

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

Ronald Morga,

Appellant,

v.

South Carolina Department of Motor Vehicles,

Respondents.

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AUG 10 2012
SC Court of Appeals

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. DID THE ADMINISTRATIVE LAW COURT ERR IN ADMITTING DOCUMENTS FINDING THAT THEY COULD ADMIT DOCUMENTS IN PROOF OF THE ARREST OF THE UNDERLYING CHARGE?
2. DID THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT ERR IN FINDING THAT S.C. CODE ANN. § 17-1-40 WAS NOT APPLICABLE TO THE CHARGE OF DRIVING UNDER THE INFLUENCE, S.C. CODE ANN. § 56-5-2930?

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 S.C. Code Ann. § 56-5-2950 and had his driving privileges suspended. That pursuant to S.C. Code Ann. § 56-5-2951 (Supp. 2010), the Appellant Morga requested an Administrative Hearing (R. pp. 92-93). This request was timely received by the Department of Motor Vehicles and the hearing took place on September 27, 2011 (R. p. 70). That on June 21, 2011, the charge of Driving Under the Influence was *not proessed* and expunged. At that time, pursuant to S.C. Code Ann. § 17-1-40 (Supp. 2010) all records pertaining to such charges were ordered to be destroyed. At the hearing, Appellant's attorney argued that inasmuch as the underlying tickets had been expunged and all records of the arrest expunged that there was no jurisdiction for the Court as to the arrest for Driving Under the Influence as well as refusal of the implied consent. 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 by O.M.V.H. Hearing Officer Brigette B. Autry (R. pp. 2-8).

The hearing officer sustained the suspension of the Appellant's driving privileges (R. p. 8). 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. p. 33, lines 1-2). The Transcript of the Record (R. pp. 34-48) was provided to the Appellant shortly after filing his Notice of Appeal. On March 23, 2012, the Brief of the Appellant was served on all parties (R. pp. 14-18). The Appellant argued in his Brief that the Hearing Officer's decision should be overturned because the driving under the influence charges against the Appellant had been previously dismissed and expunged and all of the records pertaining to the arrest were ordered to be destroyed. Appellant asserted in his Brief 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. On March 28, 2012, the Brief of the Respondent was served (R. pp. 19-25) in which it responded that S.C. Code Ann. § 17-1-40(A) (Supp. 2010) did not apply to the charge of Driving Under the Influence because it was a Title 56 violation and therefore excluded due to S.C. Code Ann. § 17-1-40 (C) (Supp. 2010). The Reply Brief of the Appellant was served on May 16, 2012 (R. pp. 26-29) in which the Appellant stated that the Respondent had misread S.C. Code Ann. § 17-1-40 (C) (Supp. 2010) inasmuch as it was designated to deal with only minor traffic violations in Title 56, of which a person is not fingerprinted, and was not applicable to any charge in which a person is placed under arrest, fingerprinted, and booked as is the case of the Appellant. On June 7, 2012, the Order was received from Judge McLeod in which the Office of Motor Vehicle Hearing's Final Order was affirmed.

On June 20, 2012, Appellant served the Notice of Appeal to the South Carolina Court of Appeals on all the South Carolina Administrative Law Court, Counsel for the South Carolina Department of Motor Vehicles, and the South Carolina Highway Patrol.

ARGUMENTS

I. THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT ERRED IN ADMITTING DOCUMENTS, FINDING THAT THEY COULD ADMIT DOCUMENTS IN PROOF OF THE ARREST OF THE UNDERLYING CHARGE, BECAUSE PURSUANT TO S.C. CODE ANN. § 17-1-40 (SUPP. 2010) ALL RECORDS IN THIS MATTER SHOULD HAVE BEEN EXPUNGED AND DESTROYED.

That pursuant to S.C. Code Ann. 17-1-40 (Supp. 2010), 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 *nol prossed* on June 21, 2011 and an Order of Expungement was issued (R. p. 69). 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 S.C. Code Ann. § 56-5-2930 the underlying requirement for a breath test would no longer be applicable.

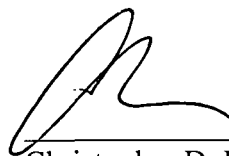
II. THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT ERRED IN FINDING THAT S.C. CODE ANN. § 17-1-40 (SUPP. 2010) WAS NOT APPLICABLE TO THE CHARGE OF DRIVING UNDER THE INFLUENCE, S.C. CODE ANN. § 56-5-2930 BECAUSE ONLY MINOR TRAFFIC OFFENSES UNDER TITLE 56 ARE EXCLUDED FROM EXPUNGEMENT PURSUANT TO S.C. CODE ANN. § 17-1-40 (SUPP. 2010).

The South Carolina Administrative Law Court erred inasmuch as they have misread S.C. Code Ann. § 17-1-40(C) regarding its application to S.C. Code Ann. § 56-5-2930. The applicable section to Title 56 deals only with such offenses as speeding and other minor traffic violations, of which a person is not fingerprinted, and was not applicable to any charge in which a person is placed under arrest, fingerprinted, and booked as is the case of the Appellant.

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,



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August 9, 2012

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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.



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