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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 2018-000023

John Michael Thomas.....Respondent,

v.

South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department.....Petitioner,

Of Whom the South Carolina Department of Motor Vehicles is the Petitioner.

APPENDIX

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The South Carolina Court of Appeals

John Michael Thomas, Respondent,

v.

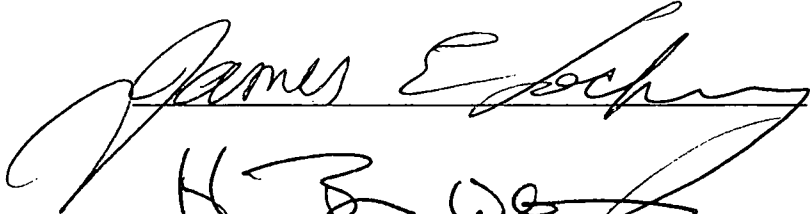
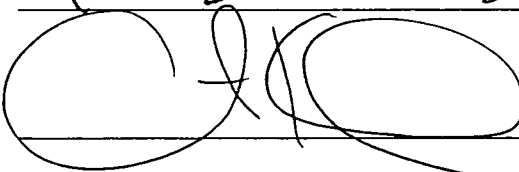
South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department, Defendants,

Of which South Carolina Department of Motor Vehicles
is the Appellant.

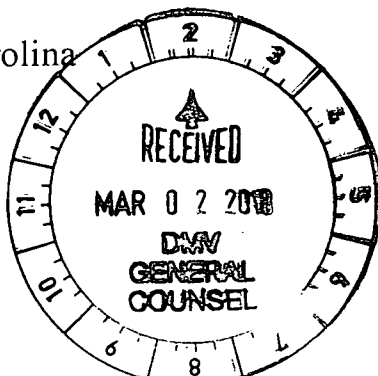
Appellate Case No. 2018-000023

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 or reinstating this appeal. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina



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Feb. 28, 2018

0001

cc:

Brandy Anne Duncan, Esquire

Frank L. Valenta, Jr., Esquire

Philip S. Porter, Esquire

Tim Amey, Esquire

The South Carolina Court of Appeals

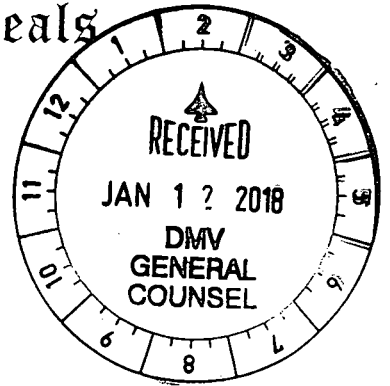
John Michael Thomas, Respondent,

v.

South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department, Defendants,

of which South Carolina Department of Motor Vehicles
is the Appellant.

Appellate Case No. 2018-000023



ORDER

This appeal arises out of an order of the Administrative Law Court reversing the decision of the South Carolina Office of Motor Vehicle Hearings and remanding for a hearing on the merits. The appeal is dismissed as interlocutory. *See Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 894 (2010) ("If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory."). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

Columbia, South Carolina


FOR THE COURT

cc:

Brandy Anne Duncan, Esquire
Frank L. Valenta, Jr., Esquire
Philip S. Porter, Esquire
Tim Amey, Esquire

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January 10, 2018

COPY

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

John Michael Thomas,

Appellant,

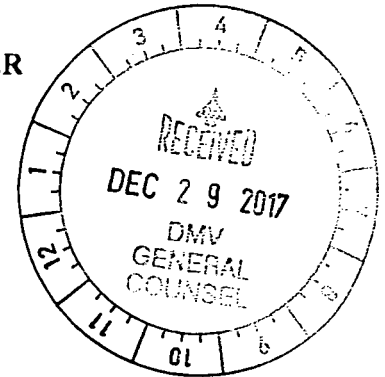
vs.

South Carolina Department of Motor
Vehicles and Mount Pleasant Police
Department,

Respondents.

Docket No. 17-ALJ-21-0223-AP

ORDER



STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed on behalf of John Michael Thomas (Appellant). Appellant seeks review of an order issued by the South Carolina Office of Motor Vehicle Hearings (OMVH) on May 3, 2017, dismissing his case for failing to appear. On June 6, 2017, the OMVH Hearing Officer denied Appellant's Motion for Reconsideration and Stay of Suspension. This appeal followed. The ALC has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 1-23-660. (Supp. 2017). After careful review of the matter, the OMVH's decision is reversed and remanded for a hearing on the merits.

BACKGROUND

On October 28, 2016, Appellant received a Notice of Suspension (Notice) of his license for registering an alcohol concentration of .15 or greater. Appellant refused to sign the Notice and through his attorney, timely requested a contested case hearing on November 28, 2016. On November 29, 2016, the OMVH issued a Notice of Hearing for a hearing to take place on February 13, 2017. The Mount Pleasant Police Department (MPPD) requested a continuance of the hearing because its DataMaster operator had to attend classes at the South Carolina Criminal Justice Academy on February 13-14, 2017. Appellant did not object to the request. On January 6, 2017, a second Notice of Hearing was issued for a hearing to take place on March 6, 2017. On February 22, 2017, the MPPD requested a second continuance due to the arresting officer being out of the state on March 6, 2017. Appellant did not object to the continuance and a third Notice

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of Hearing was issued on February 22, 2017 for a hearing to take place on April 25, 2017.

Subsequently, on April 24, 2017 at 4:07pm, Appellant requested a continuance because he had an unrelated scheduled appearance at a hearing in the Court of Common Pleas on April 25, 2017. The Hearing Officer denied Appellant's request for continuance on April 24, 2017 at 4:18pm, pursuant to OMVH Rule 10(B) requiring motions for continuances be made a least two business days prior to the scheduled hearing date. The Hearing Officer also stated that because Appellant was aware of the conflict hearing since April 3, 2017 and failed to explain his delay in requesting the continuance, the request for continuance was being denied at the time.

The OMVH hearing proceeded on April 25, 2017. The MPPD's arresting officer and DataMaster operator were present. Neither Appellant nor his attorney appeared. On May 3, 2017, the Hearing Officer issued an Order of Dismissal sustaining the license suspension pursuant to OMVH Rule 13, for Appellant's failure to appear at the hearing without proper consent of the hearing officer. On May 15, 2017, Appellant filed a Notice of Motion and Motion to Reconsider and For a Stay of the Final Order. In his motion, Appellant contended that he was unfamiliar with Rule 10(B), OMVH, and a scheduling oversight caused him to file the motion for continuance less than 48 hours prior to the hearing. The Department filed a response in opposition to Appellant's motion on May 19, 2017.

On June 6, 2017, the Hearing Officer issued an Order denying Respondent's Motion for Reconsideration and Stay of Suspension. In the order, the Hearing Officer explained she denied Appellant's Motion for Reconsideration because Rule 10(B), OMVH, requires continuance request be filed at least 48 hours before the scheduled hearing or as soon as the party is aware of the conflict. The Hearing Officer also noted that Rule 601(c), SCACR, requires an attorney requesting a continuance based upon tribunal priority, to file the request as soon as the party becomes aware of the conflict. On, July 6, 2017, Appellant filed an appeal with this Court.

ISSUE ON APPEAL

Whether the OMVH Hearing Officer's decision to deny Appellant's request for a continuance is characterized by an abuse of discretion or clearly unwarranted exercise of discretion.¹

¹ Appellant states two additional issues on appeal: Whether the OMVH Hearing Officer erred in: (1) denying the motion for reconsideration (2) and relying on a rigid application of the procedural rule regarding continuances. Because this case is being reversed and remanded for a hearing on the merits, the Court finds it is not necessary to address Appellant's remaining two issues. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) ("[An] appellate court need not address remaining issues when [resolution] of prior issue is dispositive.").

STANDARD OF REVIEW

This Court has jurisdiction to hear this appeal in its appellate capacity under the Administrative Procedures Act (APA). S.C. Code Ann. § 1-23-600(D) (Supp. 2017). Under the appellate standard of the APA, the court's review is confined to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2017). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. Id. at § 1-23-380(5) (Supp. 2017). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

Substantial evidence is “not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached” Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted).

DISCUSSION

Appellant argues the Hearing Officer's denial of Appellant's motion requesting a continuance amounts to an abuse of discretion. This Court agrees.

State agencies are creatures of statute and may not act outside the authority granted to them by the legislature. See Bazzle v. Huff, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995) (citing Triska v. Dep't of Health & Envtl. Control, 292 S.C. 190, 355 S.E.2d 531 (1987)) (“An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose.”). While this State has long held that “motions for a continuance are addressed to the sound discretion of the trial judge,” the ruling on the motion can be reversed if it clearly appears there was an abuse of discretion to the prejudice of appellant. Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) (citation omitted).

In this instance, Appellant's Attorney filed a motion requesting a continuance less than 24 hours prior to the scheduled hearing because he was simultaneously scheduled to appear before a higher Court. While Appellant's attorney should have been aware of the conflicting

appearances as of April 3, 2017, Appellant also pointed out that absent a reversal, he would be prejudiced by the denial of his constitutional right of due process. While the Department disagrees, Appellant has shown good cause as to why the motion for continuance should have been granted, and the Hearing Officer abused her discretion in failing to grant it. Even though Appellant notified the Court later than desired due to the scheduling oversight, he notified the Hearing Officer as soon as the oversight became apparent. He could not have notified it earlier if he was not "aware" of the conflict. Appellant is not able to appear in two courts at once, and in accordance with Rule 601, SCACR, he attended the hearing at the tribunal with greater priority.

While the Court understands the inconvenience to OMVH and MPPD to continue this matter,² Appellant will be severely prejudiced if it is not. Given the Hearing Officer's denial of the motion, Appellant is left without recourse before being bound by a state agency action and it is within the parameters of this Court's responsibility to ensure all litigants are provided with due process. The purpose of administrative proceedings is derived from the constitutional requirement that citizens of South Carolina receive due process before being bound by state agency action. See Engaging & Guarding Laurens County's Env't (EAGLE) v. S.C. Dep't of Health & Envtl. Control, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (citations omitted).

Based upon the foregoing and under these particular facts, this Court finds the Hearing Officer's denial of Appellant's request for continuance, amounts to an abuse of discretion. Additionally, this decision is in accordance with Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (noting South Carolina courts favor deciding cases on the merits rather than on technicalities).

ORDER

THEREFORE, IT IS HEREBY ORDERED that the decision of the OMVH Hearing Officer is **REVERSED** and **REMANDED** for a hearing on the merits.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

December 15, 2017
Columbia, South Carolina

² The Court notes that this matter had been continued twice before at the request of the MPPD.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States mail postage paid, or in the Interagency Mail Section addressed to the party(ies) or the attorney(s).

This 15 day of December 2017
By: [Signature]
Judge-Law Clerk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 17-ALJ-21-0223-AP

John Michael Thomas Respondent,

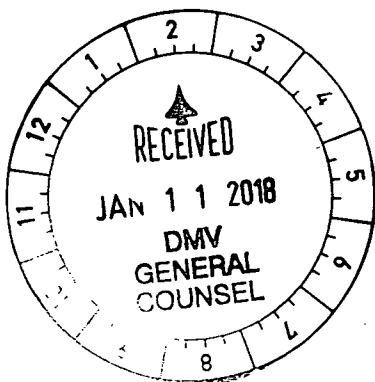
v.

South Carolina Department of Motor Vehicles
And Mount Pleasant Police Department Appellant.

Of Whom South Carolina Department of Motor Vehicles is Appellant

NOTICE OF APPEAL

The South Carolina Department of Motor Vehicles hereby appeals from the Order of the Honorable Shirley C. Robinson issued December 15, 2017 (copy attached). Appellant received written notice of entry of this Order on December 29, 2017.



January 3, 2018
Blythewood, South Carolina


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JAN 05 2018
SC Court of Appeals

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

John Michael Thomas,

Docket No. 17-ALJ-21-0223-AP

Appellant,

vs.

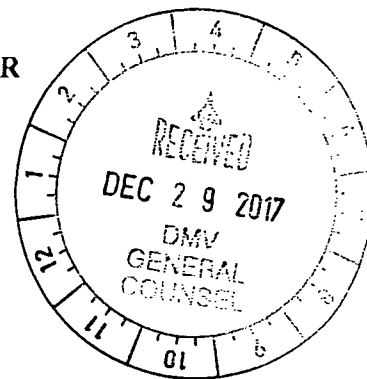
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SC Court of Appeals



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ORDER

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AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

December 15, 2017
Columbia, South Carolina

² The Court notes that this matter had been continued twice before at the request of the MPPD.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 15 day of December 2017
By: [Signature]
JUDICIAL LAW CLERK

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 17-ALJ-21-0223-AP

John Michael Thomas Respondent,

v.

South Carolina Department of Motor Vehicles
And Mount Pleasant Police Department Appellant.

Of Whom South Carolina Department of Motor Vehicles is Appellant

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Appellant's Notice of Appeal by depositing a copy of same in the United States Mail, postage prepaid, on this 3rd day of January, 2018, addressed to the Respondent and the South Carolina Administrative Law Court as follows:

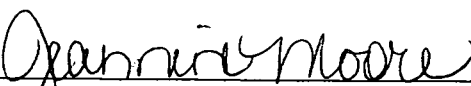
Tim Amey, Esquire
1495 Remount Road
North Charleston, South Carolina 29406

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

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JAN 05 2018

SC Court of Appeals


Jeanline (Nina) Moore, Paralegal
Office of General Counsel

January 3, 2018
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 2018-000023

John Michael Thomas Respondent,
v.

South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department Defendants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant.

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- 1) THE DECEMBER 15, 2017 ORDER ISSUED BY THE ADMINISTRATIVE LAW COURT IS IMMEDIATELY APPEALABLE TO THIS COURT.
- 2) THE OFFICE OF MOTOR VEHICLE HEARINGS HEARING OFFICER DID NOT ABUSE HER DISCRETION IN DENYING APPELLANT'S REQUEST FOR A CONTINUANCE THAT WAS SUBMITTED LESS THAN TWO BUSINESS HOURS PRIOR TO THE SCHEDULED HEARING.
- 3) ADDITIONAL SUSTAINING GROUNDS.

STATEMENT OF THE CASE

This matter comes before the Court of Appeals pursuant to the appeal of the South Carolina Department of Motor Vehicles (hereinafter, "SCDMV" or "DMV"), who seeks review of the December 15, 2017 Order from the Administrative Law Court (hereinafter, "ALC") which remanded this case for a second hearing on the merits before the Office of Motor Vehicles Hearings (hereinafter, "OMVH"). The Appellant, SCDMV seeks to have the ALC's Order overturned and the OMVH Order of Dismissal issued May 3, 2017 reinstated in full.

Respondent Thomas was arrested on October 28, 2016 for driving under the influence (ALC R. p. 62-63). Upon refusal to submit to a breath sample, Respondent was found to be in violation of S.C. Code §56-5-2950, and Officer Kyle Alexander of the Mount Pleasant Police Department, the DataMaster Operator in this case, issued a Notice of Suspension form pursuant to S.C. Code §56-5-2951. *Id.* Respondent timely requested a contested case hearing on November 25, 2016. *Id.*

On November 29, 2016, the OMVH e-mailed a Notice of Hearing to all parties for a hearing scheduled for February 13, 2017 (ALC R. p. 59-60). On Wednesday, December 28, 2016, Officer Alexander requested a continuance of the hearing scheduled

for February 13, 2017 (and two other hearings) due to conflicting training at the South Carolina Criminal Justice Academy (ALC R. p. 58). The South Carolina Criminal Justice Academy is located at 5400 Broad River Road, Columbia, South Carolina, approximately 1 ½ hours from Mount Pleasant. Respondent did not object to this continuance request. This continuance request was granted on January 6, 2017 and rescheduled the hearing to take place on March 6, 2017 (ALC R. p. 56-57). On February 22, 2017, Officer Brandon Kittle of the Mount Pleasant Police Department, the arresting officer in this case, requested a continuance of the March 6, 2017 hearing because he was scheduled to be out of the state on March 6, 2017 (ALC R. p. 55). Respondent did not object to this continuance request. This continuance request was granted on February 22, 2017 and rescheduled the hearing to take place on April 25, 2017 at 9:30 a.m. (ALC R. p. 53-54).

On April 3, 2017, Respondent's counsel was notified via e-mail that he was scheduled to appear in the Charleston Non-Jury Court of Common Pleas on April 25, 2017 at 10:30 a.m. for the case *Bivens vs. State of South Carolina*, 2017-CP-10-00625 (ALC R. p. 51). Respondent's counsel failed to request a continuance of the conflicting OMVH hearing until April 24, 2017 at 4:07 p.m. (ALC R. p. 50). Respondent's counsel requested a continuance by forwarding the April 3, 2017 e-mail from the conflicting Non-Jury case to the OMVH and parties to this case stating "Good Afternoon, I have to be downtown tomorrow for a hearing in Common Pleas. Please continue tomorrow's hearing and let me know when a new date is set. Thanks!" *Id.* This e-mail was sent to the OMVH and all parties to this case, but did not include any information about which OMVH case Respondent's counsel was requesting a continuance for. *Id.* The OMVH hearing officer responded to the continuance request eleven minutes later and denied the

continuance request due to Respondent's counsel's failure to request this continuance in a timely manner. *Id.* Specifically, the OMVH hearing officer ruled that: 1) Rule 10(B), OMVH Rules requires motions for continuance to be made at least two business days prior to the scheduled hearing date; 2) that based on Respondent's counsel's e-mail it was apparent that he was aware of the conflicting court appearance since April 3, 2017 (three weeks earlier); and 3) Respondent's counsel provided no explanation for why the continuance was not requested earlier. *Id.*

On April 25, 2017, the hearing was held and Respondent and his counsel failed to appear for the hearing (ALC R. p. 5-8). Thereafter, on May 3, 2017, the OMVH hearing officer issued an Order of Dismissal sustaining Respondent's implied consent suspension due to Respondent's failure to appear at the hearing (ALC R. p. 17-19).

On May 15, 2017, Respondent filed a *Motion to Reconsider and for a Stay of the Final Order* (ALC R. p. 46-49). The OMVH denied Respondent's *Motion to Reconsider and for a Stay of the Final Order* on June 6, 2017 (ALC R. p. 20-23). This denial was based on Appellant's failure to request a continuance of the OMVH hearing "as soon as he became aware of the conflict without explanation for the delay in making the request and [due to counsel's failure to] appear for the hearing after he was notified that the continuance was denied." *Id.*

Thereafter, Respondent timely appealed to the Administrative Law Court (hereinafter, "ALC") (R. p. 11-16). After the parties briefed the case, the ALC issued an Order on December 15, 2017 holding that the OMVH hearing officer "abused her discretion in failing to grant [Respondent's continuance request]" and remanded the case for "a hearing on the merits."



On January 3, 2017, Appellant SCDMV timely filed a Notice of Appeal of the December 15, 2017 Order from the ALC.

STANDARD OF REVIEW

The scope of judicial review in cases such as this is limited by the Administrative Procedures Act, S.C. Code §1-23-380(A)(6).

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

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

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

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

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

We, therefore, caution the Bench and Bar as to the limitations upon the application of the "substantial evidence" rules in reviewing the decision of administrative agencies. As stated in *Dickinson-Tidewater, Inc. v.*

Supervisor of Assess., 273 Md. 245, 329 A.2d 18, 25, the substantial evidence test "need not and must not be either judicial fact-finding or substitution of judicial judgment for agency judgment"; and a judgment upon which reasonable men might differ will not be set aside.

The Court further noted that:

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

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

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

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

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

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion.

Dorman v. DHEC, supra; Hamm v. American Telephone & Telegraph Co., supra; Chemical Leaman Tank Lines v. South Carolina Public Service Commission, 258 S.C. 518, 189 S.E.2d 296 (1972). The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. *See Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973).

On review of the acts or orders of administrative agencies, the courts will presume, among other things, that the agency action is regular and correct, and that the orders and decisions of the agency are valid and reasonable. 73A C.J.S. *Public Administrative Law and Procedure* Section 220(a) (1983). Therefore, the burden is on the Petitioner to show convincingly that the order of the agency is without evidentiary support or is arbitrary or capricious as a matter of law. *Hamm v. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1988).

ARGUMENT

- 1) THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS IMMEDIATELY APPEALABLE TO THIS COURT.

S.C. Code §14-8-200. S.C. Code §14-8-200 states:

...[T]he court has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of... a final decision of an administrative law judge... This jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case...

(Emphasis added). In this case, the order issued by the ALC on December 15, 2017 is the final Order from the ALC in this case. This is evidenced by the fact that the ALC explicitly remanded this case to the OMVH for a "hearing on the merits." Therefore,

there is no doubt that the December 15, 2017 ALC Order is a "final decision of an administrative law judge" as it is clear that the ALC was taking no further action in this case and remanded the case back to the OMVH. For this reason alone, this case is immediately appealable to this Court.

Additionally, S.C. Code §14-3-330 sets forth those cases that may be considered by the appellate courts of South Carolina. One of the types of cases that may be considered by the appellate courts of this state are those where "An order affecting a substantial right made in an action when such order...(b) grants or refuses a new trial..." The order appealed in this case is just such an order. The Order issued by the ALC on December 15, 2017 explicitly remands this case back to the OMVH "for a hearing on the merits." This case was already scheduled for a hearing once before, a hearing was held, and neither Respondent nor his Counsel appeared at that hearing (R. p. 5-8). Therefore, the ALC's Order has, essentially, granted Respondent a new "trial" via the new hearing. As held in the recently decided case *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146, to prevent Appellant DMV "from appealing the order immediately would encourage piecemeal litigation and limit [DMV's] appellate remedies." The *Morrow* case was dismissed by the Court of Appeals as interlocutory. This dismissal was then appealed to the South Carolina Supreme Court, which decided the appeal was not interlocutory and decided the underlying issue that was original appealed to the Court of Appeals, specifically, whether several defendants in the lawsuit could be severed under the label "bifurcation." In the *Morrow* case the Supreme Court held the order of "bifurcation" went far beyond the Court's understanding of bifurcation, thereby affecting a substantial right of the petitioners. Thus, the Supreme

Court reversed the order of Dismissal issued by the Court of Appeals and the order of "bifurcation" issued by the trial court. While the discussion in the *Morrow* case focused on S.C. Code §14-3-330, the underlying principle, the order of "bifurcation" was immediately appealable (including being immediately appealable to the Court of Appeals), is still applicable here for all the reasons discussed in the *Morrow* case. Specifically, because the Order issued by the ALC on December 15, 2017 explicitly remands this case back to the OMVH "for a hearing on the merits" and because this case already had a hearing once before, the ALC's Order has, essentially, granted Respondent a new "trial" via the new hearing. As discussed in the *Morrow* case, to prevent Appellant DMV "from appealing the order immediately would encourage piecemeal litigation and limit [DMV's] appellate remedies." See also, *Knight v. Johnson*, 244 S.C. 70, 135 S.E.2d 372 (1964) (An order of the trial court granting or refusing a new trial, when based solely on an error of law, is subject to review by the Supreme Court); and *Daughty v. Northwestern R. Co. of South Carolina*, 92 S.C. 361, 75 S.E. 553 (1912) (This statute does not undertake to make an order granting a new trial appealable, when it is based upon questions of fact; but it can review orders granting new trials when based upon error of law.).¹ For these reasons, the ALC's Order issued on December 15, 2017 is immediately appealable.

¹ Both the *Knight* case and the *Daughty* cases were decided before the South Carolina Court of Appeals was created on September 1, 1983, therefore, they only make reference to the South Carolina Supreme Court. Application of the *Knight* and *Daughty* cases here, however, is still appropriate given the clear statement in the *Morrow* case that S.C. Code §14-3-330 deals with the jurisdiction of the appellate courts. If the *Morrow* decision was only discussing the appellate jurisdiction of the Supreme Court, it would not have referenced appellate courts.

- 2) THE HEARING OFFICER DID NOT ABUSE HER DISCRETION IN DENYING APPELLANT'S REQUEST FOR A CONTINUANCE THAT WAS SUBMITTED LESS THAN TWO BUSINESS HOURS PRIOR TO THE SCHEDULED HEARING.

A. Less Than Two Business Days Notice

Rule 10(B), OMVH Rules states that motions filed less than two business days prior to a scheduled hearing will only be granted for good cause shown. This motion for continuance was sent with less than two business hours notice. Thus, the request clearly violated Rule 10(B) OMVH Rules requirement of at least two business days notice and, as a result, the request could only be granted for "good cause shown." Rule 10(B) specifically states "Attorneys must notify the Office as soon as possible when a court conflict occurs." In this case, Respondent's counsel was notified of the conflicting court appearance on April 3, 2017. Despite this advanced notice, Respondent's counsel did not notify the OMVH of the conflicting court appearance until April 24, 2017, three weeks after receiving notice of the conflicting court appearance. The "good cause" standard "primarily considers the diligence of the party seeking the [continuance]." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). "If the party seeking the [continuance] was not diligent, the inquiry should end and the motion [for continuance] should not be granted." *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). In this case, the entirety of the request for continuance stated "Good Afternoon, I have to be downtown tomorrow for a hearing in Common Pleas. Please continue tomorrow's hearing and let me know when a new date is set. Thanks!" (ALC R. p. 50-52). This e-mail was sent from an e-mail chain regarding the scheduling for the common pleas hearing, which is how the OMVH Hearing Officer knew when Appellant's Counsel became aware of the conflicting court appearance. *Id.*

Significantly, Appellant's Counsel provided no explanation why he had not notified the OMVH of this conflicting court appearance sooner. Thus, at the time the OMVH hearing officer ruled on the request for continuance, there was no evidence that Appellant had exhibited good cause, i.e. diligence, in seeking this continuance and in seeking to deconflict Counsel's court dates. For this reason alone, the OMVH hearing officer's decision does not demonstrate an abuse of discretion and the decision should be upheld.

Compounding the issues in this case, however, is the fact that the OMVH responded to Appellant's continuance request within eleven minutes and notified Respondent's counsel that the continuance request was denied due to the request not being made in a timely manner being made with no explanation as to why the request was not made sooner (ALC R. p. 50). Respondent's counsel did not respond to the OMVH's ruling in any manner, for example, with an explanation as to why the request for continuance was not made sooner. Rather, Respondent and Respondent's counsel simply did not appear for the hearing (ALC R. p. 5-8 and 17).

In fact, the first time Respondent's counsel attempted to provide any reason why the request for continuance was not made sooner was in Respondent's *Motion to Reconsider and for a Stay of the Final Order*, which was not filed until May 15, 2017, twenty days after the hearing. Although Respondent claims a "full and complete explanation was provided to the hearing officer," that explanation left something to be desired. Respondent's "full and complete explanation" merely stated this was a "scheduling oversight" (ALC R. p. 46, ¶9). No further explanation was provided. No description of the "scheduling oversight" was provided. No explanation of how the "scheduling oversight" occurred. No explanation was provided for how Respondent's

counsel would ensure such a "scheduling oversight" would be prevented in the future. Moreover, Appellant's explanation for why the continuance request was not filed sooner was inadequate, at best, and submitted long after the hearing had already taken place. For these reasons, the OMVH hearing officer did not abuse her discretion in denying the continuance request and refusing to reconsider this case.

The ALC relied on the case *Williams v. Bordon's, Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980) to determine that the OMVH hearing officer abused her discretion by denying Respondent's continuance request. The *Williams* case involved a request for continuance of a civil action for damages due to plaintiff's legislative duties. Moreover, the Court in the *Williams* case specifically found that the continuance was timely requested. Even the ALC conceded that Respondent's counsel in this case "notified the Court later than desired due to the scheduling oversight." SCDMV agrees that the *Williams* case generally stands for the proposition that a denial of a motion for continuance can be reversed if it clearly appears there was an abuse of discretion of the trial judge. There are, however, significant factually differences between this case and the *Williams* case that demonstrate the OMVH hearing officer did not abuse her discretion: namely, Respondent's request was not timely and the request was made due to a conflicting court appearance, not legislative duties. Lending credence to this analysis is the fact that numerous South Carolina cases have dealt with the issue of whether a court abused its discretion in denying a continuance request and it appears that only three times has a denial of a continuance been reversed on the basis of a court abusing its discretion

with regard to such a motion.² See *Holmes v. Hanysworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 639, 760 S.E.2d 399, 409 (2014) (requesting additional time to prepare and arrange for counsel to be present); *Jackson v. Speed*, 326 S.C. 289, 309, 486 S.E.2d 750, 760 (1997) (Defendant needed to obtain new counsel, but had already been granted a 6 month continuance to obtain new counsel and attorney of record appeared); *Townsend v. Townsend*, 323 S.C. 309, 313, 474 S.E.2d 424, 427 (1996) (Father not prejudiced by denial of motion for continuance because replacement counsel had ample time to conduct discovery); *Speers Sand & Clay Works V. American Trust Co.*, 52 F.2d 831, 832 (4th Cir. 1931) (Denial of continuance based on illness of attorney was held to not an abuse of discretion); *Crouch v. Cudd*, 158 S.C. 1, 155 S.E. 136, 138 (1930) (Denial of continuance based on illness of one of defendant's counsel's mothers held not to be an abuse of discretion); *King v. Smith*, 148 S.C. 419, 146 S.E. 237, 237 (1929) (Denial of defendant's motion for continuance beyond term because of attorney's illness was held not to be an abuse of discretion where it appeared that plaintiff might not live beyond the term); *Brunson v. Hamilton Ridge Lumber Co.*, 122 S.C. 436, 115 S.E. 624, 624 (1923) (Denial of continuance request held to not be an abuse of discretion because defendant refused to pay his counsel and counsel stated he would not represent defendant until he had been paid); *Cutter v. Mallard Lumber Co., Limited*, 99 S.C. 231, 83 S.E. 595, 598 (1914) (Denial of continuance request held to not be an abuse of discretion where one of

² *Varn v. Geen*, 50 S.C. 403, 27 S.E. 862 (1897) (Error for judge to allow exercise of his discretion with regard to a continuance request to be controlled by the judge's custom to force the client to employ other counsel when their original counsel are too sick to conduct the case); *Hopkins v. Smathers*, 114 S.C. 488 (1920) (Error to not continue case on account of defendant's counsel being a witness and interested in the court of general session; the county court being inferior to the circuit court, whose terms are fixed by law); and the *Williams* case discussed previously.

defendant's attorneys was ill, but another attorney was present and prepared to represent defendant); *Montgomery v. United States Fidelity & Guaranty Co.*, 90 S.C. 283, 71 S.E. 1084, 1085 (1911) (Denial of continuance request held to not be an abuse of discretion where counsel in Georgia stated it was impossible for him to get to the trial because defendant was represented by capable local counsel); *Rice v. Lockhart Mills*, 75 S.C. 150, 55 S.E. 160, 161 (1906) (Denial of continuance request held to not be an abuse of discretion where lead counsel is at court in another county, but knew of the conflicting court appearance, another counsel is ill, but able to participate in the trial, and a third counsel is expected to be absent at the sickbed of his father, but arranges to assist in the trial); *Rhodes V. Southern Ry. Co.*, 68 S.C. 494, 47 S.E. 689, 689 (1904) (Denial of continuance request held to not be an abuse of discretion where one counsel is confined in the hospital and another counsel took part in the trial of the case); *Worth v. Norton*, 60 S.C. 293, 38 S.E. 605, 605 (1901) (Denial of continuance held not be an abuse of discretion where defendant's lead counsel was out of town, but the court agreed to keep the case open for further testimony).

Additionally, undermining the ALC's ruling is the fact that the ALC failed to provide any reasoning behind its' determination the OMVH hearing officer abused her discretion, other than to state that Respondent would be "prejudiced by the denial of his constitutional right of due process" and Respondent's counsel "could not have notified [the OMVH] earlier if he was not 'aware' of the conflict." First, Respondent's counsel did not provide the explanation regarding his "scheduling error" until twenty days after this hearing took place. The OMVH hearing officer, in denying the request for continuance, explicitly stated that "there is no explanation for the delay in requesting the

continuance.” That statement was an implicit invitation for Respondent’s counsel to explain why he did not request the continuance sooner than April 24, 2017. Despite this, Respondent’s counsel did not provide any explanation until twenty days later, in Respondent’s motion for reconsideration. Second, Respondent was provided with a hearing within which he could exercise his due process challenge to this implied consent suspension and he and his counsel failed to appear for that hearing despite Respondent’s counsel being specifically advised that the hearing had not been continued. Thus, there was no denial of Respondent’s right to due process. He was given the hearing he asked for and failed to appear for the same.

Following the ALC’s logic in its’ opinion in this case, any attorney could wait until literally one (1) minute prior to a scheduled hearing or trial to inform a court that he/she had an appearance in a court with a higher priority for the same date and time, due to a “scheduling error” did not realize they had that conflicting court appearance, and were, as a result, requesting a continuance.³ Such a holding would essentially eviscerate Rule 601, SCARC, particularly section (C) of that rule. Some level of diligence is required for tracking court appearances to ensure conflicting court appearances are properly noticed to the court with the lessor priority under Rule 601, SCARC. Under the ALC’s logic, no such diligence is required.

³ For example, if an attorney had oral arguments scheduled for the same day and time before the South Carolina Supreme Court and the South Carolina Court of Appeals, he/she could wait until only minutes before the argument was scheduled to begin at the Court of Appeals to inform the Court of Appeals of the conflict, could simply state that he/she had a “scheduling error” causing him/her to not realize he/she had a conflicting court appearance, and, thus, should be entitled to a continuance of the Court of Appeals oral argument.

B. Delayed Notice to OMVH of Conflicting Court Appearance

As stated above, Respondent's counsel knew about this conflicting court appearance on April 3, 2017. At the time Respondent requested a continuance of the April 25, 2017 hearing, no explanation was provided to the OMVH to explain why the request for continuance was filed so late. As stated earlier, OMVH Rule 10(B) requires attorneys to notify the OMVH "as soon as possible when a court conflict occurs." (Emphasis added). Despite knowing about this conflicting court appearance since April 3, 2017, Respondent did not request a continuance in this case until April 24, 2017 at 4:07 p.m., which was not "as soon as possible" as required by Rule 10(B), OMVH Rules.

Additionally, Rule 601, SCACR explicitly states "An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent." (Emphasis added). In this case Respondent's counsel did not notify the OMVH of the conflicting court appearance until three weeks after the conflict became apparent and less than 2 business hours prior to the OMVH hearing. Thus, Respondent's counsel did not comply with the requirements of Rule 601(c), SCACR and, as a result, the protection normally provided by Rule 601, SCACR was waived by Respondent's counsel's failure to timely notify the OMVH of the conflicting court appearance.

Moreover, Respondent's motion for continuance was filed late enough that it was a very real possibility that the arresting officer, DataMaster officer, and SCDMV would not receive notice that a continuance had been requested. Certainly, SCDMV did not receive notice of the continuance request until April 25, 2017 at approximately 12:30 p.m. (ALC R. p. 34-39). The fact that there was no response from the Mount Pleasant Police

Department in regard to this request for continuance and that Officers Kittle and Alexander both showed up for the hearing on April 25, 2017 indicates that they also did not receive notice of Respondent's request for a continuance until sometime after this hearing took place on April 25, 2017. It is common knowledge that most police officers do not work a normal 9-5 shift. Most police officers work rotating shifts that change every few weeks. Thus, sending a request for continuance so late prior to this hearing practically guaranteed that Officers Kittle and Alexander would not receive the request for continuance until after this hearing took place. In fact, the request for hearing was *almost* sent late enough that the OMVH offices would have already been closed for the day (the OMVH closes at 5:00 p.m.). Thus, submitting this request for continuance so late is patently unfair to the other parties in this case because it stripped the parties of the opportunity to respond to the continuance request and risked the parties showing up for a hearing that had the possibility of being continued. In this case, of course, the hearing was not continued and went forward as scheduled, but the fact that it was possible the hearing would be continued and the other parties might show up unnecessarily was a direct result and risk of submitting this continuance request so late.

Case law grants judges and hearing officers discretion when determining whether to grant or deny a request for continuance. A review of the case *Brockman v. South Carolina Dept. of Motor Vehicles and Mauldin Police Dept.*, 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 2014) reveals that the ALC has considered the issue of continuances requested with less than two business days notice in the past. In the *Brockman* case, the ALC specifically rejected a claim of abuse of discretion for a request of continuance under Rule 601, SCACR because the request for continuance was filed



with less than two business days notice and Appellant was aware of the conflict well before he filed the Motion for Continuance. Thus, the *Brockman* case makes clear that the OMVH hearing officer in this case was well within her discretion to deny Respondent's request for continuance in this case. Also, instructive in this regard is the *Hiller* case, which stated "Nothing in Rule 601, SCACR mandates that one tribunal always be given priority over the other." (Emphasis added). *Joseph W. Hiller, Sr., v. S.C. Dept. of Labor, Licensing and Regulation*, 1999 WL 51899 (1999). Finally, another case which provides guidance on this matter is *S.C. Dept. of Revenue v. Edwin Alewine*, 1997 WL 816208 (1997). The *Alewine* case focused on:

- a. the late notice to the ALC of a conflicting General Sessions court appearance (less than 24 hours);
- b. the requirement of Rule 601, SCACR that "an attorney must give notice of a scheduling conflict as soon as it becomes apparent;"
- c. that Counsel requesting the continuance did not state the date when he was noticed of the Circuit Court trial (notice of the ALC hearing was issued 45 days prior to the hearing);
- d. there was no "explanation as to why the request was not made earlier;"
- e. the number of prior requests for continuances and the reasons for those requests;
- f. that Counsel stated he "did not have anyone in his firm that would be able to attend the hearing for him 'because of the short notice;'" and
- g. the amount of delay the previous continuances had created in the case (six months in *Alewine*).

Emphasis in the original. This case shares many similarities to the *Alewine* case. The request for a continuance was sent with less than 24 hours notice, and, in fact, was sent with less than two business hours notice. Respondent's Counsel waited for three weeks after receiving notice of the conflicting court appearance before advising the OMVH of the conflict. No explanation was provided in the request for continuance to explain why the request was not made earlier. Furthermore, when prompted by the OMVH hearing officer to provide an explanation as to why the continuance was not requested sooner, Respondent's counsel failed to provide any response. Additionally, two prior continuances had already been granted in this case and the previous continuances had already caused a nearly 2 ½ month delay in this case. Thus, based on the factors set forth in *Alewine* case and the factual similarities in this case and the *Alewine* case, the OMVH hearing officer was justified in denying this request for continuance and did not abuse her discretion in doing so.

In South Carolina, the grant or denial of a continuance is within the sound discretion of the Hearing Officer and is reviewable on appeal only when an abuse of discretion appears from the record. *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) ("The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record."); *Newman v. Old West, Inc., et al.*, 286 S.C. 394, 334 S.E.2d 275 (1985) (The trial judge's decision to grant or deny a continuance is a matter within his sound discretion.); and *State v. Lytchfield*, 230 S.C. 405, 95 S.E.2d 857 (1957) ("The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there

was an abuse of discretion to the prejudice of appellant. A multitude of cases to this effect will be found in 7 S.C.Dig., Criminal Law, k586 et seq., p. 504 et seq. and supplement. Review of them shows that reversals of refusal of continuance are about as rare as the proverbial hens' teeth."'). In this case, the OMVH Hearing Officer made it clear that she denied the request for continuance because "it appears that Mr. Amey has been aware of the scheduled hearing since April 3, and there is no explanation for the delay in requesting the continuance" (ALC R. p. 50). Thereafter, Appellant provided no explanation for the delay in requesting the continuance until long after the hearing had taken place. Moreover, the explanation provided in the motion for reconsideration was minimal, as explained in further detail above. For these reasons, Respondent failed to show that the OMVH hearing officer abused her discretion.

Respondent asserted in his ALC appeal that he was denied his "constitutional right to a hearing and of due process, as guaranteed by the Constitutions of South Carolina and the United States." This statement is patently false. Respondent requested a hearing to challenge his implied consent hearing. That hearing was scheduled for April 25, 2017. As outlined in detail above, Respondent's counsel waited until the very last moment to request a continuance of the April 25, 2017 hearing and, when that continuance request was denied Respondent and his Counsel failed to appear for the hearing. As seen in the record at pages 5-8, the hearing requested by Appellant took place, but Appellant and his Counsel failed to appear for that hearing. Thus, no due process rights were violated.

3) ADDITIONAL SUSTAINING GROUNDS.

The South Carolina Supreme Court has said, "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

A. Insufficient Call To Court

Respondent's request for continuance submitted on April 24, 2017 at 4:07 p.m. violated Rule 10(B), OMVH Rules because it did not include the presiding judge's name and telephone number. This failure meant that if the OMVH hearing officer wanted to speak with the presiding judge in the conflicting case, to make scheduling arrangements for example, the OMVH hearing officer was unable to do so. Because of Respondent's failure to provide all of the information required by Rule 10(B), OMVH Rules when making a continuance request due to a conflicting court appearance, the OMVH hearing officer was correct to deny the continuance request and did not abuse her discretion in doing so.

B. Motion Violated Rules in Such a Way the SCDMV Was Unable to Respond to the Motion in a Substantive Manner

Respondent's request for continuance submitted on April 24, 2017 at 4:07 p.m. violated Rule 6, OMVH Rules because it did not contain the caption of the OMVH case, a brief description of the document (for example, "Motion for Continuance"), or the docket number assigned to the case by the OMVH. This failure caused significant confusion on SCDMV's part because SCDMV was unable to determine which case Respondent was asking for a continuance of, as evidenced by SCDMV's e-mail on Tuesday, April 25, 2017 at 12:31 p.m. (ALC R. p. 34-36). Because SCDMV was unable

to determine which case Respondent was asking for a continuance in, SCDMV was unable to provide a substantive response to the request for continuance.⁴ Thus, these violations of Rule 6, OMVH Rules stripped SCDMV of its' opportunity to provide a substantive response to Respondent's continuance request and when SCDMV sought clarification from Respondent's counsel about the continuance request, Respondent's counsel responded "I just replied from a previous email on this case. Sorry about that." Thus, no explanation was provided to explain to SCDMV that Respondent's counsel was seeking a continuance of an OMVH case due to a conflicting Common Pleas appearance.

C. Harm to the State

Further, the State would have been harmed if Respondent's motion for continuance or motion for reconsideration was granted in that:

- a. Officers Kittle and Alexander of the Mount Pleasant Police Department would have to prepare for and appear a second time for a second hearing;
- b. The OMVH would have to reschedule this case, taking up more court time; and
- c. Both a and b above will cost the State of South Carolina and the Mount Pleasant Police Department additional funds and employee time.

All of these are consequences that could have been easily avoided if Respondent had submitted his request for a continuance shortly after receiving notice of the conflicting court appearance.

⁴ SCDMV acknowledges that due to the timing of Appellant's request for continuance, the time the hearing was scheduled to take place, and the time SCDMV actually received Appellant's request for continuance, any substantive response SCDMV would have sent regarding Appellant's continuance request would have come after the scheduled hearing in this case.

CONCLUSION

For the reasons set forth above, the order of the ALC is immediately appealable, should be overturned, and the OMVH Order of Dismissal issued May 3, 2017 reinstated in full.

Respectfully submitted,



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

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PHILIP S. PORTER, SC Bar # 4526

Deputy General Counsel

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Attorneys for the Appellant

January 11, 2018
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 2018-000023

RECEIVED

JAN 12 2018

SC Court of Appeals

John Michael Thomas Respondent,
v.

South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department Defendants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant.

**APPELLANT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL
AND CERTIFICATE OF COUNSEL**

1. Administrative Law Court Order filed December 15, 2017
2. Brief of Respondent SCDMV filed November 8, 2017
3. Brief of Appellant dated October 23, 2017
4. Administrative Law Court Record on Appeal dated August 17, 2017

Undersigned Counsel certifies pursuant to SCARC Rule 209 (c) that this Designation contains no matter which is irrelevant to the Appeal.



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

January 11, 2018
Blythewood, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JAN 12 2018

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 2018-000023

John Michael Thomas Respondent,

v.

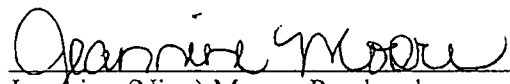
South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department Defendants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant.

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, January 11, 2018, I served one (1) copy of the Appellant's Initial Brief and Designation of Matter by depositing with the United States Postal Service, correct postage prepaid, to Counsel for the Respondent at the address indicated below:

Tim Amey, Esquire
1495 Remount Road
North Charleston, SC 29406


Jeanine (Nina) Moore, Paralegal
Office of General Counsel

January 11, 2018
Blythewood, South Carolina

Henry M. McMaster
Governor



Kevin A. Shwedo
Director

State of South Carolina
Department of Motor Vehicles

RECEIVED

JAN 12 2018

SC Court of Appeals

January 11, 2018

The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: *John Michael Thomas v. South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department***
Case No: 2018-000023

Dear Ms. Kitchings:

Enclosed for filing please find the following documents:

1. Unbound original and two (2) copies of the Appellant's Initial Brief;
2. Original and two (2) copies of the Appellant's Designation of Matter To Be Included In the Record on Appeal with Certificate of Counsel of SCACR, Rule 209(c) compliance; and
3. Certificate of Service of these documents on counsel for the Respondent.

Please file the original and copies necessary for SCACR compliance and return the extra copies to me with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Sincerely,

A handwritten signature in cursive script that reads "Jeannine Moore".
Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Enclosures

cc: Tim Amey, Esquire

0046

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 2018-000023

RECEIVED
JAN 22 2018
SC Court of Appeals

Michael John Thomas Respondent,
v.

South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department Appellants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant.

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:

FACTUAL BACKGROUND

This matter comes before the Court of Appeals pursuant to the appeal of the South Carolina Department of Motor Vehicles (hereinafter, "SCDMV" or "DMV"), who seeks review of the December 15, 2017 Order from the Administrative Law Court (hereinafter, "ALC") which remanded this case for a second hearing on the merits before the Office of Motor Vehicles Hearings (hereinafter, "OMVH"). The Appellant, SCDMV seeks to have the ALC's Order overturned and the OMVH Order of Dismissal issued May 3, 2017 reinstated in full.

1 

Respondent Thomas was arrested on October 28, 2016 for driving under the influence (ALC R. p. 62-63). Upon refusal to submit to a breath sample, Respondent was found to be in violation of S.C. Code §56-5-2950, and Officer Kyle Alexander of the Mount Pleasant Police Department, the DataMaster Operator in this case, issued a Notice of Suspension form pursuant to S.C. Code §56-5-2951. *Id.* Respondent timely requested a contested case hearing on November 25, 2016. *Id.*

On November 29, 2016, the OMVH e-mailed a Notice of Hearing to all parties for a hearing scheduled for February 13, 2017 (ALC R. p. 59-60). On Wednesday, December 28, 2016, Officer Alexander requested a continuance of the hearing scheduled for February 13, 2017 (and two other hearings) due to conflicting training at the South Carolina Criminal Justice Academy (ALC R. p. 58). The South Carolina Criminal Justice Academy is located at 5400 Broad River Road, Columbia, South Carolina, approximately 1 ½ hours from Mount Pleasant. Respondent did not object to this continuance request. This continuance request was granted on January 6, 2017 and rescheduled the hearing to take place on March 6, 2017 (ALC R. p. 56-57). On February 22, 2017, Officer Brandon Kittle of the Mount Pleasant Police Department, the arresting officer in this case, requested a continuance of the March 6, 2017 hearing because he was scheduled to be out of the state on March 6, 2017 (ALC R. p. 55). Respondent did not object to this continuance request. This continuance request was granted on February 22, 2017 and rescheduled the hearing to take place on April 25, 2017 at 9:30 a.m. (ALC R. p. 53-54).

On April 3, 2017, Respondent's counsel was notified via e-mail that he was scheduled to appear in the Charleston Non-Jury Court of Common Pleas on April 25, 2017 at 10:30 a.m. for the case *Bivens vs. State of South Carolina*, 2017-CP-10-00625



(ALC R. p. 51). Respondent's counsel failed to request a continuance of the conflicting OMVH hearing until April 24, 2017 at 4:07 p.m. (ALC R. p. 50). Respondent's counsel requested a continuance by forwarding the April 3, 2017 e-mail from the conflicting Non-Jury case to the OMVH and parties to this case stating "Good Afternoon, I have to be downtown tomorrow for a hearing in Common Pleas. Please continue tomorrow's hearing and let me know when a new date is set. Thanks!" *Id.* This e-mail was sent to the OMVH and all parties to this case, but did not include any information about which OMVH case Respondent's counsel was requesting a continuance for. *Id.* The OMVH hearing officer responded to the continuance request eleven minutes later and denied the continuance request due to Respondent's counsel's failure to request this continuance in a timely manner. *Id.* Specifically, the OMVH hearing officer ruled that: 1) Rule 10(B), OMVH Rules requires motions for continuance to be made at least two business days prior to the scheduled hearing date; 2) that based on Respondent's counsel's e-mail it was apparent that he was aware of the conflicting court appearance since April 3, 2017 (three weeks earlier); and 3) Respondent's counsel provided no explanation for why the continuance was not requested earlier. *Id.*

On April 25, 2017, the hearing was held and Respondent and his counsel failed to appear for the hearing (ALC R. p. 5-8). Thereafter, on May 3, 2017, the OMVH hearing officer issued an Order of Dismissal sustaining Respondent's implied consent suspension due to Respondent's failure to appear at the hearing (ALC R. p. 17-19).

On May 15, 2017, Respondent filed a *Motion to Reconsider and for a Stay of the Final Order* (ALC R. p. 46-49). The OMVH denied Respondent's *Motion to Reconsider and for a Stay of the Final Order* on June 6, 2017 (ALC R. p. 20-23). This denial was

based on Appellant's failure to request a continuance of the OMVH hearing "as soon as he became aware of the conflict without explanation for the delay in making the request and [due to counsel's failure to] appear for the hearing after he was notified that the continuance was denied." *Id.*

Thereafter, Respondent timely appealed to the Administrative Law Court (hereinafter, "ALC") (R. p. 11-16). After the parties briefed the case, the ALC issued an Order on December 15, 2017 holding that the OMVH hearing officer "abused her discretion in failing to grant [Respondent's continuance request]" and remanded the case for "a hearing on the merits."

On January 3, 2017, Appellant SCDMV timely filed a Notice of Appeal of the December 15, 2017 Order from the ALC. On January 10, 2018, prior to receiving any briefs from any of the parties, this Court dismissed this appeal as interlocutory. On January 11, 2018, prior to receiving this Court's January 10, 2018 Order of dismissal, SCDMV mailed Initial Brief of Appellant to the Court. This document was filed on January 12, 2018.

STANDARD OF REVIEW

The scope of judicial review in cases such as this is limited by the Administrative Procedures Act, S.C. Code §1-23-380(A)(6).

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

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

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

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

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

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

The Court further noted that:

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

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

An appeal from action of an administrative agency must be sustained if supported by substantial evidence. *Hamm v. American Telephone & Telegraph Co.*, 302 S.C. 211,

394 S.E.2d 842 (1990); *Lark v. Bi Lo, Inc.*, *supra*. In *Lark*, our Supreme Court quoted *Consolo v. Federal Maritime Commission*, 383 U.S. 611, 16 L.Ed.2d 131, 86 S.Ct. 1118 (1966), to define substantial evidence:

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

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

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

On review of the acts or orders of administrative agencies, the courts will presume, among other things, that the agency action is regular and correct, and that the orders and decisions of the agency are valid and reasonable. 73A C.J.S. *Public Administrative Law and Procedure* Section 220(a) (1983). Therefore, the burden is on the Petitioner to show convincingly that the order of the agency is without evidentiary

support or is arbitrary or capricious as a matter of law. *Hamm v. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1988).

ARGUMENTS

- 1) THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS IMMEDIATELY APPEALABLE TO THIS COURT.

S.C. Code §14-8-200. S.C. Code §14-8-200 states:

...[T]he court has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of... a final decision of an administrative law judge... This jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case...

(Emphasis added). In this case, the order issued by the ALC on December 15, 2017 is the final Order from the ALC in this case. This is evidenced by the fact that the ALC explicitly remanded this case to the OMVH for a "hearing on the merits." Therefore, there is no doubt that the December 15, 2017 ALC Order is a "final decision of an administrative law judge" as it is clear that the ALC was taking no further action in this case and remanded the case back to the OMVH. For this reason alone, this case is immediately appealable to this Court.

Additionally, S.C. Code §14-3-330 sets forth those cases that may be considered by the appellate courts of South Carolina. One of the types of cases that may be considered by the appellate courts of this state are those where "An order affecting a substantial right made in an action when such order...(b) grants or refuses a new trial..." The order appealed in this case is just such an order. The Order issued by the ALC on December 15, 2017 explicitly remands this case back to the OMVH "for a hearing on the merits." This case was already scheduled for a hearing once before, a hearing was held,

and neither Respondent nor his Counsel appeared at that hearing (R. p. 5-8). Therefore, the ALC's Order has, essentially, granted Respondent a new "trial" via the new hearing. As held in the recently decided case *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146, to prevent Appellant DMV "from appealing the order immediately would encourage piecemeal litigation and limit [DMV's] appellate remedies." The *Morrow* case was dismissed by the Court of Appeals as interlocutory. This dismissal was then appealed to the South Carolina Supreme Court, which decided the appeal was not interlocutory and decided the underlying issue that was original appealed to the Court of Appeals, specifically, whether several defendants in the lawsuit could be severed under the label "bifurcation." In the *Morrow* case the Supreme Court held the order of "bifurcation" went far beyond the Court's understanding of bifurcation, thereby affecting a substantial right of the petitioners. Thus, the Supreme Court reversed the order of Dismissal issued by the Court of Appeals and the order of "bifurcation" issued by the trial court. While the discussion in the *Morrow* case focused on S.C. Code §14-3-330, the underlying principle, the order of "bifurcation" was immediately appealable (including being immediately appealable to the Court of Appeals), is still applicable here for all the reasons discussed in the *Morrow* case. Specifically, because the Order issued by the ALC on December 15, 2017 explicitly remands this case back to the OMVH "for a hearing on the merits" and because this case already had a hearing once before, the ALC's Order has, essentially, granted Respondent a new "trial" via the new hearing. As discussed in the *Morrow* case, to prevent Appellant DMV "from appealing the order immediately would encourage piecemeal litigation and limit [DMV's] appellate remedies." See also, *Knight v. Johnson*, 244 S.C. 70, 135 S.E.2d

372 (1964) (An order of the trial court granting or refusing a new trial, when based solely on an error of law, is subject to review by the Supreme Court); and *Daughy v. Northwestern R. Co. of South Carolina*, 92 S.C. 361, 75 S.E. 553 (1912) (This statute does not undertake to make an order granting a new trial appealable, when it is based upon questions of fact; but it can review orders granting new trials when based upon error of law.).¹ For these reasons, the ALC's Order issued on December 15, 2017 is immediately appealable.

2) THE HEARING OFFICER DID NOT ABUSE HER DISCRETION IN DENYING APPELLANT'S REQUEST FOR A CONTINUANCE THAT WAS SUBMITTED LESS THAN TWO BUSINESS HOURS PRIOR TO THE SCHEDULED HEARING.

A. Less Than Two Business Days Notice

Rule 10(B), OMVH Rules states that motions filed less than two business days prior to a scheduled hearing will only be granted for good cause shown. This motion for continuance was sent with less than two business hours notice. Thus, the request clearly violated Rule 10(B) OMVH Rules requirement of at least two business days notice and, as a result, the request could only be granted for "good cause shown." Rule 10(B) specifically states "Attorneys must notify the Office as soon as possible when a court conflict occurs." In this case, Respondent's counsel was notified of the conflicting court appearance on April 3, 2017. Despite this advanced notice, Respondent's counsel did not notify the OMVH of the conflicting court appearance until April 24, 2017, three weeks

¹ Both the *Knight* case and the *Daughy* cases were decided before the South Carolina Court of Appeals was created on September 1, 1983, therefore, they only make reference to the South Carolina Supreme Court. Application of the *Knight* and *Daughy* cases here, however, is still appropriate given the clear statement in the *Morrow* case that S.C. Code §14-3-330 deals with the jurisdiction of the appellate courts. If the *Morrow* decision was only discussing the appellate jurisdiction of the Supreme Court, it would not have referenced appellate courts.

after receiving notice of the conflicting court appearance. The "good cause" standard "primarily considers the diligence of the party seeking the [continuance]." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). "If the party seeking the [continuance] was not diligent, the inquiry should end and the motion [for continuance] should not be granted." *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). In this case, the entirety of the request for continuance stated "Good Afternoon, I have to be downtown tomorrow for a hearing in Common Pleas. Please continue tomorrow's hearing and let me know when a new date is set. Thanks!" (ALC R. p. 50-52). This e-mail was sent from an e-mail chain regarding the scheduling for the common pleas hearing, which is how the OMVH Hearing Officer knew when Appellant's Counsel became aware of the conflicting court appearance. *Id.* Significantly, Appellant's Counsel provided no explanation why he had not notified the OMVH of this conflicting court appearance sooner. Thus, at the time the OMVH hearing officer ruled on the request for continuance, there was no evidence that Appellant had exhibited good cause, i.e. diligence, in seeking this continuance and in seeking to deconflict Counsel's court dates. For this reason alone, the OMVH hearing officer's decision does not demonstrate an abuse of discretion and the decision should be upheld.

Compounding the issues in this case, however, is the fact that the OMVH responded to Appellant's continuance request within eleven minutes and notified Respondent's counsel that the continuance request was denied due to the request not being made in a timely manner being made with no explanation as to why the request was not made sooner (ALC R. p. 50). Respondent's counsel did not respond to the OMVH's ruling in any manner, for example, with an explanation as to why the request for

continuance was not made sooner. Rather, Respondent and Respondent's counsel simply did not appear for the hearing (ALC R. p. 5-8 and 17).

In fact, the first time Respondent's counsel attempted to provide any reason why the request for continuance was not made sooner was in Respondent's *Motion to Reconsider and for a Stay of the Final Order*, which was not filed until May 15, 2017, twenty days after the hearing. Although Respondent claims a "full and complete explanation was provided to the hearing officer," that explanation left something to be desired. Respondent's "full and complete explanation" merely stated this was a "scheduling oversight" (ALC R. p. 46, ¶9). No further explanation was provided. No description of the "scheduling oversight" was provided. No explanation of how the "scheduling oversight" occurred. No explanation was provided for how Respondent's counsel would ensure such a "scheduling oversight" would be prevented in the future. Moreover, Appellant's explanation for why the continuance request was not filed sooner was inadequate, at best, and submitted long after the hearing had already taken place. For these reasons, the OMVH hearing officer did not abuse her discretion in denying the continuance request and refusing to reconsider this case.

The ALC relied on the case *Williams v. Bordon's, Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980) to determine that the OMVH hearing officer abused her discretion by denying Respondent's continuance request. The *Williams* case involved a request for continuance of a civil action for damages due to plaintiff's legislative duties. Moreover, the Court in the *Williams* case specifically found that the continuance was timely requested. Even the ALC conceded that Respondent's counsel in this case "notified the Court later than desired due to the scheduling oversight." SCDMV agrees that the

Williams case generally stands for the proposition that a denial of a motion for continuance can be reversed if it clearly appears there was an abuse of discretion of the trial judge. There are, however, significant factually differences between this case and the *Williams* case that demonstrate the OMVH hearing officer did not abuse her discretion: namely, Respondent's request was not timely and the request was made due to a conflicting court appearance, not legislative duties. Lending credence to this analysis is the fact that numerous South Carolina cases have dealt with the issue of whether a court abused its discretion in denying a continuance request and it appears that only three times has a denial of a continuance been reversed on the basis of a court abusing its discretion with regard to such a motion.² See *Holmes v. Hanysworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 639, 760 S.E.2d 399, 409 (2014) (requesting additional time to prepare and arrange for counsel to be present); *Jackson v. Speed*, 326 S.C. 289, 309, 486 S.E.2d 750, 760 (1997) (Defendant needed to obtain new counsel, but had already been granted a 6 month continuance to obtain new counsel and attorney of record appeared); *Townsend v. Townsend*, 323 S.C. 309, 313, 474 S.E.2d 424, 427 (1996) (Father not prejudiced by denial of motion for continuance because replacement counsel had ample time to conduct discovery); *Speers Sand & Clay Works V. American Trust Co.*, 52 F.2d 831, 832 (4th Cir. 1931) (Denial of continuance based on illness of attorney was held to not an abuse of discretion); *Crouch v. Cudd*, 158 S.C. 1, 155 S.E. 136, 138 (1930) (Denial of continuance

² *Varn v. Geen*, 50 S.C. 403, 27 S.E. 862 (1897) (Error for judge to allow exercise of his discretion with regard to a continuance request to be controlled by the judge's custom to force the client to employ other counsel when their original counsel are too sick to conduct the case); *Hopkins v. Smathers*, 114 S.C. 488 (1920) (Error to not continue case on account of defendant's counsel being a witness and interested in the court of general session; the county court being inferior to the circuit court, whose terms are fixed by law); and the *Williams* case discussed previously.

based on illness of one of defendant's counsel's mothers held not to be an abuse of discretion); *King v. Smith*, 148 S.C. 419, 146 S.E. 237, 237 (1929) (Denial of defendant's motion for continuance beyond term because of attorney's illness was held not to be an abuse of discretion where it appeared that plaintiff might not live beyond the term); *Brunson v. Hamilton Ridge Lumber Co.*, 122 S.C. 436, 115 S.E. 624, 624 (1923) (Denial of continuance request held to not be an abuse of discretion because defendant refused to pay his counsel and counsel stated he would not represent defendant until he had been paid); *Cutter v. Mallard Lumber Co., Limited*, 99 S.C. 231, 83 S.E. 595, 598 (1914) (Denial of continuance request held to not be an abuse of discretion where one of defendant's attorneys was ill, but another attorney was present and prepared to represent defendant); *Montgomery v. United States Fidelity & Guaranty Co.*, 90 S.C. 283, 71 S.E. 1084, 1085 (1911) (Denial of continuance request held to not be an abuse of discretion where counsel in Georgia stated it was impossible for him to get to the trial because defendant was represented by capable local counsel); *Rice v. Lockhart Mills*, 75 S.C. 150, 55 S.E. 160, 161 (1906) (Denial of continuance request held to not be an abuse of discretion where lead counsel is at court in another county, but knew of the conflicting court appearance, another counsel is ill, but able to participate in the trial, and a third counsel is expected to be absent at the sickbed of his father, but arranges to assist in the trial); *Rhodes V. Southern Ry. Co.*, 68 S.C. 494, 47 S.E. 689, 689 (1904) (Denial of continuance request held to not be an abuse of discretion where one counsel is confined in the hospital and another counsel took part in the trial of the case); *Worth v. Norton*, 60 S.C. 293, 38 S.E. 605, 605 (1901) (Denial of continuance held not be an abuse of

discretion where defendant's lead counsel was out of town, but the court agreed to keep the case open for further testimony).

Additionally, undermining the ALC's ruling is the fact that the ALC failed to provide any reasoning behind its' determination the OMVH hearing officer abused her discretion, other than to state that Respondent would be "prejudiced by the denial of his constitutional right of due process" and Respondent's counsel "could not have notified [the OMVH] earlier if he was not 'aware' of the conflict." First, Respondent's counsel did not provide the explanation regarding his "scheduling error" until twenty days after this hearing took place. The OMVH hearing officer, in denying the request for continuance, explicitly stated that "there is no explanation for the delay in requesting the continuance." That statement was an implicit invitation for Respondent's counsel to explain why he did not request the continuance sooner than April 24, 2017. Despite this, Respondent's counsel did not provide any explanation until twenty days later, in Respondent's motion for reconsideration. Second, Respondent was provided with a hearing within which he could exercise his due process challenge to this implied consent suspension, and he and his counsel failed to appear for that hearing despite Respondent's counsel being specifically advised that the hearing had not been continued. Thus, there was no denial of Respondent's right to due process. He was given the hearing he asked for and failed to appear for the same.

Following the ALC's logic in its' opinion in this case, any attorney could wait until literally one (1) minute prior to a scheduled hearing or trial to inform a court that he/she had an appearance in a court with a higher priority for the same date and time, due to a "scheduling error" did not realize they had that conflicting court appearance, and

were, as a result, requesting a continuance.³ Such a holding would essentially eviscerate Rule 601, SCARC, particularly section (C) of that rule. Some level of diligence is required for tracking court appearances to ensure conflicting court appearances are properly noticed to the court with the lessor priority under Rule 601, SCARC. Under the ALC's logic, no such diligence is required.

B. Delayed Notice to OMVH of Conflicting Court Appearance

As stated above, Respondent's counsel knew about this conflicting court appearance on April 3, 2017. At the time Respondent requested a continuance of the April 25, 2017 hearing, no explanation was provided to the OMVH to explain why the request for continuance was filed so late. As stated earlier, OMVH Rule 10(B) requires attorneys to notify the OMVH "as soon as possible when a court conflict occurs." (Emphasis added). Despite knowing about this conflicting court appearance since April 3, 2017, Respondent did not request a continuance in this case until April 24, 2017 at 4:07 p.m., which was not "as soon as possible" as required by Rule 10(B), OMVH Rules.

Additionally, Rule 601, SCACR explicitly states "An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent." (Emphasis added). In this case Respondent's counsel did not notify the OMVH of the conflicting court appearance until three weeks after the conflict became apparent and less

³ For example, if an attorney had oral arguments scheduled for the same day and time before the South Carolina Supreme Court and the South Carolina Court of Appeals, he/she could wait until only minutes before the argument was scheduled to begin at the Court of Appeals to inform the Court of Appeals of the conflict, could simply state that he/she had a "scheduling error" causing him/her to not realize he/she had a conflicting court appearance, and, thus, should be entitled to a continuance of the Court of Appeals oral argument.

than 2 business hours prior to the OMVH hearing. Thus, Respondent's counsel did not comply with the requirements of Rule 601(c), SCACR and, as a result, the protection normally provided by Rule 601, SCACR was waived by Respondent's counsel's failure to timely notify the OMVH of the conflicting court appearance.

Moreover, Respondent's motion for continuance was filed late enough that it was a very real possibility that the arresting officer, DataMaster officer, and SCDMV would not receive notice that a continuance had been requested. Certainly, SCDMV did not receive notice of the continuance request until April 25, 2017 at approximately 12:30 p.m. (ALC R. p. 34-39). The fact that there was no response from the Mount Pleasant Police Department in regard to this request for continuance and that Officers Kittle and Alexander both showed up for the hearing on April 25, 2017 indicates that they also did not receive notice of Respondent's request for a continuance until sometime after this hearing took place on April 25, 2017. It is common knowledge that most police officers do not work a normal 9-5 shift. Most police officers work rotating shifts that change every few weeks. Thus, sending a request for continuance so late prior to this hearing practically guaranteed that Officers Kittle and Alexander would not receive the request for continuance until after this hearing took place. In fact, the request for hearing was *almost* sent late enough that the OMVH offices would have already been closed for the day (the OMVH closes at 5:00 p.m.). Thus, submitting this request for continuance so late is patently unfair to the other parties in this case because it stripped the parties of the opportunity to respond to the continuance request and risked the parties showing up for a hearing that had the possibility of being continued. In this case, of course, the hearing was not continued and went forward as scheduled, but the fact that it was possible the



hearing would be continued and the other parties might show up unnecessarily was a direct result and risk of submitting this continuance request so late.

Case law grants judges and hearing officers discretion when determining whether to grant or deny a request for continuance. A review of the case *Brockman v. South Carolina Dept. of Motor Vehicles and Mauldin Police Dept.*, 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 2014) reveals that the ALC has considered the issue of continuances requested with less than two business days notice in the past. In the *Brockman* case, the ALC specifically rejected a claim of abuse of discretion for a request of continuance under Rule 601, SCACR because the request for continuance was filed with less than two business days notice and Appellant was aware of the conflict well before he filed the Motion for Continuance. Thus, the *Brockman* case makes clear that the OMVH hearing officer in this case was well within her discretion to deny Respondent's request for continuance in this case. Also, instructive in this regard is the *Hiller* case, which stated "Nothing in Rule 601, SCACR mandates that one tribunal always be given priority over the other." (Emphasis added). *Joseph W. Hiller, Sr., v. S.C. Dept. of Labor, Licensing and Regulation*, 1999 WL 51899 (1999). Finally, another case which provides guidance on this matter is *S.C. Dept. of Revenue v. Edwin Alewine*, 1997 WL 816208 (1997). The *Alewine* case focused on:

- a. the late notice to the ALC of a conflicting General Sessions court appearance (less than 24 hours);
- b. the requirement of Rule 601, SCACR that "an attorney must give notice of a scheduling conflict as soon as it becomes apparent;"



- c. that Counsel requesting the continuance did not state the date when he was noticed of the Circuit Court trial (notice of the ALC hearing was issued 45 days prior to the hearing);
- d. there was no "explanation as to why the request was not made earlier;"
- e. the number of prior requests for continuances and the reasons for those requests;
- f. that Counsel stated he "did not have anyone in his firm that would be able to attend the hearing for him 'because of the short notice;'" and
- g. the amount of delay the previous continuances had created in the case (six months in *Alewine*).

Emphasis in the original. This case shares many similarities to the *Alewine* case. The request for a continuance was sent with less than 24 hours notice, and, in fact, was sent with less than two business hours notice. Respondent's Counsel waited for three weeks after receiving notice of the conflicting court appearance before advising the OMVH of the conflict. No explanation was provided in the request for continuance to explain why the request was not made earlier. Furthermore, when prompted by the OMVH hearing officer to provide an explanation as to why the continuance was not requested sooner, Respondent's counsel failed to provide any response. Additionally, two prior continuances had already been granted in this case and the previous continuances had already caused a nearly 2 ½ month delay in this case. Thus, based on the factors set forth in *Alewine* case and the factual similarities in this case and the *Alewine* case, the OMVH hearing officer was justified in denying this request for continuance and did not abuse her discretion in doing so.



In South Carolina, the grant or denial of a continuance is within the sound discretion of the Hearing Officer and is reviewable on appeal only when an abuse of discretion appears from the record. *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) ("The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record."); *Newman v. Old West, Inc., et al.*, 286 S.C. 394, 334 S.E.2d 275 (1985) (The trial judge's decision to grant or deny a continuance is a matter within his sound discretion.); and *State v. Lytchfield*, 230 S.C. 405, 95 S.E.2d 857 (1957) ("The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant. A multitude of cases to this effect will be found in 7 S.C.Dig., Criminal Law, k586 et seq., p. 504 et seq. and supplement. Review of them shows that reversals of refusal of continuance are about as rare as the proverbial hens' teeth."). In this case, the OMVH Hearing Officer made it clear that she denied the request for continuance because "it appears that Mr. Amey has been aware of the scheduled hearing since April 3, and there is no explanation for the delay in requesting the continuance" (ALC R. p. 50). Thereafter, Appellant provided no explanation for the delay in requesting the continuance until long after the hearing had taken place. Moreover, the explanation provided in the motion for reconsideration was minimal, as explained in further detail above. For these reasons, Respondent failed to show that the OMVH hearing officer abused her discretion.

Respondent asserted in his ALC appeal that he was denied his "constitutional right to a hearing and of due process, as guaranteed by the Constitutions of South

Carolina and the United States.” This statement is patently false. Respondent requested a hearing to challenge his implied consent hearing. That hearing was scheduled for April 25, 2017. As outlined in detail above, Respondent’s counsel waited until the very last moment to request a continuance of the April 25, 2017 hearing and, when that continuance request was denied Respondent and his Counsel failed to appear for the hearing. As seen in the record at pages 5-8, the hearing requested by Appellant took place, but Appellant and his Counsel failed to appear for that hearing. Thus, no due process rights were violated.

3) ADDITIONAL SUSTAINING GROUNDS.

The South Carolina Supreme Court has said, “The appellate court may review respondent’s additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court’s judgment.” *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

A. Insufficient Call To Court

Respondent’s request for continuance submitted on April 24, 2017 at 4:07 p.m. violated Rule 10(B), OMVH Rules because it did not include the presiding judge’s name and telephone number. This failure meant that if the OMVH hearing officer wanted to speak with the presiding judge in the conflicting case, to make scheduling arrangements for example, the OMVH hearing officer was unable to do so. Because of Respondent’s failure to provide all of the information required by Rule 10(B), OMVH Rules when making a continuance request due to a conflicting court appearance, the OMVH hearing officer was correct to deny the continuance request and did not abuse her discretion in doing so.

B. Motion Violated Rules in Such a Way the SCDMV Was Unable to Respond to the Motion in a Substantive Manner

Respondent's request for continuance submitted on April 24, 2017 at 4:07 p.m. violated Rule 6, OMVH Rules because it did not contain the caption of the OMVH case, a brief description of the document (for example, "Motion for Continuance"), or the docket number assigned to the case by the OMVH. This failure caused significant confusion on SCDMV's part because SCDMV was unable to determine which case Respondent was asking for a continuance of, as evidenced by SCDMV's e-mail on Tuesday, April 25, 2017 at 12:31 p.m. (ALC R. p. 34-36). Because SCDMV was unable to determine which case Respondent was asking for a continuance in, SCDMV was unable to provide a substantive response to the request for continuance.⁴ Thus, these violations of Rule 6, OMVH Rules stripped SCDMV of its' opportunity to provide a substantive response to Respondent's continuance request and when SCDMV sought clarification from Respondent's counsel about the continuance request, Respondent's counsel responded "I just replied from a previous email on this case. Sorry about that." Thus, no explanation was provided to explain to SCDMV that Respondent's counsel was seeking a continuance of an OMVH case due to a conflicting Common Pleas appearance.

C. Harm to the State

Further, the State would have been harmed if Respondent's motion for continuance or motion for reconsideration was granted in that:

⁴ SCDMV acknowledges that due to the timing of Appellant's request for continuance, the time the hearing was scheduled to take place, and the time SCDMV actually received Appellant's request for continuance, any substantive response SCDMV would have sent regarding Appellant's continuance request would have come after the scheduled hearing in this case.

- a. Officers Kittle and Alexander of the Mount Pleasant Police Department would have to prepare for and appear a second time for a second hearing;
- b. The OMVH would have to reschedule this case, taking up more court time; and
- c. Both a and b above will cost the State of South Carolina and the Mount Pleasant Police Department additional funds and employee time.

All of these are consequences that could have been easily avoided if Respondent had submitted his request for a continuance shortly after receiving notice of the conflicting court appearance.

For these reasons, Appellant again asserts the ALC's Order issued on December 15, 2017 is immediately appealable and should be addressed by the Court of Appeals.



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Counsel for the Appellant

January 18, 2018
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 17-ALJ-21-0223-AP

John Michael Thomas Respondent,

v.

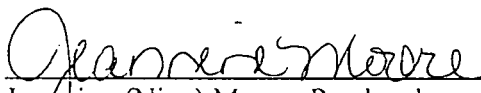
South Carolina Department of Motor Vehicles
And Mount Pleasant Police Department Appellant.

Of Whom South Carolina Department of Motor Vehicles is Appellant

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Appellant's Petition for Rehearing by depositing a copy of same in the United States Mail, postage prepaid, on this 18th day of January, 2018, addressed to the Respondent as follows:

Tim Amey, Esquire
1495 Remount Road
North Charleston, South Carolina 29406


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

January 18, 2018
Blythewood, South Carolina

RECEIVED
JAN 22 2018
SC Court of Appeals

Henry McMaster
Governor



Kevin A. Shwedo
Director

State of South Carolina
Department of Motor Vehicles

RECEIVED

JAN 22 2018

SC Court of Appeals

January 18, 2018

The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *John Michael Thomas v. South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department*
ALC Case No: 17-ALJ-21-0223-AP

Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of the South Carolina Department of Motor Vehicles' Petition for Rehearing and Proof of Service in the above-referenced matter. Please file the original and return the extra copy to us with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

Sincerely,


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Enclosures

cc: Tim Amey, Esquire

THE STATE OF SOUTH CAROLINA
In Administrative Law Court

APPEAL FROM THE SCOMVH
Administrative Law Court

Case

South Carolina Department of Public Safety & Department of Motor Vehicles. . . . Respondents,
v.

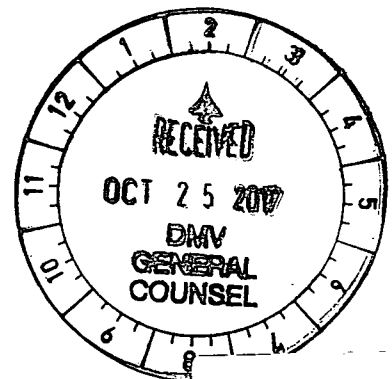
John Michael Thomas. Appellant.

COVER SHEET

Tim Amey

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(843) 425-2269
tim@timamey.com
Attorney for Appellant

October 23, 2017



0071

Statement of Issues on Appeal

Question I: Did the OMVH err in denying the Appellant's motion for a continuance, where motion was made in advance of the hearing and good cause was shown of a conflicting court appearance?

Question II: Did the OMVH err in denying the Appellant's motion for reconsideration, where explanation of the nature of the conflict was provided, making it physically impossible for Counsel to appear, and sufficient detail was given to explain why a request had not been submitted prior?

Question III: Did the OMVH err in relying on the rigid application of a procedural rule, despite there being an exception drawn in for good cause, where the matter had been previously continued by other parties to the case, no detriment could be shown in granting a continuance, and where the result is to apply a penalty that unjustly and unfairly punishes the Appellant, under the due process clauses of the Constitutions of South Carolina and the United States?

Statement of the Case

A hearing was held on April 25, 2017 to review the suspension of Appellant's Driver's License. On April 24, 2017, Counsel for Appellant submitted a request for a continuance, citing a conflict which required he appear in a higher court. The request was denied and the hearing was held without Appellant's ability to be heard. An order dismissing Appellant's case was issued on May 3, 2017. On May 15, 2017, counsel for Appellant filed a motion for reconsideration and stay of suspension. Appellant's motion for reconsideration sought an opportunity to appear and participate in a rescheduled hearing. That motion was denied in an order dated and served on June 6, 2017. Notice of Appeal was submitted on July 6, 2017. The case was assigned on July 14, 2017. A record was filed on August 17, 2017. Appellant filed a motion to extend the time for filing of this brief, which was granted, providing 30 days from September 21, 2017.

Argument

I. The OMVH erred in denying the Appellant's motion for a continuance, where motion was made in advance of the hearing and good cause was shown of a conflicting court appearance.

The South Carolina Office of Motor Vehicle Hearings Rule 10 (B) states that where good cause can be shown, a continuance may be granted. The case was originally scheduled for a hearing on March 6, 2017. However, due to a conflict, Officer Kittle requested a continuance. The hearing officer granted the continuance, setting a new court date, April 25, 2017. Counsel was scheduled to appear in Common Pleas court at the same time as the new court date. And as Counsel has communicated with the OMVH many times in the past, an email was forwarded the day before court, April 24, 2017 explaining that he had a conflict and could not attend.

Prior to the denial of Counsel's request for a continuance, there had been no instance in which it was necessary to consult the OMVH rules advising a preference of a minimum of 48 hours notice and that as much advance notice be given as possible. While Counsel had not made any official continuance requests with the court previously, it is not uncommon to alert lower courts in jurisdictions throughout the State that a conflict exists and a continuance is required. Generally, notice received as late of the morning of court will be accepted and a continuance granted for good cause shown.

When reviewing issues of continuance SC Courts evaluate the requirements of applicable statutes, whether there was good cause, and whether prejudice exists against the parties. While the law does generally leave the grant or denial of a continuance request to the discretion of the trial judge, such grant or denial may be over-turned where the Court finds an abuse of discretion. *Bridwell v. Bridwell*, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983). The

requirement of the statute is suggestive of a 48-hour minimum, however its wording is not absolute. Good cause was shown unto the lower court as Counsel for the Defendant was required to appear in a higher court. This fact is not in dispute. Furthermore, no prejudice existed to any of the parties had a continuance been issued. It was only the Appellant who was ultimately prejudiced by the court's denial of his motion. Given the previous issuance of a continuance when an officer had a conflict, the fact that good cause was shown and Appellant's Counsel was unable to appear in two courts at the same time, and the complete lack of prejudice to any of the parties in the event of a subsequent continuance, the court's denial of Appellant's motion does amount to an abuse of discretion.

II. The OMVH erred in denying of the Appellant's motion for reconsideration, where explanation of the nature of the conflict was provided, making it physically impossible for Counsel to appear, and sufficient explanation was given to explain why a request had not been submitted prior.

On May 15, 2017, Appellant filed a motion to reconsider and for a stay of the final order. Rec. on App. at 46. A full and complete explanation was provided to the hearing officer and yet another opportunity to docket the case without prejudice to any of the parties was avoided. The order denying the motion does note that Counsel for the Appellant had a conflict in a higher court. It also recites the mandates of SCACR 601 (c). However, the explanation provided by Counsel for the Appellant in the motion to reconsider plainly states it was a scheduling oversight. The denial issued by the hearing officer conveniently ignores this deciding "counsel failed to request a continuance as soon as he became aware of the conflict without explanation for the delay in making the request and did not appear for the hearing."

Rec. on App at 21.

III. The OMVH erred in relying on the rigid application of a procedural rule, despite there being an exception drawn in for good cause, where the matter had been previously continued by other parties to the case, no detriment could be shown in granting a continuance, and where the result is to apply a penalty that unjustly and unfairly punishes the Appellant, under the due process clauses of the Constitutions of South Carolina and the United States.

The decision of the hearing officer in the lower court was simply that a 48-hour requirement exists, and Counsel's motion to continue the Appellant's case because of a conflict could not be granted. It gives no consideration for good cause shown, as that part of the rule cannot be found cited anywhere in the court's denial. Failing to apply the entirety of Rule 10 (B), and choosing to rely on and evaluate its decision based only on the portion favorable to denying the Appellant's request is an abuse of discretion. Given the nature of Counsel's conflict, regardless of the manner or time in which such was provided, in advance of the hearing, the hearing officer was fully aware that Counsel could not appear on behalf of the Appellant. The Appellant, similarly, could not appear without Counsel and sufficiently defend himself or advocate his position to the court. Therefore, the hearing officer's decision to arbitrarily deny Counsel's motion for a continuance, and subsequently, the motion for reconsideration, where good cause was shown and where no prejudice existed to the other parties, constitutes reversible error. It further denies the Appellant his constitutional right to a hearing and for due process, as guaranteed by the Constitutions of South Carolina and the United States.

CONCLUSION

For the foregoing reasons, this Court should reverse the OMVH decision dismissing Appellant's request for a hearing and sustaining his suspension and remand this case for a new hearing or for such other and further relief as may be just and proper.

Respectfully submitted,

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BY:



TIMOTHY D. AMEY

SC Bar Number: 75345

ATTORNEY FOR DEFENDANT

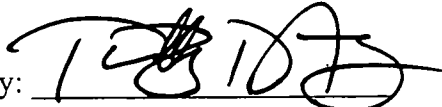
North Charleston, South Carolina
October 23, 2017

0077

CERTIFICATE OF SERVICE

I, Timothy D. Amey, hereby certify that a copy of the foregoing was sent by U.S. Mail or courier to Counsel for the South Carolina Department of Motor Vehicles on this 23rd day of October, 2017.

Tim Amey – Attorney at Law

By: 

Timothy D. Amey
Attorney at Law
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North Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
ALJ DOCKET NO: 17-ALJ-21-0223-AP

APPEAL FROM SOUTH CAROLINA
OFFICE OF MOTOR VEHICLES HEARINGS
OMVH DOCKET NO: 16-OMVH-01-3683-CC

BRIGETTE B. AUTRY, OMVH HEARING OFFICER

JOHN MICHAEL THOMAS APPELLANT

VS

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES RESPONDENT

Of Whom South Carolina Department of Motor Vehicles is the Respondent

BRIEF OF RESPONDENT
SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

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0079

FILED

SC ADMIN. LAW COURT

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

John Michael Thomas,

Appellant,

v.

South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department,

Respondents.

Docket No. 17-ALJ-21-0223-AP

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

This matter comes before the Administrative Law Court pursuant to the appeal of John Michael Thomas, Appellant, who seeks review of the May 3, 2017 Order of Dismissal sustaining the Appellant's implied consent suspension. The Respondent, South Carolina Department of Motor Vehicles (hereinafter, "SCDMV"), seeks to have the May 3, 2017 Order of Dismissal affirmed and the suspension remain.

STATEMENT OF THE ISSUE ON APPEAL

- 1) THE HEARING OFFICER DID NOT ABUSE HER DISCRETION IN DENYING APPELLANT'S REQUEST FOR A CONTINUANCE THAT WAS SUBMITTED LESS THAN TWO BUSINESS HOURS PRIOR TO THE SCHEDULED HEARING.
- 2) ADDITIONAL SUSTAINING GROUNDS.

STATEMENT OF THE CASE

The Appellant was arrested on October 28, 2016 for driving under the influence (hereinafter, "DUI"). Upon refusal to submit to a breath sample, Appellant was found to be in violation of S.C. Code §56-5-2950, and the arresting officer issued a Notice of Suspension form pursuant to S.C. Code §56-5-2951. R. p. 62-63. Appellant timely requested a contested case

hearing. *Id.* The contested case hearing was originally scheduled to take place on February 13, 2017. R. p. 59-60.

On December 28, 2016, the Mount Pleasant Police Department requested a continuance of the February 13, 2017 hearing because Officer Alexander, the DataMaster operator in this case, was scheduled to attend a class at the South Carolina Criminal Justice Academy from February 6-17, 2017. R. p. 58 & 62. This request was submitted via e-mail to the Office of Motor Vehicle Hearings (hereinafter, "OMVH") and parties. *Id.* Appellant did not object to this continuance request. This continuance was granted on January 6, 2017 and the hearing was rescheduled to take place on March 6, 2017. R. p. 56-57.

On February 22, 2017 at 8:35 a.m., the Mount Pleasant Police Department requested a continuance of the March 6, 2017 hearing because Officer Kittle, the arresting officer in this case, would be out of state that day. R. p. 55. This request was submitted via e-mail to the OMVH and parties. *Id.* Appellant did not objection to this continuance request. This continuance was granted on February 22, 2017 at 11:38 a.m. R. p. 53-54. The hearing was rescheduled to take place on Tuesday, April 25, 2017 at 9:30 a.m. *Id.*

On April 3, 2017, Appellant's Counsel was notified that he had a Court of Common Pleas matter added to the non-jury docket for Charleston county on Tuesday, April 25, 2017 at 10:30 a.m. R. p. 51 (middle of the page and down). Appellant failed to request a continuance of the conflicting OMVH hearing until Monday, April 24, 2017 at 4:07 p.m. R. p. 50 (middle of the page and down). The April 24, 2017 request for continuance was the first notice Appellant's Counsel provided to the OMVH and parties of this conflicting court appearance. The OMVH denied this continuance request at 4:18 p.m. due to the request being made with less than two business days' notice, Appellant's Counsel being aware of the conflicting court appearance since

April 3, 2017, and no explanation being provided for the delay in requesting the continuance. R. p. 50 (top of the page to the middle). Although Appellant sent the request for continuance on Monday, April 24, 2017 at 4:07 p.m., SCDMV did not receive the request until approximately 12:30 on Tuesday, April 25, 2017. Upon receiving Appellant's request for continuance, SCDMV immediately sought additional information from Appellant's Counsel regarding the request due to the request not containing any case name or caption information for the OMVH case, and instead containing only the case name and caption information for the conflicting Court of Common Pleas case. R. p. 40. At 12:34 p.m. on Tuesday, April 25, 2017, the OMVH notified the SCDMV that Appellant had requested a continuance and the continuance request was denied by Hearing Officer Autry. R. p. 37. This communication from the OMVH did not notify the SCDMV about which OMVH case Appellant had requested a continuance for. *Id.* It was only once Appellant filed his *Motion to Reconsider and for a Stay of the Final Order* that SCDMV was able to figure out which OMVH case Appellant had requested a continuance in. R. p. 24-45.

The OMVH denied Appellant's *Motion to Reconsider and for a Stay of the Final Order* on June 6, 2017. R. p. 20-23. This denial was based on Appellant's failure to request a continuance of the OMVH hearing "as soon as he became aware of the conflict without explanation for the delay in making the request and [due to Counsel's failure to] appear for the hearing after he was notified that the continuance was denied." *Id.*

The Appellant then timely filed this appeal.

STANDARD OF REVIEW

The scope of judicial review in cases such as this is limited by the Administrative Procedures Act, S.C. Code Section 1-23-380.

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

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

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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

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

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

The Court further noted that:

The substantial evidence rule... means that we will not overturn a finding of fact by an administrative agency "unless there is no reasonable probability that the

facts could be as related by a witness upon whose testimony the finding was based." (Citation omitted.)

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

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

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

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

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

On review of the acts or orders of administrative agencies, the courts will presume, among other things, that the agency action is regular and correct, and that the orders and decisions of the agency are valid and reasonable. 73A C.J.S. *Public Administrative Law and Procedure* Section 220(a) (1983). Therefore, the burden is on the Petitioner to show convincingly that the order of the agency is without evidentiary support or is arbitrary or capricious as a matter of law. *Hamm v. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1988).

ARGUMENT

1) THE HEARING OFFICER DID NOT ABUSE HER DISCRETION IN DENYING APPELLANT'S REQUEST FOR A CONTINUANCE THAT WAS SUBMITTED LESS THAN TWO BUSINESS HOURS PRIOR TO THE SCHEDULED HEARING.

A. Less Than Two Business Days Notice

Rule 10(B), OMVH Rules states that motions filed less two business days prior to a scheduled hearing will only be granted for good cause shown. This motion for continuance was sent with less than two business hours notice. Thus, the request clearly violated Rule 10(B), OMVH Rules requirement of at least two business days notice and, as a result, the request could only be granted for "good cause shown." Rule 10(B) specifically states "Attorneys must notify the Office as soon as possible when a court conflict occurs." In this case, Appellant's Counsel was notified of the conflicting court appearance on April 3, 2017. Despite this advanced notice, Appellant's Counsel did not notify the OMVH of the conflicting court appearance until three weeks later on April 24, 2017 at 4:07 p.m., less than two business hours prior to the scheduled time for this hearing. The "good cause" standard "primarily considers the diligence of the party seeking the [continuance]." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). "If the party seeking the [continuance] was not diligent, the inquiry should end and the

motion [for continuance] should not be granted.” *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). In this case, the entirety of the request for continuance stated “Good Afternoon, I have to be downtown tomorrow for a hearing in Common Pleas. Please continue tomorrow’s hearing and let me know when a new date is set. Thanks!” R. p. 50-52. This e-mail was sent from an e-mail chain regarding the scheduling for the common pleas hearing, which is how the OMVH Hearing Officer knew when Appellant’s Counsel became aware of the conflicting court appearance. *Id.* Significantly, Appellant’s Counsel provided no explanation why he had not notified the OMVH of this conflicting court appearance sooner. Thus, at the time the OMVH Hearing Officer ruled on the request for continuance, there was no evidence that Appellant had exhibited good cause, i.e. diligence, in seeking this continuance and in seeking to deconflict Counsel’s court dates. For this reason alone, the OMVH Hearing Officer’s decision does not demonstrate an abuse of discretion and the decision should be upheld.

Compounding the issues in this case, however, is the fact that the OMVH responded to Appellant’s continuance request within minutes and notified Counsel that the continuance request was denied due to the request not being made in a timely manner and no explanation being provided for why the request was not made sooner. R. p. 50. Appellant did not respond to the OMVH’s ruling in any manner, for example, with an explanation as to why the request for continuance was not made sooner. Rather, Appellant and Appellant’s Counsel simply did not appear for the hearing. R. p. 5-8 and 17.

In fact, the first time Appellant attempted to provide any reason why the request for continuance was not made sooner was in Appellant’s *Motion to Reconsider and for a Stay of the Final Order*, which was not filed until May 15, 2017, twenty days after the hearing. Although Appellant claims a “full and complete explanation was provided to the hearing officer,” that

explanation left something to be desired. Appellant's "full and complete explanation" merely stated this was a "scheduling oversight." R. p. 46, ¶9. No further explanation was provided. No description of the "scheduling oversight" was provided. No explanation of how the "scheduling oversight" occurred. No explanation was provided for how Appellant's Counsel would ensure such a "scheduling oversight" would be prevented in the future. Given the time and resources the OMVH and the Mount Pleasant Police Department that had already been expended on this case, i.e. everyone prepared and present for the hearing to go forward as scheduled, it is grossly unreasonable for the Appellant to argue there was no prejudice to the other parties in continuing this case at the last minute or reopening the case after a final order had been issued by the OMVH. Moreover, Appellant's explanation for why the continuance request was not filed sooner was inadequate, at best, and submitted long after the hearing had already taken place. For these reasons, the OMVH Hearing Officer did not abuse her discretion in refusing to reconsider this case.

B. Delayed Notice to OMVH of Conflicting Court Appearance

As stated above, Appellant's Counsel knew about this conflicting court appearance on April 3, 2017. At the time Appellant requested a continuance of the April 25, 2017 hearing, no explanation was provided to the OMVH to explain why the request for continuance was filed so late. As stated earlier, OMVH Rule 10(B) requires attorneys to notify the OMVH "as soon as possible when a court conflict occurs." (Emphasis added). Despite knowing about this conflicting court appearance since April 3, 2017, Appellant did not request a continuance in this case until April 24, 2017 at 4:07 p.m., which was not "as soon as possible" as required by Rule 10(B), OMVH Rules. Additionally, Rule 601, SCACR explicitly states "An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule

shall notify the affected tribunals as soon as the conflict becomes apparent." (Emphasis added). In this case Appellant's Counsel did not notify the OMVH of the conflicting court appearance until three weeks after the conflict became apparent and less than 24 hours prior to the OMVH hearing. Thus, Appellant's Counsel did not comply with the requirements of Rule 601(c), SCACR and, as a result, the protection normally provided by Rule 601, SCACR was waived by Appellant's Counsel's failure to timely notify the OMVH of the conflicting court appearance.

Moreover, Appellant's motion for continuance was filed late enough that it was a very real possibility that the arresting officer, DataMaster officer, and SCDMV would not receive notice that a continuance had been requested. Certainly, SCDMV did not receive notice of the continuance request until April 25, 2017 at approximately 12:30 p.m. The fact that there was no response from the Mount Pleasant Police Department in regard to this request for continuance and that Officer Kittle and Alexander both showed up for the hearing on April 25, 2017 indicates that they also did not receive notice of Appellant's request for a continuance until sometime after this hearing took place on April 25, 2017. It is common knowledge that most police officers do not work a normal 9-5 shift. Most police officer work rotating shifts that change every few weeks. Thus, sending a request for continuance so late prior to this hearing practically guaranteed that Officers Kittle and Alexander would not receive the request for continuance until after this hearing took place. In fact, the request for hearing was *almost* sent late enough that the OMVH offices would have already been closed for the day (the OMVH closes at 5:00 p.m.). Thus, submitting this request for continuance so late is patently unfair to the other parties in this case because it stripped the parties of the opportunity to respond to the continuance request and risked the parties showing up for a hearing that had the possibility of being continued. In this

case, of course, the hearing was not continued and went forward as scheduled, but the fact that it was possible the hearing would be continued and the other parties might show up unnecessarily was a direct result and risk of submitting this continuance request so late.

Case law grants courts discretion when determining whether to grant or deny a request for continuance. A review of the case *Brockman v. South Carolina Dept. of Motor Vehicles and Mauldin Police Dept.*, 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 2014) reveals that the Administrative Law Court (hereinafter, "ALC") has considered the issue of continuances requested with less than two business days notice in the past. In the *Brockman* case, the ALC specifically rejected a claim of abuse of discretion for a request of continuance under Rule 601, SCACR because the request for continuance was filed with less than two business days notice and Appellant was aware of the conflict well before he filed the Motion for Continuance. Thus, the *Brockman* case makes clear that the OMVH was well within its' discretion to deny Appellant's request for continuance in this case. Also, instructive in this regard is the *Hiller* case, which stated "Nothing in Rule 601, SCACR mandates that one tribunal always be given priority over the other." (Emphasis added). *Joseph W. Hiller, Sr., v. S.C. Dept. of Labor, Licensing and Regulation*, 1999 WL 51899 (1999). Finally, another case which provides guidance on this matter is *S.C. Dept. of Revenue v. Edwin Alewine*, 1997 WL 816208 (1997). The *Alewine* case focused on:

- a. the late notice to the ALC of a conflicting General Sessions court appearance (less than 24 hours);
- b. the requirement of Rule 601, SCACR that "an attorney must give notice of a scheduling conflict as soon as it becomes apparent;"

- c. that Counsel requesting the continuance did not state the date when he was noticed of the Circuit Court trial (notice of the ALC hearing was issued 45 days prior to the hearing);
- d. there was no "explanation as to why the request was not made earlier;"
- e. the number of prior requests for continuances and the reasons for those requests;
- f. that Counsel stated he "did not have anyone in his firm that would be able to attend the hearing for him 'because of the short notice;'" and
- g. the amount of delay the previous continuances had created in the case (six months in *Alewine*).

Emphasis in the original. This case shares many similarities to the *Alewine* case. The request for a continuance was sent with less than 24 hours notice, in fact it was sent with less than two business hours notice. Appellant's Counsel waited for three weeks after receiving notice of the conflicting court appearance before advising the OMVH of the conflict. No explanation was provided in the request for continuance to explain why the request was not made earlier. Two prior continuances had already been granted in this case and the previous continuances had already caused a nearly 2 ½ month delay in this case. Thus, based on the factors set forth in *Alewine* case and the factual similarities in this case and the *Alewine* case, it appears the OMVH was justified in denying this request for continuance.

In South Carolina, the grant or denial of a continuance is within the sound discretion of the Hearing Officer and is reviewable on appeal only when an abuse of discretion appears from the record. *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) ("The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record."); *Newman v. Old West, Inc., et al.*, 286

S.C. 394, 334 S.E.2d 275 (1985) (The trial judge's decision to grant or deny a continuance is a matter within his sound discretion.); and *State v. Lytchfield*, 230 S.C. 405, 95 S.E.2d 857 (1957) ("The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant. A multitude of cases to this effect will be found in 7 S.C.Dig., Criminal Law, k586 et seq., p. 504 et seq. and supplement. Review of them shows that reversals of refusal of continuance are about as rare as the proverbial hens' teeth."). In this case, the OMVH Hearing Officer made it clear that she denied the request for continuance because "it appears that Mr. Amey has been aware of the scheduled hearing since April 3, and there is no explanation for the delay in requesting the continuance." R. p. 50. Thereafter, Appellant provided no explanation for the delay in requesting the continuance until long after the hearing had taken place. Moreover, the explanation provided was minimal, as explained in further detail above. For these reasons, Appellant cannot show that the OMVH Hearing Officer abused her discretion.

Appellant asserts that he was denied his "constitutional right to a hearing and of due process, as guaranteed by the Constitutions of South Carolina and the United States." This statement is patently false. Appellant requested a hearing to challenge his implied consent hearing. That hearing was scheduled for April 25, 2017. As outlined in detail above, Appellant waited until the very last moment to request a continuance of the April 25, 2017 hearing and, when that continuance request was denied and Appellant was notified of that denial, Appellant and his Counsel failed to appear for the hearing. As seen in the record at pages 5-8, the hearing requested by Appellant took place, but Appellant and his Counsel failed to appear for that hearing. Thus, no due process rights were violated.

2) ADDITIONAL SUSTAINING GROUNDS.

The South Carolina Supreme Court has said, "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

A. Insufficient Call To Court

Appellant's request for continuance submitted on April 24, 2017 at 4:07 p.m. violated Rule 10(B), OMVH Rules because it did not include the presiding judge's name and telephone number. This failure meant that if the OMVH Hearing Officer wanted to speak with the presiding judge in the conflicting case, to make scheduling arrangements for example, the OMVH Hearing Officer was unable to do so.

B. Motion Violated Rules in Such a Way the SCDMV Was Unable to Respond to the Motion in a Substantive Manner

Appellant's request for continuance submitted on April 24, 2017 at 4:07 p.m. violated Rule 6, OMVH Rules because it did not contain the caption of the OMVH case, a brief description of the document (for example, "Motion for Continuance"), or the docket number assigned to the case by the OMVH. This failure caused confusion on at least the SCDMV's part as SCDMV was unable to determine which case Appellant was asking for a continuance of, as evidenced by SCDMV's e-mail on Tuesday, April 25, 2017 at 12:31 p.m. R. p. 40. Because SCDMV was unable to determine which case Appellant was asking for a continuance in, SCDMV was unable to provide a substantive response to the request for continuance.¹ Thus,

¹ SCDMV acknowledges that due to the timing of Appellant's request for continuance, the time the hearing was scheduled to take place, and the time SCDMV actually received Appellant's request for continuance, any substantive response SCDMV would have sent regarding Appellant's continuance request would have come after most of the relevant events in this case.

these violations of Rule 6, OMVH Rules stripped SCDMV of its' opportunity to provide a substantive response to Appellant's continuance request.

C. Harm to the State

Further, the State would have been harmed if Appellant's motion for continuance or motion for reconsideration was granted in that:

- a. Officers Kittle and Alexander of the Mount Pleasant Police Department would have to prepare for and appear a second time for a second hearing;
- b. The OMVH would have to reschedule this case, taking up more court time; and
- c. Both a and b above will cost the State of South Carolina and the Mount Pleasant Police Department additional funds and employee time.

All of these are consequences that could have been easily avoided if Appellant had submitted his request for a continuance shortly after receiving notice of the conflicting court appearance.

CONCLUSION

Based upon the foregoing arguments, the Respondent SCDMV respectfully requests that the Order of Dismissal be affirmed and the suspension remain.

[SIGNATURE ON THE FOLLOWING PAGE]

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Respectfully submitted,



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November 8, 2017

Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

John Michael Thomas,

Appellant,

v.

South Carolina Department of Motor Vehicle,

Respondent.

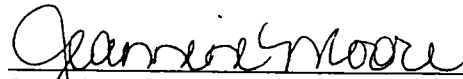
Docket No. 17-ALJ-21-0223-AP
SCDL No. 102250212

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 8, 2017, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing Brief of Respondent to the following:

Tim Amey, Esquire
1495 Remount Road
North Charleston, SC 29406

as Counsel of Record for Appellant John Michael Thomas.



Jeannine (Nina) Moore, Paralegal
Office of General Counsel

November 8, 2017

Blythewood, South Carolina

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SC ADMIN. LAW COURT

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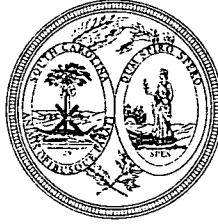
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
OFFICE OF MOTOR VEHICLE HEARINGS

RALPH K. ANDERSON, III
Director



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

August 17, 2017

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

Re: S.C. Dept of Motor Vehicles
vs
John Michael Thomas
SCDL/Customer NO.: 102250212

Dear Ms. Shealy:

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

Please be aware that the transcript was ordered and Creel Reporting has the audio recording. The transcript has not been delivered. I will check on it and I will forward it to the judge and the parties as soon as it is received.

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

Sincerely,

Yolanda P. Williams
Administrative Coordinator, OMVH

Cc: Tim Amey, Esquire
Frank L. Valenta, SCDMV General Counsel

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Michael Thomas,

Appellant,

vs.

South Carolina Department of Motor
Vehicles and Mt. Pleasant Police
Department,

Respondent.

NOTICE OF ASSIGNMENT
(Appeal)

DOCKET NO. 17-ALJ-21-0223-AP

NOTICE IS GIVEN that a notice of appeal seeking review of a decision of the Office of Motor Vehicle Hearings was filed on July 6, 2017. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2016), the **Honorable Shirley C. Robinson**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

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

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

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

This the fourteenth day of July, 2017.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy

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

0099

FILED

JUL 14 2017

000004 SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Mount Pleasant Police)
Department and South Carolina)
Department of Motor Vehicles,)
)
)
)
vs.)
)
John Michael Thomas,)
)
)
)
)
Respondent.)

HEARING

April 25, 2017



INDEXPAGE**STATEMENTS**

Hearing Officer 3

Certificate 4



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

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1 HEARING OFFICER: OMVH-01-5683CC, Mt. Pleasant
2 Police Department and DMV versus John Michael
3 Thomas. Driver's license number 102250212. My
4 name's Brigitte Autry and I've been appointed
5 to preside at this implied consent hearing
6 being held Tuesday, April 25th, 2017, at the
7 Goose Creek Municipal Court. Present with the
8 Mount Pleasant Police Department are Officers
9 Kettle and Alexander. DMV's not present and
10 neither respondent nor counsel for respondent's
11 present. Since the respondent is the one
12 seeking relief and he failed to appear, I find
13 the suspension is sustained and the case is
14 dismissed. Okay. Thanks, y'all.

15 (There being nothing further, the hearing was
16 concluded.)
17
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CERTIFICATE

This is to certify the transcript of the hearing consists of three (3) pages. This transcript was prepared by me without the benefit of my being present during the hearing. Additionally, this transcript was prepared from a audio recording provided to me.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal this July 25, 2017.

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

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Yolanda Williams

Transcript Request

Appeal

From: Yolanda Williams
Sent: Tuesday, July 11, 2017 11:54 AM
To: Creel Reporting (contact@creelreporting.com); 'Coral Strickland'
Subject: Transcript Request for John Michael Thomas 16-OMVH-01-5683-CC
Attachments: Thomas, John Michael_20170425-0956_01d2bdaa35ec3c10.wma

Importance: High

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

Tim Amey
Attorney at Law
1495 Remount Road
North Charleston, SC 29406
843-425-2269

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

1495 Remount Rd.
North Charleston, SC 29406



TIM AMEY
ATTORNEY AT LAW

Tel. (843) 425-2269
Fax (843) 410-5700

<http://www.timamey.com>

July 6, 2017

VIA MAIL & EMAIL:

Brigette Autry
SCOMVH 1205 Pendleton St. Suite 325
Columbia, SC 29201

RE: SCDPS & SCDMV v. John Michael Thomas
Case #: 16-OMVH-01-5683-CC

RECEIVED

JUL 10 2017

SCOMVH

Dear Ms. Autry,

On May 3, 2017, the above case was heard before the Honorable Brigette Autry, Hearing Officer, SCOMVH.

I am requesting that you provide me with a transcript of the proceedings. Please transcribe the entire record of OMVH proceedings. I agree to pay the per page charge for this transcript as provided by OMVH policy.

With best wishes, I remain

Sincerely,

Tim Amey

cc: Clerk of Court
SC Administrative Law Court

FILED

JUL 06 2017

SCOMVH

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Hrny date 4-25-17

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BA

THE STATE OF SOUTH CAROLINA
In Administrative Law Court

APPEAL FROM THE SCOMVH
Administrative Law Court

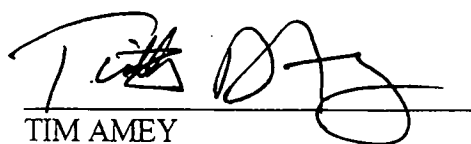
Case

South Carolina Department of Public Safety & Department of Motor Vehicles. . . . Respondents,
v.

John Michael Thomas. Appellant.

NOTICE OF APPEAL

John Michael Thomas appeals the order of the Brigitte B. Autry dated June 6, 2017, which denied the Appellant's Motion for Reconsideration and for a Stay of Appellant's Suspension Pursuant to Rule 15 (D) & (E) of the OMVH, thereby affirming her Order of Dismissal and Sustaining the Suspension of Appellant's Driver's License. The Appellant appeals this Order upon the attached grounds.



TIM AMEY
1495 Remount Road
North Charleston, SC 29406
(843) 425-2269
tim@timamey.com
Attorney for Appellant

July 6, 2017

RECEIVED

JUL 10 2017

SCOMVH

FILED

JUL 06 2017

SCOMVH

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM THE SCOMVH
Brigette Autry, OMVH Hearing Officer

Docket #: 16-OMVH-01-5683-CC
DL #: 102250212

South Carolina Department of Public Safety & Department of Motor Vehicles. . . . Respondents,
v.

John Michael Thomas Appellant.

GROUND FOR APPEAL

The Appellant hereby appeals the Order of SCOMVH Hearing Officer, Brigette Autry, dated May 3, 2017, and the subsequent Order dated June 6, 2017. In each Order, Appellant's request for a hearing was dismissed and a suspension of his driving privileges was sustained. Notice of the Court's final decision was provided to Counsel via email on June 6, 2017. This Appeal is timely filed within thirty (30) days of receiving notice of the Court's action.

The Appeal is based upon the following issues:

1. The case was originally scheduled for a hearing on March 6, 2017. However, due to a conflict, Officer Kittle requested a continuance. Counsel for the

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Appellant did not raise an objection and the Hearing Officer granted the continuance, setting a new court date, April 25, 2017.

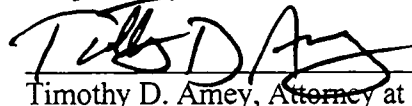
2. Counsel was scheduled to appear in Common Pleas court at the same time as the new court date, on April 25, 2017. As Counsel has communicated with the OMVH many times in the past, an email was forwarded the day before court, April 24, 2017 explaining that he had a conflict and could not attend.
3. That same day, Counsel received notice from the Hearing Officer that the continuance would not be granted as it did not comply with the requirements of the OMVH Rules. Despite receiving this news, Counsel had no way of appearing for the hearing the following day.
4. While Counsel had not made any official continuance requests with the court previously, it is not uncommon to alert various courts in jurisdictions throughout the State that a conflict exists and a continuance is required. Generally, notice received as late of the morning of court will be accepted and a continuance granted for good cause shown.
5. Counsel did previously have the experience of notifying the OMVH of delays in arrival for court on the morning scheduled and had received wide latitude for late appearances where the OMVH was notified in advance of the start of the hearing.
6. Prior to the denial of Counsel's request for a continuance, there had been no instance in which it was necessary to consult the OMVH rules requiring a minimum of 48 hours notice and that as much advance notice be given as

possible. Counsel for the Appellant explained this to the OMVH in a formal motion for reconsideration.

7. While Counsel does not dispute that a rigid application of the rule requiring prior notice of a conflict could be construed to bar reconsideration or even an appeal, such an application is not necessary, under the rules, and would create an unfair and unjust result for the Appellant.
8. OMVH Rule 10(B) does allow for good cause to be shown. In this instance, Counsel would argue that this is the first time he has ever requested a continuance of an OMVH hearing due to a scheduling conflict, and as such Counsel was not aware of the requirements of the Rule. While it has been a lesson well learned, the result should not include collateral consequences for the Appellant.
9. Counsel requested a continuance, with good cause shown of a conflict in a higher court. While the timing of the request was not perfect, it did provide the Court advance notice. Furthermore, there would have been no detriment to the Respondents in continuing the matter, as their request for a continuance had already been granted in the case.
10. The ruling of the hearing officer, denying the request for a continuance, and subsequently denying the Appellant's motion for reconsideration of that decision should be vacated and the matter should be remanded for a hearing where all parties may appear with Counsel, in the interests of justice and fairness for the Appellant.

WHEREFORE, Appellant respectfully requests this Court reverse the OMVH decision dismissing Appellant's request for a hearing and sustaining his suspension and remand this case for a new hearing or for such other and further relief as may be just and proper.

Respectfully submitted:



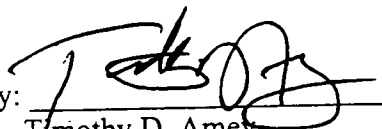
Timothy D. Amey, Attorney at Law
1495 Remount Road
North Charleston, SC 29406
(843) 425-2269
tim@timamey.com
Attorney for Appellant

July 6, 2017

CERTIFICATE OF SERVICE

I, Timothy D. Amey, hereby certify that a copy of the foregoing was sent by U.S. Mail or courier to OMVH Hearing Officer, Brigitte Autry, on this 6th day of July, 2017.

Tim Amey – Attorney at Law

By: 

Timothy D. Amey

Attorney at Law

1495 Remount Rd.

North Charleston, SC 29406

Attorney for the Appellant

North Charleston, South Carolina

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CERTIFICATE OF SERVICE

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

Yolanda P. Williams

Yolanda P. Williams

May 3, 2017
Columbia, South Carolina

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Yolanda Williams

From: Yolanda Williams
Sent: Wednesday, May 03, 2017 8:58 AM
To: Tim Amey (tim@timamey.com); Mt. Pleasant PD (rwildes@tompssc.com); HPU@scdmv.net
Subject: 05-03-17 John Thomas, IC Dismissal
Attachments: 1 Reconsideration-appeal instructions 09-07-11.pdf; 05-03-17 CERTIFICATE OF SERVICE.pdf; Thomas, John Michael - 16-5683.pdf

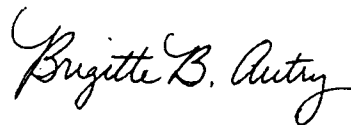
Attached is a copy of the hearing officer's decision. Your client will receive additional information via mail from the DMV regarding their driving privileges.

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

May 3, 2017. No further correspondence was received until May 15, 2017, when counsel filed the motion for reconsideration, stating that he was unaware of the two business day time frame imposed by OMVH Rule 10(B). OMVH Rule 10(B) requires requests for continuances be filed at least two (2) business days prior to the scheduled hearing **or as soon as the party becomes aware of a court conflict**. Furthermore, Rule 601(c), SCACR, also requires attorneys requesting a continuance based upon the priority established in that rule to notify the affected tribunal as soon as he becomes aware of the conflict. Because it appears that counsel failed to request a continuance as soon as he became aware of the conflict without explanation for the delay in making the request and did not appear for the hearing after he was notified that the continuance was denied,

IT IS HEREBY ORDERED that Respondent's motion for reconsideration and stay of suspension is **DENIED**.

AND IT IS SO ORDERED.



June 6, 2017
Columbia, South Carolina

Brigitte B. Autry
Hearing Officer, OMVH

CERTIFICATE OF SERVICE

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

Yolanda P. Williams

Yolanda P. Williams

June 6, 2017
Columbia, South Carolina

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Yolanda Williams

From: Yolanda Williams
Sent: Tuesday, June 06, 2017 12:27 PM
To: Tim Amey (tim@timamey.com); Mt. Pleasant PD (rwildes@tompsec.com); HPU@scdmv.net
Subject: Order, John Thomas dk# 16-5683
Attachments: 1 Reconsideration-appeal instructions 09-07-11.pdf; 06-06-17 CERTIFICATE OF SERVICE.pdf; Thomas, John Michael - 16-5683 - Order denying MFR.pdf

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

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

May 19, 2017

Brigette Autry, Administrative Hearing Officer
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, South Carolina 29201

RE: Return To Motion To Reconsider and for a Stay of The Final Order
South Carolina Department of Public Safety and South Carolina Department of Motor Vehicles vs. John M. Thomas
Docket No.: 16-OMVH-01-5683-CC
SCDL No.: 102250212

Dear Ms. Autry:

Enclosed for filing, please find one original and one copy of SCDMV's Return to Motion to Reconsider and for a Stay of The Final Order in the above referenced matter. As evidenced by the attached Certificate of Service, I am serving the parties with a copy of same. Please have your clerk file the original and return a clocked copy to me in the enclosed self-addressed envelope.

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

Sincerely,

A handwritten signature in cursive script that reads "Wanda R. Ealy".

Wanda R. Ealy
Paralegal Assistant
Office of General Counsel

RECEIVED

MAY 19 2017

SCOMVH

cc: Timothy D. Amey, Esquire
Marcus Gore, Esquire

FILED

MAY 19 2017

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MAY 19 2017

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STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Public Safety and
South Carolina Department of Motor Vehicles,

Petitioners,

v.

John Michael Thomas,

Respondent.

Docket No. 16-OMVH-01-5683-CC
SCDL No. 102250212

**RETURN TO MOTION TO
RECONSIDER AND FOR A STAY OF
THE FINAL ORDER**

On May 18, 2017, the South Carolina Department of Motor Vehicles (SCDMV) received Respondent's *Motion to Reconsider and for a Stay of the Final Order* ("current Motion") in regard to the above-captioned matter. The SCDMV opposes the motion and hereby files the following return to Respondent's current Motion.

1. On February 22, 2017, Office of Motor Vehicle Hearings (OMVH) staff issued an Order of Continuance and Notice of Hearing for the above referenced case (Exhibit A). This Order and Notice was e-mailed to the parties at the HPU e-mail address for SCDMV, rwildes@tompsc.com for the Town of Mount Pleasant, and to tim@timamey.com for Respondent.
2. Respondent's Counsel apparently received this Order and Notice because Respondent's current Motion discusses Respondent's Counsel forwarding "information related to [a] scheduling conflict to all parties via e-mail and request[ing] that the court continue the hearing for good cause, having to appear in a higher court" on Monday, April 24, 2017.¹

¹ After diligently searching SCDMV's records, it appears the motion for continuance referenced by Respondent is an e-mail sent by Respondent's Counsel to the OMVH and parties at 4:07 p.m. on Monday, April 24, 2017 (Exhibit C). The undersigned cannot be certain of this because the e-mail did not contain any information specific to this case in it, for example, the case name or docket number.

FILED

MAY 19 2017

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3. Based on the contents of the current Motion and page four of Exhibit C, it appears the OMVH denied the motion for continuance (see paragraph 7 to current Motion).
4. Respondent, nor his counsel, appeared at the hearing on April 25, 2017. As a result an Order of Dismissal was issued on May 3, 2017 (Exhibit B). The Order of Dismissal was sent to all the parties at the same e-mail addresses used to provide the Order of Continuance and Notice of Hearing marked as Exhibit A.
5. Respondent asserts that his Counsel was "not aware of the generally applicable 48-hour requirement in the OMVH rules" and that the OMVH's denial of the motion for continuance "prompted Counsel's review of the rules." The rule requiring at least two business days notice for all motions for continuance has been part of the OMVH Rules since at least May 1, 2011.
6. Based on the contents of the current Motion, it appears that the OMVH had ruled on the Respondent's motion for continuance and denied the motion. If this understanding is correct, (keeping in mind that SDCMV does not have a copy of the ruling at this time), then Respondent and/or Respondent's Counsel openly defied a ruling of this Court. If this understanding is not correct and a ruling on the motion for continuance had not yet been issued, then at the very least Respondent and/or Respondent's Counsel still had a duty to appear for this hearing. This is due to the fact that not all motions for continuance are granted and until the Court issues a ruling granting the motion for continuance, the parties are still obligated to appear at the scheduled hearing.
7. Further, the State asserts it will be harmed should Respondent's Motion to Reconsider be granted in that:



- a. Officers Kittle and Alexander of the Mount Pleasant Police Department would have to prepare for and appear a second time for a second hearing;
- b. The OMVH would have to reschedule this case and hold a second hearing; and
- c. Both a and b above will cost the State of South Carolina and the Mount Pleasant Police Department additional funds and employee time.

Wherefore, Petitioner SCDMV respectfully requests the Motion to Reconsider and for a Stay of the Final Order be denied in full.

Respectfully submitted,



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

General Counsel

PHILIP S. PORTER, SC Bar # 4526

Deputy General Counsel

BRANDY A. DUNCAN, SC Bar # 72052

Assistant General Counsel

South Carolina Department of Motor Vehicles

10312 Wilson Boulevard

Post Office Box 1498

Blythewood, South Carolina 29016-0000

Telephone: 803.896.9900

Fax: 803.896.9901

Email: hearingsprocessingunit@scdmv.net

May 18, 2017
Blythewood, South Carolina

Duncan, Brandy A

From: Yolanda Williams <ywilliams@scalc.net>
Sent: Wednesday, February 22, 2017 11:39 AM
To: Tim Amey (tim@timamey.com); Mt. Pleasant PD (rwildes@tompsc.com); HPU
Subject: Order of Continuance, John Thomas, 04-25-17 dk# 16-5683
Attachments: Order of Continuance, John Thomas, 04-25-17 dk# 16-5683.pdf

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

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

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

Mt. Pleasant Police Department
and
South Carolina Department of Motor
Vehicles,

Petitioner,

VS.

John Michael Thomas,

Respondent.

Docket No. 16-OMVH-01-5683-CC
DL# 102250212

ORDER OF CONTINUANCE AND NOTICE OF HEARING

This matter was previously scheduled to be heard on the merits before Hearing Officer Brigette B. Autry at 9:30 AM on Monday, March 6 2017. On February 22, 2017 B. Kittle requested a continuance. There being good cause shown, this case is continued until a later date and time. Accordingly,

IT IS HEREBY NOTICED that this case is rescheduled for **9:30 AM on Tuesday, April 25 2017 at Goose Creek Municipal Court 519 N. Goose Creek Blvd. Goose Creek SC** . All other provisions of the original Notice of Hearing remain in effect.

Yolanda P. Williams,
Administrative Coordinator, OMVH

February 22, 2017
Columbia, South Carolina

Cc: Tim Amey

FILED
MAY 19 2017
SCOMVH

Duncan, Brandy A

From: Yolanda Williams <ywilliams@scalco.net>
Sent: Wednesday, May 3, 2017 8:58 AM
To: Tim Amey (tim@timamey.com); Mt. Pleasant PD (rwildes@tompsec.com); HPU
Subject: 05-03-17 John Thomas, IC Dismissal
Attachments: 1 Reconsideration-appeal instructions 09-07-11.pdf; 05-03-17 CERTIFICATE OF SERVICE.pdf; Thomas, John Michael - 16-5683.pdf

Follow Up Flag: Follow up
Flag Status: Completed

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

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

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

0125

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

Mt. Pleasant Police Department	)	Docket No. 16-OMVH-01-5683-CC
and	)	DL# 102250212
South Carolina Department of Motor	)	
Vehicles	)	
Petitioners,	)	
	)	
vs.	)	ORDER OF DISMISSAL
	)	
John Michael Thomas,	)	
	)	
Respondent.	)	

Appearances:

For Mt. Pleasant Police Department: Officers B. Kittle and K. Alexander
 For S.C. Department of Motor Vehicles: no appearance¹
 For Respondent: no appearance

Other information:

Type of Hearing: Implied consent (S.C. Code Ann. § 56-5-2950)
 [Registering .15% or greater]

This matter is before the South Carolina Office of Motor Vehicle Hearings ("OMVH") pursuant to Respondent's request for a contested case hearing regarding the suspension of his driver's license or driving privilege. Pursuant to notice to the parties, a hearing was held before me on April 25, 2017, at the Goose Creek Municipal Court in Goose Creek, South Carolina. The Mt. Pleasant Police Department was present, but neither Respondent nor counsel for Respondent appeared at the hearing.

Rule 13 of the Rules of Procedure for the Office of Motor Vehicle Hearings provides:

A hearing officer may dismiss a contested case or dispose of a contested case adverse to a defaulting party. A default occurs when a party fails to plead or otherwise prosecute or defend, fails to appear at the hearing without the proper consent of the hearing officer...

Because Respondent is the party seeking relief in this matter and he failed to appear at the hearing,

IT IS HEREBY ORDERED that this matter is dismissed and that the suspension of Respondent's driver's license or driving privilege is **SUSTAINED**.

AND IT IS SO ORDERED.

Brigette B. Autry

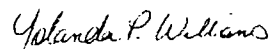
May 3, 2017
 Goose Creek, South Carolina

 Brigette B. Autry
 Hearing Officer, OMVH

¹ Pursuant to S.C. Code Ann. § 1-23-660(B), the South Carolina Department of Motor Vehicles is not required to appear at implied consent hearings.

CERTIFICATE OF SERVICE

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



Yolanda P. Williams

May 3, 2017
Columbia, South Carolina

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NOTICE

Motion of Reconsideration

A party may file a written motion with the OMVH within ten (10) days after notice of this order requesting the Hearing Officer reconsider this final decision. However, the filing of a Motion of Reconsideration does not stay the provisions of this final decision nor excuse compliance with its provisions. See OMVH Rule 15 (D). A stay must be requested specifically by motion. See OMVH Rule 15 (E). The filing of a motion for reconsideration does stay the time for an appeal until an order is issued; however, if the hearing officer does not issue a written order on the motion for reconsideration, it is deemed denied thirty days after it is filed.

Only original documents are accepted. Documents must be filed via hand-delivery or by depositing the document in the U.S. Mail, properly addressed, with sufficient first class postage attached. Facsimiles sent to the OMVH and the South Carolina Administrative Law Court do not comply with filing requirements and are not authorized. See ALC Rules 4(B).

The Rules of the Administrative Law Court are found at: www.scalc.net

The Rules of the Office of Motor Vehicle Hearings are found at: www.scomvh.net

Appeal

A party may appeal this final decision by filing written notice with the South Carolina Administrative Law Court within thirty (30) days of receipt of the order to the following address:

Attn: Clerk
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

The notice must be accompanied by proof of service of the notice on all parties and a filing fee in the amount of \$150.00 made payable to the South Carolina Administrative Law Court. See ALC Rules 3(A), 4(B), 31(A), 33 and 71(A). A copy of the notice must also be sent to the OMVH and a copy of the transcript shall be ordered within ten days after service of the notice. The transcript must be ordered by the Appellant and the Appellant is responsible for the cost thereof.

Duncan, Brandy A

From: Duncan, Brandy A
Sent: Tuesday, April 25, 2017 12:32 PM
To: 'Tim Amey'; Yolanda Williams
Cc: HPU; Mt. Pleasant PD (rwildes@tompsec.com)
Subject: RE: Motion "MOTAPP-Grounds For Appeal" for Case "2017CP1000625-Stephen Bivens VS South Carolina State of The" was added to a Motions Roster for 4/28/2017 at 10:30 AM

Tim,

I am not sure why this e-mail was sent us. Can you clarify?

Thanks,

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

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

From: Tim Amey [mailto:tim@timamey.com]
Sent: Monday, April 24, 2017 4:07 PM
To: Yolanda Williams <ywilliams@scalc.net>
Cc: HPU <HearingsProcessingUnit@scdmv.net>; Mt. Pleasant PD (rwildes@tompsec.com) <rwildes@tompsec.com>
Subject: FW: Motion "MOTAPP-Grounds For Appeal" for Case "2017CP1000625-Stephen Bivens VS South Carolina State of The" was added to a Motions Roster for 4/28/2017 at 10:30 AM

Good Afternoon,

I have to be downtown tomorrow for a hearing in Common Pleas. Please continue tomorrow's hearing and let me know when a new date is set. Thanks!

Tim

Tim Amey

1495 Remount Rd.

North Charleston, SC 29406

0129

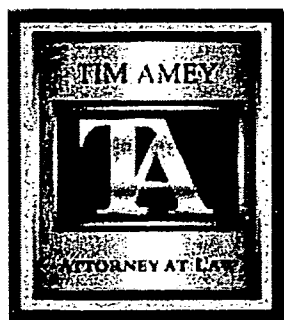
000034

(o): 843-718-2656

(c): 843-425-2269

(f): 843-410-5700

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From: "Caroline Crisler, Leonard" <ccleonard@charlestoncounty.org>

Date: Monday, April 3, 2017 at 10:57 AM

To: Tim Amey <tim@timamey.com>, Ira Grossman <IGrossman@tompssc.com>

Subject: RE: Motion "MOTAPP-Grounds For Appeal" for Case "2017CP1000625-Stephen Bivens VS South Carolina State of The" was added to a Motions Roster for 4/28/2017 at 10:30 AM

I have rescheduled this matter to Tuesday the 25th at 10:30. You will receive e-mail confirmation shortly.

Caroline C. Leonard
Non Jury Docket Coordinator
Charleston, County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

000035

ccleonard@charlestoncounty.org
843-958-5049 (Office)
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Court *Plus*

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ccleonard@charlestoncounty.org.

0131

000036

Duncan, Brandy A

From: Yolanda Williams <ywilliams@scalc.net>
Sent: Tuesday, April 25, 2017 12:34 PM
To: Duncan, Brandy A
Subject: RE: Motion "MOTAPP-Grounds For Appeal" for Case "2017CP1000625-Stephen Bivens VS South Carolina State of The" was added to a Motions Roster for 4/28/2017 at 10:30 AM

He was requesting a continuance but Mrs. Autry denied the request. Thanks.

From: Duncan, Brandy A [mailto:Brandy.Duncan@scdmv.net]
Sent: Tuesday, April 25, 2017 12:32 PM
To: Tim Amey <tim@timamey.com>; Yolanda Williams <ywilliams@scalc.net>
Cc: HPU <HearingsProcessingUnit@scdmv.net>; Mt. Pleasant PD (rwildes@tompsc.com) <rwildes@tompsc.com>
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 (803) 896-9937
 (803) 896-9901 (fax)

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Tim Amey

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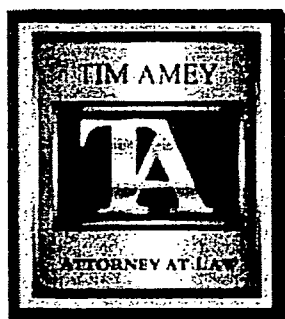
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ccleonard@charlestoncounty.org.

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

Duncan, Brandy A

From: Tim Amey <tim@timamey.com>
Sent: Wednesday, April 26, 2017 2:17 PM
To: Duncan, Brandy A
Subject: Re: Motion "MOTAPP-Grounds For Appeal" for Case "2017CP1000625-Stephen Bivens VS South Carolina State of The" was added to a Motions Roster for 4/28/2017 at 10:30 AM

Hey Brandy,

I just replied from a previous email on this case. Sorry about that.

Thanks,

Tim Amey
(C): 843-425-2269
(F): 843-410-5700

Sent from my iPhone

On Tue, Apr 25, 2017 at 12:31 PM -0400, "Duncan, Brandy A" <Brandy.Duncan@scdmv.net> wrote:

Tim,

I am not sure why this e-mail was sent us. Can you clarify?

Thanks,

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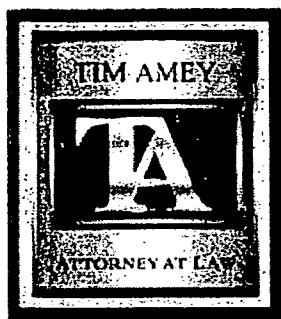
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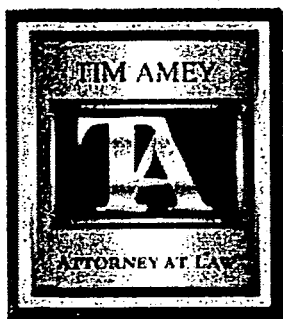
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FILED

MAY 19 2017

SCOMVH

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

South Carolina Department of Public Safety and
South Carolina Department of Motor Vehicles,

Petitioner,

v.

John M. Thomas,

Respondent.

Docket No. 16-OMVH-01-5683-CC
SCDL No. 102250212

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 19, 2017, I mailed, via first class mail, a true and correct copy of the foregoing *Return to Motion to Reconsider and for a Stay of The Final Order* to the following:

Timothy D. Amey, Esquire
1495 Remount Rd.
N. Charleston, SC 29406

As Counsel of Records for John M. Thomas, and to

Marcus Gore, Esquire
South Carolina Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016


Wanda R. Ealy
Paralegal Assistant

May 19, 2017
Blythewood, South Carolina

✓

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

South Carolina Department of Public Safety)
and)
South Carolina Department of Motor Vehicles,)
)
Petitioners,)
)
vs.)
)
John Michael Thomas,)
)
Respondent.)

Docket No. 16-OMVH-01-5683-CC
DL# 102250212

**NOTICE OF MOTION AND
MOTION TO RECONSIDER
AND FOR A STAY OF THE
FINAL ORDER**

This matter is before the South Carolina Office of Motor Vehicle Hearings ("OMVH") pursuant to Respondent's request for reconsideration of the Order of Dismissal issued May 3, 2017 and for a stay of the Final Order pursuant to OMVH Rule 15 (D) and 15 (E), based upon the following:

1. This case was originally scheduled on March 6, 2017.
2. Prior to the scheduled date, Officer Kittle requested a continuance.
3. A continuance was granted and a new court date was set for April 25, 2017.
4. Counsel was scheduled to appear in Common Pleas court at the same time as the hearing on the 25th.
5. On Monday April 24, 2017 Counsel forwarded information related to the scheduling conflict to all parties via email and requested that the court continue the hearing for good cause, having to appear in a higher court.
6. At the time, Counsel was not aware of the generally applicable 48-hour requirement in the OMVH rules.
7. The Court's denial of the request to continue came as a surprise, and prompted Counsel's review of the rules.
8. While the rule does very clearly call for motions to be made two business in advance of the hearing, there is allowance for scenarios where good cause can be shown.
9. Counsel would beg the Court's consideration for the scheduling oversight and request that he be allowed to appear on behalf of Mr. Thomas, as this was a genuine mistake and not one that will ever be made again.
10. The failure to appear was no fault of the Respondent, as he expected Counsel would be appearing on his behalf.

RECEIVED

FILED

MAY 17 2017

0141

MAY 15 2017

SCOMVH

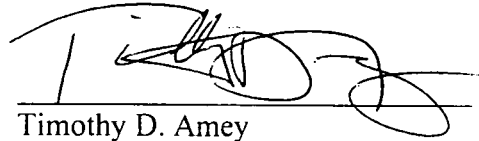
000046

SCOMVH

3

11. In the interests of justice, Respondent and Counsel humbly pray the Court will reconsider its ruling, stay the Final Order, and see fit to reset this hearing for a new date upon which Counsel may appear, as both Counsel and Respondent had intended, to proceed with the appeal of Respondent's suspension.

Respectfully submitted,



Timothy D. Amey
TA – Attorney at Law
1495 Remount Rd.
North Charleston, SC 29406
Cell: (843) 425-2269
ATTORNEY FOR DEFENDANT

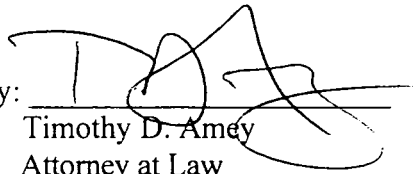
This 15th day of May, 2017
North Charleston, South Carolina

FILED
MAY 15 2017
SCOMVH

CERTIFICATE OF SERVICE

I, Timothy D. Amey, hereby certify that a copy of the foregoing was sent by U.S. Mail or courier to Officers B. Kittle and K. Alexander on this 15th day of May 2017.

Tim Amey – Attorney at Law

By: 
Timothy D. Amey
Attorney at Law
1495 Remount Rd.
North Charleston, SC 29406
Attorney for the Appellant

North Charleston, South Carolina

0143

FILED

MAY 15 2017

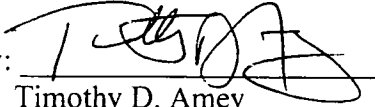
SCOMVH

000048

CERTIFICATE OF SERVICE

I, Timothy D. Amey, hereby certify that a copy of the foregoing was sent by U.S. Mail or courier to Counsel for the South Carolina Department of Motor Vehicles on this 15th day of May 2017.

Tim Amey – Attorney at Law

By: 
Timothy D. Amey
Attorney at Law
1495 Remount Rd.
North Charleston, SC 29406
Attorney for the Appellant

North Charleston, South Carolina

FILED

MAY 15 2017

SCOMVH

000049

Yolanda Williams

5683

From: Yolanda Williams
Sent: Monday, April 24, 2017 4:18 PM
To: 'Tim Amey'
Cc: HPU@scdmv.net; Mt. Pleasant PD (rwildes@tompsc.com)
Subject: RE: Motion "MOTAPP-Grounds For Appeal" for Case "2017CP1000625-Stephen Bivens VS South Carolina State of The" was added to a Motions Roster for 4/28/2017 at 10:30 AM

Importance: High

Rule 10(B) requires motions for a continuance be made at least two business days prior to the scheduled hearing date. From the below e-mail, it appears that Mr. Amey has been aware of the scheduled hearing since April 3, and there is no explanation for the delay in requesting the continuance. At this time, the continuance is denied and the hearing will remain as scheduled.

Brigette Autry
Hearing Officer, OMVH

From: Tim Amey [mailto:tim@timamey.com]
Sent: Monday, April 24, 2017 4:07 PM
To: Yolanda Williams <ywilliams@scalco.net>
Cc: HPU@scdmv.net; Mt. Pleasant PD (rwildes@tompsc.com) <rwildes@tompsc.com>
Subject: FW: Motion "MOTAPP-Grounds For Appeal" for Case "2017CP1000625-Stephen Bivens VS South Carolina State of The" was added to a Motions Roster for 4/28/2017 at 10:30 AM

Good Afternoon,

I have to be downtown tomorrow for a hearing in Common Pleas. Please continue tomorrow's hearing and let me know when a new date is set. Thanks!

Tim

TIM AMEY

1495 REMOUNT RD.

NORTH CHARLESTON, SC 29406

(O): 843-718-2656

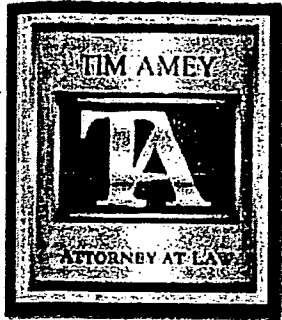
(C): 843-425-2269

(F): 843-410-5700

WWW.TIMAMEY.COM

0145

000050



CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by an attorney. It may contain information that is confidential, privileged, proprietary or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, or disseminate this message, or any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

From: "Caroline Crisler, Leonard" <ccleonard@charlestoncounty.org>
Date: Monday, April 3, 2017 at 10:57 AM
To: Tim Amey <tim@timamey.com>, Ira Grossman <IGrossman@tompsec.com>
Subject: RE: Motion "MOTAPP-Grounds For Appeal" for Case "2017CP1000625-Stephen Bivens VS South Carolina State of The" was added to a Motions Roster for 4/28/2017 at 10:30 AM

I have rescheduled this matter to Tuesday the 25th at 10:30. You will receive e-mail confirmation shortly.

Caroline C. Leonard
Non Jury Docket Coordinator
Charleston, County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401
ccleonard@charlestoncounty.org
843-958-5049 (Office)
843-958-4440 (Fax)

Court Plus

-----Original Message-----

From: cpas@charlestoncounty.org [mailto:cpas@charlestoncounty.org]
Sent: Thursday, March 30, 2017 11:39 AM
To: Ira Grossman <IGrossman@tompsec.com>

000051

Subject: Motion "MOTAPP-Grounds For Appeal" for Case "2017CP1000625-Stephen Bivens VS South Carolina State of The" was added to a Motions Roster for 4/28/2017 at 10:30 AM

- MOTIONS WILL BE HEARD BEFORE JUDGE NICHOLSON IN COURTROOM 3E
 - PLEASE SUBMIT ALL MEMOS THREE DAYS PRIOR TO THE HEARING
 - DEADLINES FOR REQUESTS FOR CONTINUANCES WILL BE WEDNESDAY APRIL 19th. AT 5PM
- AFTER THAT TIME, ALL REQUESTS WILL NEED TO GO DIRECTELY TO JUDGE NICHOLSON

IF YOU HAVE QUESTIONS PLEASE CONTACT CAROLINE LEONARD AT:
ccleonard@charlestoncounty.org.

0147

000052

Yolanda Williams

From: Yolanda Williams
Sent: Wednesday, February 22, 2017 11:38 AM
To: Tim Amey (tim@timamey.com); Mt. Pleasant PD (rwildes@tompsc.com); HPU@scdmv.net
Subject: Order of Continuance, John Thomas, 04-25-17 dk# 16-5683
Attachments: Order of Continuance, John Thomas, 04-25-17 dk# 16-5683.pdf

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

0149

000054

Yolanda Williams

From: Wildes, Renice <RWildes@tompssc.com>
Sent: Wednesday, February 22, 2017 8:35 AM
To: Yolanda Williams
Cc: Tim Amey (tim@timamey.com); HPU@scdmv.net; Kittle, Brandon
Subject: RE: Order of Continuance, John Thomas, 03-06-17 dk# 16-5683

From: Kittle, Brandon
Sent: Tuesday, February 21, 2017 7:51 PM
To: Wildes, Renice <RWildes@tompssc.com>
Subject: BA Hearing for John Thomas

DU
4.25
9.30

Hey Renice,
Could you please request a continuance for a BA on March 6. It is for John Thomas. I will be out of state that day. Also, could you request that the new date be on a Tuesday. I work every Tuesday so it shouldn't need continued again.

Thanks,
Kittle

-----Original Message-----

From: Yolanda Williams [mailto:ywilliams@scalc.net]
Sent: Friday, January 06, 2017 12:29 PM
To: Tim Amey (tim@timamey.com) <tim@timamey.com>; Wildes, Renice <RWildes@tompssc.com>; HPU@scdmv.net
Subject: Order of Continuance, John Thomas, 03-06-17 dk# 16-5683

Yolanda P. Williams
Administrative Coordinator
Scheduling Assistant for
Brigette Autry and Tracy Holland
South Carolina Administrative Law Court
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803-734-3201
803-734-3200 fax
www.scomvh.net

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

000056

Yolanda Williams

From: Yolanda Williams
Sent: Friday, January 06, 2017 12:29 PM
To: Tim Amey (tim@timamey.com); Mt. Pleasant PD (rwildes@tompsc.com); HPU@scdmv.net
Subject: Order of Continuance, John Thomas, 03-06-17 dk# 16-5683
Attachments: Order of Continuance, John Thomas, 03-06-17 dk# 16-5683.pdf

Yolanda P. Williams
Administrative Coordinator
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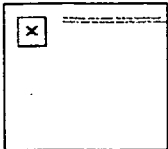
Yolanda Williams

16-5683

From: Wildes, Renice <RWildes@tompsc.com>
Sent: Wednesday, December 28, 2016 9:08 AM
To: Yolanda Williams
Cc: Alexander, Kyle; 'hpu@scdmv.net'; Tim Amey (tim@timamey.com) (tim@timamey.com); Michael S. O'Neal (msoneallaw@hotmail.com) (msoneallaw@hotmail.com); John Drennan (jdrennanlaw@yahoo.com) (jdrennanlaw@yahoo.com); John Drennan (jdrennanlaw@yahoo.com) (jdrennanlaw@yahoo.com); John Drennan (beagle@drennanlawfirm1.com) (beagle@drennanlawfirm1.com)
Subject: FW: BA court
Attachments: Notice of Hearing, John Thomas, 02-13-17 dk# 16-5683.pdf; Notice of Hearing, Audrey Davis, 02-14-17 dk# 16-5671.pdf; German, Isaac - 16-1663 - Order of Continuance_1.pdf

From: Alexander, Kyle
Sent: Wednesday, December 28, 2016 9:01 AM
To: Wildes, Renice <RWildes@tompsc.com>
Subject: BA court

Hey Renice, I have 3 upcoming BA's scheduled for Feb 6,13,14. I will be at the South Carolina Criminal Justice Academy from Feb 6th thru 17th. Please see if I can get these rescheduled. Thanks, Alexander



Pfc. Kyle Alexander

Traffic Services Bureau

Mount Pleasant Police Department

100 Ann Edwards Lane

Mount Pleasant, SC. 29464

Dispatch: 843.884.4176

Handwritten signature/initials: "Pfc. Kyle Alexander" with a date "12/28/16" and a time "9:30".

0153

000058

Yolanda Williams

From: Yolanda Williams
Sent: Tuesday, November 29, 2016 10:54 AM
To: Tim Amey (tim@timamey.com); Mt. Pleasant Police Dept. (Rwilliams1@tompsc.com); HPU@scdmv.net
Subject: Notice of Hearing, John Thomas, 02-13-17 dk# 16-5683
Attachments: Notice of Hearing, John Thomas, 02-13-17 dk# 16-5683.pdf

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

0155

000060

View Cash Receipt

Teresa Langford

myCaseLoad

Case Number

Actions	Search	Generate	Tools	Accounts Receivable
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Cash Receipt

Number: CR1611-0462 **Dated:** 11-28-2016
Till: **Total Paid** \$200.00
Posted: Yes

Void Information

Void Method: **Voided:** No
Void Posted: No
Void Explanation:

Generate

Checklists (0)

Go to top

Invoices (1)

Go to top

					Show: 40
Date	Number	Item Type	Customer		Paid
11-28-2016	NV1611-0464	Case Filing Fee - \$200	John Thomas		\$200.00

Payments (1)

Go to top

		Show: 40
Payment Method	Reference	Paid
Money Order	17-506480873	\$200.00

0156

000061



South Carolina Department of Motor Vehicles

NOTICE OF SUSPENSION

2016-OMVH-01

5683
(Rev. 1/11)

Driver's Name John Michael Thomas SC 106 BP/DL State and Number 9-28-78 Date of Birth

Address on Driver's License: Street address, Apt. No., City, State, Zip Code

Special mailing address for notices (if different from driver's license address): Street address, Apt. No., City, State, Zip Code

Vehicle License Plate State and No. SC IVN 474 Vehicle Type: Commercial ☐ Yes ☒ No Hazardous Material ☐ Yes ☒ No

**YOUR PRIVILEGE TO DRIVE IN SOUTH CAROLINA IS SUSPENDED IMMEDIATELY FOR THE FOLLOWING:
(CHECK ONLY ONE BOX)**

**UNDER THE AGE OF TWENTY-ONE (21)
AND NOT UNDER ARREST FOR DUI***

- ☐ Registering an alcohol concentration of .02 or greater*
☐ Refusing to submit to a breath, blood or urine test*
Date of Test/Refusal

ANY AGE UNDER ARREST FOR DUI

- ☒ Registering an alcohol concentration of .15 or greater
☐ Refusing to submit to a breath, blood or urine test
Date of Test/Refusal

*A person who is taken for testing under 56-1-286 cannot be prosecuted under 20-7-8920, 20-7-8925, 56-5-2930 or 56-5-2933. Everyone who receives this Notice of Suspension can request a hearing to challenge the suspension. A request for a hearing must be filed with the SC Office of Motor Vehicle Hearings within thirty days of the issuance of the Notice of Suspension. There is a \$200.00 filing fee. (Personal checks are not accepted.) See the back of this form for more information on how to ask for a hearing.

If a hearing is scheduled, you may be able to get a temporary alcohol restricted license. The temporary alcohol restricted license costs \$100.00 and allows you to drive without restrictions until the hearing results are mailed to you. See the back of this form for instructions on how to obtain a temporary alcohol restricted license.

If you do not obtain a temporary alcohol restricted license, your suspension continues. You cannot drive until you either obtain a route-restricted license or your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules against you after your hearing, your suspension will go back into effect. If you were suspended after having been arrested for DUI, you may be eligible for a route-restricted license to allow you to drive for the remainder of the suspension. There are instructions on the back of this form to explain how to obtain a route-restricted license. If you do not obtain a route-restricted license or if you are under the age of twenty-one (21) and were not arrested for DUI, you cannot drive until your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules in your favor, the suspension will be cancelled. Your driving privileges will be reinstated. However, you must go to a Department of Motor Vehicles office to have a regular license issued.

If you were suspended after having been arrested for DUI, you may be entitled to have a route-restricted license during your suspension period. You do not have to request a hearing to be eligible for a route-restricted license. The route-restricted license costs \$100.00 and allows you to drive only to and from work, college, ADSAP classes, and a court-ordered drug program, plus during the course of your employment or college. However, you must enroll in ADSAP before a route-restricted license will be issued. See the back of this form for instructions on how to obtain a route-restricted license.

I understand that I cannot drive until a license has been issued to me.

Refused to sign 10-28-16
Signature of Driver Date Signed

Driver's license or permit surrendered (yes or no) yes. (If yes, license must be attached to yellow copy of this form)

10-28-16 B. Hittle
Date Signed Signature of Arresting Officer

MPPD 1003
Agency Name Agency Code

10-28-16 Kyle Alexander
Date Signed Signature of DataMaster Operator

MPPD 1003
Agency Name Agency Code

B. Hittle NOV 28 2016
Printed Name of Arresting Officer

843-884-4176 SCOMVH
Agency Telephone Number

K. Alexander
Printed Name of DataMaster Operator

843-884-4176
Agency Telephone Number

Blue Copy - Driver Yellow Copy - DMV/Driver Records

Green Copy - Office

0157

000062

HEARING REQUEST:

I am requesting an administrative hearing. I understand that I must file my request with the SC Office of Motor Vehicle Hearings within thirty days of the issuance of the Notice of Suspension to have a hearing and to obtain a temporary alcohol restricted license.

Date 11/28/11 Signature of Driver [Signature]Driver's Mailing Address, Phone Number, and Email Address for [Signature]Your Attorney's Name Tom HueyAttorney's Address, Phone Number, and Email Address 1495 Remount Rd, N. Cho., SC 29406 tim@timhuey.com

If you do not list an attorney above, you must tell your attorney when your hearing is scheduled.

943-425-2269**INSTRUCTIONS FOR USING THIS FORM TO REQUEST A HEARING**

1. Complete the Hearing Request part of this form, giving the current address, telephone number, and email address where you can be reached.
2. There is a \$200.00 filing fee for a hearing. (Personal checks are not accepted.)
3. Bring or mail your completed form, plus the filing fee, to the SC Office of Motor Vehicle Hearings, 1205 Pendleton St., Suite 325, Columbia, SC 29201. This completed form and the fee must be either hand-delivered or mailed on or before the thirtieth (30th) day of the date on this notice of suspension.

INSTRUCTIONS FOR REQUESTING A HEARING WHEN NOT USING THIS FORM

1. You may use the Official Notice letter you will receive from the DMV to request a hearing. However, the thirty (30) days to file begins at the time the original Notice of Suspension was issued to you. Be sure to include your mailing address, phone number, and email address, along with your attorney's mailing address, phone number, and email address.
2. There is a \$200.00 filing fee for a hearing. (Personal checks are not accepted.)
3. Without either form, you may submit a written request for a hearing. However, be aware the case will not be assigned and the request will not be forwarded to the DMV until the filing fee and either the Notice of Suspension or the Official Notice from the DMV have been received.
4. You must follow the time, delivery, and mailing instructions in the previous section.

INSTRUCTIONS FOR OBTAINING A TEMPORARY ALCOHOL RESTRICTED LICENSE

1. If you met the deadline for requesting a hearing, you may be eligible for a non-commercial temporary alcohol restricted license. Temporary alcohol restricted licenses are not available in Class A, B or C commercial driver licenses.
2. The fee for a temporary alcohol restricted license is \$100.00.
3. After you file your request for a hearing, the SC Department of Motor Vehicles will determine whether you are eligible for a temporary alcohol restricted license. If you are eligible, SC DMV will mail you a letter stating your eligibility.
4. IF YOU ARE SOUTH CAROLINA LICENSED DRIVER, you may take that letter to any SC DMV office in the state, pay the \$100.00 license fee, and have the temporary alcohol restricted license issued.
5. IF YOU ARE LICENSED DRIVER FROM ANOTHER STATE, you may take that letter and the \$100.00 license fee to SC DMV, Specialized Services, 1630 Shop Road, Columbia, SC (two miles North of I-77 Exit 6). That office can issue the temporary alcohol restricted license. You may also mail that letter, a completed Driver's License Application (Form 447, available on the Internet at www.scdmvonline.com), and the \$100.00 license fee to SC DMV, Driver Records, P.O. Box 1498, Blythewood, SC 29016-0028. That office will mail you the temporary alcohol restricted license.

INSTRUCTIONS FOR OBTAINING A ROUTE-RESTRICTED LICENSE

1. If you were suspended after having been arrested for DUI, you may be eligible for a non-commercial route-restricted license. Route-restricted licenses are not available in Class A, B or C commercial driver licenses.
2. A route-restricted license allows you to drive only to and from work, college, ADSAP classes, and a court-ordered drug program, plus during the course of your employment or college.
3. The fee for the route-restricted license is \$100.00. If you are licensed in another state, you must also pre-pay the \$100.00 reinstatement fee.
4. You must enroll in ADSAP before a route-restricted license will be issued.
5. You do not have to request a hearing to be eligible for a route-restricted license.
6. You must apply for a route-restricted license by submitting an application (Form DL-127). This application will be mailed to you with your suspension notice. It is also available on the Internet www.scdmvonline.com.
7. You are advised to complete the application and bring it, with the \$100.00 license fee and the \$100.00 reinstatement fee if you are licensed in another state, to SC DMV, Specialized Services, 1630 Shop Road, Columbia, SC (two miles North of I-77 Exit 6). Once the application and the route are approved, that office can issue the route-restricted license. You may also mail the application, a completed Driver's License Application (Form 447, available on the Internet at www.scdmvonline.com), the \$100.00 license fee and the \$100.00 reinstatement fee if you are licensed in another state to SC DMV, Driver Records, P.O. Box 1498, Blythewood, SC 29016-0028. Upon approval of the application and route, that office will mail you the route-restricted license.

ADSAP is an abbreviation for Alcohol and Drug Safety Action Program, which is operated under the direction of the SC Department of Motor Vehicles. You must go to an ADSAP office to enroll. Numbers for ADSAP are in the county government section of most telephone directories. If you reside in another state, you can make arrangements to attend an ADSAP program there.

Certificate of Service

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage aid, or in the interagency Mail Service addressed to the party (ies) or their attorney(s).

This 17th day of August 2017

By: Golane P. [Signature]

Title: Administrative Coordinator, OMVH

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 2018-000023

John Michael Thomas.....Respondent,

v.

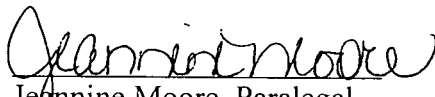
South Carolina Department of Motor Vehicles and
Mount Pleasant Police Department.....Petitioner,

Of Whom the South Carolina Department of Motor Vehicles is the 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 7th day of March, 2018, addressed to the attorney for the Respondent as follows:

Tim Amey, Esquire
1495 Remount Road
North Charleston, South Carolina 29406


Jeannine Moore, Paralegal
Office of General Counsel
S.C. Department Motor Vehicles