

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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FINAL REPLY BRIEF OF APPELLANT

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**SC Court of Appeals**

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**RESPONDENT’S STATEMENT OF ISSUES 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 CASE?
2. DID THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT ERR IN FINDING THAT THE S.C. CODE 17-1-40 WAS NOT APPLICABLE TO THE CHARGE OF DRIVING UNDER THE INFLUENCE, S.C. CODE 56-5-2930?

**REPLY ARGUMENT**

1. THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT DID ERR IN ADMITTING DOCUMENTS FINDING THAT THEY COULD ADMIT DOCUMENTS IN PROOF OF THE ARREST UNDER THE UNDERLYING CASE, BECAUSE PURSUANT TO S.C. CODE ANN. § 17-1-40 (SUPP. 2010) ALL RECORDS IN THIS MATTER SHOULD HAVE BEEN EXPUNGED AND DESTROYED.
2. THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT DID ERR IN FINDING THAT THE S.C. CODE 17-1-40 WAS NOT APPLICABLE TO THE CHARGE OF DRIVING UNDER THE INFLUENCE, S.C. CODE 56-5-2930.

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. 69), 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,



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August 9, 2012

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PROOF OF SERVICE OF FINAL REPLY BRIEF

I certify that I have served the Final Reply 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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