			05/21/2008	2	

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OCT 06 2011

DMV

EXHIBIT C

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

D. L. Phelps
Driver Services, Deputy Director

VS22BTKT

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2013
IRMD POLICE DEPT (131)

07/09/2013 PAGE 4.366

CITATION STATUS CODES:

C-COURT

U-UNUSED

N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

S-SIGNED OFF (SENT TO SCDMV)

X-VOID (SENT TO SCDMV)

N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

U 60152CE	S 60154CE	U 60157CE	U 60158CE	U 60159CE	U 60160CE	U 60161CE	U 60162CE	U 60163CE	U 60164CE
U 60165CE	U 60166CE	U 60167CE	U 60168CE	U 60169CE	U 60170CE	U 60171CE	U 60172CE	U 60173CE	U 60174CE
U 60175CE	U 60176CE	U 60177CE	U 60178CE	U 60179CE	U 60180CE	U 60181CE	U 60182CE	U 60183CE	U 60184CE
U 60185CE	U 60186CE	U 60187CE	U 60188CE	U 60189CE	U 60190CE	U 60191CE	U 60192CE	U 60193CE	U 60194CE
U 60195CE	U 60196CE	U 60197CE	U 60198CE	U 60199CE	U 60200CE				

FIRST OUTSTANDING TICKET 60152CE

LAST OUTSTANDING TICKET 60200CE

01/24/2002

46

FIRST OUTSTANDING TICKET 57567EA

LAST OUTSTANDING TICKET 57567EA

01/31/2007

1

FIRST OUTSTANDING TICKET 31044EE

LAST OUTSTANDING TICKET 31047EE

05/21/2008

2

FIRST OUTSTANDING TICKET 31092EE

LAST OUTSTANDING TICKET 31092EE

05/21/2008

1

FIRST OUTSTANDING TICKET 31119EE

LAST OUTSTANDING TICKET 31120EE

05/21/2008

2

FIRST OUTSTANDING TICKET 31151EE

LAST OUTSTANDING TICKET 31174EE

05/21/2008

2

FIRST OUTSTANDING TICKET 31201EE

LAST OUTSTANDING TICKET 31203EE

05/21/2008

2

FIRST OUTSTANDING TICKET 31211EE

LAST OUTSTANDING TICKET 31212EE

05/21/2008

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FIRST OUTSTANDING TICKET 31221EE

LAST OUTSTANDING TICKET 31222EE

05/21/2008

1

FIRST OUTSTANDING TICKET 31231EE

LAST OUTSTANDING TICKET 31232EE

05/21/2008

8

FIRST OUTSTANDING TICKET 31241EE

LAST OUTSTANDING TICKET 31242EE

05/21/2008

27

FIRST OUTSTANDING TICKET 31251EE

LAST OUTSTANDING TICKET 31252EE

05/21/2008

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LAST OUTSTANDING TICKET 31304EE

05/21/2008

1

FIRST OUTSTANDING TICKET 31393EE

LAST OUTSTANDING TICKET 31394EE

05/21/2008

1

FIRST OUTSTANDING TICKET 31424EE

LAST OUTSTANDING TICKET 31425EE

05/21/2008

1

FIRST OUTSTANDING TICKET 31434EE

LAST OUTSTANDING TICKET 31435EE

05/21/2008

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FIRST OUTSTANDING TICKET 31444EE

LAST OUTSTANDING TICKET 31445EE

05/21/2008

1

FIRST OUTSTANDING TICKET 31454EE

LAST OUTSTANDING TICKET 31455EE

05/21/2008

1

EXHIBIT D



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

D. L. Phelps
Driver Services, Deputy Director

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2013
IRMO POLICE DEPT (131)

07/09/2013 PAGE 4,367

CITATION STATUS CODES:

C-COURT

U-UNUSED

N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

S-SIGNED OFF (SENT TO SCDMV)

X-VOID (SENT TO SCDMV)

S31501EE X31528EE S31539EE
IRST OUTSTANDING TICKET 31501EE LAST OUTSTANDING TICKET 31535EE

S31588EE
IRST OUTSTANDING TICKET 31588EE LAST OUTSTANDING TICKET 31588EE 05/21/2008 3

C31621EE C31643EE S31647EE S31648EE
IRST OUTSTANDING TICKET 31621EE LAST OUTSTANDING TICKET 31648EE 05/21/2008 1

S31663EE X31678EE S31700EE
IRST OUTSTANDING TICKET 31663EE LAST OUTSTANDING TICKET 31648EE 05/21/2008 4

S31719EE S31720EE U31721EE U31722EE U31723EE U31724EE U31725EE
U31729EE U31730EE U31731EE U31732EE U31733EE U31734EE U31735EE
U31739EE U31740EE U31741EE U31742EE U31743EE U31744EE U31745EE
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S31807EE S31815EE C31818EE
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S32197EE
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X32217EE
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S32288EE S32289EE S32292EE S32294EE S32299EE
IRST OUTSTANDING TICKET 32217EE LAST OUTSTANDING TICKET 32217EE 05/21/2008 1

EXHIBIT D

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

A. L. B. [Signature]
Driver Services, Deputy Director



OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 26288811
 Name: WILSON, ANNA DILLARD
 Address: 1 PADDOCK CHASE
 City: IRMO
 County: RICHLAND
 DOB:
 State: SC Zip: 290632937
 Sex: F
 Driver License No:
 Driver Training: N
 Status - DL: NO SUSPENSION CDL: NO DISQUALIFICATION

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.
Current							
DL	D	Modify	03/03/2014	07/11/2019	08/02/1993	Y	N
Prior							
DL	D	Renewal	11/12/2009	07/11/2019	08/02/1993	Y	N
DL	D	Duplicate	02/19/2010	07/11/2019	08/02/1993	Y	N
RR	D	Returned	09/22/2009	11/11/2009	08/02/1993	Y	N
RR	D	Original	09/22/2009	11/11/2009	08/02/1993	Y	N
TA DL	D	Returned	12/08/2008	08/08/2009	08/02/1993	N	N
TA DL	D	Original	12/08/2008	08/08/2009	08/02/1993	N	N
DL	D	Renewal	06/15/2007	07/11/2012	08/02/1993	Y	N
DL	D	Reissue	06/15/2007	07/11/2012	08/02/1993	Y	N
DL	D	Returned	06/15/2007	07/11/2012	08/02/1993	Y	N
DL	D	Renewal	11/22/2002	07/11/2007	08/02/1993	Y	N
DL	D	Duplicate	10/14/2004	07/11/2007	08/02/1993	Y	N
DL	D	Renewal	07/18/1997	07/11/2002	08/02/1993	Y	N

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

A. J. Shelton
 Driver Services, Deputy Director

Current Restrictions: A Corrective Lens

Name Change -

Name: DILLARD, ANNA RUTH

Date Changed: 02/19/2010

Address Change -

Address: 119 WESTON WATCH RD
 City: IRMO

State: SC Zip: 290632006

Date Changed: 03/03/2014

Point Summary

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

SC Driver License Surrendered

License Type: TA DL Class: D Function: Original
 Date Surrendered: 09/22/2009
 Reason for Return: RETURNED VOLUNTARILY

Posted: 09/22/2009

Issued: 12/08/2008

Returning State: SC

ADSAP - Alcohol and Drug Safety Action Program

Enrolled: 06/18/2009 Status: SUCCESSFUL COMPLETION
 Enrollment No: 000224137

Post Date: 07/02/2009

EXHIBIT E

6/13/2014 12:24:03 PM

REDACTED

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 26288811

Name: WILSON, ANNA DILLARD

Driver License No:

SUSP: 091 - Implied Consent
Special Driving Privilege: ROUTE RESTRICTED
Suspension Beg: 08/29/2009
Causal: 11/23/2008
Reinstatement Requirements Met: 11/12/2009
ACD: A12 Withdrawal Loc Ref:

Suspension End: 11/11/2009
Post: 12/01/2008
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

VIOL: 401 - Implied Consent
Violation: 11/23/2008 **Conviction:** 11/23/2008
ACD: A12 Conviction Loc Ref:
Conviction State: SC

Recd: 11/26/2008 **Post:** 12/01/2008
Conviction Reference:
Court Type:

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.



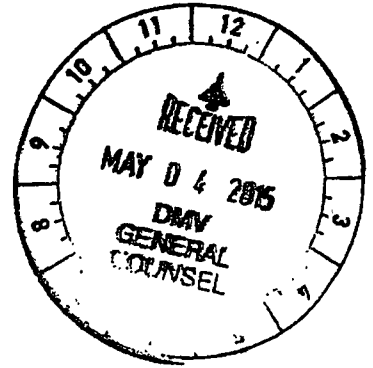
Driver Services, Deputy Director

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2014-CP-40-3750



Anna Dillard Wilson Respondent,

v.

South Carolina Department of Motor Vehicles Appellant.

NOTICE OF APPEAL

The South Carolina Department of Motor Vehicles appeals the Order of the Honorable L. Casey Manning dated March 23, 2015. Appellant received written notice of entry of this Order on April 9, 2015.


FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel
PHILIP S. PORTER, SC Bar # 4526
Deputy General Counsel
South Carolina Department of Motor Vehicles
Post Office Box 1498
Blythewood, South Carolina 29016-0020
Telephone: 803.896.9900
Fax: 803.896.9901
Email: val.valenta@scdmv.net
ATTORNEY FOR APPELLANT

April 20, 2015
Blythewood, South Carolina

Other Counsel of Record:
John D. Elliott, Esquire
Post Office Box 607
Columbia, South Carolina 29202
Attorney for Respondent

RECEIVED

APR 21 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2014-CP-40-3750

Anna Dillard Wilson Respondent,

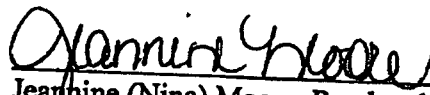
v.

South Carolina Department of Motor Vehicles Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent Anna Dillard Wilson by depositing a copy in the United States Mail, postage prepaid, on April 20, 2015, addressed to her attorney of record as follows:

John D. Elliott, Esquire
Post Office Box 607
Columbia, South Carolina 29202


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

April 20, 2015
Blythewood, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-3750

Anna Dillard Wilson

SC Department of Motor Vehicles

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John D. Elliott

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

- DISPOSITION TYPE (CHECK ONE)**
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained on this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge
SCRCP Form 4C (12/2011)

Judge Code

Date

SCANNED

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

John D. Elliott
P.O. Box 607
Columbia SC 29202
ATTORNEY(S) FOR THE PLAINTIFF(S)

Frank L. Valenta, Jr.
P.O. Box 1498
Blythewood SC 29016-0020
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Crystal M. Holmes

CLERK OF COURT
Janette W. Arledge

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Anna Dillard Wilson,)

Plaintiff,)

vs.)

S.C. Department of Motor Vehicles,)

Defendants.)

Civil Action No. 2014-CP-40-3750

ORDER

DATE OF HEARING:
PRESIDING JUDGE:
PLAINTIFF'S COUNSEL:
DEFENDANT'S COUNSEL:
COURT REPORTER:

January 20th, 2015
Hon. L. Casey Manning
John D. Elliott, Esquire
Frank L. Valenta, Jr., Esquire
Crystal M. Holmes

RICHLAND COUNTY
FILED
2015 MAR 23 AM 11:36
JENNIFER L. COOPER
Clerk of Court

This is an order granting injunctive relief to the plaintiff, a South Carolina motorist, enjoining the defendant Department of Motor Vehicles from suspending her license to drive.

The parties appeared with their counsel on the date above. After entertaining the evidence and exhibits introduced by the parties, this court arrived at the following findings and conclusions.

1. Plaintiff is a citizen and resident of South Carolina, with a license to drive issued by the South Carolina Department of Motor Vehicles, No. 8137XXX.
2. On June 11th, 2009, the plaintiff pleaded guilty to first offense driving under the influence of alcohol in the Irmo, South Carolina Municipal Court.
3. The plaintiff timely paid her fine of \$1,026.91. On June 18th, 2009, the plaintiff enrolled in the Alcohol and Drug Safety Action Program, or ADSAP, and successfully completed the program.
4. The plaintiff's privilege to drive was suspended by the Department of Motor Vehicles for her failure to comply with the implied consent statute, S.C.Code Ann. § 56-5-2950

(Supp.2009), beginning August 29th, 2009, and reinstated on November 11th, 2009 after the expiration of the requisite 90 day period.

5. The week following her conviction, the plaintiff contacted the Irmo Town Clerk to inquire about whether the record of conviction had been sent to the Department of Motor Vehicles so that her suspension required by conviction would commence. A notation on the record of the conviction maintained by the Irmo Town Clerk asserts the "ticket" was sent to the Department of Motor Vehicles on July 1st, 2009.

6. The plaintiff contacted the Department of Motor Vehicles to inquire about the further suspension of her driver's license required by her entry of a plea to driving under the influence. She received no response to her inquiries. The plaintiff also contacted her long-time insurance agent, who went to a branch of the Department of Motor Vehicles to inquire about the suspension and the plaintiff's need for auto insurance in the wake of her conviction for driving under the influence. These inquiries occurred in August and September, 2009. The records of the Department of Motor Vehicles apparently did not reflect a record of conviction and officers of the department informed both the plaintiff and her agent there was no such record.

7. Audits routinely conducted by the Department of Motor Vehicles for traffic citations issued by the Town of Irmo for the years 2010, 2011 and 2013 showed the plaintiff's citation for driving under the influence as "outstanding."

8. Apparently at some juncture after the last audit, the department's records were updated to show the status of the citation. On May 27th, 2014, nearly five years to the day after pleading guilty to the offense, the department notified the plaintiff of the suspension of her license to drive.

9. The plaintiff maintains she suffer significant immediate hardship and irreparable harm with the imposition of a suspension after this lapse of time. The plaintiff is in the medical

field and has a license as a registered nurse. She testified that she lost her job in the wake of her conviction and it was months before she could find employment. The plaintiff is now employed with a company which does not know of her conviction and which requires that she operate a motor vehicle in connection with her employment, without limitations. The plaintiff also now carries mortgages on two separate residences, as she tries to sell her former residence. The plaintiff has a reasonable fear that her job will be jeopardized by any suspension of her driver's license at this juncture, or upon disclosure of her conviction at this late date.

10. The department argues that it is blameless in the lapse between the entry of the conviction for driving under the influence and the imposition of the suspension of the plaintiff's license to drive. While this may be true, the test is whether the plaintiff will be deprived of fundamental fairness required by due process of law in the suspension of her driver's license after a significant lapse of time. *See, Hipp v. S.C. Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009). There, the court held that both the driver and the department were blameless in the 12 year lapse of time between the conviction there and its recording with the Department of Motor Vehicles, triggering suspension. *Id.*, at fn. 2.

11. The department argues that the plaintiff should have done more to impose the requisite suspension on herself, but it is difficult to see how much more she could have done after she and her insurance agent made several inquiries of the department about the suspension without success. Nor was it incumbent on the plaintiff's lawyer to see to it his client's license was suspended. The attorney owed his client a duty of loyalty, not the department.

12. This court finds and concludes that the lapse of time of five years between the plaintiff's conviction for driving under the influence and her suspension will deprive the plaintiff fundamental fairness of the law required by due process and cause the plaintiff hardship. The plaintiff has no other remedy at law.

NOW THEREFORE, based on the foregoing, it is accordingly
ORDERED, ADJUDGED and DECREED that the South Carolina Department of Motor
Vehicles is permanently enjoined from suspending the plaintiff's license to drive for her
conviction for driving under the influence entered June 11th, 2009.

AND IT IS SO ORDERED.


HON. L. CASEY MANNING
Circuit Judge, Court of Common Pleas
for Richland County

Columbia, South Carolina

March 23 2015

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
2 COUNTY OF RICHLAND) COURT
3)
4 ANNA DILLARD WILSON,)
5)
6 -V-) TRANSCRIPT
7) OF
8 SOUTH CAROLINA DEPARTMENT) RECORD
9 OF MOTOR VEHICLES) 2014-CP-40-3750
10 DEFENDANT.)
11)

12 JANUARY 20, 2015
13 RICHLAND, SOUTH CAROLINA
14

15 B-E-F-O-R-E:
16 HONORABLE CASEY L. MANNING, JUDGE;
17

18 A-P-P-E-A-R-A-N-C-E-S:
19 FOR THE PLAINTIFF:
20 MR. ELLIOTT, ESQ.
21

22 FOR THE DEFENDANT:
23 MR. VALENTA, ESQ.
24
25

1	I-N-D-E-X	
2		PG.
3	ANNA WILSON:	
4	DIRECT BY MR. ELLIOTT	5
5	CROSS BY MR. VALENTA	15
6	DEVONA SUMMER:	
7	DIRECT BY MR. ELLIOTT	19
8	CROSS BY MR. VALENTA	23
9	SHIRLEY RIVERS:	
10	DIRECT BY MR. VALENTA	25
11		
12	CERTIFICATE OF REPORTER:	34
13		
14		
15		
16		
17		
18		
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23		
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25		

1	E-X-H-I-B-I-T-S	
2	Plaintiff's	EVD.
3	NO.	PG.
4	1. Receipt.	6
5	2. \$500 receipt.	10
6	3. Printout.	10
7	4. DMV and Irmo Letters.	20
8	5. License Letter.	21
9		
10	Defendant's	
11	1. Audit ticket.	25
12	2. Audit July 9, 2013.	27
13	3. 10-year driving record.	28
14		
15		
16		
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18		
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21		
22		
23		
24		
25		

1 (The following proceedings were held on
2 January 20, 2015.)

3 THE COURT: Okay. Mr. Elliott, I think you're the
4 moving party. Go ahead.

5 MR. ELLIOTT: Yes, sir. Judge, would you like me
6 to read the complaint or would you like me to give you a
7 brief introduction?

8 THE COURT: I didn't know it was going to be
9 multiple choice pop quiz. How do you wish to proceed, sir?

10 MR. ELLIOTT: The reason we're here today, Judge,
11 is Anna Wilson pled guilty on June 11, 2009, to first
12 offense DUI. Five years later, she got notice of suspension
13 of her driver's license. We're now here under South
14 Carolina Department of Motor Vehicles vs. Hipp, saying that
15 the passage of time, essentially, estops the Department from
16 suspending her license.

17 THE COURT: All right. Did -- issue a circuit
18 court opinion in this case, too? It doesn't matter. You
19 may proceed.

20 Mr. Valenta, are you ready?

21 MR. VALENTA: Yes, sir.

22 THE COURT: Call your witness.

23 MR. ELLIOTT: I call Anna Wilson to the stand,
24 please.

25 THEREUPON,

1 ANNA WILSON,
2 after having been duly sworn, testified as follows:

3 THE CLERK: Have a seat in the witness box and
4 state your name for the record.

5 THE WITNESS: Anna Wilson.

6 DIRECT EXAMINATION

7 BY MR. ELLIOTT::

8 Q. Ms. Wilson, tell us a little bit about you. How old
9 are you?

10 A. I'm 50 years old.

11 Q. And where do you work?

12 A. I work for Beulah Prosthetic Solutions.

13 Q. And are you in the medical field?

14 A. I am.

15 Q. How long have you been in the medical field?

16 A. 30 years.

17 Q. And do you have any certification or specialized
18 training?

19 A. Yes. I'm -- education. I am the officer manager and
20 patient care coordinator for the office I work at now.

21 Q. Are you a registered nurse?

22 A. I am.

23 Q. And when did you get that education?

24 A. Straight out of high school.

25 Q. Okay. Very good. Now, were you eventually arrested by

1 the Town of Irmo Police Department for driving under
2 the influence?

3 A. Yes, sir.

4 Q. Do you remember about when that was?

5 A. November 2008, maybe. November 23rd, 2008.

6 Q. Did I represent you in the course of that prosecution?

7 A. Yes, you did.

8 Q. Did you eventually plead guilty?

9 A. Yes, I did.

10 Q. Do you remember about when that happened?

11 A. June 11th, 2009.

12 Q. Okay. Were you to pay a fine?

13 A. I did.

14 Q. Did you pay it?

15 A. I did pay that fine.

16 Q. Did you ask for time payments?

17 A. I did. At first, I asked the Judge to give me 60 days,
18 however, I paid it the very next week. Therefore, did
19 not have to pay the \$29 fee for financing.

20 Q. Is this a copy of the receipt you obtained from the
21 Town of Irmo when you paid the fine?

22 A. It is.

23 MR. ELLIOTT: Offer that as Plaintiff's 1.

24 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted
25 into evidence.)

1 BY MR. ELLIOTT::

2 Q. When you pled guilty, what was your understanding about
3 what the status of your driver's license would be?

4 A. My understanding was, as it was explained to me, is
5 that I could go and take ADSAP -- an ADSAP class, which
6 would allow me to continue to keep my driver's license.
7 I was to do this voluntarily because at that time, this
8 had happened before it was mandatory that you have to
9 do that.

10 Q. Okay. What was your understanding about what would
11 happen with your driver's license as a result of your
12 pleading guilty to driving under the influence?

13 A. I understood that there would be a suspension, but the
14 suspension would be waived based on the fact that I
15 took that -- once I completed the ADSAP class.

16 Q. Well, waived or did you understand you would get some
17 sort of special license?

18 A. Yes.

19 Q. So it was the latter?

20 A. Yes, sir.

21 Q. Now, by the way, did you -- did you have a suspension
22 of your driver's license at some point?

23 A. I did not.

24 Q. Was there not an implied consent suspension?

25 A. Yes, I'm sorry, there was for that. And then I had a

1 -- it was not a restricted driver's license, though, it
2 was -- it was during the time we were waiting to go to
3 trial. I'm not exactly sure what you call it. So yes,
4 it was a short period of time, a week maybe, that I
5 didn't have one. So they did take it that particular
6 night, but then I got it back.

7 Q. Did you understand that your license would be suspended
8 a second time because of the DUI?

9 A. I did not. I understood that I would have a -- that I
10 would have an implied consent restriction that I would
11 have to do. But I wasn't sure whether that would be
12 incorporated under the ADSAP umbrella where I would be
13 able to keep it and have a restricted license.

14 Q. What was your understanding about what kind of
15 insurance you would have to buy?

16 A. Well, once the suspension was there, then I would need
17 SR22.

18 Q. Okay. Now, did you participate in the alcohol and
19 safety action program?

20 A. I did.

21 Q. Tell me what this is, please.

22 A. This is the receipt where I paid the \$500 to start the
23 class. And that was on June 18th, which was the
24 following week after my conviction.

25 MR. ELLIOTT: Offer that as Plaintiff's 2.

1 (WHEREUPON, Plaintiff's Exhibit No. 2 was admitted
2 into evidence.)

3 BY MR. ELLIOTT::

4 Q. After that, what steps did you take to try to comply
5 with the requirements of your pleading guilty to
6 driving under suspension -- I mean, to driving under
7 the influence?

8 A. Well, I enrolled in the ADSAP class. I did attend the
9 ADSAP class. It was every Thursday evening. The last
10 ADSAP class was on August the 20th, that was my final
11 one. And then I went back for an exit interview. I
12 think that was the first week in September, which that
13 was completed. I was under the impression or I was
14 told that ADSAP would forward my stuff to the DMV and I
15 was expecting a letter to come --

16 Q. Okay.

17 A. -- telling me what to do next. I did get a letter in
18 the mail saying that my license was -- that I could
19 come get a route restricted because my license had been
20 suspended because of the implied consent from August to
21 November.

22 Q. Okay.

23 A. At that point I -- when I -- well, when I finished the
24 class, I did go to the DMV and talk with them about
25 what I needed to do. And they told me that all they

1 could offer me was a route restricted license because
2 all they had was a conviction for implied consent.

3 Q. All right. At some point, did you go down to the clerk
4 at the Town of Irmo to find out what you were supposed
5 to do?

6 A. I did. I went down there to find out if it had been
7 filed with the DMV.

8 Q. All right. I don't want you to tell me anything
9 that -- I mean, was it a lady that you met with at the
10 Town of Irmo?

11 A. It was.

12 Q. All right. I don't want you tell me what she told you,
13 but did she give you some sort of a printout?

14 A. Yes, she did.

15 Q. Let me ask you if you can identify that?

16 A. Yes, sir, that's a printout of a copy of her computer
17 screen when she pulled it up on her screen as I was
18 sitting in her office with her.

19 MR. VALENTA: No objection, Your Honor.

20 (WHEREUPON, Plaintiff's Exhibit No. 3 was admitted
21 into evidence.)

22 BY MR. ELLIOTT::

23 Q. By the way, on Plaintiff's 3, there is some writing, a
24 note?

25 A. Uh-huh.

- 1 Q. You see that?
- 2 A. Yes, sir.
- 3 Q. That's not your handwriting?
- 4 A. It is not.
- 5 Q. Is that the handwriting of the lady you spoke to?
- 6 A. It is.
- 7 Q. After that, Ms. Wilson, what did you do to try to
8 comply with whatever review you believed was supposed
9 to happen with regards to your driving under the
10 influence?
- 11 A. At that point I -- after I spoke with her and she said
12 she had sent everything to the DMV, I had already
13 spoken with the DMV, who told me they did not have my
14 file. I then called my insurance agent and explained
15 the situation to her and asked her what exactly did I
16 need to do because I felt like I needed to make sure I
17 was following the rules and doing what was expected of
18 me.
- 19 Q. All right. Don't tell what she said, but what is her
20 name?
- 21 A. Devona Summer.
- 22 Q. Last name?
- 23 A. Summer.
- 24 Q. And is that the nice lady who's sitting here in the
25 courtroom (indicating)?

- 1 A. It is.
- 2 Q. All right. Very good. You spoke to her about what you
3 were supposed to do?
- 4 A. I did.
- 5 Q. Okay. Then what did you do?
- 6 A. What did I do or what did she do?
- 7 Q. What did you do?
- 8 A. I -- she told me she would call me back in a couple of
9 hours.
- 10 Q. All right. After -- did you have a conversation with
11 her?
- 12 A. I did.
- 13 Q. All right. After that, what did you do?
- 14 A. I waited for her to call me back and tell me what she
15 had found out.
- 16 Q. All right. And after that conversation, what did you
17 do, anything?
- 18 A. No. Because I was told that there was nothing that I
19 could do, that they could not issue SR22 for implied
20 consent. It was not necessary. So then I went down
21 to -- I had been speaking with the folks at Ballentine
22 DMV.
- 23 Q. All right.
- 24 A. I -- then after I spoke to Devona, I went down to the
25 Bluff Road, Shop Road DMV --

- 1 Q. Okay.
- 2 A. -- and got a route restricted license.
- 3 Q. Okay.
- 4 A. Uh-huh.
- 5 Q. At that point, were you waiting -- were you waiting to
6 hear from the Department of Motor Vehicles?
- 7 A. Sure.
- 8 Q. Okay. And time passed on?
- 9 A. It did.
- 10 Q. And when did you finally get your notice of suspension
11 from the good old Department of Motor Vehicles?
- 12 A. Five years later.
- 13 Q. Okay. You remember the date?
- 14 A. The 27th of May of this year, of 2014.
- 15 Q. All right. Very good. Now, I want you to tell Judge
16 Manning, did you have some difficulties -- in the wake
17 of this DUI, did you have some difficulties finding
18 employment?
- 19 A. Yes, sir. To begin with, I lost my job because of
20 this. The doctor's office that I was working for sold
21 out to the hospital and at that point, they were doing
22 background checks and anything that was pending or --
23 anything against you or anything pending, they would
24 not let you come across as a hospital employee. At
25 that point in time, that was -- that was -- that

1 happened in November, so this was February of 2009 when
2 this was still pending because we had not been to court
3 yet. And so I lost my job because of it.

4 Q. All right.

5 A. It then took me two years -- two full years to find a
6 decent job because of this being on there.

7 Q. All right. Now, tell us please what kind -- would any
8 bad things actually happen to you if you went ahead and
9 just got your driver's license suspended and got you a
10 route restricted license here now six years later?

11 A. It very well could be that I could lose the job that I
12 have now.

13 Q. Tell us a little bit more about that, please.

14 A. Well, first and foremost, there are times when I drive
15 a company vehicle and they pay for my insurance. So
16 they certainly would not be willing to pay SR22 for me
17 to drive the vehicle. We have a satellite office in
18 Augusta and at times, I have to go there. During those
19 times is when they pay for the insurance. So,
20 obviously, I am on their insurance. And so if my
21 driving record changed, then it may knock me out of my
22 job.

23 Q. Okay. Can you think of any other consequence that
24 might happen if you had to undergo a suspension at this
25 point?

1 A. Well, obviously, if I lost my job, it would be a
2 difficult situation. I just brought a new house. I
3 have two house payments.

4 Q. How do you have two house payments?

5 A. Well, because the first house hasn't sold yet.

6 Q. Okay. Are you married?

7 A. I am.

8 Q. Does your husband earn an income?

9 A. Yes, sir.

10 Q. You still need both incomes in your household to make
11 those two mortgage payments?

12 A. Yes, sir. We have two mortgages, we certainly do.

13 Q. Okay.

14 MR. ELLIOTT: Thank you. No further questions.
15 Please answer any questions Mr. Valenta or the Judge might
16 have for you.

17 CROSS-EXAMINATION

18 BY MR. VALENTA::

19 Q. Hi, Ms. Wilson. I'm Frank Valenta with DMV. I just
20 want to ask you, when you went to Shop Road and you had
21 been to Ballentine previously and they said well, we
22 don't have any DUI on your record, right?

23 A. Yes, sir.

24 Q. And you went to Irmo and they said we sent it, right?

25 A. The Town of Irmo, yes.

1 Q. Right.

2 A. Uh-huh.

3 Q. So that's kind of like if you send a check to your
4 cable company and your cable company says they didn't
5 get your check and you say well, that's your problem, I
6 mailed it. You didn't call DMV headquarters, did you?

7 A. Sir, I talked with three different divisions of DMV.
8 Nobody ever told me I had to call headquarters,
9 wherever headquarters is.

10 Q. But I mean, did you go to Irmo and get a copy of the
11 ticket and take it to DMV?

12 A. Yes, sir, DMV got a copy of the ticket as well as a
13 copy of that certified printout that the --

14 Q. Wait a minute. Wait a minute. When did DMV get a copy
15 of the ticket?

16 A. When the clerk of court of Irmo turned it into them --

17 Q. No, no, Irmo said they sent it?

18 A. Yes, sir.

19 Q. I'm asking did -- when DMV said they never received it,
20 did you get a copy and take it to DMV?

21 A. No, sir.

22 Q. Did you ask your attorney to get a copy and send it to
23 DMV?

24 A. No, sir.

25 Q. So you talked to offices who said we don't know

1 anything about your conviction and you talked to your
2 agent who said DMV doesn't know anything about your
3 conviction, but you didn't take the step of making sure
4 the DMV knew about your conviction, right?

5 A. I'm not certain why that was my responsibility.

6 Q. Well, you're blaming the state for it not being on your
7 record, but I'm asking what you did to make sure it was
8 on your record?

9 A. Is it expected of every individual that they carry the
10 load and see that it's on the DMV records?

11 Q. Well, it's on the DMV record now.

12 A. But it took five years to get there?

13 Q. Yes, it did. And you're saying that's the State's
14 fault for not receiving it?

15 A. I'm not certain whose fault it was, sir --

16 Q. But you didn't --

17 A. -- I'm just saying --

18 THE COURT: Stop. Let her finish her answer.

19 MR. VALENTA: I didn't know she wasn't finished.

20 THE COURT: You're going to get a chance to ask
21 all the questions you want. It's all right.

22 THE WITNESS: I'm just saying it's awfully odd
23 that five years later, it just pops up because I didn't call
24 them, you know, back in May either to notify them, so
25 somebody did.

1 BY MR. VALENTA::

2 Q. All right. So now you say -- you talk about SR22
3 insurance, but do you understand -- has your attorney
4 told you there is no such thing?

5 A. That there is no such thing?

6 Q. Correct.

7 A. No, sir, he certainly has not told me that.

8 Q. SR22 -- would you believe me if I said SR22 is just a
9 form number that your agent files to say that you have
10 insurance?

11 A. I can't dispute -- or I don't know. I have no idea.

12 Q. All right. So since that's just a form saying that you
13 have insurance, that wouldn't affect your employer's
14 insurance, right?

15 A. I don't know. I have no idea. I've never had SR22
16 before.

17 Q. Well, there is no such thing as SR22. What I'm saying
18 is it's just hypothetical that this is going to affect
19 your job if you get a provisional license?

20 A. Of course, it is, but it's an awfully big risk to take.

21 MR. VALENTA: I have no further questions.

22 THE COURT: Anything on redirect?

23 MR. ELLIOTT: None, thanks.

24 THE COURT: You may step down, Ms. Wilson.

25 Call your next witness.

1 MR. ELLIOTT: Call Devona Summer.

2 THEREUPON,

3 DEVONA SUMMER,

4 after having been duly sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box. State
6 your name for the record and spell your first name, please.

7 THE WITNESS: It's Devona Summer.

8 DIRECT EXAMINATION

9 BY MR. ELLIOTT::

10 Q. Ms. Summer, what do you do for a living?

11 A. I'm an insurance agent.

12 Q. Are you a broker or is there a particular line you
13 handle?

14 A. We're an independent agent.

15 Q. I see. Okay. And how long have you been providing
16 insurance policies for Ms. Wilson, formally Ms. Wood?

17 A. Possibly 10 or 15 years.

18 Q. Okay. Are y'all friends?

19 A. She went to Newberry High School and I went to
20 Mid-Carolina. We knew of each other, but we're not
21 like friends.

22 Q. Did she call you in the wake of the DUI we're talking
23 about here, did she call you?

24 A. Yes, she did.

25 Q. And what was the purpose of her call?

- 1 A. She needed to know what she needed to do to be able to
2 get a restricted license to drive once she was charged
3 with a DUI.
- 4 Q. Did she also ask about what kind of insurance she was
5 supposed to have?
- 6 A. She asked what would happen and I told her we would
7 have to file an SR22 to prove that she had insurance,
8 if at any time it canceled, it would notify the highway
9 department that her insurance had canceled.
- 10 Q. Okay. Let me ask you, did she understand that
11 something might happen to her driver's license in the
12 wake of the DUI?
- 13 A. Yes, she was aware that her license was going to be
14 suspended and she could get the route restricted, but
15 she did not know the whole process.
- 16 Q. Okay.
- 17 A. So she faxed me over her letter from the DMV and along
18 with that was the clerk of court's notice showing that
19 she had been found guilty of DUI. But at that same
20 time, she told me that she had not gotten charged with
21 DUI on her record yet.
- 22 Q. Okay. Now, first, let me show you this and see if you
23 recognize it?
- 24 A. Yes, sir.
- 25 Q. And what is it, please?

1 A. This is the letter from the DMV that she faxed over to
2 me along with the Irmo letter showing that she had been
3 found guilty of the DUI.

4 Q. Okay. All right.

5 MR. VALENTA: No objection, Your Honor.

6 (WHEREUPON, Plaintiff's Exhibit No. 4 was admitted
7 into evidence.)

8 BY MR. ELLIOTT::

9 Q. After you got that information from her, what did you
10 do in response?

11 A. I wasn't sure what to do because we did not need to
12 file SR22 if the DUI was not showing up on her driving
13 record.

14 Q. Okay.

15 A. So I actually went to the Newberry DMV and talked to
16 the people that I usually talk to there. They pulled
17 it up and said that --

18 Q. Don't tell me what they said, but what was your purpose
19 in going there?

20 A. I was going there to make sure if we needed to actually
21 file the SR22.

22 Q. Okay. Did you tell them explicitly that this young
23 lady had a conviction for driving under the influence?

24 A. Yes, because I actually took those papers with me out
25 there.

1 Q. And you showed those papers to them?

2 A. Yes, sir.

3 Q. And in response, did they furnish you any information?

4 A. They handed me a letter showing that she could get her
5 license with -- that's it.

6 Q. Okay.

7 A. It was just saying that there was a \$100 suspension
8 reinstatement and that she at this time was eligible to
9 get her license and that they did not need me to file
10 an SR22.

11 MR. VALENTA: No objection, Your Honor.

12 (WHEREUPON, Plaintiff's Exhibit No. 5 was admitted
13 into evidence.)

14 BY MR. ELLIOTT::

15 Q. Did you do anything after that encounter with the
16 Department of Motor Vehicles?

17 A. I did not.

18 Q. Did you call Ms. Wilson and --

19 A. I called her and I also documented on my computer
20 screen that I had been out there and talked to the
21 highway department and that there was no conviction on
22 her record for the DUI.

23 Q. Okay.

24 A. And we have to have like a case number to file the
25 SR22.

1 Q. Right.

2 A. And, you know, she said there was nothing showing on
3 her record, so at that point, we did not take any
4 action.

5 Q. I have a question, if you know, being in the insurance
6 business as long as you have, is there some sort of --
7 is there some sort of record that comes up at the DMV
8 or any other database showing that someone like
9 Ms. Wilson might have -- might have filed an SR22 form
10 alerting people she had that type of insurance or not?

11 A. Only if you ran her motor vehicle report would it show
12 up. But if you ran her motor vehicle report, it would
13 show that she had had SR22 filed at some point.

14 Q. And under certain circumstances, you understand that
15 those reports are available for certain purposes,
16 including employment?

17 A. Yes.

18 MR. ELLIOTT: Thank you. No further questions.
19 Please answer any questions that Mr. Valenta might have.

20 CROSS-EXAMINATION

21 BY MR. VALENTA::

22 Q. Ms. Summer, you didn't have a copy of the ticket,
23 correct?

24 A. I had just the computer screen that she had printed
25 out. No copy of the ticket, no, sir.

1 Q. No copy of the ticket. So you never presented a copy
2 of the ticket to the DMV?

3 A. No.

4 Q. And I just want to make sure, this reinstatement sheet
5 was given to you --

6 A. At the Newberry DMV. That's the date I went.

7 Q. I'm not really challenging you on anything. This was
8 given to you -- did you have any kind of power of
9 attorney with you?

10 A. Nope.

11 Q. Okay. Thank you.

12 MR. VALENTA: I have no further questions.

13 THE COURT: Anything further, Mr. Elliott?

14 MR. ELLIOTT: None. Thank you.

15 THE COURT: You may step down, Ms. Summer.

16 That concludes your presentation, Mr. Elliott?

17 MR. ELLIOTT: It does. That's our case in chief.

18 THE COURT: Ready, Mr. Valenta?

19 MR. VALENTA: Yes, the DMV calls Shirley Rivers.

20 THE COURT: Come around, Ms. Rivers.

21 THEREUPON,

22 SHIRLEY RIVERS,

23 after having been duly sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box and
25 state your name for the record, please.

1 THE WITNESS: I'm Shirley Rivers.

2 DIRECT EXAMINATION

3 BY MR. VALENTA::

4 Q. Ms. Rivers, what is your position with the DMV?

5 A. I'm deputy director of procedures and compliance.

6 Q. Is there an -- in-house, does anybody call you deputy
7 director of anything else?

8 A. Well, they basically call me -- we're over the issuing
9 of tickets, satisfying of tickets and driving records,
10 suspensions, suspending driver's licenses, setting the
11 standards for the issuance of driver's licenses and
12 other regulatory things.

13 Q. All right. When there's a problem or a delay in
14 tickets coming in, is that within your area?

15 A. Yes.

16 Q. All right. Have you looked over the records in this
17 case?

18 A. I have reviewed the record.

19 Q. All right. I'm going to show you what's attached to
20 our answers, Defendant's Exhibit A. Are you familiar
21 with that?

22 A. Yes, this is driving under the influence first offense
23 that we received in our ticket audit May 20, 2014, for
24 driving under the influence.

25 Q. And what does it show as the date of conviction?

1 THE COURT: Yes, sir, Mr. Elliott?

2 MR. ELLIOTT: Just wanted to say I'll stipulate
3 the exhibits attached to the answer.

4 THE COURT: That's very kind of you, sir.

5 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
6 into evidence.)

7 BY MR. VALENTA::

8 Q. So what does it show as the date of conviction?

9 A. June 11th, 2009.

10 Q. Now, you mentioned -- you mentioned the audit --

11 A. Yes.

12 Q. You mentioned the audit. What are you talking about?

13 A. Well, every July, we perform an audit of the 400 and
14 some odd jurisdictions that issues traffic tickets.

15 And that's all outstanding tickets for that
16 jurisdiction. We send them a report from our system
17 showing all the tickets that are outstanding for
18 that -- at that date, that snapshot in time.

19 Q. Early July, all the missing tickets or just unaccounted
20 for tickets?

21 A. Unaccounted for tickets that we have not received back
22 and entered into our system.

23 Q. Okay. All right. I show you this Exhibit B. And if
24 you could tell the Court what that is.

25 A. This is an audit of Irmo Police Department dated

1 July 13th, 2010.

2 Q. And now, that was about a year after the conviction.
3 The ticket number is 31588EE. Is that on that audit
4 request?

5 A. Yes, the ticket is listed on the audit request.

6 Q. And what did Irmo say about that ticket?

7 A. Irmo PD said that ticket was still in court.

8 Q. All right. I show you this. What is that document?

9 A. This is the audit that was ran July 1, 2011.

10 Q. A year later.

11 A. A year later.

12 Q. Is the ticket on that report?

13 A. Yes, ticket number 31501EE -- excuse me, 31588EE. It's
14 showing that that ticket was in court.

15 Q. All right. And this document, what is that?

16 A. This is audit that was ran July 9th, 2013.

17 THE COURT: What happened in 2012?

18 THE WITNESS: 2012, we did not receive an audit
19 back from the Town of Irmo.

20 THE COURT: All right.

21 BY MR. VALENTA::

22 Q. What does that show?

23 A. This showed that that ticket was sent into the DMV.

24 Q. What reaction do you have when they say sent?

25 A. When we receive an audit back and it has -- and on the

1 top of the audit --

2 THE COURT: Any objection, Mr. Elliott?

3 MR. ELLIOTT: None. None.

4 (WHEREUPON, Defendant's Exhibit No. 2 was admitted
5 into evidence.)

6 THE WITNESS: It was showing sent, S for sent. We
7 sent a listing to that jurisdiction telling them they were
8 telling us -- and I'm paraphrasing, that these tickets were
9 sent into DMV, however, we do not have a copy. Would you
10 please send us a certified copy of that ticket.

11 BY MR. VALENTA::

12 Q. So at that point, did the ticket come in from Irmo?

13 A. We didn't receive it in until May of 2014.

14 Q. All right. And that's when Ms. Wilson was notified it
15 was on her record and she was going to have a
16 suspension, correct?

17 A. Yes, sir.

18 Q. I show you this document. What is that?

19 A. This is an official 10-year driving record for Ms.
20 Wilson.

21 Q. And would an implied consent suspension in August of
22 2009 and DUI conviction in June of 2009, is there a
23 time when Ms. Wilson does not have a driver's license?

24 A. I believe about two months, two or three months that
25 Ms. Wilson was without a driver's license.

1 Q. And how did that occur?

2 A. Well, she got a temporary alcohol license first on
3 December 8th, 2008. After we received the implied
4 consent was November 23rd, 2008. She requested an
5 administrative hearing and she was issued what we call
6 a TAL or temporary alcohol license. And she kept that
7 license until June 8th, 2009. And then on September
8 the 22nd, 2009, because of the outcome of the hearing,
9 once we received that in, she got what we call a route
10 restricted driver's license that allows her to drive on
11 particular routes to and from work or any alcohol or
12 drug program.

13 Q. After the route restricted license, do you see a
14 six-month period when she was not licensed to drive?

15 A. No, sir. Her route restricted license expired
16 November the 11th, 2009. She came back in and got her
17 regular license on November 12th, 2009.

18 Q. All right. Do you ever have occasion, Ms. Rivers, when
19 a customer or an attorney calls and says hey, I'm
20 supposed to be --

21 THE COURT: I'm sure without objection, is that
22 correct, Mr. Elliott?

23 MR. ELLIOTT: That's correct.

24 THE COURT: I need to mark it.

25 (WHEREUPON, Defendant's Exhibit No. 3 was admitted

1 into evidence.)

2 BY MR. VALENTA::

3 Q. Do you ever have occasion when a customer or an
4 attorney for a customer calls and says hey, I'm
5 supposed to be suspended for a DUI and it's not on my
6 record?

7 A. Yes.

8 Q. What do you do?

9 A. Well, first, we double check and make sure we don't
10 have the ticket. We'll ask the attorney, do you know
11 the ticket number? Do your client have a copy of their
12 copy? Then we'll check to make sure that they're not
13 in transit to be processed. Then we'll tell them they
14 need to contact the court and have the court send us
15 that ticket because we don't have a copy.

16 Q. You don't take on the burden of contacting the court
17 for them?

18 A. Very rare do we call the courts and ask them to send us
19 in the ticket. Most of the time, because of the volume
20 of tickets we receive in, we put that back on the
21 customer and have them contact the court and have them
22 send it in to us.

23 MR. VALENTA: Nothing further.

24 THE COURT: Mr. Elliott?

25 MR. ELLIOTT: No questions. Thank you.

1 THE COURT: All right. You may step down, Ms.
2 Rivers.

3 Anything further, gentlemen?

4 MR. VALENTA: No, sir, Judge. I just want to hand
5 up --

6 THE COURT: You said no and then you're going to
7 hand me something up? It's fine. Hand it up. Hand it up.

8 MR. VALENTA: That's the case.

9 THE COURT: The Hipp case, Georgia. I think it
10 was nine years, wasn't it --

11 MR. VALENTA: 13.

12 Very briefly?

13 THE COURT: Yes, sir.

14 MR. VALENTA: There were two points. First of
15 all, as I understood it, they didn't like 13 years. They
16 said they didn't know what the time was, probably 10, but
17 they weren't drawing a bright line, but they just knew 13
18 was too much.

19 THE COURT: Yes, sir.

20 MR. VALENTA: But a major factor in the Hipp case
21 was that was his second offense. And he was going to have a
22 hard suspension for a year and he was not going to be
23 eligible for a provisional license --

24 THE COURT: Yeah, I think that was Chief Justice
25 Toal that authored that opinion, did she not?

1 MR. VALENTA: I think.

2 THE COURT: Beatty and Pleicones and maybe even
3 Waller.

4 MR. VALENTA: Well, I could have guessed before
5 whose opinion it was. But yes, Your Honor. Thank you.

6 THE COURT: Mr. Elliott, any argument?

7 MR. ELLIOTT: Just briefly. Judge, you know, this
8 is not a tort claim and it doesn't really matter whose fault
9 it is. The Hipp case talks about --

10 THE COURT: Well, they said it's no bright line
11 test. 13 years from Georgia, second, and all that. I
12 looked at the Hipp case. This is about six years out.

13 MR. ELLIOTT: You know the record.

14 THE COURT: All right.

15 MR. ELLIOTT: Thank you.

16 THE COURT: We can blame it on the police
17 department or blame nobody.

18 All right. Y'all want to submit proposed orders?
19 Y'all want to do that?

20 MR. ELLIOTT: Yes, sir.

21 MR. VALENTA: Yes.

22 THE COURT: How much time y'all want?

23 MR. ELLIOTT: 30 days?

24 THE COURT: I don't care, I'm asking y'all. Make
25 it easy on yourself. 30 days, is that fine?

1 MR. ELLIOTT: That's fine.

2 THE COURT: All right. That's good. 30 days.

3 Good luck to everybody. Nice meeting y'all. Sorry it was
4 under these circumstances.

5 MR. VALENTA: Thanks again.

6 THE COURT: All right.

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1 COUNTY OF RICHLAND)

2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Anna Dillard Wilson Vs. South
5 Carolina Department of Motor Vehicles, No. 2014-CP-40-3750,
6 at the Richland County Courthouse, January 20, 2014.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 34 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 15th day of June, 2015.

15

16

Crystal Holmes, Official Court Reporter

17

18

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20

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23

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25

RECEIPT FOR EXHIBITS

Case No. 2014 CP-40-37.0
 Plaintiff: Anna Wilford Wilson
 Defendant: SC Dept of Motor
 Date Trial Started: 1/20/15

Judge Manning
 Plt's Atty. Mr. Elliott John D.
 Def's. Atty. Frank L. Valente, Jr.
 Date Trial Ended: _____

Received of Crystal Holmes Court Reporter for the above case, these exhibits:
PL

	Clerk of Court Use
1 <u>Town of Temo receipt</u>	☒
2 <u>Lexington / Richland Alcohol & Drug</u>	☒
3 <u>Computer printout CT Violation</u>	☒
4 <u>Amended Notice of Driving Status</u>	☒
5 <u>SC Dept. Reinstatement Requirements</u>	☒
6	
7 <u>DF</u>	
8 <u>A. State of SC Traffic Ticket</u>	☒
9 <u>B. SC Dept. Inventory 7/13/10</u>	☒
10 <u>C. " " 7/1/11</u>	☒
11 <u>D. " " 7/9/13</u>	☒
12 <u>E. Official 10 year Driver Record</u>	☒
13	
14	
15 <u>Court</u>	
16 <u>I. Charles B. HDPP V. SC Dept. Case</u>	☒
17	
18	
19	
20	

This 20 day of Jan 20 15.

Page 1 of 1

By: C. [Signature]
 Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

Civil Motion

TOWN OF IRMO

REC#: 00029099 6/25/2009 12:43 PM
OPER: INEZ TERM: 001
REF#: 997

TRAN: 800.0000 Court Payments
DILLARD, ANNA RUTH
31588EE -01 997.00CR
BALANCE: 29.91

TENDERED: 1,000.00 CASH
APPLIED: 997.00-

CHANGE: 3.00



LEWISTON / RICHLAND
ALCOHOL AND DRUG ABUSE COUNCIL

Phone (803) 202-3727
P.O. Box 53587 Columbia, S.C. 29253

Acct. No. 55349		Date 6/18/02	
Received Of DILLARD, ANNA			
Address:			
City:			
Dollars 500		Cents 00	
Old Balance	On A/C	Paid In Full	100 Dollars Net Balance
Draft	I.O.	Check: #5549	Cash
For ADSAP			
Thank You Please keep this copy for reference.			

No. 52500

Rec'd by **Anna Ruff**

LEWISTON PRINTING SERVICES WEST COLUMBIA SC 29171 33157-77



REDACTED

Violation		Fees	History	Receipts	Clerk Comments	Docket Comments	Prosecutor Comments	Judgment	Variables
Citation #	31588EE	Viol #	1	Comments					
Violator Name	DILLARD, ANNA RUTH		W. P.		-SC	Docket #	31588EE01		
			"Adult"			Age at time of Violation	44		
						In Queue	None		
Status	EL	DOCKET CLOSED - FOUND GUILTY							
Alt. Status #1		Date	7/01/2009	Wed	Time	12:12	PM		
Alt. Status #2		Date			Time	12:00	AM		
Plea		Date			Time	12:00	AM		
Judge	JME	JOSEPH M EPTING							
Court Location	UP6	INCODE Upgrade Location							
Type of Trial	by Judge								
Conviction Date	6/11/2009								
Attorney	ELI	ELLIOTT, JOHN D							
County	32	LEXINGTON							
Review Attorney		<none>							
Bonds Bond Set Override ☐ Set 0.00 Posted 0.00 Fine/Costs Fine 400.00 Fees 626.91 Total 1,026.91 Credits Cash 997.00 NCash 29.91 Pend 0.00 Bal 0.00									
Collect Fees Only ☐ Send to Queue									
Offense DUI 1ST OFFENSE <.10									
View Close Exit									

The ticket was sent to the DMV on July 1, 2009



REDACTED

South Carolina
Department of Motor Vehicles



ANNA
2463462

Cell

right
2nd
Floor

08/14/2009

DILLARD, ANNA RUTH
119 WESTON WATCH RD
IRMO, SC 29063-2006

CUSTOMER NO: 26288811
FILE NO: 10113201
DL NO:

AMENDED NOTICE OF DRIVING STATUS

This is official notification that the information on your driving record has changed effective 08/14/2009. This official notice cancels previous notices of suspension, revocation, cancellation or disqualification concerning the listed description(s).

DRIVING STATUS: No Suspension No Disqualification

Defensive Driving Credit: No

Violation modified or deleted:

Date	Action	Ticket#	Viol Description
------	--------	---------	------------------

Suspension, revocation, cancellation and/or disqualification modified or deleted:

Date	Begin Date	End Date	Action Modified	Susp Description
11/23/2008	08/29/2009	11/11/2009		Implied Consent

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.

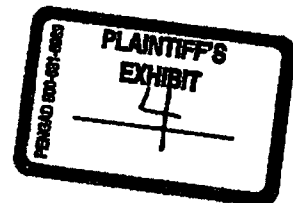
DISQUALIFIED-All driving privileges to operate commercial vehicles are disqualified.

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.

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.



If your driving status shows "No Suspension", you may make application for a driver's license by presenting this notice to your local DMV Office. You may be required to take a vision, knowledge and/or skills test in order to be issued a license.

Driver Records Manager

Citation #	31588EE	Viol #	1	Comments	
Violator Name	DILLARD, ANNA RUTH				
	W. F.		SC		
Docket #	31588EE01				
Age at time of Violation	44				
In Queue	None				

Violation | Fees | History | Receipts | Clerk Comments | Docket Comments | Prosecutor Comments | Judgment | Variables |

Status	CL	DOCKET CLOSED - FOUND GUILTY	Date	7/01/2009	Wed	Time	12:12 PM
Alt. Status #1			Date			Time	12:00 AM
Alt. Status #2			Date			Time	12:00 AM
Plea			Date				
Judge	JME	JOSEPH M EPTING					
Court Location	UPG	INCODE Upgrade Location					
Type of Trial	by Judge						
Conviction Date	6/11/2009						
Attorney	ELJ	ELLIOTT, JOHN D					
County	32	LEXINGTON					
Review Attorney		<none>					

Bonds	
Bond Set Override	☐
Set	0.00
Posted	0.00

Fine/Costs		Credits	
Fine	400.00	Cash	997.00
Fees	626.91	NCash	29.91
Total	1,026.91	Pool	0.00
		Bal	0.00

Collect Fees Only ☐

Send to Queue

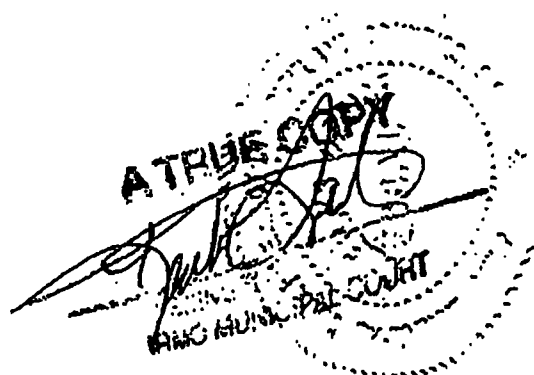
Offense DUI 1ST OFFENSE < .10

View

Novelace

Exit

The ticket was sent to the DMV on July 1, 2009



REDACTED



**S.C. Department of Motor Vehicles
Reinstatement Requirements**

Customer No.: 26288811
Name : DILLARD, ANNA RUTH
Address : 119 WESTON WATCH RD
City : IRMO

Driver License No.:

State: SC **Zip:** 290632006

Outstanding Fees:

\$100.00 DL SUSPENSION REINSTATEMENT for Implied Consent

Suspensions to be served:

Regular License Suspended
From 08/29/2009 until 11/11/2009 for Implied Consent on 11/23/2008

Other requirements to be met before driving privileges will be granted:

Serve Suspension Term



8/26/2009
10:18:56 AM

Page 1

0099

REDACTED

FORM S-438

REV 3/09

STATE OF SOUTH CAROLINA
Uniform Traffic Ticket

CITY OF IRMO

VERSUS

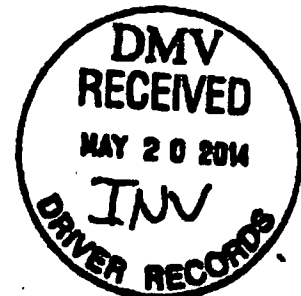
First Name ANNA RUTH DILLARD		Middle Name		Last Name	
Street and Number 112 WESTON WATCH ROAD		City IRMO, SC 29663		State SC	
State Licensed SC		Driver's License Number		Zip Code	
Veh Lic Number 356VXW-SC		Model NISSAN ALTIMA 4 DOOR		Make of Veh NISS	Year 2000
					N

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

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

Name of Trial Officer CITY OF IRMO		Street and Number 7300 WOODROW ST.	
Date of Trial 7/01/2009	Time of Trial 12:12 PM	City IRMO, SC 29663	State SC
Violation-Court Appearance Required DUI 1ST OFFENSE < 10		Yes ☐ No ☐	
Owner of Vehicle		Violation Sect Code 56-5-3930	
Address of Owner		Date of Arrest 11/22/2008	
Bail deposited	Name of Arrest Officer GRINSTEAD, ANDREA A	Date of Violation 11/22/2008	
Description of Accused		Rank	
Race W	Sex F	Birth Date 0 R. 0 M. 0	Height 5
Weight 180	Hair B	Eyes B	County LEXINGTON
Date Bail Red'd	By	Badge 18AAG	District
CASE BEFORE		Days Saturday	
Circuit Court	Magistrate	Time of Violation / 23:54	
Family Court	Municipal Judge X	Weather /	
Federal Court		Distance in Feet from Intersection of THE 1300 BLOCK OF LAKE MURRAY BOULEVARD	
Name of Trial Officer if Different from above:		And	
Defendant Did not appear ☐ Appeared ☐		Distance in Feet from the intersection of	
DISPOSITION			
NOLLE PROSEED ☐ PLED GUILTY ☐			
FORFEITED BOND ☐ NOL CONTENDERE ☐			
TRIAL BY Judge		Hwy No	
Verdict of Trial if Any DOCKET CLOSED - FOUND GUILTY		Lat	
Date of Trial if any		Long	
Jail	Suspend	Fine \$1026.91	
Am't Collected 997.00	Am't Suspended	Long	
Committed to	Vehicle Searched	Arrest result of Collision No	
OFFENSE CODE		B A Level	
TICKET NUMBER 3155EE			



499 AM



SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2010
IRMO POLICE DEPT (131)

07/13/2010 PAGE 4.552

CITATION STATUS CODES:
C-COURT
U-UNUSED
N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

S-SIGNED OFF (SENT TO SCDMV)
X-VOID (SENT TO SCDMV)

3-SIGNED OFF (SENT TO SCDMV)
X-VOID (SENT TO SCDMV)

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U60195CE	U60196CE	U60197CE	U60198CE	U60199CE	U60200CE				

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FIRST OUTSTANDING TICKET 36903EA LAST OUTSTANDING TICKET 36925EA

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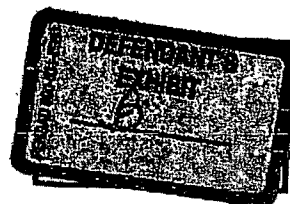
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OCT 12 2010

DMV



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

A. L. Phelps
Driver Services, Deputy Director

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2010
IRMO POLICE DEPT (131)

07/13/2010 PAGE 4,553

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copy of the original document on file
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D. L. Phelps
Driver Services, Deputy Director

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2011
IRMO POLICE DEPT (131)

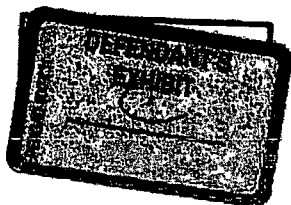
07/01/2011 PAGE 4,568

CITATION STATUS CODES:
C-COURT
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OCT 06 2011
DMV



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D. L. Phelps
Driver Services, Deputy Director

3223TKT

**SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2013
IRMO POLICE DEPT (131)**

07/09/2013 PAGE 4.366

CITATION STATUS CODES,
C-50102

C-COURT

U-UNUSED

N-VOID (NOT SENT TO SCBNV) X-VOID (SENT TO SCBNV)

S-SIGNED OFF (SENT TO SCDHV)
X-VOID (SENT TO SCDHV)

X-VOID (SENT TO SCBNV)
TO SCBNV. MUST SEND

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LAST OUTSTANDING TICKET 60200CE 01/24/2002

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LAST OUTSTANDING TICKET 57567EA 01/31/2007

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LAST OUTSTANDING TICKET 31047EE 05/21/2008

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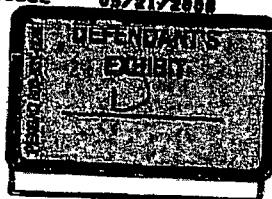
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7 OUTSTANDING TICKET 31463EE

LAST OUTSTANDING TICKET 81450EE 05/21/2008

LAST OUTSTANDING TICKET 31463EE 05/21/2000



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Motor Vehicles.

A. L. Phelps
Driver Services, Deputy Director

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2013
IRMO POLICE DEPT (131)

07/09/2013 PAGE 4,367

CITATION STATUS CODES:
C-COURT
U-UNUSED
N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

CITATION STATUS	TICKET NUMBER	DATE	COUNT
U-UNUSED	31501EE	05/21/2008	3
U-UNUSED	31528EE	05/21/2008	1
U-UNUSED	31535EE	05/21/2008	1
U-UNUSED	31588EE	05/21/2008	4
U-UNUSED	31621EE	05/21/2008	3
U-UNUSED	31643EE	05/21/2008	32
U-UNUSED	31647EE	05/21/2008	3
U-UNUSED	31648EE	05/21/2008	1
U-UNUSED	31678EE	05/21/2008	1
U-UNUSED	31708EE	05/21/2008	1
U-UNUSED	31719EE	05/21/2008	1
U-UNUSED	31720EE	05/21/2008	1
U-UNUSED	31721EE	05/21/2008	1
U-UNUSED	31722EE	05/21/2008	1
U-UNUSED	31723EE	05/21/2008	1
U-UNUSED	31724EE	05/21/2008	1
U-UNUSED	31725EE	05/21/2008	1
U-UNUSED	31726EE	05/21/2008	1
U-UNUSED	31727EE	05/21/2008	1
U-UNUSED	31728EE	05/21/2008	1
U-UNUSED	31729EE	05/21/2008	1
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U-UNUSED	31731EE	05/21/2008	1
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U-UNUSED	32148EE	05/21/2008	1
U-UNUSED	32197EE	05/21/2008	1
U-UNUSED	32217EE	05/21/2008	1
U-UNUSED	32288EE	05/21/2008	1
U-UNUSED	32289EE	05/21/2008	1
U-UNUSED	32292EE	05/21/2008	1
U-UNUSED	32294EE	05/21/2008	1
U-UNUSED	32299EE	05/21/2008	1

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Motor Vehicles.

D. L. G. Smith
Driver Services, Deputy Director



OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 26288811
 Name: WILSON, ANNA DILLARD
 Address: 1 PADDOCK CHASE
 City: IRMO
 County: RICHLAND
 DOB:
 State: SC Zip: 290632937
 Sex: F
 Driver License No:
 Driver Training: N
 Status - DL: NO SUSPENSION CDL: NO DISQUALIFICATION

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.
Current	D	Modify	03/03/2014	07/11/2019	08/02/1993	Y	N
Prior	D	Renewal	11/12/2009	07/11/2019	08/02/1993	Y	N
DL	D	Duplicate	02/19/2010	07/11/2019	08/02/1993	Y	N
DL	D	Returned	09/22/2009	11/11/2009	08/02/1993	Y	N
RR	D	Original	09/22/2009	11/11/2009	08/02/1993	Y	N
RR	D	Returned	12/08/2008	06/08/2009	08/02/1993	N	N
TA DL	D	Original	12/08/2008	06/08/2009	08/02/1993	N	N
TA DL	D	Renewal	06/15/2007	07/11/2012	08/02/1993	Y	N
DL	D	Reissue	06/15/2007	07/11/2012	08/02/1993	Y	N
DL	D	Returned	06/15/2007	07/11/2012	08/02/1993	Y	N
DL	D	Renewal	11/22/2002	07/11/2007	08/02/1993	Y	N
DL	D	Duplicate	10/14/2004	07/11/2007	08/02/1993	Y	N
DL	D	Renewal	07/18/1997	07/11/2002	08/02/1993	Y	N

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

Current Restrictions: A Corrective Lens

Name Change -

Name: DILLARD, ANNA RUTH

Date Changed: 02/19/2010

Address Change -

Address: 119 WESTON WATCH RD
 City: IRMO

State: SC Zip: 290632006

Date Changed: 03/03/2014

Point Summary

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

SC Driver License Surrendered

License Type: TA DL Class: D Function: Original
 Date Surrendered: 09/22/2009
 Reason for Return: RETURNED VOLUNTARILY

Posted: 09/22/2009
 Issued: 12/08/2008

Returning State: SC

ADSAP - Alcohol and Drug Safety Action Program
 Enrolled: 06/18/2009 Status: SUCCESSFUL COMPLETION
 Enrollment No: 000224137

Post Date: 07/02/2009

0106

6/13/2014 12:24:03 PM



REDACTED

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 26288511

Name: WILSON, ANNA DILLARD

Driver License No:

SUSP: 091 - Implied Consent

Special Driving Privilege: ROUTE RESTRICTED

Suspension Beg: 08/29/2009

Causal: 11/23/2008

Reinstatement Requirements Met: 11/12/2008

ACD: A12 Withdrawal Loc Ref:

Suspension End: 11/11/2009

Post: 12/01/2008

Reinstatement Fee Paid: Y

Withdrawal Reason Ref:

VIOL: 401 - Implied Consent

Violation: 11/23/2008

Conviction: 11/23/2008

ACD: A12 Conviction Loc Ref:

Conviction State: SC

Recd: 11/26/2008

Post: 12/01/2008

Conviction Reference:

Court Type:

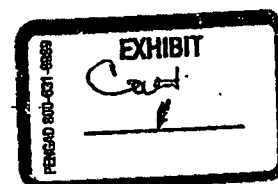
End of Report

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with the South Carolina Department of
Motor Vehicles.



Driver Services Deputy Director

381 S.C. 323 (2009)
673 S.E.2d 416



Charles R. HIPPI, III, Respondent,

v.

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES, Appellant.

No. 26588.

Supreme Court of South Carolina.

Heard December 4, 2008.

Decided January 26, 2009.

324 *324 General Counsel Frank L. Valenta, Jr., Deputy General Counsel Philip S. Porter, and Assistant General Counsel Linda A. Grice, all of Blythewood, for Appellant.

Michael A. Timbes, of Thurmond, Kirchner & Timbes, of Charleston, for Respondent.

PER CURIAM:

South Carolina Department of Motor Vehicles (SCDMV) appeals the order of the circuit court enjoining it from suspending the driver's license of Respondent Charles R. Hipp, III (Respondent) as a consequence of Respondent's 1993 Georgia conviction for driving under the influence (DUI). We affirm.

FACTS

Respondent was arrested and pled guilty to DUI in the State of Georgia in 1993. At the time of the arrest, Respondent was a South Carolina resident attending college in South Carolina, and a driver licensed by the South Carolina Department of Motor Vehicles (SCDMV). As a result of his plea, Respondent paid a fine to the State of Georgia and fulfilled other conditions required by Georgia. In 2005, twelve years after his conviction, Respondent received notice from the SCDMV that his South Carolina driver's license was being suspended as a consequence of his 1993 Georgia DUI conviction. Respondent filed a declaratory judgment action asking the court to enjoin suspension of his license. The circuit court issued an order enjoining the SCDMV from suspending Respondent's driver's license.

ISSUE

Did the circuit court err in enjoining the suspension of Respondent's driver's license?

STANDARD OF REVIEW

325 "Actions for injunctive relief are equitable in nature." Shaw v. Coleman, 373 S.C. 485, 492, 645 S.E.2d 252, 256 *325 (Cl.App.2007). In actions in equity this Court may find facts in accordance with its own view of the preponderance of the evidence. *Id.*

ANALYSIS

The circuit court cited three grounds for enjoining suspension of Respondent's driver's license: (1) that the applicable statute is ambiguous; (2) the doctrine of laches; and (3) that suspension twelve years after conviction violates the

"fundamental fairness" required by due process. We find the circuit court's conclusion as to fundamental fairness to be persuasive and so, affirm.^[1]

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. Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971). Due process is violated when a party is denied fundamental fairness. City of Spartanburg v. Parris, 251 S.C. 187, 191, 161 S.E.2d 228, 230 (1968).

This Court addressed facts similar to those in the case at hand in State v. Chavis, 261 S.C. 408, 200 S.E.2d 390 (1973). While we found fundamental fairness was not violated by suspension after a one-year delay, we allowed that there might be circumstances under which it could be soundly held that the State had no right to suspend a driver's license after a lengthy delay. *Id.* at 411, 200 S.E.2d at 391. We find in the instant case the extreme circumstances contemplated by *Chavis*.

326 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.^[2] Though neither dispositive nor directly applicable to the instant case, we note "326 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. See, e.g., S.C.Code Ann. §§ 56-1-746 (for purposes of determining a prior offense for sentence enhancement of alcohol-related offenses, only convictions within ten years of the date of the most recent violation are considered prior offenses); XX-X-XXXX (violation convictions shall be entered in the records of the SCDMV for a period of ten years); XX-X-XXXX (for sentence enhancement of convictions for operating motor vehicle under influence of alcohol or drugs, only those violations which occurred within ten years preceding date of last violation constitute prior violations); XX-X-XXXX (in determining time of suspension of driver's license, only violations which occurred within ten years of the last violation shall constitute prior violations).

CONCLUSION

We agree with the circuit court that under the unique circumstances of this case, the attempted suspension of Respondent's driver's license twelve years after conviction constitutes a denial of fundamental fairness. The order enjoining suspension is therefore

AFFIRMED.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

[1] Having found the circuit court's decision supported by its finding that Respondent was denied fundamental fairness, we do not address the remaining grounds. See Wilson v. Moseley, 327 S.C. 144, 147, 488 S.E.2d 862, 864 (1997).

[2] It should be noted that neither Respondent nor SCDMV is at fault for the delay. The unexplained delay in reporting the 1993 violation appears to be solely attributable to the inaction of the State of Georgia.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2015-000887

Anna Dillard Wilson Respondent,

v.

South Carolina Department of Motor Vehicles Appellant.

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

December 9, 2015
Blythewood, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2015-000887

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SC Court of Appeals

Anna Dillard Wilson Respondent,

v.

South Carolina Department of Motor Vehicles Appellant.

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, December 3,
2015, I served one (1) copy of the Record on Appeal by depositing with the United States
Postal Service, correct postage prepaid, to Counsel for the Respondent at the address
indicated below:

John D. Elliott, Esquire
Post Office Box 607
Columbia, South Carolina 29202

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

December 3, 2015
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2015-000887

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SC Court of Appeals

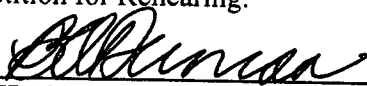
Anna Dillard Wilson. Respondent,

v.

South Carolina Department of Motor Vehicles. Appellants.

PETITION FOR REHEARING

Pursuant to Rules 240 and 242(c), SCACR, the Appellant South Carolina Department of Motor Vehicles (SCDMV) petitions for rehearing of this matter. The legal reasoning and citations to authorities in support of the petition are addressed in detail in the Memorandum in Support of the Petition for Rehearing.


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PHILIP S. PORTER, SC Bar # 4526
Deputy General Counsel

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Counsel for the Appellant

January 26, 2017
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JAN 26 2017

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2015-000887

Anna Dillard Wilson. Respondent,

v.

South Carolina Department of Motor Vehicles. Appellants.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

Pursuant to Rules 240 and 242(c), SCACR, the Appellant South Carolina Department of Motor Vehicles (SCDMV) petitions for rehearing of this matter. The grounds for this petition are:

- 1) THE JANUARY 11, 2017 OPINION ISSUED BY THIS COURT FOUND THAT RESPONDENT PRESENTED EVIDENCE OF PREJUDICE, BUT THE RECORD REFLECTS THAT RESPONDENT MERELY SPECULATED THAT SHE MIGHT SUFFER PREJUDICE.

This Court found that the record contained evidence of specific injuries and prejudice that might be suffered by Respondent if this suspension were served now, rather than five (5) years ago. Significantly, Respondent merely stated these injuries “could” or “might” occur. R. p. 63, line 7 – p. 64, line 13. Respondent presented no evidence to suggest these injuries “might” or “could” occur beyond her own speculation and belief. Respondent testified that, as part of her job, she is required to travel on behalf



of the company, and a suspension of her driver's license "may" cause her to lose her current job. R. p. 14, lines 14-22. Respondent provided no evidence to support her belief that she might lose her job. Further, Respondent did not state how often she is required to travel for her current company, how far or long this travel is, whether or not she is transporting or traveling with others during this travel, whether such travel occurs only within the State of South Carolina, etc... Based solely on the concern that Respondent "might" lose her job, Respondent asserted and this Court agreed that Respondent losing her job "would cause severe economic hardship because she has two mortgage payments and would not have a steady stream of income to make these payments." The issue is, of course, that there is no evidence to support Respondent's speculation that she might lose her job. Moreover, this Court and the record did not address whether these same issues existed or may have existed at the time this conviction originally occurred. Certainly, if Respondent had two mortgages at the time of her conviction, then there is no additional or no different prejudice than had already existed in this case if the conviction had been timely reported to the SCDMV.

Significantly, although this Court places much emphasis on:

- 1) Respondent's testimony that she approached the SCDMV to find out how to obtain a restricted driver's license in lieu of a suspension and was informed that SCDMV had no record of Respondent's DUI conviction;
- 2) Respondent's testimony that she contacted the Irmo Town Clerk to inquire about the status of her conviction; and
- 3) Respondent's insurance agency contacting the SCDMV to inquire about filing insurance forms relate to her DUI conviction;

Respondent, apparently, never bothered to contact her defense attorney in the DUI case to inquire about what was going on with this DUI conviction. It seems that contacting her defense attorney first makes much more sense than the contacts Respondent did make.¹

2) THE DEPARTMENT OF MOTOR VEHICLES ARGUMENTS
REGARDING RESPONDENT'S OTHER REMEDIES AT LAW WERE
PRESERVED FOR REVIEW.

This Court refused to consider whether Respondent had another remedy at law or whether Respondent's hardship was reduced, because she can now install an ignition interlock device on her vehicle pursuant to the retroactivity clause in Emma's Law. S.C. Code 56-5-2941(T). The retroactivity clause of Emma's law was not passed until June 1, 2015, after the circuit court heard this case on January 20, 2015. Therefore, there was no way for SCDMV to raise this issue until after the circuit court had already heard this case. Thus, the first opportunity for SCDMV to raise this alternative remedy and the issue of Respondent's hardship being reduced due to this change in the law was in this appeal. Significantly, SCDMV did raise the possibility of Respondent obtaining a provisional license before the circuit court. R. p. 67, lines 17-19. At the time of this hearing before the circuit court, a provisional license was the only option available to Respondent for this suspension, other than serving a "hard" suspension.² For these reasons, this Court should not have found that other remedies at law were not preserved.

3) THE JANUARY 11, 2017 OPINION ISSUED BY THIS COURT FAILED
TO ANSWER CERTAIN NECESSARY PRACTICAL QUESTIONS
INVOLVED IN THIS APPEAL.

¹ In fact, it seems to the undersigned, that this is one of the primary reasons people hire defense attorneys, to handle issues like this for them and to utilize the defense attorney's knowledge of the criminal justice system and contacts within the system.

² A "hard" suspension is a suspension in which the driver is absolutely suspended from all driving and has no special driving privileges.

Finally, one of the most significant reasons SCDMV must request reconsideration of this decision is because of the numerous practical questions this decision did not answer. For example, assuming this Court holds that everything in its original decision should stand as already published, the published decision did not answer any of the following practical questions:

1) While SCDMV understands that Respondent would not undergo the imposition of the suspension period, *should Respondent still be required to complete all the reinstatement requirement that typically go along with this type of suspension?*

a. *Completion of the Alcohol, Drug, and Substance Abuse Program (ADSAP)?³*

b. *Filing form SR-22 for at least three (3) years after this suspension time would have ended if it was posted on the same day as Respondent's conviction?⁴*

c. *Payment of a \$100 reinstatement fee?⁵*

d. *Successful completion of the vision, knowledge, and skills tests before Respondent may be relicensed?⁶*

2) While SCDMV understands that Respondent would not undergo the imposition of the suspension period, *is the underlying DUI conviction still required or allowed to be posted on Respondent's driving record?*

This question becomes particularly important if Respondent is convicted of one or more subsequent offenses of DUI or DUAC within a 10 year period of time. This is because of

³ Required by S.C. Code §56-5-2990(B).

⁴ Required by S.C. Code §§56-9-500 and 56-9-630.

⁵ Required by S.C. Code §56-1-390(1).

⁶ Required by S.C. Code §56-1-130.

the graduated administrative penalties that are imposed (i.e. IID requirements under Emma's law) for such subsequent offenses. S.C. Code §56-5-2990. Significantly, in this case, ten (10) years since the violation date of the DUI conviction at issue has not yet passed. November 23, 2018 would mark the passage of ten (10) years since the violation date of the DUI conviction at issue in this case.

- 3) While SCDMV understands that Respondent would not undergo the imposition of the suspension period, *should or must SCDMV simply include the period of suspension on Respondent's driving record as if it began on the date of Respondent's DUI conviction and ended on the statutorily appropriate date?*

An action such as this would make it appear that Respondent was suspended when, in fact, she was still driving.

For these reasons, Appellant requests this Court reconsider its' January 11, 2017 decision.



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Counsel for the Appellant

January 26, 2017
Blythewood, South Carolina

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JAN 26 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning, Circuit Court Judge

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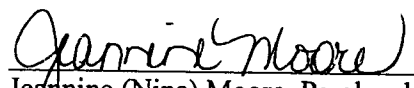
v.

South Carolina Department of Motor Vehicles Appellant.

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, January 26, 2017,
I served one (1) copy of the Appellant's Petition for Rehearing and Memorandum in
Support of Petition for Rehearing by depositing with the United States Postal Service,
correct postage prepaid, to Counsel for the Respondent at the address indicated below:

John D. Elliott, Esquire
Post Office Box 607
Columbia, South Carolina 29202


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

January 26, 2017
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Appellate Case No. 2015-000887

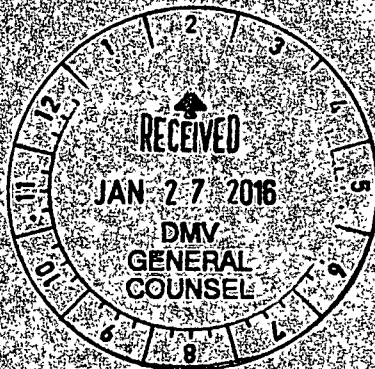
Anna Dillard Wilson Respondent,

v.

South Carolina Department of Motor Vehicles Appellant.

FINAL REPLY BRIEF OF THE APPELLANT

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Attorneys for the Appellant



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STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

Appellant retains the statement of the case set forth in its initial brief.

ARGUMENT

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

Appellant retains all arguments under this section set forth in its initial brief and adds the following in reply:

A. FORM SR-22

Regarding footnote 2 in *Brief of Respondent*, an insurance premium increase is not impacted by the filing of Form SR-22 beyond the cost of actually filing the form. To the contrary, insurance companies set their premiums based on their assessment of a driver's risk. Often these assessments are based on the person's driving record. Therefore, the reporting of Respondent's driving under the influence (hereinafter, "DUI") conviction on her driving record is what will impact her insurance premiums. Thus, any implication that the filing of Form SR-22 will cause an increase in Respondent's

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

insurance premiums, beyond the cost of actually filing the form, is incorrect. For these reasons, discussion of the impact Respondent may face in the way of insurance premiums increasing will not be impacted by the outcome of this case.

B. DUE PROCESS PROTECTIONS

Respondent argues she has been denied due process in the suspension of her driver's license pursuant to her DUI conviction. All of Respondent's arguments on this point ignore the fact that Respondent was granted all of the due process protections afforded to all criminal defendants in South Carolina. Moreover, the delay in reporting the conviction to the Appellant in no way removes, eliminates, or minimizes the due process protections that were extended to Respondent through the criminal process. The due process protections that are already in place through the criminal process are recognized in state statute and because of those due process protections a DUI conviction is a mandatory driver's license suspension, i.e. there are no additional due process steps that are required to be followed by Appellant, the Office of Motor Vehicle Hearings, the Administrative Law Court, or any other Court. In fact, S.C. Code §56-1-370 specifically states "The licensee may, within ten days after notice of suspension, cancellation, or revocation, except in cases where the suspension, cancellation, or revocation is made mandatory upon the Department of Motor Vehicles, request in writing an administrative hearing..." Emphasis added. Thus, Appellant, upon receiving the DUI conviction had no choice but to apply the conviction to Respondent's driving record and begin her mandatory suspension as required by statute. See S.C. Code §§56-5-2970, 56-1-280, 56-1-330, 56-1-350, 56-1-360, 56-1-540, and 56-5-2990.

C. DELAY IN REPORTING CONVICTION & EMMA'S LAW RETROACTIVITY

Respondent points to *In Re Petition of Donley*, 217 W.VA 449, 618 S.E.2d 458 (2005) to demonstrate that the West Virginia Supreme Court held that three year delay was unreasonable as a matter of law. Respondent fails to fully explain that the West Virginia Supreme Court's analysis did not end at this point. The West Virginia Supreme Court explained:

Although we have found that the delay was unreasonable in this case, Mr. Donley is still not entitled to relief because no prejudice flowed from the delay. The record clearly demonstrates that Mr. Donley pled guilty to second offense DUI. Consequently, the only issue at the administrative hearing was whether Mr. Donley was the person named in the abstract. The evidence established this single issue. Insofar as no other factual matters were litigated, Mr. Donley has failed to show any prejudice stemming from the delay in forwarding the abstract to the Commissioner. Moreover, because the circuit court vacated the Commissioner's effective date of revocation, the delay of nearly three years in forwarding the abstract of judgment is simply inconsequential.

In re Petition of Donley, 217 W. Va. 449, 452, 618 S.E.2d 458, 461 (2005). Emphasis added. Thus, it is clear the West Virginia Supreme Court has a two-step analysis: 1) Was the delay unreasonable; and, if the answer to the first question is "yes," 2) Has prejudice stemmed from the delay. The West Virginia Supreme Court made it clear in the *Donley* case that if there is no prejudice that stemmed from the delay, then the suspension should be upheld. In this case, the "hardships" Respondent will suffer if she is required to serve this statutorily mandated suspension are the same and/or less significant "hardships" than those she would have suffered if the conviction had been timely reported to Appellant. Respondent will still have a period of time during which she either:

- 1) cannot drive; OR

2) will be required to obtain an ignition interlock device for her vehicle (hereinafter, "IID") and an IID license.

See S.C. Code §56-5-2941(T) a.k.a. Emma's Law retroactivity clause. The IID license option only became available to Respondent via the effective date of Senate Bill 590.² Thus, the delay in reporting to Appellant has actually worked in Respondent's favor by granting her the IID license option that was not available to her at the time of her conviction.

Significantly, the IID license option completely negates Respondent's concerns about the only important interests put forth by Respondent in this case, i.e. pursuing her livelihood and avoiding financial hardship. Essentially, Respondent has speculated she might lose her current employment if this suspension is upheld. Respondent has then stated that if she loses her job she will not be able to pay all of her bills, in particular, her two (2) mortgage payments. Thus, all of the important interests put forth by Respondent rely on the speculation that she might lose her current employment. Even assuming Respondent's speculation is correct, the IID license option would fully protect Respondent from those speculated outcomes of the Court upholding this suspension. Specifically, while Respondent with an IID license would be required to have an IID installed in her personal vehicle, there is no requirement that she have an IID installed in her employer's vehicles. See S.C. Code §56-5-2941(L). Therefore, as with the *Donley* case in West Virginia, there is no evidence of any prejudice to Respondent stemming

² Effective date for S.590 was June 1, 2015, which is after the date the Circuit Court ruled in this matter. As a result, the IID license option was not available to the Circuit Court or Respondent on the date of the Circuit Court's Order. Because of the explicitness of the retroactivity clause, however, it is clear this is an option available to Respondent and this Court now.

from the delay in reporting this conviction to Appellant, and, in fact, Respondent has gained a significant benefit from this delay.

D. PERMANENTLY ENJOINING SUSPENSION

Finally, should this Court make a finding against Appellant, Appellant would request the Court not use language similar to “the government permanently enjoined from suspending” Respondent’s license. *Brief of Respondent*, page 4. Such a holding and/or ruling could be interpreted to preclude all government in the United States and other states, not just the Appellant, from suspending Respondent’s license, even if she incurred other violations/convictions which required a suspension in the future.

CONCLUSION

For the reasons set forth above and in Appellant’s initial brief, the order of the Circuit Court should be set aside and Respondent’s DUI suspension reinstated.

Respectfully submitted,



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December 18, 2015
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2015-000887

Anna Dillard Wilson Respondent,

v.

South Carolina Department of Motor Vehicles Appellant.

CERTIFICATE OF COUNSEL

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



Brandy A. Duncan, SC Bar # 52072
Assistant General Counsel
South Carolina Department of Motor Vehicles

December 18, 2015
Blythewood, South Carolina

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South Carolina Department of Motor Vehicles Appellant.

CERTIFICATE OF COMPLIANCE

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



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Assistant General Counsel
South Carolina Department of Motor Vehicles

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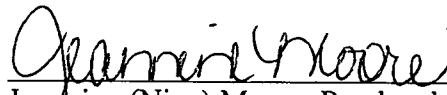
v.

South Carolina Department of Motor Vehicles Appellant.

CERTIFICATE OF SERVICE

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

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December 18, 2015
Blythewood, South Carolina

THE STATE OF TEXAS

COUNTY OF DALLAS

Know all men by these presents, that _____ of the County of _____ State of _____ do hereby certify that _____ of the County of _____ State of _____ is the owner of the following described land, to-wit:

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<i>S.C. Department of Motor Vehicles v. McCarson</i> , 391 S.C. 136, 705 S.E.2d 425 (2011)	3
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Other Authority:

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ISSUE ON APPEAL

Did the circuit court correctly find that a five-year delay between the respondent's conviction for driving under the influence and suspension of her license to drive deprived her of due process of law, to her detriment, and prejudice?

STATEMENT OF THE CASE

Anna D. Wilson, the respondent, brought an action for declaratory and injunctive relief against the South Carolina Department of Motor Vehicles with a summons and complaint filed June 9th, 2014 and served on the department on June 11th, 2014. The department timely interposed an answer to the complaint, filed July 28th, 2014. The circuit court entered a temporary restraining order enjoining the department from suspending the respondent's license to drive on June 10th, 2014. The circuit court held a hearing on permanent relief on January 20th, 2015, and entered an order granting that relief on March 23rd, 2015. The department timely served its notice of appeal.

ARGUMENT

The circuit court correctly found that a five-year delay between the respondent's conviction for driving under the influence and suspension of her license to drive deprived her of due process of law, to her detriment, and prejudice.

The principal case relied on by the circuit court, and relevant here is *Hipp v. S.C. Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009). There, the South Carolina Supreme Court was presented with a 12-year delay between Mr. Hipp's guilty plea to driving under the influence in Georgia, and the subsequent imposition of suspension of his license in South Carolina by the Department of Motor Vehicles.

The court found that such a lapse of time violated the principle of fundamental fairness required by due process of law. The court did not establish a "bright line rule" with which to determine whether an unreasonable delay amounted to such a violation, but noted in its opinion, though not dispositive, that South Carolina's statutory scheme regarding sentence enhancements and records of driving convictions routinely referenced a ten year limit. *Id.*, 381 S.C. 325-326. 673 S.E.2d 417.

The court referenced *State v. Chavis*, 261 S.C. 408, 200 S.E.2d 390 (1973), involving a 14-month delay between Mr. Chavis' refusal to submit to a breathalyzer test, together with his subsequent conviction for driving under the influence, and the suspension of his license for two three month periods as a consequence by the South Carolina Highway Department. The court there held that such a delay was not so prejudicial to Mr. Chavis as to justify estoppel of the suspension. In *Hipp*, however, the court noted that a lengthy delay constituting a denial of due process was contemplated by *Chavis*, and *Hipp* was such a case.

Here, in the five years intervening between Mrs. Wilson's conviction and notification of a six month suspension of her license to drive, she had lost her job as a result of the conviction, regained employment two years later, was driving a company vehicle requiring that she have a license and remain insured, and was purchasing a new home while maintaining mortgage payments on her former home was on the market. [ROA, p. 24; ROA pp. 63-64]. These are reasonably foreseeable events in Mrs. Wilson's life given the lapse of time of a half-decade.

She was understandably concerned about the hardships she might now face if she her license to drive was now suspended again, this time for six months.¹ She reasonably believes her job might once again be jeopardized. She is also contending with the prospect of financial hardship in any event; she is maintaining two house payments, and her insurance premiums may increase as a result of the suspension.² While the department dismissed her potential job loss as "hypothetical" in the hearing before the circuit court, Mrs. Wilson adroitly pointed out that it was

¹ She had already completed a suspension of three months for violation of the state's implied consent law. [ROA, pp. 56, l. 24 - 57, l. 6.]

² While the Department of Motor Vehicles is quite correct that Form SR-22 is by itself a mere filing of a form by an insurance company with the department verifying that a driver convicted of driving under the influence has insurance, it is the potential for significant increases in insurance premiums for a substantial period of time which is daunting for the driver.

“an awfully big risk to take,” and not one for the department to minimize. [ROA. p. 67, l. 12-20.]

The U.S. Supreme Court recognized that the “continued possession” of a license to drive a motor vehicle “...may become essential in the pursuit of a livelihood,” requiring due process of law in a state’s action to deprive the driver of it. *Bell v. Burson*, 402 U.S. 535 (1971), at 539. The South Carolina Supreme Court does as well. See, *S.C. Department of Motor Vehicles v. McCarson*, 391 S.C. 136, 148, 705 S.E.2d 425, __ (2011), excluding the observation of a non-testifying police officer as hearsay in an administrative hearing to suspend a driver’s license.

Mrs. Wilson’s important interest in pursuing her livelihood and avoiding financial hardship are precisely the important interests due process of law is intended to protect in this setting.

The department cites a number of decisions in other state’s appellate courts, both reported and unreported, upholding suspensions in the wake of delay between conviction and suspension. See, Brief of Appellant at pp. 3-4. The outer limit of the delay in those cases is three and a half years, and at that the suspension of an habitual traffic offender, citing *Thomas v. Indiana Bureau of Motor Vehicles*, 979 N.E.2d 169 (2012). Mr. Thomas had been convicted of two drunken driving offenses and reckless driving within an eight year period. The Indiana court rejected his arguments regarding the application of a statute of limitations and laches, observing that the interest of the public in keeping him off the road would be served rather than threatened by suspension.³ By contrast, Mrs. Wilson’s ten year driving record is clean, other than this incident. [10-year record]. And in *In Re Petition of Donley*, 217 W.Va. 449, 618 S.E.2d 458 (2005), relied

³ Mrs. Wilson does not argue the application of laches should estop the department from suspending her license, relying solely on the more important principle of due process of law.

on by the department, the West Virginia supreme court held that a three year delay was unreasonable as a matter of law, but the appellant showed no prejudice resulting from the delay.

Nor is the consideration of fault on the part of the government agency causing the delay a material factor in determining whether due process has been violated with a lengthy delay in the imposition of suspension. In *Hipp v. S.C. Department of Motor Vehicles, supra*, it was immaterial to the court that neither the department nor the driver were "at fault" in the delay; it only mattered that the delay occurred, due to the failure of the Georgia law enforcement agency to report it. *Id.*, at 381 S.C. 323, 326, 673 S.E.2d 416, 417, fn. 2. And in *State v. Chavis, supra*, a fair reading of that decision is that while the department there acted promptly upon receipt of proof of the conviction, and the delay inexplicable from the record, the 11 month period which elapsed between the date of his conviction and notice of his suspensions did not prejudice Mr. Chavis. Hence, it is not blameworthiness but hardship as a result of government prorogation which violates due process. After all, as Shakespeare famously observed, "the law's delay" can drive men mad.⁴

Mrs. Wilson's uncontroverted testimony is that she is likely to suffer the loss of her livelihood and financial hardship if her license is suspended after five years of delay, a period during which she has had no other driver's license infractions, and before this incident, had no infractions for the five years leading up to it. She does not pose a threat to public safety and the process of law which is due her should prohibit suspension of her license now.

CONCLUSION

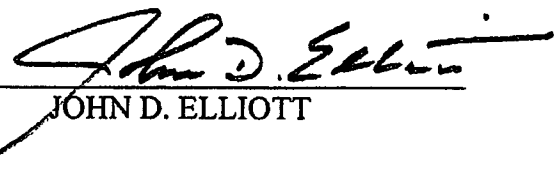
The respondent motorist has been deprived of due process of law in the imposition of a six-month suspension of her license to drive, five years after her conviction, to her prejudice.

⁴ *Hamlet*, Act 3, Scene 1

The judgment of the trial court should be affirmed, and the government permanently enjoined from suspending her license.

Respectfully submitted,

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December 23rd, 2015

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Appellant

FINAL BRIEF OF THE APPELLANT

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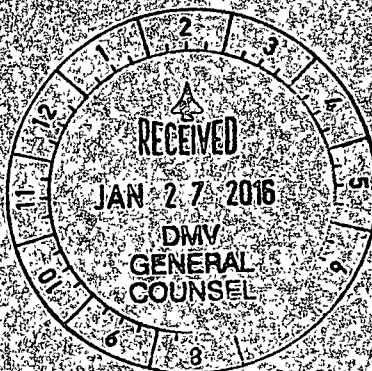


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STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

On November 22, 2008, Respondent was arrested for driving under the influence (hereinafter, "DUI"). On June 11, 2009, Respondent pled guilty to DUI in the Irmo Municipal Court. On May 20, 2014, nearly five (5) years after the conviction, Appellant received a copy of ticket number 31588EE from the Irmo Municipal Court reflecting Respondent's conviction. Accordingly, on May 27, 2014, a mere four (4) working days² later, Appellant issued Respondent a notice of suspension for the DUI conviction. Respondent did not surrender her license to the court on the date of her conviction. Therefore, pursuant to S.C. Code Ann. § 56-1-365, the suspension did not begin until the ticket was received and processed by the Appellant.

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

- 1) thirteen (13) month delay between out-of-state and in-state suspensions for the same offense;⁴
- 2) fifteen (15) month delay between conviction and revocation;⁵

³ In the *Chavis* case, the South Carolina Highway Department was not notified of Chavis' implied consent violation or conviction until on or about February 1, 1973.

⁴ *Boyd v. Division of Motor Vehicles*, 307 N.J. Super. 356 (1998).

⁵ *Lundsten v. Motor Vehicles Div.*, 91 Or.App. 95 (1988).

- 3) seventeen (17) month delay between refusal to take chemical test and scheduling of hearing;⁶
- 4) nineteen (19) month delay between accident and commencement of administrative proceedings;⁷
- 5) twenty-one (21) month delay between an out-of-state conviction and license revocation;⁸
- 6) a two and a half (2 ½) year delay between an implied consent violation and the license suspension hearing;⁹
- 7) three (3) year delay between conviction and receipt of abstract of judgment;¹⁰
- 8) three (3) year delay between conviction and revocation;¹¹
- 9) three (3) year delay between conviction and revocation;¹²
- 10) three (3) year delay between conviction and revocation;¹³ and
- 11) three and a half (3 ½) year delay between DMV receiving notice of third qualifying conviction for habitual traffic violation and sending notice of ten (10) year suspension to driver;¹⁴

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

⁶ *Minnick v. Melton*, 53 A.D.2d 1016 (NY 1976).

⁷ *Dubiel v. Department of Motor Vehicles*, 1993 WL 265500 (Conn. 1993), unpublished opinion.

⁸ *Miller v. Cline, Department of Motor Vehicles*, 193 W.Va. 210 (1995).

⁹ *Alvarez v. State, Dept. of Admin., Div. of Motor Vehicles*, 249 P.3d 286 (2011).

¹⁰ *In re Petition of Donley*, 217 W.Va. 449 (2005).

¹¹ *Celata v. Registry of Motor Vehicles*, 1995 WL 808614 (Mass. 1995) (unpublished opinion).

¹² *Lyver v. Motor Vehicles Div.*, 91 Or.App. 244 (1988).

¹³ *Dubiel v. Dept. of Motor Vehicles*, 1993 WL 265500 (1993) (unpublished opinion).

¹⁴ *Thomas v. Indiana Bureau of Motor Vehicles*, 979 N.E.2d 169 (2012).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,



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Attorneys for the Appellant

December 18, 2015
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

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

DEC 21 2015
SC Court of Appeals

Appellate Case No. 2015-000887

Anna Dillard Wilson Respondent,

v.

South Carolina Department of Motor Vehicles Appellant.

CERTIFICATE OF COUNSEL

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



Brandy A. Duncan, SC Bar # 52072
Assistant General Counsel
South Carolina Department of Motor Vehicles

December 18, 2015
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA

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CERTIFICATE OF COMPLIANCE

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



Brandy A. Duncan, SC Bar # 52072

Assistant General Counsel

South Carolina Department of Motor Vehicles

December 18, 2015
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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Anna Dillard Wilson Respondent,

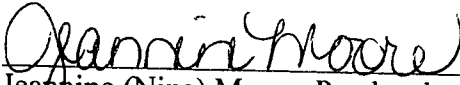
v.

South Carolina Department of Motor Vehicles Appellant.

CERTIFICATE OF SERVICE

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

John D. Elliott, Esquire
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Jeannine (Nina) Moore, Paralegal
Office of General Counsel

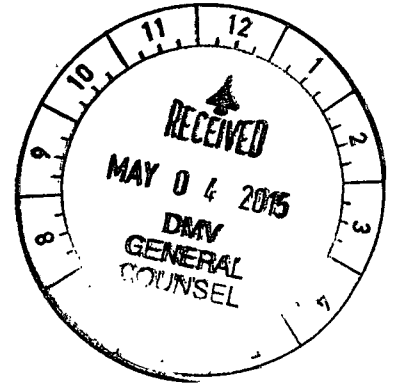
December 18, 2015
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2014-CP-40-3750



Anna Dillard Wilson Respondent,

v.

South Carolina Department of Motor Vehicles Appellant.

NOTICE OF APPEAL

The South Carolina Department of Motor Vehicles appeals the Order of the Honorable L. Casey Manning dated March 23, 2015. Appellant received written notice of entry of this Order on April 9, 2015.

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APR 21 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2014-CP-40-3750

Anna Dillard Wilson Respondent,

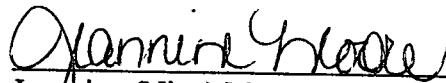
v.

South Carolina Department of Motor Vehicles Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent Anna Dillard Wilson by depositing a copy in the United States Mail, postage prepaid, on April 20, 2015, addressed to her attorney of record as follows:

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Jeanine (Nina) Moore, Paralegal
Office of General Counsel

April 20, 2015
Blythewood, South Carolina

RECEIVED

APR 21 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-3750

Anna Dillard Wilson

SC Department of Motor Vehicles

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John D. Elliott

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(b), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge
SCRPC Form 4C (12/2011)

Judge Code

Date

SCANNED

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

John D. Elliott

P.O. Box 607

Columbia SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

Frank L. Valenta, Jr.

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Blythewood SC 29016-0020

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Janette W. Anderson

Court Reporter: Crystal M. Holmes

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Anna Dillard Wilson,)
Plaintiff,)
vs.)
S.C. Department of Motor Vehicles,)
Defendants.)

Civil Action No. 2014-CP-40-3750

ORDER

DATE OF HEARING:
PRESIDING JUDGE:
PLAINTIFF'S COUNSEL:
DEFENDANT'S COUNSEL:
COURT REPORTER:

January 20th, 2015
Hon. L. Casey Manning
John D. Elliott, Esquire
Frank L. Valenta, Jr., Esquire
Crystal M. Holmes

RICHLAND COUNTY
FILED
2015 MAR 23 AM 11:36
JENNIFER M. COFFE
CLERK OF COURT

This is an order granting injunctive relief to the plaintiff, a South Carolina motorist, enjoining the defendant Department of Motor Vehicles from suspending her license to drive.

The parties appeared with their counsel on the date above. After entertaining the evidence and exhibits introduced by the parties, this court arrived at the following findings and conclusions.

1. Plaintiff is a citizen and resident of South Carolina, with a license to drive issued by the South Carolina Department of Motor Vehicles, No. 8137XXX.
2. On June 11th, 2009, the plaintiff pleaded guilty to first offense driving under the influence of alcohol in the Irmo, South Carolina Municipal Court.
3. The plaintiff timely paid her fine of \$1,026.91. On June 18th, 2009, the plaintiff enrolled in the Alcohol and Drug Safety Action Program, or ADSAP, and successfully completed the program.
4. The plaintiff's privilege to drive was suspended by the Department of Motor Vehicles for her failure to comply with the implied consent statute, S.C.Code Ann. § 56-5-2950

(Supp.2009), beginning August 29th, 2009, and reinstated on November 11th, 2009 after the expiration of the requisite 90 day period.

5. The week following her conviction, the plaintiff contacted the Irmo Town Clerk to inquire about whether the record of conviction had been sent to the Department of Motor Vehicles so that her suspension required by conviction would commence. A notation on the record of the conviction maintained by the Irmo Town Clerk asserts the "ticket" was sent to the Department of Motor Vehicles on July 1st, 2009.

6. The plaintiff contacted the Department of Motor Vehicles to inquire about the further suspension of her driver's license required by her entry of a plea to driving under the influence. She received no response to her inquiries. The plaintiff also contacted her long-time insurance agent, who went to a branch of the Department of Motor Vehicles to inquire about the suspension and the plaintiff's need for auto insurance in the wake of her conviction for driving under the influence. These inquiries occurred in August and September, 2009. The records of the Department of Motor Vehicles apparently did not reflect a record of conviction and officers of the department informed both the plaintiff and her agent there was no such record.

7. Audits routinely conducted by the Department of Motor Vehicles for traffic citations issued by the Town of Irmo for the years 2010, 2011 and 2013 showed the plaintiff's citation for driving under the influence as "outstanding."

8. Apparently at some juncture after the last audit, the department's records were updated to show the status of the citation. On May 27th, 2014, nearly five years to the day after pleading guilty to the offense, the department notified the plaintiff of the suspension of her license to drive.

9. The plaintiff maintains she suffer significant immediate hardship and irreparable harm with the imposition of a suspension after this lapse of time. The plaintiff is in the medical

field and has a license as a registered nurse. She testified that she lost her job in the wake of her conviction and it was months before she could find employment. The plaintiff is now employed with a company which does not know of her conviction and which requires that she operate a motor vehicle in connection with her employment, without limitations. The plaintiff also now carries mortgages on two separate residences, as she tries to sell her former residence. The plaintiff has a reasonable fear that her job will be jeopardized by any suspension of her driver's license at this juncture, or upon disclosure of her conviction at this late date.

10. The department argues that it is blameless in the lapse between the entry of the conviction for driving under the influence and the imposition of the suspension of the plaintiff's license to drive. While this may be true, the test is whether the plaintiff will be deprived of fundamental fairness required by due process of law in the suspension of her driver's license after a significant lapse of time. *See, Hipp v. S.C. Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009). There, the court held that both the driver and the department were blameless in the 12 year lapse of time between the conviction there and its recording with the Department of Motor Vehicles, triggering suspension. *Id.*, at fn. 2.

11. The department argues that the plaintiff should have done more to impose the requisite suspension on herself, but it is difficult to see how much more she could have done after she and her insurance agent made several inquiries of the department about the suspension without success. Nor was it incumbent on the plaintiff's lawyer to see to it his client's license was suspended. The attorney owed his client a duty of loyalty, not the department.

12. This court finds and concludes that the lapse of time of five years between the plaintiff's conviction for driving under the influence and her suspension will deprive the plaintiff fundamental fairness of the law required by due process and cause the plaintiff hardship. The plaintiff has no other remedy at law.

NOW THEREFORE, based on the foregoing, it is accordingly

ORDERED, ADJUDGED and DECREED that the South Carolina Department of Motor Vehicles is permanently enjoined from suspending the plaintiff's license to drive for her conviction for driving under the influence entered June 11th, 2009.

AND IT IS SO ORDERED.


HON. L. CASEY MANNING
Circuit Judge, Court of Common Pleas
for Richland County

Columbia, South Carolina

March 23 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2014-CP-40-3750

RICHLAND COUNTY
FILED
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JEANETTE W. McBRIDE
C.C.P. & G.S.

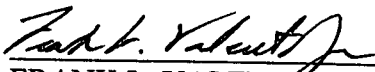
Anna Dillard Wilson Respondent,

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South Carolina Department of Motor Vehicles Appellant.

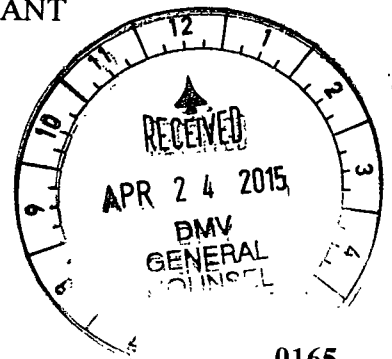
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The South Carolina Department of Motor Vehicles appeals the Order of the Honorable L. Casey Manning dated March 23, 2015. Appellant received written notice of entry of this Order on April 9, 2015.


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April 20, 2015
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Columbia, South Carolina 29202
Attorney for Respondent



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2014-CP-40-3750

RICHLAND COUNTY
FILED
2015 APR 22 AM 10:07
JEANETTE W. McBRIDE
C.C.P. & G.S.

Anna Dillard Wilson Respondent,

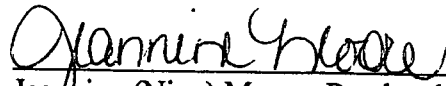
v.

South Carolina Department of Motor Vehicles Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent Anna Dillard Wilson by depositing a copy in the United States Mail, postage prepaid, on April 20, 2015, addressed to her attorney of record as follows:

John D. Elliott, Esquire
Post Office Box 607
Columbia, South Carolina 29202


Jeanine (Nina) Moore, Paralegal
Office of General Counsel

April 20, 2015
Blythewood, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-3750

Anna Dillard Wilson

SC Department of Motor Vehicles

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John D. Elliott

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(b), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge
SCRPC Form 4C (12/2011)

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 26 day of Mar 2015 to attorneys of record or to parties (when appearing pro se) as follows:

John D. Elliott

P.O. Box 607

Columbia SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

Frank L. Valenta, Jr.

P.O. Box 1498

Blythewood SC 29016-0020

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Janette W. H. H. H.

Court Reporter: Crystal M. Holmes

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Anna Dillard Wilson,)
Plaintiff,)
vs.)
S.C. Department of Motor Vehicles,)
Defendants.)

Civil Action No. 2014-CP-40-3750

ORDER

DATE OF HEARING:
PRESIDING JUDGE:
PLAINTIFF'S COUNSEL:
DEFENDANT'S COUNSEL:
COURT REPORTER:

January 20th, 2015
Hon. L. Casey Manning
John D. Elliott, Esquire
Frank L. Valenta, Jr., Esquire
Crystal M. Holmes

RICHLAND COUNTY
FILED
2015 MAR 23 AM 11:36
JENNIFER M. COLE
C.C.P. CLERK

This is an order granting injunctive relief to the plaintiff, a South Carolina motorist, enjoining the defendant Department of Motor Vehicles from suspending her license to drive.

The parties appeared with their counsel on the date above. After entertaining the evidence and exhibits introduced by the parties, this court arrived at the following findings and conclusions.

1. Plaintiff is a citizen and resident of South Carolina, with a license to drive issued by the South Carolina Department of Motor Vehicles, No. 8137XXX.
2. On June 11th, 2009, the plaintiff pleaded guilty to first offense driving under the influence of alcohol in the Irmo, South Carolina Municipal Court.
3. The plaintiff timely paid her fine of \$1,026.91. On June 18th, 2009, the plaintiff enrolled in the Alcohol and Drug Safety Action Program, or ADSAP, and successfully completed the program.
4. The plaintiff's privilege to drive was suspended by the Department of Motor Vehicles for her failure to comply with the implied consent statute, S.C.Code Ann. § 56-5-2950

(Supp.2009), beginning August 29th, 2009, and reinstated on November 11th, 2009 after the expiration of the requisite 90 day period.

5. The week following her conviction, the plaintiff contacted the Irmo Town Clerk to inquire about whether the record of conviction had been sent to the Department of Motor Vehicles so that her suspension required by conviction would commence. A notation on the record of the conviction maintained by the Irmo Town Clerk asserts the "ticket" was sent to the Department of Motor Vehicles on July 1st, 2009.

6. The plaintiff contacted the Department of Motor Vehicles to inquire about the further suspension of her driver's license required by her entry of a plea to driving under the influence. She received no response to her inquiries. The plaintiff also contacted her long-time insurance agent, who went to a branch of the Department of Motor Vehicles to inquire about the suspension and the plaintiff's need for auto insurance in the wake of her conviction for driving under the influence. These inquiries occurred in August and September, 2009. The records of the Department of Motor Vehicles apparently did not reflect a record of conviction and officers of the department informed both the plaintiff and her agent there was no such record.

7. Audits routinely conducted by the Department of Motor Vehicles for traffic citations issued by the Town of Irmo for the years 2010, 2011 and 2013 showed the plaintiff's citation for driving under the influence as "outstanding."

8. Apparently at some juncture after the last audit, the department's records were updated to show the status of the citation. On May 27th, 2014, nearly five years to the day after pleading guilty to the offense, the department notified the plaintiff of the suspension of her license to drive.

9. The plaintiff maintains she suffer significant immediate hardship and irreparable harm with the imposition of a suspension after this lapse of time. The plaintiff is in the medical

field and has a license as a registered nurse. She testified that she lost her job in the wake of her conviction and it was months before she could find employment. The plaintiff is now employed with a company which does not know of her conviction and which requires that she operate a motor vehicle in connection with her employment, without limitations. The plaintiff also now carries mortgages on two separate residences, as she tries to sell her former residence. The plaintiff has a reasonable fear that her job will be jeopardized by any suspension of her driver's license at this juncture, or upon disclosure of her conviction at this late date.

10. The department argues that it is blameless in the lapse between the entry of the conviction for driving under the influence and the imposition of the suspension of the plaintiff's license to drive. While this may be true, the test is whether the plaintiff will be deprived of fundamental fairness required by due process of law in the suspension of her driver's license after a significant lapse of time. *See, Hipp v. S.C. Department of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009). There, the court held that both the driver and the department were blameless in the 12 year lapse of time between the conviction there and its recording with the Department of Motor Vehicles, triggering suspension. *Id.*, at fn. 2.

11. The department argues that the plaintiff should have done more to impose the requisite suspension on herself, but it is difficult to see how much more she could have done after she and her insurance agent made several inquiries of the department about the suspension without success. Nor was it incumbent on the plaintiff's lawyer to see to it his client's license was suspended. The attorney owed his client a duty of loyalty, not the department.

12. This court finds and concludes that the lapse of time of five years between the plaintiff's conviction for driving under the influence and her suspension will deprive the plaintiff fundamental fairness of the law required by due process and cause the plaintiff hardship. The plaintiff has no other remedy at law.

NOW THEREFORE, based on the foregoing, it is accordingly

ORDERED, ADJUDGED and DECREED that the South Carolina Department of Motor Vehicles is permanently enjoined from suspending the plaintiff's license to drive for her conviction for driving under the influence entered June 11th, 2009.

AND IT IS SO ORDERED.


HON. L. CASEY MANNING
Circuit Judge, Court of Common Pleas
for Richland County

Columbia, South Carolina

March 23 2015

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Opinion No. 5464 (S.C. Ct. App. filed January 11, 2017)

Anna Dillard Wilson.....Respondent,

v.

South Carolina Department of Motor Vehicles.....Petitioner.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Appendix by depositing a copy of it in the United States Mail, postage prepaid, on the 5th day of April, 2017, addressed to the attorney for the Respondent as follows:

John D. Elliott, Esquire
Post Office Box 607
Columbia, South Carolina 29202



Brandy A. Duncan, Assistant General Counsel
S.C. Department Motor Vehicles