

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Hon. S. Phillip Lenski, Administrative Law Judge

Appellate No. 2013-002614

South Carolina Department of Motor
Vehicles,.....Respondent,
v.
Christopher Platt,.....Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Christopher William Platt,)	Docket Number: 12-ALJ-21-0454-AP
)	
Appellant,)	
)	
vs.)	ORDER
)	
South Carolina Department of)	
Motor Vehicles,)	
)	
Respondent.)	
<hr/>		

This matter is before the Administrative Law Court (ALC or Court) on a Notice of Appeal filed by Christopher William Platt (Appellant) from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings (OMVH) dated October 8, 2012. The Appellant argues that the OMVH Hearing Officer erred in sustaining the Department of Motor Vehicles' (Department) determination that Appellant is a habitual offender as defined in S.C. Code Ann. § 56-1-1020 (2006). This determination resulted in the suspension of Appellant's driver's license for a five-year period. The ALC has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 1-23-660 (Supp. 2012). After careful consideration of the briefs and the record on appeal, the OMVH Hearing Officer's decision is affirmed.

FACTS

On February 27, 2009, Appellant was charged with Reckless Driving and was convicted of that offense on March 23, 2009. Subsequently, the Appellant was again charged with Reckless Driving on December 25, 2009, and he was convicted of that offense on November 18, 2011. After the second conviction for Reckless Driving was entered upon the Department's records, the Department sent the Appellant a letter, dated December 1, 2011, advising him that he was in danger of being declared a habitual offender. The letter stated in pertinent part:

This is to advise you of your present standing under the Habitual Offender law. This law states that any person who is convicted of three major violations. . . within a three year period will be classified as a Habitual Offender. Our records now reveal that you have accumulated 02 major and 02 minor violations. Should you be convicted of any additional major or minor violations which would

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classify you as an Habitual Offender, your driving privileges will be suspended for a period of five years.

The letter went on to list the offenses which would classify a driver as a habitual offender, and advised: “[W]e earnestly request that you improve your driving habits in order to protect your privilege to drive on the streets and highways of South Carolina.”

On August 13, 2011, the Appellant committed the offense of Driving with Unlawful Alcohol Concentration (DUAC). He was convicted of this offense on April 20, 2012. The Department then sent the Appellant an Official Notice, dated May 21, 2012, that as a result of the three convictions he was declared a Habitual Offender and his driver’s license was suspended from June 20, 2012 until June 20, 2017. The Notice further advised the Appellant of his right to review of the determination by the OMVH.

On June 8, 2012, the Appellant requested an administrative hearing challenging the habitual offender declaration and the suspension of his driving privileges. After notice was sent to all parties, a hearing was held on (date), before OMVH Hearing Officer Brigette Autry. On October 8, 2012, the Hearing Officer issued a Final Order and Decision sustaining the Department’s determination and the suspension of the Appellant’s driving privileges. The Appellant filed this appeal with the ALC on October 19, 2012.

ISSUE ON APPEAL

Whether the OMVH hearing officer erred in not concluding that the Department should be equitably estopped from declaring the Appellant to be a Habitual Offender?

STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. See S.C. Code Ann. § 1-23-660 (Supp. 2011). The ALC has jurisdiction to hear appeals of OMVH decisions pursuant to S.C. Code Ann. § 1-23-660(D) (Supp. 2011). The OMVH is an “agency” under the Administrative Procedures Act (“APA”). See S.C. Code Ann. § 1-23-310(2) (Supp. 2011). As such, the APA’s standard of review governs appeals from decisions of the OMVH. See S.C. Code Ann. § 1-23-380 (Supp. 2011); see also *Bverly Hosp. v. S.C. State Health & Human Servs. Fin. Comm’n*, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995).

Section 1-23-380(5) provides the standard for appellate bodies, including the ALC in this matter, to use when reviewing agency decisions:

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

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

S.C. Code Ann. § 1-23-380(5) (Supp. 2012).

On review of the facts or orders of administrative agencies, the court 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 § 220(a) (1983). Therefore, the burden is on the Appellant 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. S.C. Pub. Serv. Comm'n, 294 S.C. 320, 364 S.E.2d 455 (1988).

DISCUSSION

South Carolina law defines a habitual offender as “any person whose record as maintained by the Department of Motor Vehicles shows that he has accumulated the convictions for separate and distinct offenses described in subsections (a) (b) and (c) committed during a three year period. . . .” S.C. Code Ann. § 56-1-1020 (2006) (emphasis added). In order to be declared a habitual offender, a person must have accumulated convictions for three or more separate and distinct major offenses, or ten or more separate and distinct minor offenses, committed within the three year period. Id. Major offenses include reckless driving and operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs. § 56-1-1020(a)(2) and (3).¹ A motorist is deemed to have been

¹ A conviction for Driving with Unlawful Alcohol Concentration (DUAC) constitutes a conviction for operating a motor vehicle “while under the influence of intoxicating liquors, narcotics or drugs” under Section 56-1-1020(a)(2). S.C. Dep’t of Motor Vehicles v. Blackwell, 389 S.C. 293, 698 S.E.2d 770 (2010).

convicted of an offense on the date the offense was committed if he is subsequently convicted of committing the offense. § 56-1-1020(d).

Furthermore, when a motorist is convicted of one or more of the offenses listed in § 56-1-1020, the Department must review the motorist's driving record, and if the record reveals that the person is a habitual offender, the Department must revoke or suspend the person's driver's license for a five-year period. S.C. Code Ann. §§ 56-1-1030, 56-1-1090 (Supp. 2012).

In this case, the Appellant does not dispute that his driving record, as maintained by the Department, reflects convictions for three separate and distinct offenses which were committed during a three year period: Reckless Driving, committed on February 27, 2009; another conviction for Reckless Driving, committed on December 25, 2009; and DUAC, committed on August 13, 2011. Thus, pursuant to Section 56-1-1020, he meets the definition of a habitual offender.²

Nevertheless, the Appellant contends that the Hearing Officer erred in not concluding that the Department should be estopped from declaring him a Habitual Offender and suspending his driving privileges. The Appellant asserts that the Department misrepresented the law to him in its December 1, 2011 letter, in which it notified him that he was in danger of being classified as a Habitual Offender. Specifically, the Appellant argues that the letter did not contain any reference to Section 56-1-1020(d), but merely stated that a third conviction within three years would result in a Habitual Offender declaration. He further states that the letter misled him into believing his conviction for DUAC would not result in his being declared a Habitual Offender. Based upon this misapprehension, the Appellant decided not to contest the DUAC charge. The court finds the Appellant's estoppels argument to be without merit.

First, the doctrine of equitable estoppel does not apply against a government entity when the matters involved affect the exercise of the government's police power or the application of public policy. S.C. Dep't of Social Servs. v. Parker, 275 S.C. 176, 268 S.E.2d 282 (1980); Morgan v. S.C. Budget and Control Bd., 377 S.C. 313, 659 S.E.2d 263 (Ct. App. 2008). The General Assembly has clearly stated the public policy of the State with regard to habitual traffic offenders as follows:

² Although the date of Appellant's conviction for DUAC (April 20, 2012) was more than three years after the date of his first offense and conviction for Reckless Driving, the offense was committed during the three year period. Therefore, pursuant to Section 56-1-1020(d), the DUAC conviction is properly counted as one of the three major convictions necessary for Appellant to be declared a Habitual Offender.

It is hereby declared to be the policy of this State:

(a) To provide maximum safety for all persons who use the public highways of this State; and

(b) To deny the privilege of operating motor vehicles on such highways to persons who by their conduct and record have demonstrated their indifference to the safety and welfare of others and their disrespect for the laws of this State; and

(c) To discourage repetition of unlawful acts by individuals against the peace and dignity of this State and her political subdivisions and to impose additional penalties upon habitual offenders who have been convicted repeatedly of violations of the traffic laws of this State.

S.C. Code Ann. §56-1-1010 (2006). In this case, the Appellant does not dispute that he accumulated the requisite convictions to support the Department's determination to classify him as a habitual offender. Thus, it is the policy of the State to safeguard the public by denying the Appellant the privilege of driving a motor vehicle. This case clearly involves the exercise of the State's police power and the application of public policy.³ Accordingly, the doctrine of equitable estoppel is inapplicable.

Moreover, even if the application of equitable estoppel were appropriate in this instance, the Appellant has failed to establish all of the necessary elements. To prove estoppel against the government, the relying party must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229, 232 (2001) (citing Midlands Utility, Inc. v. S.C. Dep't of Health and Env'tl. Control, 298 S.C. 66, 378 S.E.2d 256 (1989)). In this case, the court finds that the Appellant's argument fails to satisfy either of the first two elements.

With respect to the first element, lack of knowledge and the means of knowledge of the truth, the Appellant states that he was unaware of Section 56-1-1020(d) and did not know his third conviction, which took place more than three years from the date of his first offense, would result in a habitual offender declaration. However, all citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests. Aherne v. State, 392 S.C.

³ Cf. Sponar v. S.C. Dep't of Public Safety, 361 S.C. 35, 603 S.E.2d 412 (Ct. App. 2004) (license to operate a motor vehicle is a mere privilege subject to reasonable regulations under the state's police power in the interest of public safety and welfare); S.C. Dep't of Motor Vehicles v. Nelson, 364 S.C. 514, 613 S.E.2d 544 (Ct. App. 2005) (implied consent laws are driven by public policy considerations of maintaining safe highways and roads).

340, 709 S.E.2d 54 (2011); Morgan v. S.C. Budget and Control Bd., 377 S.C. 313, 659 S.E.2d 263 (Ct. App. 2008); American Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E.2d 181 (Ct. App. 2009). The statutes of South Carolina are publicly accessible. Therefore, the Appellant was charged with knowledge of the law and had the “means of knowledge” to determine the law applicable to habitual offenders, including the provisions of Section 56-1-1020(d).⁴ See Quail Hill, LLC v. County of Richland, 387 S.C. 223, 692 S.E.2d 499 (2010) (since zoning classifications were available to the public, developer had the means of knowledge to determine the correct classification and could not rely solely on information provided by county staff members).

Furthermore, the court finds that any reliance the Appellant placed upon the letter sent by the Department was not justifiable. Pursuant to S.C. Code Ann. § 56-1-1130, the Department is required to “send a written notice to any person who it determines is in danger of becoming a habitual offender.” The purpose of the Department’s letter of December 1, 2011, issued in accordance with this statutory mandate, was not to provide the Appellant with legal advice, but merely to warn him that he was in danger of being declared a Habitual Offender and to implore him to improve his driving habits. Importantly, the receipt of this notice is not even a prerequisite to a Habitual Offender declaration. Wilkins v. Taylor, 268 S.C. 371, 234 S.E.2d 212 (1977) (dealing with a predecessor statute identical to Section 56-1-1130). Once the Appellant received the notice, it was incumbent upon him to exercise reasonable care to protect his interests by making himself aware of the applicable law and by changing his driving habits so as not to commit any additional offenses. Morgan, supra. The court cannot accept the Appellant’s assertions that the Department’s letter misrepresents the law simply because it does not cite to the relevant statutes. The Department’s letter does not purport to contain a complete recitation of the Habitual Offender statutes, but merely to notify the Appellant of the status of his driving record. Even if the Department’s letter had contained a misrepresentation of the law, it is well settled that the government cannot be estopped where a government employee gives erroneous information that contradicts the law. See, e.g., Quail Hill, 387 S.C. at 236, 692 S.E.2d at 506; Morgan, 377 S.C. at 319, 659 S.E.2d at 267. Finally, since Appellant had the means of knowledge to determine the provisions of the Habitual Offender statutes, he could not justifiably

⁴ The Appellant argues in his brief that Section 56-1-1020(d) is an “obscure provision of law” and that even attorneys have difficulty interpreting it. However, there is nothing in the case law of South Carolina which exempts obscure provisions of law from the general doctrine that citizens are presumed to know the law.

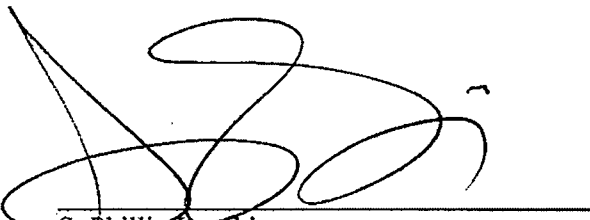
rely solely on the information provided by the Department. Quail Hill, 387 S.C. at 239, 692 S.E.2d at 507-08.⁵

For the foregoing reasons, this court finds the OMVH Hearing Officer properly concluded that the Appellant is a Habitual Offender and correctly sustained the suspension of his driving privileges.

ORDER

Therefore, **IT IS HEREBY ORDERED** that the Hearing Officer's Final Order and Decision is **AFFIRMED**.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

November W, 2013
Columbia, South Carolina

⁵ Appellant also makes the assertion in his brief that the Department's conduct violated his right to due process under the South Carolina and United States Constitutions. However, this assertion is conclusory and unsupported by any legal argument. Therefore, this argument is abandoned. See First Savings Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994); D.R. Horton, Inc. v. Wescott Land Co., LLC, 398 S.C. 528, 730 S.E.2d 340 (Ct. App. 2012) (conclusory statements made without supporting authority are deemed abandoned on appeal).

CERTIFICATE OF SERVICE

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



Leah E. Garland
Judicial Law Clerk

November 8, 2013
Columbia, South Carolina

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SC ADMIN. LAW COURT

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

RALPH K. ANDERSON, III
Director



(803) 734-3201
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December 21, 2012

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

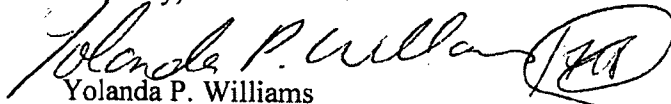
Re: S.C. Dept of Motor Vehicles
vs
Christopher William Platt
SCDL/Customer NO.: 011293194

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: Philip A. Berlinsky, Esquire
Frank L. Valenta, SCDMV General Counsel

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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South Carolina Department)
of Motor Vehicles,)
)
Petitioner,)
)
vs.)
)
Christopher William)
Platt,)
)
Respondent.)
-----)



TRANSCRIPT OF
HEARING
July 31, 2012

THE COURT: Docket Number 12-OMVH-02-3266CC, South Carolina Department of Motor Vehicles versus Christopher William Platt. Respondent's driver's license number is 011293194. My name's Bridget Aughtry and I've been appointed to preside at this habitual offender declaration hearing, which is being held Tuesday, July 31st, 2012, at the Goose Creek Municipal Court. DMV is not present, but did make an appearance by documents dated June 18, 2012, wherein they submitted several documents that they asked be made a part of the record at today's hearing. And respondent is present along with his attorney, Philip Berlinsky. I'd

1 like to remind you this matter is being
2 recorded and is a matter of public record.
3 We're here today because DMV is seeking to
4 suspend respondent's driver's license privilege
5 for a period of five years based upon allegedly
6 having incurred three major traffic violations
7 within a three-year period. And so now
8 respondent's requested a hearing to show that
9 the determination is incorrect, that the
10 respondent does not, in fact, qualify as a
11 habitual offender. Anything in opening, Mr.
12 Berlinsky, before we go over DMV's documents?

13 **MR. BERLINSKY:** Briefly, yes. Philip Berlinsky, I
14 represent Mr. Christopher Platt. The records
15 as indicated which were sent to the -- by us to
16 the Department of Motor Vehicles, as well as my
17 client's driving record, indicate that the --
18 my client has not been convicted of three
19 offenses within the three-year period of time,
20 three major offenses. In fact, the dates of
21 the violations themselves were 2/27/09,
22 12/25/09, and 8/13, the year 2011. But the
23 conviction dates are 3/23/09, 11/13/11, and
24 4/20/12. Accordingly, they would not -- the
25 conviction date would not fall within the

1 three-year period of time. The notice which
2 was sent to my client on 12/1 of 2011 notified
3 him that if he's guilty of three major
4 violations, convicted of three major violations
5 within a three-year period of time, that he
6 could be considered a habitual offender and
7 fall under that status. Additionally, the
8 letter from the Department of Motor Vehicles on
9 5/21 of '12 notes the conviction dates of
10 4/20/2012, 11/13/2011, and 3/23/2009.
11 Accordingly, the conviction dates do not fall
12 within the three-year period of time. It's our
13 position, Your Honor, that the letter or notice
14 sent to my client as written is flawed and
15 needs to inform the public that if it's their
16 position the conviction date falls back to the
17 date of the actual arrest, it needs to so state
18 in this letter. In this particular instance,
19 had my client had known this from the letter,
20 which was sent directly to him, he would have
21 contested that third violation, to which he had
22 a viable defense, but it was very costly. So,
23 in light of that, he chose not to do it, not
24 realizing, of course, as in accordance with
25 your letter for the -- the letter from the

1 Department of Motor Vehicles that his license
2 would be suspended for up to a five-year period
3 of time.

4 **THE COURT:** All right. And then, as I said earlier,
5 DMV -- the documents you're referring to, they
6 submitted a copy of three traffic tickets, a
7 copy of his suspension letter dated May 21st,
8 2012, a copy of the warning letter you're
9 referring to dated December 1st, 2011, and a
10 copy of his certified driving record. Do you
11 have any objection to those documents?

12 **MR. BERLINSKY:** I do not.

13 **THE COURT:** Okay. Without objection, they'll be
14 made a part of the record then. All right. Do
15 you wish to call Mr. Platt?

16 **MR. BERLINSKY:** I do.

17 **THE COURT:** Okay. Mr. Platt, if you'll please raise
18 your right hand and state your full name for
19 me.

20 **MR. PLATT:** Christopher William Platt.

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

23 **MR. PLATT:** Yes.

24 **THE COURT:** Okay. All right. Mr. Berlinsky.

25 **MR. PLATT - DIRECT EXAMINATION BY MR. BERLINSKY:**

1 Q: Mr. Platt, did you receive a letter from the
2 Department of Motor Vehicles dated 12/1/2011 --
3 2011 notifying you that you may be considered
4 to be a habitual offender if you have three
5 major convictions within a three-year period of
6 time?

7 A: Yes, sir.

8 Q: Is it your understanding that you did not have
9 three major convictions within a three-year
10 period of time?

11 A: Yes, sir.

12 Q: And had you known that the conviction itself
13 referred back to the date of the violation,
14 would you have contested that third charge of
15 driving -- unlawful alcohol consumption, which
16 is dated 8/13/2011?

17 A: Yes, sir.

18 Q: Thank you. I have nothing further.

19 **THE COURT:** Okay. All right. Anything in closing?

20 **MR. BERLINSKY:** Briefly in closing. He had a viable
21 -- my client's had a viable defense of the DUAC
22 in the year 2011. However -- which conviction
23 date reflects 4/20/2012. However, it was very
24 costly, so my client opted not to do that, not
25 realizing that he would lose his license for a

1 five-year period of time.

2 **THE COURT:** All right.

3 **MR. BERLINSKY:** I respectfully ask this Court to
4 find that he is not a habitual offender. He's
5 been driving now for the past year with no
6 further offenses and has and will enroll in
7 accordance with the habitual -- I apologize,
8 has enrolled in the DUAC class --

9 **THE COURT:** ADSAP?

10 **MR. PLATT:** ADSAP.

11 **MR. BERLINSKY:** ADSAP for the DUAC.

12 **THE COURT:** Okay. All right. Well, I'll take the
13 case under advisement and issue a written
14 order, okay.

15 **MR. BERLINSKY:** Thank you very much.

16 **THE COURT:** All right. Thank you.

17 **MR. BERLINSKY:** Thank you.

18 (There being nothing further, the hearing was
19 concluded.)
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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. Christopher William Platt, consisting of Six (6) 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 December 19, 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: Tuesday, October 23, 2012 9:16 AM
To: Creel Reporting (amanda@creelreporting.com); 'Crystal Kaminer'
Subject: Transcript Request for Christopher Platt
Attachments: Platt, Christopher_20120731-1016_01cd6f059bbf0840.trm; Platt, Christopher_20120731-1021_01cd6f064ee24130.trm

Importance: High

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

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Attorney at Law
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Charleston, SC 29423-0997
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Administrative Coordinator
Scheduling Assistant for
Brigette Autry and Tracy Holland
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803-734-3200 fax

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A REGISTERED LIMITED LIABILITY PARTNERSHIP

FRED W. RIESEN, JR.
GARY ALAN LING, PC +
E. PAUL GIBSON, PC, LLM +
(SC, FL, MD)

PHILIP A. BERLINSKY
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+ S.C. Certified Mediator
• Certified by The National Board of Trial
Advocacy in Civil Trial Advocacy
and Civil Pretrial Practice
Certified Guardian ad Litem

JOHN D. BRADLEY, III (1946-1998)

October 18, 2012

CERTIFIED MAIL/ RETURN RECEIPT REQUESTED

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

RE: My Client: Christopher William Platt
Docket: 12-OMVH-02-3266-CC
DL No.: 11293194

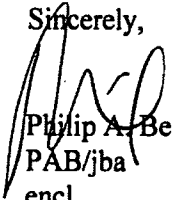
Dear Sir or Madam

Enclosed please a copy of the Appeal, Final Order and Decision, Request for Transcript of Record and Certificate of Service in the above referenced matter. Upon receipt, please forward to my attention verification of Mr. Platt's hearing date.

I appreciate your assistance in this matter. Please feel free to contact me should you have any questions or concerns.

With kind regards, I am

Sincerely,


Philip A. Berlinsky
PAB/jba
encl.

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OCT 19 2012

SCOMVH

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RECEIVED

OCT 22 2012

SCOMVH 800028

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor
Vehicles,

Petitioner,

vs.

Christopher William Platt,

Respondent.

DOCKET NO.: 12-OMVH-02-3266-CC
DL# 011293194

APPEAL

YOU WILL PLEASE TAKE NOTICE that the Respondent, Christopher William Platt, by and through his attorney, Philip A. Berlinsky, will, pursuant to Administrative Law Court Rule 31, appeal the Final Order and Decision from the Respondents Habitual Traffic Offender Suspension Hearing held on July 31, 2012. The notification which was provided to the Respondent on December 1, 2011 specifically states that "any person who is convicted of three major violations...within a three year period will be classified as a Habitual Offender". That the language is clear, concise and unambiguous. That the Petitioner relied upon the language of the form provided by the SCDMV and had a right to rely upon that language. That the form, as provided, is flawed.

RIESEN LAW OFFICES

BY: 

PHILIP A. BERLINSKY, ESQ.
3660 W. Montague Avenue
Post Office Box 40997
N. Charleston, SC 29423
(843) 760-2450

North Charleston, South Carolina
October 16, 2012

FILED

OCT 19 2012

SCOMVH

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

South Carolina Department of Motor Vehicles,)	Docket No. 12-OMVH-02-3266-CC
)	DL# 011293194
)	
Petitioner,)	
)	
vs.)	FINAL ORDER AND DECISION
)	
Christopher William Platt,)	
)	
Respondent.)	
)	

Appearances:

For Petitioner:	By documents
For Respondent:	Philip A. Berlinsky, Esquire

Other information:

Type of Hearing: Habitual Traffic Offender Suspension Hearing
S.C. Code Ann. §§ 56-1-1020 and 56-1-1030

STATEMENT OF THE CASE

This matter is before the Office of Motor Vehicle Hearings (“OMVH”) pursuant to a request for a contested case hearing filed by Christopher William Platt (“Respondent”). Respondent challenges the South Carolina Department of Motor Vehicles’ (“Department”) determination that he is a habitual offender, which resulted in the suspension of his driving privileges for a five-year period. Pursuant to written notice to the parties, a hearing was held before me on July 31, 2012, at the Goose Creek Municipal Court, 519 N. Goose Creek Boulevard, Goose Creek, South Carolina.¹ After considering all the evidence presented, I conclude that Respondent is a habitual offender as defined in S.C. Code Ann. § 56-1-1020 and, as such, that the suspension of his driving privilege must be sustained.

¹ Pursuant to S.C. Code Ann. § 1-23-660(B), the Department is not required to appear at habitual offender hearings. Although the Department did not appear at the hearing, it did submit documentation prior to the hearing that was made a part of the record in this matter.

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. Respondent was charged with and convicted of the following three separate and distinct major traffic offenses within a three year period:

- (a) On February 27, 2009, Respondent was charged with Reckless Driving, ticket #11635EV, and he was convicted of that offense on March 23, 2009.
- (b) On December 25, 2009, Respondent was charged with Reckless Driving, ticket #91121FX, and he was convicted of that offense on November 18, 2011.
- (c) On August 13, 2011, Respondent was charged with Unlawful Alcohol Concentration, ticket #54947FS, and he was convicted of that offense on April 20, 2012.

2. As a result of these three major traffic offenses and subsequent convictions, the Department declared Respondent a habitual offender. On May 21, 2012, the Department notified Respondent of its determination and that, as a result of being declared a habitual offender, his driving privileges would be suspended for a five-year period.

3. By letter dated December 1, 2011, the Department previously notified Respondent of his status under the Habitual Offender law, explaining that a person who is convicted of three major violations within a three year period will be classified as a habitual offender. The letter indicated that he had accumulated convictions for two major driving violations and two minor driving violations and warned that a conviction of additional violation(s) may result in a five-year habitual offender suspension. At the hearing, Respondent testified that if he the letter had explained that in computing the three year period, the date of the offense is used provided a person is subsequently convicted of that offense, he would have contested his third major charge for Unlawful Alcohol Concentration.

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. 2011), 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. 2011). 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. 2011).
2. The South Carolina Department of Motor Vehicles is an administrative agency of the State of South Carolina and is charged with administering the motor vehicle laws of this state. § 56-1-5 (2006).
3. Generally, the burden of proof rests upon the party who asserts the affirmative of an issue. 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, and 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 and John S. Nichols, Trial Handbook for South Carolina Lawyers, Second Edition, 2001, § 9:3, p. 366.
4. A habitual offender is a person whose records, as maintained by the Department, reflect that he has been convicted of three or more separate and distinct major offenses or ten or more separate and distinct minor offenses within a three (3) year period. § 56-1-1020 (2006).
5. The following are considered major traffic offenses: voluntary manslaughter, involuntary manslaughter, and reckless homicide from the operation of a motor vehicle; operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs; reckless driving; driving under suspension, except for failure to file proof of financial responsibility; a felony under the motor vehicle laws of South Carolina or any felony in the commission of which a motor vehicle is used; and leaving the scene of an accident

that resulted in an injury or death. § 56-1-1020(a). Minor offenses are those for which four (4) or more points are assigned pursuant to § 56-1-720. § 56-1-1020(b). When more than one included offense is committed within a one-day period, the multiple offenses are treated as one offense. § 56-1-1020. Furthermore, a person is deemed convicted of an offense on the date the offense occurred, provided he is subsequently convicted of committing the offense. § 56-1-1020(d).

6. For purposes of determining the number of major or minor offenses for which an individual has been convicted during a three year period, offenses under any federal law and offenses under any law or municipal or county ordinance of another state that substantially conform to the offenses set forth in § 56-1-1020(a) and (b) shall be included. § 56-1-1020(c).

7. After considering the evidence presented, I conclude that Respondent was convicted of three separate and distinct major traffic offenses within a three year period, and as a result is a habitual offender as defined in § 56-1-1020. Reckless Driving is considered major traffic offense pursuant to § 56-1-1020(a). Likewise, Unlawful Alcohol Concentration is considered a major traffic offense pursuant to § 56-1-1020(a). S.C. Dep't of Motor Vehicles v. Blackwell, 389 S.C. 293, 698 S.E.2d 270 (2010). Furthermore, each offense occurred on a different date within the course of a three year period, so it is clear that each of these offenses constituted a separate and distinct offense.

Counsel for Respondent argued that Respondent should not qualify as a habitual offender because the conviction date for Respondent's charge of Unlawful Alcohol Concentration – April 20, 2012 - is more than three years from the date of his first conviction for Reckless Driving on March 23, 2009. However, §56-1-1020(d) provides that a person is deemed convicted of an offense on the date the offense occurred, provided he is subsequently convicted of committing the offense. Clearly, Respondent was convicted of the two charges of Reckless Driving and for Unlawful Alcohol Concentration, so the dates the offenses occurred are used in calculating the three year period under §56-1-1020(d). In looking at the dates the offenses occurred, beginning with the first offense of Reckless Driving on February 27, 2009, each of the three major offenses occurred within a three year period.

Counsel also argued that had the Department's December 1, 2011 habitual offender warning letter explained that the date the offense occurred would be deemed the date of conviction for purposes of determining whether Respondent had three convictions in a three year

period, Respondent would have contested his charge for Unlawful Alcohol Concentration, which was his third major conviction. As a result, he argued that Respondent should not be declared a habitual offender. While the letter did not specifically explain that in computing the three year period a person is deemed convicted of an offense on the date the offense occurred, "citizens are presumed to know the law and are charged with exercising 'reasonable care to protect their interests.'" Ahrens v. State, 392 S.C. 340, 355, 709 S.E.2d 54, 61 (2011) (quoting Morgan v. S.C. Budget and Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008)). Furthermore, absent a showing that Respondent does not qualify as a habitual offender, no relief from the suspension period is authorized by statute other than the opportunity to seek a reduction of the habitual offender suspension period pursuant to § 56-1-1090 after serving at least two years of it. Therefore, based upon the evidence before me and the applicable law, I conclude that Respondent is a habitual offender as defined in § 56-1-1020, and as such, the suspension of his driving privilege must be sustained.

ORDER

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

IT IS HEREBY ORDERED that Respondent is a habitual offender and that the suspension of his driving privilege is sustained.

AND IT IS SO ORDERED.

Brigitte B. Autry

October 8, 2012
Goose Creek, South Carolina

Brigitte B. Autry
OMVH Hearing Officer

CERTIFICATE OF SERVICE

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

Yolanda P. Williams

Yolanda P. Williams

October 8, 2012
Columbia, South Carolina

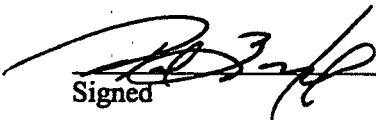
FILED
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SCOMVH

#809130

Request for Transcript of Record

I, PHILIP A. BERLINSKY, ESQ., request the Transcript of the Record for the case SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES VS. CHRISTOPHER PLATT Docket No. 12-OMVH-02-3266-CC. The hearing in this matter was held on July 31,, 20 12 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 _____

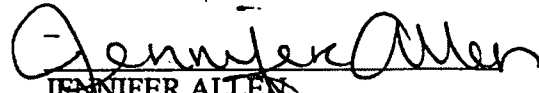
P.O. Box 40997
CHARLESTON, SC 29418

Address


October 19, 2012
Dated

FILED
OCT 19 2012
SCOMVH

fully postpaid at the United States Post Office at North Charleston, South Carolina.


JENNIFER ALLEN

SWORN and subscribed to before me
this 19th day of OCT., 2012


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires 5/7/2013

FILED

OCT 19 2012

SCOMVH

Exhibits for Habitual Offender Declaration

Hearing: SC DMV v. Christopher William Platt
Petitioner Respondent

Docket No.: 12-OMVH-02-3266-CC

Date of Hearing: July 31, 2012 Location: Goose Creek Municipal Court

Hearing Officer: Brigette B. Autry

() I hereby certify that neither party offered exhibits into the record.

(XXX) I hereby certify that exhibit(s) were offered into the record and are indicated below.

PETITIONER:	RESPONDENT
(X) Notice of Suspension*	() Other _____
(X) Certified 10-year Driving Record*	() Other _____
(X) Copies of Traffic Violations (Tickets)*	() Other _____
(X) Letter by DMV dated 12/1/11 advising of status under HO law*	() Other _____
() For Departmental Reference: Audio Tape	

(X) I hereby certify that no exhibits were attached to this form and it was delivered to the OMVH Office by e-mail.

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

Date placed in the mail _____ or Date delivered November 6, 2012

Signature Brigette B. Autry

*Previously submitted to OMVH – not included with this attachment.

000024

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

BA
7-31-12

June 18, 2012

Yolanda P. Williams, Administrative Coordinator
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street
Suite 325
Columbia, South Carolina 29201

RE: *Christopher William Platt v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 12-OMVH-02-3266-CC
SCDL 11293194

Dear Ms. Williams:

The South Carolina Department of Motor Vehicles provides the enclosed documents for introduction into the record at the habitual offender hearing. Please file the original and return a clocked copy to me in the self-addressed envelope.

Sincerely,

Handwritten signature of Linda A. Grice in cursive.

Linda A. Grice
Assistant General Counsel

Enclosures: UTT 54947FS, UTT 91121FX, UTT 11635EV
Suspension letter dated May 21, 2012
Habitual Offender warning letter dated December 1, 2011
Certified Driving Record

cc: Philip A. Berlinsky, Esquire
Post Office Box 40997
Charleston, SC 29423-0997

RECEIVED

JUN 18 2012

SCOMVH

FILED

JUN 18 2012

SCOMVH

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF

VERSUS

FIRST NAME MIDDLE NAME LAST NAME

Christopher William Platt

STREET AND NO. CITY STATE

226 Birmingham Dr Summerville SC 29533

STATE LICENSED DRIVER'S LICENSE NO. CDL. DR. LIC CLASS

SC 011253194 [] YES [X] NO -A

VEH LIC NO. STATE MAKE OF VEH YEAR COMB VEH. AUTO PASSENGER VEH. COMB

6TD 569 SC GMC 01 HAZ MT. BIOPED. MTRCYCL. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT STREET AND NO.

NC Dist Ct 2500 City Hall Lane

DATE OF TRIAL TIME OF TRIAL CITY STATE ZIP CODE

11/1/2011 1000 AM N CHAR SC 29406

VIOLATION - COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO.

Required (08) 56-5-2933

OWNER OF VEHICLE DATE OF ARREST

8/13/2011

ADDRESS OF OWNER DATE OF VIOLATION

8/13/2011

BAIL DEPOSITED NAME OF ARRESTING OFFICER RANK

J. Lewis PFC

DESCRIPTION OF ACCUSED COUNTY NUMBER

WM 12/13/83 5'8 130 lbs 12/12/82 CLAS 10

DATE BAIL REC'D BY BADGE TROOP

20 164 6

CASE BEFORE MAGISTRATE [] MUN COURT [X] TIME OF VIOLATION WEATHER

CIRCUIT COURT [] FAMILY COURT [] FEDERAL COURT [] 2351 AM

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE DISTANCE IN FEET FROM INTERSECTION

DEFENDANT DID NOT APPEAR [X] APPEARED [] Ash Pross Rd

NOLLE PROSSED [] DISPOSITION GUILTY [] AND Northwoods

FORFEITED BOND [X] PLED NOLO CONTENDERE [] MILES N E S W

TRIAL BY TRIAL JUDGE [] JURY [] CITY NC

VERDICT OF GUILTY [] DATE OF TRIAL IF ANY

TRIAL IF ANY NOT GUILTY [] 20

JAIL SUSPENDED FINE AMT COLLECTED AMT SUSPENDED

997 997

COMMITTED TO Vehicle Searched Arrest as Result of Collision OFFENSE CODE BIA LEVEL

99

CERTIFIED CORRECT DATE

4/20/12 54947 FILED

DRIVER'S RECORD COPY

484

IN 18-2017 Services, Deputy Director

SCOMVH

000006

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Transportation.

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

A. L. Phelps
Driver Services, Deputy Director

MAY 04 2012

STATE SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF CHES

VERSUS

FIRST NAME MIDDLE NAME LAST NAME

CHRISTOPHER WILLIAM PLATT

STREET AND NO CITY STATE ZIP CODE

26 BIRCHMAN DR Summerville SC 29489

STATE LICENSED DRIVER'S LICENSE NO. SC 11293194

VEH LIC NO. STATE MAKE OF VEH YEAR COMB VEH ADJCTY IN FEEL VEH COMB

DMT 699 SC DULOS

HAZ MT MOPED MTRCYCL OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT STREET AND NO

TBA 180 Col. Highway Blvd

DATE OF TRIAL TIME OF TRIAL CITY STATE ZIP CODE

12/20/13 1300h CHES SC 29403

VIOLATION - COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO

RECKLESS DRIVING SC 56-7B-26

OWNER OF VEHICLE DATE OF ARREST

SAME 12/25/09

ADDRESS OF OWNER DATE OF VIOLATION

12/25/13

BAIL DEPOSITED NAME OF ARRESTING OFFICER

5000 L. McGehee

RACE SEX BIRTH DATE HT WT HAIR EYES COUNTY NUMBER

W M 12/13/83 5'10" 160 Brn Brn CHES 10

DATE BAIL REC'D BY BADGE TRUCK

20

CASE BEFORE TIME OF VIOLATION WEATHER

5:00 PM

CIRCUIT COURT MAGISTRATE FAMILY COURT FEDERAL COURT

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE

DEFENDANT DID NOT APPEAR APPEARED

NOLLE PROSSED DISPOSITION

GUILTY

FORFEITED BOND PLED NOLO CONTENDERE

TRIAL BY TRIAL JUDGE JURY

VERDICT OF TRIAL IF ANY DATE OF TRIAL IF ANY

GUILTY NOT GUILTY

JAIL SUSPENDED FINE AMT COLLECTED AMT SUSPENDED

5 445

COMMITTED TO VEHICLE SEARCHED AMOUNT TO REPORT TO COURT OFFENSE CODE BA LEVEL

MAAD 67 N/A

CERTIFIED CORRECT DATE 11/18/13 91.121 FX

24020EE

DOCKET NO

copy original and correct
with the South Carolina Department of
Motor Vehicle
L. Phelan
Driver Services, Deputy Director

DRIVER'S RECORD COPY

445

Chell

DRIVER RECORDS
NOV 28 2011
DMV RECEIVED

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

[Signature]
Driver Services, Deputy Director

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET **608 UC**

CITY OR COUNTY OF **CHARLESTON** VERSUS

FIRST NAME **CHRISTOPHER** MIDDLE NAME **WILLIAM** LAST NAME **PLATT**

STREET AND NO **226** CITY **BIRMINGHAM** STATE **S.C.** ZIP CODE **29383**

STATE LICENSED **S.C.** DRIVER'S LICENSE NO **011293194** CDL YES NO ORI LIC CLASS **0**

VEH LIC NO **106-WST** STATE **SC** MAKE OF VEH **SATURN** YEAR **07** CORN VEH HAZ MT MOPED MTRCYCL OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER **CORNER** STREET AND NO **4045 BRIDLEVIEW DR**

DATE OF TRIAL **3/23/09** TIME OF TRIAL **1:00 PM** CITY **N CHARLESTON** STATE **SC** ZIP CODE **29105**

VIOLATION - COURT APPEARANCE REQUIRED YES NO **RECKLESS DRIVING** VIOLATION SECTION NO **56-5-2920**

OWNER OF VEHICLE **SAME** DATE OF ARREST **2/27/09**

ADDRESS OF OWNER **SAME** DATE OF VIOLATION **2/27/09**

BAIL DEPOSITED **NONE** NAME OF ARRESTING OFFICER **THOMPSON M E** RANK **DEP**

DESCRIPTION OF ACCUSED **W M B 12/15/83 5'10 170 BW** COUNTY **CHARLES** NUMBER **10**

DATE BAIL RECD. BY **20** BADGE **9307** DISTRICT **8**

CASE BEFORE MAGISTRATE MAIN COURT CIRCUIT COURT FAMILY COURT FEDERAL COURT TIME OF VIOLATION **2241** WEATHER **clear**

NAME OF TRIAL OFFICER **IF DIFFERENT FROM ABOVE** DISTANCE IN FEET FROM INTERSECTION OF **NW 78**

DEFENDANT DID NOT APPEAR APPEARED DISPOSITION **BEAR AND**

NOLLE PROSSED FORFEITED BOND GUILTY FLED NOLO CONTENDERE TRIAL BY TRIAL OFFICER JURY DATE OF TRIAL IF ANY

VERDICT OF TRIAL IF ANY **GUILTY** NOT GUILTY JAIL SUSPEND **YES** PROBATION **YES** AMT SUSPENDED

COMMITTED TO **Arrest on Result of Citation** OFFENSE CODE **61** B A LEVEL **M/A**

CERTIFIED CORRECT **DATE** **11635 EV**

DRIVER'S RECORD COPY **461**

2009-004092 B / SSN 219-77-2930

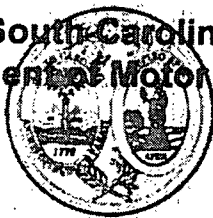
Handed over to... Driver Services, Dept.

Certificate is true and correct
copy of the original and return on file
with the South Carolina Department of
Motor Vehicles.

A. L. Phillips
Driver Services, Deputy Director

APR 10 2009

South Carolina
Department of Motor Vehicles



05/21/2012

PLATT, CHRISTOPHER WILLIAM
226 BIRMINGHAM DR
SUMMERVILLE, SC 29483-8254

CUSTOMER NO: 25075070
FILE NO: 14112514
DL NO: 11293194

OFFICIAL NOTICE

REASON: You have accumulated violations in a 3 year period that result in you being declared an Habitual Offender. SECTION OF LAW: 56-1-1030 and 56-1-1090

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
08/13/2011	04/20/2012	54947FS	Unlawful Alcohol Concentration
12/25/2009	11/18/2011	91121FX	Reckless driving
02/27/2009	03/23/2009	11635EV	Reckless driving

BEGINNING DATE: 12:01 AM 06/20/2012 ENDING DATE: MIDNIGHT 06/20/2017

HEARING:

Section 56-1-1030 allows you to appeal the DMV's decision. There is a \$150.00 filing fee for a hearing. (Personal checks not accepted.) Should you desire a hearing, you must submit a written request within 30 days from the date of this letter. State the reasons why you believe that the Department has made an error. Mail or deliver the request and the fee to the South Carolina Office of Motor Vehicle Hearings, 1205 Pendleton St., Suite 325, Columbia, SC 29201. If you do not request a hearing, the suspension will become effective on the date indicated above. After you have completed two years of the suspension, you may request a reduction of the suspension. You can obtain an application and instructions at the Department's website at www.scdmvonline.com or by contacting a Customer Service Representative at (803)896-5000.

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. You may not drive until the suspension period has ended and you have done the following:

FINANCIAL RESPONSIBILITY:

You must do one of the following for 3 years from the ending date listed above:

1. have your insurance agent file a Certificate of Insurance (SR-22), or
2. deposit \$40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

TESTS:

You must successfully complete the vision, knowledge and skills test.

Driver Records Manager

South Carolina Department of Motor Vehicles
Driver Services, Dept. of Motor Vehicles

000032

South Carolina
Department of Motor Vehicles



12/01/2011

PLATT, CHRISTOPHER WILLIAM
226 BIRMINGHAM DR
SUMMERVILLE, SC 29483-8254

CUSTOMER NO: 25075070
FILE NO: 13412635
DL NO: 11293194

Dear Customer:

This is to advise you of your present standing under the Habitual Offender Law. This law states that any person who is convicted of three major violations or is convicted of a combination of ten minor and/or major violations within a three year period will be classified as a Habitual Offender.

Our records now reveal that you have accumulated 02 major and 02 minor violations. Should you be convicted of any additional major or minor violations which would classify you as an Habitual Offender, your driving privileges will be suspended for a period of five years.

A listing of the major and minor offenses is printed below, and we earnestly request that you improve your driving habits in order to protect your privilege to drive on the streets and highways of South Carolina.

MAJOR VIOLATIONS

Felony Child Endangerment	Reckless Driving
Driving Under Suspension	Reckless Homicide
Driving Under the Influence	Felony in a Motor Vehicle
Unlawful Alcohol Concentration	Felony Controlled Substance
Felony Driving Under the Influence	
Manslaughter/Involuntary Manslaughter	
Leaving the Scene of Accident-Bodily Injury	
Passing Stopped School Bus/Bodily Injury/Death	
Negligent or Criminal Operation of CMV-Fatality	
Failure to Stop for Blue Light with Bodily Injury/Death	
Any offenses punishable as a felony under the motor vehicle laws of this State.	

Subsequent offenses of:
Failure to Stop for Blue Light

MINOR VIOLATIONS

Driving on wrong side of the road	Following too closely
Reckless driving	Speeding (over 10 MPH)
Failure to yield right of way	Turning Unlawfully
Passing stopped school bus	Passing unlawfully
Hit & Run-Property and Damage only	
Disobeying official directing traffic	
Disregard Railroad Sign or Signal	
Disobedience to Signal of approaching Train	
Driving through or within a safety zone	
Driving too fast for conditions-over 10 MPH	
Failure to give or giving improper signal	
Operating vehicle with improper brakes	
Disobeying an official traffic device	
Speeding more than 25 MPH over posted speed	

Driver Records Manager

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

A. L. P. [Signature]
Driver Services, Deputy Director



OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 25075070 Driver License No.: 11293194
 Name : PLATT, CHRISTOPHER WILLIAM
 Address : 226 BIRMINGHAM DR
 City : SUMMERVILLE State: SC Zip: 294838254
 County : BERKELEY
 DOB: 12/13/1983 Sex: M Driver Training: N
 Status - DL: SUSPENDED CDL: DISQUALIFIED

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.
Prior							
TA DL	D	Returned	08/23/2011	08/23/2012	03/24/2000	N	N
TA DL	D	Original	08/23/2011	08/23/2012	03/24/2000	N	N
TA DL	D	Reissue	08/23/2011	08/23/2012	03/24/2000	N	N
DL	D	Returned	12/08/2010	12/13/2020	03/24/2000	N	N
DL	D	Renewal	12/08/2010	12/13/2020	03/24/2000	N	N
TA DL	D	Original	10/19/2010	10/19/2011	03/24/2000	N	N
TA DL	D	Returned	10/19/2010	10/19/2011	03/24/2000	N	N
TA DL	D	Original	09/03/2010	09/03/2011	03/24/2000	N	N
TA DL	D	Original	02/05/2010	08/05/2010	03/24/2000	N	N
DL	D	Renewal	12/07/2005	12/13/2015	03/24/2000	N	N
DL	D	Reissue	12/07/2005	12/13/2015	03/24/2000	N	N
DL	D	Modify	02/15/2008	12/13/2015	03/24/2000	N	N
DL	D	Modify	05/19/2006	12/13/2015	03/24/2000	N	N
DL	D	Returned	12/07/2005	12/13/2015	03/24/2000	N	N
DL	D	Renewal	03/24/2000	12/13/2005	03/24/2000	Y	N
DL	D	Duplicate	12/10/2001	12/13/2005	03/24/2000	Y	N
DL	D	Duplicate	12/12/2002	12/13/2005	03/24/2000	Y	N
DL	D	Duplicate	02/14/2003	12/13/2005	03/24/2000	Y	N
DL	D	Duplicate	01/20/2004	12/13/2005	03/24/2000	Y	N
DL	D	Duplicate	07/05/2005	12/13/2005	03/24/2000	Y	N

Address Change -

Address: 4820 GIBSON RD Date Changed: 01/20/2004
 City: HOLLYWOOD State: SC Zip: 294496179

Address Change -

Address: 1036 WHARF INDIGO PL Date Changed: 10/04/2005
 City: MT PLEASANT State: SC Zip: 294643623

Address Change -

Address: 1476 ORANGE GROVE RD APT D102 Date Changed: 05/19/2008
 City: CHARLESTON State: SC Zip: 294073642

Address Change -

Address: 62 REID ST Date Changed: 02/02/2007
 Driver Services, Department

OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 25075070

Driver License No.: 11293194

Name: PLATT, CHRISTOPHER WILLIAM

City: CHARLESTON

State: SC

Zip: 294036221

Address Change -

Address: 1987 TEAKWOOD RD

Date Changed: 01/22/2008

City: CHARLESTON

State: SC

Zip: 294145951

Point Summary

Total Current Points: 1

Driver Credit: - 0

Adjusted Current Points: 1

VIOL: 484-Unlawful Alcohol Concentration
Violation: 08/13/2011 Conviction: 04/20/2012
ACD: A08 Conviction Loc Ref:
Conviction State: SC

Ticket#: 54947FS

Recd: 05/04/2012 Post: 05/21/2012

Conviction Reference:
Court Type: Municipal Court

SUSP: 084-Unlawful Alcohol Concentration
Special Driving Privilege: NONE
Suspension Beg: 04/20/2012
Causal: 08/13/2011
Reinstatement Requirements Met: INDEFINITE
ACD: A08 Withdrawal Loc Ref:

Ticket#: 54947FS

Suspension End: 10/20/2012

Post: 05/21/2012

Reinstatement Fee Paid: N
Withdrawal Reason Ref:

SC Driver License/ID Surrendered

Credential Type: TA DL Class: D

Function: Reissue

Posted: 03/19/2012

Issued: 08/23/2011

Date Surrendered: 03/19/2012

Reason For Return: SUSPENDED LICENSE

Returning State:

SR22

Future Proof of Financial Responsibility (Insurance)

Effective: 03/12/2012 Filing: 03/13/2012

Posted: 03/13/2012

Type: NON-RESTRICTED

Policy Number: 41950985

Company Code: 38628 Company Name: PROGRESSIVE NORTHERN INSURANCE COMPANY

SUSP: 004-Reckless Driving
Special Driving Privilege: NONE

Suspension Beg: 12/16/2011

Causal: 12/25/2009

Reinstatement Requirements Met: 03/19/2012

ACD: M84 Withdrawal Loc Ref:

Suspension End: 03/16/2012

Post: 12/01/2011

Reinstatement Fee Paid: Y

Withdrawal Reason Ref:

VIOL: 461-Reckless driving

Violation: 12/25/2009 Conviction: 11/18/2011

ACD: M84 Conviction Loc Ref:

Conviction State: SC

Ticket#: 91121FX

Recd: 11/28/2011 Post: 12/01/2011

Conviction Reference:

Court Type: Municipal Court

Violation Points: 6 Current Points: 0

SC Driver License/ID Surrendered

Credential Type: TA DL Class: D

Function: Returned

Posted: 03/19/2012

Issued: 09/30/2011

Date Surrendered: 03/19/2012

OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 25075070

Driver License No.: 11293194

Name: PLATT, CHRISTOPHER WILLIAM

Reason For Return: SUSPENDED LICENSE

Returning State: SC

SC Driver License/ID Surrendered

Credential Type: DL Class: D

Function: Renewal

Posted: 08/19/2011

Issued: 12/08/2010

Date Surrendered: 08/14/2011

Reason For Return: SUSPENDED LICENSE

Returning State: SC

VIOL: 421-Speeding 10-mph or less

Ticket#: 49448FP

Violation: 04/25/2011 Conviction: 06/06/2011

Recd: 06/23/2011 Post: 07/21/2011

ACD: S51 Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: Magistrate Court

Violation Points: 2 Current Points: 1

SC Driver License/ID Surrendered

Credential Type: TA DL Class: D

Function: Returned

Posted: 12/08/2010

Issued: 10/19/2010

Date Surrendered: 12/08/2010

Reason For Return: ANOTHER SC LICENSE ISSUED

Returning State: SC

SC Driver License/ID Surrendered

Credential Type: DL Class: D

Function: Returned

Posted: 01/14/2010

Issued: 02/15/2008

Date Surrendered: 12/25/2009

Reason For Return: SUSPENDED LICENSE

Returning State: SC

VIOL: 461-Reckless driving

Ticket#: 11635EV

Violation: 02/27/2009 Conviction: 03/23/2009

Recd: 04/10/2009 Post: 04/16/2009

ACD: M84 Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: Magistrate Court

Violation Points: 6 Current Points: 0

ACC: REPORTABLE

Accident: 02/27/2009

Posted: 03/25/2009

Accident Case Number: 9024019

FR-10 Audit Number: X-915511

Accident Jurisdiction: SC Accident Loc Ref: SCHDPT

History: N

Contributed: Y

VIOL: 421-Speeding 10-mph or less

Ticket#: D243503

Violation: 07/13/2008 Conviction: 08/19/2008

Recd: 08/28/2008 Post: 09/04/2008

ACD: S51 Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: Magistrate Court

Violation Points: 2 Current Points: 0

VIOL: 441-Speeding more than 10 mph but LT 25 mph

Ticket#: Z145605

Violation: 04/20/2007 Conviction: 05/14/2007

Actual Speed: 84 Posted Speed: 60

Recd: 05/29/2007 Post: 06/07/2007

ACD: S92 Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: Magistrate Court

Violation Points: 4 Current Points: 0

VIOL: 441-Speeding more than 10 mph but LT 25 mph

Ticket#: 84741DP

Violation: 02/10/2007 Conviction: 03/28/2007

Actual Speed: 56 Posted Speed: 40

Recd: 05/16/2007 Post: 06/25/2007

ACD: S92 Conviction Loc Ref:

Conviction Reference:

OFFICIAL 10 YEAR DRIVER RECORD

Customer No.: 25075070

Driver License No.: 11293194

Name: PLATT, CHRISTOPHER WILLIAM

Conviction State: SC

Court Type: Municipal Court

Violation Points: 4 Current Points: 0

SUSP: 097-Failure to Pay Traffic Ticket

Ticket#: 31998DY

Suspension Beg: 06/04/2007

Suspension End: 06/15/2007

Causal: 03/10/2007

Post: 05/15/2007

Ticket Paid: 06/15/2007

Compliance Received: 06/15/2007

ACD: D56 Court Name: MT. PLEASANT MUNICIPAL COURT

Court Address: 100 ANN EDWARDS LANE

City: MT PLEASANT

State: SC

Zip: 29464

Phone No: 843 884 6796

VIOL: 560-Failure to Pay Traffic Ticket or Appear

Ticket#: 31998DY

Violation: 03/10/2007 Conviction: 04/03/2007

Recd: 05/15/2007

Post: 05/15/2007

ACD: D56 Conviction Loc Ref: 521

Conviction Reference:

Conviction State: SC

Court Type: Unknown

VIOL: 421-Speeding 10-mph or less

Ticket#: 31998DY

Violation: 03/10/2007 Conviction: 04/03/2007

Recd: 04/19/2007

Post: 04/21/2007

ACD: S51 Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: Municipal Court

Violation Points: 2 Current Points: 0

VIOL: 475-Careless or negligent driving

Ticket#: 37464DQ

Violation: 08/01/2006 Conviction: 08/15/2006

Recd: 02/16/2007

Post: 02/21/2007

ACD: M81 Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: Municipal Court

VIOL: 421-Speeding 10-mph or less

Ticket#: 95070DP

Violation: 05/16/2006 Conviction: 06/12/2006

Recd: 07/26/2006

Post: 08/02/2006

ACD: S51 Conviction Loc Ref:

Conviction Reference:

Conviction State: SC

Court Type: Municipal Court

Violation Points: 2 Current Points: 0

End of Report

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

D. L. Shelton

Driver Services, Deputy Director

RIESEN LAW FIRM, L.L.P.
A REGISTERED LIMITED LIABILITY PARTNERSHIP

FRED W. RIESEN, JR.
GARY ALAN LING, PC
E. PAUL GIBSON, PC, LL.M.
(SC, FL, MD)
PHILIP A. BERLINSKY
ALLISON STOVER LEARD
PAUL W. BRADLEY #
FRED W. RIESEN, III (SC, CA)
FRAMPTON W. DURBAN, JR.
LEANNE M. INNET (SC, FL, USPTO)

MAILING ADDRESS
Post Office Box 40997
Charleston, South Carolina 29423-0997

STREET ADDRESS
3660 West Montague Avenue
N. Charleston, South Carolina 29418

TELEPHONE
(843) 760-2450
FACSIMILE
(843) 329-8580

+ S.C. Certified Mediator
• Certified by The National Board of Trial
Advocacy in Civil Trial Advocacy
and Civil Pretrial Practice
Certified Guardian ad Litem

JOHN D. BRADLEY, III (1946-1998)

June 8, 2011

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

RE: My Client: Christopher William Platt
Customer No.: 25075070
DL No.: 11293194

Dear Sir or Madam

Please take notice, it is my intent to appeal the decision to classify my client as a habitual offender and revoke his license. As per your notice of December 1, 2011, my client was not convicted of three major violations within a three year period of time.

I would appreciate you notifying me of a hearing date. I have enclosed the required \$150.00 filing fee. I appreciate your assistance in this matter. Please feel free to contact me should you have any questions or concerns.

With kind regards, I am

Sincerely,



Philip A. Berlinsky
PAB/jba
encl.

Yolanda Williams

From: Yolanda Williams
Sent: Tuesday, June 12, 2012 1:27 PM
To: Philip A. Berlinsky (askipper@knology.net); HPU@scdmv.net
Subject: Notice of Hearing, Christopher Platt, 07-31 dk# 3266
Attachments: Notice of Hearing, Christopher Platt, 07-31 dk# 3266.pdf

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

Cash Receipt

Number: CR1206-0210
Title: OMVH Title
Posted: Yes

Dated: 06-11-2012
Total Paid: \$150.00

Void Information

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

Generate

Cash Receipt

Generate

Invoices (1)				Paid
Date	Number	Item Type	Customer	
06-11-2012	NV:206-0209	Case Filing Fee - \$150	Platt, Christopher William	150.00

Payments (1)			Paid
Payment Method	Reference		
Check	Philip A. Berlinsky		150.00

Nikki R. Haley
Governor



2012-OMVH-01-3266
Karin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

05/21/2012

PLATT, CHRISTOPHER WILLIAM
226 BIRMINGHAM DR
SUMMERVILLE, SC 29483-8254

CUSTOMER NO: 25075070
FILE NO: 14112514
DL NO: 11293194

OFFICIAL NOTICE

REASON: You have accumulated violations in a 3 year period that result in you being declared an Habitual Offender. SECTION OF LAW: 56-1-1030 and 56-1-1090

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
08/13/2011	04/20/2012	54947FS	Unlawful Alcohol Concentration
12/25/2009	11/18/2011	91121FX	Reckless driving
02/27/2009	03/23/2009	11635EV	Reckless driving

BEGINNING DATE: 12:01 AM 06/20/2012 ENDING DATE: MIDNIGHT 06/20/2017

HEARING:

Section 56-1-1030 allows you to appeal the DMV's decision. There is a \$150.00 filing fee for a hearing. (Personal checks not accepted.) Should you desire a hearing, you must submit a written request within 30 days from the date of this letter. State the reasons why you believe that the Department has made an error. Mail or deliver the request and the fee to the South Carolina Office of Motor Vehicle Hearings, 1205 Pendleton St., Suite 325, Columbia, SC 29201. If you do not request a hearing, the suspension will become effective on the date indicated above. After you have completed two years of the suspension, you may request a reduction of the suspension. You can obtain an application and instructions at the Department's website at www.scdmvonline.com or by contacting a Customer Service Representative at (803)896-5000.

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. You may not drive until the suspension period has ended and you have done the following:

FINANCIAL RESPONSIBILITY:

You must do one of the following for 3 years from the ending date listed above:

1. have your insurance agent file a Certificate of Insurance(SR-22), or
2. deposit \$40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

TESTS:

You must successfully complete the vision, knowledge and skills test.

Driver Records Manager

FILED

JUN 08 2012

SCOMVH

RECEIVED

JUN 11 2012

SCOMVH

Post Office Box 1498, Blythewood, South Carolina 29016

40000

RH

Nikki R. Haley
Governor



Kevin A. Shando
Executive Director

State of South Carolina
Department of Motor Vehicles

12/01/2011

PLATT, CHRISTOPHER WILLIAM
226 BIRMINGHAM DR
SUMMERVILLE, SC 29483-8254

CUSTOMER NO: 25075070
FILE NO: 13412634
DL NO: 11293194

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: You have been convicted of the offense listed below.

SECTION OF LAW: 56-5-2920

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
12/25/2009	11/18/2011	91121FX	Reckless driving
02/27/2009	03/23/2009	11635EV	Reckless driving

BEGINNING DATE: 12:01 AM 12/16/2011 ENDING DATE: MIDNIGHT 03/16/2012

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. You may not drive until the suspension period has ended and you have done the following:

FINANCIAL RESPONSIBILITY:

You must do one of the following for 3 years from the ending date listed above:

1. have your insurance agent file a Certificate of Insurance (SR-22), or
2. deposit \$40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:

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TESTS:

You must successfully complete the vision, knowledge and skills test.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

If you have not already turned in your license, you must return it to Driver Records or your local DMV office.

Driver Records Manager

Nikki R. Haley
Governor



Karin A. Shando
Executive Director

State of South Carolina
Department of Motor Vehicles

12/01/2011

PLATT, CHRISTOPHER WILLIAM
226 BIRMINGHAM DR
SUMMERVILLE, SC 29483-8254

CUSTOMER NO: 25075070
FILE NO: 13412635
DL NO: 11293194

Dear Customer:

This is to advise you of your present standing under the Habitual Offender Law. This law states that any person who is convicted of three major violations or is convicted of a combination of ten minor and/or major violations within a three year period will be classified as a Habitual Offender.

Our records now reveal that you have accumulated 02 major and 02 minor violations. Should you be convicted of any additional major or minor violations which would classify you as an Habitual Offender, your driving privileges will be suspended for a period of five years.

A listing of the major and minor offenses is printed below, and we earnestly request that you improve your driving habits in order to protect your privilege to drive on the streets and highways of South Carolina.

MAJOR VIOLATIONS

Felony Child Endangerment	Reckless Driving
Driving Under Suspension	Reckless Homicide
Driving Under the Influence	Felony in a Motor Vehicle
Unlawful Alcohol Concentration	Felony Controlled Substance
Felony Driving Under the Influence	
Manslaughter/Involuntary Manslaughter	
Leaving the Scene of Accident-Bodily Injury	
Passing Stopped School Bus/Bodily Injury/Death	
Negligent or Criminal Operation of CMV-Fatality	
Failure to Stop for Blue Light with Bodily Injury/Death	

Any offenses punishable as a felony under the motor vehicle laws of this State.

Subsequent offenses of:
Failure to Stop for Blue Light

MINOR VIOLATIONS

Driving on wrong side of the road	Following too closely
Reckless driving	Speeding (over 10 MPH)
Failure to yield right of way	Turning Unlawfully
Passing stopped school bus	Passing unlawfully
Hit & Run-Property and Damage only	
Disobeying official directing traffic	
Disregard Railroad Sign or Signal	
Disobedience to Signal of approaching Train	
Driving through or within a safety zone	
Driving too fast for conditions-over 10 MPH	
Failure to give or giving improper signal	
Operating vehicle with improper brakes	
Disobeying an official traffic device	
Speeding more than 25 MPH over posted speed	

Driver Records Manager

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 21 day of December
By: Yolanda P. Williams
Title: Administrative Coordinator, OMVH

RECEIVED

AUG 20 2014

SC Court of Appeals

FILED

AUG 20 2014

SC ADMIN. LAW COURT

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

August 18, 2014



TIMOTHY CLAY KULP
C. AUSTIN ELLIOTT
Kulp Law Firm
116 Church Street, 3rd Floor
Charleston, South Carolina 29401
(843) 853-3310
Attorneys for Appellant

RECEIVED

AUG 20 2014

SC Court of Appeals