

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

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Case No. 12-ALJ-21-0047-AP

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Ronald Morga,

Appellant,

v.

South Carolina Department of Motor Vehicles

Respondents.

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RECORD ON APPEAL

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Hanahan, South Carolina. After considering all the evidence presented, I conclude that the suspension of Respondent's driver's license or driving privilege must be sustained.

### **MOTION TO DISMISS**

Respondent was arrested on January 20, 2011, and he requested a hearing to challenge the suspension of his driver's license or driving privilege based upon an alleged violation of the implied consent law. This matter was originally scheduled for a hearing on April 11, 2011, but it was continued three times. The hearing was finally held on September 27, 2011. At the hearing, counsel for Respondent moved to dismiss this matter based upon an order issued on September 21, 2011, just prior to the hearing, by The Honorable Katrina L. Patton, Summary Court Judge in Dorchester County Magistrate's Court, that expunged Respondent's charge of driving under the influence. The charge was *not proessed* on June 21, 2011. The order required that all records relating to the offense be expunged and destroyed pursuant to § 17-1-40 (Supp. 2009). Respondent argued that based upon the expungement of the underlying criminal charge, this matter should be dismissed. While a document offered by the officer related to the expunged driving under the influence charge was excluded from evidence upon the objection of counsel at the implied consent hearing, I conclude that the disposition and expungement of the underlying criminal charge does not require dismissal of the implied consent case. Rather, I conclude that the administrative hearing and criminal trial are separate and that the outcome of the underlying criminal charge has no affect on the implied consent hearing.

### **FINDINGS OF FACT**

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

1. On January 20, 2011, at approximately 1:17 a.m., Trooper Kunce was on patrol in Dorchester County when he observed a white truck that was traveling westbound on Dorchester Road weaving in the roadway. At one point, the truck left the roadway. As a result, he conducted a traffic stop.

2. Trooper Kunce approached the vehicle and spoke with the driver, who he identified as Respondent.

3. Respondent had slurred speech and red, glassy eyes. Trooper Kunce also smelled a strong odor of alcohol coming from Respondent.

4. Trooper Kunce asked Respondent to recite the alphabet, which he did successfully.

5. Then, Trooper Kunce asked Respondent to count backward from "95" to "47." Respondent had difficulty completing that task. He began counting backwards and then began counting forwards. He also stopped a couple of times during the test. Trooper Kunce determined that Respondent failed the number counting test.

6. Respondent exited his vehicle at Trooper Kunce's direction and performed three standardized field sobriety tests: the Horizontal Gaze Nystagmus ("HGN"), the walk-and-turn and the one-leg stand test. Respondent failed the three field sobriety tests.

7. During the HGN, Trooper Kunce observed a lack of smooth pursuit in both eyes, distinct and sustained nystagmus at maximum deviation in both eyes, and the onset of nystagmus prior to 45 degrees in his left eye.

8. Respondent attempted the one-leg stand test several times, but he was unable to successfully complete it. He put his foot down several times during the test.

9. During the walk-and-turn test, Respondent failed to touch heel-to-toe and made an improper turn.

10. Respondent was placed under arrest for driving under the influence and transported to the Dorchester County law enforcement complex for a DataMaster test.

11. Prior to beginning the DataMaster test, Trooper Kunce, a certified DataMaster operator, advised Respondent that the test was being video recorded and that he would be requesting a breath sample. Trooper Kunce read aloud the driving under the influence advisement of implied consent rights to Respondent and provided him with a written copy of those rights. He also checked Respondent's mouth for foreign materials, of which he found none, and entered Respondent's biographical data into the machine. At the conclusion of the twenty minute observation period, the machine performed several checks and tests to ensure that it was working properly. Respondent consented to the test and submitted a breath sample registering

.17%. Based upon the alcohol concentration in Respondent's breath sample, a notice of suspension was issued to him.

### CONCLUSIONS OF LAW

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

1. Pursuant to S.C. Code Ann. §1-23-660(A) (Supp. 2010), the Hearing Officers of the OMVH, effective January 1, 2006, preside over contested case hearings involving suspensions, cancellations, or revocations of drivers licenses by the Department. All hearings presided over by the Hearing Officers of the OMVH are contested case hearings and must be conducted in accordance with the Administrative Procedures Act ("APA") and the rules of procedure for the OMVH. § 1-23-660(B) (Supp. 2010). Furthermore, all appeals from final decisions of the Hearing Officers are to the South Carolina Administrative Law Court in accordance with its rules of procedure. § 1-23-660(D) (Supp. 2010).

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

3. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. See Peabody Coal Co. v. Ralston, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e. the enforcement of a driver's license suspension, revocation or cancellation, and since it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this matter. See Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers § 9.3 at 366 (2nd ed. 2001).

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

5. Pursuant § 56-5-2930 (Supp. 2010):

It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. . . .

6. Section § 56-5-2950(A) (Supp. 2010) provides:

A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol or drugs or the combination of alcohol and drugs if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. A breath test must be administered at the direction of the law enforcement officer who has arrested [the] person....

Furthermore, the breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy pursuant to South Carolina Law Enforcement Division ("SLED") policies. § 56-5-2950(A) (Supp. 2010).

7. Section 56-5-2950(B) (Supp. 2010) further provides:

No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

- (1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;
- (2) his privilege to drive must be suspended for at least one month if he takes the tests or gives the samples and has an alcohol concentration of fifteen one hundredths of one percent or more;
- (3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;
- (4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and
- (5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

8. Upon motion by any party, the OMVH Hearing Officer may review the application of the policies, procedures, and regulations promulgated by SLED. If the Hearing Officer finds that the failure to follow any of the policies, procedures, regulations or other provisions of § 56-5-2950 materially affected the accuracy or reliability of the test results or the fairness of the testing procedure, the test results shall be excluded from evidence. The Hearing Officer must rule specifically as to the manner in which the failure materially affected the accuracy or reliability of the test results or the fairness of the procedure. See § 56-5-2950(J)(Supp. 2010).

9. If a person drives a motor vehicle and has an alcohol concentration of fifteen one-hundredths of one percent or more, the Department must suspend the person's driver's license, permit or nonresident operating privilege or deny the issuance of a license or permit to that individual. The arresting officer issues a notice of suspension, which is effective beginning on the date of the alleged violation. § 56-5-2951(A) (Supp. 2010).

10. A person may request an administrative hearing within thirty (30) days of the issuance of the notice of suspension. § 56-5-2951(B) (Supp.2010). Section 56-5-2951(F) (Supp. 2010) requires that the scope of the hearing be limited to whether the person:

- (1) was lawfully arrested or detained;
- (2) given a written copy of and verbally informed of the rights enumerated in Section 56-5-2950;
- ...
- (4) consented to taking a test pursuant to Section 56-5-2950, and the:
  - (a) reported alcohol concentration at the time of testing was fifteen one-hundredths of one percent or more;
  - (b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;
  - (c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950; and
  - (d) the machine was working properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

11. After reviewing the evidence presented, I conclude that Respondent was lawfully arrested for driving under the influence. The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006). Probable cause for a warrantless arrest exists when the

circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. Id. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. Id.

In this case, Trooper Kunce stopped Respondent's vehicle after he observed it weave and leave the roadway. During the stop, Trooper Kunce smelled a strong odor of alcohol coming from Respondent, and Respondent had slurred speech and glassy, red eyes. Additionally, Respondent failed the number counting test, HGN, one-leg stand and walk-and-turn. Therefore, based upon the totality of the circumstances before Trooper Kuncé, I conclude that he had probable cause for Respondent's arrest for driving under the influence.

Furthermore, Respondent was advised of his implied consent rights verbally and in writing, and he consented to the DataMaster test, which was conducted in accordance with § 56-5-2950 by Trooper Kunce, a certified DataMaster operator. At the conclusion of the twenty minute observation period, Respondent submitted a breath sample registering .17%, and the machine was working properly. Therefore, after considering all the evidence presented and the applicable law, I conclude that the suspension of Respondent's driver's license or driving privilege must be sustained.

**ORDER**

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

**IT IS HEREBY ORDERED** the suspension of Respondent's driver's license or driving privilege is sustained.

**AND IT IS SO ORDERED.**



Brigitte B. Autry  
OMVH Hearing Officer

January 26, 2012  
Hanahan, South Carolina

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Ronald Morga,

Appellant,

v.

South Carolina Department of Motor Vehicle,

Respondent.

Docket No. 12-ALJ-21-0047-AP

**ORDER**

**Appearances: Christopher D. Lizzi, Esquire, for Appellant  
Linda Annette Grice, Esquire, for Respondent**

This is an appeal by Ronald Morga (Appellant) from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings (OMVH) issued January 26, 2012. The OMVH's Final Order and Decision was issued following an administrative hearing S.C. Code Ann. 56-1-370. Appellant contends that the OMVH Hearing Officer erroneously sustained the suspension of his driver's license. The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. 1-23-660 (Supp. 2009). Upon careful review of this matter, the OMVH's Final Order and Decision is affirmed.

**BACKGROUND**

The Appellant was arrested for driving under the influence, taken for a breath test, and subsequently refused to submit a breath sample in violation of S.C. Code Ann. § 56-5-2950. The Appellant was issued a written notice of suspension which suspended her driver's licenser driving privilege. Pursuant to written notice to the parties, a hearing was held before Administrative Hearing Officer, Brigitte Autry on January 20, 2011 at the Hanahan Municipal Court in Hanahan, South Carolina. By Final Order and Decision dated January 26, 2012, the Hearing Officer sustained the suspension of the Respondent's driver's license. This appeal followed.

**FILED**

JUN 07 2012

SC ADMIN. LAW COURT

## ISSUES ON APPEAL

**Did the hearing officer err in finding that the state can proceed administratively in an implied consent case against a defendant whose driving under the influence charges have been dismissed and expunged and all records of the arrest ordered to be destroyed?**

## 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(5) (Supp. 2011).

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 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. 210, 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. 609, 16 L.Ed.2d 131, 86 S.Ct. 1018 (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 309. *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.*, 309 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).

### DISCUSSION

Appellant contends that the Hearing Officer's decision should be overturned because the driving under the influence charges against Appellant have been previously dismissed and expunged and all of the records pertaining to the arrest were ordered to be destroyed. Appellant asserts that pursuant to S.C. Code Ann 17-1-40 (Supp. 2010), the Department should not be allowed to proceed with the administrative license suspension. I disagree. The Hearing Officer correctly concluded that the disposition and expungement of the underlying criminal charge does not require dismissal of the implied consent case, rather the administrative hearing and criminal trial are separate and the outcome of the underlying criminal charge has no effect on the implied consent hearing.

S.C. Code Ann. 17-1-40 (Supp. 2011) reads in pertinent part:

(A) A person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency. Provided, however, that local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and, where necessary, to defend such facilities during litigation proceedings except when an action, complaint, or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. Such information only may be disclosed by judicial order, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the

record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.

(B) A municipal, county, or state agency may not collect a fee for the destruction of records pursuant to the provisions of this section.

(C) **This section does not apply to a person who is charged with a violation of Title 50, Title 56, an enactment pursuant to the authority of counties and municipalities provided in Titles 4 and 5, or any other state criminal offense if the person is not fingerprinted for the violation.** (emphasis added).

The plain language of the statute states that the section does not apply to a person who is charged with a violation of Title 56. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E. 2d 747 (1996).

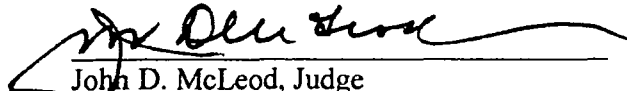
In this case, Appellant was charged with driving under the influence, which is a Title 56 violation. Therefore, the expungement of the charges provided for under the language of the statute does not apply and the Department can proceed with the administrative license suspension. The Appellant's suspension resulted solely from his compliance with the implied consent law and registering a breath alcohol level in excess of .15%. The subsequent dismissal of the DUI charge had no effect upon the BAC suspension. Accordingly, this Court has no choice but to find that the OMVH Hearing Officer's decision that the outcome of the underlying criminal charge has no affect on the implied consent hearing must be upheld. To hold otherwise would undermine the **implied consent law**.

**ORDER**

**IT IS HEREBY ORDERED** that, for the reasons set forth above, the OMVH's Final Order and Decision is **AFFIRMED**.

**AND IT IS SO ORDERED.**

June 7, 2012  
Columbia, SC

  
John D. McLeod, Judge  
S.C. Administrative Law Court

**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 paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 7 day of June, 2012  
By: Anthony R. Daldun  
Judicial Law Clerk



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## STATEMENT OF ISSUE ON APPEAL

Issue on Appeal is whether the State can proceed administratively against a Defendant on Driving Under the Influence charges that have been previously dismissed and expunged and all records of the arrest has been ordered to be destroyed.

## STATEMENT OF THE CASE

That on January 20, 2011, Appellant Morga was arrested by the South Carolina Highway Patrol on a charge of Driving Under the Influence. At the time, the Appellant submitted to a test pursuant to South Carolina Code of Law 56-5-2950 and had his driving privileges suspended. That pursuant to South Carolina Code of Law 56-5-2951, the Appellant Morga requested an Administrative Hearing (R. pp. 000064-000065). This request was timely received by the Department of Motor Vehicles and hearing took place on September 27, 2011 (R. p. 000040). That on June 21, 2011, the charge of Driving Under the Influence was *nol prossed* and expunged (R. p. 000039). At that time, pursuant to South Carolina Code of Law 17-1-40 all records pertaining to such charges were ordered to be destroyed. At the hearing, Appellant's attorney argued that inasmuch as the underlying ticket had been expunged and all records of the arrest been expunged that there was no jurisdiction for the Court as to the arrest for Driving Under the Influence. The records of the arrest being expunged made it no longer a valid arrest. The hearing was held on September 27, 2011, and an order was issued January 26, 2012 by O.M.V.H. Hearing Officer Brigette B. Autry. The hearing officer sustained the suspension of the Appellant's driving privileges (R. p. 000033). That such Order was served on the Appellant, and a Notice of Appeal was filed by the Appellant and served on February 6, 2012 (R. pp. 000024-000025).

## ARGUMENT

The State can not proceed administratively against a Defendant on Driving Under the Influence charges that have been previously dismissed and expunged and all records of the arrest has been ordered to be destroyed

That pursuant to South Carolina Code of Law 17-1-40, a person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency. Furthermore, a person who otherwise intentionally retains the arrest and booking record, files, mug shots, and fingerprints or any evidence of the records pertaining to a charge, discharge, or dismissed pursuant to this section is guilty of Contempt of Court. To the case at hand, the Appellant's criminal charges were dismissed and Expungement ordered on June 21, 2011 (R. p. 000039).

Therefore, at the time of the hearing on September 27, 2011, no records of arrest for Driving Under the Influence of the Appellant were statutorily allowed to exist. The retention of any such records would be sanctionable by Contempt of Court and statutorily improper. Furthermore, there being no underlying charge of Driving Under the Influence under South Carolina Code of Law 56-5-2930 the underlying requirement for a breath test would no longer be applicable. Furthermore, any testimony as to the Breathalyzer reading were hearsay and properly objected to in the proceeding.

## CONCLUSION

Inasmuch as all records of the arrest from January 20, 2011 were expunged and destroyed prior to the September 27, 2011 Administrative Hearing, the Court did not have jurisdiction to sustain the suspension of the driver's license of the Appellant and therefore the suspension should have been rescinded.

Respectfully submitted,



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March 23, 2012

THE STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT  
ALL DOCKET NO. 12-ALJ-21-0047-AP

APPEAL FROM SOUTH CAROLINA  
DIVISION OF MOTOR VEHICLES HEARINGS  
DMVH DOCKET NO. 11-DMVH-01-0455-CC

BRIGETTE AUTRY, HEARING OFFICER

RONALD TORGA, APPELLANT

VS

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES, RESPONDENT

BRIEF OF RESPONDENT

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

Ronald Morga,

Appellants,

v.

South Carolina Department of Motor Vehicle,

Respondent.

Docket No. 12-ALJ-21-0047-AP  
SCDL No. 8197481

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

This case comes before the Administrative Law Court pursuant to the appeal Ronald Morga, which seeks review of the January 26 Final Order & Decision sustaining the Appellant's implied consent suspension. The DMV seeks to have the Final Order & Decision affirmed and the suspension remain.

**STATEMENT OF THE ISSUES ON APPEAL**

Did the Hearing Officer err in finding that the State can proceed administratively against a Defendant on Driving Under the Influence charges that have been previously dismissed and expunged and all records of the arrest have been ordered to be destroyed?

**STATEMENT OF THE CASE**

The Appellant was arrested for driving under the influence, taken for a breath test, and subsequently refused to submit a breath sample in violation of S.C. Code Ann. § 56-5-2950. The Appellant was issued a written notice of suspension which suspended her driver's licensor driving privilege. Pursuant to written notice to the parties, a hearing was held before Administrative Hearing Officer, Brigette Autry on January 20, 2011 at the Hanahan Municipal Court in Hanahan, South Carolina. By Final Order and Decision

10/6  
R/S

dated January 26, 2012, the Hearing Officer sustained the suspension of the Respondent's driver's license. This appeal followed.

### STANDARD OF REVIEW

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

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

- (6) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
- (a) In violation of constitutional or statutory provisions;
  - (b) In excess of the statutory authority of the agency;
  - (c) Made upon unlawful procedure;
  - (d) Affected by other error of law;
  - (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
  - (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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

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

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

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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. 210, 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. 610, 16 L.Ed.2d 131, 86 S.Ct. 1018 (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 310. *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.*, 310 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

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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

DID THE HEARING OFFICER ERR IN FINDING THAT THE STATE CAN PROCEED ADMINISTRATIVELY AGAINST A DEFENDANT ON DRIVING UNDER THE INFLUENCE CHARGES THAT HAVE BEEN PREVIOUSLY DISMISSED AND EXPUNGED AND ALL RECORDS OF THE ARREST HAVE BEEN ORDERED TO BE DESTROYED?

The Appellant asserts that because the record of the Driving Under the Influence arrest which precipitated the Implied Consent suspension which is the subject matter of this appeal was expunged pursuant to South Carolina Code Section 17-1-40, "no records of arrest for Driving Under the Influence of the Appellant were statutorily allowed to exist". This argument is totally without merit.

South Carolina Code Ann. § 17-1-40 provides:

(A) A person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency. Provided, however, that local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional

to be  
destroyed

reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and, where necessary, to defend such facilities during litigation proceedings except when an action, complaint, or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. Such information only may be disclosed by judicial order, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.

(B) A municipal, county, or state agency may not collect a fee for the destruction of records pursuant to the provisions of this section.

**(C) This section does not apply to a person who is charged with a violation of Title 50, Title 56, an enactment pursuant to the authority of counties and municipalities provided in Titles 4 and 5, or any other state criminal offense if the person is not fingerprinted for the violation. (emphasis added).**

The plain language of the statute states that the section does not apply to a person who is charged with a violation of Title 56. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E. 2d 747 (1996).

Driving Under the Influence is a Title 56 violation and is therefore excluded from the requirements of Section 17-1-40 (A). Therefore, it was proper for the Hearing Officer to allow testimony regarding the arrest of the Appellant for driving under the influence.


The Hearing Officer did not err in determining that the expungement of the criminal charge for driving under the influence did not deprive the OMOVH of jurisdiction over the implied consent suspension.

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**CONCLUSION**

Based upon the foregoing arguments, the Department of Motor Vehicles respectfully requests that the Final Order and Decision be affirmed and the suspensions remain.

Respectfully submitted,



LINDA ANNETTE GRICE

Assistant General Counsel

PHILIP S. PORTER

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March 27, 2012

Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA  
OFFICE OF MOTOR VEHICLE HEARINGS

COPY

DOCKET NO. 12-ALJ-21-0047-AP

Ronald Morga, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 South Carolina Department of Motor Vehicles and )  
 South Carolina Department of Public Safety, )  
 )  
 Respondents. )  
 )  
 )  
 )

**REPLY BRIEF OF APPELLANT**

IN THE STATE OF SOUTH CAROLINA  
In the Administrative Law Court

APPEAL FROM SOUTH CAROLINA  
OFFICE OF MOTOR VEHICLE HEARINGS

Brigitte Autry, Hearing Officer

Christopher D. Lizzi, Esquire  
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Attorney for the Respondent

**FILED**

MAY 16 2012

SC ADMIN. LAW COURT

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**RESPONDENT’S STATEMENT OF ISSUE ON APPEAL**

- 1. THE ISSUE ON APPEAL GIVEN BY THE RESPONDENT IS DID THE HEARING OFFICER ERR IN FINDING THAT THE STATE CAN PROCEED ADMINISTRATIVELY IN AN IMPLIED CONSENT HEARING WHEN THE UNDERLYING CHARGE OF DRIVING UNDER THE INFLUENCE WAS DISMISSED AND EXPUNGED AND ALL RECORDS OF THE ARREST ORDERED TO BE DESTROYED PURSUANT TO SOUTH CAROLINA CODE ANN. § 17-1-40.

**REPLY ARGUMENT**

- I. THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT DID ERR IN FINDING THAT THE STATE CAN PROCEED ADMINISTRATIVELY IN AN IMPLIED CONSENT HEARING WHEN THE UNDERLYING CHARGE OF DRIVING UNDER THE INFLUENCE WAS DISMISSED AND EXPUNGED AND ALL RECORDS OF THE ARREST ORDERED TO BE DESTROYED PURSUANT TO SOUTH CAROLINA CODE ANN. § 17-1-40.

That the Respondent’s argument in the Brief of the Respondent fails inasmuch as they

have misinterpreted S.C. Code Ann. §17-1-40 (Supp. 2010) which states, “A person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency.” S.C. Code Ann. §17-1-40 (C) provides a clear and definite meaning in that this statute specifically does not apply to those who have been charged with a violation of Title 56 and were not fingerprinted as is relevant to this case. The appellant was charged with a S.C. Code Ann. § 56-5-2930 violation and was fingerprinted, hence why the destruction of arrest records is applicable in his case.

According to S.C. Code Ann. §17-22-910, the Respondent argues that a first offense conviction for failure to stop when signaled by a law enforcement vehicle is the only type of traffic offense subject to expungement. This is accurate in that S.C. Code Ann. §17-22-910 does govern Expungement and Orders for Destruction of Records; however, authorization pursuant to subsection (7) states, “Section 17-1-40, criminal records destruction, except as provided in Section 17-22-950.” It is important to note this exception as Section 17-22-950 (A) states, “When criminal charges are brought in a summary court and the accused person is found not guilty or if the charges are dismissed or nolle prossed, pursuant to Section 17-1-40, the presiding judge of the summary court, at no cost to the accused person, immediately shall issue an order to expunge the criminal records of the accused person...” Such is the case of the Appellant, as his charge of Driving Under the Influence was dismissed and ordered to be expunged on June 21, 2011 (R.p. 000039), prior to the administrative hearing which was held on September 27, 2011.

Therefore, the destruction of arrest records provided for in the statute does apply and it was not proper for the Hearing Officer of the South Carolina Administrative Law Court to allow testimony regarding the arrest of the Appellant for Driving Under the Influence in the administrative hearing.

### CONCLUSION

For the reasons stated, this Court should reverse the judgment of the South Carolina Administrative Law Court and rescind the suspension of the driver's license of the Appellant.

Respectfully submitted,



---

Christopher D. Lizzi, Esquire  
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North Charleston, SC 29406  
(843) 797-0222, (843) 797-0202 Fax  
Attorney for Appellant

May 16, 2012



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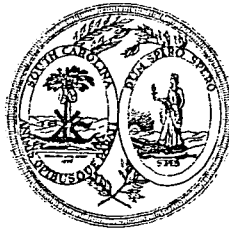
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STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT  
OFFICE OF MOTOR VEHICLE HEARINGS

RALPH K. ANDERSON, III  
Director



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

February 24, 2012

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

Re: S.C. Dept of Motor Vehicles  
vs  
Ronald P. Morgia  
SCDL/Customer NO.: 008197481

Dear Ms. Shealy:

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

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

Sincerely,

Yolanda P. Williams  
Administrative Coordinator, OMVH

Cc: Christopher D. Lizzi, Esquire  
Frank L. Valenta, SCDMV General Counsel

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STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Ronald P. Morga,

Appellant,

vs.

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

Respondents.

NOTICE OF ASSIGNMENT  
(Appeal)

DOCKET NO. 12-ALJ-21-0047-AP

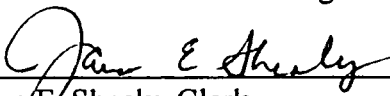
NOTICE IS GIVEN that a notice of appeal seeking review of a decision of the Office of Motor Vehicle Hearings was filed on February 6, 2012. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2011), the **Honorable John D. McLeod**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

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](http://www.scalc.net).

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the ninth day of February, 2012.

Ralph King Anderson, III  
Chief Administrative Law Judge

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

**FILED**

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STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

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South Carolina Department )  
of Motor Vehicles, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
Ronald Morga, )  
 )  
Respondent. )  
----- )

TRANSCRIPT OF  
HEARING  
September 27, 2011

**THE COURT:** Docket number 11-OMVH-01-0455CC, South Carolina Department of Public Safety and DMV versus Ronald C. Morga. Respondent's driver's license number is 008197481. My name is Bridget Aughtry and I've been appointed to preside at this implied consent hearing being held Tuesday, September 27, 2011, at the Hanahan Municipal Court. Present with the Department of Public Safety is Trooper Robert Koontz. DMV is not present. And respondent's represented by Christopher Lizzi. I'd like to remind you this matter is being recorded and is a matter of public record. Any opening before we begin? Trooper, anything in opening? Mr. Lizzi, anything?

1 **MR. LIZZI:** Yes, I'd like to make a motion to  
2 dismiss as the matter has been expunged. I'd  
3 like to make that part of the record. The  
4 expungement happened on 9/20 ... 9/22, 9/21.  
5 The charge ... underlying charge was dismissed  
6 and plead to a reckless driving. Therefore,  
7 there is no record of the underlying arrest.

8 **THE COURT:** Want to take a look at that?

9 **TROOPER KOONTZ:** I already saw it.

10 **THE COURT:** Okay. Well, I'm going to ... do you  
11 want to respond to the motion?

12 **TROOPER KOONTZ:** Well, it's separate court, separate  
13 jurisdictions. That's a criminal case; this is  
14 an administrative hearing. This has to do with  
15 the Datamaster test, nothing else.

16 **THE COURT:** Okay. I'm going to deny your motion. I  
17 agree with Trooper Koontz and, in fact, the  
18 Administrative Law Court recently issued a  
19 decision in a case, I think it might have even  
20 been yours, Mr. Lizzi, where they said that the  
21 criminal matter and the administrative hearing  
22 are separate, so the fact that the criminal  
23 matter has been expunged or dismissed really  
24 has no bearing on this hearing. The only  
25 bearing it may have or ... may be on the

1           admissibility of any documents that the trooper  
2           wishes to put in. But other than that, I'm  
3           going to deny your motion and go forward with  
4           the hearing. But would you still like to have  
5           this made a part of the record?

6           **TROOPER KOONTZ:** Yes.

7           **THE COURT:** Do you have any objection to this being  
8           made a part of the record?

9           **MR. LIZZI:** No.

10          **THE COURT:** Without objection, then.

11          **TROOPER KOONTZ:** That page is going up to the next  
12          level.

13          **THE COURT:** Okay. And I can keep this copy or ...

14          **TROOPER KOONTZ:** Yes.

15          **THE COURT:** All right. This is coming in as  
16          Respondent's Number One, then, okay. Anything  
17          further, Mr. Lizzi?

18          **MR. LIZZI:** No.

19          **THE COURT:** Trooper, if you'll please raise your  
20          right hand and state your full name.

21          **TROOPER KOONTZ:** Robert S. Koontz.

22          **THE COURT:** Swear to tell the truth, the whole  
23          truth, and nothing but the truth?

24          **TROOPER KOONTZ:** I do.

25          **THE COURT:** Okay. You may present your testimony.

1 DIRECT TESTIMONY BY TROOPER KOONTZ:

2 TROOPER KOONTZ: On January 20<sup>th</sup> of 2011, at  
3 approximately 1:17 in the morning, I was  
4 patrolling the area of Dorchester County on  
5 Dorchester Road when I observed a white pick-up  
6 truck weaving in the roadway traveling  
7 westbound. Not only was it weaving in the  
8 roadway, at one point it actually left the  
9 roadway. I proceeded to activate my blue lights  
10 and the vehicle pulled into White Church Place,  
11 it's a little housing development there off  
12 Dorchester Road. As I approached the vehicle,  
13 I met the driver of it, was Mr. Ronald P.  
14 Morga. He had slurred speech, red glassy eyes,  
15 and a strong smell of alcohol coming from him.  
16 During that time frame, I had asked him if he  
17 would do his alphabet for me, which he did so.  
18 He did that fine. I asked him to count  
19 backwards from 95 to 47 for me, which he had  
20 difficulty in that and actually, he failed  
21 that. As he was going down counting  
22 numerically, he actually turned around and  
23 starting going back up with it. He stopped a  
24 couple different times and just wasn't able to  
25 do that. He failed that. I asked him to exit

1 the vehicle, and which I advised him I was  
2 going to request for him to do some  
3 standardized field sobriety tests. Three were  
4 given to him, horizontal gaze nystagmus test.

5 **MR. LIZZI:** At this point, I would like to object on  
6 the record as it appears the trooper is reading  
7 from some notes in the file and all records,  
8 including any notes or any type of records as  
9 to the arrest, were ordered to be destroyed by  
10 the court and possession of any records after  
11 that order's issued is in violation of law and  
12 would be contrary to the law of South Carolina  
13 for any records to be used or entered in this  
14 proceeding.

15 **THE COURT:** Any response, Trooper?

16 **TROOPER KOONTZ:** Well, I have not received any order  
17 from the Court to do that. I did sign the  
18 expungement on it, but I haven't received  
19 anything from the Court and in reference to all  
20 this, the defense is the one that asked for the  
21 continuance on this hearing I believe several  
22 times, which pushed it back beyond the time of  
23 Court.

24 **THE COURT:** And what are you referring to over  
25 there?

1 **TROOPER KOONTZ:** Right now, I'm referring to this  
2 handwritten notes (inaudible).

3 **THE COURT:** Okay. I'm going to ... he's referring  
4 to his notes that he used in preparation for  
5 the hearing. You're welcome to take a look at  
6 those. I'll allow him to use those  
7 (inaudible). Do you want to take a look at the  
8 (Inaudible)?

9 **MR. LIZZI:** No.

10 **TROOPER KOONTZ:** That's what was given to you as far  
11 as Rule 5.

12 **MR. LIZZI:** Those notes were prepared prior to  
13 September 21<sup>st</sup>, 2011?

14 **TROOPER KOONTZ:** Prior to what?

15 **MR. LIZZI:** Yeah. You provided those notes and  
16 those notes were made prior to the destruction  
17 order of September 21<sup>st</sup>.

18 **TROOPER KOONTZ:** I have not received the destruction  
19 order, sir.

20 **MR. LIZZI:** Well, the destruction order is right  
21 here, sir. It's signed by Judge ...

22 **TROOPER KOONTZ:** (Inaudible) looking at it out  
23 there.

24 **THE COURT:** Well, I'll allow him to use his notes  
25 (Inaudible) to refresh his memory for the

1 hearing. He's not offering into evidence  
2 (inaudible) so if you'd like to take a look at  
3 it (inaudible) you're welcome to do that.

4 **TROOPER KOONTZ:** (Inaudible) copy.

5 **MR. LIZZI:** Okay.

6 **TROOPER KOONTZ:** The HGN was applied to Mr. Morga,  
7 which he had unsmooth pursuit with both left  
8 and right eyes. He had distinct nystagmus at  
9 maximum deviation left and right, and onset  
10 prior to 45 in his left eye. Proceeded with  
11 the one-leg stand. The subject tried several  
12 times to do it. Actually, kind of tried to  
13 cheat on it leaving his left foot on the  
14 ground. He was advised that it needed to be  
15 six to eight inches. As he tried to do that,  
16 he put his foot down several times. Which he  
17 failed that test. The next was the walk and  
18 turn. And he attempted to do that, he was not  
19 heel to toe and he did an about face on the  
20 turn. He also failed that test. The subject  
21 was arrested and transported to the Dorchester  
22 Law Enforcement Complex.

23 **THE COURT:** All right. Anything further?

24 **TROOPER KOONTZ:** At the Law Enforcement Complex,  
25 subject was given a Datamaster test. I am a

1 trained and certified Datamaster operator.  
2 There is the original and I do have a copy for  
3 you to read.

4 **THE COURT:** (Inaudible) any objection to the  
5 Datamaster certification?

6 **MR. LIZZI:** No.

7 **THE COURT:** Okay. Comes in as Petitioner's Number  
8 One.

9 **TROOPER KOONTZ:** At the Datamaster room, he was read  
10 the Datamaster implied ... advisement of  
11 implied consent rights. I'll read these as I  
12 read them to him. I advised him that it was  
13 being video recorded. I also informed him that  
14 I was requesting a breath sample. I provided  
15 him with a written copy of the advisement and  
16 I read to him "you are under arrest for driving  
17 under the influence, Section 56-5-2930, South  
18 Carolina Code of Laws, 1976, as amended. The  
19 arresting officer has directed that samples be  
20 taken for alcohol and/or drug testing. Samples  
21 will be taken and tested according to Section  
22 56-5-2950 and SLED policies. You do not have  
23 to take the test or give the samples, but if  
24 you refuse to submit to the test, your  
25 privilege to drive in South Carolina must be

1 suspended or denied for at least six months and  
2 the refusal may be used against you in court.  
3 If you take the test or give the samples and  
4 have an alcohol concentration of .08 of one  
5 percent or more, you may instead be charged  
6 with driving with an unlawful alcohol  
7 concentration, which is DUAC, Section 56-5-  
8 2933. If you have an alcohol concentration of  
9 .15 of one percent or more, your privilege to  
10 drive in South Carolina must be suspended for  
11 at least one month. You have the right to have  
12 a qualified person of your own choosing conduct  
13 additional independent tests at your expense.  
14 The officer upon request must provide you  
15 affirmative assistance. You have the right to  
16 request an administrative hearing within 30  
17 days of the issuance of notice of suspension.  
18 If you do not request an administrative hearing  
19 or if your suspension's upheld at the  
20 administration hearing, you must enroll in an  
21 alcohol and drug safety action program." At  
22 that point, I also did check his mouth for any  
23 foreign material, which he had none. And he  
24 was already provided his copy of that. At that  
25 time, I entered his biographical data into the

1           Datamaster and which it accepted that. And I  
2           observed him for 20 minutes according to SLED  
3           policies.

4           **THE COURT:** All right.

5           **TROOPER KOONTZ:** This is a copy of that.

6           **MR. LIZZI:** I object to entering that document.  
7           That document has been ordered to be destroyed  
8           by ... by ...

9           **THE COURT:** (Inaudible) take a look at this  
10           (inaudible) a second. Okay. I'm going to  
11           sustain your objection and that really comes  
12           under I believe it's 17-1-40 ... 17-1-40, where  
13           law enforcement is not able to keep records of  
14           this, so I'm going to sustain your objection on  
15           the introduction of the advisement of implied  
16           consent rights.

17           **TROOPER KOONTZ:** Even though it has to do with the  
18           administrative hearing and not the actual ...

19           **THE COURT:** Yeah, because the documents ... the  
20           document itself is what he's objecting to.

21           **TROOPER KOONTZ:** Okay.

22           **THE COURT:** So I'll allow your testimony, but not  
23           the document as evidence.

24           **TROOPER KOONTZ:** Well, it's one of those things, I  
25           ... I'm going to object to that on the stance

1 that this is a hearing on the actual Datamaster  
2 and use of it. This has nothing to do with  
3 court. This is administrative.

4 **THE COURT:** I'll note your objection for the record.

5 **TROOPER KOONTZ:** After the 20 minute observation  
6 time, the Datamaster went through its test  
7 making sure that it was working properly, and  
8 which it was. It allowed the test to be taken  
9 and it started beeping.

10 **MR. LIZZI:** I would object to any testimony as to  
11 ... on the grounds of hearsay as to his  
12 testimony with what he read or any ... any  
13 readings from the Datamaster would be hearsay  
14 ... that he would testify to would be hearsay.

15 **THE COURT:** Okay. I'm going to overrule your  
16 objection on that. I'm going to allow his  
17 testimony. And he also testified earlier he's  
18 a certified Datamaster operator.

19 **TROOPER KOONTZ:** And that I did observe it. Testify  
20 to what I observed. At that time, Mr. Morga  
21 did get up and provide his sample into the  
22 Datamaster. Upon testing of that through the  
23 Datamaster, the reading that was observed on  
24 the front of the Datamaster was a .17 percent  
25 blood alcohol level.

1 **MR. LIZZI:** Again, I'd object to the reading of the  
2 sample on the grounds of hearsay. He can't  
3 testify as to what the machine said and going  
4 to the truth of the matter asserted as to what  
5 the actual reading was and, therefore, would be  
6 hearsay.

7 **THE COURT:** Any response?

8 **TROOPER KOONTZ:** Well, once again, I did observe it  
9 off the front of it. I do have the  
10 documentation. I can show it. And he's quite  
11 aware of it.

12 **THE COURT:** Again, I'm going to overrule your  
13 objection. Okay. Go ahead.

14 **TROOPER KOONTZ:** At that time, once again, the  
15 machine actually printed out a piece of paper  
16 that was given to the subject as his copy and  
17 the State had its copy and being that that was  
18 above a .15 percent, he was issued the  
19 paperwork for a notice of suspension.

20 **THE COURT:** Does that conclude your testimony?

21 **TROOPER KOONTZ:** Yes, it does.

22 **THE COURT:** Okay. Any questions, Mr. Lizzi?

23 **MR. LIZZI:** None.

24 **THE COURT:** None, okay. And no witnesses with you  
25 for the record. Do the parties wish to make

1 closing arguments? Trooper, anything in  
2 closing?

3 **TROOPER KOONTZ:** Well, once again, with this, the  
4 defense is the one that asked for the  
5 continuances on this. He said that he wanted  
6 to work something out. He never contacted me  
7 on this; never talked anything about it. As  
8 far as the court case is concerned, when I  
9 talked to our solicitor on that, the State was  
10 ready to proceed with this. How it came to a  
11 reckless driving, I do not know, but that is  
12 through the solicitor. I just went with her  
13 ... her decision on that. This is a completely  
14 separate case than the court case on that and  
15 the subject did provide a sample above the  
16 legal limit for the State of South Carolina and  
17 that's what the State showed.

18 **THE COURT:** All right. Mr. Lizzi?

19 **MR. LIZZI:** For the record, I want to say the  
20 prosecutor was appointed. My proper avenue to  
21 discuss any settlement of the case was with the  
22 prosecutor, not directly with the officer.  
23 Therefore, I followed the proper channels. The  
24 ... this case, the testimony provided was  
25 hearsay. There's no evidence whatsoever in the

1 record other than hearsay evidence that my  
2 client provided a sample above the .15.  
3 Therefore, this matter should be dismissed as  
4 well as on the ground ... I renew my grounds  
5 for it should be dismissed based on the ...  
6 that this matter was nolle prossed and no  
7 longer a valid arrest.

8 **THE COURT:** Okay. Anything further?

9 **TROOPER KOONTZ:** No.

10 **THE COURT:** Okay. Nothing further, the hearing is  
11 now closed.

12 **MR. LIZZI:** Thank you.

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

15  
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25

**CERTIFICATE**

This is to certify that the within hearing in the matter of South Carolina Department of Motor Vehicles vs. Ronald Morga, consisting of Fourteen (14) pages, is a true and correct transcript and was prepared by me from an audio recording provided to me. This transcript was prepared by me without the benefit of my being present at the hearing of this matter.

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 on March 6, 2012.

Carenn N. Moore  
Carenn N. Moore

Notary Public for South Carolina  
My Commission Expires: 3/24/2019

Yolanda Williams

*Transcript Request*

*Appeal*

**From:** Yolanda Williams  
**Sent:** Thursday, February 09, 2012 9:25 AM  
**To:** Creel Reporting (amanda@creelreporting.com); 'Crystal Kaminer'  
**Subject:** Transcript Request for Ronald Morga  
**Attachments:** Morga, Ronald\_20110927-0954\_01cc7cfb81031480.trn; Morga, Ronald\_20110927-0954\_01cc7cfb81507130.trn; Morga, Ronald\_20110927-0959\_01cc7cfc34ca0780.trn; Morga, Ronald\_20110927-1004\_01cc7cfce7e689b0.trn; Morga, Ronald\_20110927-1009\_01cc7cfd9b02e4d0.trn

**Importance:** High

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

Christopher D. Lizzi  
Attorney at Law  
P.O. Box 61899  
North Charleston, SC 29419  
843-797-0222

Yolanda P. Williams  
Administrative Coordinator  
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

Yolanda Williams

*Transcript Request*

*Appeal*

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# LIZZI LAW FIRM, PC

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2170 Ashley Phosphate Road, Suite 402  
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E-Mail: [lizzlaw@aol.com](mailto:lizzlaw@aol.com)

February 6, 2012

**RECEIVED**

FEB 08 2012

SCOMVH

South Carolina Administrative Law Court  
Office of Motor Vehicle Hearings  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 325  
Columbia, South Carolina 29201

**Re: Appeal of Previous Docket No.: 11-OMVH-01-0455-CC**  
**Ronald P. Morga vs. South Carolina Department of Motor Vehicles and S.C. Dept. of**  
**Public Safety**

Dear Clerk:

Enclosed please find a copy of the Notice of Appeal with regard to the above-referenced matter which I hereby serve upon you. In addition, I have enclosed the original Transcript Request.

Please notify my office of the appropriate fee to be paid to order this transcript and I will promptly remit same.

If you have any questions, or need additional information, please do not hesitate to contact my office.

Very truly yours,



Christopher D. Lizzi

CDL/mcl

Enclosure: As stated.

cc: Ronald P. Morga

000021-51

**REQUEST FOR TRANSCRIPT OF RECORD**

I, Christopher D. Lizzi, request the Transcript of the Record for the case South Carolina Department of Public Safety and South Carolina Department of Motor Vehicles vs. Ronald P. Morga, Docket No. 11-OMVH-01-0455-CC. The hearing in this matter was held on September 27, 2011 before the Honorable Brigette B. Autry.

I understand that I am responsible for all costs associated with the preparation of this transcript pursuant to Rule 32 of the Rules of Procedure for the Administrative Law Court.

  
\_\_\_\_\_  
Signed

2170 Ashley Phosphate Road,  
Suite 402  
North Charleston, SC 29406

February 6, 2012

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

RONALD P. MORGA, )  
 )  
 Appellant. )  
 )  
 vs. )  
 )  
 SOUTH CAROLINA DEPARTMENT )  
 OF MOTOR VEHICLES and )  
 SOUTH CAROLINA DEPARTMENT )  
 OF SAFETY, )  
 )  
 Respondent(s). )  
 \_\_\_\_\_ )

Docket No. \_\_\_\_\_-ALJ-\_\_\_\_-\_\_\_\_-\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I am the Attorney for the Appellant in the above-captioned matter and that on the 6<sup>th</sup> day of February, 2012, in North Charleston, South Carolina, I served the original Request for Transcript of Record on the following person(s) by depositing the same in the United States Mail, postage paid, and addressed as follows:

**South Carolina Administrative Law Court  
Office of Motor Vehicles Hearings  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 325  
Columbia, S.C. 29201**



\_\_\_\_\_  
Christopher D. Lizzi  
2170 Ashley Phosphate Road, Suite 402  
North Charleston, SC 29406  
(843) 797-0222, (843) 797-0202 Facsimile  
Attorney for Appellant

# LIZZI LAW FIRM, PC

## Attorney at Law

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Christopher D. Lizzi, Esquire

Post Office Box 61899  
North Charleston, SC 29419  
Facsimile: (843)797-0202  
E-Mail: [lizzlaw@aol.com](mailto:lizzlaw@aol.com)

February 6, 2012

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

**RECEIVED**  
FEB 06 2012  
SCOMVH

**Re: Appeal of Previous Docket No.: 11-OMVH-01-0455-CC**  
**Ronald P. Morga vs. South Carolina Department of Motor Vehicles and S.C. Dept. of Public Safety**

Dear Madam Clerk:

Enclosed please find the original Notice of Appeal with regard to the above-referenced matter. In addition, I have enclosed the Certificate of Service of the Notice of Appeal and a check in the amount of \$150.00 for the required filing fee.

By copy of this correspondence I have served the South Carolina Administrative Law Court Office of Motor Vehicle Hearings, South Carolina Department of Public Safety, and South Carolina Department of Motor Vehicles with said Notice.

If you have any questions, or need additional information, please do not hesitate to contact my office.

Very truly yours,



Christopher D. Lizzi

CDL/mcl

Enclosure: As stated.

cc: South Carolina Administrative Law Court Office of Motor Vehicle Hearings  
South Carolina Department of Public Safety  
South Carolina Department of Motor Vehicles  
Ronald P. Morga

000024

54

**SOUTH CAROLINA ADMINISTRATIVE LAW COURT  
DIVISION OF MOTOR VEHICLE HEARINGS**

IN RE: )  
)  
)  
RONALD P. MORGA, )  
)  
)  
Appellant. )  
\_\_\_\_\_ )

Docket No. \_\_\_\_\_-ALJ-\_\_\_\_-\_\_\_\_-\_\_\_\_  
  
**Notice of Appeal**

The Appellant respectfully states, by and through his undersigned attorney below:

Inasmuch as the Court erred in not dismissing or rescinding the suspension on South Carolina Driver's License Number 008197481 due to the fact the underlying criminal case was dismissed and expunged no record of incident existed thereafter divesting the South Carolina Department of Motor Vehicles of any ability to go forward in this matter.

Appellant has attached hereto and incorporated by reference herein a copy of the final decision which is the subject of the appeal as well as the date it was received, and a copy of the request for a transcript marked Exhibit "A".

**WHEREFORE** Petitioner prays that the Department inquire into the matter and rescind its Final Order and Decision and grant his Appeal.

**LIZZI LAW FIRM, PC**

  
\_\_\_\_\_  
**CHRISTOPHER D. LIZZI**

2170 Ashley Phosphate Road, Suite 402  
N. Charleston, South Carolina 29406  
843-797-0222, 843-797-0202 (Fax)  
Attorney for Appellant

Ronald P. Morgia  
106 Glebe Road  
Summerville, SC 29483  
843.870.4584  
Appellant

North Charleston, South Carolina  
February 6, 2012

# Exhibit "A"



Hanahan, South Carolina. After considering all the evidence presented, I conclude that the suspension of Respondent's driver's license or driving privilege must be sustained.

### **MOTION TO DISMISS**

Respondent was arrested on January 20, 2011, and he requested a hearing to challenge the suspension of his driver's license or driving privilege based upon an alleged violation of the implied consent law. This matter was originally scheduled for a hearing on April 11, 2011, but it was continued three times. The hearing was finally held on September 27, 2011. At the hearing, counsel for Respondent moved to dismiss this matter based upon an order issued on September 21, 2011, just prior to the hearing, by The Honorable Katrina L. Patton, Summary Court Judge in Dorchester County Magistrate's Court, that expunged Respondent's charge of driving under the influence. The charge was *not proessed* on June 21, 2011. The order required that all records relating to the offense be expunged and destroyed pursuant to § 17-1-40 (Supp. 2009). Respondent argued that based upon the expungement of the underlying criminal charge, this matter should be dismissed. While a document offered by the officer related to the expunged driving under the influence charge was excluded from evidence upon the objection of counsel at the implied consent hearing, I conclude that the disposition and expungement of the underlying criminal charge does not require dismissal of the implied consent case. Rather, I conclude that the administrative hearing and criminal trial are separate and that the outcome of the underlying criminal charge has no affect on the implied consent hearing.

### **FINDINGS OF FACT**

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

1. On January 20, 2011, at approximately 1:17 a.m., Trooper Kunce was on patrol in Dorchester County when he observed a white truck that was traveling westbound on Dorchester Road weaving in the roadway. At one point, the truck left the roadway. As a result, he conducted a traffic stop.

2. Trooper Kunce approached the vehicle and spoke with the driver, who he identified as Respondent.

3. Respondent had slurred speech and red, glassy eyes. Trooper Kunce also smelled a strong odor of alcohol coming from Respondent.

4. Trooper Kunce asked Respondent to recite the alphabet, which he did successfully.

5. Then, Trooper Kunce asked Respondent to count backward from "95" to "47." Respondent had difficulty completing that task. He began counting backwards and then began counting forwards. He also stopped a couple of times during the test. Trooper Kunce determined that Respondent failed the number counting test.

6. Respondent exited his vehicle at Trooper Kunce's direction and performed three standardized field sobriety tests: the Horizontal Gaze Nystagmus ("HGN"), the walk-and-turn and the one-leg stand test. Respondent failed the three field sobriety tests.

7. During the HGN, Trooper Kunce observed a lack of smooth pursuit in both eyes, distinct and sustained nystagmus at maximum deviation in both eyes, and the onset of nystagmus prior to 45 degrees in his left eye.

8. Respondent attempted the one-leg stand test several times, but he was unable to successfully complete it. He put his foot down several times during the test.

9. During the walk-and-turn test, Respondent failed to touch heel-to-toe and made an improper turn.

10. Respondent was placed under arrest for driving under the influence and transported to the Dorchester County law enforcement complex for a DataMaster test.

11. Prior to beginning the DataMaster test, Trooper Kunce, a certified DataMaster operator, advised Respondent that the test was being video recorded and that he would be requesting a breath sample. Trooper Kunce read aloud the driving under the influence advisement of implied consent rights to Respondent and provided him with a written copy of those rights. He also checked Respondent's mouth for foreign materials, of which he found none, and entered Respondent's biographical data into the machine. At the conclusion of the twenty minute observation period, the machine performed several checks and tests to ensure that it was working properly. Respondent consented to the test and submitted a breath sample registering

.17%. Based upon the alcohol concentration in Respondent's breath sample, a notice of suspension was issued to him.

### CONCLUSIONS OF LAW

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

1. Pursuant to S.C. Code Ann. §1-23-660(A) (Supp. 2010), the Hearing Officers of the OMVH, effective January 1, 2006, preside over contested case hearings involving suspensions, cancellations, or revocations of drivers licenses by the Department. All hearings presided over by the Hearing Officers of the OMVH are contested case hearings and must be conducted in accordance with the Administrative Procedures Act ("APA") and the rules of procedure for the OMVH. § 1-23-660(B) (Supp. 2010). Furthermore, all appeals from final decisions of the Hearing Officers are to the South Carolina Administrative Law Court in accordance with its rules of procedure. § 1-23-660(D) (Supp. 2010).

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

3. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. See Peabody Coal Co. v. Ralston, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e. the enforcement of a driver's license suspension, revocation or cancellation, and since it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this matter. See Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers § 9.3 at 366 (2nd ed. 2001).

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

5. Pursuant § 56-5-2930 (Supp. 2010):

It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. . . .

6. Section § 56-5-2950(A) (Supp. 2010) provides:

A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol or drugs or the combination of alcohol and drugs if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. A breath test must be administered at the direction of the law enforcement officer who has arrested [the] person....

Furthermore, the breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy pursuant to South Carolina Law Enforcement Division ("SLED") policies. § 56-5-2950(A) (Supp. 2010).

7. Section 56-5-2950(B) (Supp. 2010) further provides:

No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

(1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;

(2) his privilege to drive must be suspended for at least one month if he takes the tests or gives the samples and has an alcohol concentration of fifteen one hundredths of one percent or more;

(3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;

(4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and

(5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

8. Upon motion by any party, the OMVH Hearing Officer may review the application of the policies, procedures, and regulations promulgated by SLED. If the Hearing Officer finds that the failure to follow any of the policies, procedures, regulations or other provisions of § 56-5-2950 materially affected the accuracy or reliability of the test results or the fairness of the testing procedure, the test results shall be excluded from evidence. The Hearing Officer must rule specifically as to the manner in which the failure materially affected the accuracy or reliability of the test results or the fairness of the procedure. See § 56-5-2950(J)(Supp. 2010).

9. If a person drives a motor vehicle and has an alcohol concentration of fifteen one-hundredths of one percent or more, the Department must suspend the person's driver's license, permit or nonresident operating privilege or deny the issuance of a license or permit to that individual. The arresting officer issues a notice of suspension, which is effective beginning on the date of the alleged violation. § 56-5-2951(A) (Supp. 2010).

10. A person may request an administrative hearing within thirty (30) days of the issuance of the notice of suspension. § 56-5-2951(B) (Supp.2010). Section 56-5-2951(F) (Supp. 2010) requires that the scope of the hearing be limited to whether the person:

- (1) was lawfully arrested or detained;
- (2) given a written copy of and verbally informed of the rights enumerated in Section 56-5-2950;
- ...
- (4) consented to taking a test pursuant to Section 56-5-2950, and the:
  - (a) reported alcohol concentration at the time of testing was fifteen one-hundredths of one percent or more;
  - (b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;
  - (c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950; and
  - (d) the machine was working properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

11. After reviewing the evidence presented, I conclude that Respondent was lawfully arrested for driving under the influence. The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006). Probable cause for a warrantless arrest exists when the

circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. Id. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. Id.

In this case, Trooper Kunce stopped Respondent's vehicle after he observed it weave and leave the roadway. During the stop, Trooper Kunce smelled a strong odor of alcohol coming from Respondent, and Respondent had slurred speech and glassy, red eyes. Additionally, Respondent failed the number counting test, HGN, one-leg stand and walk-and-turn. Therefore, based upon the totality of the circumstances before Trooper Kunce, I conclude that he had probable cause for Respondent's arrest for driving under the influence.

Furthermore, Respondent was advised of his implied consent rights verbally and in writing, and he consented to the DataMaster test, which was conducted in accordance with § 56-5-2950 by Trooper Kunce, a certified DataMaster operator. At the conclusion of the twenty minute observation period, Respondent submitted a breath sample registering .17%, and the machine was working properly. Therefore, after considering all the evidence presented and the applicable law, I conclude that the suspension of Respondent's driver's license or driving privilege must be sustained.

**ORDER**

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

**IT IS HEREBY ORDERED** the suspension of Respondent's driver's license or driving privilege is sustained.

**AND IT IS SO ORDERED.**



\_\_\_\_\_  
Brigitte B. Autry  
OMVH Hearing Officer

January 26, 2012  
Hanahan, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

RONALD P. MORGA, )  
 )  
 Appellant. )  
 )  
 vs. )  
 )  
 SOUTH CAROLINA DEPARTMENT )  
 OF MOTOR VEHICLES and )  
 SOUTH CAROLINA DEPARTMENT )  
 OF SAFETY, )  
 )  
 Respondent(s). )  
 \_\_\_\_\_ )

Docket No. \_\_\_\_\_ -ALJ- \_\_\_\_\_ - \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I am the Attorney for the Appellant in the above-captioned matter and that on the 6<sup>th</sup> day of February, 2012, in North Charleston, South Carolina, I served the original Request for Transcript of Record on the following person(s) by depositing the same in the United States Mail, postage paid, and addressed as follows:

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Edgar A. Brown Building  
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Columbia, S.C. 29201**



\_\_\_\_\_  
Christopher D. Lizzi  
2170 Ashley Phosphate Road, Suite 402  
North Charleston, SC 29406  
(843) 797-0222, (843) 797-0202 Facsimile  
Attorney for Appellant

## REQUEST FOR TRANSCRIPT OF RECORD

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I understand that I am responsible for all costs associated with the preparation of this transcript pursuant to Rule 32 of the Rules of Procedure for the Administrative Law Court.

  
\_\_\_\_\_  
Signed

2170 Ashley Phosphate Road,  
Suite 402  
North Charleston, SC 29406

February 6, 2012

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

RONALD P. MORGA, )  
 )  
 Appellant. )  
 )  
 vs. )  
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 SOUTH CAROLINA DEPARTMENT )  
 OF MOTOR VEHICLES and )  
 SOUTH CAROLINA DEPARTMENT )  
 OF SAFETY, )  
 )  
 Respondent(s). )  
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 \_\_\_\_\_ )

Docket No. \_\_\_\_\_ -ALJ- \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**CERTIFICATE OF SERVICE**


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**South Carolina Administrative Law Court  
Office of Motor Vehicles Hearings  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 325  
Columbia, S.C. 29201**

**South Carolina Administrative Law Court  
Attn: Clerk  
1205 Pendleton Street, Suite 224  
Columbia, S.C. 29201**

**South Carolina Department of Safety  
Attn: Trooper Robert S. Kunce  
100 Mable T. Willis Blvd.  
Walterboro, S.C. 29485**

**South Carolina Department of Motor Vehicles  
Attn: Driver Records  
P.O. Box 1498  
Blythewood, S.C. 29016**

  
\_\_\_\_\_  
Christopher D. Lizzi  
2170 Ashley Phosphate Road, Suite 402  
North Charleston, SC 29406  
(843) 797-0222, (843) 797-0202 Facsimile  
Attorney for Appellant

Exhibits - Implied Consent Hearing

Hearing:           Petitioner: South Carolina Department of Public Safety  
                          Respondent: Ronald P. Morga  
                          Attorney: Christopher Lizzi, Esq.

Docket No.: 11-OMVH-01-0455-CC

Date of Hearing: September 27, 2011    Location: Hanahan Municipal Court

Hearing Officer: Brigette B. Autry

- I hereby certify that neither party offered exhibits into the record.
- I hereby certify that exhibit(s) were offered into the record and are indicated below.

**PETITIONER:**

**RESPONDENT**

- |  |   |
|--|---|
| <input type="checkbox"/> Notice of Suspension                      | <input type="checkbox"/> Notice of Suspension                               |
| <input type="checkbox"/> Advisement of Implied Consent Rights      | <input type="checkbox"/> Advisement of Implied Consent Rights               |
| <input type="checkbox"/> SLED Breath Alcohol Analysis Test Report. | <input type="checkbox"/> SLED Breath Alcohol Analysis Test Report.          |
| <input type="checkbox"/> In-car videotape                          | <input type="checkbox"/> In-car videotape                                   |
| <input type="checkbox"/> Datamaster site videotape                 | <input type="checkbox"/> Datamaster site videotape                          |
| <input checked="" type="checkbox"/> Datamaster certification card  | <input type="checkbox"/> Datamaster certification card                      |
| <input type="checkbox"/> Other                                     | <input checked="" type="checkbox"/> Order for Destruction of Arrest Records |

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

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

Date placed in the mail \_\_\_ or Date hand delivered 2/10/12

Signature Brigette B. Autry





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

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

Petitioner,

vs.

Ronald P. Morga,

Respondent.

---

Docket No. 11-OMVH-01-0455-CC  
DL#008197481

**ORDER OF CONTINUANCE AND  
NOTICE OF HEARING**

This matter was previously scheduled to be heard on the merits before Hearing Officer Brigitte B. Autry 9:30 AM on Monday, August 29 2011. On August 24, 2011 Christopher Lizzi 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, September 27 2011 at Hanahan Municipal Ct 1255 Yeamans Hall Rd. Hanahan SC.** All other provisions of the original Notice of Hearing remain in effect.

Yolanda P. Williams, Administrative Coordinator, OMVH

By: Frances L Inabinet

Scheduling Assistant

August 25, 2011  
Columbia, South Carolina

Cc: Robert S. Kunce

**Frances Inabinet**

---

**From:** Frances Inabinet  
**Sent:** Thursday, August 25, 2011 11:41 AM  
**To:** hpu@scdmv.net; 'ltscarborough@schp.org'; lizzlaw@aol.com  
**Subject:** Reschedule Letter, Ronald Morga 09-27 dkt# 0455  
**Attachments:** Reschedule Letter, Ronald Morga 09-27 dkt# 0455.pdf

Frances L. Inabinet  
Scheduling Assistant to Hearing Officers  
Tracy Holland  
Brigette Autry  
Phil Hayes  
Robert Harley  
Phil Addington  
SC Administrative Law Court  
Office of Motor Vehicle Hearings  
1205 Pendleton St. Ste.325  
Columbia SC 29201  
803-734-3209  
803-734-3200 (fax)

000041

# LIZZI LAW FIRM, PC

Attorney at Law

2170 Ashley Phosphate Road, Suite 402  
North Charleston, SC 29406  
Telephone: (843)797-0222  
Christopher D. Lizzi, Esquire

Post Office Box 61899  
North Charleston, SC 29419  
Facsimile: (843)797-0202  
E-Mail: [lizzlaw@aol.com](mailto:lizzlaw@aol.com)

August 24, 2011

**Via facsimile only- (803) 734-3200**

South Carolina Administrative Law Court  
Division of Motor Vehicle Hearings  
Edgar A. Brown Building  
1205 Pendleton Street, Ste. 325  
Columbia, SC 29201

Re: **Continuance Request for Administrative Hearing**

Driver:	Ronald P. Morga
Date of Birth:	February 24, 1962
Drivers License Number:	SC 008197481
Current Address:	106 Glebe Road Summerville, SC 29485
Telephone Number:	843.870.4584
Charge:	DUI 1 <sup>st</sup>
Ticket Number:	E 709458
Reason for Suspension:	Registering an Alcohol Concentration of .15 or greater
Arresting Officer:	R. Kunce

US5

Dear Ms. Inabinet:

As the court is aware, I represent Ronald Morga on the aforementioned charge which is scheduled for an administrative hearing on August 29, 2011 at 9:30 a.m. However, I have a scheduling conflict in Berkeley County Family Court for an all day trial in the matter of Shipley vs. Shipley. Therefore, I am hereby requesting that this matter be continued. A copy of my Unavailable Dates List is attached for your ready reference as well as a copy of said conflict.

By copy of this correspondence to the Office of General Counsel and arresting officer via facsimile, I am hereby notifying them of my request.

If same meets with your approval, please kindly advise me of the new date and time for the hearing.

Tues

9:27  
9:30  
2

000042

South Carolina Administrative Law Court  
August 24, 2011  
Page 2 of 2

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Christopher D. Lizzi

CDL/mcl

Enclosure: As stated.

cc: Office of General Counsel (Via facsimile only- 803-896-9901)  
Officer R. Kunce, South Carolina Highway Patrol (Via facsimile only- 843-953-6009)  
Ronald Morga

**LIZZI LAW FIRM, PC**  
**DATES UNAVAILABLE AS OF August 24, 2011**

<u>Date</u>	<u>Time</u>	<u>Length</u>	<u>Location</u>
08/24/11	9:30 am	1 hour	Charleston County Common Pleas
08/24/11	11:00 am	1 hour	Charleston County Family Court
08/24/11	1:00 pm	4 hours	Mediation
08/24/11	2:00 pm	1 hour	Berkeley County Family Court
08/25/11	9:00 am	1 hour	Dorchester County Family Court
08/25/11	10:30 am	1 hour	Charleston County Family Court
08/25/11	2:30 pm	2 ½ hours	Berkeley County Family Court
08/26/11	9:30 am	3 hours	Dorchester County Family Court
08/26/11	9:30 am	1 hour	Bond Hearing
08/26/11	3:30 pm	1 hour	North Area Small Claims Court
08/29/11	9:00 am	ALL DAY	Berkeley County Family Court
08/29/11	9:30 am	1 hour	Hanahan Municipal Court
08/30/11	9:00 am	1 ½ hours	Berkeley County Family Court
08/30/11	9:00 am	ALL DAY(Stand-by)	Berkeley County Family Court
08/30/11	1:00 pm	4 hours	Deposition
08/31/11	9:00 am	3 hours	Mediation
08/31/11	2:00 pm	1 hour	Orangeburg Magistrate Court
08/31/11	2:30 pm	1 hour	Berkeley County Family Court
09/01/11	9:00 am	1 hour	Berkeley County Family Court

09/01/11	11:00 am	1 hour	Berkeley County Family Court
09/01/11	1:00 p.m.	1 hours	North Charleston Municipal Court
09/01/11	2:30 pm	2 hours	Deposition
09/02/11	9:00 am	ALL DAY	Deposition-Greenville County
09/06/11	9:30 am	2 hours	Charleston County Family Court
09/06/11	2:00 pm	1 hour	Dorchester County Family Court
09/07/11	9:00 am	1 hour	Berkeley County Family Court
09/07/11	2:00 pm	1 hour	Charleston County Family Court
09/07/11	5:00 pm	2 hours	Deposition
09/08/11	10:00 am	ALL DAY	Mediation
09/09/11	9:00 am	1 hour	Charleston County General Sessions
09/09/11	9:30am	2 hours	Dorchester County Family Court
09/09/11	10:15 am	1 hour	Berkeley County Family Court
09/12/11	9:30 am	1 hour	Hanahan Municipal Court
09/12/11	11:00 am	1 ½ hours	Dorchester County Family Court
09/12/11	3:30 pm	1 hour	Charleston County Family Court
09/12/11 thru 09/14/11		ALL DAY(Stand-by)	Berkeley County Family Court
09/13/11	9:00 am	1 hour	Berkeley County Family Court
09/13/11	11:45 am	2 hours	North Charleston Municipal Court
09/13/11	1:00 pm	4 hours	Mediation
09/14/11	11:30 am	1 hour	Knight Law Complex
09/14/11	3:15 pm	1 hour	Master Charleston County

09/15/11	10:00 a.m.	3 hours	Deposition
09/16/11	9:30 am	1 hour	Moncks Corner Magistrate Court
09/16/11	11:00 am	1 hour	Lexington County Family Court
09/19/11	9:00 am	2 hours	Berkeley County Family Court
09/19/11	2:00 pm	1 hour	Berkeley County Family Court
09/20/11	10:00 am	2 hours	Deposition-Lizzi Law Firm
09/22/11	9:00 am	1 hour	Berkeley County Family Court
09/26/11	8:30am	4 hours	Charleston Municipal Court
09/26/11	9:00 a.m.	ALL DAY	Orangeburg Magistrate Court
09/26/11	11:15 am	1 hour	Charleston County Common Pleas
09/28/11	10:00am	4 hours	Depositions
10/03/11 thru 10/07/11		ALL DAY	Dorchester County Family Court
10/05/11	3:30 pm	2 hours	Charleston County Family Court
10/07/11		1 hour	Dorchester County General Sessions
10/10/11		ALL DAY	Mediation in Greenville County
10/11/11	2:00 pm	½ day	Berkeley County Family Court
10/13/11	1:30 p.m.	2 hours	Deposition
10/17/11 thru 10/18/11		ALL DAY	Berkeley County Family Court
10/17/11 thru 10/18/11		ALL DAY(Stand-by)	Berkeley County Family Court
10/17/11 thru 10/18/11		ALL DAY(Stand-by)	Charleston County Family Court
10/21/11	2:30 pm	1 hour	Berkeley County General Sessions

10/31/11	9:30 am	2 hours	Colleton County Family Court
11/04/11	9:00am	2 hours	Charleston General Sessions Court
11/08/11 thru 11/10/11		ALL DAY(Stand-by)	Berkeley County Family Court
11/17/11	10:30 am	1 hour	Berkeley County Family Court
11/29/11 thru 11/30/11		ALL DAY(Stand-by)	Charleston County Family Court
12/05/11 thru 12/09/11		ALL DAY(Stand-by)	Berkeley County Family Court
12/07/11 thru 12/08/11		ALL DAY	Berkeley County Family Court

STATE OF SOUTH CAROLINA )  
 COUNTY OF BERKELEY )  
 )  
 SHIPLEY, THOMAS E )  
 Plaintiff )  
 )  
 VS. )  
 )  
 SHIPLEY, ANGELA F )  
 Defendant )  
 ----- )

IN THE FAMILY COURT OF THE  
 NINTH JUDICIAL CIRCUIT

FILED

CASE NO.: 2009DR0800716

2011 APR -1 PM 1:24 NOTICE  
 OF FINAL HEARING

MARY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

04/01/2011

TO: LIZZI, CHRISTOPHER D  
 ATTORNEY AT LAW  
 2170 ASHLEY PHOSPHATE-STE 402  
 NORTH CHARLESTON SC 29406

FAX: 843-797-0202  
 PHONE: 843-797-0222

The above requested Hearing has been set for:

09:00 A.M. thru 05:00 P.M.

on the 29 day of August, 2011 in Courtroom No. C.

YOU ARE HEREBY NOTIFIED to be present in the Family Court of the  
 Ninth Judicial Circuit located at the Courthouse, 300-B California Avenue  
 in Moncks Corner, South Carolina at the aforesaid time..

MARY P. BROWN, CLERK OF COURT

\*\*THE ATTORNEY OF RECORD IS RESPONSIBLE TO NOTIFY ALL PARTIES INVOLVED  
 OF THIS HEARING DATE.

(NFH)



## Frances Inabinet

---

**From:** Frances Inabinet  
**Sent:** Wednesday, July 13, 2011 3:01 PM  
**To:** hpu@scdmv.net; 'ltscarborough@schp.org'; lizzlaw@aol.com  
**Subject:** Reschedule Letter, Ronald Morgia 8/29 dkt# 0455  
**Attachments:** reschedule letter, Ronald Morgia

Frances L. Inabinet  
Scheduling Assistant to Hearing Officers  
Tracy Holland  
Brigette Autry  
Phil Hayes  
Robert Harley  
Phil Addington  
SC Administrative Law Court  
Office of Motor Vehicle Hearings  
1205 Pendleton St. Ste.325  
Columbia SC 29201  
803-734-3209  
803-734-3200 (fax)



# South Carolina Department of Public Safety

S.C. Highway Patrol

## MEMORANDUM

To: Francis L. Inabinet  
Office of Motor Vehicle Hearings

From: Sergeant R.L. Hardee  
SC Highway Patrol Troop 6 Post B

Date: July 12, 2011

Subject: Request for Continuance  
Ronald Morga  
Hearing Date: August 2, 2011  
Docket # 11-OMVH-01-0455-CC  
DL# 8197481

I am requesting a continuance on behalf of Lance Corporal R.S. Kunce for the above Administrative Hearing. Lance Corporal Kunce has prior commitments out of town during that time for instructors in-service in Columbia and will be unable to attend the hearing as scheduled.

C: Major R.S. Stewart  
Cpt. C.N. Williamson  
Lt. W.N. Wise  
F/Sgt. K.B. Martin  
Cpl. D.A. McMurry  
L/Cpl. R.S. Kunce  
Yolanda Williamson, OMVH  
Shuana Wilson, OMVH  
DMV General Counsel  
Leon Scarborough  
Attorney - None listed on notice of hearing

Mon  
8:29  
9:30

8:2

Courtesy - Efficiency - Service

STATE OF SOUTH CAROLINA  
OFFICE OF MOTOR VEHICLE HEARINGS

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

Petitioner, )

vs. )

Ronald Morga, )

Respondent. )

Docket No. 11-OMVH-01-0455-CC  
DL# 8197481

**ORDER OF CONTINUANCE AND  
NOTICE OF HEARING**

This matter was previously scheduled to be heard on the merits before Hearing Officer Brigette Aütry at 9:30 am on June 7, 2011. On June 1, 2011 Attorney Christopher Lizzi requested a continuance due to being in court. 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, August 2, 2011 at Hanahan Municipal Court Bldg, 1255 Yeamans Hall Road Hanahan SC.** All other provisions of the original Notice of Hearing remain in effect.

Yolanda P. Williams, Administrative Coordinator, OMVH

By: Frances L Inabinet

Scheduling Assistant

June 2, 2011  
Columbia, South Carolina

Cc: Trp. R Kunce

**FILED**

June 2, 2011

**SCOMVH**

**Frances Inabinet**

---

**From:** Frances Inabinet  
**Sent:** Thursday, June 02, 2011 10:44 AM  
**To:** hpu@scdmv.net; 'ltscarborough@schp.org'; lizzlaw@aol.com  
**Subject:** Reschedule Letter, Ronald Morgia 8/2 dkt# 0455  
**Attachments:** reschedule letter, Ronald Morgia.pdf

Frances L. Inabinet  
Scheduling Assistant to Hearing Officers  
Tracy Holland  
Brigette Autry  
Phil Hayes  
Robert Harley  
Phil Addington  
SC Administrative Law Court  
Office of Motor Vehicle Hearings  
1205 Pendleton St. Ste.325  
Columbia SC 29201  
803-734-3209  
803-734-3200 (fax)

**Frances Inabinet**

---

**From:** Frances Inabinet  
**Sent:** Wednesday, June 01, 2011 12:27 PM  
**To:** hpu@scdmv.net; Brigette Autry; 'ltscarborough@schp.org'; lizzlaw@aol.com  
**Subject:** Continuance: Ronald Morga 6/7 dkt# 0455

**Importance:** High

Hearing on above respondent scheduled for June 7<sup>th</sup> has been continued at the request of the attorney. New notice will be emailed in the next few business days

Trp. R Kunce

Thanks

fli

Frances L. Inabinet  
Scheduling Assistant to Hearing Officers  
Tracy Holland  
Brigette Autry  
Phil Hayes  
Robert Harley  
Phil Addington  
SC Administrative Law Court  
Office of Motor Vehicle Hearings  
1205 Pendleton St. Ste.325  
Columbia SC 29201  
803-734-3209  
803-734-3200 (fax)

*APPROX-  
email  
ATT*

*TUES  
8:2  
9:30*

**LIZZI LAW FIRM, PC**  
**Attorney at Law**

2170 Ashley Phosphate Road, Suite 402  
 North Charleston, SC 29406  
 Telephone: (843)797-0222  
 Christopher D. Lizzi, Esquire

Post Office Box 61899  
 North Charleston, SC 29419  
 Facsimile: (843)797-0202  
 E-Mail: [lizzlaw@aol.com](mailto:lizzlaw@aol.com)

June 1, 2011

**Via facsimile only - (803) 734-3200**

South Carolina Administrative Law Court  
 Division of Motor Vehicle Hearings  
 Edgar A. Brown Building  
 1205 Pendleton Street, Ste. 325  
 Columbia, SC 29201

**Re: Continuanace Request for Administrative Hearing**

Driver:	Ronald P. Morga
Date of Birth:	February 24, 1962
Drivers License Number:	SC 008197481
Current Address:	106 Glebe Road Summerville, SC 29485
Telephone Number:	843.870.4584
Charge:	DUI 1 <sup>st</sup>
Ticket Number:	E 709458
Reason for Suspension:	Registering an Alcohol Concentration of .15 or greater
Arresting Officer:	R. Kunce

Dear Ms. Inabinet:

As the court is aware, I represent Ronald Morga on the aforementioned charge which is scheduled for an administrative hearing on June 7, 2011 at 9:30 a.m. However, I have a scheduling conflict in Berkeley County Family Court on June 7, 2011 at 10:30 a.m. for a final hearing in the matter of Astorga vs. Riccardo. Therefore, I am hereby requesting that this matter be continued. A copy of my Unavailable Dates List is attached for your ready reference as well as a copy of said conflict.

By copy of this correspondence to the Office of General Counsel and arresting officer via facsimile, I am hereby notifying them of my request.

If same meets with your approval, please kindly advise me of the new date and time for the hearing.



**Frances Inabinet**

---

**From:** Frances Inabinet  
**Sent:** Monday, April 11, 2011 4:20 PM  
**To:** hpu@scdmv.net; 'gbperalta@schp.org'; 'lts Scarborough@schp.org'; lizzlaw@aol.com  
**Subject:** Ronald Morga, Order of Continuance and Notice of Rescheduled Hearing, 6/7 dkt# 0455  
**Attachments:** Morga, Ronald - Order of Continuance.pdf

Frances L. Inabinet  
Scheduling Assistant to Hearing Officers  
Tracy Holland  
Brigette Autry  
Phil Hayes  
Robert Harley  
Phil Addington  
SC Administrative Law Court  
Office of Motor Vehicle Hearings  
1205 Pendleton St. Ste.325  
Columbia SC 29201  
803-734-3209  
803-734-3200 (fax)

# LIZZI LAW FIRM, PC

Attorney at Law

2170 Ashley Phosphate Road, Suite 402  
North Charleston, SC 29406  
Telephone: (843)797-0222  
Christopher D. Lizzi, Esquire

Post Office Box 61899  
North Charleston, SC 29419  
Facsimile: (843)797-0202  
E-Mail: [lizzilaw@aol.com](mailto:lizzilaw@aol.com)

January 26, 2011

South Carolina Administrative Law Court  
Division of Motor Vehicle Hearings  
Edgar A. Brown Building  
1205 Pendleton Street, Ste. 325  
Columbia, SC 29201

Re: **Request for Administrative Hearing**

Driver: Ronald P. Morga  
Date of Birth: February 24, 1962  
Drivers License Number: SC 008197481  
Current Address: 106 Glebe Road  
Summerville, SC 29485  
Telephone Number: 843.870.4584  
Charge: DUI 1<sup>st</sup>  
Ticket Number: E 709458  
Reason for Suspension: Registering an Alcohol Concentration of .15 or greater  
Arresting Officer: R. Kunce

Dear Sir or Madam:

Please be advised that I represent Ronald Morga on the above referenced charge. I hereby request that my client be given an administrative hearing with respect to the suspension of this driver's license.

Enclosed, please find a check payable to the DMV Office of Administrative Hearings in the amount of \$150.00, representing the filing fee for said request along with a copy of my Unavailable Dates List and an Official Notice of Suspension for your records.

Please notify me of the hearing date at the address indicated on the letterhead above.

RECEIVED

JAN 28 2011

SCOMVH 0000588

STATE OF SOUTH CAROLINA  
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Public Safety )  
and )  
South Carolina Department of Motor )  
Vehicles, )  
Petitioner, )  
vs. )  
Ronald Morga, )  
Respondent. )

Docket No. 11-OMVH-01-0455-CC  
DL# 8197481

**NOTICE OF HEARING**

On January 20, 2011 Respondent was arrested by Trp. Robert Kunce of Dorchester HP and Respondent's driver's license or privilege was suspended. The Respondent is being represented by Attorney Christopher Lizzi. This matter is before the South Carolina Office of Motor Vehicle Hearings (DMVH) pursuant to Respondent's request for a contested case hearing.

**IT IS HEREBY NOTICED** that a hearing on the merits of this action before Hearing Officer Brigette Autry is scheduled to begin at **9:30 am on Monday April 11, 2011 at Hanahan Municipal Court Bldg, 1255 Yeamans Hall Road Hanahan SC.** All parties are to arrive at least fifteen minutes prior to the time set for the hearing.

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

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

3. Subpoenas are available to the parties pursuant to S.C. Code Ann. § 1-23-320(d) (2006) and the rules of the OMVH, to compel the attendance of witnesses or for the production of documents at the hearing. The parties are responsible for service of subpoenas and any cost involved. Subpoena may be obtained from the OMVH website.

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

5. **FOR GOOD CAUSE SHOWN**, a party may request a continuance no later than 48 hours prior to the scheduled hearing date. All requests must be made in writing and forwarded to the scheduling assistant listed below for the assigned hearing officer of the OMVH by U.S. Mail, Fax, or email. A copy of your request must be sent to all parties.

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

Yolanda P. Williams, Administrative Coordinator, OMVH

By: Frances L Inabinet

Scheduling Assistant

**FILED**

February 1, 2011  
Columbia, South Carolina

February 1, 2011

**SCOMVH**

00006189

**Frances Inabinet**

---

**From:** Frances Inabinet  
**Sent:** Tuesday, February 01, 2011 10:50 AM  
**To:** 'hpu@scdmv.net'; 'gbperalta@schp.org'; lizzlaw@aol.com  
**Subject:** NOH, Morga  
**Attachments:** NOH, Ronald Morga.pdf

Frances L. Inabinet  
Scheduling Assistant to Hearing Officers  
Tracy Holland  
Brigette Autry  
Phil Hayes  
Robert Harley  
Phil Addington  
SC Administrative Law Court  
Office of Motor Vehicle Hearings  
1205 Pendleton St. Ste.325  
Columbia SC 29201  
803-734-3209  
803-734-3200 (fax)

# myCaseLoad

Welcome: Shanna Wilson

[About](#)

[Logout](#)

[Intake](#) [Search](#) [Generate](#) [Tools](#) [Accounts Receivable](#)

Case  Search

[Return to List](#)

### Cash Receipt

<b>Number:</b>	CR1101-0535	<b>Dated:</b>	01-31-2011
<b>Till:</b>	OMVH Till	<b>Total Paid</b>	\$150.00
<b>Posted:</b>	Yes		

### Void Information

<b>Void Method:</b>		<b>Voided:</b>	No
<b>Void Posted:</b>	No		
<b>Void Explanation:</b>			

### Generate

Cash Receipt

Invoices (1)				
Date	Number	Item Type	Customer	Paid
01-31-2011	NV1101-0536	Case Filing Fee - \$150	Clevenger, Jason Matthew	150.00

Payments (1)			
Payment Method	Reference		Paid
Check	Lizzi Law FirmPC		150.00

000063



# South Carolina Department of Motor Vehicles

MV-65  
Rev. 12/05

## Notice of Suspension

Defendant's Name: Ronald P Marga Address: 11-0MVA01-455  
106 Glebe Rd Sille  
 BP/DL Number: 008197481 State: SC Zip Code: 29485 Date of Birth: 2-24-62

Vehicle: License Plate Number Z53 6ED 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)

<p><b>UNDER THE AGE OF TWENTY-ONE (21) AND NOT UNDER ARREST FOR DUI*</b></p> <p><input type="checkbox"/> Registering an alcohol concentration of .02 or greater*</p> <p><input type="checkbox"/> Refusing to submit to a breath, blood or urine test*</p>	<p><b>ANY AGE UNDER ARREST FOR DUI</b></p> <p><input checked="" type="checkbox"/> Registering an alcohol concentration of .15 or greater</p> <p><input type="checkbox"/> Refusing to submit to a breath, blood or urine test</p>
---	--

\*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 have a hearing to challenge the suspension. A hearing will be scheduled if within thirty days of the date on this notice of suspension the South Carolina Administrative Law Court RECEIVES your written request for a hearing. There is a \$150.00 filing fee for a hearing. (Personal checks 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 get a temporary alcohol restricted license.

If you do not get a temporary alcohol restricted license, your suspension continues. You cannot drive until you either get 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 get 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 get a route-restricted license. If you do not get a route-restricted license or if you are under the age of twenty-one 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 get 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 DMV office and have a regular license issued to you.

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 get a route-restricted license.

I understand that I cannot drive until a license has been issued to me. [Signature]  
 Signature of Defendant

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

Date: 1-20-11 Signature of Arresting Officer: [Signature] Printed Name of Arresting Officer: Robert S Kincer

Agency Name: SCHP Agency Code: (18 Dorchester) SCSHP0600 Agency Telephone Number: 1-877-886-2394

Date: 1-20-11 Signature of DataMaster Operator: [Signature] Printed Name of DataMaster Operator: \_\_\_\_\_

Agency Name: \_\_\_\_\_ Agency Code: \_\_\_\_\_ Agency Telephone Number: \_\_\_\_\_

**FILED**  
 JAN 26 2011  
 SCOMVH  
 RECEIVED  
 JAN 28 2011  
 SCOMVH

## HEARING REQUEST

I am requesting an administrative hearing. I understand that if the SC Administrative Law Court does not receive my hearing request within 10 my days of the date on this notice of suspension, I will not be given a hearing and I will not be issued a temporary alcohol restricted license.

Date \_\_\_\_\_ Signature of Defendant \_\_\_\_\_ Defendant's Current Address \_\_\_\_\_ Phone Number \_\_\_\_\_

Your Attorney's Name \_\_\_\_\_ Attorney's Address \_\_\_\_\_ Phone Number \_\_\_\_\_

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

## INSTRUCTIONS FOR USING THIS FORM TO REQUEST A HEARING

1. Complete the Hearing Request part of this form, giving the current address and telephone number where you can be reached.
2. There is a \$150.00 filing fee for a hearing. (Personal checks not accepted.)
3. Bring or mail this completed form, plus the filing fee, to the South Carolina Administrative Law Court, 1205 Pendleton St., Suite 325, Columbia, SC 29201. This completed form and the fee must be RECEIVED by the Administrative Law Court within thirty days of the date on this notice of suspension for a hearing to be scheduled.

## INSTRUCTIONS FOR REQUESTING A HEARING WHEN NOT USING THIS FORM

1. Submit a written request that includes all information that is requested in the blanks on this form: your name, date of birth, driver license number, state in which licensed, current address, telephone number where you can be reached, license plate number of vehicle, whether it was a commercial vehicle, whether you surrendered your license, whether you were under arrest for DUI, and whether you were suspended for refusing the test or for taking the test and having too high a reading. You must also include the names and agencies of the arresting officer and of the DataMaster operator, plus contact information for your attorney.
2. There is a \$150.00 filing fee for a hearing. (Personal checks not accepted.)
3. Bring or mail your completed request, plus the filing fee, to the South Carolina Administrative Law Court, 1205 Pendleton St., Suite 325, Columbia, SC 29201. The completed request and the fee must be RECEIVED by the Administrative Law Court within thirty days of the date of your suspension for a hearing to be scheduled.

## INSTRUCTIONS FOR GETTING A TEMPORARY ALCOHOL RESTRICTED LICENSE

1. If you meet 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 the temporary alcohol restricted license is \$100.00.
3. After you file your request for a hearing, the Department of Motor Vehicles will determine whether you are eligible for a temporary alcohol restricted license. If you are eligible, DMV will mail you a letter stating your eligibility.
4. IF YOU ARE A SOUTH CAROLINA LICENSED DRIVER, you may take that letter to any DMV office in the state, pay the \$100.00 license fee, and have the temporary alcohol restricted license issued.
5. IF YOU ARE A LICENSED DRIVER FROM ANOTHER STATE, you may take that letter and the \$100.00 license fee to DMV Specialized Services, 1630 Shop Road, Columbia, SC (2 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 <http://www.scdmvonline.com>), and the \$100.00 license fee to DMV/Driver Records, P. O. Box 1498, Blythewood, SC 29016-0028. That office will mail you the temporary alcohol restricted license.

## INSTRUCTIONS FOR GETTING 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 DI-127). This application will be mailed to you with your suspension notice. It is also available on the Internet at <http://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 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 <http://www.scdmvonline.com>), the \$100.00 license fee, and the \$100.00 reinstatement fee if you are licensed in another state) to 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 Department of Alcohol and Other Drug Abuse Services (DAODAS). You must go to your 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 ADSAP classes in person.

**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 12<sup>th</sup> day of March 2012

By: Upland Will

Title: Administrative Coordinator, OMOVH

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

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Case No. 12-ALJ-21-0047-AP

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Ronald Morga,

Appellant,

v.

South Carolina Department of Motor Vehicles


Respondents.

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CERTIFICATE OF COUNSEL

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I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

  
\_\_\_\_\_  
Christopher D. Lizzi  
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843.797.0222  
Attorney for the Appellant, Ronald Morga

August 9 2012

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 12-ALJ-21-0047-AP

**RECEIVED**

AUG 10 2012

**SC Court of Appeals**

Ronald Morga,

Appellant,

v.

South Carolina Department of Motor Vehicles

Respondents.

PROOF OF SERVICE OF RECORD ON APPEAL AND FINAL BRIEF

I certify that I have served the Record on Appeal and Final Brief on the Administrative Law Court and Respondents South Carolina Department of Motor Vehicles and South Carolina Highway Patrol by depositing a copy of same in the United States Mail, postage prepaid, on August 9, 2012, addressed to Judge John D. McLeod, 1205 Pendleton Street, Suite 224 Columbia, South Carolina 29201, the Counsel of Record Linda A. Grice, Assistant General Counsel, Philip S. Porter, Deputy General Counsel, Frank L. Valenta, Jr., General Counsel Post Office Box 1498, Blythewood, South Carolina 29016-0020 and South Carolina Highway Patrol, Trooper R. Kunce, 100 Mable T. Willis Blvd., Walterboro, SC 29485.



Christopher D. Lizzi  
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North Charleston, South Carolina 29406  
843.797.0222  
Attorney for the Appellant,  
Ronald Morga

August 9, 2012

**ORIGINAL**