

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM Horry COUNTY

COURT OF COMMON PLEAS

RECEIVED

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SC Court of Appeals

BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2017-001381

RICHARD B. LAMB

APPELLANT

V

STATE OF SOUTH CAROLINA DMV.

OFFICE OF GENERAL COUNSEL

RESPONDENT

RECORD OF APPEAL

RICHARD B. LAMB

9541 MAISON CT

MYRTLE BEACH, SC 29572

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PRO SE

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MYRTLE BEACH, SC 29578

843-448-1008

ATTORNEY FOR RESPONDENT

INDEX

PAGES 1-3 DEFENDANT ORDER FOR
SUMMARY JUDGEMENT

PAGES 4-8 APPELLANTS ORIGINAL
COMPLAINT

PAGES 9-12 DEFENDANTS ANSWER TO
ORIGINAL COMPLAINT

PAGES 13-23 TRANSCRIPT OF HEARING
ON MAY 17, 2003

PAGES 24-28 RIGHTS DENIED TO
APPELLANT BY RESPONDANTS

PAGES 29-30 FR-4 FORM STATING
UNLAWFUL SUSPENSION DATE AND
2008 CALENDER

PAGES 31-33 INFORMATION GUIDE SCALIR
SYSTEM WITH MANDATE OF 20 BUSINESS
DAYS FOR DUE PROCESS OF OPPORTUNITY.
SPECIFICALLY PAGE 33 2ND PARAGRAPH

INDEX CONT.

- PAGES 34-35 AFFIDAVIT OF WILLIAM C.
WANNAMAKER AND RESPONDENTS
ADMITTANCE OF GUILT IN LINES 5, 6, 7
OF § 16-19-10 PERJURY AND SUBORNATION
§ 16-17-735 PERSONS FALSELY ASSERTING
AUTHORITY OF LAW
§ 56-10-650 VIOLATION OF 20 DAY
MANDATED OPPORTUNITY
- PAGE 36 SOUTH CAROLINA CONSTITUTION
SC. CONST. ART. I § 22, 23
- PAGE 37 § 1-23-370 PROCEDURES
REGARDING ISSUANCE, DENIAL OR
RENEWAL OF LICENSES. SPECIFICALLY
PARAGRAPH A AND PARAGRAPH C
- PAGE 38 § 56-10-650 PARAGRAPH A
MANDATING THE 20 WORKING DAYS.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	C/A No. 2017-CP-26-0489
Richard B. Lamb,)	
)	
Plaintiff,)	
)	
vs.)	ORDER GRANTING
)	DEFENDANT'S MOTION
State of South Carolina DMV,)	FOR SUMMARY JUDGMENT
Office of General Counsel,)	
)	
Defendant.)	
)	

This matter is before me upon Motion of the Defendant requesting the court grant summary judgment as to all of the Plaintiff's claims. A hearing on this Motion was held on May 17, 2017. Present at the hearing were the Plaintiff, acting *pro se*, and Douglas Charles Baxter, Esquire on behalf of the Defendant.

FACTUAL BACKGROUND

This case arises around a suspended South Carolina driver's license from the year 2008. In 2008, the Plaintiff was the record owner of a 2003 Dodge vehicle, tag number 2897DB and the Defendant, South Carolina Department of Motor Vehicles ("SCDMV") received notification from Progressive Direct Insurance that the vehicle may be uninsured. On November 25, 2008, the SCDMV sent a letter to the Plaintiff, the owner of record of the vehicle, stating that the vehicle may be uninsured. The notice informed the Plaintiff that he was required to respond by providing proof of insurance for the vehicle, providing proof that the vehicle had been sold/traded, or turn in the vehicle license plate tag. Due to a computer glitch, the letter misstated that the Plaintiff must respond by December 17, 2008 rather than December 30, 2008, which was

twenty working days. On January 14, 2009, the Plaintiff turned his license plate tag in to the SCDMV.

FINDINGS

The South Carolina Tort Claims Act (§15-78-10 et. seq.) governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 384 S.E.2d 413, 416 (Ct. App. 2003). The South Carolina Tort Claims Act provides exceptions to the waiver of immunity and the exceptions limit the liability of governmental entities. Jinks v. Richland Cty., 585 S.E.2d 281, 283 (2003). Section 15-78-60 of the Code of Laws of South Carolina, as amended, provides in Subsection (12), that a governmental entity is not liable for a loss resulting from:

“licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner”.

There is no evidence of gross negligence and the Defendant is immune from liability for suspending the Plaintiff’s driver’s license.

Additionally, under the South Carolina Tort Claims Act (§15-78-10 et. seq.), generally, an action must be commenced within two years. S.C. Code Ann. §15-78-110 provides:

“Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.”

Plaintiff surrendered his vehicle license plate tag on January 14, 2009, and approximately eight years later, on January 26, 2017, Plaintiff brought this action. The Plaintiff was required to bring an action within two years from the date he became aware that his license was suspended,

and this action was commenced more than two years after the loss was or should have been discovered. Therefore, the Plaintiff's claims are barred by the statute of limitations. It is therefore

ORDERED that the Defendant's Motion for Summary Judgment is granted and this action is hereby dismissed with prejudice.

The Honorable Benjamin H. Culbertson
Judge, 15th Judicial Circuit

_____, 2017

STATE OF SOUTH CAROLINA,
COUNTY OF HORRY
RICHARD B. LAMB
9541 MAISON CT
MYRTLE BEACH, SC 29572 Plaintiff,

IN THE COURT OF COMMON PLEAS

COMPLAINT/INJUNCTION
COMPLAINT

FILE NO. _____ -CP- _____

vs.
STATE OF SOUTH CAROLINA DMV.
OFFICE OF GENERAL COUNSEL
10311 WILSON BLVD. Defendant.
PO. BOX 1498

~~BLYTHEWOOD, SC 29016-0020~~

PLAINTIFF RICHARD B. LAMB COMES BEFORE THIS HONORABLE COURT WITH THE COMPLAINT AGAINST DEFENDANT, THE STATE OF SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES OF VIOLATION OF SC CODE § 16-17-735 AND § 15-75-60 TO BE ENJOINED IN THIS COMPLAINT UNDER RULE 18 (SCRC P).

PLAINTIFF RECEIVED A CORRESPONDENCE THE FIRST AND ONLY IN DECEMBER OF 2008. FROM DEFENDANTS, THE STATE OF SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES, THAT PLAINTIFF MIGHT BE IN VIOLATION OF SC CODE § 56-10-240 AND § 56-10-245. IT STATED DRIVERS LICENSE AND VEHICLE REGISTRATION WOULD BE SUSPENDED IF PLAINTIFF DID NOT CONTACT BEFORE THE SUSPENSION DATE OF DECEMBER 17, 2008.

PLAINTIFF DID CONTACT DEFENDANTS BY TELEPHONE ON DECEMBER 17, 2008 AND WAS TOLD THAT PLAINTIFFS DRIVERS LICENSE AND REGISTRATION WAS ALREADY SUSPENDED AND THERE WAS NOTHING THEY COULD DO ABOUT IT AND FURTHER STATED THAT PLAINTIFF BROKE THE LAW AND HAD TO PAY. PLAINTIFF RELENTLESSLY ATTEMPTED TO OBTAIN WHAT LAW WAS BROKEN AND WAS STILL LEFT WITH "YOU BROKE THE LAW LISTED ON THE LETTER AND YOU HAVE TO PAY." PLAINTIFF LOOKED INTO SOUTH CAROLINA STATUTORY CODE LAW AND FOUND § 56-10-240 SAYS IN THE CODE, PUNISHMENT ONLY UPON CONVICTION. PLAINTIFF HAS NEVER BEEN LAWFULLY, OFFICIALLY, LEGALLY, CHARGED WITH A CRIME, THERE HAS NEVER BEEN A UNIFORM TRAFFIC TICKET OR AN ARREST WARRANT ISSUED, PLAINTIFF HAS NOT BEEN AFFORDED ANY OF THE RIGHTS MANDATED IN THE SUMMARY JUDGES BENCH BOOK MANUAL. SEE EXHIBIT #1 PUBLIC DOCUMENT, RIGHTS OF THE DEFENDANT.

PLAINTIFFS FURTHER INVESTIGATION INTO THIS ISSUE REVEALED THAT DEFENDANTS ARE IN VIOLATION § 56-10-650 THAT STATES NOTIFICATION TO PLAINTIFF MUST BE GIVEN 20 WORKING DAYS TO RESPOND TO DEFENDANTS, DEFENDANTS GAVE ONLY 13 WORKING DAYS NOTICE AND THATS A VIOLATION OF SOUTH CAROLINA STATUTORY PENAL LAW AND A VIOLATION OF PLAINTIFFS DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW RIGHTS. SEE EXHIBIT #2 LETTER FROM DEFENDANTS DATED NOVEMBER 25, 2008., AND SUSPENSION DATE OF DECEMBER 17, 2008 AND CALENDAR FOR 2008, BOTH PUBLIC DOCUMENTS, DEFENDANTS ACTIONS ARE CONTRARY TO THE FOLLOWING SOUTH CAROLINA STATUTORY CODE LAW.

§ 56-1-380 CANT SUSPEND FOR MORE
THAN 1 YEAR.

§ 56-10-240 PUNISHMENT UPON CONVICTION

§ 56-10-650 MUST GIVE 20 WORKING DAYS
NOTICE - SEE EXHIBIT #3 PUBLIC DOCUMENT

SOUTH CAROLINA AUTOMOBILE LIABILITY
INSURANCE REPORTING (SC ALIR) SYSTEM
AND WRITTEN STATUTE § 56-10-650

§ 16-9-10 GIVING FALSE, INCOMPLETE,
MISLEADING, RECORD, REPORT, DOCUMENT.

§ 17-25-10 NO PUNISHMENT TIL PROVEN
GUILTY

BECAUSE DEFENDANTS HAVE BOUND
PLAINTIFF WITHOUT JUDICIAL REVIEW
AND HAVE KEPT PLAINTIFF UNDER THE
STATE OF SOUTH CAROLINA DEPARTMENT
OF MOTOR VEHICLES FOR BOTH PROSECUTION
AND ADJUDICATION, THEY ARE VIOLATING
PLAINTIFFS RIGHTS LISTED IN THE SOUTH
CAROLINA CONSTITUTION ARTICLE 1 SECTION 22
SEE EXHIBIT #4 PUBLIC DOCUMENT
SOUTH CAROLINA CONSTITUTION.

ALL OF DEFENDANTS ACTS ARE CONTRARY TO THE FEDERAL CONSTITUTION, THE STATE CONSTITUTION, AND SOUTH CAROLINA STATUTORY LAW MAKING THIS A SHAM LEGAL PROCESS AS STATUTORALLY STATED IN SC CODE § 16-17-735 ("PERSONS FALSELY ASSERTING AUTHORITY OF LAW")

PERSON IS DEFINED BY STATUTE § 1-23-10 GOVERNMENTAL SUBDIVISIONS. THE REMEDY AND RELIEF THAT PLAINTIFF FALLS UNDER SC CODE § 15-75-60

PLAINTIFF DEMANDS ~~10~~ 330,000.⁰⁰ DAMAGES \$600,000.⁰⁰ PUNITIVE DAMAGES FOR SHAM LEGAL PROCESS, THAT BEING SEPARATE OF THE RESTITUTION DEMANDED OF ~~330,000.~~ ^{\$}330,000.⁰⁰
§ 16-17-735 HAS NO STATUTE OF LIMITATIONS
§ 15-75-60 FALLS UNDER § 15-3-600 ACTION FOR OTHER RELIEF 10 YEARS

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2017-CP-26-0489

Richard B. Lamb,
Plaintiff,

vs.

State of South Carolina DMV,
Office of General Counsel,
Defendants.

ANSWER OF DEFENDANT

(Jury Trial Demanded)

2017 FEB 21 PM 2:54
COUNTY CLERK
HORRY COUNTY

Defendant, State of South Carolina DMV, Office of General Counsel (hereinafter referred to as "SCDMV"), responds to the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. The SCDMV would show that the Plaintiff was the record owner of a 2003 Dodge vehicle, tag number 2897DB, and the SCDMV received notification from Progressive Direct Insurance that the vehicle might be uninsured.
3. On or about November 25, 2008, the SCDMV sent the Plaintiff a notice that it received information from Progressive Direct Insurance indicating the vehicle might be uninsured.
4. The SCDMV notified Plaintiff that he had certain options, including provide proof of insurance for the vehicle, provide proof that the vehicle had been sold/traded, or turn in the vehicle tag.
5. The notice further informed the Plaintiff that failure to take the requisite actions could result in suspension of the vehicle registration and/or his driver's license.

6. The Plaintiff failed to take any of the actions outlined in the notice.
7. The Plaintiff's driver's license was suspended pursuant to § 56-10-225 and § 56-10-520 of the Code of Laws of South Carolina, as amended.
8. The SCDMV denies that it violated any laws or statutes, it denies that it in any way violated the Plaintiff's constitutional rights and it denies having breached any duty of care.
9. The SCDMV denies that the Plaintiff is entitled to declaratory relief or is entitled to recover monetary damages.

FOR A SECOND DEFENSE

10. The SCDMV reiterates the allegations as contained in the previous defenses as if repeated verbatim within this defense.
11. The Complaint fails to set out sufficient allegations to constitute a cause of action as against the SCDMV.

FOR A THIRD DEFENSE

12. The SCDMV reiterates the allegations as contained in the previous defenses as if repeated verbatim within this defense.
13. The SCDMV would show that the Plaintiff failed to bring this action within the applicable statute of limitations and it asserts same as an affirmative defense.

FOR A FOURTH DEFENSE

14. The SCDMV reiterates the allegations as contained in the previous defenses as if repeated verbatim within this defense.
15. The SCDMV would show that the Plaintiff failed to exhaust all remedies, including filing an application to have his driver's license reinstated.

FOR A FIFTH DEFENSE

16. The SCDMV reiterates the allegations as contained in the previous defenses as if repeated verbatim within this defense.
17. The SCDMV would show that this action is governed by the South Carolina Tort Claims Act, § 15-78-10 *et. seq.* of the Code of Laws of South Carolina, as amended, and the SCDMV asserts the applicable provisions, including immunities, limitations on recovery and statute of limitations.

FOR A SIXTH DEFENSE

18. The SCDMV reiterates the allegations as contained in the previous defenses as if repeated verbatim within this defense.
19. The SCDMV asserts the applicable provisions of § 15-78-60 *et. seq.* of the Code of Laws of South Carolina, as amended, including, but not limited to, Subsections 4 and 12.

FOR A SEVENTH DEFENSE

20. The SCDMV reiterates the allegations as contained in the previous defenses as if repeated verbatim within this defense.
21. The SCDMV would show that the Plaintiff's alleged damages were caused by his own negligence and the SCDMV asserts comparative negligence as an affirmative defense.

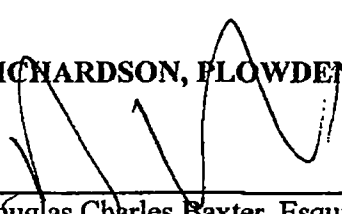
FOR AN EIGHTH DEFENSE

22. The SCDMV reiterates the allegations as contained in the previous defenses as if repeated verbatim within this defense.
23. The SCDMV asserts waiver and laches as affirmative defenses.

Wherefore, having fully responded to the Complaint of the Plaintiff, Defendant, State of South Carolina DMV, Office of General Counsel, requests that the same be dismissed with prejudice, together with the costs and disbursements in the defense of this matter, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

RICHARDSON, FLOWDEN & ROBINSON, P.A.



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Attorney for the Defendant, State of South Carolina DMV,
Office of General Counsel

February 24, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF Horry) 2017-CP-26-489

Richard B. Lamb,)
)
 Plaintiff,) Transcript of Record
)
 vs.) May 17, 2017
)
 State of South Carolina DMV,)
 Office of General Counsel,)
)
 Defendants.)

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Plaintiff Appearing Pro Se

Douglas Charles Baxter, Esquire
Attorney for Defendants

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (On the record, May 17, 2017.)

2 THE COURT: First is 2017-CP-26-489. Okay. According to
3 my roster this is a motion for summary judgment. Please give
4 the court reporter your names and who you represent.

5 MR. BAXTER: Your Honor, Doug Baxter. I'm here on behalf
6 of the Defendant, South Carolina Department of Motor Vehicles.

7 THE COURT: All right.

8 MR. LAMB: Richard Lamb, pro se.

9 THE COURT: All right. Mr. Baxter, this is your motion?

10 MR. BAXTER: Yes, Your Honor.

11 THE COURT: All right. Let me hear from you.

12 MR. BAXTER: The -- this lawsuit arises out of the
13 issuance and suspension of Mr. Lamb's driver's license, and we
14 submitted a motion, and attached to that is an affidavit of
15 William Wannamaker. As indicated in the affidavit, sometime
16 in the Fall of 2008 the Department of Motor Vehicles received
17 notice from, I believe, Progressive Insurance Company
18 indicating that a 2003 Dodge vehicle owned by Mr. Lamb was no
19 longer insured, and pursuant to the statute, he was sent a
20 letter notifying him that he either needed to provide proof of
21 insurance, proof that the vehicle had been sold or traded or
22 he needed to come turn his tag in. In the letter there --
23 the, the statute provides that he's to be given 20 days, 20
24 working business days' notice before his license is suspended.
25 The letter that was sent had a -- due to a computer glitch it,

1 it indicated that the -- he needed to turn it in by December
2 17th, 2008, when, in fact, it should have been December 30th,
3 2008. Basically, they gave him 20 days instead of 20 business
4 days.

5 On January 14th of 2009, the Plaintiff actually turned in
6 his license plate, and as of that date, he was eligible to
7 have his license reinstated.

8 We now move for summary judgment based upon, I think -- I
9 don't, I don't think there's any issue about what the facts
10 are. The -- and our motion is based upon several things.

11 First of all, the -- he -- the date he turned the license --

12 THE COURT: Excuse, excuse me for interrupting. What
13 relief is he seeking in this lawsuit?

14 MR. BAXTER: He's seeking damages.

15 MR. LAMB: Damage, financial and the license itself to be
16 re --

17 THE COURT: Okay. All right. Go ahead.

18 MR. BAXTER: And so we'd move for summary judgment based
19 upon several issues. First of all, the, the, the, the letter,
20 while it contained the erroneous date, he turned his license
21 in -- he, he's obligated to immediately take care of that
22 regardless of what the statute says, and he turned his license
23 in more than 20 business days. So, whether -- regardless of
24 what the letter said, he was outside the permissible period to
25 turn his license in.

1 Second of all, the -- because this is a claim for damages
2 it would be governed by the South Carolina Tort Claims Act,
3 and under the Tort Claims Act 15-78-60 contains certain things
4 for which immunity, sovereign immunity was not waived, and one
5 of those is under 15-78-60, Subsection 12 says, [as read], "A
6 governmental entity is not liable for a loss resulting from
7 licensing powers or functions included, but not limited to,
8 the issuance, denial, suspension, renewal, or revocation of or
9 failure to refuse to issue, deny, suspend, renew, revoke any
10 permit, license, certificate, approval," etcetera, etcetera.
11 So this case involves the suspension of a driver's license,
12 and under Section 15-78-60, we are -- there is sovereign
13 immunity, and the DMV cannot be sued for, for the, for
14 suspending the license, and then finally the -- Mr. Lamb was
15 given notification that his license was being suspended on
16 December -- excuse me, it was mailed to him on November 25th,
17 2008. He would have received that notification, and that,
18 that would have triggered the running of the statute of
19 limitations. Any damages he had, any actions on our part
20 occurred back in latter part of 2008, early 2009. The statute
21 of limitations has a two-year -- I mean, a Tort Claims has a
22 two-year statute of limitations. So he is well outside of the
23 statute of limitations.

24 THE COURT: When did he commence the action?

25 MR. BAXTER: 2017.

1 THE COURT: Okay.

2 MR. BAXTER: So it's almost nine years after -- well,
3 eight -- well, well more than two years after he had the right
4 to bring the action.

5 THE COURT: All right.

6 MR. BAXTER: And then finally, as to the -- I, I think
7 he's also seeking some injunctive relief. He, he, he has been
8 eligible to go in and reapply for his driver's license since
9 January 14th, 2009, and he has not done so. So we, we just
10 think based on those grounds, we'd move for summary judgment.

11 THE COURT: All right. All right. Mr. Lamb, let me hear
12 from you.

13 MR. LAMB: Thank you, Your Honor.

14 In regards to the Defendants' position, the driver's
15 license having been suspended early, they've admitted to that
16 violation of Title 56 in their affidavit. There should be --
17 there is no issue whether or not they broke the law. The
18 criminal penal law of Title 56 -- 56-10 and 16 chapters of
19 such our criminal penal law, statutory from this state.
20 They've continued to go on with different, different
21 allegations in regards to what the real cause of the
22 suspension was. In their answer to the pleadings, they cited
23 two other Title 56 codes other than what was posted on the
24 original letter, and in such those codes still in, in the
25 Codes 56-10-2 -- 225, is something that you have to be

1 convicted of. It says right in this statute. 56-10-240 it
2 says right in the code upon conviction of, and then we move to
3 the point of the statute of limitations, this was only
4 discovered for a sham legal process and this is what I'm
5 filing the case pursuant to. This law was written 11 years
6 after the Tort Claims Act, and it's specifically written for
7 two classes of people, and if I may introduce this to the
8 Court as Plaintiff's Exhibit Nine, I'd appreciate it.

9 THE COURT: What is it?

10 MR. LAMB: This is South Carolina -- from the South
11 Carolina State Legislature's website. It is the Title Code
12 16-17-735, sham legal process, which is also criminal penal
13 law and 15-75-60 which is joined by statutory, by the
14 statutory mandate in it for civil relief.

15 THE COURT: Okay. It -- you don't need to introduce it
16 into evidence. Law it's --

17 MR. LAMB: Okay.

18 THE COURT: -- it's considered.

19 MR. LAMB: What I would like to strongly point out
20 respectfully and strongly point out is is that this is two
21 classes of people, persons impersonating law enforcement
22 officers or persons falsely asserting authority of law;
23 offenses; punishment, and then on A, [as read], "It is
24 unlawful for a person to impersonate a state or local official
25 or employee or a law enforcement officer in connection with a

1 sham legal process. A person acting or purporting to act in
2 an official capacity or taking advantage of such actual
3 authority." There's only two classes. That's the State and
4 somebody impersonating it. This law pertains to the State.
5 This law was written 11 years afterwards. It joined by the
6 legislature itself in 15-75-60 specifically right in there.
7 [As read}, "A person who is injured by the sham legal process
8 involving a violation of," and I would set out to the Court
9 that violation is not a conviction but simply what reasonable
10 persons could infer, and the whole person it's in violation of
11 has these remedies available. In regards to this issue,
12 pursuant to what I've claimed in there, I didn't discover this
13 until June 2015. That's when I knew that I was part of a sham
14 legal process or the victim thereof. I had filed, if I may
15 introduce, and I did have it in in regards to my joinder, that
16 I filed a claim with the state, state financial accountability
17 authority back then. They had hired their own investigator,
18 pardon me, Your Honor, I need, I need some water.

19 Thank you, Your Honor.

20 Their own investigator said that they were going to get
21 to specifically do an investigation. They involved contacting
22 the Department of Motor Vehicles to get the exact reason the
23 license was suspended. Their investigation revealed by their
24 own admittance that they suspended the license because they
25 told me, sent me a letter stating that I may not have

1 insurance and that I was given an opportunity to respond.
2 Well, I did respond. I responded on December 17th, and as the
3 Defendants have already admitted, that wasn't the proper time.
4 It was December 30th of that year. Defendants continue on
5 saying I could just go and pay for it. This is a motor
6 vehicle traffic violation in either way, and any kind of
7 payment of any fine and such is an admission of guilt and it's
8 pleading guilty. That's why it's not paid. I certainly could
9 have done that, but it would had, had no recourse in any of
10 this. Whether it's right or wrong in regards to the legal
11 issues or the, the criminal, criminal aspect of it, to pay a
12 fine is to say you're guilty, that what -- without. It hasn't
13 been paid, taken care of it -- that. That's an irrelevant and
14 immaterial. I can't, I can't say I'm guilty and then try to
15 appeal, claim for damages.

16 Again, I filed a claim in 2015. In regards to any
17 statute of limitations that's when I knew the sham legal
18 process. They never mentioned in their investigation by their
19 own investigator and the insurance company never said anything
20 about statute of limitations, and I submit under the good
21 faith, bad faith is that this, this applies. Also 16-75 is a
22 criminal, criminal violation, which has no statute of
23 limitations. Somebody being alleged to have committed this
24 being prosecuted for such of that could happen at any time and
25 they're still left with this recourse, a mandate by the

1 legislature. It's right in there. So somebody could have
2 that to ten years, 20 years, theoretically, under this here,
3 and you could come back and still do this because it is
4 connected statutorily.

5 THE COURT: All right. Thank you.

6 MR. LAMB: Thank you, Your Honor.

7 THE COURT: Anything in reply?

8 MR. BAXTER: Your Honor, the -- as to the statute of
9 limitations the -- it, it, it doesn't, it doesn't matter when
10 you have a full-blown legal theory. It's when you know --
11 you're aware of the damages or the event, which clearly he was
12 aware of in the latter part of 2008. Second of all, this,
13 this statute does not apply to this situation. The DMV has
14 the right under the law to suspend a driver's license, which
15 they did. The only issue here was is that there was a mix-up
16 on the date. He, he, he replied after the date, but even if
17 that was somehow connected, he's, he's had the right since
18 2009 to have his license reinstated by filing the application
19 and the fees, etcetera, etcetera. So that statute does not
20 apply. Clearly the Tort Claims Act says that we cannot be
21 sued for damages for these types of things, and clearly the --
22 he was aware of the incident in the -- more than two years
23 irregardless of what theory and research he's done since that
24 time.

25 THE COURT: All right. All right. I'm going to grant

1 the motion for summary judgment. Mr. Baxter, if I could get
2 you to prepare an order I think it is explicitly covered by
3 the South Carolina Torts Claim Act. It's, it's -- the State
4 is immune from any civil liability for failure to license. I
5 think that, that is pretty point blank in the South Carolina
6 Tort Claims Act. Also, I find that it is outside the statute
7 of limitations. All right. Thank you.

8 MR. LAMB: Thank you, Your Honor.

9 (Adjourned.)

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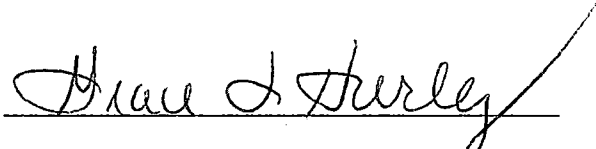
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of Richard B. Lamb versus State of South Carolina DMV, Office of General Counsel, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on May 17, 2017.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M
Official Reporter

September 9, 2017.

G.
Rights of the Defendant

1. Outline

While it is not possible to discuss all of the procedural rights of the defendant, the following outline may be of some use to magistrates and municipal judges.

- a. Right To Be Informed Of The Nature Of The Complaint (infra)
- b. Right To Counsel (infra)
- c. Right Against Self-Incrimination (infra)
- d. Right Of Confrontation (infra)
- e. Right To Due Process (infra)
- f. Right To Speedy And Public Trial (infra)
- g. Right To Bail (see Article I, Section 15, S. C. Constitution; and BAIL)
- h. Right To Preliminary Examination (see PRELIMINARY EXAMINATION)
- i. Right To Unanimous Verdict (See S.C. Const. Art. V, §18)
- j. Right To Compel The Attendance Of Witnesses (See S.C. Const. Art. I, §14 and TRIAL PROCEDURE, Witnesses)
- k. Right To Trial By Impartial Jury (See S.C. Const. Art. I, §13, ; and TRIAL PROCEDURE, Selection of the Jury, and The Voir Dire)
- l. Right To Reasonable Time To Prepare A Defense
- m. Right Against Double Jeopardy (See S.C. Const. Art. I, §12)
- n. Right To Be Present At Trial (Rule 16 South Carolina Rules of Criminal Procedure)

2. Checklist for Magistrates and Municipal Judges

By Order of the Chief Justice, all magistrates and municipal judges are required to use the "Checklist for Magistrates and Municipal Judges" (Form SCCA-507) in all criminal cases in which an arrest warrant has been issued. (see FORMS)

Magistrates and municipal judges are required to attach the Checklist for Magistrates and Municipal Judges to the arrest warrant at the time of the return of the warrant with the arrested person or at the bail proceeding. If the case is transmitted to the Court of General Sessions, or the case is appealed, the Checklist is to be sent to the clerk of court with the warrant and other papers pertaining to the case. If the case is within the trial jurisdiction of the magistrate, the Checklist is to be attached to the warrant and kept as a part of the case in magistrate or municipal court for a period of three years. At the end of that period, the Checklist may be destroyed, however the warrant and other related papers should be retained indefinitely.

from the magistrate.

3. Defense of Indigents Act

Pursuant to the authority of S.C. Code Ann. §17-3-110, the S.C. Supreme Court has established rules regarding the administration of the Defense of Indigents Act, §§17-3-10 - 17-3-110. These rules are found in Volume 22, of the Code, and in the annual cumulative supplement.

S.C. Appellate Court Rule 602(a) provides, in part, that in all cases within the trial jurisdiction of magistrates or municipal judges, if a prison sentence is likely to be imposed upon conviction, the presiding judge must inform the accused as provided in S.C. Appellate Court Rule 602(b). In these cases therefore, the magistrate or municipal judge should:

- (1) Inform the accused of the charges against him and of the nature of the charges.
- (2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if the accused is financially unable to employ counsel.

Additionally, S.C. Appellate Court Rule 602(b) provides that the magistrate should,

- (3) If the accused represents that he is financially unable to employ counsel, take his application for appointment of counsel or for the services of the Public Defender where the latter is available in the county.

The Chief Circuit Court Judge for Administrative Purposes has, in each county, designated the Clerk of Court or other officer(s) with the responsibility of securing counsel for the alleged indigent defendant. This designated officer should be immediately notified of the request for counsel.

Magistrate and municipal judges should also note the provisions of S.C. Appellate Court Rule 602(c).

The initial designation of the Public Defender or appointment of counsel to represent an accused shall be subject to review by the court if it subsequently appears that the accused is in fact financially able to employ counsel, has obtained counsel of his own, or for other good cause shown.

4. Informing the Defendant of the Nature of the Complaint

When the accused person is first brought before the magistrate or municipal judge after his arrest, he should be informed of the nature of the complaint against him. This explanation should be given in simple terms so that the defendant will be sure to understand the charges against him. For example, in many instances the defendant may not understand the following charge:

The complaint alleges that you made an unlawful offer of corporal injury to John Doe, under circumstances as created well-founded fear of imminent peril, coupled with apparent present ability to execute corporal injury. The complaint further alleges that you did do wrongful physical violence against John Doe without his consent.

A more simple explanation is advisable. For example:

You are charged with assault and battery. The complaint says that you went up to John Doe and threatened to strike him. After that the complaint says you struck John Doe with your fists without his consent. Do you understand the crime with which you are charged?

The magistrate or municipal judge should also inform the defendant of the possible penalty which faces him should he be convicted of the crime with which has been charged.

For example, if the defendant has been charged with a simple assault and battery, the magistrate or municipal judge should inform the defendant as follows:

Do you understand that if you plead guilty or are found guilty, I may either 1) order you to pay a fine of up to \$500 or 2) order you imprisoned for up to 30 days? Do you also understand that I may not give you the choice of a fine or imprisonment, but may simply order your imprisonment for up to 30 days?

These explanations should be continued until the magistrate or municipal judge is convinced that the defendant understands both the charge(s) and the possible penalty(s).

Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto. (See Defense of Indigents, supra.)

The U.S. Supreme Court in Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), Alabama v. Shelton, 535 U.S. 654, 122 S.Ct. 1764 (2002), and Rothgery v. Gillespie County, 554 U.S. 191, 128 S.Ct. 2578 (2008) held that, absent a knowing and intelligent waiver, no person may be imprisoned for any offense, regardless of whether it is classified as petty, misdemeanor, or felony, unless he was represented by counsel at trial.

The right to counsel has been held to extend to every "critical stage" in the criminal process, including for example, the preliminary examination. Coleman v. Alabama, 399 U.S. 1, 90 S. Ct. 1999, 26 L.Ed.2d 387 (1970); State v. Taylor, 255 S.C. 268, 178 S.E.2d 244 (1970).

The magistrate or municipal judge, as a judicial officer, must insure that a defendant has proper counsel at a criminal proceeding. In order to carry out this responsibility, the magistrate or municipal judge must inform the accused person of his two possible alternatives for representation:

1) The defendant may be represented by an attorney. If the defendant cannot afford an attorney but wishes to retain one, counsel may be appointed for him. [See Defense of Indigents Rule 602 South Carolina Appellate Court Rules (SCACR), § 17-3-10 et. seq.].

2) The defendant may represent himself. § 40-5-80. Defendants have the right to refuse court-appointed counsel and the right to represent themselves. However, an unrepresented defendant should be advised of the dangers of self-representation. Faretta v. California, 422 U.S. 806 (1975). If a defendant is convicted, receives jail time, and was unrepresented, the summary court level conviction will not qualify to enhance a subsequent offense unless there is proof that Faretta warnings, or the dangers of self-representation, were given to a defendant prior to plea or conviction. Therefore, these warnings must be given in order for summary court convictions to be used in the future for enhancement purposes. See State v. Spratt, 383 S.C. 212, 678 S.E.2d 266 (Ct. App. 2009).

In order to assist a judge in providing these warnings to an unrepresented defendant, Form SCCA 684, Faretta Warnings, is available in the Form section of this bench book for that use. This document clarifies to defendants the advantages of attorney representation, and if they choose to represent themselves, the potential ramifications. After advising the defendant of the danger of self-representation, you should inquire on the record if the defendant wishes to be screened for court-appointed counsel (and advise him if he does not qualify, he is responsible for retaining counsel), wishes to retain an attorney, or wishes to represent himself. This form may be used during bond setting or at the defendant's first court appearance. Since counties and municipalities differ as to indigency screening procedure, it would be up to each jurisdiction to determine the appropriate time to administer these rights to the defendant. We recommend that the form be signed by both the defendant and the Judge, and go in the defendant's case file.

In all cases, the defendant has the right to introduce evidence, examine and cross-examine witnesses, make closing arguments, and otherwise present a defense to the charges.

If the counsel has been retained by the defendant, but the attorney is not present when the time for trial arrives, the magistrate or municipal court judge should use his own judgment in each case as to how to handle the situation. The magistrate or municipal court judge should be responsible to the defendant in the matter; the defendant should not be rebuked or made to suffer because of the tardiness or ineptness of his attorney.

If the defendant does not have counsel, the defendant himself must be given ample opportunity to be fully heard. This is, of course, one of the fundamental safeguards in a criminal trial and is deeply rooted in Anglo-American tradition as well as in Article I, Section 14, of the S.C. Constitution. He should be permitted to confront and examine witnesses (including law enforcement officers), to introduce evidence on his own behalf, and to make whatever other reasonable presentations that he considers necessary to his defense.

Where it appears in the process of the trial that the defendant is unable to handle his defense in an expeditious manner, it is only fair and proper that the magistrate or municipal judge guide him by at least telling him what he might do on his behalf. For example, after a law enforcement officer has completed testimony on behalf of the State, the magistrate or municipal judge might suggest to an unrepresented defendant that he may cross-examine the officer on matters concerning the alleged offense to which the officer has testified. And, after the State has rested its case, the magistrate or municipal judge might inform the defendant that he has the right to call his own witnesses (and to have compulsory process for obtaining material witnesses under S.C. Constitution, Art. I, Section 14) and to introduce whatever evidence he desires. At the conclusion of all the evidence, the magistrate or municipal judge might explain to the defendant that he may make whatever closing arguments he desires on his behalf. While the defendant is making such an argument, the magistrate or municipal judge should be reasonably patient while the defendant attempts to explain himself, and should

against himself". This right is also insured by Article 1, Section 12 in the S.C. Constitution. A judge's responsibility is to protect this right for the defendant. He may do this in two ways:

1) Question the accused to make sure that he understands his right not to say anything that might incriminate him.

(a) "Do you understand that under the Constitution of the United States and the Constitution and statutes of South Carolina, you do not have to say anything to me that might tend to incriminate you regarding this charge?"

(b) "Do you understand that the phrase 'might tend to incriminate you' means that anything you say or write may be used in a trial to prove you are guilty?"

(c) "Do you understand that you do not have to say anything to any law enforcement officer that might tend to incriminate you?"

(d) "Do you understand that you do not have to say anything to any judge in court that might tend to incriminate you?"

(e) "Do you understand that you do not have to sign or write anything concerning this alleged crime that might tend to incriminate you?"

(f) "Do you understand that if you do say, write or sign anything, a law enforcement officer or prosecuting attorney may introduce that statement or writing into evidence at trial in order to convict you?"

2) Review the evidence presented by the state at each stage of the trial and determine if the evidence may be properly submitted without violating the self-incrimination law. South Carolina courts have held that compelling a defendant to stand for purposes of identification, State v. O'Neal, 210 S.C. 305, 42 S.E.2d 523 (1974), and requiring the defendant to show his physical characteristics, State v. Hart, 304 S.C. 99, 403 S.E.2d 144 (1991), do not violate the self-incrimination clause. On the other hand, Miranda requirements which state that identification of rights must be given to accused persons at the time of their arrest or interrogation, put restrictions upon the admissibility of confessions by the defendant. To accept a confession, the judge must carefully determine that the accused both knowingly and voluntarily confessed his guilt to the alleged crime.

Under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed.2d 694 (1966), the accused must be aware of his basic rights before he may knowingly waive such rights and offer a confession. Miranda requires that the accused be informed:

1) in clear and unequivocal terms that he has the right to remain silent;

2) that anything said can and will be used against him in court;

3) that he has the right to consult with a lawyer and to have the lawyer with him during any interrogation;

4) that if he is indigent, a lawyer will be appointed to represent him;

5) that if he "indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease";

6) that if he "states that he wants an attorney, the interrogation must cease until an attorney is present."

If a statement (either confession or merely admission) is obtained in violation of these rules, Miranda prohibits admitting such a statement into evidence. Finally, Miranda prohibits the prosecution from using at trial, the fact that the accused remained silent or exercised any of his rights in the face of accusation.

With regards to self-incrimination, it should be noted that at trial, the prosecution commenting on or making any reference to the fact that the accused failed to testify at trial is constitutionally impermissible. State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10 (1987).

A second right of the accused, guaranteed by the Sixth Amendment of the U.S. Constitution and Art. 1, Section 14 of the S.C. Constitution and S.C. Code Ann. §17-23-60 is the right "to be confronted with the witnesses against him." The constitutional right to confront and cross examine witnesses is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. State v. Martin, 292 S.C.437, 357 S.E.2d 21 (1987).

An accused has the right to be present at every stage of his trial. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L. Ed. 2d

Magistrates and municipal judges are cautioned to give the defendant every opportunity to return to the courtroom so as to preserve his right to confront his accusers in an orderly manner.

7. Right to Due Process

The Fourteenth Amendment to the U.S. Constitution provides, in part, that no state may "deprive any person of life, liberty, or property, without due process of law." This provision has been interpreted as requiring the states to assure that the defendant is receiving "that fundamental fairness essential to the very concept of justice." Lisenba v. California, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941). This fundamental concept of fairness should be dominant in every proceeding before the magistrate or municipal judge.

8. Right to a Speedy and Public Trial

Article I, Section 14 of the S.C. Constitution, and the Sixth Amendment to the U.S. Constitution provide that the accused in a criminal trial shall have the right to a speedy and public trial. The right to a speedy trial is a right which can be waived. Waiver of such right is generally inferred where (1) the accused failed to make timely demand that he be either tried or discharged, (2) the court grants a continuance on motion of the accused or with his consent, or (3) the accused voluntarily entered a plea of guilty without raising the question of denial of a speedy trial. Wheeler v. State, 247 S.C. 393, 401, 147 S.E.2d 627, 630 (1966).

The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay. State v. Chapman, 289 S.C. 42, 344 S.E.2d 611 (1986). The determination of whether or not an accused has been denied his constitutional right to a speedy trial depends on the circumstances of each case. State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64,70 (1997). For the defendant to establish the fact that he has been denied a speedy trial, he must demonstrate the delay was attributable to the neglect and willfulness of the State. State v. Dukes, 256 S.C. 218, 222, 182 S.E.2d 286, 288 (1971). Certain factors which must be considered in determining whether the defendant has been denied a speedy trial are: (1) the length of the delay, (2) the government's reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) prejudice to the defendant. This four part balancing test was adopted by the United States Supreme Court in Barker v. Wingo, 407 U.S.514 (1972). "South Carolina has also adopted this approach to the speedy trial analysis." See Brazell, supra, State v. Smith, 307 S.C. 376, 415 S.E.2d 409 (Ct. App. 1992); State v. Robinson, 335 S.C. 620, 518 S.E.2d 269 (Ct. App. 1999).

In Richmond Newspapers, Inc., v. Commonwealth of Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980), the U.S. Supreme Court determined that, based upon the First Amendment rights of press and speech, the public has a right to attend trials. The court held that while the Constitution provides a defendant with the right to a public trial, there is no absolute right to a private trial. Nevertheless, the defendant may move for closure of the trial. At a hearing on the issue, the defendant must show: (1) that he will be denied a fair trial if the public or press is allowed access to the proceeding and (2) no other method of protecting the defendant's right to a fair trial is available. Persons with a legitimate interest in the proceedings (e.g. representatives of the news media) should be allowed to present reasons why the pretrial proceeding should remain open to the public, and why the defendant's right to a fair trial will not be jeopardized by an open hearing. After hearing the arguments both for and against closure of the proceedings, the judge must determine whether closure of the proceeding is the least drastic means of preserving the defendant's right to a fair trial and must make his findings a part of the record. (See Steinle, et al. v. Lollis, supra. Even in those instances where the prosecutor consents to the closing of the pretrial proceeding, the judge must make an inquiry and determine that no other alternative action will protect the defendant's right.

Possible alternatives to closure which might prove equally effective in protecting the defendant's rights under the particular circumstances might be (1) questioning prospective jurors on their voir dire in order to eliminate those who have prejudged the case, (2) sequestering the jury during the entire trial, (3) sequestering the witnesses, (4) permitting a change of venue, or (5) if appropriate, declaring a mistrial. These are only some of the possible methods of protecting the defendant's rights, without closing the trial to the public.

A combination of these or other appropriate alternatives should assure that the defendant receives a fair trial without the necessity of excluding the public from the trial. In all cases, it should be kept in mind that public access to judicial proceedings is an important aspect of our system of justice. (See also "Closure of the Preliminary Examination").



11/25/2008

LAMB, RICHARD B
9541 MAISON CT
MYRTLE BEACH, SC 29572-5177

FR4 Reference No:006153511
Date of Cancellation:10/31/2008
Date of Suspension:12/17/2008
Customer No. 30262319
Driver License No: 101451988

South Carolina Department Of Motor Vehicles
FR4 Notice Of Cancellation

PLEASE DO NOT IGNORE THIS NOTICE

Failure to respond to this notice BEFORE the suspension date listed above will result in the SUSPENSION OF YOUR REGISTRATION AND DRIVER LICENSE privileges in this state.

The South Carolina Department of Motor Vehicles (SCDMV) has received notification from PROGRESSIVE DIRECT INSURANCE C that the following vehicle may be uninsured:

YR/MAKE: 2003 DODG PK VIN NO: 1D7HA16D63J599166 TAG NO: 2897DB

If you currently have liability insurance or must obtain liability insurance on the vehicle listed above, YOU MUST TAKE THIS LETTER TO YOUR INSURANCE COMPANY EVEN IF YOU BELIEVE YOU HAVE RECEIVED THIS NOTICE IN ERROR. Your insurer or agent must electronically transmit the insurance information to DMV using the SC ALIR system (available at www.sc-alir.com.)
OR

Commercial carriers and out-of-state agents that do not have access to the SC ALIR system can complete the insurance information located on the reverse side of this notice and submit to the DMV. It will be your responsibility to ensure that DMV receives the insurance information in order to clear the suspension.

If you have sold or traded the vehicle above you must complete the vehicle Sold/Traded section of the FR4a form located on the back of this notice.

If you do not wish to obtain liability insurance, South Carolina law requires that you surrender your vehicle tag and registration card to your nearest DMV branch office. If you do not surrender your vehicle tag, it will be confiscated by law enforcement and additional penalties and fines may also apply.

If there has been a lapse in your insurance coverage, you will be charged a penalty of \$5.00 per day for each uninsured day from 10/31/2008, up to a maximum of \$200.00.

Failure to comply with this notice before the suspension date listed above will result in the suspension of your vehicle registration and/or drivers license. If suspended, you could be charged an additional \$200.00 to reinstate your registration and/or driving privilege.

File No: 9112121
SC Law Code:56-10-240, 56-10-245

FORM FR4
Revised 10/06

January

PP#	S	M	T	W	T	F	S
			1	2	3	4	5
2	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
3	20	21	22	23	24	25	26
	27	28	29	30	31		

February

PP#	S	M	T	W	T	F	S
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4	3	4	5	6	7	8	9
	10	11	12	13	14	15	16
5	17	18	19	20	21	22	23
	24	25	26	27	28	29	

March

PP#	S	M	T	W	T	F	S
							1
6	2	3	4	5	6	7	8
	9	10	11	12	13	14	15
7	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
8	30	31					

April

PP#	S	M	T	W	T	F	S
8			1	2	3	4	5
	6	7	8	9	10	11	12
9	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
10	27	28	29	30			

May

PP#	S	M	T	W	T	F	S
10					1	2	3
	4	5	6	7	8	9	10
11	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
12	25	26	27	28	29	30	31

June

PP#	S	M	T	W	T	F	S
	1	2	3	4	5	6	7
13	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
14	22	23	24	25	26	27	28
	29	30					

July

PP#	S	M	T	W	T	F	S
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15	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
16	20	21	22	23	24	25	26
	27	28	29	30	31		

August

PP#	S	M	T	W	T	F	S
					1	2	
17	3	4	5	6	7	8	9
	10	11	12	13	14	15	16
18	17	18	19	20	21	22	23
	24	25	26	27	28	29	30
19	31						

September

PP#	S	M	T	W	T	F	S
19		1	2	3	4	5	6
	7	8	9	10	11	12	13
20	14	15	16	17	18	19	20
	21	22	23	24	25	26	27
21	28	29	30				

October

PP#	S	M	T	W	T	F	S
21			1	2	3	4	
	5	6	7	8	9	10	11
22	12	13	14	15	16	17	18
	19	20	21	22	23	24	25
23	26	27	28	29	30	31	

November

PP#	S	M	T	W	T	F	S
23						1	
	2	3	4	5	6	7	8
24	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
25	23	24	25	26	27	28	29
	30						

December

PP#	S	M	T	W	T	F	S
		1	2	3	4	5	6
26	7	8	9	10	11	12	13
	14	15	16	17	18	19	20
1	21	22	23	24	25	26	27
	28	29	30	31			

HOLIDAYS
 CHECK PAY DATES
 QTR
 PAY PERIOD END DATES
 EFT PAY DATES
 ETAMS T&A CUTOFF

South Carolina Automobile Liability Insurance Reporting (SC ALIR) System

Supplemental Information Guide for Insurance Agents and Agencies

Version 5
May 23, 2007

TABLE OF CONTENTS

1. INTRODUCTION	2
2. AGENT/AGENCY REGISTRATION.....	3
3. LOGIN FOR REGISTERED AND APPROVED USERS.....	7
4. COMPLIANCE REPORTING	8
4.1 FR4A AND FR31 COMPLIANCE TRANSACTION	8
4.2 FR10 ACCIDENT COMPLIANCE TRANSACTION	14
4.3 FR5 COMPLIANCE TRANSACTION.....	18
4.4 SR22 TRANSACTION.....	23
5. SR22 ACCESS – INSURANCE COMPANY LIST	27
6. WEB ACCOUNT MAINTENANCE	28
6.1 MODIFY AGENT/AGENCY INFORMATION.....	28
6.2 MODIFY CONTACT INFORMATION	28
6.3 ADD/REMOVE ASSOCIATED INSURANCE COMPANIES.....	29
6.4 MODIFY PASSWORD	29
6.5 FORGOT PASSWORD	29
7. HELP	30
8. REPORTS	30
9. REPORTING FREQUENCY	33

Appendix A: FR4 Cancellation and Compliance Process

Appendix B: FR31 Compliance Process

Appendix C: FR10 Accident Compliance Process

1. Introduction

The South Carolina (SC) Department of Motor Vehicles (DMV) implemented the South Carolina Automobile Liability Insurance Reporting (ALIR) System on March 15, 2004. This system is used to collect automobile liability insurance information from insurers that are licensed to provide automobile liability insurance in the state. This reporting functionality was limited to insurance companies only and not insurance agents. At the direction of the Working Group and the DMV, the system was modified to support Agent and Agency reporting through the ALIR website. Agent/Agency reporting was limited to the transmission of insurance information sent in response FR4, FR31, FR10, and FR5 forms (described below). As of May 21, 2007 insurance companies have the ability to grant SR22 access to insurance agent and agency ALIR web accounts.

FR4a

Currently, insurance companies are utilizing the ALIR system to report regular insurance cancellations to DMV. This transaction is known as an FR4 Cancellation. Once the FR4 Cancellation is processed by the DMV system, a pending FR4 Suspension is applied to the registration of the vehicle and an FR4 Suspension letter is sent to the registered owner. The FR4 Suspension letter informs the customer that they must verify their insurance with the DMV within 20 business days or their vehicle registration and/or driver license will become suspended. The customer is required to notify the insurance company/agent about the letter and to have their insurance information reported to DMV. Agents have the ability to transmit the customer's insurance information to DMV using the ALIR website in order to clear the customer's suspension. Using an agent or agency web account, agents will have the ability to submit FR4a Compliance transactions directly to DMV in real-time. A detailed flowchart of this reporting process is provided in Appendix A.

FR31

Under the direction of the ALIR Working Group, a Monthly VIN Verification program has been implemented in order to verify a customer's insurance following registration transactions. Each month insurers submit a list of their insured VINs which is compared with the VINs of registration transactions. If the VIN of the registration transaction matches one of those provided by insurers, the customer will be considered compliant per SC uninsured motorists law and no action will be taken. If the VIN of the registration transaction does not match one of those provided by insurers, an FR31 suspension will be generated and notification will be sent to the owner/lessee of the vehicle. The FR31 Suspension letter informs the customer that they must verify their insurance with the DMV within 20 business days or their vehicle registration and/or driver license will become suspended. The customer is required to notify the insurance company/agent about the letter and to have their insurance information reported to DMV. Using an agent or agency web account, agents will have the ability to submit FR31 Compliance transactions directly to DMV in real-time. A detailed flowchart of this reporting process is provided in Appendix B.

FR10

Once an accident occurs an FR10 Form is provided to each party involved in the accident. The bottom portion of this green form is currently completed by the customer's insurance agent and mailed to DMV. If the customer's insurance is not verified with DMV within 15 days after the accident, the customer's driver license and vehicle registration will be subject to suspension (FR5 Suspension). The electronic FR10 Accident Compliance transaction available through the ALIR system allows agents to electronically transmit the customer's insurance information directly to DMV in order to satisfy the accident compliance requirements. Using an agent or agency web account, agents and their personnel will have the ability to submit FR10 Accident Compliance transactions directly to DMV. A detailed flowchart of this reporting process is provided in Appendix C.

8. As of January 14, 2009, the Plaintiff was eligible to apply to have his driver's license reinstated upon submitting an application and paying a fee.
9. Since January 14, 2009, the SCDMV has no record of the Plaintiff submitting an application and fee to reinstate his driver's license.
10. The SCDMV has no record of the re-issuance of vehicle license plate tags for the 2003 Dodge in the Plaintiff's name.

FURTHER THE AFFIANT SAYETH NOT.

William C Wannamaker
William C. Wannamaker

SWORN TO and subscribed before me
this 30th day of March 2017.

Brandy A. Duncan
Notary Public for South Carolina
My commission expires May 9, 2023



A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. (1970 (56) 2684; 1971 (57) 315.)

Editor's Note

The present provisions of this section are identical to former Section 26 of Article I as it existed prior to the 1971 revision. For similar provisions in Constitution of 1868, see Const 1868, Art I, Section Section 28, 29.

SECTION 21. Martial law.

No person shall in any case be subject to martial law or to any pains or penalties by virtue of that law, except those employed in the armed forces of the United States, and except the militia in actual service, but by the authority of the General Assembly. (1970 (56) 2684; 1971 (57) 315.)

Editor's Note

The present provisions of this section are similar to former Section 27 of Article I as it existed prior to the 1971 revision. For similar provisions in Constitution of 1868, see Const 1868, Art I, Section 25.

SECTION 22. Procedure before administrative agencies; judicial review.

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

SECTION 23. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

Editor's Note

The present provisions of this section are identical to former Section 29 of Article I as it existed prior to the 1971 revision.

SECTION 24. Victims' Bill of Rights.

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute;

(2) be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped;

(3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present;

(4) be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail;

(5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing;

findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

HISTORY: 1977 Act No. 176, Art. II, Section 5.

SECTION 1-23-360. Communication by members or employees of agency assigned to decide contested case.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member:

- (1) May communicate with other members of the agency; and
- (2) May have the aid and advice of one or more personal assistants.

Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than two hundred fifty dollars or imprisoned for not more than six months.

HISTORY: 1977 Act No. 176, Art. II, Section 6.

SECTION 1-23-370. Procedures regarding issuance, denial or renewal of licenses.

(a) When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this article and Article 1 concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

HISTORY: 1977 Act No. 176, Art. II, Section 7.

SECTION 1-23-380. Judicial review upon exhaustion of administrative remedies.

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

(1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of

(2) assigning a newly-licensed driver to the proper automobile insurance policy for rating purposes; and

(3) ordering a motor vehicle report on a newly-licensed driver.

HISTORY: 2002 Act No. 324, Section 1; 2004 Act No. 241, Section 5.

Code Commissioner's Note

Pursuant to the direction to the Code Commissioner in 2003 Act No. 51, Section 18, "Department of Motor Vehicles" was substituted for "Motor Vehicle Division" and "department" for "division" in subsections (A) and (B).

SECTION 56-10-650. Suspension of owner's driving privileges and license plates of uninsured motor vehicle; notification of owner; proof of insurance.

(A) If the database indicates that a motor vehicle is not insured or if the Department of Motor Vehicles receives notification as prescribed by regulation that a vehicle may not be insured, the department shall notify the owner of the motor vehicle that he has twenty working days to provide the department with one of the following, or the owner's driving privileges and the vehicle license plates will be suspended:

(1) proof of complying coverage in accordance with Sections 56-10-10 or 56-10-220, or of self-insurance in accordance with Section 56-9-60; or

(2) proof of exemption from the financial security requirements.

(B) Verification in a manner prescribed by regulation from an insurer or agent verifying that the person had the required motor vehicle insurance coverage on the date specified is considered proof of financial responsibility for purposes of this section.

HISTORY: 2002 Act No. 324, Section 1; 2004 Act No. 241, Section 6.

Code Commissioner's Note

2002 Act No. 324, Section 12, provides as follows:

"This act takes effect July 1, 2002; provided, however, that Section 56-10-650 and Sections 5, 6, and 9 are effective one hundred eighty days after the latter of certification by the department to the President Pro Tempore of the Senate and the Speaker of the House of Representatives that the program has been implemented and is fully prepared to accept data transmitted by the insurers or publication of final regulations by the department."

Pursuant to the directive to the Code Commissioner in 2003 Act No. 51, Section 18, "Department of Motor Vehicles" was substituted for "department" and "department" for "division" in subsection (A).

SECTION 56-10-660. Database information disclosure; fee.

(A) The division, for a fee as prescribed and promulgated by regulation, shall disclose an individual's reported database information upon request by the following individuals and agencies only:

(1) the individual;

(2) the parent or legal guardian of an individual who is an unemancipated minor;

(3) the legal guardian of an individual who is legally incapacitated;

(4) a person who has power of attorney from the individual;

(5) a person who submits a notarized release from the individual that is dated no more than ninety days before the date the request is made;

38