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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable H. W. Funderburk, Jr., Administrative Law Judge

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Case No. 2020-000980

Shante Michele Eugene . . . . . Respondent,

v.

South Carolina Department of Motor Vehicles . . . . . Appellant.

RECORD ON APPEAL

FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel
PHILIP S. PORTER, SC Bar #4526
Deputy General Counsel
BRANDY A. DUNCAN, SC Bar #72052
South Carolina Department of Motor Vehicles
Post Office Box 1498
Blythewood, South Carolina 29016-0020
Telephone: (803) 896-9900
Email: hearingsprocessingunit@scdmv.net
ATTORNEYS FOR APPELLANT

ARIE BAX, SC Bar #72488
The Bax Law Firm, PA
10 Sams Point Way
Suite B-1 PMB 138
Beaufort, South Carolina 29907
Telephone: (843) 522-0980
Email: Arie.baxlaw@gmail.com
ATTORNEY FOR RESPONDENT

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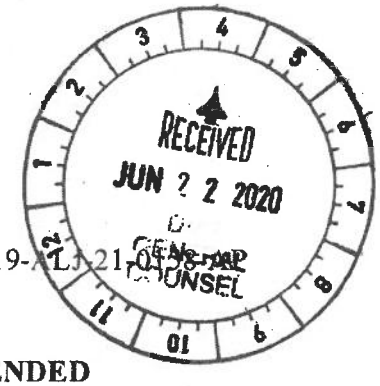
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	)	Docket No. 19-ALJ-21-0158-AP **AMENDED FINAL ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Shante Michele Eugene (Appellant) on April 25, 2019. After a contested case hearing was held in this matter on April 6, 2018, Appellant seeks review of the Final Order and Decision issued by the South Carolina Department of Motor Vehicles' (Department or Respondent) Office of Motor Vehicle Hearings (OMVH) sustaining the suspension of Appellant's driver's license and driving privileges upon a finding that Appellant is a habitual offender.

During the contested case, Appellant did not dispute her convictions or the resulting habitual offender status but argued that the Department should not be permitted to suspend her driver's license as a habitual offender approximately two years after the date of her last conviction for Driving Under Suspension (DUS) on January 13, 2016. On April 1, 2019, OMVH Hearing Officer Brigette Autry issued a Final Order and Decision sustaining the habitual offender suspension. Hearing Officer Autry concluded that the two-year delay in imposing the suspension did not violate the standards of fundamental fairness so as to deny Appellant due process.

On appeal, Appellant renewed her argument that the delayed suspension of her driver's license more than two years after her last qualifying traffic conviction is fundamentally unfair and denied her due process. Appellant also argues that the Final Order and Decision regarding the two-year delay sets a bright line rule that is against public policy.

Upon review of the Record on Appeal (ROA), the briefs of both parties, and the law, the Court previously issued a Final Order in this matter on February 6, 2020, finding the substantial rights of Appellant had been prejudiced by the OMVH decision that was affected by errors of law and

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not supported by substantial evidence. In that Order, the Court found the imposition of the delayed suspension resulted in fundamental unfairness under the unique circumstances presented in Appellant's case. However, remaining cognizant that the two-year delay in Appellant's case is shorter than the delays discussed in the previous cases addressing this issue, and in an effort to refrain from ruling in a manner which would effectively reward Appellant based on an error not attributable to either party, the Court found it proper to modify the suspension to serve the interests of both parties and avoid injury and potential prejudice to Appellant.[1]

Respondent timely filed a Motion for Reconsideration in Part on February 10, 2020. Alleging multiple issues in implementing the Court's Order as written,[2] SCDMV moved for partial reconsideration of the section of the Order addressing the modification of the suspension. Specifically, the Department argues the issuance of a route-restricted license for the remainder of the backdated suspension and the waiver of the $100 route-restricted license fee and all other reinstatement fees and costs as ordered by the Court "is in direct violation of state law and. therefore. not statutorily permitted." (Resp. Motion, p. 5).

Because Respondent is either unable or unwilling to follow the Court's previous Order seeking a just and satisfactory result balancing the interests of both parties, and because the Court does find that the imposition of the delayed suspension results in fundamental unfairness under the unique circumstances presented in Appellant's case, the Court grants SCDMV's Motion for Reconsideration in Part. issuing this Amended Final Order reversing the Final Order and Decision

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[1] "Congruent with the terms of a timely suspension. Appellant's driver's license and full driving privileges shall remain suspended until January 18. 2021. five days after the fifth anniversary of the triggering conviction. However. to alleviate the most significant injury and prejudice suffered by Appellant as a result of the delay, pursuant to S.C. Code Ann. § 56-1-170 (2016), the Department shall issue a special route-restricted driver's license to Appellant to allow her to operate a motor vehicle to and from her residence in Beaufort County to her place of employment and to and from her monthly National Guard duty in Hopkins, South Carolina. The Department shall waive the $100 fee associated with the issuance of the restricted driver's license and, in order to establish restrictions on the times and routes of travel, Appellant shall promptly notify the Department of her current address along with: (1) her place of employment and work hours; (2) the hours and location(s) from which she will be picking up and dropping off her children as part of her daily commute to work; and, (3) the location and dates of her National Guard duty. Appellant shall also immediately notify the Department of any changes in her residence, employment, or any other changes affecting the routes and times of necessary travel to allow the Department to establish new restrictions pursuant to § 56-1-170. Upon serving the remainder of her suspension ending on January 18, 2021, the Department shall reinstate Appellant's driving privileges in full and reissue her driver's license waiving all fees and costs associated therewith." (Final Order of February 6, 2020. p. 12-13).

[2] *See* Footnote 1, above. The waiver of reinstatement fees and costs recognized Appellant's payment of those fees in November 2017 for the reinstatement prior to the suspension of January 2018. which is the matter before this Court.

of the OMVH Hearing Officer.

BACKGROUND

Appellant was arrested for DUS on May 31, 2013, and was convicted of this offense on August 20, 2013. Appellant received another DUS charge on June 1, 2013, and was convicted of this offense on February 4, 2014. By letter dated February 21, 2014, the Department notified Appellant she had accumulated two major and three minor traffic violations and warned her that if she accrued another major violation within a three-year period, she could be declared a habitual offender resulting in a five-year suspension of her driving privileges.[3] On April 7, 2015, Appellant was charged with a subsequent DUS (Ticket Number 57873GO) and later pled guilty to DUS 2nd on January 13, 2016.[4]

Despite the explicit statutory instructions of S.C. Code Ann. § 56-7-30(A) (2016) requiring courts to notify the Department of such convictions within five business days of the date of trial, the Beaufort County Magistrate's Court did not notify the Department of Appellant's 2016 DUS conviction. However, two years later, the Beaufort County Sheriff's Office sent the Department a ticket inventory including Appellant's January 2016 conviction for Ticket Number 57873GO. After receiving notice of the conviction on January 18, 2018, the Department notified Appellant on January 24, 2018, that she was declared a habitual offender and that her driving privileges would be suspended for the statutory five-year period ending in January 2023. Appellant timely filed a request for a contested case hearing with OMVH asserting that the two-year delay in imposing the suspension was fundamentally unfair and a violation of her right to due process.

Appellant had been previously declared a habitual offender, and her driving privileges were suspended for a five-year period beginning October 18, 2012, and ending October 18, 2017.[5] When the previous habitual offender suspension ended in October 2017, the Department notified Appellant that she met the requirements for reinstatement and was eligible to obtain a South Carolina driver's license as of October 31, 2017. Upon receipt of this notice from the Department,

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[3] *See* S.C. Code Ann. § 56-1-1020 (Supp. 2016) (a person convicted of DUS three or more times within a three-year period is a habitual offender). Upon classifying a driver as a habitual offender, the Department must suspend his or her driver's license for five years.

[4] Appellant was originally charged with DUS 3rd and Habitual Traffic Offender (HTO) but pled guilty to the reduced charge of DUS 2nd in January 2016. The accompanying HTO charge was dismissed pursuant to the plea agreement.

[5] During the contested case hearing, Appellant testified that she was not aware that she was already under a habitual offender suspension until she was charged with DUS 3rd on April 7, 2015.

Appellant paid all fines and fees and obtained the necessary SR-22 insurance. After she met the requirements for reinstatement, the Department reissued Appellant's license on November 13, 2017.

Two days later, Appellant received another letter from the Department indicating her driver's license would be cancelled effective January 14, 2018, if she did not clear up outstanding issues with the Georgia DMV. (ROA, p. 115). Appellant resolved the Georgia issues, including the payment of fines and fees in the approximate amount of $1,000. Subsequently, on December 14, 2017, Appellant went to a branch of the SCDMV to ensure she had cleared up all outstanding issues to protect her license from any impending suspension. While at the branch, the Department issued Appellant an Amended Notice of Driving Status indicating that her pending suspension(s) had been cleared and her driving privileges had been fully restored. (ROA, p. 116). Appellant maintained fully restored driving privileges until she received notice of the habitual offender suspension at issue in this case on January 24, 2018.

During the contested case hearing, Appellant testified that, in May 2016, after her last DUS conviction in January 2016, she got a job with the U.S. Postal Service at a mail processing center in North Charleston, South Carolina. Appellant testified that when she got the job, she was living with a relative in North Charleston who was able to give her rides to and from work while her license was still under suspension from her previous habitual offender determination. At that time, Appellant anticipated having only about a year and a half left on her habitual offender suspension scheduled to end in October 2017 and believed she would be able to find transportation to work for the remainder of the suspension period because she lived close to work.

However, Appellant's circumstances changed when the relative moved and Appellant had to relocate to Beaufort County where she now resides. She has a significant daily commute of approximately 1.5 hours, each way, to get to and from her place of employment. Appellant testified that without her driving privileges, she has no other means of transportation to get to and from work and will lose the job she has held since May 2016. Appellant has submitted multiple requests to be transferred to a similar job in Beaufort County to eliminate the commute, but her requests have not been granted.

Appellant has also been a member of the National Guard since 2013 and must travel approximately two hours once each month to report for duty in Hopkins, South Carolina. Appellant testified that

there are other National Guard units throughout the state and some closer to home but transfer to any particular unit is based upon interest, experience, and slot availability. Additionally, Appellant is the single mother of two children, ages 2 and 3, who attend daycare while she works. Finally, Appellant testified that she would not have spent the money, effort, and time to get her driver's license reissued in November 2017 or to clear up the issues with the Georgia DMV if she had been aware that her license would be suspended for an additional five years beginning in January 2018 due the DUS conviction of January 2016.

Finding no fundamental unfairness to Appellant due to the delayed suspension, Hearing Officer Autry sustained the suspension and compared the facts and circumstances of Appellant's case to those discussed in *Davis v. S.C. Dep't of Motor Vehicles*, 420 S.C. 98, 800 S.E.2d 493 (Ct. App. 2017), and *Wilson v. S.C. Dep't of Motor Vehicles*, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017).

In those cases, the delayed impositions of the suspensions were found to be fundamentally unfair in violation of Davis' and Wilson's respective due process rights. Concluding that Appellant's situation did not reach the levels of injury or prejudice present in *Davis* and *Wilson*, the Final Order and Decision noted several timing differences between those cases and Appellant's. Further, the Final Order and Decision concluded that Appellant failed to present specific evidence to show that she would suffer severe economic hardship if she lost her job because of her inability to commute to work.

ISSUES ON APPEAL

I. Did the Hearing Officer err in concluding that the imposition of the habitual offender suspension after a two-year delay was not fundamentally unfair and did not constitute a violation of due process?

II. Did the Hearing Officer's conclusion that the two-year delay does not exceed the five-year suspension establish a bright line rule that is against public policy?

STANDARD OF REVIEW

The OMVH is authorized by S.C. Code Ann. § 1-23-660(A) (Supp. 2018) to hear contested cases involving the suspension, cancellation, or revocation of driver's licenses by the Department. Pursuant to §1-23-660(D), the Court has jurisdiction to hear appeals from the OMVH. When acting in an appellate capacity, the ALC must apply the criteria of § 1-23-380(5) which provides:

S.E.2d 653, 656 (2006). 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. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1998).

DISCUSSION

In this case, the record contains unrefuted evidence that within a three-year period, Appellant was convicted of three distinct offenses justifying the imposition of a five-year suspension of her driver's license and driving privileges under the habitual offender statute. *See* S.C. Code Ann. § 56-1-1020 (Supp. 2016). Appellant asserts, however, that the imposition of the license suspension more than two years after the triggering conviction violates the principles of fairness and due process. "A person's interest in his driver's license is property that a state may not take away without satisfying the requirements of due process. Due process is violated when a party is denied fundamental fairness." *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 325, 673 S.E.2d 416, 417 (2009). However, the Department argues that Appellant did not show any injury or prejudice, violating due process, arising from a suspension in January 2018 based on a triggering conviction from January 2016.

This issue has been addressed by the South Carolina Supreme Court and Court of Appeals on multiple occasions. In *State v. Chavis*, the Supreme Court found that the suspension of Chavis' license after a one-year delay did not violate due process when Chavis failed to present evidence to show that he suffered any prejudice as a result of the delay and had simply kept quiet and continued to drive in the hope that his suspension would be overlooked. 261 S.C. 408, 200 S.E.2d 390 (1973). The lesson of *Chavis* is showing prejudice rather than the length of delay.

Noting that the Department was not at fault in the delay, the Supreme Court held that an unexplained delay on the part of reporting officials unaccompanied by a showing of real prejudice to the driver was insufficient to warrant relief from the imposition of the suspension. *Id.* at 412, 200 S.E.2d at 392. Although Chavis was not granted relief, the Supreme Court stated "there might be circumstances under which it could be successfully argued or soundly held that the State had no right to suspend a driver's license after a long delay...." *Id.* at 411, 200 S.E.2d at 391.

Addressing the same issue thirty years later, the Supreme Court found that a twelve-year delay in imposing the suspension of a driver's license constituted fundamental unfairness resulting in a violation of due process in *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416,

(2009). While refraining from establishing a bright line rule as to what length of time would constitute the "long delay" envisioned in *Chavis*, the Supreme Court did note that neither Hipp nor the SCDMV was at fault for the delay. *Id.* at 325, 673 S.E.2d at 417.

More recently, the Court of Appeals held that a five-year delay in the imposition of a suspension after a triggering DUI conviction also fell under the circumstances envisioned by the Supreme Court in *Chavis* and constituted a denial of fundamental fairness in violation of due process. In *Wilson v. S.C. Dep't of Motor Vehicles*, the Court of Appeals found that Wilson demonstrated a high likelihood of injury or potential prejudice if the DMV suspended her license after a five-year delay, including the possible loss of employment leading to the inability to pay two mortgages. 419 S.C. 203, 208, 796 S.E.2d 541, 543 (2017). Wilson testified that after her DUI conviction, she spent two years looking for work and was required to travel as part of the employment she eventually found as an office manager. *Id.* Wilson further testified that because of the license suspension she might lose her job and the loss of steady income would cause severe economic hardship since she had two mortgage payments. *Id.* Based on those statements, the Court found the record contained "evidence of specific injuries and prejudice, which were absent from *Chavis*, that Wilson believed would result from a suspension five years after her conviction." *Id.* Thus, the Court of Appeals found Wilson had "demonstrated a high likelihood of injury or potential prejudice if her driver's license [was] suspended." *Id.* The Court of Appeals also noted that Wilson did not simply "keep quiet" about her suspension, unlike Chavis, and actively sought to resolve her suspension by contacting the DMV shortly after her conviction to find out how to obtain a restricted license in lieu of the suspension. *Id.* at 208-09, 796 S.E.2d at 543-44. Concluding that sufficient evidence of prejudice existed in the record and that neither party was at fault for the delay, the Court held that the imposition of the suspension after a five-year delay was a denial of fundamental fairness in violation of due process. *Id.* at 209, 796 S.E.2d at 544.

Finally, the Court of Appeals also found that substantial evidence existed to support a finding by the ALC that a suspension after a six-year delay was fundamentally unfair in *Davis v. S.C. Dep't of Motor Vehicles*, 420 S.C. 98, 800 S.E.2d 493 (2017). First, the Court of Appeals agreed that Davis would suffer prejudice and injury since, by the time he was notified of his suspension six years after the triggering conviction, he had already paid reinstatement fees and met the DMV requirements for reinstatement and his license had, in fact, been reinstated for twenty months. *Id.* at 106-07, 800 S.E.2d at 497. The Court also noted that the six-year delay exceeded the total time

of Davis' five-year suspension had it been timely imposed. *Id.* Second, the Court of Appeals found that neither party was at fault for the delay. *Id.* at 107, 800 S.E.2d at 497. Citing its previous ruling, the Court of Appeals stated "[a]s in *Wilson*, evidence exists to support a finding Davis would suffer prejudice if his license were suspended, and neither he nor the DMV were at fault for the delay." *Id.* at 106, 800 S.E.2d at 497 (citing *Wilson*, 419 S.C. at 207-08, 796 S.E.2d at 543).

In the present matter, Hearing Officer Autry found the facts of Appellant's case distinguishable from those in both *Davis* and *Wilson*. The Final Order and Decision points out that Davis' license had been reinstated for twenty months before he received his notice of suspension. In comparison, Hearing Officer Autry found that Appellant's license had only been reinstated for just over one month after her previous habitual offender suspension ended in October 2017 and her license was reissued on November 13, 2017.[6] Additionally, the Final Order and Decision states that in *Davis*, the Court of Appeals found it "significant" that the six-year delay exceeded the total time of the five-year suspension, whereas the delay in Appellant's case was only two years. (Final Order and Decision, p. 8).[7] The Court finds that while Hearing Officer Autry may be correct in her findings on these two points of distinction, this comparison falls short of the analysis in *Davis*. There, although the Court of Appeals recognized that the delay exceeded the total time of the suspension, more importantly, the Court identified two major factors leading to the finding of fundamental unfairness in violation of due process.

First, the Court of Appeals found Davis would suffer prejudice and injury if his license were suspended because he had already paid the reinstatement fees, met the DMV's requirements for reinstatement, and his license had been reinstated for twenty months. While Appellant's license had not been reinstated for twenty months, the Final Order and Decision only compares the difference in the amount of time both drivers had their licenses back and fails to recognize that,

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[6] The Hearing Officer calculates this one-month period to run from the date Appellant received her Amended Notice of Driving Status on December 14, 2017, after resolving the issues with the Georgia DMV until she was notified of the suspension on January 24, 2018.

[7] Appellant's second issue on appeal claims that upholding the ruling of the Hearing Officer would create a bright line rule that the delay in the imposition of the suspension would be fair anytime it does not exceed the time period of the suspension imposed. Appellant essentially argues that such a bright line rule goes against public policy by preventing an aggrieved driver from establishing fundamental unfairness in any case where the period of delay is less than the period of the suspension. However, the Court finds that the *Davis* decision only *noted* that the delay exceeded the time period of the suspension but set forth two other distinct deciding factors in its analysis. Therefore, the Court declines to separately address Appellant's argument on this issue as it is discussed above in the context of the first issue on appeal.

like Davis, Appellant also paid the reinstatement fees and met the DMV requirements for reinstatement, including obtaining SR-22 insurance and the payment of $1,000 in fines and fees to Georgia. Additionally, Appellant testified that had she known her license would be suspended again soon thereafter, she would not have spent so much time, effort, and money to get the short-lived reinstatement.

Second, in *Davis*, the Court of Appeals established that the other major factor leading to a finding of fundamental unfairness was that neither Davis nor the DMV was at fault for the delay. However, in the *Davis* comparison, the Final Order and Decision fails to recognize the second factor considered by the Court of Appeals in *Davis* is also present and relevant in Appellant's case: neither party was at fault for the delay. Moreover, the Court of Appeals also established fault – or lack thereof – as a primary consideration in *Wilson*. 419 S.C. 203, 209, 796 S.E.2d 541, 545 (finding a due process violation "when sufficient evidence of prejudice exists in the record and neither party is at fault for the delay"). However, when comparing Appellant's circumstances to those set forth in *Wilson*, the Hearing Officer ignored this lack of fault.

As to the remainder of the *Wilson* analysis undertaken in Appellant's case, the Court finds the Final Order and Decision to be affected by an error of law and to be clearly erroneous in view of the substantial evidence on the record. Hearing Officer Autry correctly stated that the Court of Appeals considered that it took Wilson two years to find a job after her DUI arrest and that she was expected to travel on behalf of her employer in her position as an office manager. Distinguishing Appellant's case from *Wilson*, Hearing Officer Autry found that unlike Wilson, Appellant had no "significant change in personal or professional circumstances in the two years between her conviction and the imposition of the suspension." (Final Order and Decision, p. 8). However, based upon Appellant's testimony and the Findings of Fact set forth in the Final Order and Decision, it is clear that Appellant did, in fact, have significant changes in both her personal and professional circumstances during the two-year delay.

Appellant testified that she got her job with the U.S. Postal Service in North Charleston in May 2016, approximately four to five months after her conviction in January 2016. At the time she got the job, she was living with a relative in North Charleston and could rely on others to get to and from work locally while her license was suspended under the habitual offender designation that ended in October 2017. Since that time, Appellant has had to move to Beaufort County and now

faces an approximate hour and a half commute to and from work each way. Appellant has tried to transfer to a similar job in Beaufort but, transfer has been unavailable. Appellant also presented evidence she is the sole caregiver for her children, ages two and three, who are in daycare while she is at work.

The Court finds that the addition of another child to the household, obtaining new employment, and moving to another county approximately 1.5 hours away from her place of employment do constitute significant changes in personal and professional circumstances. In the Final Order and Decision, all of these changes were acknowledged in the Findings of Fact but were ignored in the Hearing Officer's comparison of Appellant's circumstances to the facts set forth in *Wilson*. Thus, despite the substantial evidence of significant changes in Appellant's circumstances to show injury and prejudice caused by the two-year delay, the Hearing Officer concluded to the contrary and found that Appellant presented no evidence of specific injuries and prejudice. That conclusion does not comport with the Findings of Fact contained in the Final Order and Decision and is clearly erroneous in view of the reliable, probative, and substantial evidence in the record.

Further, the Hearing Officer stated that "[w]hile Respondent testified that she will lose her job if unable to get back and forth to work, which would undoubtedly result in *some* economic hardship, Respondent also did not present specific evidence to show that she would suffer a *severe* economic hardship, as in *Wilson*, as a result. Therefore, based upon the evidence presented, I conclude that the imposition of the habitual offender suspension after a two-year delay would not be fundamentally unfair or constitute a violation of due process." (Final Order and Decision, p. 9) (emphasis added). The Court finds that in this conclusion, the Hearing Officer applied the wrong legal principle and, thus, committed an error of law.

The Court of Appeals noted that the record in *Wilson* contained evidence of specific injuries and prejudice, which were absent in *Chavis*,[8] that Wilson believed would result from the delayed suspension. *Id.* at 208, 796 S.E.2d at 543. Based on Wilson's statement that losing her job would cause severe economic hardship because of the inability to pay her two mortgages, the Court of Appeals found "Wilson demonstrated a high likelihood of injury or potential prejudice if her

[8] Specifically, in *State v. Chavis* the Supreme Court noted there was no inference or indication in the record that Chavis suffered *any* prejudice as a result of the one-year delay and held that a driver is not entitled to relief when an unexplained delay is unaccompanied by a showing of real prejudice to the driver. 261 S.C. 408, 411-12, 200 S.E.2d 390, 391-92 (1973).

driver's license [was] suspended." *Id.* The Court then concluded by finding a denial of fundamental fairness in violation of due process "when sufficient evidence of prejudice exists in the record and neither party is at fault for the delay." *Id.* at 209, 796 S.E.2d at 544. Thus, the findings by the Court of Appeals in *Wilson* do not establish that Appellant must present specific evidence to show she would suffer *severe* economic hardship as stated in the Final Order and Decision.

Like Wilson, Appellant testified her inability to make the commute to work as a result of the delayed suspension would cause her to lose the job she has held for approximately three years. Appellant also testified she is the single mother of two young children who attend day care while she works. Hearing Officer Autry was correct in her finding that the loss of Appellant's job "would undoubtedly result in *some* economic hardship."[9] (emphasis added). However, in concluding that Appellant failed to present specific evidence that she would suffer a "severe" economic hardship, as in *Wilson*, the Hearing Officer required a heightened showing of injury and prejudice not identified in any case addressing this issue.

The Court of Appeals in *Wilson* did not adopt a level of economic hardship as the requisite evidentiary standard but, instead, found "Wilson demonstrated a high likelihood of injury or potential prejudice." *Id.* at 208, 796 S.E.2d at 543. Moreover, in *Chavis*, the only language used by the Supreme Court that relates in any way to a degree of injury or prejudice was that Chavis failed to make any showing of "real prejudice" and the record contained no inference or indication that he had suffered any prejudice as a result of the delayed suspension. *State v. Chavis*, 261 S.C. 408, 411-12, 200 S.E.2d 390, 391-92 (1973). Finally, the Court of Appeals in *Davis* only found that Davis would suffer "prejudice and injury" if his license was suspended after he paid the reinstatement fees and completed the requirements to regain his license. *Davis v. S.C. Dep't of Motor Vehicles*, 420 S.C. 98, 106, 800 S.E.2d 493, 497 (2017).

In analyzing the cases addressing this issue, it is clear no specified level of economic hardship, degree of injury, or amount of prejudice must be shown in order to establish fundamental unfairness violating due process. Appellant must only show that the delay would result in injury and prejudice. Therefore, in concluding that Appellant failed to present "specific evidence that she

[9] The Court finds the record contains substantial evidence that the loss of Appellant's job with benefits due to the delayed imposition of the suspension after having already established a residence that requires a lengthy commute (and the license necessary to accomplish that commute) would result in *significant* economic hardship for Appellant and her family.

would suffer a severe economic hardship," Hearing Officer Autry applied a heightened standard of injury and prejudice and based her decision on an incorrect legal principle, therefore making an error of law.

In this instance, the Court finds the imposition of the delayed suspension does result in fundamental unfairness under the unique circumstances presented in Appellant's case. While reluctant to rule in a manner that would reward Appellant based on an error not attributable to either party,[10] and recognizing that the two-year delay in this case is significantly shorter than those discussed in the previous line of cases,[11] the Court previously attempted to modify Appellant's suspension to balance the interests of both parties and to cure the high likelihood of injury and prejudice to Appellant resulting from the delay. However, upon Respondent's Motion to Reconsider in Part, the Court hereby reverses the Final Order and Decision of the OMVH sustaining the suspension of Appellant's driver's license and driving privileges. The Department shall reinstate Appellant's driving privileges in full and reissue her driver's license waiving all fees and costs associated therewith.

It is therefore,

ORDERED that the suspension of Appellant's driver's license and driving privileges is **REVERSED.**

AND IT IS SO ORDERED.

June 19, 2020
Columbia, South Carolina

H. W. Funderburk, Jr.
Administrative Law Judge

[10] The Record on Appeal contains undisputed evidence establishing that Appellant committed multiple violations of the motor vehicle laws subjecting herself to a five-year habitual offender suspension of her driver's license and driving privileges in South Carolina.

[11] Of note, as of the date of this Order, Appellant would still have just under one year left to serve the remainder of her suspension had it been imposed timely, whereas Davis and Wilson would have completed their suspensions by the time the Department sought to enforce them.

FILED
JUN 19 2020
SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

Docket No. 19-ALJ-21-0158-AP

I, Elizabeth A. Perkins, hereby certify that I have this date served the **AMENDED FINAL ORDER** in this case 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 parties and their attorneys.

Arie D. Bax, Esquire
2 Merchants Lane, Suite 210
Beaufort, SC 29907

Brandy Duncan, Esquire
SC Department of Motor Vehicles
PO Box 1498
Blythewood, SC 29016

June 19, 2019
Columbia, SC

Elizabeth A. Perkins
Judicial Law Clerk

FILED
JUN 19 2020
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	)	Docket No. 19-ALJ-21-0158-AP **FINAL ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Shante Michele Eugene (Appellant) on April 25, 2019. After a contested case hearing was held in this matter on April 6, 2018, Appellant seeks review of the Final Order and Decision issued by the South Carolina Department of Motor Vehicles' (Department or Respondent) Office of Motor Vehicle Hearings (OMVH) sustaining the suspension of Appellant's driver's license and driving privileges upon a finding that Appellant is a habitual offender.

During the contested case, Appellant did not dispute her convictions or the resulting habitual offender status but argued that the Department should not be permitted to suspend her driver's license as a habitual offender approximately two years after the date of her last conviction for Driving Under Suspension (DUS) on January 13, 2016. On April 1, 2019, OMVH Hearing Officer Brigette Autry issued a Final Order and Decision sustaining the habitual offender suspension. Hearing Officer Autry concluded that the two-year delay in imposing the suspension did not violate the standards of fundamental fairness so as to deny Appellant due process.

On appeal, Appellant renews her argument that the delayed suspension of her driver's license more than two years after her last qualifying traffic conviction is fundamentally unfair and denies her due process. Appellant also argues that the Final Order and Decision regarding the two-year delay sets a bright line rule that is against public policy. Upon review of the Record on Appeal (ROA), the briefs of both parties, the statutes, and the case law, the Court affirms the suspension of Appellant's driver's license and driving privilege as modified.

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BACKGROUND

Appellant was arrested for DUS on May 31, 2013, and was convicted of this offense on August 20, 2013. Appellant received another DUS charge on June 1, 2013, and was convicted of this offense on February 4, 2014. By letter dated February 21, 2014, the Department notified Appellant she had accumulated two major and three minor traffic violations and warned her that if she accrued another major violation within a three-year period, she could be declared a habitual offender resulting in a five-year suspension of her driving privileges.[1] On April 7, 2015, Appellant was charged with a subsequent DUS (Ticket Number 57873GO) and later pled guilty to DUS 2nd on January 13, 2016.[2]

Despite the explicit statutory instructions of S.C. Code Ann. § 56-7-30(A) (2016) requiring courts to notify the Department of such convictions within five business days of the date of trial, the Beaufort County Magistrate's Court did not notify the Department of Appellant's 2016 DUS conviction. However, two years later, the Beaufort County Sheriff's Office sent the Department a ticket inventory including Appellant's January 2016 conviction for Ticket Number 57873GO. After receiving notice of the conviction on January 18, 2018, the Department notified Appellant on January 24, 2018, that she was declared a habitual offender and that her driving privileges would be suspended for the statutory five-year period ending in January 2023. Appellant timely filed a request for a contested case hearing with OMVH asserting that the two-year delay in imposing the suspension was fundamentally unfair and a violation of her right to due process.

Due to previous convictions, Appellant had been declared a habitual offender, and her driving privileges were suspended for a five-year period beginning October 18, 2012, and ending October 18, 2017.[3] When the previous habitual offender suspension ended in October 2017, the Department notified Appellant that she met the requirements for reinstatement and was eligible to obtain a South Carolina driver's license as of October 31, 2017. Upon receipt of this notice from the Department, Appellant paid all fines and fees and obtained the necessary SR-22 insurance. Upon

[1] *See* S.C. Code Ann. § 56-1-1020 (Supp. 2016) (a person convicted of DUS three or more times within a three-year period is a habitual offender). Upon classifying a driver as a habitual offender, the Department must suspend his or her driver's license for five years.

[2] Appellant was originally charged with DUS 3rd and Habitual Traffic Offender (HTO) but pled guilty to the reduced charge of DUS 2nd in January 2016. The accompanying HTO charge was dismissed pursuant to the plea agreement.

[3] During the contested case hearing, Appellant testified that she was not aware that she was already under a habitual offender suspension until she was charged with DUS 3rd on April 7, 2015.

meeting these requirements for reinstatement, the Department reissued Appellant's license on November 13, 2017.

Two days later, Appellant received another letter from the Department indicating her driver's license would be cancelled effective January 14, 2018, if she did not clear up outstanding issues with the Georgia DMV. (ROA, p. 115). Appellant resolved the Georgia issues, including the payment of fines and fees in the approximate amount of $1,000. Subsequently, on December 14, 2017, Appellant went to a branch of the SCDMV to ensure she had cleared up all outstanding issues to protect her license from any impending suspension. While at the branch, the Department issued Appellant an Amended Notice of Driving Status indicating that her pending suspension(s) had been cleared and her driving privileges had been fully restored. (ROA, p. 116). Appellant maintained fully restored driving privileges until she received notice of the habitual offender suspension at issue in this case on January 24, 2018.

During the contested case hearing, Appellant testified that, in May 2016, after her last DUS conviction in January 2016, she got a job with the U.S. Postal Service at a mail processing center in North Charleston, South Carolina. Appellant testified that when she got the job, she was living with a relative in North Charleston who was able to give her rides to and from work while her license was still under suspension from her previous habitual offender determination. At that time, Appellant anticipated having only about a year and a half left on her habitual offender suspension scheduled to end in October 2017 and believed she would be able to find transportation to work during the remaining suspension period because she lived close to work.

However, Appellant's circumstances changed when the relative moved and Appellant had to relocate to Beaufort County where she now resides. She has a significant daily commute of approximately 1.5 hours, each way, to get to and from her place of employment. Appellant testified that without her driving privileges, she has no other means of transportation to get to and from work and will lose the job she has held since May 2016. Appellant has submitted multiple requests to be transferred to a similar job in Beaufort County to eliminate the commute, but her request has not been granted.

Appellant has also been a member of the National Guard since 2013 and must travel approximately two hours once each month to report for duty in Hopkins, South Carolina. Appellant testified that there are other National Guard units throughout the state and some closer to home but transfer to

any particular unit is based upon interest, experience, and slot availability. Additionally, Appellant is the single mother of two children, ages 2 and 3, who both attend daycare while she works. Finally, Appellant testified that she would not have spent the money, effort, and time to get her driver's license reissued in November 2017 or to clear up the issues with the Georgia DMV if she had been aware that her license would be suspended for an additional five years beginning in January 2018 due to her last DUS conviction from January 2016.

Finding no fundamental unfairness to Appellant due to the delayed suspension, Hearing Officer Autry sustained the suspension and compared the facts and circumstances of Appellant's case to those discussed in *Davis v. S.C. Dep't of Motor Vehicles*, 420 S.C. 98, 800 S.E.2d 493 (Ct. App. 2017), and *Wilson v. S.C. Dep't of Motor Vehicles*, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017).

In those cases, the delayed imposition of the suspensions were found to be fundamentally unfair in violation of Davis' and Wilson's respective due process rights. Concluding that Appellant's situation did not reach the levels of injury or prejudice present in *Davis* and *Wilson*, the Final Order and Decision noted several timing differences between those cases and Appellant's. Further, the Final Order and Decision concluded that Appellant failed to present specific evidence to show that she would suffer severe economic hardship if she lost her job due to her inability to commute to work as a result of the suspension.

ISSUES ON APPEAL

I. Did the Hearing Officer err in concluding that the imposition of the habitual offender suspension after a two-year delay was not fundamentally unfair and did not constitute a violation of due process?

II. Did the Hearing Officer's conclusion that the two-year delay does not exceed the five-year suspension establish a bright line rule that is against public policy?

STANDARD OF REVIEW

The OMVH is authorized by S.C. Code Ann. § 1-23-660(A) (Supp. 2018) to hear contested cases involving the suspension, cancellation, or revocation of driver's licenses by the Department. Pursuant to §1-23-660(D), the Court has jurisdiction to hear appeals from the OMVH. When acting in an appellate capacity, the ALC must apply the criteria of § 1-23-380(5) which provides:

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.

Id. (Supp. 2018). *See also* S.C. Code Ann. § 1-23-600(E) (Supp. 2018) (directing administrative law judges to conduct appellate review in the same manner prescribed in §1-23-380).

Thus, this Court's review is limited to deciding whether the OMVH's Final Order and Decision is unsupported by substantial evidence or is affected by an error of law, an abuse of discretion, or is arbitrary or capricious. *Bass v. Kenco Group*, 366 S.C. 450, 457, 622 S.E.2d 577, 581 (Ct. App. 2005). The findings of the agency are presumed correct and must be affirmed if supported by substantial evidence. "Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the [OMVH] and is more than a mere scintilla of evidence." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008).

It is axiomatic that the ALC may reverse because of an error of law. *See, e.g., Olsen v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 501 (Ct. App. 2008) (finding an appellate court may reverse the decision of a lower court "[i]f the findings are affected by an error of law, are not supported by substantial evidence, or are characterized by abuse of discretion or clearly unwarranted exercise of discretion."). An abuse of discretion occurs when an administrative agency's ruling is based upon an error of law, such as the application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or, when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006). 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. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1998).

DISCUSSION

In this case, the record contains unrefuted evidence that within a three-year period, Appellant was convicted of three distinct offenses justifying the imposition of a five-year suspension of her driver's license and driving privileges under the habitual offender statute. *See* S.C. Code Ann. § 56-1-1020 (Supp. 2016). Appellant asserts, however, that the imposition of the license suspension more than two years after the triggering conviction violates the principles of fairness and due process. "A person's interest in his driver's license is property that a state may not take away without satisfying the requirements of due process. Due process is violated when a party is denied fundamental fairness." *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 325, 673 S.E.2d 416, 417 (2009). In response, the Department argues Appellant failed to show any injury or prejudice that violates due process when imposing the suspension belatedly in January 2018 as opposed to applying the suspension in January 2016 when the triggering conviction occurred.

This issue has been addressed by the South Carolina Supreme Court and Court of Appeals on multiple occasions. In *State v. Chavis*, the Supreme Court found that the suspension of Chavis' license after a one-year delay did not violate due process when Chavis failed to present evidence to show that he suffered any prejudice as a result of the delay and had simply kept quiet and continued to drive in the hope that his suspension would be overlooked. 261 S.C. 408, 200 S.E.2d 390 (1973). Noting that the Department was not at fault in the delay, the Supreme Court held that an unexplained delay on the part of reporting officials unaccompanied by a showing of real prejudice to the driver was insufficient to warrant relief from the imposition of the suspension. *Id.* at 412, 200 S.E.2d at 392. However, while Chavis was not granted relief, the Supreme Court stated "there might be circumstances under which it could be successfully argued or soundly held that the State had no right to suspend a driver's license after a long delay...." *Id.* at 411, 200 S.E.2d at 391.

Addressing the same issue thirty years later, the Supreme Court found that a twelve-year delay in imposing the suspension of a driver's license constituted fundamental unfairness resulting in a violation of due process in *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416, (2009). While refraining from establishing a bright line rule as to what length of time would

constitute the "long delay" envisioned in *Chavis*, the Supreme Court did note that neither Hipp nor the SCDMV was at fault for the delay. *Id.* at 325, 673 S.E.2d at 417.

More recently, the Court of Appeals held that a five-year delay in the imposition of a suspension after a triggering DUI conviction also fell under the circumstances envisioned by the Supreme Court in *Chavis* and constituted a denial of fundamental fairness in violation of due process. In *Wilson v. S.C. Dep't of Motor Vehicles*, the Court of Appeals found that Wilson demonstrated a high likelihood of injury or potential prejudice if the DMV suspended her license after a five-year delay, including the possible loss of employment leading to the inability to pay two mortgages. 419 S.C. 203, 208, 796 S.E.2d 541, 543 (2017). Wilson testified that after her DUI conviction, she spent two years looking for work and was required to travel as part of the employment she eventually found as an office manager. *Id.* Wilson further testified that because of the license suspension she might lose her job and the loss of steady income would cause severe economic hardship since she had two mortgage payments. *Id.* Based on those statements, the Court found the record contained "evidence of specific injuries and prejudice, which were absent from *Chavis*, that Wilson believed would result from a suspension five years after her conviction." *Id.* Thus, the Court of Appeals found Wilson had "demonstrated a high likelihood of injury or potential prejudice if her driver's license [was] suspended." *Id.* Additionally, neither party was at fault for the delay. *Id.* The Court of Appeals also noted that Wilson did not simply "keep quiet" about her suspension, unlike Chavis, and actively sought to resolve her suspension by contacting the DMV shortly after her conviction to find out how to obtain a restricted license in lieu of the suspension. *Id.* at 208-09, 796 S.E.2d at 543-44. Concluding that sufficient evidence of prejudice existed in the record and that neither party was at fault for the delay, the Court held that the imposition of the suspension after a five-year delay was a denial of fundamental fairness in violation of due process. *Id.* at 209, 796 S.E.2d at 544.

Finally, the Court of Appeals also found that substantial evidence existed to support a finding by the ALC that a suspension after a six-year delay was fundamentally unfair in *Davis v. S.C. Dep't of Motor Vehicles*, 420 S.C. 98, 800 S.E.2d 493 (2017). First, the Court of Appeals agreed that Davis would suffer prejudice and injury since, by the time he was notified of his suspension six years after the triggering conviction, he had already paid reinstatement fees and met the DMV requirements for reinstatement and his license had, in fact, been reinstated for twenty months. *Id.* at 106-07, 800 S.E.2d at 497. The Court also noted that the six-year delay exceeded the total time

of Davis' five-year suspension had it been timely imposed. *Id.* Second, the Court of Appeals found that neither party was at fault for the delay. *Id.* at 107, 800 S.E.2d at 497. Citing its previous ruling, the Court of Appeals stated "[a]s in *Wilson*, evidence exists to support a finding Davis would suffer prejudice if his license were suspended, and neither he nor the DMV were at fault for the delay." *Id.* at 106, 800 S.E.2d at 497 (citing *Wilson*, 419 S.C. at 207-08, 796 S.E.2d at 543).

In the present matter, Hearing Officer Autry found the facts of Appellant's case distinguishable from those in both *Davis* and *Wilson*. The Final Order and Decision points out that Davis' license had been reinstated for twenty months before he received his notice of suspension. In comparison, Hearing Officer Autry found that Appellant's license had only been reinstated for just over one month after her previous habitual offender suspension ended in October 2017 and her license was reissued on November 13, 2017.[4] Additionally, the Final Order and Decision states that in *Davis*, the Court of Appeals found it "significant" that the six-year delay exceeded the total time of the five-year suspension, whereas the delay in Appellant's case was only two years. (Final Order and Decision, p. 8).[5] The Court finds that while Hearing Officer Autry may be correct in her findings on these two points of distinction, this comparison falls short of the analysis in *Davis*. There, although the Court of Appeals recognized that the delay exceeded the total time of the suspension, more importantly, the Court identified two major factors leading to the finding of fundamental unfairness in violation of due process.

First, the Court of Appeals found Davis would suffer prejudice and injury if his license were suspended because he had already paid the reinstatement fees, met the DMV's requirements for reinstatement, and his license had been reinstated for twenty months. While Appellant's license had not been reinstated for twenty months, the Final Order and Decision only compares the difference in the amount of time both drivers had their licenses back and fails to recognize that,

[4] The Hearing Officer calculates this one-month period to run from the date Appellant received her Amended Notice of Driving Status on December 14, 2017, after resolving the issues with the Georgia DMV until she was notified of the suspension on January 24, 2018.

[5] Appellant's second issue on appeal claims that upholding the ruling of the Hearing Officer would create a bright line rule that the delay in the imposition of the suspension would be fair anytime it does not exceed the time period of the suspension imposed. Appellant essentially argues that such a bright line rule goes against public policy by preventing an aggrieved driver from establishing fundamental unfairness in any case where the period of delay is less than the period of the suspension. However, the Court finds that the *Davis* decision only *noted* that the delay exceeded the time period of the suspension but set forth two other distinct deciding factors in its analysis. Therefore, the Court declines to separately address Appellant's argument on this issue as it is discussed above in the context of the first issue on appeal.

like Davis, Appellant also paid the reinstatement fees and met the DMV requirements for reinstatement, including obtaining SR-22 insurance and the payment of $1,000 in fines and fees to Georgia. Additionally, Appellant testified that had she known her license would be suspended again soon thereafter, she would not have spent so much time, effort, and money to get the short-lived reinstatement.

Second, in *Davis*, the Court of Appeals established that the other major factor leading to a finding of fundamental unfairness was that neither Davis nor the DMV was at fault for the delay. However, in the *Davis* comparison, the Final Order and Decision fails to recognize that the second factor considered by the Court of Appeals in *Davis* is also present and relevant in Appellant's case: neither party was at fault for the delay. Moreover, the Court of Appeals also established fault as a primary consideration in *Wilson*, 419 S.C. 203, 209, 796 S.E.2d 541, 545 (finding a due process violation "when sufficient evidence of prejudice exists in the record and neither party is at fault for the delay"). However, when comparing Appellant's circumstances to those set forth in *Wilson*, the Hearing Officer again ignored this fault factor altogether.

As to the remainder of the *Wilson* analysis undertaken in Appellant's case, the Court finds the Final Order and Decision to be affected by an error of law and to be clearly erroneous in view of the substantial evidence on the record. Hearing Officer Autry correctly stated that the Court of Appeals considered that it took Wilson two years to find a job after her DUI arrest and that she was expected to travel on behalf of her employer in her position as an office manager. Distinguishing Appellant's case from *Wilson*, Hearing Officer Autry found that unlike Wilson, Appellant had no "significant change in personal or professional circumstances in the two years between her conviction and the imposition of the suspension." (Final Order and Decision, p. 8). However, based upon Appellant's testimony and the Findings of Fact set forth in the Final Order and Decision, it is clear that Appellant did, in fact, have significant changes in both her personal and professional circumstances during the two-year delay.

Appellant testified that she got her job with the U.S. Postal Service in North Charleston in May 2016, approximately four to five months after her conviction in January 2016. At the time she got the job, she was living with a relative in North Charleston and could rely on others to get to and from work locally while her license was suspended under the habitual offender designation that ended in October 2017. Since that time, Appellant has had to move to Beaufort County and now

faces an approximate hour and a half commute to and from work each way. Appellant has tried to transfer to a similar job in Beaufort but, thus far, transfer has been unavailable. Appellant also presented evidence she is the sole caregiver for her children, ages two and three, who are in daycare while she is at work.

The Court finds that the addition of another child to the household, obtaining new employment, and moving to another county approximately 1.5 hours away from her place of employment do constitute significant changes in personal and professional circumstances. In the Final Order and Decision, all of these changes were acknowledged in the Findings of Fact but were later ignored in the Hearing Officer's comparison of Appellant's circumstances to the facts set forth in *Wilson*. Thus, despite the substantial evidence of significant changes in Appellant's circumstances to show injury and prejudice caused by the two-year delay, the Hearing Officer concluded to the contrary and found that Appellant presented no evidence of specific injuries and prejudice. That conclusion does not comport with the Findings of Fact contained in the Final Order and Decision and is clearly erroneous in view of the reliable, probative, and substantial evidence in the record.

Further, the Hearing Officer stated that "[w]hile Respondent testified that she will lose her job if unable to get back and forth to work, which would undoubtedly result in *some* economic hardship, Respondent also did not present specific evidence to show that she would suffer a *severe* economic hardship, as in *Wilson*, as a result. Therefore, based upon the evidence presented, I conclude that the imposition of the habitual offender suspension after a two-year delay would not be fundamentally unfair or constitute a violation of due process." (Final Order and Decision, p. 9) (emphasis added). The Court finds that in this conclusion, the Hearing Officer applied the wrong legal principle and, thus, committed an error of law.

The Court of Appeals noted that the record in *Wilson* contained evidence of specific injuries and prejudice, which were absent in *Chavis*,[6] that Wilson believed would result from the delayed suspension. *Id.* at 208, 796 S.E.2d at 543. Based on Wilson's statement that losing her job would cause severe economic hardship because of the inability to pay her two mortgages, the Court of Appeals found "Wilson demonstrated a high likelihood of injury or potential prejudice if her

[6] Specifically, in *State v. Chavis* the Supreme Court noted there was no inference or indication in the record that Chavis suffered any prejudice as a result of the one-year delay and held that a driver is not entitled to relief when an unexplained delay is unaccompanied by a showing of real prejudice to the driver. 261 S.C. 408, 411-12, 200 S.E.2d 390, 391-92 (1973).

driver's license [was] suspended." *Id.* The Court then concluded by finding a denial of fundamental fairness in violation of due process "when sufficient evidence of prejudice exists in the record and neither party is at fault for the delay." *Id.* at 209, 796 S.E.2d at 544. Thus, the findings by the Court of Appeals in *Wilson* do not establish that Appellant must present specific evidence to show she would suffer *severe* economic hardship as stated in the Final Order and Decision.

Like Wilson, Appellant testified her inability to make the commute to work as a result of the delayed suspension would cause her to lose the job she has held for approximately three years. Appellant also testified she is the single mother of two young children who attend day care while she works. Hearing Officer Autry was correct in her finding that the loss of Appellant's job "would undoubtedly result in *some* economic hardship."[7] (emphasis added). However, in concluding that Appellant failed to present specific evidence that she would suffer a "severe" economic hardship, as in *Wilson*, the Hearing Officer required a heightened showing of injury and prejudice not established in any case law addressing this issue.

The Court of Appeals in *Wilson* did not adopt a level of economic hardship as the requisite evidentiary standard but, instead, found "Wilson demonstrated a high likelihood of injury or potential prejudice." *Id.* at 208, 796 S.E.2d at 543. Moreover, in *Chavis*, the only language used by the Supreme Court that relates in any way to a degree of injury or prejudice was that Chavis failed to make any showing of "real prejudice" and the record contained no inference or indication that he had suffered any prejudice as a result of the delayed suspension. *State v. Chavis*, 261 S.C. 408, 411-12, 200 S.E.2d 390, 391-92 (1973). Finally, the Court of Appeals in *Davis* only found that Davis would suffer "prejudice and injury" if his license was suspended after he paid the reinstatement fees and completed the requirements to regain his license. *Davis v. S.C. Dep't of Motor Vehicles*, 420 S.C. 98, 106, 800 S.E.2d 493, 497 (2017).

In collectively analyzing the cases addressing this issue, it is clear no specified level of economic hardship, degree of injury, or amount of prejudice must be shown in order to establish fundamental unfairness violating due process. Appellant must only show that the delay would result in injury and prejudice. Therefore, in concluding that Appellant failed to present "specific evidence that she

[7] The Court finds the record contains substantial evidence that the loss of Appellant's job with benefits due to the delayed imposition of the suspension after having already established a residence that requires a lengthy commute (and the license necessary to accomplish that commute) would result in *significant* economic hardship for Appellant and her family.

would suffer a severe economic hardship," Hearing Officer Autry applied a heightened standard of injury and prejudice and based her decision on an incorrect legal principle resulting in an error of law.

However, while the Court finds the imposition of the delayed suspension does result in fundamental unfairness under the circumstances presented in Appellant's case, the Court is reluctant to rule in a manner which would reward Appellant based on an error not attributable to either party. Additionally, the Court also recognizes the record contains undisputed evidence establishing that Appellant committed multiple violations of the motor vehicle laws subjecting herself to a five-year habitual offender suspension of her driver's license and driving privileges in South Carolina. In fact, if the Department had received proper notice of Appellant's triggering DUS conviction within the statutorily prescribed 5-day period and timely apprised Appellant of her ensuing suspension, Appellant's driver's license and privilege to drive would remain under suspension until January 2021.[8] In this respect, the Court is mindful that the two-year delay in this case is significantly shorter than those discussed in the previous line of cases. Of note, as of the date of this Order, Appellant would still have just under one year left to serve the remainder of her suspension had it been imposed timely, whereas Davis and Wilson would have completed their suspensions by the time the Department sought to enforce them.

Thus, in this instance, the Court concludes it proper to modify the suspension sustained by OMVH as follows. Congruent with the terms of a timely suspension, Appellant's driver's license and full driving privileges shall remain suspended until January 18, 2021, five days after the fifth anniversary of the triggering conviction. However, to alleviate the most significant injury and prejudice suffered by Appellant as a result of the delay, pursuant to S.C. Code Ann. § 56-1-170 (2016), the Department shall issue a special route-restricted driver's license to Appellant to allow her to operate a motor vehicle to and from her residence in Beaufort County to her place of employment and to and from her monthly National Guard duty in Hopkins, South Carolina.[9] The Department shall waive the $100 fee associated with the issuance of the restricted driver's license and, in order to establish restrictions on the times and routes of travel, Appellant shall promptly

[8] Had Appellant's suspension been imposed timely, she would have served approximately one year and ten months of the suspension concurrent with her previous habitual offender suspension ending in October 2017. (*See* ROA, p. 40).

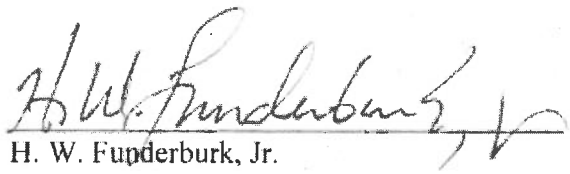
[9] As part of the route restriction, Appellant shall also be permitted to pick up and drop off her children at school or daycare during her daily commute to work.

notify the Department of her current address along with: (1) her place of employment and work hours; (2) the hours and location(s) from which she will be picking up and dropping off her children as part of her daily commute to work; and, (3) the location and dates of her National Guard duty. Appellant shall also immediately notify the Department of any changes in her residence, employment, or any other changes affecting the routes and times of necessary travel to allow the Department to establish new restrictions pursuant to § 56-1-170. Upon serving the remainder of her suspension ending on January 18, 2021, the Department shall reinstate Appellant's driving privileges in full and reissue her driver's license waiving all fees and costs associated therewith.

It is therefore,

ORDERED that the suspension of Appellant's driver's license and driving privileges is **AFFIRMED** as **MODIFIED**.

AND IT IS SO ORDERED.



February 6, 2020
Columbia, South Carolina

H. W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

Docket No. 19-ALJ-21-0158-AP

I, Elizabeth A. Perkins, hereby certify that I have this date served the **FINAL ORDER** in this case 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 parties and their attorneys.

Arie D. Bax, Esquire
2 Merchants Lane, Suite 210
Beaufort, SC 29907

Brandy Duncan, Esquire
SC Department of Motor Vehicles
PO Box 1498
Blythewood, SC 29016

Elizabeth A Perkins

February 6, 2020
Columbia, SC

Elizabeth A. Perkins
Judicial Law Clerk

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July 2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	**NOTICE OF ASSIGNMENT** **(Appeal)** DOCKET NO. 19-ALJ-21-0158-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was initially filed on April 29, 2019 and resubmitted on May 28, 2019. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2018), the **Honorable H. W. Funderburk, Jr.**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

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

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

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

This the thirty-first day of May 2019.

Ralph King Anderson, III
Chief Administrative Law Judge

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

RECEIVED
JUN 06 2019
DMV
GENERAL
COUNSEL

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MAY 31 2019
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	)	DOCKET NO. 19-ALJ-21-0158-AP **REPLY**

APPELLANT, by and through her undersigned counsel, hereby files this Reply in opposition to Respondent's Motion for Reconsideration in Part.

Respondent filed a motion requesting that the court modify its ruling that was issued pursuant to the Final Order dated February 6, 2020. Respondent argues that the portion of the Order that require the SCDMV to issue Appellant a route-restricted driving privileges be removed from the order. Respondent also asks the court to reconsider the fees that the court modified for Appellant. Basically, Respondent has asked the court to remove all parts of the order that are in favor of Appellant.

Respondent based its argument on the assertion that the court order violates South Carolina Statute, specifically S.C. Code §56-1-5, stating that "SCDMV can only do those things that SCDMV is specifically authorized to do in statue or regulation." Respondent Motion p. 1. Respondent further argues that because the South Carolina legislature has been so diligent about stating specifically when SCDMV can issue route restricted licenses for specific types of suspensions, SCDMV cannot issue a route restricted license for a suspension without such statutory authority.

Respondent's argument is without merit when you consider there is a statue directly on point that

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grants statutory authority to the Office of Motor Vehicle hearings to issue such a license to someone who is in the similar situation as Appellant. S.C. Code §56-1-1090(A)(2). A "person may seek relief from the department's determination by filing a request for a de novo contested case hearing with the Office of Motor Vehicle Hearings pursuant to the Administrative Procedures Act and the rules of procedure for the Office of Motor Vehicle Hearings. For good cause shown, the Office of Motor Vehicle Hearings may restore to the person the privilege to operate a motor vehicle in this State subject to other provisions of law relating to the issuance of driver's licenses. The provisions of item (1) shall not be construed to limit the discretion or authority of the Office of Motor Vehicle Hearings in considering the person's request for a reduction of the five-year suspension period; however, those provisions may be used as guidelines for determinations of good cause for relief from the normal five-year suspension period." *Id.*

Appellant followed the procedure as outlined in the statue. The reason that this court has jurisdiction is due to Appellant's appeal of that decision. Since this court is standing in appellate review, it has the same authority to authorize the SCDMV to do the same.

If you take Respondent's argument at face-value, it is apparent that the legislature did take the granting of this authority into account as it allows the Office of Motor Hearings to issue the directive to the SCDMV to reinstate driving privileges to habitual traffic offenders like the Appellant. Respondent specifically ignores the fact that part of the statute does indeed allow the Office of Motor to issue the directive to SCDMV. Respondent argues that the SCDMV is not allowed to issue a route restricted license to a habitual offender. It is absurd to argue that just because it says that the OMVH has that authority to make that order that SCDMV would lack the authority to execute and ignore that bodies' order. Appellant will again stress, "the provisions of item (1) shall not be construed to limit the discretion or authority of the Office of Motor Vehicle Hearings in considering the person's request

for a reduction of the five-year suspension period."

Instead Respondent argues that Appellant should begin the process all over again by having Appellant go through the process of applying once again to reduce her habitual offender suspension, which Respondent admits the department would deny and then have Appellant then apply again for a contested hearing before OMVH. Not only does that far exceed the definition of overly burdensome, it is also goes against judicial economy and would further prejudice Appellant, causing her to encounter more economic hardship.

This matter came before the Office of Motor Vehicles when Appellant requested a hearing to contest the SCDMV determination that she was a habitual offender. A hearing was on April 6, 2018. On April 1, 2019, a Final Order and Decision was issued concluding that the suspension of Appellant's driving privilege be sustained. This appeal followed.

This court correctly found that Appellant has already suffered hardship. Appellant requests that the court deny Respondent's request to reconsider its ruling. However, if the court is inclined to reconsider its ruling, Appellant would request that the court find that Appellant's delayed suspension was fundamentally unfair and rescind the suspension of Appellant's driver's license.

Respectfully Submitted,

Beaufort, South Carolina
March 16, 2020

Arie D. Bax
Federal ID #: 10340
The Bax Law Firm, PA
2 Merchants Lane, Suite 210
Beaufort, SC 29907
Ph: (843) 522-0980
Fax: (843) 379-3115
arie.baxlaw@gmail.com
ATTORNEY FOR APPELLANT

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THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, v. South Carolina Department of Motor Vehicles, Respondent.	Docket No. 19-ALJ-21-0158-AP SCDL No. 11617948 **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION IN PART**

PLEASE TAKE NOTICE that Respondent South Carolina Department of Motor Vehicles ("SCDMV") will move before the Honorable H. W. Funderburk, Jr., ten (10) days from this notice or as soon thereafter as the matter may be heard or determined for partial reconsideration of the *Final Order* issued on February 6, 2020. The grounds of this motion are set forth below.

The *Final Order*, as Currently Written, Requires SCDMV to take Actions Not Authorized by Statute with Regard to Appellant's Habitual Offender Suspension

A. **Route Restricted License**

SCDMV is highly concerned with this Court's order that SCDMV issue a route restricted driver's license to Appellant for the remainder of her habitual offender suspension time. SCDMV is a statutorily created state agency. S.C. Code §56-1-5. As such, the SCDMV can only do those things that SCDMV is specifically authorized to do in statute or regulation. *Id.* This statutory and regulatory limitation is problematic with regard to this Court's Order that SCDMV issue a route restricted driver's license to Appellant for the remainder of her habitual offender suspension time because no statute or regulation authorizes SCDMV to issue a route restricted driver's license during a habitual offender suspension. Route restricted driver's

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licenses are only statutorily authorized by individual statutes for suspensions for: failure to pay child support, points, alcohol violations, accident judgments, implied consent and blood alcohol concentration violations, failure to stop for blue light (without death or great bodily injury), false insurance certification, misrepresentation of identity, some offenses for driving under suspension, and some reckless vehicular homicide suspensions (when ordered by the Circuit Court). See S.C. Code §§56-1-171 (child support), 56-1-740(B) (points), 56-1-746(D) (alcohol violations), 56-9-430(B) (accident judgments), 56-5-2951(H) (implied consent and blood alcohol concentration violations), 56-5-750(G) (failure to stop for blue light), 56-10-260(B) (false insurance certification), 56-1-746(D) misrepresentation of identity, 56-1-460(A)(1)(e) (driving under suspension), and 56-5-2910(B) (reckless vehicular homicide). Because the South Carolina Legislature has been so diligent about stating specifically when SCDMV can issue route restricted licenses for specific types of suspensions, it is clear that SCDMV cannot issue a route restricted license for a suspension without such statutory authority.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Carolina Power & Light Co. v. City of Bennettsville,* 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. *Bryant v. City of Charleston,* 295 S.C. 408, 368 S.E.2d 899 (1988); *State v. Blackmon,* 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole. *Mid–State Auto Auction of Lexington, Inc. v. Altman,* 324 S.C.

65, 69, 476 S.E.2d 690, 692 (1996). Statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result. *Joiner v. Rivas,* 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). Since Title 56 always states explicitly which suspensions SCDMV may issue a route restricted license for, it is clear that SCDMV may not issue a route restricted license for any suspension for which SCDMV is not specifically authorized to issue a route restricted license. [1] To find otherwise would render meaningless the Legislature's actions of specifically listing in so many different statutes that a route restricted license can be issued for that particular suspension. SCDMV is not authorized to issue any sort of special driving privilege to person suspended for habitual offender, including not being authorized to issue route restricted licenses to persons suspended for habitual offender. S.C. Code §§56-1-1010 et seq. For these reasons, SCDMV cannot legally issue a route restricted license to any driver under a habitual offender suspension, including Appellant.

Further, even if SCDMV was statutorily authorized to issue a route restricted license to Appellant, SCDMV is statutorily limited in the routes that can be approved for a route restricted license. SCDMV may only approve routes to and from a person's home and their: 1) work (or for work); 2) their university or college; 3) ADSAP; and 4) court ordered drug treatment. See S.C. Code §§56-1-171(A), 56-1-748(B), 56-1-460(A)(1)(e), 56-1-320(A), 56-9-430(B), 56-1-740(B), 56-10-260(B), 56-1-746(D), 56-5-750(G), and 56-5-2910(B). Thus, even if SCDMV was statutorily authorized to issue a route restricted license to Appellant, SCDMV could not approve a route that allowed Appellant to pick up and drop off her children at school or daycare.

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[1] This pattern is further evidenced by the Legislature's grant of other special driving privileges only through statutory authority such as the temporary alcohol license, the provisional license, and the ignition interlock restricted license. See S.C. Code §§56-5-2951(B), 56-5-2990(A)(2)(b), and 56-5-2990(2)-(5).

SCDMV does note, despite the above concerns regarding the route restricted license, that if Appellant's habitual offender suspension is backdated as ordered in this Court's *Final Order*, then Appellant would be able to apply for a reduction of her habitual offender suspension pursuant to S.C. Code §56-1-1090. Because this is Appellant's second habitual offender suspension, SCDMV would be statutorily required by S.C. Code §56-1-1090(A)(1) to deny the reduction request. However, following that denial the Appellant could apply for a contested case hearing before the OMVH to seek her reduction.

This Court's *Final Order* cites S.C. Code §56-1-170 as a statute that allows SCDMV to issue a route restricted license to Appellant for her habitual offender suspension. S.C. Code §56-1-170 is a statute that deals with restrictions placed on a person's driver's license due to physical disabilities and/or limitations that require the person to limit their driving to certain areas, times, or through the use of special mechanical equipment. For example, if a driver has significant difficulty seeing at night, then that person may be restricted to driving during daylight hours only. If that person was then caught driving at night, despite the daylight only driving restriction, then the person's driver's license could be suspended by SCDMV. During that suspension period, the person could apply for a route restricted license (similar to when a person applies for a route restricted license for a points suspension or the other suspensions discussed earlier in this motion). Therefore, S.C. Code §56-1-170 does not apply to habitual offender suspensions and, rather, is simply another one of the specific places where SCDMV is granted authority to issue a route restricted license for a specific type of suspension.

Finally, the Court's *Final Order* requires SCDMV to issue a route restricted license to Appellant without charging the $100 fee that is normally required for all route restricted licenses. Again, this is not statutorily allowed. Each of the statutes that grant authority to SCDMV to

issue a route restricted license also state the fee to be charged for the license and where those fees are to be dispersed. For each route restricted license that is authorized, except for one issued under S.C. Code §56-5-2910(B), SCDMV is statutorily mandated to charge a fee of $100 for the route restricted license. Thereafter, SCDMV is statutorily mandated to disperse such funds to various places within State government.[2] Therefore, SCDMV does not have statutory authority to waive fees for route restricted licenses.

For the reasons set forth in detail above, SCDMV believes this Court's Order that:

1) SCDMV issue a route restricted license to Appellant for the remainder of her habitual offender suspension;
2) that the route include drop off and pick up locations for Appellant's childcare and children's schools; and
3) that the SCDMV waive the $100 route restricted license fee

is in direct violation of state law and, therefore, not statutorily permitted. For these reasons, SCDMV asks that this Court reconsider and eliminate from the *Final Order* any references to a route restricted license being issued to Appellant.[3]

B. **Waiving Reinstatement Fees & Filing of Form SR-22**

On page 13 of this Court's *Final Order*, this Court has ordered SCDMV to "reinstate Appellant's driving privileges in full and reissue her driver's license waiving all fees and costs associated therewith" when Appellant completes her habitual offender suspension on January 18, 2021. S.C. Code §56-1-390 requires SCDMV to continue all suspensions and revocations of driver's licenses and/or driving privileges until the suspended/revoked person pays a

[2] These dispersements are to the general fund, the State Highway Fund, the Department of Transportation State Non-Federal Aid Highway Fund, and SCDMV, as set forth in each statute.
[3] Specifically, SCDMV asks this Court to reconsider the language in the last paragraph that starts on page 12 starting with the word "However" and continuing up to the work "Upon" on page 13.

reinstatement fee of $100.[4] S.C. Code §56-9-500 mandates that SCDMV must also continue nearly all suspensions or revocations of driver's licenses and/or driving privileges until the suspended/revoked person files proof of financial responsibility with SCDMV, i.e. files Form SR-22 with SCDMV.[5] Additionally, pursuant to S.C. Code §56-9-620, SCDMV is required to continue to mandate the filing of proof of financial responsibility for a period of at least three years after the suspension/revocation triggering the requirement ends. Finally, SCDMV is statutorily mandated to charge a fee of $25 for the renewal of each driver's license. S.C. Code §§56-1-80(A)(2) and 56-1-140(A). Therefore, SCDMV cannot legally waive Appellant's reinstatement fee for her habitual offender suspension or the fee for reissuance of Appellant's driver's license upon the conclusion of her habitual offender suspension period. Moreover, SCDMV cannot legally renew Appellant's driver's license on January 19, 2021, unless Appellant has already filed proof of financial responsibility with SCDMV. For these reasons, SCDMV asks that this Court reconsider and eliminate from the *Final Order* in this case the sentence beginning with "Upon" on page 13.

CONCLUSION

Based upon the foregoing arguments, the Respondent SCDMV respectfully requests that the *Final Order* in this case be reconsidered as set forth above.

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[4] S.C. Code §56-1-390 mandates that SCDMV must distribute the $100 reinstatement fee to the State Highway Fund ($70), the "Keep South Carolina Beautiful Fund" ($1), and the Department of Transportation State Non-Federal Aid Highway Fund ($29).

[5] Some suspensions are statutorily exempt from this requirement, but a habitual offender suspension is not one of suspensions granted such an exemption.

THE ADMINISTRATIVE LAW COURT
IN THE STATE OF SOUTH CAROLINA

Shante Michele Eugene, Appellant, v. South Carolina Department of Motor Vehicles, Respondent.	ALJ Docket No. 19-ALJ-21-1058-AP SCDL No. 11617948 **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 10, 2020, I mailed, via USPS first class mail, a true and correct copy of the foregoing ***Notice of Motion and Motion for Reconsideration In Part*** upon the following:

Arie D. Bax, Esquire
2 Merchants Lane, Suite 210
Beaufort, SC 29907

Jeannine Moore

Jeannine Moore, Paralegal
Office of General Counsel
SCDMV

Blythewood, South Carolina

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THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT
ALJ DOCKET NO: 19-ALJ-21-0158-AP

THE HONORABLE BRIGETTE B. AUTRY, HEARING OFFICER

SHANTE MICHELE EUGENE..... APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES....RESPONDENT

BRIEF OF RESPONDENT
SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel
PHILIP S. PORTER, SC Bar # 4526
Deputy General Counsel
BRANDY A. DUNCAN, SC Bar # 72052
Assistant General Counsel
South Carolina Department of Motor Vehicles
11311 Wilson Boulevard
Post Office Box 1498
Blythewood, South Carolina 29016-0020
Telephone: 803.896.9900
Fax: 803.896.9901
Email: hearingsprocessingunit@scdmv.net

Counsel for the Respondent

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THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Shante Michele Eugene,

Appellant,

v.

South Carolina Department of Motor Vehicles,

Respondent.

Docket No. 19-ALJ-21-0158-AP
SCDL No. 11617948

BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

This matter comes before the Administrative Law Court pursuant to the appeal of Shante Michele Eugene, who seeks review of the April 1, 2019 Final Order & Decision sustaining the Appellant's habitual offender suspension. The Respondent South Carolina Department of Motor Vehicles (SCDMV) seeks to have the Final Order & Decision affirmed and the suspension remain.

STATEMENT OF THE ISSUE ON APPEAL

I. *SUBSTANTIAL EVIDENCE SUPPORTED THE HEARING OFFICER'S RULING THAT APPELLANT DID NOT PRESENT EVIDENCE OF ANY PREJUDICE OR HARDSHIP THAT WAS DIFFERENT FROM APPLYING THE HABITUAL SUSPENSION NOW (JANUARY 2018) VERSUS WHEN THE TRIGGERING CONVICTION TOOK PLACE (JANUARY 2016).*

II. *DELAY IN DECISION FROM OMVH IN THIS CASE WAS NOT RAISED TO OR RULED ON BY THE OMVH AND, THEREFORE, IS NOT PRESERVED FOR APPEAL*

STATEMENT OF THE CASE

The Appellant was arrested for Driving Under Suspension (hereinafter, "DUS") on May 31, 2013 and convicted of this offense on August 20, 2013 (UTT# 78917GC). R. p. 86, 169, 170, and 173. SCDMV received notice of this conviction on September 3, 2013 and posted this

violation to Appellant's driving record on September 9, 2013. R. p. 173. On June 1, 2013, the Appellant was arrested for DUS and convicted of this offense on February 4, 2014 (UTT# G281787). R. p. 86, 167-168, 170, and 173. SCDMV received notice of this conviction on February 19, 2014 and posted this violation to Appellant's driving record on February 21, 2014. R. p. 168 and 173. SCDMV mailed Appellant a letter dated February 21, 2014 notifying her that she had accumulated two major and three minor driving violations and was at risk of being declared a habitual offender and undergoing a five year suspension of her driver's license and driving privileges.[1] R. p. 86 and 171. Finally, Appellant was arrested for DUS on April 7, 2015 and was convicted of that offense on January 13, 2016 (UTT# 57873GO). R. p. 86, 166, and 172. SCDMV received notice of this conviction on January 18, 2018 and posted this violation to Appellant's driving record on January 24, 2018.[2] R. p. 113 and 172. Thus, Appellant was charged and convicted of three (3) separate and distinct traffic violations within a three (3) year period, and the hearing officer concluded that the Appellant's driver's record as maintained by

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[1] This is a process Appellant was familiar with due to her prior declaration and suspension for habitual offender. R. p. 87 and 173.

[2] Despite the explicit statutory requirement that courts notify SCDMV of such convictions with five business days of the trial date, this notification was never received from the Beaufort County Magistrate's Office and was, instead, received from the Beaufort County Sheriff's Office as part of ticket inventory. S.C. Code §56-7-30. R. p. 87 and 134. Additionally, *Brief of Appellant* makes much ado about SCDMV staff changing the conviction date for this violation prior to the hearing on this matter. As stated at the hearing, this change was made at that time because SCDMV reasonably believed that this conviction took place on January 11, 2018. R. p. 13, line 21 – p. 14, line 23. SCDMV understands that the hearing officer in this matter made a factual ruling in the *Final Order and Decision* that this conviction took place on January 13, 2016 and SCDMV has written this brief understanding that factual findings of the lower court cannot be challenged on appeal unless there is a lack of substantial evidence to support the finding. R. p. 86. Further, *Brief of Appellant* asserts that there is no evidence to support SCDMV's change of the date of conviction. This is not accurate. The notation on the ticket itself was evidence that the date of conviction could be January 11, 2018. R. p. 166. Additionally, the ticket inventory reports also supported a finding that January 11, 2018 could have been the date of conviction. R. p. 161-164. Finally, the date of submission of the ticket to SCDMV also supported the possibility that January 11, 2018 could have been the date of conviction. R. p. 133-134.

SCDMV meets the criteria of a Habitual Offender as defined by S.C. Code Ann. § 56-1-1020 (2006) and § 56-1-1030 (Suppl. 2012). R. p. 90. Appellant timely requested a hearing which was held on April 6, 2018. R. p. 5-73 and 178-181. After reviewing the record and considering all the evidence, the hearing officer sustained the suspension of the Appellant's driving license or driving privileges. R. p. 85-93.

At the hearing, Appellant argued that she should not have to serve her habitual offender suspension due to the two year delay between the date of conviction for UTT# 57873GO and when that conviction was communicated to SCDMV.[3] R. p. 5-73. Further, Appellant attempted to present evidence of prejudice or hardship for her having to serve her habitual offender suspension now (shortly after the date SCDMV received notification of the triggering conviction, i.e. shortly after January 2018) versus shortly after the date the triggering conviction took place (January 2016). *Id.* The hearing officer ultimately ruled that Appellant did not present evidence of any prejudice or hardship that was different from applying the habitual offender suspension now (January 2018) versus when the triggering conviction took place (January 2016). R. p. 85-93.

The Appellant appealed the hearing officer's final order to this Court. R. p. 74-108.

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[3] *Brief of Appellant* argues that there was no evidence to support the hearing officer's finding that SCDMV was not at fault in creating the delay in this case. Again, this argument is baseless and actually goes against the evidence presented in this case. The evidence in this case clearly showed that this conviction was not communicated to SCDMV until January 18, 2018 and that SCDMV then promptly placed the conviction on Appellant's driving record on January 24, 2018. R. p. 134 and 172. Furthermore, despite numerous apparent communications with the Clerk of Court, Appellant was not able to produce any evidence to support the allegation that this conviction was transmitted to SCDMV any sooner than the January 18, 2018 communication from the Beaufort County Sheriff's Office. R. p. 137 ("Unfortunately we have no record of when the yellow copy was sent to SCDMV. The clerk who does the DL-76 report on Fridays did not keep copies of the transmittals at that time.").

STANDARD OF REVIEW

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

> A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review....
>
> (5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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

> [Section 1-23-380(g)(5)] specifically states: "The Court shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact." In addition, the statute states the decision under appeal must be "clearly erroneous" in view of the substantial evidence on the whole record.
>
> We, therefore, caution the Bench and Bar as to the limitations upon the application of the "substantial evidence" rules in reviewing the decision of administrative agencies. As stated in *Dickinson-Tidewater, Inc. v. Supervisor of Assess.*, 273 Md. 245, 329 A.2d 18, 25, the substantial evidence test "need not and must not be either judicial fact-finding or substitution of judicial judgment for agency judgment"; and a judgment upon which reasonable men might differ will not be set aside.

The Court further noted that:

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

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

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

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

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

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion. *Dorman v. DHEC*, *supra*; *Hamm v. American Telephone & Telegraph Co.*, *supra*; *Chemical Leaman Tank Lines v. South Carolina Public Service Commission*, 258 S.C. 518, 189 S.E.2d 296 (1972). The limited substantial evidence standard of review is intended only to assure that the agency's action is

properly supported and that, therefore, no abuse of delegated authority occurred. *See Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973).

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

ARGUMENT

I. *SUBSTANTIAL EVIDENCE SUPPORTED THE HEARING OFFICER'S RULING THAT APPELLANT DID NOT PRESENT EVIDENCE OF ANY PREJUDICE OR HARDSHIP THAT WAS DIFFERENT FROM APPLYING THE HABITUAL SUSPENSION NOW (JANUARY 2018) VERSUS WHEN THE TRIGGERING CONVICTION TOOK PLACE (JANUARY 2016).*

State 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 three or more separate and distinct major offenses or ten or more separate and distinct minor offenses committed within a three (3) year period. S. C. Code Ann. § 56-1-1020 (2006). There is no question or challenge in this case about whether Appellant incurred convictions for three separate and distinct major offenses that were committed within a three year period of time. R. p. 90 and *Brief of Appellant*. Rather, Appellant argues that she should not have to serve her habitual offender suspension due to the two year delay between the date of conviction for UTT# 57873GO and when that conviction was communicated to SCDMV. R. p. 5-73. In support of this argument, Appellant presented evidence of prejudice or hardship for her having to serve her

habitual offender suspension. The evidence presented by Appellant, however, did not demonstrate that there was any difference in the prejudice or hardship between the two time periods, i.e. between imposition of the suspension beginning in January 2016 versus January 2018. In short, the case law in this area requires the driver to demonstrate that they have been somehow hurt (prejudiced) or denied fundamental fairness by the delay between when the conviction occurs[4] and when the suspension is imposed. Appellant's failure to demonstrate any increased prejudice or hardship due to the delay is why there is no prejudice or lack of fundamental fairness for Appellant in this case.[5]

There are four cases that have analyzed the issue of a delay between the time a conviction took place and the time SCDMV (or its' predecessor agencies) took suspension action based on that conviction. Each of these cases demonstrates that the appellate courts have consistently analyzed whether the delay resulted in some increased prejudice or denial of fundamental fairness as a result of the delay itself. It is intuitive that any driver's license/driving privilege suspension causes hardship for the person that is not allowed to drive during the suspension period. These cases each looked to see if there was something about the delay that caused that hardship to be increased in any way. Each of these four cases are discussed in further detail below in the order in which they were decided.

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[4] *Brief of Appellant* repeatedly refers to the offense date when discussing the delay in this case. Such references are inaccurate and misleading since SCDMV may never impose a habitual offender suspension until a person has been convicted of the required number and type of offenses.

[5] *Brief of Appellant* states that this Court "should reverse the decision of the Hearing Officer and find that SCDMV erred in not finding that the two-year delay of the habitual offender suspension is fundamentally unfair." *Brief of Appellant*, p. 4. SCDMV does not understand why Appellant refers to SCDMV making any errors in the findings in this case. Since this case was appealed to the Office of Motor Vehicle Hearings (hereinafter, "OMVH"), SCDMV has not made any findings or decisions in this case. Rather, the OMVH hearing officer, who is not an SCDMV employee, made factual findings and conclusions of law. Therefore, it appears that this sentence in *Brief of Appellant* should actually be directed solely to the OMVH hearing officer.

The first case to address the delay issue was *State v. Chavis*, 261 S.C. 408, 200 S.E.2d 390 (1973). Mr. Chavis was arrested for driving under the influence (hereinafter, "DUI") on December 1, 1971. *Id.* at S.E.2d 391. Mr. Chavis refused to submit to a breathalyzer test. *Id.* Mr. Chavis was convicted of DUI on March 7, 1972. *Id.* For unknown reasons that DUI conviction and the notification that Mr. Chavis had refused to submit to a breathalyzer test were not sent to the SC Highway Department (one of SCDMV's predecessor agencies) until on or about February 1, 1973. *Id.* The SC Highway Department notified Mr. Chavis on February 8, 1973 that his driver's license would be suspended from February 8, 1973 through May 8, 1973 for the refusal to submit to a breathalyzer test. *Id.* The SC Highway Department further notified Mr. Chavis on February 22, 1973 that his driver's license would be suspended from May 9, 1973 through November 8, 1973 as a result of his DUI conviction. *Id.* 200 S.E.2d at 391. Thus, there was approximately a 15 month delay between the refusal to submit to a breathalyzer test took place and when the SC Highway Department notified Mr. Chavis of his suspension for that violation and there was approximately a one year delay between the DUI conviction and when the SC Highway Department notified Mr. Chavis of his suspension for that conviction. The Record on Appeal contained no additional facts and was, as a result, ruled on solely based upon the time delay and whether that time delay was unreasonable, violated basic fairness, and violated due process of law provisions of both State and Federal Constitutions. *Id.* In ruling on these matters, the Supreme Court made the following findings:

1) There was no contention or suggestion that there was any unreasonable delay on the part of the SC Highway Department once it was it was notified of the violation and conviction. *Id.*

2) There was no contention or suggestion that there was any improper conduct on the part of the SC Highway Department. *Id.*

3) The parties' responsibility for the delays in sending the notices of the violation and conviction to the SC Highway Department were not parties to the case. *Id.*

4) The Record on Appeal contained no evidence as to the circumstances that caused the delay. *Id.*

5) The Record on Appeal contained no evidence of any prejudice to Mr. Chavis as a result of the delay. *Id.*

6) Mr. Chavis was "charged with knowledge of the law, and that therefore his license was required to be suspended." *Id.*

7) The Record on Appeal contained no evidence that Mr. Chavis sought, wished, or desired to have the suspensions promptly started. *Id.*

8) "For aught the record shows, [Mr. Chavis] simply kept quiet and continued to drive in the hope that his license suspension would somehow or other get overlooked and never be imposed." *Id.*

9) The only case (at that time) where a driver was afforded relief as a result of a delay was a case from Pennsylvania where the driver "made a strong showing of substantial prejudice from a very long delay" from the office whose duty it was to impose the suspension. *Id.* 200 S.E.2d at 392.

Thus, right from the beginning the SC Supreme Court set forth that a prejudice analysis must be performed in these cases and discussed some of the items that should be considered as part of that analysis: 1) the length of the delay, 2) the person/agency that caused the delay, 3) the reason for the delay (if known), 4) whether the SCDMV engaged in any unreasonable delay or improper

conduct, 5) whether there has been a change the driver's circumstances that creates substantial prejudice as a result of the delay, and 6) whether the driver took any action to ensure the suspension was promptly started or whether the driver "simply kept quiet and continued to drive in the hope that his license suspension would somehow or other get overlook and never be imposed." Of exceptional significance in the *Chavis* case is the fact that the Record on Appeal apparently held no evidence regarding any of these issues other the length of the delay and the fact that the parties to the *Chavis* case were not the parties that caused the delay. Then based solely on the information regard these two points, the SC Supreme Court held that these delays were permissible and the suspensions could be imposed despite the delays. So, what *Chavis* tells us for certain is that in the absence of evidence of substantial prejudice to the driver as a result of the delay (or evidence of efforts by the driver to have the suspension promptly imposed), a delay of fifteen months for an administrative suspension is acceptable and a delay of one year is acceptable for suspensions triggered as a result of a criminal conviction.

The second case to address the delay issue was *Hipp v. S.C. Dept. of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416 (2009). The *Hipp* case had substantially different facts that the *Chavis* case. Mr. Hipp was convicted of DUI in Georgia in 1993. *Hipp*, 381 S.C. at 324. SCDMV was not notified of that Georgia DUI conviction until 2005. *Id.* Thus, the delay in the *Hipp* case was twelve years long. The SC Supreme Court found it significant that Title 56 of the South Carolina Code is replete with ten-year limitations for purposes of sentence enhancement and keeping record of convictions. *Id.* at 325-326. The SC Supreme Court concluded by stated that "under the unique circumstances of this case, the attempted suspension of [Mr. Hipp's] driver's license twelve years after conviction constitutes a denial of fundamental fairness." *Id.* at 326. Some of the unique circumstances of the *Hipp* case that were considered by the lower court were:

1) At the time of his arrest for DUI in Georgia, Mr. Hipp was a South Carolina resident attending college in South Carolina. 2006 WL 6105588 (S.C.Com.Pl.) ("In 1993, when he pled guilty, [Mr. Hipp] was a college student, ready, willing and able to endure the suspension period.")
2) After his guilty plea to the Georgia DUI, Mr. Hipp finished his college degree, returned to Charleston, and began working. *Id.*
3) Mr. Hipp continued to be gainfully employed and continued to lawfully drive a motor vehicle during this time. *Id.*
4) At the time SCDMV sought to impose the suspension against Mr. Hipp he was employed in a sales position requiring the use of a vehicle in his daily duties. *Id.*

Thus, Mr. Hipp showed "extreme prejudice" due to the delay in his case as a result of his change in situation from being a "college student, ready, willing and able to endure the suspension period" to being a person "employed in a sale position requiring the use of a vehicle in his daily duties." *Id.*

The third case to address the delay issue was *Wilson v. S.C. Dept. of Motor Vehicles*, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017). The *Wilson* case also had substantially different facts than the *Chavis* case. Ms. Wilson was arrested for DUI on November 22, 2008. *Wilson*, 419 S.C. at 205. Ms. Wilson pled guilty to this DUI offense on June 11, 2009. *Id.* Ms. Wilson enrolled in and completed the Alcohol and Drug Safety Program ("ADSAP"). *Id.* In August 2009, Ms. Wilson contacted a local branch of the SCDMV in an attempt to obtain a restricted driver's license. *Id.* At that time, the SCDMV informed Ms. Wilson that there was no record of a DUI conviction on her driving record. *Id.* Ms. Wilson then contacted the Clerk of Court who informed Ms. Wilson that her DUI conviction was sent to SCDMV on July 1, 2009. *Id.* Ms.

Wilson then contacted her insurance agency in an effort to file form SR-22 with the SCDMV. *Id.* Ms. Wilson's insurance agent went to a different local branch of the SCDMV to inquire about filing form SR-22 on Ms. Wilson's behalf and was similarly told that there was not a DUI conviction on Mr. Wilson's driving record. *Id.* Although Ms. Wilson's DUI ticket was adjudicated on June 11, 2009, both the 2010 and 2011 ticket audit reports submitted by the arresting agency stated the ticket was still "in court" (meaning unadjudicated). *Id.* The 2013 ticket audit report submitted by the arresting agency stated the ticket had been sent to the SCDMV. *Id.* Since SCDMV did not have a record of receiving the ticket in 2013, SCDMV requested the arresting agency send SCDMV a certified copy of the ticket. *Id.* SCDMV received the certified copy of Ms. Wilson's ticket on May 20, 2014, nearly five years after Ms. Wilson's conviction for DUI. *Id.* The Court of Appeals cited several reasons why the delay in Ms. Wilson's case was prejudicial as a result of the delay, including:

1) Ms. Wilson testified that she "lost her job after her DUI arrest, and it took her two years to find new employment as an office manager… that as part of her new job, she is required to travel on behalf of the company, and a suspension of her driver's license may cause her to lose her current job;"
2) Losing her current job would cause "severe economic hardship because [Ms. Wilson] has two mortgage payments and would not have a steady stream of income to make these payments;"
3) the Record on Appeal demonstrated that Ms. Wilson took several steps to ensure SCDMV was notified about her DUI conviction (including reporting the conviction to a local branch of the SCDMV, contacting the Clerk of Court to ensure the conviction

had been sent to SCDMV, and having her insurance agency report the conviction to a local branch of the SCDMV); and

4) the Record on Appeal demonstrated that Ms. Wilson enrolled in and completed ADSAP even though SCDMV had no record of her DUI conviction.[6] *Id.* at 208.

Thus, like Mr. Hipp, Ms. Wilson had a substantial change in her circumstances that made imposition of her DUI suspension five years after the conviction took place prejudicial to Ms. Wilson in a way that did not exist at the time of her conviction.

The last case to address the delay issue was *Davis v. S.C. Dept. of Motor Vehicles*, 420 S.C. 98, 800 S.E.2d 493 (Ct. App. 2017). Again, the *Davis* case had substantially different facts than the *Chavis* case. Mr. Davis was convicted of driving under suspension (hereinafter, "DUS") on October 20, 2006 (his third such conviction within a three year period of time). *Id.* 420 S.C. at 100. From October 20, 2006 through April 26, 2010 Mr. Davis's driver's license and driving privileges remained suspended for various violations. *Id.* On April 26, 2010, Mr. Davis regained his driver's license. *Id.* On September 22, 2011, SCDMV received notice of Mr. Davis's DUS conviction from October 20, 2006. *Id.* SCDMV did not immediately post this ticket to Mr. Davis's driving record because it had only received one side of the ticket and was unable to determine what offense Mr. Davis had been convicted of committing. *Id.* On April 20, 2012, SCDMV requested additional information from the sheriff's office regarding this DUS ticket. *Id.* On October 25, 2012, SCDMV received the additional information needed to process

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[6] *Brief of Appellant* argues that the OMVH hearing officer error in discussing the concept of "severe economic hardship" because "that is not the standard applied in any of the cases discussed by the hearing officer." *Brief of Appellant*, p. 4. This is inaccurate. As cited in this sentence, the *Wilson* court discussed whether losing her job would cause "severe economic hardship" to Ms. Wilson and specifically cited Ms. Wilson's inability to pay her two mortgage payments if she lost her job. Therefore, the *Wilson* court did consider a severe economic hardship measurement for weighing the prejudice and/or hardship caused by a delay such as this.

and post this ticket to Mr. Davis's driving record. *Id.* SCDMV posted the DUS conviction to Mr. Davis's driving record on December 5, 2012, which triggered a five year habitual offender suspension. *Id.* The Court of Appeals held that Mr. Davis would suffer prejudice and injury if he was suspended after the six year delay between his conviction for DUS and when that conviction was posted to his driving record because:

1) The six year delay exceeded the total time that Mr. Davis's suspension would have run if his habitual offender suspension had been timely imposed. *Id.* at 107.
2) Mr. Davis had already paid reinstatement fees, met the SCDMV's requirements for reinstatement of his driver's license, and had his driver's license reinstated for twenty months when SCDMV sought to impose the habitual offender suspension against him. *Id.*

Thus, like Mr. Hipp and Ms. Wilson, Mr. Davis had substantial changes in his circumstances that made the imposition of his habitual offender suspension six years after the triggering conviction occurred prejudicial to Mr. Davis in a way that did not exist at the time of his conviction.

Contrary to Mr. Hipp, Ms. Wilson, and Mr. Davis, Appellant's circumstances at the time SCDMV sought to impose this habitual offender suspension (January 2018) were nearly identical to those that existed at the time of Appellant's triggering conviction (January 2016). In support of her claims of prejudice and/or hardship Appellant presented the following evidence:

1) A letter dated October 31, 2017 from SCDMV informing Appellant her driver's license and driving privilege suspensions had ended. R. p. 23, lines 3-10 and 114. While it is true that this letter would not have been produced in October 2017 if SCDMV had received timely notification of Appellant's January 2016 DUS conviction, the mere creation and presence of this letter does not constitute prejudice

and/or hardship for Appellant. Appellant, unlike the SCDMV, was well-aware that she had an additional DUS conviction that had not yet posted to her driving record (the January 2016 DUS conviction) and for which she had not yet served her suspension. Therefore, Appellant knew she could not reasonably rely on the October 31, 2017 letter from SCDMV. In fact, if SCMDV had received timely notification of Appellant's January 2016 DUS conviction and Appellant still took all the steps necessary to clear of her other suspensions as of October 31, 2017, SCDMV would not have produced the October 31, 2017 letter and, instead, would have instructed Appellant that she still had to finish serving her habitual offender suspension before her driving suspensions would be fully cleared in South Carolina. Thus, mere receipt of the October 31, 2017 letter from SCDMV does not demonstrate prejudice and/or hardship for Appellant.

2) Next, Appellant testified that after receiving the letter dated October 31, 2017 from SCDMV she took action to get her driver's license back. R. p. 25, lines 4-7. The only action Appellant took after receiving the October 31, 2017 letter from SCDMV to regain her driver's license was to take and pass the knowledge and skills tests on or before November 13, 2017.[7] R. p. 172. Due to Appellant's many suspensions and the amount of time she had been suspended, successful completion of the knowledge and skills tests were required before SCDMV could legally issue Appellant a renewed driver's license. The knowledge test typically takes 15-20 minutes to take and costs

[7] The October 31, 2017 letter is a form letter that is produced by SCDMV's automated system when a person has met all their reinstatement requirements for all known suspensions. Thus, at the time the letter is produced, the driver will have already met all their reinstatement requirements for all known violations, such as paying reinstatement fees, serving their suspension time, enrolling in or complete ADSAP, etc… The exact reinstatement requirements vary from suspension to suspension, but are all tracked in SCDMV's Phoenix system.

$2.00. See http://www.scdmvonline.com/Fees. The skills test typically takes 20-30 minutes (depending on traffic) and costs nothing to take. See *Id.* and https://www.scdmvonline.com/qflowweba/appointment.aspx. Thus, although Appellant's testimony makes it sound as if she put great effort, resources, and money into regaining her driver's license after receiving the October 31, 2017 letter, that is simply not accurate. Moreover, no matter when Appellant sought to regain her driver's license, Appellant was going to have to take and pass the knowledge and skills tests. Having to take the knowledge and skills tests a bit earlier and at a cost of $2.00 does not demonstrate prejudice or hardship for Appellant.

3) Appellant next testified that after she received her driver's license back on November 13, 2017, she received another letter from SCDMV dated November 15, 2017 informing her that she was under suspension in Georgia and needed to resolve that Georgia suspension or SCDMV would have to cancel her driver's license. R. p. 26, lines 8-23, p. 27, lines 8-22, and 115. Appellant testified that she did clear up the issue in Georgia. R. p. 38, lines 11-14, and p. 116. On cross examination, Appellant admitted that whether this habitual offender suspension was started in 2016 or 2018 she would have had to eventually deal with the Georgia suspension issue and get that issue resolved to regain and keep her driver's license.[8] R. p. 40, lines 13-24. Thus,

[8] *Brief of Appellant* appears to argue that since Appellant received a letter dated December 14, 2017 informing Appellant that her issues with Georgia had been resolved, that Appellant could rely on that letter as a clearance for all matters having to do with the SCDMV. R. p. 118. Further, Appellant testified that she spoke with an SCDMV employee that informed her that Appellant "was good and … was cleared." R. p. 28, lines 2-11. While such a statement may have been true and accurate on December 14, 2017, once SCDMV was notified about Appellant's DUS conviction, SCDMV had to take action as set forth in State Law and did so. SCDMV can only give a driver information based on the information on file at the time a question is asked. So, if there is a violation or conviction that has not been communicated to

this issue does not demonstrate prejudice or hardship to Appellant, as either way she was going to have to deal with her Georgia suspension issues.[9]

4) Appellant further testified that she works for the United States Postal Service (hereinafter, "USPS") in North Charleston and lives in Seabrook approximately 1 ¼ to 1 ½ hours away. R. p. 34, line 24 – p. 35, line 15. Appellant testified that she began working for USPS in May 2016. R. p. 36, lines 15-18. On cross examination and redirect, Appellant admitted that USPS has offices in Beaufort and that she has previously applied for transfers to USPS offices located in Beaufort, but that she has not yet been selected for one of those transfers. R. p. 40, lines 4-6, and p. 45, lines 6-24. Significantly, although Appellant argues that the location of her job with USPS in comparison with where she lives constitutes a hardship and prejudice, the reality is that Appellant applied for and accepted the job with USPS while she was still under suspension for her prior habitual offender suspension, her June 1, 2013 DUS, and her May 31, 2013 DUS. R. p. 173. Further, Appellant's prior habitual offender suspension continued for approximately a year and half after Appellant started working for USPS and Appellant obviously worked out acceptable, reliable, and appropriate ways to get to her job at USPS despite those active suspensions. Significantly, Appellant accepted the USPS job knowing that she was actively under suspension for three different items and knowing that she should have two new

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SCDMV yet, that violation or conviction can change the answer given by SCDMV and its employees.

[9] In fact, since many States periodically increase their reinstatement fees and have requirements for special kinds of insurance notices to be filed for a period of time, bringing Appellant's Georgia suspension issue to Appellant's attention now may have ultimately saved Appellant increased reinstatement fee costs and may have relieved her of having to provide special insurance notices to Georgia.

suspensions getting ready to hit her driving record at any time (her DUS conviction would have triggered a DUS suspension and the habitual offender suspension at issue in this case), since the DUS conviction took place in January 2016 and Appellant accepted the USPS job in May 2016. Thus, even if SCDMV had been timely notified of Appellant's DUS conviction in January 2016, Appellant still would have had to contend with the long commute to her USPS job and the delay in this case has not changed that impact in any way. For this reason, Appellant's testimony about her USPS job does not demonstrate prejudice and/or hardship beyond that which would have been suffered had the DUS conviction been timely posted.

5) Appellant testified that she has two children, aged two and three, that attend daycare while she is at work. R. p. 35, lines 19-25. The hearing took place in April 2018. If Appellant's children were two and three years old at the time of this hearing, then in January 2016 they would have been approximately an infant (somewhere less than one year old) and one year old. Thus, Appellant still had the same dependents to take care of in January 2016 as she did in January 2018. So, again, while SCDMV understands that all driver's license and driving privileges suspensions cause hardship, there is no evidence of additional hardship or prejudice being created due to the delay in this case with regard to Appellant's children.

6) Appellant testified that she believes that if she cannot get to her work she would be fired. R. 36, lines 3-6. SCDMV agrees that if Appellant cannot get to her USPS job she would likely be terminated. In this regard, it appears that Appellant was attempting to liken her case to the *Wilson* case. In the *Wilson* case, however, Ms. Wilson had been fired from her job, took two years to locate a new job, had finally

found a new job, and her new job required her to drive to maintain the job. Thus, Appellant's situation at USPS is not similar with Ms. Wilson's situation. First, Appellant accepted the job at USPS in May 2016, right when should have been expecting to begin her DUS and habitual offender suspensions for her January 2016 DUS conviction. Second, Appellant is not required to drive for her job at USPS. Appellant testified that she works in a mail processing center and that batches of mail are sorted and then sent to branch offices of the USPS. R. p. 44, lines 9-20. Further, this same exact issue existed at the time Appellant accepted the job with USPS. As stated previously, at the time Appellant accepted the USPS job she was still actively under suspension for three things and one of those suspensions continued for approximately a year and a half after Appellant began working for USPS. Thus, this argument does not demonstrate any change in Appellant's circumstances from January 2016 to January 2018 that would make the delay cause any increase in prejudice or hardship for Appellant.

7) Appellant testified that there is no one that can give her a ride back and forth to Charleston for work.[10] R. p. 36, lines 7-10. This testimony was vague and undeveloped. As stated earlier, Appellant was under active suspension for at least three things when she accepted the USPS job and at least one of those suspensions continued for approximately a year and half after Appellant started working for USPS. Despite these suspensions, Appellant worked out a reliable, acceptable form

[10] Appellant also testified that after she got her job at the USPS she "stayed" with her cousin in Charleston, but that her cousin doesn't live there anymore. R. p. 36, lines 10-13. Significantly, there was no indication in the record of when Appellant's cousin moved from the Charleston area, nor did Appellant testify about how frequently she "stayed" with her cousin, whether her cousin is who drove her to her job at USPS, or in what way her cousin's residency impacted Appellant's job at USPS.

of transportation from her home to her job at USPS. Appellant had only regained her driver's license for two months and five days when SCDMV was notified of Appellant's DUS conviction that triggered this habitual offender suspension. Yet, Appellant's testimony appears to indicate, without any explanation or detail, that in those two months she completely lost her reliable, acceptable transportation method that she had been using for approximately a year and half. Significantly, Appellant provided no information about what happened to her reliable, acceptable transportation method that she had been using for approximately a year and half. Without any explanation or details about what supposedly occurred during this two month period, this argument does not demonstrate any change in Appellant's circumstances from January 2016 to January 2018 that would make the delay cause any increase in prejudice or hardship for Appellant.

8) Next, Appellant testified that she is a member of the South Carolina National Guard (hereinafter, "Guard") and has been a member since 2013. R. p. 36, lines 19-25. Appellant testified that part as part of her Guard duties she must report for duty once a month in Hopkins, South Carolina, which is "a little over 2 hours" from her home in Seabrook. R. p. 37, lines 10-22. Appellant further testified that she is in the 151 Aviation Unit within the Guard and has been in that unit since November 2013. R. p. 39, lines 11-16. On cross examination, Appellant admitted that the South Carolina Guard has units based in Beaufort and Charleston. R. p. 39, line 17 – p. 40, line 3. Since Appellant has been in the same Guard unit since November 2013, there is no evidence that imposition of this habitual offender suspension in January 2016 versus January 2018 increased the hardship and/or prejudice against Appellant in any way.

9) Finally, Appellant testified that she has had to undergo the expense of retaining an attorney to assist her with this case. R. p. 39, lines 1-3. There was no development of this testimony to explain how the cost of retaining an attorney to assist her with this case has anything to do with hardship and/or prejudice against Appellant due solely to the delay in this case. Further, to the extent that this argument might be considered or relied on to argue that hardship and/or prejudice against Appellant exists in this case, such an argument could be made of every habitual offender suspension. Habitual offender suspensions do not occur automatically at the time of a person's triggering 3rd conviction. Rather, SCDMV must be notified of the conviction, must post the conviction to the person's driving record, and must then determine that the person has the other two required prior convictions to trigger the suspension. Once SCDMV makes this determination, SCDMV must then determine a start date for the habitual offender suspension (keeping in mind the person's ability to challenge the suspension before the OMVH) and must then notify the driver of the suspension via letter. Back in January 2016, the e-citation system was not mandatory for courts in South Carolina. Therefore, as was done in this case, most convictions were reported to SCDMV via regular paper transmission (i.e. regular mail). As a result, typically the fastest a conviction would be reported to SCDMV and recorded on someone's driving record was approximately 2 weeks after their conviction. If that conviction triggered a habitual offender suspension, that suspension would start no earlier than thirty days after the date of the habitual offender suspension letter. Thus, generally the earliest any habitual offender suspension could start was approximately 6 weeks after the person's triggering 3rd conviction took place. If all any driver had to do was argue

that the delay between their conviction date and the start date of the suspension (even if it was the shortest time of 6 weeks) caused them undue hardship because they hired any attorney to help them challenge the habitual offender suspension, then no habitual offender suspension could ever be enforced in this State. Thus, for these reasons, Appellant's costs in hiring Appellant's Counsel to assist her with this case is not prejudice and/or hardship as discussed by the South Carolina Supreme Court or the South Carolina Court of Appeals for evaluating delay cases. Further, to hold that such attorneys fees and costs alone can cause prejudice and/or hardship would violate public policy, specifically the State's interest in keeping dangerous drivers off of South Carolina's roadways, particularly since no driving conviction can be posted to a person's driving the record the same day the conviction takes place.[11]

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[11] *Brief of Appellant* also argues that Appellant took initiative to find out if there were any issues that would affect her driving privileges being reinstated and compares Appellant's actions to those of Ms. Wilson from the *Wilson* case. Unlike Ms. Wilson, Appellant never specifically asked anyone at the SCDMV about this particular DUS conviction and why it had not posted to her driving record. Ms. Wilson, on the other hand, contacted SCDMV to specifically ask about her DUI conviction, contacted the Clerk of Court to ensure the DUI conviction had been sent to SCDMV, and had her insurance agent contact SCDMV regarding the DUI conviction. Ms. Wilson further enrolled in and completed ADSAP even though she had no other convictions on her record with SCDMV that required enrollment in or completion of ADSAP. Appellant's only actions in attempting to regain her driving privileges were to, essentially, ask SCDMV "Is there anything else I have to do?." Appellant never informed SCDMV that she had received another DUS conviction and that that DUS conviction did not appear to be on her driving record. Further, Appellant never made inquiry from the Clerk of Court (until this case was initiated) regarding whether her conviction for DUS was sent to SCDMV. Thus, Appellant's actions are exceptionally difference from Ms. Wilson's actions. Rather, Appellant's actions are much more similar to those of Mr. Chavis from the *Chavis* case, in that Appellant "simply kept quiet and continued to drive in the hope that [her] license suspension would somehow or other get overlooked and never be imposed." This failure on Appellant's part is further amplified by her extensive experience with DUS suspensions in South Carolina. Appellant has received at least four prior DUS convictions and all of them triggered DUS suspensions. R. p. 172-175. Thus, Appellant was well aware that she should have another DUS suspension triggered shortly after her DUS conviction at issue in this case.

During this hearing the Appellant presented evidence of how serving this suspension would be difficult for her, but she presented no evidence that demonstrated that the hardship in January 2018 was any different than the hardship in January 2016. This is a significant difference. As stated earlier, there is no question that driver's license and driving privilege suspensions cause difficulties for the suspended driver. The case law in this area, however, has specifically demanded that there be evidence presented that the hardship and/or prejudice has been increased in some way due to the delay. In this case, as outlined in detail above, Appellant simply hasn't presented any evidence that her hardship and/or prejudice has been increased due to the delay in this case. In fact, in looking at all the cases that have been previously reviewed by the higher Courts, the *Davis* case gives some pretty telling guidance. The *Davis* court held:

1) The six year delay exceeded the total time that Mr. Davis's suspension would have run if his habitual offender suspension had been timely imposed. *Davis*, 420 S.C. at 107.
2) Mr. Davis had already paid reinstatement fees, met the SCDMV's requirements for reinstatement of his driver's license, and had his driver's license reinstated for twenty months when SCDMV sought to impose the habitual offender suspension against him. *Id.*

Comparing Appellant's case to Mr. Davis's there are some significant differences. Despite Appellant's argument that the hearing officer ruled that a "bright line rule [now existed] that the delay between the incident date [sic, should be conviction date] and the suspension date would be fair anytime it does not exceed the time of suspension imposed," that is not the ruling made by the hearing officer in this case. *Brief of Appellant*, p. 9. Rather, the hearing officer merely noted that the *Davis* court found it significant that the delay in Mr. Davis's case exceeded the

total time of his habitual offender suspension if the suspension had been timely imposed. R. p. 92. In this case, of course, the delay is much smaller than the delay in the *Davis* case, six years versus two years. Such a difference in the amount of delay time is significant because the *Davis* court said that is significant when the total delay time exceeds the suspension period. In this case, two years (the delay time) does not exceed five years (the total suspension time). Therefore, the hearing officer was correct to find that the *Davis* case did not necessarily support Appellant's arguments in this case on the time delay issue alone. Further, although Mr. Davis and Appellant are also similar because they had both paid reinstatement fees and met the SCDMV's requirements for reinstatement of their driver's licenses, the timeframe again does not support Appellant's arguments. Mr. Davis had met his requirements and had his driver's license reinstated for twenty months versus Appellant's two months. Although this section of the *Davis* decision was not specifically fleshed out by the court, it appears that the court was addressing the fact that Mr. Davis had regained his driver's license and been driving on it for over a year and half when SCDMV attempted to impose his habitual offender suspension. Alternatively, while Appellant had also paid her reinstatement fees and met SCDMV's requirements for reinstatement of her driver's license, Appellant had only held her driver's license for two months when SCMDV notified her of her habitual offender suspension. Further, Appellant was notified within two days that she was again in danger of losing her driver's license due to the issues in Georgia. Then, once Appellant cleared up the issues in Georgia, she was notified approximately one month later about the habitual offender suspension. Thus, unlike Mr. Davis, Appellant did not go for over a year and half believing that her issues with the SCDMV were resolved. Appellant was well-aware that she had continuing issues with her driver's license and driving privileges.

In making her rulings, the hearing officer found:

1) "... SC DMV did not receive notice of Respondent's January 13, 2016 conviction for driving under suspension, ticket #57873GO, until January 18, 2018, after which time it promptly posted the ticket to Respondent's driving record and imposed the resulting habitual offender suspension." *Id.*

Thus, the hearing officer found that SCDMV had no part in the delay in this case and, upon being notified of the conviction, promptly posted to the conviction to Appellant's driving record.

2) "After considering the facts and circumstances of this case, I do not find that the imposition of the habitual offender suspension after the two-year delay would be fundamentally unfair or constitute a violation of due process." R. p. 91.

3) "In reaching its decision [in the case *Wilson v. S.C. Dept. of Motor Vehicles*, 419, S.C. 203, 796 S.E.2d 541 (Ct. App. 2017)], the Court found that Wilson 'demonstrated a high likelihood' of injury or potential prejudice' if her license was suspended. Specifically, Wilson presented evidence that she lost her job after her arrest for driving under the influence, and after a two-year job search, she obtained a new job that required her to travel on behalf of her company, and that the suspension of her license would cause her to lose her job and suffer severe economic hardship. Additionally, Wilson actively south to resolve the pending suspension in 2009 after she was convicted of driving under the influence." R. p. 91-92 (citations omitted).

4) "Neither Davis [referring to the Appellant in the case *Davis v. S.C. Dept. of Motor Vehicles*, 420 S.C. 98, 800 S.E. 2d 493 (Ct. App. 2017)] nor the SC DMV were at fault for the delay, and the court found that Davis would suffer prejudice if the suspension were imposed because he had fulfilled the requirements to have his license reinstated, his licensed had already been reinstated for twenty months, and the delay exceeded the total time of the five-year suspension." R. p. 92 (citations omitted).

5) "In Davis the court found significant that the delay exceeded the total time of the five-year habitual offender suspension. In Respondent's case, the delay was two years and clearly did not exceed the total time of the suspension. Additionally, in Davis his licensed had been reinstated for a total of twenty months after he fulfilled the requirements to have it reinstated before the SC DMV sought to impose the habitual offender suspension. In this case, Respondent's license had only been reinstated for approximately one month after she fulfilled the requirements to have it reinstated in December 2017 – just after her previous habitual offender suspension had ended."[12] R. p. 92.

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[12] *Brief of Appellant* takes issue with the hearing officer's reference to "one month" in this section. *Brief of Appellant*, p. 6. Since the hearing officer refers to December 2017 as the date that Respondent's license was reinstated, it is obvious that one month the hearing officer is referring to is the time between when Respondent finally resolved her issues in Georgia (thus

6) "Furthermore, unlike in Wilson, Respondent has not had a significant change in personal or professional circumstances in the two years between her conviction and the imposition of the suspension." *Id.*

7) "Unlike in Wilson, Respondent has maintained employment in the same position with the U.S. Postal Service in North Charleston since May 2016, and she has been a member of the same National Guard unit since November 2013. Additionally, despite her commute and the suspension of her driving privileges since at least 2012 for a prior habitual offender suspension and other violations, Respondent has maintained that employment and remained in the National Guard since that time. While Respondent testified that she will lose her job if unable to get back and forth to work, which would undoubtedly result in some economic hardship, Respondent also did not present specific evidence to show that she would suffer a severe economic hardship, as in Wilson, as a result." R. p. 93 (footnote omitted).

There is simply nothing in the Record on Appeal which challenges the factual findings and conclusions of the hearing officer in applying the law to those factual findings. Appellant has argued, essentially, that this Court should reweigh the factual findings and how the law is applied to those factual findings to end up with a different result than the hearing officer. Such reweighing of evidence is not permitted at the appellate level. *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) (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). Rather, with regard to the evidence, the appellate court is supposed to review the record to ensure substantial evidence exists to assure that the agency's action is properly supported. *See Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973). Since this Record contains substantial evidence to support the reasoning and determination

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ensuring that her South Carolina driver's license would not be cancelled due to the Georgia issues) and when SCDMV notified Appellant about her habitual offender suspension.

reached by the hearing officer, the Final Order and Decision should be affirmed. *See Lark v. Bilo, Inc.*, 276 S.C. 130, 276 S.E.2d 304.

III. DELAY IN DECISION FROM OMVH IN THIS CASE WAS NOT RAISED TO OR RULED ON BY THE OMVH AND, THEREFORE, IS NOT PRESERVED FOR APPEAL

In her closing arguments, Appellant argues that the delay that has occurred in this case since January 2018 has further prejudiced her. This is the time that has elapsed since Appellant requested her contested case hearing before the OMVH to challenge this suspension and then her appeal to this Court. First, this matter was never raised to the OMVH in any way. Appellant had the opportunity to file a motion for reconsideration and raise this issue, but failed to do so. Rule 15, OMVH Rules. Since this matter was not raised to or ruled on by the OMVH, it is not preserved for appeal. See *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [lower] court to be preserved."); *Brown v. S.C. Dept. of Health & Envtl. Control*, 348 S.C. 507, 519, 560 S.E. 2d 410, 417 (2002) ("[I]ssues not raised to and ruled on by the [lower court] are not preserved for appellate consideration.").

Second, to the extent that such a delay had been raised to the OMVH, Appellant took no action while the case was pending before the OMVH to try to "encourage" the hearing officer to issue a final decision in a faster manner. The hearing in this case took place on April 6, 2018 and the final decision was issued in this case on April 1, 2019. R. p. 5 & 93. While SCDMV agrees that it would be nice to receive a final decision more quickly than occurred in this case, unless a party sends some sort of communication to the OMVH and/or hearing officer indicating that the delay is causing the party some sort of harm and asking for the decision to be issued more quickly, then that party cannot expect the OMVH and/or hearing officer to know that such an

issue exists.[13] Additionally, despite Appellant's arguments in this regard, Appellant has actually benefitted from the delay in issuance of the decision in this case. As required by statute, once this contested case hearing was requested SCDMV placed Appellant's habitual offender suspension in "hearing request" status, which stays the suspension pending a final ruling in the case. Thus, in this case, Appellant's habitual offender suspension has been stayed, continuously, since February 8, 2018.[14] That means, other than other suspensions that may have occurred since February 8, 2018, Appellant has been able to drive while this case has been pending.[15] To the extent that Appellant is now trying to argue that delays as a result of her contested case hearing and this appeal have caused her additional prejudice and/or hardship for her, claims such as these are simply not provided for in the delay case law that has been issued by the courts. Further, even if the case law did allow for such an analysis, that would, functionally, leave the record open indefinitely for the Appellant to continue to add to her list of prejudice and/or hardship. Thus, such a procedure would substantially benefit drivers the more levels of appeal they decided to pursue and the more those appeals could be delayed.[16] Moreover, such a procedure could result in a never ending loop of claims of prejudice and/or hardship, followed by rebuttals from the State, etc… Rather than this never ending process, the relevant analysis is to examine

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[13] For example, drivers' attorneys routinely inform the OMVH hearing officers if their client is a CDL driver that cannot work until a decision is issued on an implied consent or BAC violation case and ask the hearing officers to issue a decision quickly.

[14] This stay is evidenced by the fact that this habitual offender suspension does not appear on the driving records contained at R. p. 110-112 and 172-175.

[15] Furthermore, as required by State law, that stay will remain in place until a final decision is issued in this case.

[16] For example, this case has suffered at least four months of delay based solely on the actions of Appellant (two months delay for filing Brief of Appellant, one month delay for Appellant to locate additional documents regarding the delay from the Clerk of Court [in addition to the 30 days given by the hearing officer for all the parties], one month delay due to Appellant failing to include the filing fee with her appeal to this Court and also failing to timely request a transcript of the OMVH hearing).

the prejudice and/or hardship that existed at the time the conviction took place versus the time the SCDMV attempted to enforce the suspension and determine whether the delay caused an increase in the prejudice and/or hardship.

CONCLUSION

Based upon the foregoing arguments, the Respondent SCDMV respectfully requests that the Final Order and Decision be affirmed and the Appellant's habitual offender suspension remain.

Respectfully submitted,

BRANDY A. DUNCAN, SC Bar # 72052
Assistant General Counsel
FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel
PHILIP S. PORTER, SC Bar # 4526
Deputy General Counsel
South Carolina Department of Motor Vehicles
Post Office Box 1498
Blythewood, South Carolina 29016-0020
Telephone: 803.896.9900
Email: hearingsprocessingunit@scdmv.net

November 4, 2019
Blythewood, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, v. South Carolina Department of Motor Vehicle, Respondent.	Docket No. 19-ALJ-21-0158-AP SCDL No. 11617948 **CERTIFICATE OF SERVICE**

FILED
NOV 04 2019
SC ADMIN. LAW COURT

I HEREBY CERTIFY that on November 4, 2019, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing Brief of Respondent South Carolina Department of Motor Vehicles to the following:

Arie D. Bax, Esquire
The Bax Law Firm, P.A.
2 Merchants Lane, Suite 210
Beaufort, South Carolina 29907

as Counsel for the Appellant.

Brandy A. Duncan
Assistant General Counsel

November 4, 2019
Blythewood, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	)	DOCKET NO. 19-ALJ-21-0158-AP **BRIEF OF APPELLANT**

Arie D. Bax
The Bax Law Firm, PA
2 Merchants Lane
Suite 210
Beaufort, South Carolina 29907
(843) 522-0980
Arie.baxlaw@gmail.com
Attorney for Appellant

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, South Carolina 29016
(803) 896-9902
Attorney for Respondent

RECEIVED
OCT 17 2019
DMV
GENERAL COUNSEL

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	)	DOCKET NO. 19-ALJ-21-0158-AP **BRIEF OF APPELLANT**

STATEMENT OF ISSUES ON APPEAL

I. Did the Hearing Officer err in finding that the imposition of the habitual offender suspension after a two-year delay was not fundamentally unfair?
II. Did the Hearing Officer err in finding that the imposition of the habitual offender suspension after a two-year delay did not constitute a violation of due process?
III. Did the Hearing Officer err in not finding that the imposition of the habitual offender suspension after a two-year delay was against public policy?

STATEMENT OF THE CASE

This matter came before the Office of Motor Vehicles Hearings ("OMVH") when Appellant requested a hearing to contest the South Carolina Department of Motor Vehicles (SCDMV) determination that she is a habitual offender. A hearing was held before OMVH Hearing Officer Brigette B. Autry on April 6, 2018. At the hearing it was revealed that Respondent unilaterally changed the conviction date of Appellant's qualifying offense from January 13, 2016 to January 11, 2018 on Appellant's DMV driving record. At the request of Appellant's attorney and with no objection from SCDMV, the court held the matter open for Appellant to have an opportunity to

supplement the record and provide additional documentation. Appellant requested a thirty (30) day extension which was also granted. Appellant submitted additional documents on May 14, 2018. SCDMV filed a response on June 7, 2018. On April 1, 2019, Hearing Officer Autry issued a Final Order and Decision concluding that the suspension of Appellant's driving privilege be sustained. This appeal follows.

This matter commenced by Appellants filing and serving of the notice of appeal on April 25, 2019. Appellant appeals the Final Order and Decision of Office of Motor Vehicles (OMVH) Hearing Officer Brigette B. Autry issued on April 1, 2019.

STATEMENT OF THE FACTS

Appellant was arrested on May 31, 2013 on the offense of driving under suspension ("DUS"). She was subsequently convicted of this charge on August 20, 2013. On June 1, 2013, Appellant received another DUS charge and was convicted on February 4, 2014. On April 7, 2015, Appellant was charged with a subsequent DUS and pled guilty on January 13, 2016. The ticket number for the April 2015 offense was ticket number 57873GO. For this particular ticket, SCDMV records indicated a conviction date of January 13, 2016. On January 24, 2018, Appellant was notified that she was declared a habitual offender and her driving privileges would be suspended. Appellant obtained counsel and requested a hearing.

At the hearing, SCDMV counsel argued that a notation on the bottom of the ticket itself indicated that January 11, 2018 was actually the date of conviction and decided, unilaterally, to change the date of conviction to January 11, 2018 on the day before the OMVH hearing without any evidence that this was the correct date of conviction. Appellant submitted additional documents including the certified records from Beaufort Magistrate Court and an affidavit from the public defender that

corroborated the Appellant, attesting to the fact that the actual date of conviction was in 2016 not 2018.

Appellant testified and presented supporting documents establishing that she had gone through considerable effort and expense to regain her driving privileges, not once but twice, after her prior suspension ended in October of 2017. Appellant's job with the US Postal Service and her military service with the National Guard require substantial commutes and would most likely be lost if the Appellant lost her driving privileges again after having regained them.

Without any explanation of why SCDMV maintained that it received a copy of the ticket number 57873GO on January 18, 2018, the Hearing Officer found that the SCDMV was not at fault in creating the two-year delay in imposing the suspension.

STANDARD OF REVIEW

The OMVH has exclusive jurisdiction over contested cases involving habitual offenders. S.C. Code Ann. § 56-1-1030(B) (Supp. 2016). Decisions by the OMVH hearing officer must be appealed to the ALC. S.C. Code Ann. § 1-23-660 (Supp. 2016). Accordingly, the ALC's decision "should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). "Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the [ALC] and is more than a mere scintilla of evidence." *Id.* at 605, 670 S.E.2d at 676.

ISSUE I

Did the Hearing Officer err in finding that the imposition of the habitual offender suspension after a two-year delay was not fundamentally unfair?

The Administrative Law Court should reverse the decision of the Hearing Officer and find that the SCDMV erred in not finding that the two-year delay of the habitual offender suspension is fundamentally unfair.

"A person's interest in his driver's license is property that a state may not take away without satisfying the requirements of due process. Due process is violated when a party is denied fundamental fairness." *Hipp v. S.C. Dep't of Motor Vehicles* , 381 S.C. 323, 325, 673 S.E.2d 416, at 417 (2009).

In *Wilson v. S.C. Dep't of Motor Vehicles*, 419 S.C. 20, 796 S.E. 2d. 541 (Ct. App. 2017), the court found that a five-year delay between *Wilson*'s conviction and her suspension where neither *Wilson* nor DMV were at fault for the delay was fundamentally unfair. That court considered that in *State v. Chavis, 200 S.E. 2d. 390, 261 S.C. 408 (S.C., 1973).* It was held that a one-year delay not attributable to either Chavis or the Highway Department did not stop the suspension when there was no showing that Chavis was prejudiced by the delay. However, in *Wilson*, the court found that even though neither party was at fault in the delay, *Wilson* demonstrated "a high likelihood of injury or potential prejudice." In the case at bar, the Hearing Officer erred in ruling that while the Appellant had presented evidence of potential prejudice and hardship, it did not rise to a "severe economic hardship" as that is not the standard applied in any of the cases discussed by the hearing officer.

Appellant testified that she is currently employed with the U.S.P.S. at a postal processing center in North Charleston and had been since May 2016. This requires her to commute more than an hour and a half each way to get to her job. Appellant further testified that she had actively sought a transfer within the postal service to a location closer to her home in Beaufort, SC and she was

informed that there was none available. Appellant testified that she did not become aware of her previous suspension until 2015. ROA p. 18. It was only then that she was able to consult with an attorney after she received the charges in the instant case. She became aware that the suspension would expire in 2017. ROA p. 20.

Appellant was able to obtain the job at the post office in May 2016. At that time, she was anticipating having just over a year left in which she would be subject to suspension. She was able to get by during that short period of time. Appellant testified that when she got the job, she was staying with a cousin who resided in Charleston, but that cousin does not live there anymore. ROA p. 36. This was not discussed by the Hearing Officer in her conclusions. Appellant further testified that she has no one who she can ride with to go to work. If she is not able to maintain her driving privileges, she would lose a good job with great benefits. ROA p. 36. Appellant is also a member of the Army National Guard which requires her to travel to Hopkins, S.C., which is over two hours from her home, at least once a month. ROA p. 37.

Appellant's initial suspension ended on October 18, 2017. She was subsequently notified that she was eligible to apply for her driver's license. Appellant testified that in order to get her license, she had to pay fines and fees and obtain the higher priced SR-22 insurance, which she did. ROA p. 25. Appellant had her license reissued on November 13, 2017. Almost immediately after, she received a letter from SCDMV that, based on some driving issues with Georgia, her license would be again suspended on January 14, 2018, if she did not clear up the issue with the Georgia DMV. Appellant testified that she spent almost a thousand dollars just to clear that up. ROA p. 26. Appellant clearly stated in her testimony that had she known her license would still be subject to suspension, she would not have spent the time and money getting her South Carolina driver's license, or the expenses on the Georgia driving issues. ROA p. 38.

On or about December 14, 2017 Appellant actually went to the SCDMV and asked them if everything was cleared up and to make sure she had done everything that she needed to do to make sure that her license was no longer in any danger of being suspended. She was told that she had done every-thing that she needed to do. ROA p. 28. Appellant submitted the letter she received on that date from the DMV that she was told documented this assertion. ROA p. 116. It wasn't until January 24, 2018, that she received notice of suspension based on an incident from almost 3 years prior. It should be noted that the Hearing Officer misstated the facts when she said Appellant's license had only for "approximately one month" when in fact it had been reinstated on November 13, 2017 and was not suspended again until the January 24, 2018 notice of HTO suspension at question in this case. ROA p. 107.

Respondent presented no evidence refuting the testimony of the Appellant regarding the prejudice Appellant would suffer. The order of the Hearing Officer discounts the prejudice presented by Appellant, as she failed to address the merits contained in the unrefuted testimony such as the details regarding her employment with the postal service or her additional obligations to the National Guard. If the court examines the totality of the circumstances and the exhibits presented, Appellant would submit that the Hearing Officer committed clear error in ruling that the Appellant had not demonstrate sufficient "potential prejudice". The Hearing Officer found that "unlike *Wilson*, Respondent has not had a significant change in personal or professional circumstances in the two years between her conviction and the imposition of the suspension." ROA p. 107. That is untrue. The incident at issue occurred on April 7, 2015. Appellant did not begin her employment at the U.S.P.S. processing center in North Charleston until May of 2016. At that time, she lived with a relative in Charleston. Since that time, the relative has moved and she is back in Beaufort, more than an hour commute each way. She has tried to transfer to Beaufort, but the opportunity is not available.

Like *Wilson*, travel is an essential part of her employment as part of her commute. Appellant has presented evidence that she has 2 young children at home. The Hearing Officer acknowledged that Appellant testified that she will likely lose her job if she is unable to get back and forth to work but then concludes that would be a hardship but not specific evidence to show "severe economic hardship." ROA p. 93. Appellant submits that the loss of a federal job with the benefits that come with it would be a severe economic hardship.

More importantly, the Hearing Officer added an elevated standard of consideration that is not required pursuant to the case law. There is no case law authorizing the Hearing Officer to an implement and apply a "severe prejudice" or "severe economic hardship" standard of the prejudice that is required to be shown. In Chavis, the only language used by the court is was a showing of "real prejudice".

This is further clarified by the *Wilson* case. In *Wilson*, *Wilson* presented to the court that she would suffer "severe economic hardship" if the suspension was imposed. The court declined to adopt that language as the standard and maintained that what was required was "a showing of a high likelihood of injury or *potential* prejudice" *Id.* at 497 (2017) (emphasis added). Even though the Hearing Officer also cited Davis in her order, the Davis case does not create any higher standard of proof required by the Appellant but simply follows the same standard of *Wilson* as to prejudice. Furthermore, in *Wilson*, the prejudice or injury suffered was the potential loss of employment and her then subsequent inability to pay two mortgages. The only distinguishable factor between from *Wilson* and the instant case is that Appellant would suffer more potential prejudice as she would not only lose her job, she could also lose her commission in the National Guard, and all of the benefits therefrom. ROA pp. 36-37.

Due to the clear showing of prejudice of the Appellant which exceeds the standard set forth in the precedent case law, the Hearing Officer committed clear error by not finding that the imposition of this suspension would violate fundamental fairness.

ISSUE II

Did the Hearing Officer err in finding that the imposition of the habitual offender suspension after a two-year delay did not constitute a violation of due process?

Pursuant S.C. Code Ann.§56-1-1020(d), "[f]or purposes of determining the number of convictions for separate and distinct offenses committed during any three-year period, a person shall be deemed to be convicted of an offense on the date the offense was committed if he is subsequently convicted of committing such offense." The date of offense in the instant case is April 7, 2015. Appellant did not receive notice that the incident would lead to another suspension until January 24, 2018, almost 3 years after the date of the incident.

As referenced in the argument above, the Appellant testified to the steps that she took to acquire her driver's license after being notified of her potential eligibility at the end of 2017. This is also included in the Hearing Officer's order. ROA pp. 87-88.

As mentioned in the prior argument, during the process by which Appellant regained her driving privileges in 2017, she specifically inquired of the SCDMV whether there were any other issues or problems that could affect her driving status. She was informed that there were none and given documentation from the SCDMV that purported to say that. ROA p. 116. The facts here are virtually the same as the facts in the *Wilson* case where both Appellants took the initiative to find out if there were any issues that would affect them having their driving privileges reinstated. *Wilson* asked multiple agencies including the clerk of court and, her insurance agent, and the SCDMV to find

out if there anything else that she needed to do. Appellant similarly went to the DMV, dealt with GA DMV at a fairly high expense, and went back to SCDMV and obtained verification from them that she had done everything she needed to do to get her license back. As with *Wilson*, the Appellant "did not simply 'keep quiet' about her suspension, but instead, actively sought a resolution to her pending suspension." *Id.* at 543.

As in *Wilson,* the Appellant took active steps to inquire of the relevant government agency, here the SCDMV, and receive an answer, even insisting on documentation of that answer. She now faces exactly what she sought to avoid in direct contradiction to what she was told by the SCDMV. To uphold the ruling of the Hearing Officer would create the precedent that citizens cannot rely on the answers and information they receive from the government, whether they are aware of these rulings or not. The Appellant submits that this court should rule that the Hearing Officer clearly erred in ruling that there was no violation of due process in this case.

ISSUE III

> Did the Hearing Officer err in not finding that the imposition of the habitual offender suspension after a two-year delay was against public policy?

To uphold the ruling of the Hearing Officer would violate public policy in two major ways. First, it would constitute a bright line rule that the delay between the incident date and the suspension would be fair anytime it does not exceed the time of suspension imposed. This goes against public policy as a matter of course as it is saying that regardless of the lawful endeavors taken by the individual during the delay that they had no fault in bringing on themselves, they stand to lose all that they have built. Moreover, even if the court agrees that the delay between the incident date and the suspension is an integral factor to be considered, the Appellant was charged with the last incident in question on April 7, 2015, thus, her suspension period would be over in less than 6 months. Now,

after all the time that has passed due to the process and the timing of the Hearing Officer's decision, SCDMV will require Appellant to basically start the suspension period all over again. This will then place Appellant in an untenable situation regarding her employment with an essential service of the federal government and her enlistment in the military as a result of a delay through no fault of her own.

CONCLUSION

For all the arguments and reasons stated in this brief, Appellant asserts that this Court should find that the findings of the Hearing Officer were in clear error and rule that the suspension of Appellant's driving privileges is fundamentally unfair and thus violates due process.

Arie D. Bax
ATTORNEY FOR APPELLANT

10/15/2019

Beaufort, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	)	DOCKET NO. 19-ALJ-21-0158-AP **PROOF OF SERVICE**

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant in the above-referenced case has been deposited in the United States Mail, postage prepaid, addressed to:

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, South Carolina 29016

This 15th day of October 2019.

Arie D. Bax
The Bax Law Firm, PA
2 Merchants Lane
Suite 210
Beaufort, South Carolina 29907
(843) 522-0980
Arie.baxlaw@gmail.com
Attorney for Appellant

Attorneys
Arie D. Bax
S. Naki Richardson-Bax•

Bax Law Firm

Contact Information
2 Merchants Lane Suite 210
Beaufort, SC 29907
P:(843) 522-0980
F:(843) 379-3115

April 25, 2019

Clerk of Court
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

RE: SCOMVH v. Shante Michele Eugene
Case Number: 2018-OMVH-02-0605-CC
SCDL Number: 11617948

To Whom It May Concern:

Enclosed please from Ms. Eugene's Notice of Intent to Appeal and Proof of Service. Also enclosed is Check Number 1305 in the amount of $150.00 for the requisite filing fee.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Arie D. Bax

Arie D. Bax, Esq.

CC: Brandy Duncan, Esq., Assistant General Counsel, SCDMV
South Carolina OMVH

COA - 0083



THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM SOUTH CAROLINA OFFICE OF MOTOR VEHICLE HEARINGS
BRIGETTE B. AUTRY, Hearing Officer

Case No. 2018-OMVH-02-0605-CC

South Carolina Department of Motor Vehicles,
Respondent,

vs.

Shante Michele Eugene, Appellant,

NOTICE OF INTENT TO APPEAL

Shante Michele Eugene, by and through counsel, hereby appeals the Final Order and Decision of Hearing Officer BRIGETTE B. AUTRY, dated and filed April 1, 2019, a copy of which is attached hereto. Counsel received written notice of the entry of the order on April 1, 2019.

Appellant's appeal is based on her belief that pursuant to S.C. Code §1-23-380(5), the administrative findings, conclusions, and decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and affected by other error of law.

April 25, 2019

Arie Bax
The Bax Law Firm, PA
2 Merchants Lane, Suite 210
Beaufort, SC 29907
Phone: (843) 522-0980, Fax: (843) 379-3115
arie.baxlaw@gmail.com
ATTORNEY FOR APPELLANT

RECEIVED
APR 29 2019
DMV
GENERAL
COUNSEL

Other Counsel of Record:

Brandy Duncan, Esq.
Assistant General Counsel
S.C. Department of Motor Vehicles
P.O. Box 1498
Blythewood, SC 29016
Phone: (803) 896-9937 Fax: (803) 896-9901
brandy.duncan@scdmv.net
ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM SOUTH CAROLINA OFFICE OF MOTOR VEHICLE HEARINGS
BRIGETTE B. AUTRY, Hearing Officer

Case No. 2018-OMVH-02-0605-CC

South Carolina Department of Motor Vehicles,
Respondent,

vs.

Shante Michele Eugene, Appellant,

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Notice of Intent to Appeal in the above referenced case has been deposited in the United States Mail, postage prepaid on April 25, 2019 addressed to:

Brandy Duncan, Esq.
Assistant General Counsel
S.C. Department of Motor Vehicles
P.O. Box 1498
Blythewood, SC 29016
Phone: (803) 896-9937 Fax: (803) 896-9901
ATTORNEY FOR RESPONDENT

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

this 25th day of April 2019.

Arie Bax
ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, vs. Shante Michele Eugene, Respondent.	Docket No. 18-OMVH-02-0605-CC DL# 11617948 **FINAL ORDER AND DECISION**

Appearances:
For Petitioner: Brandy Duncan, Esq.
For Respondent: Arie Bax, Esq.

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 Shante Michelle Eugene ("Respondent"). Respondent challenges the South Carolina Department of Motor Vehicles' ("SC DMV") determination that she is a habitual offender, which resulted in the suspension of her driving privileges for a five-year period.

Pursuant to written notice to the parties, a hearing was held before me on April 6, 2018, at the Jasper County Court House in Ridgeland, South Carolina. At the conclusion of the hearing, counsel for Respondent requested to hold the record open for at least thirty days to allow him an opportunity to provide additional documentation regarding the conviction date for Driving Under Suspension ticket #57873GO, which was used by the SC DMV in making its habitual offender determination. Provided it was given the opportunity to respond to any additional documentation submitted, the SC DMV did not object, and Respondent's request was granted. Counsel for Respondent subsequently requested a thirty-day extension to provide the documentation to the OMVH. Respondent's request for an extension was granted, giving Respondent until June 6,

2018 to submit supplemental documentation, and giving the SC DMV fifteen additional days to respond to it. On May 14, 2018, the OMVH received three additional exhibits from Respondent. On June 7, 2018, the SC DMV filed a response to the documents along with a copy of the ticket transmittal sheet from the Beaufort County Sheriff's Office that included ticket #57873GO,[1] after which time the record was closed. After considering all the evidence presented at the hearing as well as the supplemental documentation and arguments of the parties, I conclude that the suspension of Respondent's driving privileges must be sustained.

FINDINGS OF FACT

Having observed the witness 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 May 31, 2013, Respondent was charged with driving under suspension, ticket #78917GC, and she was convicted of that offense on August 20, 2013.

2. On June 1, 2013, Respondent was charged with driving under suspension, ticket #G281787, and she was convicted of that offense on February 4, 2014.

3. By letter dated February 21, 2014, the SC DMV notified Respondent that she had accumulated two major and three minor driving violations and warned that if she accumulated a total of three major traffic violations in a three-year period, she may be declared a habitual offender and her driving privileges would be suspended for five years.

4. On April 7, 2015, Respondent was charged with driving under suspension, ticket #57873GO, and she was convicted of that offense on January 13, 2016.[2]

---

[1] Although the documentation submitted by Respondent indicated that a copy had been forwarded to the SC DMV, when the OMVH inquired as to whether it intended to file any response, Ms. Duncan indicated that she had not received a copy of the documentation. Upon receipt, she promptly filed a response with the OMVH, which included a copy of the SC DMV ticket inventory sheet from the Beaufort County Sheriff's Office that included ticket #57873GO.

[2] The SC DMV's records initially indicated a conviction date of January 13, 2016, but at the hearing, the SC DMV argued that a notation at the bottom of the ticket indicated the conviction date was actually January 11, 2018, and that it had changed Respondent's driving record to reflect the conviction date as January 11, 2018. Based upon the supplemental documentation submitted by Respondent, which includes a certified copy of the ticket from the Beaufort County Magistrate's Office as well as the affidavit of Respondent's public defender, who represented her on that charge, I conclude the conviction date for ticket #57873GO was January 13, 2016.

5. The SC DMV received a copy of ticket #57873GO from the Beaufort County Sheriff's Office on January 18, 2018.[3]

6. On January 24, 2018, after Respondent was convicted of all three major traffic offenses, the SC DMV notified Respondent that it declared her a habitual offender and that her driving privileges would be suspended for a five-year period.

7. Respondent was previously declared a habitual offender and her driving privileges were suspended for a five-year period beginning October 18, 2012 and ending October 18, 2017.

8. Respondent testified that she was not aware she was already under a habitual offender suspension until she was charged with driving under suspension and habitual traffic offender ("HTO") on April 7, 2015.

9. Respondent was represented by attorney Jessica Saxon for her April 7, 2015 driving under suspension, 3rd offense, charge, ticket #57873GO. Respondent's charge was reduced to driving under suspension, 2nd offense, and she pled guilty to that charge on January 13, 2016.[4]

10. At the time Respondent pled guilty to the ticket #57873GO for driving under suspension on January 13, 2016, Respondent testified that she was aware that her driving privileges would remain suspended under her current habitual offender suspension until October 2017.

11. Respondent's habitual offender suspension ended on October 18, 2017, and she met the reinstatement requirements as of October 31, 2017.[5] On October 31, 2017, the SC DMV notified Respondent that her suspensions had ended and that she was eligible to obtain a South Carolina driver's license.

12. Respondent received her driver's license back on November 13, 2017, and on November 15, 2017, she received a letter from the SC DMV that indicated her driver's license would be cancelled effective January 14, 2018 based upon her driving privileges being cancelled, suspended, or revoked in the State of Georgia.[6]

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[3] The ticket inventory sheet is dated January 12, 2018, and it is stamped received by the SC DMV on January 18, 2018.
[4] The HTO charge was dropped.
[5] See Petitioner's Ex. #2, Respondent's driving record
[6] See Respondent's Ex. #2.

13. After taking steps to clear her suspension in the State of Georgia, including the payments of fines and fees in the approximate amount of $1000, on December 14, 2017, the SC DMV issued an Amended Notice of Driving Status, indicating that her pending suspension(s) had been cleared and that her driving privileges had been restored.

14. Respondent resides on Seabrook Island in Beaufort County and commutes approximately 1 ½ hours to and from her place of employment at a mail processing center for the U.S. Postal Service in North Charleston, South Carolina, where she has been employed since May 2016.

15. Respondent testified that she does not have anyone who could give her a ride to and from North Charleston, and that she will lose her job if unable to get back and forth to work. Respondent testified that there are no processing centers in Beaufort but that there are branch offices. She also testified that there are certain locations in Beaufort that have positions for the same job she performs at the processing center in North Charleston but that she has so far been unsuccessful in getting transferred to one of those positions in Beaufort.

16. Respondent has two children, ages 2 and 3, and they both attend daycare while Respondent works.

17. Respondent has been in the National Guard since November 2013. Respondent testified that she has to report to Hopkins, South Carolina, for drill once a month and that the commute is approximately two hours from her home. Respondent has been in the same National Guard unit since November 2013. Respondent testified that there are National Guard units throughout the state and placement in a particular unit is based upon interest and availability.

18. Respondent testified that she would not have spent the money, time, and effort to get her driver's license back at the end of 2017 if she had been aware in 2016 that her license would be suspended for an additional five years as a habitual offender.

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. 2018), 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 SC DMV. 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. 2018). 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. 2018).

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 SC DMV, 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. In this case, Respondent was convicted of three offenses of driving under suspension. Clearly, driving under suspension is considered a major traffic offense pursuant to §56-1-1020(a), and each of Respondent's driving under suspension offenses occurred on a different date within the course of a three-year period. Therefore, I conclude Respondent qualifies as a habitual offender as a result of being convicted of three separate and distinct major traffic offenses within a three-year period. Notwithstanding, Respondent argues that the five-year suspension of her driving privileges should be rescinded due to a two-year delay between the date of her January 13, 2016 driving under suspension conviction and the imposition of the resulting habitual offender suspension on January 24, 2018.

At the hearing, there was a factual dispute as to the conviction date for Respondent's third offense of driving under suspension, ticket #57873GO, for which she was charged on April 7, 2015. Although the SC DMV originally had the conviction date listed as January 13, 2016 on both its driving record and the notice of suspension issued to Respondent on January 24, 2018, prior to the hearing, the SC DMV changed the conviction date to January 11, 2018 based upon a handwritten notation at the bottom of the ticket by an unknown person. Respondent disputed the SC DMV's contention that the conviction date was January 11, 2018 rather than January 13, 2016. Based upon the supplemental documentation made a part of the record after the hearing by Respondent, which included a letter from the Beaufort County Magistrate's Office, a certified copy of the original ticket, and the affidavit of Respondent's attorney who represented her on the driving under suspension charge, I conclude the conviction date for ticket #57873GO was January 13, 2016. However, the SC DMV was not notified of the January 13, 2016 conviction until January 2018. A copy of the ticket inventory sheet from the Beaufort County Sheriff's Office dated January 12, 2018, and received by the SC DMV on January 18, 2018, indicates that the SC DMV did not receive notice of Respondent's January 13, 2016 conviction for driving under suspension, ticket #57873GO, until January 18, 2018, after which time it promptly posted the ticket to Respondent's driving record and imposed the resulting habitual offender suspension.

As a result, it appears that, through no fault of the SC DMV, there was a two-year delay between the conviction date and the date the habitual offender suspension was imposed. After considering the facts and circumstances of this case, I do not find that the imposition of the habitual offender suspension after the two-year delay would be fundamentally unfair or constitute a violation of due process.

In State v. Chavis, 261 S.C. 408, 200 S.E.2d 390 (1973), the Court found that a police department's one-year delay in notifying the South Carolina Highway Department of Chavis' conviction of driving under the influence did not estop the Highway Department from imposing a mandatory suspension of his driver's license as a result of the conviction. In reaching its conclusion that the suspension after the one-year delay did not violate fundamental fairness, the court noted that the delay was not attributable to the Highway Department and that there was no evidence to show that Chavis was prejudiced in any way by the delay or that he desired or acted to have the suspensions begin sooner. Id. at 411-412, 200 S.E.2d at 391. Notwithstanding, the court noted that there may be circumstances where the State would not have the right to suspend a driver's license after a long delay. Id. at 411, 200 S.E.2d at 391. Subsequently, in Hipp v. S.C. Dep't of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009) the Court held that the imposition of a driver's license suspension for a conviction of driving under the influence in the State of Georgia twelve years earlier, where neither Hipp nor the SC DMV were at fault for the delay, constituted a denial of fundamental fairness.

More recently, in Wilson v. S.C. Dep't of Motor Vehicles, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017), the Court of Appeals found that a five-year delay between Wilson's conviction for driving under the influence and the suspension of her driver's license, where neither Wilson nor the SC DMV were at fault for the delay, fell under the circumstances envisioned in Chavis and constituted a denial of fundamental fairness. In reaching its decision, the Court found that Wilson "demonstrated a high likelihood of injury or potential prejudice" if her license was suspended. Id. at 208, 796 S.E.2d at 543. Specifically, Wilson presented evidence that she lost her job after her arrest for driving under the influence, and after a two-year job search, she obtained a new job that required her to travel on behalf of her company, and that the suspension of her license would cause her to lose her job and suffer severe economic hardship. Id.

Additionally, Wilson actively sought to resolve the pending suspension in 2009 after she was convicted of driving under the influence. Id. at 209, 796 S.E.2d at 543.

Afterwards, in Davis v. S.C. Dep't of Motor Vehicles, 420 S.C. 98, 800 S.E.2d 493 (Ct. App. 2017), the Court found that a six-year delay between Davis' conviction for driving under suspension and the suspension of his driver's license constituted a denial of fundamental fairness. Davis was convicted of driving under suspension in October 2006, but because the SC DMV had not received notice of the 2006 conviction, Davis had his license reinstated in April 2010. Id. at 101, 800 S.E.2d at 494. In September 2011, the SC DMV received a copy of Davis' ticket, but because it was unable to determine what type of conviction Davis had received, it requested additional information from the sheriff's department in April 2012. The SC DMV received the requested information in October 2012, at which time the SC DMV sought to suspend Davis' license upon qualifying as a habitual offender. Id. Neither Davis nor the SC DMV were at fault for the delay, and the court found that Davis would suffer prejudice if the suspension were imposed because he had fulfilled the requirements to have his license reinstated, his license had already been reinstated for twenty months, and the delay exceeded the total time of the five-year suspension. Id. at 106, 800 S.E.2d at 497.

I find the facts of this case distinguishable from those in both Wilson and Davis. In finding that Davis would suffer prejudice based upon the imposition of the habitual offender suspension after a six-year delay, in Davis the court found significant that the delay exceeded the total time of the five-year habitual offender suspension. In Respondent's case, the delay was two years and clearly did not exceed the total time of the suspension. Additionally, in Davis, his license had been reinstated for a total of twenty months after he fulfilled the requirements to have it reinstated before the SC DMV sought to impose the habitual offender suspension. In this case, Respondent's license had only been reinstated for approximately one month after she fulfilled the requirements to have it reinstated in December 2017 – just after her previous habitual offender suspension had ended.

Furthermore, unlike in Wilson, Respondent has not had a significant change in personal or professional circumstances in the two years between her conviction and the imposition of the suspension. In finding that Wilson demonstrated she would be prejudiced by a suspension after five years, the Court looked at the fact that it had taken Wilson two years to find employment

after losing her job after her driving under the influence arrest and that travel for her company was a requirement of her new employment. Wilson also presented evidence she would suffer from severe economic hardship if she lost her job. Unlike in Wilson, Respondent has maintained employment in the same position with the U.S. Postal Service in North Charleston since May 2016, and she has been a member of the same National Guard unit since November 2013. Additionally, despite her commute and the suspension of her driving privileges since at least 2012 for a prior habitual offender suspension and other violations,[7] Respondent has maintained that employment and remained in the National Guard since that time. While Respondent testified that she will lose her job if unable to get back and forth to work, which would undoubtedly result in some economic hardship, Respondent also did not present specific evidence to show that she would suffer a severe economic hardship, as in Wilson, as a result. Therefore, based upon the evidence presented, I conclude that the imposition of the habitual offender suspension after the two-year delay would not be fundamentally unfair or constitute a violation of due process. Accordingly, the habitual offender suspension of Respondent's driver's license or driving privilege is sustained.

ORDER

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

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

AND IT IS SO ORDERED.

Brigette B. Autry

April 1, 2019
Columbia, South Carolina

Brigette B. Autry
Hearing Officer, OMVH

[7] See Respondent's driving record, Petitioner's Ex. #2.

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	)	Docket No. 19-ALJ-21-0158-AP **RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA

In The Administrative Law Court

APPEAL FROM
SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Brigette Autry, Hearing Officer

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, South Carolina
(803) 896-9902
Attorney for Respondent

Arie. D. Bax, Esquire
2 Merchants Lane Ste 210
Beaufort, SC 29907
843-522-0980
Attorney for Appellant

RECEIVED
JUL 17 2019
DMV
GENERAL
COUNSEL

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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

July 17, 2019

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

Re: S.C. Dept of Motor Vehicles
vs
Shante Michele Eugene
SCDL/Customer NO.: 011617948

Dear Ms. Shealy:

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

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

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

Sincerely,

Yolanda P. Williams
Administrative Coordinator, OMVH

Cc: Arie Bax, Esquire
Frank L. Valenta, SCDMV General Counsel

000003

Yolanda

ALJ Form #102a
July 2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	**NOTICE OF ASSIGNMENT** **(Appeal)** DOCKET NO. 19-ALJ-21-0158-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was initially filed on April 29, 2019 and resubmitted on May 28, 2019. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2018), the **Honorable H. W. Funderburk, Jr.**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

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

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

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

This the thirty-first day of May 2019.

Ralph King Anderson, III
Chief Administrative Law Judge

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

000004

FILED
MAY 31 2019
SC ADMIN. LAW COURT

COA - 0099

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
18-OMVH-02-0605-CC

South Carolina Department of Motor Vehicles

Petitioner,

vs.

Shante Michele Eugene,

Respondent.

HEARING

****

COPY

Friday, April 6th, 2018

The Office of Motor Vehicle Hearings Habitual Offender Declaration Hearing was held before the Honorable Brigette Autry, Hearing Officer, at the Jasper County Courthouse, Ridgeland, South Carolina, on the 6th day of April, 2018.

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

APPEARANCES

Hearing Officer:
The Honorable Brigette Autry

Brandy Duncan, Esquire
The Department of Motor Vehicles
Attorney for the Petitioner

Arie D. Bax, Esquire
Bax Law Firm, PA
Attorney for the Respondent

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OPENING REMARKS BY THE HEARING OFFICER:

HEARING OFFICER: All right. 18-OMVH-02-0605-CC, South Carolina Department of Motor Vehicles versus Shante Michelle Eugene. Driver's license number is 11617948. My name is Brigette Autry and I've been appointed to preside over this habitual offender declaration hearing. Which is being held on Friday, April 6th, 2018 at the Jasper County Courthouse. Present on behalf of the Department of Motor Vehicles is Brandy Duncan. DMV -- excuse me-- representing the DMV and Respondent is being represented by attorney Arie Bax. I would like to remind you this matter is recorded and is a matter of public record. And as I briefly explained before we went on the record, we're here because Ms. Eugene is challenging the Department of Motor Vehicle's decision to declare her a habitual offender, which would result in the suspension of her driver's license, her driving privileges for a period of five years and the sole scope of this hearing today is whether or not Ms. Eugene does or does not qualify as a habitual offender under the statute, okay? At this time anything in

opening from either party? Ms. Duncan, anything in opening?

MS. DUNCAN: Nothing in opening.

HEARING OFFICER: Okay, Mr. Bax, anything in opening?

OPENING STATEMENT BY MR. BAX:

MR. BAX: Yes, just a couple of things if you don't mind. I will present this argument at the closing but---

HEARING OFFICER: Okay.

MR. BAX: --- you know, part of the issue here is we allege that there was an improper delay by the South Carolina Department of Motor Vehicles in issuing the notice of suspension. And based on State versus Chavis and State versus Davis, that the issue of whether the suspension can be imposed is one that can be looked at and has been in the past in these very settings. But I'll get into that at the closing, I just wanted to give Your Honor a heads up.

HEARING OFFICER: Okay.

MR. BAX: Secondly, Your Honor, I have just been aware, today, that Ms. Duncan is going to be arguing that a note at the bottom of one of her exhibits, it would be I believe, according to

what I have, Your Honor, is the first page.

HEARING OFFICER: Okay.

MR. BAX: Um, it is the photo copy of ticket -- or ticket number 57873GO.

HEARING OFFICER: Uh-huh.

MR. BAX: She has indicated to me, that at the bottom there is a unknown little signature there, and then there's date under it that looks like either 1/11/18 or 1/8/18, it's kind of hard to tell.

HEARING OFFICER: Uh-huh.

MR. BAX: She's indicated that she's going to argue that that was the date of the conviction. She has changed the tenure driving record to reflect an 2018 conviction. Where as, up and to this point, the driving record, as well as the communication with my client, reflected 1/13/2016, as a conviction date. We did discuss the possibility of holding the record open, in order for me to provide additional documentation to show that the conviction was actually in 2016. I don't know that that will be necessary.

HEARING OFFICER: Okay.

MR. BAX: And there's, you know, obviously -- and I

can argue this at the end of the case, but I think it's fairly clear that if you look at the document, that the 2018 date written at the bottom is in different handwriting than that of the judge who entered the 1/13/16. The initials are MF, and I think the B after the B-R-B-O is Beaufort County. I'm not sure, but I know that the MF, I believe is Mark Fitzgivens, that is the magistrate, one of many magistrate judges in Beaufort County. I know Mark very well, I asked my client, I have a general description and she said yeah, that sounded like him. And as you see, there's some handwriting down below that says change amended to -- or charge, excuse me, amended to DUS 2nd Offense, MF again. That hand writing seems markedly differently from the handwriting of some individual that looks like their last name starts with V with a date underneath that. So I would certainly submit to the Court that there may not even be a need to hold the record open. I don't think that's an accurate date. Additionally, I did look on the public index for Beaufort County, and it lists the disposition date of this charge as January

13th, 2016.

HEARING OFFICER: Okay.

MR. BAX: But with that being said, Your Honor, I'd like to uh, have my client testify about these issues, if Your Honor would allow.

HEARING OFFICER: All right. Ms. Eugene, if you'll please raise your right hand and state your full name for me.

MS. EUGENE: Shante Michelle Eugene.

HEARING OFFICER: You swear to tell the truth, the whole truth and nothing but the truth?

MS. EUGENE: Uh-huh.

HEARING OFFICER: I'm sorry, Ms. Duncan, do you have something?

MS. DUNCAN: Well I did want to make sure that we moved in those documents that we had mail in on February 15th, moved those into the record ---

HEARING OFFICER: Okay.

MS. DUNCAN: --- and then I do have an updated ten year driving record ---

HEARING OFFICER: Okay.

MS. DUNCAN: --- for the Court that I'd like to move in as well. I just didn't know if you wanted to do that before Ms. Eugene testified or not.

HEARING OFFICER: Yes, and you are the Petitioner.

I'm looking at this, the document y'all sent in had it -- had it reversed, so yes.

MS. DUNCAN: Yes.

HEARING OFFICER: If you have any documents at this time, go ahead.

MS. DUNCAN: Well we would ask that all the documents that we mailed in on February 15th, 2018, that those be admitted into evidence ---

HEARING OFFICER: Okay.

MS. DUNCAN: --- as one exhibit.

THE COURT: Okay.

MS. DUNCAN: Those include tickets number 57873GO --

-

HEARING OFFICER: All right.

MS. DUNCAN: --- G281787, as well as the back page to that same ticket. Then ticket 78917GC, the notice of suspension dated January 24th, of 2018. The warning notice that was mailed on February 21st, 2014 and then a official ten year driving record for Ms. Eugene.

HEARING OFFICER: Okay.

MS. DUNCAN: We would ask that that be exhibited.

HEARING OFFICER: And I understand your argument with regard to the date, but do you have any other objection to these documents coming in?

MR. BAX: I don't have any objection to any of these.

HEARING OFFICER: Okay.

MR. BAX: Now the original ten year -- the ten year driving record that's attached to mine is that still reflects a 1/13/2016 conviction date.

HEARING OFFICER: Okay.

MR. BAX: I certainly would just object to the second driving record that she has talked about entering that she showed me today that reflects a date of today or yesterday at the bottom. And my indication from her is that the only difference is that she has gone in and changed that conviction date to the 2018 date.

HEARING OFFICER: Okay.

MR. BAX: And so that would be the basis of my objection because I don't think there was foundation for that change and it was not something that was sent to me before, as well.

HEARING OFFICER: Okay, Ms. Duncan?

MS. DUNCAN: Well, first off, no discovery was ever served in this case so we certainly didn't have to share anything with the Respondant prior to showing up at today's hearing, nor did we have to explain the discrepancy that we found with

how ticket 57873GO was entered into our system. But it is common practice of the DMV, anytime we find a mistake, whether it is to our detriment or our to our benefit, it is our common practice to always correct that mistake. So if we enter a date incorrect, whether it's an offense date or a conviction date, whether we just straight up enter whatever the charge was wrong, so if we enter something as a DUI, but it was actually an open container, we -- we always correct that, no matter what. So yes, in prepping for this case yesterday, I did notice this note at the bottom of the page that indicated that the charge was amended with a conviction date of 1/11/18 so I did ask our staff to change that on Ms. Eugene's record. And that is the only change that has been made to this record compared to what was already sent in on the 15th. Moreover, I did bring a certified copy of that record, as it has been changed to reflect what the DMV believes to be the correct disposition date based off, on what's written on the actual ticket.

HEARING OFFICER: Okay.

MS. DUNCAN: And as is supported by the date that

was submitted to us by the Court as well.

HEARING OFFICER: All right.

MS. DUNCAN: So we would ask that the changed ten year record be admitted as Petitioner's Two.

HEARING OFFICER: All right. I'm going to overrule your objection at this time, Mr. Bax. Of course I understand your position and maybe, it sounds like it's going to be an issue that I may have to make a determination about whether or not that the conviction date was the 2016 or 2018 date, okay? But I'm going to go ahead and allow this to the record unless you have any further objection to it?

MR. BAX: No, I don't, Your Honor, other than what I've obviously ---

HEARING OFFICER: Okay.

MR. BAX: --- already stated. You know, I think if you do look at the ticket, there's a -- there's a real -- like I said, I think the argument is that this is a fairly obviously written by somebody else.

HEARING OFFICER: Okay.

MR. BAX: I think it's going to be very easy for me, I mean it's just going to be more time and more inconvenience for everybody involved, but I

think it will be able to fairly easily proved that that 18 date is not the conviction date. But anyway ---

HEARING OFFICER: All right. Okay. Well these will be Petitioner's 1 and 2 then, all right?

MR. BAX: Okay.

HEARING OFFICER: I'm going to leave them right here in case any body needs to refer to them. I do have -- the original documents are of course in our file in Columbia. I -- the ones I have are printed on double sided sheets of paper bringing them here, but if you need to look at these, I'm sure Ms. Duncan has a bigger copy as well?

MS. DUNCAN: Yes.

HEARING OFFICER: Okay. But these had been previously submitted to our office, and to Ms. Eugene. So these are right here if you need to refer to them. But go ahead with -- I'll remind you, you're under oath, Ms. Eugene, okay? Okay, Mr. Bax.

MR. BAX: Thank you, Your Honor.

MS. EUGENE - DIRECT EXAMINATION BY MR. BAX:

Q: Ms. Eugene, just to kind of show the road map of where we're going for purposes of

organization, kind of assist us here today, I'm going to talk to you kind of about the history of how this all went about first.

A: Uh-huh.

Q: And then we're gonna talk a little bit about how it's -- how a suspension would impact your life, okay? First of all, in 2015, do you recall being issued a ticket for driving under suspension, third offense or subsequent?

A: Yes.

Q: Okay. Was it on or about April? In about April 2015?

A: Yes.

Q: Okay. As a result of that charge you became aware that you have a suspension, correct?

A: Yes.

Q: Now, I think the record does reflect there was a couple of driving under the suspension violations from 2013.

A: Yes.

Q: You were aware that you had a suspension back then, is that correct?

A: No.

Q: No? But you had 2013 charges, correct?

A: Yes.

Q: Did those get taken care of in court? Were you ever in court for those or were those tickets that got taken care of -- outside when you weren't present, TIA's?

A: One I went to court and the other I just took care of it.

Q: Okay. So, let me ask you this. When did you become aware that there was a suspension on your license related to 3/2012 qualifying convictions under DMV's HTO?

A: After I got out of jail and I talked to my public defender. She told me to go by the DMV and see if they had any copies of anything they ever mailed me.

Q: Uh-huh.

A: And they printed it out and gave me the copy of the habitual offender suspension.

Q: Now, for the Court, can you tell her when that -- was that after the April 2015 arrest?

A: Yes.

Q: And can you remember the exact date that you got out of jail?

A: I got out the next day.

Q: The next day, so it would have been approximately April 8th of 2017 -- '15, excuse

me?

A: '15?

Q: Yeah.

HEARING OFFICER: So your -- I'm sorry, testimony was that she after April of 2015, she went to the DMV and received a copy of this notice is what she's saying?

MR. BAX: Not this notice, Your Honor.

MS. EUGENE: The one from 2012. For habitual offenders. That's how I knew I was suspended.

HEARING OFFICER: A previous habitual offender suspension?

MS. EUGENE: Yes.

HEARING OFFICER: Okay.

MR. BAX: She had a previous one, Judge.

HEARING OFFICER: Sorry, I see that now, okay. I just want to make sure I understand her testimony.

MR. BAX: And if you need clarification, I have a letter about that I can enter as well.

HEARING OFFICER: I see it on her driving record, I just didn't realize. Okay, I understand.

Q: So at that time, you became aware that you had a five year HTO suspension, dating back from 2012, is that correct?

A: Yes.
Q: And that as it runs five years, so from 2012, it would run to 2017, is that correct?
A: Yes.
Q: And this was in 2015?
A: Yes.
Q: Okay. You also indicate to the judge that you talked to your public defender. Who was that?
A: Jessica Saxon.
Q: That's correct. Uh, and you said that an attorney appointed to you from the Public Defender's Office?
A: Yes.
Q: Okay. All right. Did Ms. Saxon continue to represent you throughout the discharge? The -- -
A: After I got out of jail?
Q: Yes.
A: Yes.
Q: She did? Okay. Did you appear in court a couple of times?
A: Yes.
Q: Was she present?
A: Yes.
Q: Okay. Did you meet with her in her office?

A: Yes.
Q: Discuss this case?
A: Yes.
Q: Okay. At some point or another, did y'all resolve this case in some way?
A: Yes, we did.
Q: Do you -- can you tell us about that? What -- what did you, with the assistance from Ms. Saxon, what did you do to resolve this case?
A: She got the third DUS dropped to the second, and the HBO (sic) got dismissed.
Q: So there was a criminal HTO that was also pending at that time?
A: Yes.
Q: And Ms. Saxon had informed you that the criminal HTO carries a potential penalty of up to five years in prison, correct?
A: Yes.
Q: Okay. When did that -- did you in front of a judge and enter that plea to the DUS second at some point?
A: Yes.
Q: When was that?
A: On January 2016.
Q: Okay, January 2016. Ms. Eugene, I want you to

tell the court that after that, you were aware that the suspension would be going to 2017 at that time, correct?

A: Yes.

Q: Okay. In 2017, did you receive anything from the Department of Motor Vehicles indicating that your five years was up?

A: Yes. I received it on -- I think it was the 31st or the 1st ---

MS. DUNCAN: I'm gonna object to the relevance of this.

Q: Okay.

HEARING OFFICER: What's your response Mr. Bax?

MR. BAX: Excuse me, I'm sorry. I didn't hear.

HEARING OFFICER: She objected on the ground of relevance.

MR. BAX: Your Honor, this is -- this goes to the fact that she was released of, this goes to the prejudice element of whether or not their delay prejudiced her. So this is to go to what her actions were in getting her license back.

HEARING OFFICER: Okay. I'm going to overrule your objection. Im gonna allow the testimony, okay?

MS. DUNCAN: Okay.

MR. BAX: Your Honor, I would like to hand my client

a document. I've provided these documents to Ms. Duncan.

Q: Can you identify that for me? Can you look at that and tell me if your recognize that?

A: Yes.

Q: And what is that, Ms. Eugene?

A: It was a letter from the DMV letting me know that my suspensions were -- has ended.

Q: Okay. At this time I'd move to enter this as Defendant's Exhibit 1, Your Honor.

HEARING OFFICER: Okay.

MS. DUNCAN: And again, we would renew our objection. This letter was issued prior to the conviction date listed on the ticket 57873GO. So, you know, obviously, the department can only take action on convictions, and only take action on convictions once they are submitted to us. So, you know, this letter was issued, it looks like almost -- almost 3 months before -- before the conviction came in this ticket. So it's irrelevant of whether she was able to be reinstated or not at that time.

MR. BAX: And obviously, Your Honor, we're presenting ---

HEARING OFFICER: For purpose of this hearing. I'm

sorry.

MR. BAX: Excuse me, I'm sorry. And obviously, Your Honor, we're presenting testimony in the form of sworn testimony, that the conviction was actually in 2016 and some good time later, in fact, almost 2 years after her conviction. This whole 2018 thing is obviously a matter of contention that we will have to address in closing, and afterwards if Your Honor decides.

HEARING OFFICER: We'll (inaudible).

MS. DUNCAN: Okay.

MR. BAX: Obviously in order to make our argument based on the evidence that we have presented the conviction happened in 2016.

HEARING OFFICER: I'm going to allow it. I'm going to go ahead an allow it. I'm gonna overrule your objection and I -- I mean, understand what your position is but I'm gonna allow it in. All right, so you said you wanted to move this in as Respondent's Number 1, correct?

MR. BAX: That's correct.

HEARING OFFICER: All right.

MR. BAX: Thank you.

(Respondent's Exhibit Number 1 was marked for identification purposes and admitted into the

record.)

HEARING OFFICER: And this is a letter dated October 31st, 2017. All right? Go ahead.

Q: Um, Ms. Eugene, after you received that, did you start taking actions to try to get your license back?

A: Yes.

Q: Okay. And why did you try to get your license back?

A: Because it said my suspensions were cleared and then I went and got my SR-22, like I was supposed to.

Q: Ms. Eugene, it's a little out of order here, but just so the judge will know, were you employed at that time?

A: Yes, I was.

Q: And where were you employed?

A: I work at the Post Office in Charleston.

Q: So the United States Postal Service? Okay. What all -- can you tell the judge, when you went to get your license ---

A: I'm sorry and I'm in the National Guard.

Q: And in the National Guard.

A: In Columbia.

Q: Were you able to obtain your license again

after receiving this letter?

A: Yes.

Q: Okay. At a time after you had received your license back, did you receive a notice indicating there was a problem that could result in another suspension?

A: Yes.

Q: I'm going to hand this to you. Can you look at that and tell me what that is, please?

A: It's another letter that was sent to me on the 15th of November indicating that I had some type of issue in Georgia with the Georgia DMV.

HEARING OFFICER: Okay.

Q: And that I needed to call them to clear up the situation, unless my license will be suspended again and I had until January of the following year to get it straightened out. So what I did was I called the DMV in Georgia and they told me everything I needed to do and I ended up paying them almost 1,000 dollars just to get that cleared up.

Q: At this time, I'd like to enter this as Defendant's 2.

HEARING OFFICER: Okay, any objections Ms. Duncan?

MS. DUNCAN: No objection.

HEARING OFFICER: Okay. Respondent's Number 2 then without objection. And this is a letter dated November 15th, 2017. All right, go ahead.

(Respondent's Exhibit Number 2 was marked for identification purposes and admitted into the record.)

MR. BAX: Thank you, Your Honor.

Q: So you went ahead and you went through the trouble of clearing that up. You had to call them, you had to pay a lot of money. You got that cleared up and then provided proof that it had been cleared up the South Carolina Department of Motor Vehicles?

A: I actually, the courthouse in the DMV sent it to the ---

Q: Oh, they sent it directly?

A: To the DMV.

Q: Okay.

A: And then everything was cleared.

Q: But you were able to confirm that they received it?

A: Yes.

Q: I'm going to hand you this document. Can you take a look at that and see if you can identify that for me, Ms. Eugene?

A: That is the notice that I got from the DMV. I actually was at the DMV asking them if everything was cleared up and she went and checked for me and she printed me off this letter saying that I was good and I was cleared. My license wasn't gonna get suspended again.

Q: And what is the date on that?

A: The date on that is the, December 14th.

Q: Of 2017?

A: 2017.

Q: And indicates ---

MS. DUNCAN: And, Your Honor, we would essentially issue the same objection that we had to Petitioner -- or excuse me, to Respondent's Exhibit 1, to this document. Although we do believe that, and Mr. Bax can correct me, but I think that he's trying to say that this letter is tied to Respondent's Number 2 and her clearing of that issue in Georgia.

MR. BAX: That's correct.

MS. DUNCAN: But we would object to it on the same basis as Respondent's Number 1.

HEARING OFFICER: Okay. Any response?

MR. BAX: Well and it also goes to the same thing of

going to where she has gone through, you know, getting her driver's license back. Obviously as, what's already in the record is the notice of this suspension, we're talking about which is dated through January 2018, so that it comes after this.

HEARING OFFICER: Okay.

MR. BAX: So she's gone through all this trouble to get her license back before being notified of this suspension.

HEARING OFFICER: All right, I'm going to overrule your objection at this time, okay?

MS. DUNCAN: Yes, ma'am.

HEARING OFFICER: You're offering this document into evidence, correct?

MR. BAX: That's correct. Defendant's 3, Your Honor.

HEARING OFFICER: All right, any other objection other than what you already stated?

MS. DUNCAN: No, ma'am.

HEARING OFFICER: Okay. Respondent's Number 3.

(Respondent's Exhibit Number 3 was marked for identification purposes and admitted into the record.)

MR. BAX: Thank you very much. Now ---

HEARING OFFICER: And that letter is dated December 14th. All right, 2017. Go ahead.

MR. BAX: Thank you, Your Honor.

Q: Ms. Eugene, since you got that letter dated December 14th saying that you're good, did you then receive a notification from the South Carolina Department of Motor Vehicles that you -- they were seeking to suspend your license for a five year period of time starting in 2018 and running all the way to 2023?

A: Yes.

Q: Okay. And that is the same letter that the Department of Motor Vehicle has already entered as an exhibit in this case, is that correct?

A: Yes.

Q: Okay. As a result of receiving that letter, did you come to my office and talk to me?

A: Yes.

Q: Okay. Well let me ask you this, I'll back up. I apologize, Your Honor. First, did you talk to your public defender that you had on the case?

A: Yes.

Q: Okay.

A: Yes, I called Ms. Saxon first.

Q: And why did you do that?
A: Because first I called the court because when I called the DMV, one of the representatives told me to -- I need to handle that with the courthouse. So I called the courthouse and I asked them what was going on, why wasn't my ticket sent, why was it -- I'm sorry. Why would just sent two years later, after I already got my license back and got everything situation -- situated and everything. They told me they don't know why. They then say they, that should have never been taken that long to even be put on my record, shouldn't have took two years. They then told me to call the DMV again, so I called back to the DMV. They told me that I need to request a hearing. At that point, I said okay, that's when I wrote the letter requesting a hearing but then I called the courthouse back again and she told me to come down and get all my, I guess it's called dispositions or -- and I went down there and got all three of them for each case.
Q: So you got separate copies of what the DMV has already entered? Copies of tickets and stuff like that?

A: Yeah.
Q: Okay. Now when you contacted the court, did you have anything specifically showing you that the either Magistrate or Circuit Court clerks had only sent your ticket to the DMV in 2018 or did you just -- you didn't know who was the delay?
A: No.
Q: You didn't know who was the delay?
A: They were trying to say it was the DMV.
Q: So did they affirmatively tell you that they thought they had already sent that conviction to the DMV two years ago?
A: Uh-huh.
Q: Okay.
HEARING OFFICER: Which was a yes or no for the record?
MS. DUNCAN: Objection, (inaudible).
A: I'm sorry, yes.
HEARING OFFICER: I'm sorry, what's your objection?
MS. DUNCAN: Objection, hearsay.
MR. BAX: And I was ---
MS. DUNCAN: She's testifying as to what other people told her supposedly happened which goes directly to the legal argument he's trying to

make about delay.

MS. EUGENE: Well, I actually have ---

MR. BAX: Well just let me respond.

HEARING OFFICER: Let your attorney ---

MR. BAX: It's okay. My response to that would be that it -- it's not hearsay if it's not offered for the truth of the matter asserted. In other words, this is information that she has and how she reacts to that information. She has no way of knowing whether it's true or not, she can only react to it. So I'm not offering it for the truth of the matter asserted, I'm offering it for proof of her mind set and what she did as a result of hearing that.

HEARING OFFICER: Okay.

MS. DUNCAN: If it's only offered for that purpose and is only treated in that same way by the Hearing Officer then we have no objection.

HEARING OFFICER: All right, I'll allow it for that purpose solely, okay?

MR. BAX: Uh-huh.

HEARING OFFICER: All right.

Q: After you got all this information, did you contact Ms. Saxon?

A: Yes.

Q: Okay. And was she able to help you as a attorney from the Public Defender's Office?
A: Not really, she said since it was over a year, she couldn't get the case reopened or I couldn't get the case reopened so she then told me to call Mr. Bx.
Q: Okay. And did she indicate to you that as a public defender, that she can't handle matters that are outside of criminal court?
A: (Nonverbal response.)
Q: Okay, all right. As a result, you came and met with me?
A: Yes.
Q: And did you retain my services to represent you in this hearing?
A: Yes.
Q: Okay. Okay, so we've covered the time line here. I want to ask you a few questions, you've already told the judge that you're currently employed with the United States Postal Services, correct?
A: Yes.
Q: And where is that job physically located at? Where do you actually work at physically?
A: In North Charleston.

Q: North Charleston. Now that's the big mail processing ---

A: Yes.

Q: --- place right there? Now Ms. Eugene, where do you physically live though? Where do you reside?

A: I'm in Seabrook.

Q: Which is for ---

A: Beaufort County.

Q: Beaufort County, okay. About how long is it, as far as a commute, from your residence to where the United States Postal Service office is that you work?

A: Depending on traffic, hour 15 to an hour and a half.

Q: Hour and a half? Okay, so you got to go up West Ashley then get on 526 ---

A: Yes.

Q: Correct? Okay. Do you have any children?

A: Yes, I have two.

Q: And what are their ages?

A: Two and three.

Q: And who watches them during the day when you're at work?

A: They're in daycare.

Q: Is that a daycare that you have to pay for?
A: Yes.
Q: Okay. If you cannot get to your work, would you be able to keep that or would you be fired, as far as you know?
A: I would be fired.
Q: Okay. At this point in time, is there anybody that can give you a ride back and forth to Charleston?
A: No. During the -- after I got the job, I was staying with my cousin in Charleston and she doesn't live there anymore, ever since her mother died so.
Q: Okay. And let's, just to make sure I back up, and I apologize. When did you get the job at the US Postal Services? When did you start that job?
A: I started in May of 2016.
Q: May of 2016, okay. You also have indicated to the judge that you are in the National Guard, correct?
A: Yes.
Q: How long have you been in the National Guard?
A: I've been in the National Guard since November 2013.

Q: Okay.
A: But I switched over from active duty to the National Guard. (Inaudible) ---
Q: So you were active duty military and then switched to National Guard?
A: Correct.
Q: What branch of the military were you active in?
A: Army.
Q: Army, okay. When and how often do you -- I guess that's the same thing. How often and where do you have to report for duty for National Guard service?
A: It's once a month. Last -- I got 2 weeks to do every month or I make up a day because I missed a drill.
Q: And where do you have to report to generally?
A: It's in Hopkins, South Carolina which is Columbia.
Q: It's near Columbia, South Carolina?
A: Yes.
Q: About how far is that from Beaufort?
A: It's a little over 2 hours.
Q: Does the National Guard service provide transportation to that?
A: No.

Q: Last question, Ms. Eugene. Once the five year suspension that you were aware of ended in 2017, did you do everything you thought you needed to do to get your license back?

A: Yes.

Q: Okay. And you did that in the way that you believe was legal? You consulted with the DMV, asked them what you needed to do, paid your money, correct?

A: Yes.

Q: And when you were notified of these problems with Georgia, you did the same thing with them, correct?

A: Yes.

Q: Okay. If you had been notified in 2016, that you had another five years starting at some point in 2016 or earlier, that your license would be suspended, would you have spent that money and that time and that effort to get your license if you knew that it was already suspended again for another five years?

A: No, because I don't think -- I wouldn't even have known I had any issues in Georgia if I didn't get my license back.

Q: If you hadn't gotten your license back. Okay.

And you've also gone through the expense of retaining an attorney. Is that correct?

A: Yes.

Q: I don't believe that I have any further questions on direct for Ms. Eugene at this time, Your Honor.

HEARING OFFICER: All right. And please answer any questions Ms. Duncan may have for you, okay?

MS. EUGENE: Okay.

MS. EUGENE - CROSS-EXAMINATION BY MS. DUNCAN:

Q: Ms. Eugene, what -- what unit are you in in the National Guard?

A: I'm in 151 Aviation.

Q: Okay. And have you been in that same unit ever since November 2013?

A: Yes.

Q: Okay. Does the National Guard have other units in South Carolina or only the unit that you're in?

A: They have other units throughout South Carolina, but it's hard to get -- it goes by what your MOS is. And whatever slot is available, that's where they're going to place you.

Q: Okay. Do they have units down in Beaufort?

A: Yes, they do.
Q: Do they have units in Charleston for example?
A: Yes they do.
Q: Okay. Does the Post Office have offices in Beaufort?
A: Yes, they do.
Q: Now, would you agree with me that even assuming that this conviction that we're arguing about what date the conviction is, that even -- let's just assume the correct conviction date is 2016, okay?
A: Uh-huh.
Q: If that was the correct conviction date and therefore this additional five year suspension started back in 2016, would you agree with me that in 2021, when this five years eventually ended, that if you didn't have anything else bad happen, that you still would have had to deal with this issue in Georgia?
A: Yeah, I would have if it didn't -- I mean, like I said, the only reason why I knew about the issue in Georgia is because I got my license back. I never knew I had any issues in Georgia ---
Q: Okay.

A: --- because nothing ever came up.
Q: Okay.
A: I haven't lived in Georgia since 2013.
Q: Do you have any idea why -- I'm going to hand you the Exhibit just so you can see it. This is Petitioner's 1 and it's page two. Its that ticket that we've been talking about. This highlighted section on here, do you have any -- since your testimony is that the conviction happened in January '16 which is of course the date right here by the judge's signature.
A: Uh-huh.
Q: Do you have any idea where this note down here would have come from?
A: I don't know. Because it looks like to me the same person that signed it on the ticket is the same person that signed and made this note and signed it but this is not the same person.
Q: Okay.
A: That's a totally different person but a different date for 2018.
Q: Okay. But you do agree that your charge was amended to a DUS 2nd?
A: Uh-huh.
Q: Which is what is written down here, correct?

A: Uh-huh.
Q: Okay. And you do agree that that these initials, kind of in that bottom right hand corner, match the initials that are under certified correct right here?
A: Yes.
Q: Okay. So, so really the part of this ticket, or the writing on this ticket, that you are questioning and that your attorney is questioning is this kind of scribbled signature that's right under the words charge amended and then the date that's written there? That's the part that you all have the question about?
A: No because that says charge amended to DUS 2nd offense with these initials. This is somebody's whatever this is, with 2018 on it.
Q: Okay. But yeah, that's what I'm asking. Is this part right here that I just circled, that's the part that you all are questioning?
A: Yes.
HEARING OFFICER: The signature and the date?
MS. EUGENE: Yes.
HEARING OFFICER: Okay. Just for the record, make it clear.
MS. DUNCAN: Yes, ma'am. And if you want we can

actually circle it on the actual exhibit. Well actually we don't have a copy here.

HEARING OFFICER: The original is already in Columbia, yeah.

MS. DUNCAN: I can leave this copy with you if you want. It's the same one and I can let Mr. Bax ---

HEARING OFFICER: I think clear for the record. It looks -- it looks like the last name begins with a -- possibly a V and has the date right under it so that's the portion you're ---

MR. BAX: It kind of looks like it might me Valentes (ph) to be honest with you. I don't know. I haven't seen his signature in years.

HEARING OFFICER: But that's the -- that's the signature and that date are the ones that are at issue.

MR. BAX: Yeah, that's correct.

HEARING OFFICER: Okay, all right.

MS. DUNCAN: Just for clarification on the record, I'm very familiar with Ms. Valentes' signature and that's not his signature.

MR. BAX: I just can't think of anyone else with a V that's involved with this case, so. All right.

HEARING OFFICER: Let's see if Ms. Duncan has any

more questions.

MR. BAX: Yes, ma'am.

HEARING OFFICER: And I'll let you ask her some more.

MS. DUNCAN: I don't believe I have any more questions at this time.

HEARING OFFICER: No more questions? All right. Mr. Bax, do you have anything else for us?

MR. BAX: Just a brief follow up based on -- on that cross. The United States Postal Service facility that you work in, in Charleston, that is a processing center. Is that correct?

A: Yes, it is.

Q: Okay. And at a processing center, that's where mail is received and then sorted to be sent back out to the branch offices in each town that actually people, the mailman leave and go take the mail to people's offices or their homes and stuff, correct?

A: Yes.

Q: Okay. I don't know if I'm explaining it very clearly.

HEARING OFFICER: I understand.

Q: You work in that processing center, correct?

A: Yes, I do.

Q: Okay. Is there any processing centers in Beaufort, South Carolina?
A: No, there's just branches.
Q: Regular branch post office?
A: Yes.
Q: So would you, to your knowledge, be able to do what you're doing for the Postal Service in an office in Beaufort?
A: With that issue, she's trying to make it seem like it's easy. It's not easy.
Q: Okay.
A: I can put in a transfer, which I have done time and time again to get into Beaufort, and only certain buildings have the job that I do at the processing center. So if they don't have an opening, I can't get in there. Otherwise, I have to stay in Charleston and work there until ---
Q: And so you have ---
A: --- something comes available.
Q: I'm sorry to interrupt. I apologize. So your testimony is you have tried to transfer to Beaufort?
A: Yes.
Q: And obviously you've already testified to her

Honor, that you live in Beaufort and you have two young children, right?

A: Yes.

Q: So even, I mean that would be advantageous to you, regardless, correct?

A: Uh-huh.

Q: But you still have this job in Charleston, correct?

A: Yes.

Q: Okay. And let me ask you one brief follow up that I failed to cover. Your employment with the Postal Services, as well as your -- well let me ask it this way. Who provides health care to you?

MS. DUNCAN: Objection. It's beyond the scope of the cross.

MR. BAX: Your Honor, I would argue that it isn't because she's basically saying that she could work anywhere. But the cross testimony is to show that she -- if she doesn't get the transfer with the postal service, then she loses that job. And the prejudice that I have to show as my job in order to meet the elements of Davis and Chavis, is to show that prejudice. And if losing that job would also result in the

loss of any kind of benefits, you know, health care, retirement, or anything like that, then that goes to the prejudice element.

MS. DUNCAN: Which he could have brought out on direct to begin with. I merely asked about whether it was possible to transfer. I did not ask about whether she might be terminated, or if anything like that, or she might lose her job.

HEARING OFFICER: I think she's correct on that, according to my notes. I don't think that was apart of the cross. So I'm going to sustain her objection to that.

MR. BAX: All right, no further questions for my client at this time, Your Honor.

HEARING OFFICER: All right. Anything -- any other evidence from you, Mr. Bax, at this time?

MR. BAX: I don't believe so, Your Honor. I would like to just make one quick note, and this is just for clarification. My client did receive, you know, documentation from the South Carolina Motor Vehicles just letting her know about this hearing. She already knew about it but she got it. It's got today's date and what's going on. Then attached to the back was another

suspension notice or something having to do with this same conviction we're talking about. And clarification wise, I'm not sure if we can address that now or if that has to be done in another hearing or how that's dealt with. I mean it would be concurrent with what's ---

MS. DUNCAN: This is actually not another suspension. This is just a list of what Ms. Eugene's reinstatement requirements ---

MR. BAX: Oh.

MS. DUNCAN: would be if this is sustained.

MS. EUGENE: It's another suspension.

MR. BAX: Yeah, it just lists a suspension with a six month period of time.

MS. DUNCAN: That's her DUS suspension.

MR. BAX: Right.

MS. DUNCAN: Which is not a suspension that can be considered by the OMVH because it is a mandatory suspension and they're only allowed to consider ones where there is a certain amount of discretion where the statue specifically says they can address it. DUS is not one of those. Additionally, it would have been untimely at this point.

HEARING OFFICER: In this hearing, all I can address

is whether or not the DMV -- whether or not Ms. Eugene qualifies as a habitual offender based upon having three convictions for three major traffic violations within a three year period and of course using those -- making that determination I have to -- if she was subsequently convicted of those offenses, I use the date that the pursuit the statue, the date that the convictions were incurred in determining that. So a suspension for, just for being convicted of DUS is really not relevant to this hearing. It's just whether or not she had these convictions or not, okay? And this habitual offender suspension is what I'm determining whether or not was proper.

MR. BAX: Okay. I just wanted to make sure there wasn't something else I needed to enter.

HEARING OFFICER: Yeah.

MR. BAX: For Your Honor's (inaudible). Obviously I would have a closing statement, but I think if she's the Petitioner, does she need to go -- I'm ---

HEARING OFFICER: Yeah, do you have anything closing?

CLOSING STATEMENT BY MS. DUNCAN:

MS. DUNCAN: Yes, Your Honor. We would -- we understand that there is an objection due to timeliness in this case. Certainly we believe that we have demonstrated based on page 2 of Petitioner's Exhibit 1, that this charge did not result in a conviction until January 11th of 2018 based on the hand written notes that are at the bottom of that ticket that specifically say charged amended to DUS 2nd offense, that are signed by the clerk who also signed -- or the judge who also signed up above in that box, certified correct. Moreover that the date that the ticket was submitted to D-M-V for the very first time is commensurate with a conviction date of 1/11/18 because we did not receive the ticket until 1/18/18. So approximately one week later. We believe, based on that, that there is not actually a delay in this case between the conviction and notifying the Respondent of the imposition of the suspension. But, even assuming that all of that is incorrect, that that note at the bottom didn't exist at all and assuming the conviction date is in January of 2016, what we would be talking about is essentially a two year delay.

What we have learned from the cases over the years is the Court basically says we don't like delays up to five years. They've not addressed anything less than five years except in the Hipp case and in out of state cases. What we've learned from the out of state cases is that delays up to three and a half years are perfectly fine. In fact, and I don't have all the cases with me because I didn't think to print them out, but it's a number of different states that have affirmatively held two years and up to three and half years is fine, but we have an in state case. It's the Hipp case and in that case, the total delay of time was approximately two years and Hipp said that was fine, now the delay time I believe between conviction and when it actually finally got to the DMV was maybe 13 or 14 months so it was approximately a year but the actual offense had occurred 2 years beforehand and the court discussed that a little bit in the Hipp case as well. We do learn from Chavis and Davis that there is a prejudice analysis that does need to be done anytime the court finds that there is a delay. In this case, Ms. Eugene has

testified that she began working for the Postal Service in May of 2016, so even if this conviction happened on the date that she said it happened on, she is in the same position now, as she would have been back in 2016, which is working for the Postal Service and having her license suspended for five years for the habitual offender. So her Postal Service job is -- shows no prejudice to her. She testified that she's been in the National Guard, stationed up in Hopkins near Columbia since November 2013, so again, we have the same issue. Even if this conviction happened in January of 2016, and not January of 2018, as it's noted at the bottom, she's still in the same position of having this five year suspension that's happening while she's in the guard. So none of those show any prejudice to her. Additionally, Ms. Eugene agreed with me that even if this ticket conviction had happened in January of 2016, eventually she would have had to deal with the issues in Georgia and the suspensions that she had down there. So again, she has no prejudice on that front. So for those reasons, even if this

Court finds that there is, that there was a delay, that this conviction actually happened in January 2016 and not January 2018, we believe that the Respondent has not shown prejudice to her serving the suspension at this is time and we would ask you -- well we would ask you number one, to find that the conviction on this ticket did in fact happen in January 2018. Or that even if it happened in January 2016, that there is no prejudice to the Respondent and that essentially, that when you look at the packet in whole, that yes she had the requisite, three convictions, that were necessary for her to be declared a habitual offended within a three year period of time and that therefore this suspension should be sustained.

HEARING OFFICER: Okay, all right. Mr. Bax.

CLOSING STATEMENT BY MR. BAX:

MR. BAX: Thank you very much, Your Honor. First of all, I did make copies. I wasn't sure if I was going to need them so I'll make sure I pass some copies to opposing counsel. And I'll pull mine out. This is from Chavis and this is Davis right there. And then I'm going to pass

these up to Your Honor. Because a lot of my argument is going to refer to those. First of all, and this is purely because as the years go on, I get more forgetful. To address -- just to respond to opposing counsel's agreement about the case of Hipp, if you look at Davis versus SCDMV, that that's incorrect, what she argued. Hipp did not stand for the bright line rule of two years, in fact there was a 12 year period of time involved in Hipp. It's referenced on page 4 of the particular layout of that opinion. They specifically address the Hipp case, because part of the reason that I use Davis versus all of the other cases is because Davis references each and every one of those cases and it is, from my understanding, the most recent case. It addresses Hipp, it addresses Chavis, it addresses Wilson and it kind of goes through each one of them. Hipp was a 12 year delay and they did rule that Hipp was -- they ruled for Mr. or Ms. Hipp, I don't remember if it was a man or a woman. And they said while it was not the response, it was not the fault of the D-M-V, it was not the fault of Mr. or Ms. Hipp as well, and in fact it was

Georgia's DMV that they said was responsible. However, regardless of that, they went to the test that it was a manifest denial of fundamental fairness or Mr. or Ms. Hipp. So it was ruled, at that time, that the suspension was improper. The counsel for DMV has argued that there are these bright line years, that it's five and it's four. If you look at the analysis in Davis and the analysis that it references from the other cases in Davis, there is no bright line rule. It is a rule where you look at whether or not there is a fundamental or manifest violation of the Defendant's right to due process and if they have been prejudice by that. Additionally, there's been an argument by counsel that we have not show prejudice. In several of these cases, including Hipp as well as I want to say Wilson as well, one of the things that the court agrees in those cases as well as in Davis, constitutes prejudice is going out and paying all the fees to get your license back. In this particular case, we've shown that Ms. Eugene paid the fees to South Carolina Department of Motor Vehicles to get her license back. She

provided and as you can see on the form, it says she would have had to provided a certain kind of insurance, as you know that's much more expensive insurance that lists it down. She either has to get that more expensive insurance or she has to pay a 40,000 dollar personal bond to the DMV or she has to get a surety bondsman in order to get her license, so she's done that. Additionally, she's had to go to the Georgia DMV and get this other matter cleared up, to which she's testified that she's paid 1,000 dollars. She has come and she has hired me for much more than that. So she's gone to those things, and this is a single mother of two, who is already commuting an hour and a half to her job in order to do this. In fact, she had to -- you know, after talking to me, she had to take some time before she could hire me. This is not some -- what I'm trying to say is that this is not someone -- this is not Donald Trump sitting here. She's not going to be able to just whip out a checkbook and write these things without consequence to her family. So these are things that have been ruled in the past as establishing prejudice. Additionally,

they've discussed prejudice as being something where the potential loss of a job is prejudice. We've got testimony that there is the loss of job on the table here. And we also have testimony that she has tried to transfer her service, or excuse me, her employment location with the United States Postal Services to Beaufort and has been denied thus far. There is no indication that it would change just because another suspension is put in place. Probably would be the reverse. So I think that we have established prejudice. Now finally, you know, as I said before, this is a two year delay. There is not bright line rule about what amount of time constitutes as the right amount of time. The courts have specifically refrained from saying this year is the deadline for when the delay is good and bad. There is no such thing and I certainly leave it up to Your Honor to take a look at those cases. You know, as I said before, Davis references each one but each one is site for those other cases is in there. As a result, you then go to the idea of the delay and how you establish that delay. There's been the argument that this

kind of unknown note is the conviction date. My client has testified that she went before the court in 2016 and plead. These are the initials that I recognize to be, you know, one of the magistrate judges in Beaufort County. I think that it's clear from looking at it that it's different hand writing on the note, even at the bottom it says charge amended to DUS 2nd and initialed with MF and BR or BO, that is quite different hand writing from the J something V name with a date below it. I'd also like Your Honor to note that the 1/11, the 11 looks like it was an 18 or a 1. It looks like it's been marked through. If you look at it, its been messed with. I don't know why. No idea. You know, I hate to have the inconvenience of it, but I think it's going to be fairly easy for us to establish that the actual conviction date was 2016. Obviously there is an open question that myself and my client cannot answer for you as to whether it was the local office, the magistrate court or whatever in Beaufort that didn't send it them until 2018 or whatever. They've indicated that they got it on 1/18/18. I do note that on that

same ticket, there's the stamp to the left bottom corner that say DMV received but it's illegible. You see that kind of like, faded out stamp there? Obviously, that, I don't know if that would have borne the same 1/18 date or what it has on it because we can't read it. I can refer to you to the back page of the prior ticket from 2013. This is the ticket that is G281787. There's a second page attached to that ticket that is the back. That one has a clear received stamp on it, so we can see that date. February 19th of 2014. One of things that stretches credulity in this case is you have the same organization, because it was the Beaufort County Sheriff's Office each time. Because if you look at the officers, they indicate Beaufort County because the 2015 was Officer Draisen. I know him. He's with Beaufort County, he's an investigator now. If you look at the second ticket that is from 2000- -- 7/31/2013, that is Corporal Davis, MG Davis, Beaufort County, Beaufort County Sheriff's Deputy. And finally, on the, I think this is the earliest one, which was June 25th of 2013, it's Officer A. Paul, with Beaufort

County. I've had cases with him, I know he's with Beaufort County. So this is all the same law enforcement agency, all the same court and the previous tickets were all provided within the reasonable amount of time from the conviction in the year 2013. This one, indicates on the public index, that I would ask Your Honor to take judicial notice of ---

MS. DUNCAN: Object. He keeps referencing the public index and he has not offered anything into evidence regarding public index.

MR. BAX: Your Honor, I can give my phone to you right now. I've got it right here. And in fact, we looked it up before Ms. Duncan looked it up. But I've got it up on my phone right now.

MS. DUNCAN: Well if we're going to allow further evidence at this point, then the are additional point about the public index that I'd like to make while he's got it up, if he's going to get into that.

MR. BAX: If she wants to argue the public index itself is a fraud, then she can go right ahead and do that but I will ---

MS. DUNCAN: No, that would not be my argument.

HEARING OFFICER: If you don't have any objection to him doing it, as long as you have a chance to respond, is what you're saying?

MR. BAX: That's fine with me.

MS. DUNCAN: Sure.

HEARING OFFICER: Okay. That's fine.

MR. BAX: And, Your Honor, I can hand you mine or you can look it up yourself. I looked it up by the exact ticket number which is the 57873GO, and at the bottom it lists Ms. Eugene and it's got disposition ---

HEARING OFFICER: She clicked on the ticket number itself, so ---

MS. DUNCAN: Yeah, I clicked on the ticket number to actually take her into it.

MR. BAX: Well in that case -- before though had it, and this will be the same thing, but that page before it had the disposition as being 1/13/2016, and once again, it says disposition date, 1/13/2016. That's what's on the public index.

MS. DUNCAN: But if you look under actions, you click actions, you go down. You see right here it says disposition remand to magistrate municipal court, sent to family court,

disposition date 1/13/16. And down here, that's the last thing that it says on here as well. Remand to magistrate on 1/13/16. So clearly the last thing, according to the public index that happened, was remanded to the magistrate on 1/13/16. Then, after that, DMV gets the ticket with this note at the bottom indicating that she, that the charges amended to a DUS 2nd and she was convicted. And that -- quite frankly, that is why we don't feel that the public index is very helpful in this case because it's clearly incomplete.

HEARING OFFICER: Okay.

MR. BAX: Well and, Your Honor, we would certainly contend that the disposition date is not the remand date. Whether they indicate whether or not there's a remand, the disposition date is for when the case is closed. You know, whether they put in remand or not, the thing is, this was being handled in general sessions court, it was remanded back because there was an HTO, which she testified to, which carries up to 5 years, which is handled in criminal -- general sessions court. As part of the plea arrangement that Ms. Eugene and her attorney

arranged with the officer ---

HEARING OFFICER: Uh-huh.

MR. BAX: --- the DUS was reversed to a 2nd and dealt with. Most likely, the remand date and the disposition date are just the same date because they do it on the same time.

MS. DUNCAN: I would object. (Inaudible) evidence in the record if that.

MR. BAX: But, that is listed as the disposition date. It's my experience, that's when the case is over with.

HEARING OFFICER: All right, well. I'm sorry, what was your objection?

MS. DUNCAN: My objection was to Mr. Bax's argument that the disposition date is often the same as the remand date because in his experience, they are often handled on the same date. There is no evidence in the record to support that argument.

HEARING OFFICER: All right. I'm gonna sustain the objection to that particular point.

MR. BAX: Well if I may, just briefly, just as far as that is concerned as well, you know, part of the issue here, Your Honor, is that this is something that we were made aware of today.

That everything that we had received from the Department of Motor Vehicles had down 1/13/2016 as the conviction date. If, and that's actually what they have entered as their exhibits. So referring to an exhibit that has been entered by the Department of Motor Vehicles, which is the letter of suspension, Your Honor, it lists conviction date 1/13/2016. So coming in here today, changing their story at the last minute based on this note that they're using, that I think is clearly incorrect, and then arguing that we can't argue against it because they've ambushed us, you know, that's pretty ---

MS. DUNCAN: Objection.

MR. BAX: --- disingenuous and it also -- if you'd allow me to finish, please.

MS. DUNCAN: I'm sorry, I'm trying to lodge an objection to the fact that you just said that we were ambushing you. That is not at all what happened. I explained to Mr. Bax that I noticed for the first time, this note, yesterday afternoon. As soon as I identified him and Ms. Eugene in this court room, I went back and talked to them and told them what was

going on. There has been no ambush in this case and I respectfully object and resent that characterization being made about the department because that is absolutely not happened in this case.

HEARING OFFICER: All right.

MS. DUNCAN: Nor has that the way the department approaches these cases. As I mentioned earlier, we are not required to submit these documents or provide them to the drivers ahead of time of these hearings, but we do that because we do not believe in ambushing people at these hearings. Their attorneys, or the individuals if they're coming by themselves.

HEARING OFFICER: She's correct. I mean, that -- I don't have any record of discovery being sought in this particular case and you are certainly having a chance to make your case and respond to their documents that they've put into today. So -- but we'll go ahead with your closing. Let's finish (inaudible) please.

MR. BAX: I would just add then, you know, regardless of how it happened, us becoming, obviously, what we were provided, and part of the reason there was no discovery request

because I had everything I needed. I mean the letter dated February 15th, 2018, with the exhibits, was available to me when she retained me. There was no need to go through discovery, I had everything that I needed. It was only that the tenor of that changed today. Regardless of how that happened, which is obviously a factor in contention, we can't be expected to provide evidence, because part of the objection before that objection, was the lack of evidence, okay? Well, I can't, well my client can't be expected to bring in evidence when we don't know that that's an issue, until the day of the hearing. If I had know ahead time, I would have already contacted Mark Fitzgivens, Jessica Saxon and the clerk's office. And I don't know, but I, you know, that would potentially resulted in evidence that we would have been able to present today.

HEARING OFFICER: Okay.

MS. DUNCAN: And, Your Honor, we would have no objection if counsel wants to do that to get further clarity on when this conviction date was. We would have no objection to leaving the record open to do that, so long as DMV is also

allowed to submit -- supplement the record with our ticket inventory reports which I have not seen, but I would anticipate will probably show Beaufort telling us over and over again the ticket's still in court, the ticket's still in court. So, sort of a what's good for the goose is good for the gander. Let you see both sides of whatever records may exist regarding whatever the correct disposition date is for this ticket.

HEARING OFFICER: Well I would be willing, without objection from the DMV, I'd be willing to hold the record open if you would like to supplement the record, Mr. Bax with -- to respond to the date.

MR. BAX: I feel like I have to do that at this point.

HEARING OFFICER: But the DMV will have a chance to respond. Of course you'd have to serve a copy ---

MR. BAX: Certainly.

HEARING OFFICER: --- of anything you'd put into evidence here on them as well, and they'd have a chance to respond as well, okay?

MR. BAX: Yes, Your Honor.

HEARING OFFICER: Would you like to do that?

MR. BAX: I'd be happy. Like I said ---

HEARING OFFICER: Okay, okay.

MR. BAX: --- I feel like I have no choice but to do that.

HEARING OFFICER: All right. Let's try to get everything in by around 30 days. I think that would be plenty of time.

MS. DUNCAN: Oh yeah. Well that's gracious plenty for me.

HEARING OFFICER: Okay.

MR. BAX: I think it will be plenty. The only reason is I'm going on vacation tomorrow.

HEARING OFFICER: Okay.

MR. BAX: This is the Friday before I go on spring break that my kid has been up me about.

HEARING OFFICER: Okay.

MR. BAX: You know so, I think I can do it in 30. So I will try.

HEARING OFFICER: Okay, well I'll keep it open. Let's try to get in 30 days. If there are any issue the ---

MR. BAX: Yes, ma'am. I will contact y'all immediately.

HEARING OFFICER: --- I will let you contact our

office. Make sure you copy Ms. Duncan on any correspondence you send to our office as well and we'll address it at that time.

MR. BAX: Yes, ma'am.

HEARING OFFICER: And once you submit whatever you have, then I'll let you make a response and submit it.

MS. DUNCAN: Well, and honestly, our ticket inventory is fairly easy to access. I honestly will probably be able to submit that before the end of next week.

HEARING OFFICER: Okay.

MS. DUNCAN: And I don't -- I don't feel like I need to respond necessarily after Mr. Bax.

HEARING OFFICER: Okay.

MS. DUNCAN: I just want to have that opportunity to also ---

HEARING OFFICER: Okay.

MS. DUNCAN: --- submit the ticket inventory information so that we can know what was everybody saying about this ticket as we went forward.

HEARING OFFICER: All right. Well that's fine with me to leave the record open. I think that will save a lot of time and hopefully determine

whether or not the ticket was received and the conviction date, whatever that was. Whether it was 2016 or 2018. So is anything to further in argument though before we close the hearing for the day?

MR. BAX: No, I think I've covered everything. I certainly hope I have.

HEARING OFFICER: Okay. Ms. Duncan, do you have anything else?

MS. DUNCAN: Nothing further in argument but I did want to clarify because Mr. Bax is completely right, I repeatedly referred to the Hipp case and I was not trying to refer to the Hipp case. I was having a brain cramp, as all of us do have from time to time. I was in fact trying to refer to the Chavis case.

HEARING OFFICER: Okay.

MS. DUNCAN: So, in my original argument, everything I was talking about, when I said the Hipp case, I was referring to the Chavis case, which -- because Mr. Bax actually brought a copy of it with him today, I'm able to see that the delay was 11 months. Between date of conviction and when the D-M-V finally received that conviction in the Chavis case.

HEARING OFFICER: All right.

MS. DUNCAN: Sorry. I just wanted to clarify that. That I was not trying to mislead the Court.

HEARING OFFICER: I understand.

MS. DUNCAN: But I just misremember the names of cases.

HEARING OFFICER: That's fine.

MR. BAX: Well and, Your Honor, just ---

HEARING OFFICER: And I have the cases to review.

MR. BAX: The Chavis case we'd contend is very different, as far as what they established whether there was prejudice or not. That individual did a lot of things differently than my client.

HEARING OFFICER: Okay. Anything else, as far as arguments concern?

MR. BAX: No, Your Honor.

MS. DUNCAN: No, ma'am.

HEARING OFFICER: All right. We'll go ahead and close the hearing for today but I'll leave the record open to submit that additional evidence, okay?

MR. BAX: Thank you, Your Honor.

MS. DUNCAN: Okay.

HEARING OFFICER: All right.

(There being nothing further, the hearing ended.)

CERTIFICATE

This is to certify the transcript of the hearing consists of sixty eight (68) pages. This transcript was prepared by me without the benefit of my being present during the hearing. Additionally, this transcript was prepared from a audio recording provided to me.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal this July 12, 2019.

Amanda J. Creel Godfrey
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 17, 2021

Appeal

Yolanda Williams Transcript Request

From: Yolanda Williams
Sent: Thursday, June 6, 2019 10:20 AM
To: Creel Court Reporting Inc; 'Coral Strickland'
Subject: Transcript Request for Shante Eugene, 18-OMVH-02-0605-CC
Attachments: Eugene, Shante Michelle_20180406-1302_01d3cda785f64c60.wma

Importance: High

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

Arie Bax
Attorney at Law
2 Merchants Lane, Ste 210
Beaufort, SC 29907
843-522-0980

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

Attorneys
Arie D. Bax
S. Naki Richardson-Bax*

Bax Law Firm

Contact Information
2 Merchants Lane Suite 210
Beaufort, SC 29907
P:(843) 522-0980
F:(843) 379-3115

May 28, 2019

Clerk of Court
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

RE: SCOMVH v. Shante Michele Eugene
Case Number: 2018-OMVH-02-0605-CC
SCDL Number: 11617948

To Whom It May Concern:

Please find enclosed Ms. Eugene's Notice of Intent to Appeal and Proof of Service, Check Number 1305 in the amount of $150.00 for the requisite filing fee and Affidavit of Olivia Cooke. Please let this letter memorialize the request for transcript for the appeal. On May 1, 2019 our office received a call from Ms. Susan Dickerson stating that we needed to request a transcript with a deadline. I was told that an email to Ms. Dickerson and the OMVH office would be sufficient for the request. I immediately called the OMVH office but wasn't able to reach any one. I reached OMVH on May 3, 2019 with the email pre typed and was told to send the transcript request to Ms. Yolanda Williams. I sent the email request immediately upon hanging up with OMVH office to Ms Dickerson and Ms. Williams. Immediately I informed Attorney Arie Bax that the email was sent and physically checked this task off my list. I am a recent hire to the Bax Law Firm. My email olivia.baxlaw@gmail.com was created on May 3, 2019. On May 3, 2019 the only email that I have in my sent box is a test to our other Paralegal Kate Oliver. Mrs. Oliver was out of office that day with her email locked out. I completely respect the process of the courts. I whole heartedly know that the request email was sent out on May 3, 2019. We cannot find any record in our system of the sent email. I can not explain why it did not reach your

offices or proof on my end. Please accept this letter as an apology for this technical communication error. We here at the Bax Law Firm work very hard to avoid these problems, however, a number of unforeseen factors seem to have contributed to this problem. If you have any questions, please do not hesitate to contact our office.

Sincerely,

Olivia Cooke

Paralegal to the Bax Law Firm

CC: Brandy Duncan, Esq., Assistant General Counsel, SCDMV
South Carolina OMVH

*licensed in North Carolina

www.baxlawfirm.com

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, vs. Shante Michele Eugene, Respondent.	Docket No. 18-OMVH-02-0605-CC DL# 11617948 **Affidavit of Olivia Cooke**

Appearances:
For Petitioner: Brandy Duncan, Esq.
For Respondent: Arie Bax, Esq.

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

Personally appeared before me, the undersigned Notary, the within named Olivia Cooke, who is a resident of Beaufort County, State of South Carolina and makes this statement and Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

I, Olivia Cooke, being duly sworn, do state:

1. I am a resident of Beaufort County, South Carolina.

2. I am at least 18 years of age.

3. I started employment with the Bax Law Firm on April 26, 2019.

4. The other Paralegal Kate Oliver was out of the office April 24, 2019 through May 6, 2019 and her email was locked out on May 3, 2018.

5. My email olivia.baxlaw@email.com was created May 3, 2018.

6. I received a telephone call on May 1, 2019 from Susan Dickerson stating that our Appeal packet did not include a transcript request. We had 10 days to request it and that an email would suffice. We needed to email the OMVH office and tag her in it. I obtained Ms. Dickersons email address from that call. I took notes of this conversation

7. I immediately called OMVH office after speaking with Ms. Dickerson. No one answered my call.

8. I reached the OMVH office on May 3, 2019. I was told to send the email to Yolanda Williams. I had the email pre-typed out and immediately inputted and sent to the email addresses I was given: ywilliams@scalc.net and sdickerson@scalc.net.

9. I immediately informed Attorney Arie Bax that I had sent the email and checked this task off my list.

10. Every task obtained is written and checked off as soon as completed.

11. I did not follow up on this matter knowing that the transcript process takes at least 30 days to receive the transcript.

12. I have only requested one other transcript for appeal in an unrelated case. With that limited knowledge, I completely understand the gravity and respect the process the court requires.

13. On Friday May 24, 2019 I was notified our office received the Notice of the Case Returned Unprocessed.

14. On May 24, 2019 I left a voicemail to Susan Dickerson and tried to reach Yolanda Williams.

15. I tediously went through all sent and draft emails from our office. I could not find the proof that an email was sent to any addresses involved.

16. On May 28, 2019 I contacted Susan Dickerson and explained the above situation and was told to resend packet, check with a letter stating what had occurred. I told her I would send her the same packet with the same check that had the original date and that it would also be emailed.

DATED this 28th day of May, 2019.

Signature
Print Name: Olivia Cooke

SWORN to before me this 28th
day of May, 2019.

KATE A. OLIVER
My Commission Expires
NOTARY PUBLIC
March 13, 2029
STATE OF SOUTH CAROLINA

Notary Public for South Carolina
My commission expires: 3/13/2029

STATE OF SOUTH CAROLINA

Administrative Law Court

Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



Phone: (803) 734-0550
Fax: (803) 734-6400
Web: www.scalc.net

Memorandum

To: Arie D. Bax, Esquire, In Re: Shante Michele Eugene v. SC DMV
From: Clerk's Office, Administrative Law Court
Date: April 30, 2019
Re: Compliance with ALC Rule 33

The Administrative Law Court received an incomplete request for appeal on April 29, 2019. According to ALC Rule 33:

> Any request which is incomplete or not in compliance with this rule (ALC Rule 33) or Rule 71 will not be assigned to an administrative law judge until all required information is received and the filing fee is processed.

Accordingly, your case will not be assigned until the following information is received from you:

_____ Filing Fee of $150.00 in accordance with ALC Rule 71
(A Request to Waive Filing Fee is enclosed, which you may use.)

_____ The name, address and telephone number of the party requesting the appeal, and the name, address and telephone number of the attorney or other authorized representative, if any, representing that party

_____ A general statement of the grounds for appeal as provided in S.C. Code Ann. §1-23-380(A)(6). The grounds for appeal may be amended, supplemented or modified in the statement of issues in the brief required by Rule 37(B)(1)

_____ A copy of the entire signed final decision which is the subject of the appeal and the date received

__X__ A copy of the request for a transcript

_____ A proof of service showing you sent your request for hearing to all parties.
(A proof of service form is enclosed, which you may use.)

emailed 5/1/19

_____ Other: _____

CC: SC DMV & SC OMVH

Please return the appropriate information within 10 days of the date of this Memorandum or your case will be returned to you unprocessed.

called on 5/1/19
never received
S

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, v. South Carolina Department of Motor Vehicles, Respondent.	**NOTICE** **CASE RETURNED UNPROCESSED**

Notice is given that a request for appeal and a $150.00 check were received on April 29, 2019, from Appellant.

On April 30, 2019, the Clerk's Office sent a Memorandum to the Appellant indicating that According to Rule 33, "Any request which is incomplete or not in compliance with this rule (Rule 33) or Rule 71 will not be assigned to an administrative law judge until all required information is received and the filing fee is processed." Appellant failed to comply within the specified time period.

THEREFORE, this case will not be assigned to an administrative law judge. Any document(s) submitted by the Appellant(s) or Respondents(s) will be returned with a copy of this Notice and the $150.00 check.

This the 22nd day of May 2019.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy

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

Attorneys
Arie D. Bax
S. Naki Richardson-Bax*

Bax Law Firm

Contact Information
2 Merchants Lane Suite 210
Beaufort, SC 29907
P:(843) 522-0980
F:(843) 379-3115

April 25, 2019

Clerk of Court
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

RE: SCOMVH v. Shante Michele Eugene
Case Number: 2018-OMVH-02-0605-CC
SCDL Number: 11617948

To Whom It May Concern:

Enclosed please from Ms. Eugene's Notice of Intent to Appeal and Proof of Service. Also enclosed is Check Number 1305 in the amount of $150.00 for the requisite filing fee.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Arie D. Bax

Arie D. Bax, Esq.

CC: Brandy Duncan, Esq., Assistant General Counsel, SCDMV
South Carolina OMVH

FILED
APR 29 2019
SC ADMIN. LAW COURT

*licensed in North Carolina

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM SOUTH CAROLINA OFFICE OF MOTOR VEHICLE HEARINGS
BRIGETTE B. AUTRY, Hearing Officer

Case No. 2018-OMVH-02-0605-CC

South Carolina Department of Motor Vehicles,
Respondent,

vs.

Shante Michele Eugene, Appellant,

NOTICE OF INTENT TO APPEAL

Shante Michele Eugene, by and through counsel, hereby appeals the Final Order and Decision of Hearing Officer BRIGETTE B. AUTRY, dated and filed April 1, 2019, a copy of which is attached hereto. Counsel received written notice of the entry of the order on April 1, 2019.

Appellant's appeal is based on her belief that pursuant to S.C. Code §1-23-380(5), the administrative findings, conclusions, and decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and affected by other error of law.

April 25, 2019

Arie Bax
The Bax Law Firm, PA
2 Merchants Lane, Suite 210
Beaufort, SC 29907
Phone: (843) 522-0980, Fax: (843) 379-3115
arie.baxlaw@gmail.com
ATTORNEY FOR APPELLANT

FILED
APR 29 2019
SC ADMIN. LAW COURT

Other Counsel of Record:

Brandy Duncan, Esq.
Assistant General Counsel
S.C. Department of Motor Vehicles
P.O. Box 1498
Blythewood, SC 29016
Phone: (803) 896-9937 Fax: (803) 896-9901
brandy.duncan@scdmv.net
ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM SOUTH CAROLINA OFFICE OF MOTOR VEHICLE HEARINGS
BRIGETTE B. AUTRY, Hearing Officer

Case No. 2018-OMVH-02-0605-CC

South Carolina Department of Motor Vehicles,
Respondent,

vs.

Shante Michele Eugene, Appellant,

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Notice of Intent to Appeal in the above referenced case has been deposited in the United States Mail, postage prepaid on April 25, 2019 addressed to:

Brandy Duncan, Esq.
Assistant General Counsel
S.C. Department of Motor Vehicles
P.O. Box 1498
Blythewood, SC 29016
Phone: (803) 896-9937 Fax: (803) 896-9901
ATTORNEY FOR RESPONDENT

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

this 25th day of April 2019.

Arie Bax
ATTORNEY FOR APPELLANT

FILED
APR 29 2019
SC ADMIN. LAW COURT

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COA - 0179

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, vs. Shante Michele Eugene, Respondent.	Docket No. 18-OMVH-02-0605-CC DL# 11617945 **FINAL ORDER AND DECISION**

Appearances:
For Petitioner: Brandy Duncan, Esq.
For Respondent: Arie Bax, Esq.

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 Shante Michelle Eugene ("Respondent"). Respondent challenges the South Carolina Department of Motor Vehicles' ("SC DMV") determination that she is a habitual offender, which resulted in the suspension of her driving privileges for a five-year period.

Pursuant to written notice to the parties, a hearing was held before me on April 6, 2018, at the Jasper County Court House in Ridgeland, South Carolina. At the conclusion of the hearing, counsel for Respondent requested to hold the record open for at least thirty days to allow him an opportunity to provide additional documentation regarding the conviction date for Driving Under Suspension ticket #57873GO, which was used by the SC DMV in making its habitual offender determination. Provided it was given the opportunity to respond to any additional documentation submitted, the SC DMV did not object, and Respondent's request was granted. Counsel for Respondent subsequently requested a thirty-day extension to provide the documentation to the OMVH. Respondent's request for an extension was granted, giving Respondent until June 6,

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2018 to submit supplemental documentation, and giving the SC DMV fifteen additional days to respond to it. On May 14, 2018, the OMVH received three additional exhibits from Respondent. On June 7, 2018, the SC DMV filed a response to the documents along with a copy of the ticket transmittal sheet from the Beaufort County Sheriff's Office that included ticket #57873GO,[1] after which time the record was closed. After considering all the evidence presented at the hearing as well as the supplemental documentation and arguments of the parties, I conclude that the suspension of Respondent's driving privileges must be sustained.

FINDINGS OF FACT

Having observed the witness 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 May 31, 2013, Respondent was charged with driving under suspension, ticket #78917GC, and she was convicted of that offense on August 20, 2013.

2. On June 1, 2013, Respondent was charged with driving under suspension, ticket #G281787, and she was convicted of that offense on February 4, 2014.

3. By letter dated February 21, 2014, the SC DMV notified Respondent that she had accumulated two major and three minor driving violations and warned that if she accumulated a total of three major traffic violations in a three-year period, she may be declared a habitual offender and her driving privileges would be suspended for five years.

4. On April 7, 2015, Respondent was charged with driving under suspension, ticket #57873GO, and she was convicted of that offense on January 13, 2016.[2]

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[1] Although the documentation submitted by Respondent indicated that a copy had been forwarded to the SC DMV, when the OMVH inquired as to whether it intended to file any response, Ms. Duncan indicated that she had not received a copy of the documentation. Upon receipt, she promptly filed a response with the OMVH, which included a copy of the SC DMV ticket inventory sheet from the Beaufort County Sheriff's Office that included ticket #57873GO.

[2] The SC DMV's records initially indicated a conviction date of January 13, 2016, but at the hearing, the SC DMV argued that a notation at the bottom of the ticket indicated the conviction date was actually January 11, 2018, and that it had changed Respondent's driving record to reflect the conviction date as January 11, 2018. Based upon the supplemental documentation submitted by Respondent, which includes a certified copy of the ticket from the Beaufort County Magistrate's Office as well as the affidavit of Respondent's public defender, who represented her on that charge, I conclude the conviction date for ticket #57873GO was January 13, 2016.

5. The SC DMV received a copy of ticket #57873GO from the Beaufort County Sheriff's Office on January 18, 2018.[3]

6. On January 24, 2018, after Respondent was convicted of all three major traffic offenses, the SC DMV notified Respondent that it declared her a habitual offender and that her driving privileges would be suspended for a five-year period.

7. Respondent was previously declared a habitual offender and her driving privileges were suspended for a five-year period beginning October 18, 2012 and ending October 18, 2017.

8. Respondent testified that she was not aware she was already under a habitual offender suspension until she was charged with driving under suspension and habitual traffic offender ("HTO") on April 7, 2015.

9. Respondent was represented by attorney Jessica Saxon for her April 7, 2015 driving under suspension, 3rd offense, charge, ticket #57873GO. Respondent's charge was reduced to driving under suspension, 2nd offense, and she pled guilty to that charge on January 13, 2016.[4]

10. At the time Respondent pled guilty to the ticket #57873GO for driving under suspension on January 13, 2016, Respondent testified that she was aware that her driving privileges would remain suspended under her current habitual offender suspension until October 2017.

11. Respondent's habitual offender suspension ended on October 18, 2017, and she met the reinstatement requirements as of October 31, 2017.[5] On October 31, 2017, the SC DMV notified Respondent that her suspensions had ended and that she was eligible to obtain a South Carolina driver's license.

12. Respondent received her driver's license back on November 13, 2017, and on November 15, 2017, she received a letter from the SC DMV that indicated her driver's license would be cancelled effective January 14, 2018 based upon her driving privileges being cancelled, suspended, or revoked in the State of Georgia.[6]

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[3] The ticket inventory sheet is dated January 12, 2018, and it is stamped received by the SC DMV on January 18, 2018.
[4] The HTO charge was dropped.
[5] See Petitioner's Ex. #2, Respondent's driving record
[6] See Respondent's Ex. #2.

13. After taking steps to clear her suspension in the State of Georgia, including the payments of fines and fees in the approximate amount of $1000, on December 14, 2017, the SC DMV issued an Amended Notice of Driving Status, indicating that her pending suspension(s) had been cleared and that her driving privileges had been restored.

14. Respondent resides on Seabrook Island in Beaufort County and commutes approximately 1 ½ hours to and from her place of employment at a mail processing center for the U.S. Postal Service in North Charleston, South Carolina, where she has been employed since May 2016.

15. Respondent testified that she does not have anyone who could give her a ride to and from North Charleston, and that she will lose her job if unable to get back and forth to work. Respondent testified that there are no processing centers in Beaufort but that there are branch offices. She also testified that there are certain locations in Beaufort that have positions for the same job she performs at the processing center in North Charleston but that she has so far been unsuccessful in getting transferred to one of those positions in Beaufort.

16. Respondent has two children, ages 2 and 3, and they both attend daycare while Respondent works.

17. Respondent has been in the National Guard since November 2013. Respondent testified that she has to report to Hopkins, South Carolina, for drill once a month and that the commute is approximately two hours from her home. Respondent has been in the same National Guard unit since November 2013. Respondent testified that there are National Guard units throughout the state and placement in a particular unit is based upon interest and availability.

18. Respondent testified that she would not have spent the money, time, and effort to get her driver's license back at the end of 2017 if she had been aware in 2016 that her license would be suspended for an additional five years as a habitual offender.

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. 2018), 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 SC DMV. 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. 2018). 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. 2018).

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 SC DMV, 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. In this case, Respondent was convicted of three offenses of driving under suspension. Clearly, driving under suspension is considered a major traffic offense pursuant to §56-1-1020(a), and each of Respondent's driving under suspension offenses occurred on a different date within the course of a three-year period. Therefore, I conclude Respondent qualifies as a habitual offender as a result of being convicted of three separate and distinct major traffic offenses within a three-year period. Notwithstanding, Respondent argues that the five-year suspension of her driving privileges should be rescinded due to a two-year delay between the date of her January 13, 2016 driving under suspension conviction and the imposition of the resulting habitual offender suspension on January 24, 2018.

At the hearing, there was a factual dispute as to the conviction date for Respondent's third offense of driving under suspension, ticket #57873GO, for which she was charged on April 7, 2015. Although the SC DMV originally had the conviction date listed as January 13, 2016 on both its driving record and the notice of suspension issued to Respondent on January 24, 2018, prior to the hearing, the SC DMV changed the conviction date to January 11, 2018 based upon a handwritten notation at the bottom of the ticket by an unknown person. Respondent disputed the SC DMV's contention that the conviction date was January 11, 2018 rather than January 13, 2016. Based upon the supplemental documentation made a part of the record after the hearing by Respondent, which included a letter from the Beaufort County Magistrate's Office, a certified copy of the original ticket, and the affidavit of Respondent's attorney who represented her on the driving under suspension charge, I conclude the conviction date for ticket #57873GO was January 13, 2016. However, the SC DMV was not notified of the January 13, 2016 conviction until January 2018. A copy of the ticket inventory sheet from the Beaufort County Sheriff's Office dated January 12, 2018, and received by the SC DMV on January 18, 2018, indicates that the SC DMV did not receive notice of Respondent's January 13, 2016 conviction for driving under suspension, ticket #57873GO, until January 18, 2018, after which time it promptly posted the ticket to Respondent's driving record and imposed the resulting habitual offender suspension.

As a result, it appears that, through no fault of the SC DMV, there was a two-year delay between the conviction date and the date the habitual offender suspension was imposed. After considering the facts and circumstances of this case, I do not find that the imposition of the habitual offender suspension after the two-year delay would be fundamentally unfair or constitute a violation of due process.

In State v. Chavis, 261 S.C. 408, 200 S.E.2d 390 (1973), the Court found that a police department's one-year delay in notifying the South Carolina Highway Department of Chavis' conviction of driving under the influence did not estop the Highway Department from imposing a mandatory suspension of his driver's license as a result of the conviction. In reaching its conclusion that the suspension after the one-year delay did not violate fundamental fairness, the court noted that the delay was not attributable to the Highway Department and that there was no evidence to show that Chavis was prejudiced in any way by the delay or that he desired or acted to have the suspensions begin sooner. Id. at 411-412, 200 S.E.2d at 391. Notwithstanding, the court noted that there may be circumstances where the State would not have the right to suspend a driver's license after a long delay. Id. at 411, 200 S.E.2d at 391. Subsequently, in Hipp v. S.C. Dep't of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009) the Court held that the imposition of a driver's license suspension for a conviction of driving under the influence in the State of Georgia twelve years earlier, where neither Hipp nor the SC DMV were at fault for the delay, constituted a denial of fundamental fairness.

More recently, in Wilson v. S.C. Dep't of Motor Vehicles, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017), the Court of Appeals found that a five-year delay between Wilson's conviction for driving under the influence and the suspension of her driver's license, where neither Wilson nor the SC DMV were at fault for the delay, fell under the circumstances envisioned in Chavis and constituted a denial of fundamental fairness. In reaching its decision, the Court found that Wilson "demonstrated a high likelihood of injury or potential prejudice" if her license was suspended. Id. at 208, 796 S.E.2d at 543. Specifically, Wilson presented evidence that she lost her job after her arrest for driving under the influence, and after a two-year job search, she obtained a new job that required her to travel on behalf of her company, and that the suspension of her license would cause her to lose her job and suffer severe economic hardship. Id.

Additionally, Wilson actively sought to resolve the pending suspension in 2009 after she was convicted of driving under the influence. Id. at 209, 796 S.E.2d at 543.

Afterwards, in Davis v. S.C. Dep't of Motor Vehicles, 420 S.C. 98, 800 S.E.2d 493 (Ct. App. 2017), the Court found that a six-year delay between Davis' conviction for driving under suspension and the suspension of his driver's license constituted a denial of fundamental fairness. Davis was convicted of driving under suspension in October 2006, but because the SC DMV had not received notice of the 2006 conviction, Davis had his license reinstated in April 2010. Id. at 101, 800 S.E.2d at 494. In September 2011, the SC DMV received a copy of Davis' ticket, but because it was unable to determine what type of conviction Davis had received, it requested additional information from the sheriff's department in April 2012. The SC DMV received the requested information in October 2012, at which time the SC DMV sought to suspend Davis' license upon qualifying as a habitual offender. Id. Neither Davis nor the SC DMV were at fault for the delay, and the court found that Davis would suffer prejudice if the suspension were imposed because he had fulfilled the requirements to have his license reinstated, his license had already been reinstated for twenty months, and the delay exceeded the total time of the five-year suspension. Id. at 106, 800 S.E.2d at 497.

I find the facts of this case distinguishable from those in both Wilson and Davis. In finding that Davis would suffer prejudice based upon the imposition of the habitual offender suspension after a six-year delay, in Davis the court found significant that the delay exceeded the total time of the five-year habitual offender suspension. In Respondent's case, the delay was two years and clearly did not exceed the total time of the suspension. Additionally, in Davis, his license had been reinstated for a total of twenty months after he fulfilled the requirements to have it reinstated before the SC DMV sought to impose the habitual offender suspension. In this case, Respondent's license had only been reinstated for approximately one month after she fulfilled the requirements to have it reinstated in December 2017 – just after her previous habitual offender suspension had ended.

Furthermore, unlike in Wilson, Respondent has not had a significant change in personal or professional circumstances in the two years between her conviction and the imposition of the suspension. In finding that Wilson demonstrated she would be prejudiced by a suspension after five years, the Court looked at the fact that it had taken Wilson two years to find employment

after losing her job after her driving under the influence arrest and that travel for her company was a requirement of her new employment. Wilson also presented evidence she would suffer from severe economic hardship if she lost her job. Unlike in Wilson, Respondent has maintained employment in the same position with the U.S. Postal Service in North Charleston since May 2016, and she has been a member of the same National Guard unit since November 2013. Additionally, despite her commute and the suspension of her driving privileges since at least 2012 for a prior habitual offender suspension and other violations,[7] Respondent has maintained that employment and remained in the National Guard since that time. While Respondent testified that she will lose her job if unable to get back and forth to work, which would undoubtedly result in some economic hardship, Respondent also did not present specific evidence to show that she would suffer a severe economic hardship, as in Wilson, as a result. Therefore, based upon the evidence presented, I conclude that the imposition of the habitual offender suspension after the two-year delay would not be fundamentally unfair or constitute a violation of due process. Accordingly, the habitual offender suspension of Respondent's driver's license or driving privilege is sustained.

ORDER

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

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

AND IT IS SO ORDERED.

April 1, 2019
Columbia, South Carolina

Brigette B. Autry
Hearing Officer, OMVH

[7] See Respondent's driving record, Petitioner's Ex. #2.

Yolanda Williams

From: Olivia Cooke <olivia.baxlaw@gmail.com>
Sent: Tuesday, May 28, 2019 1:02 PM
To: Yolanda Williams; Susan C. Dickerson; Arie Bax; Naki Richardson- Bax; Kate Oliver
Subject: SCOMVH v. Shante Michele Eugene Case No: 2018- OMVH-02-0605
Attachments: packet S Eugene.pdf

Please see attached Notice of Appeal package that we are over nighting by mail. It will include the original NOA, original check and an affidavit from me. I requested the transcript in the new cover letter with the details. Thank you for your help in this matter. Should you have any questions please do not hesitate to contact our office.

Sincerely,

Olivia Cooke

Paralegal

The Bax Law Firm PA

2 Merchants Lane Suite 210

Beaufort, SC 29907

O: (843) 522-0980

F: (843) 379-3115

E: olivia.baxlaw@gmail.com

Website: www.baxlawfirm.com

Facebook: www.facebook.com/BaxLawFirm/

Notice: This communication contains confidential information belonging to the sender which may be legally privileged, confidential and exempt from disclosure under applicable federal or state law. This information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this message in error, please notify the sender by return e-mail and delete the entire message.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, v. South Carolina Department of Motor Vehicles, Respondent.	**NOTICE** **CASE RETURNED UNPROCESSED**

Notice is given that a request for appeal and a $150.00 check were received on April 29, 2019, from Appellant.

On April 30, 2019, the Clerk's Office sent a Memorandum to the Appellant indicating that According to Rule 33, "Any request which is incomplete or not in compliance with this rule (Rule 33) or Rule 71 will not be assigned to an administrative law judge until all required information is received and the filing fee is processed." Appellant failed to comply within the specified time period.

THEREFORE, this case will not be assigned to an administrative law judge. Any document(s) submitted by the Appellant(s) or Respondents(s) will be returned with a copy of this Notice and the $150.00 check.

This the 22nd day of May 2019.

Ralph King Anderson, III
Chief Administrative Law Judge

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

000095

COA - 0190

Attorneys
Arie D. Bax
S. Naki Richardson-Bax*

Bax Law Firm

Contact Information
2 Merchants Lane Suite 210
Beaufort, SC 29907
P:(843) 522-0980
F:(843) 379-3115

April 25, 2019

Clerk of Court
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

RE: SCOMVH v. Shante Michele Eugene
Case Number: 2018-OMVH-02-0605-CC
SCDL Number: 11617948

To Whom It May Concern:

Enclosed please from Ms. Eugene's Notice of Intent to Appeal and Proof of Service. Also enclosed is Check Number 1305 in the amount of $150.00 for the requisite filing fee.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Arie D. Bax

Arie D. Bax, Esq.

CC: Brandy Duncan, Esq., Assistant General Counsel, SCDMV
South Carolina OMVH

FILED
APR 25 2019
SCOMVH

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM SOUTH CAROLINA OFFICE OF MOTOR VEHICLE HEARINGS
BRIGETTE B. AUTRY, Hearing Officer

Case No. 2018-OMVH-02-0605-CC

South Carolina Department of Motor Vehicles,
Respondent,

vs.

Shante Michele Eugene, Appellant,

NOTICE OF INTENT TO APPEAL

Shante Michele Eugene, by and through counsel, hereby appeals the Final Order and Decision of Hearing Officer BRIGETTE B. AUTRY, dated and filed April 1, 2019, a copy of which is attached hereto. Counsel received written notice of the entry of the order on April 1, 2019.

Appellant's appeal is based on her belief that pursuant to S.C. Code §1-23-380(5), the administrative findings, conclusions, and decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and affected by other error of law.

FILED
APR 25 2019
SCOMVH

April 25, 2019

Arie Bax
The Bax Law Firm, PA
2 Merchants Lane, Suite 210
Beaufort, SC 29907
Phone: (843) 522-0980, Fax: (843) 379-3115
arie.baxlaw@gmail.com
ATTORNEY FOR APPELLANT

Other Counsel of Record:

Brandy Duncan, Esq.
Assistant General Counsel
S.C. Department of Motor Vehicles
P.O. Box 1498
Blythewood, SC 29016
Phone: (803) 896-9937 Fax: (803) 896-9901
brandy.duncan@scdmv.net
ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM SOUTH CAROLINA OFFICE OF MOTOR VEHICLE HEARINGS
BRIGETTE B. AUTRY, Hearing Officer

Case No. 2018-OMVH-02-0605-CC

South Carolina Department of Motor Vehicles,
Respondent,

vs.

Shante Michele Eugene, Appellant,

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Notice of Intent to Appeal in the above referenced case has been deposited in the United States Mail, postage prepaid on April 25, 2019 addressed to:

Brandy Duncan, Esq.
Assistant General Counsel
S.C. Department of Motor Vehicles
P.O. Box 1498
Blythewood, SC 29016
Phone: (803) 896-9937 Fax: (803) 896-9901
ATTORNEY FOR RESPONDENT

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

this 25th day of April 2019.

Arie Bax
ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, vs. Shante Michele Eugene, Respondent.	Docket No. 18-OMVH-02-0605-CC DL# 11617948 **FINAL ORDER AND DECISION**

Appearances:

For Petitioner: Brandy Duncan, Esq.
For Respondent: Arie Bax, Esq.

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 Shante Michelle Eugene ("Respondent"). Respondent challenges the South Carolina Department of Motor Vehicles' ("SC DMV") determination that she is a habitual offender, which resulted in the suspension of her driving privileges for a five-year period.

Pursuant to written notice to the parties, a hearing was held before me on April 6, 2018, at the Jasper County Court House in Ridgeland, South Carolina. At the conclusion of the hearing, counsel for Respondent requested to hold the record open for at least thirty days to allow him an opportunity to provide additional documentation regarding the conviction date for Driving Under Suspension ticket #57873GO, which was used by the SC DMV in making its habitual offender determination. Provided it was given the opportunity to respond to any additional documentation submitted, the SC DMV did not object, and Respondent's request was granted. Counsel for Respondent subsequently requested a thirty-day extension to provide the documentation to the OMVH. Respondent's request for an extension was granted, giving Respondent until June 6,

2018 to submit supplemental documentation, and giving the SC DMV fifteen additional days to respond to it. On May 14, 2018, the OMVH received three additional exhibits from Respondent. On June 7, 2018, the SC DMV filed a response to the documents along with a copy of the ticket transmittal sheet from the Beaufort County Sheriff's Office that included ticket #57873GO,[1] after which time the record was closed. After considering all the evidence presented at the hearing as well as the supplemental documentation and arguments of the parties, I conclude that the suspension of Respondent's driving privileges must be sustained.

FINDINGS OF FACT

Having observed the witness 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 May 31, 2013, Respondent was charged with driving under suspension, ticket #78917GC, and she was convicted of that offense on August 20, 2013.

2. On June 1, 2013, Respondent was charged with driving under suspension, ticket #G281787, and she was convicted of that offense on February 4, 2014.

3. By letter dated February 21, 2014, the SC DMV notified Respondent that she had accumulated two major and three minor driving violations and warned that if she accumulated a total of three major traffic violations in a three-year period, she may be declared a habitual offender and her driving privileges would be suspended for five years.

4. On April 7, 2015, Respondent was charged with driving under suspension, ticket #57873GO, and she was convicted of that offense on January 13, 2016.[2]

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[1] Although the documentation submitted by Respondent indicated that a copy had been forwarded to the SC DMV, when the OMVH inquired as to whether it intended to file any response, Ms. Duncan indicated that she had not received a copy of the documentation. Upon receipt, she promptly filed a response with the OMVH, which included a copy of the SC DMV ticket inventory sheet from the Beaufort County Sheriff's Office that included ticket #57873GO.

[2] The SC DMV's records initially indicated a conviction date of January 13, 2016, but at the hearing, the SC DMV argued that a notation at the bottom of the ticket indicated the conviction date was actually January 11, 2018, and that it had changed Respondent's driving record to reflect the conviction date as January 11, 2018. Based upon the supplemental documentation submitted by Respondent, which includes a certified copy of the ticket from the Beaufort County Magistrate's Office as well as the affidavit of Respondent's public defender, who represented her on that charge, I conclude the conviction date for ticket #57873GO was January 13, 2016.

5. The SC DMV received a copy of ticket #57873GO from the Beaufort County Sheriff's Office on January 18, 2018.[3]

6. On January 24, 2018, after Respondent was convicted of all three major traffic offenses, the SC DMV notified Respondent that it declared her a habitual offender and that her driving privileges would be suspended for a five-year period.

7. Respondent was previously declared a habitual offender and her driving privileges were suspended for a five-year period beginning October 18, 2012 and ending October 18, 2017.

8. Respondent testified that she was not aware she was already under a habitual offender suspension until she was charged with driving under suspension and habitual traffic offender ("HTO") on April 7, 2015.

9. Respondent was represented by attorney Jessica Saxon for her April 7, 2015 driving under suspension, 3rd offense, charge, ticket #57873GO. Respondent's charge was reduced to driving under suspension, 2nd offense, and she pled guilty to that charge on January 13, 2016.[4]

10. At the time Respondent pled guilty to the ticket #57873GO for driving under suspension on January 13, 2016, Respondent testified that she was aware that her driving privileges would remain suspended under her current habitual offender suspension until October 2017.

11. Respondent's habitual offender suspension ended on October 18, 2017, and she met the reinstatement requirements as of October 31, 2017.[5] On October 31, 2017, the SC DMV notified Respondent that her suspensions had ended and that she was eligible to obtain a South Carolina driver's license.

12. Respondent received her driver's license back on November 13, 2017, and on November 15, 2017, she received a letter from the SC DMV that indicated her driver's license would be cancelled effective January 14, 2018 based upon her driving privileges being cancelled, suspended, or revoked in the State of Georgia.[6]

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[3] The ticket inventory sheet is dated January 12, 2018, and it is stamped received by the SC DMV on January 18, 2018.
[4] The HTO charge was dropped.
[5] See Petitioner's Ex. #2, Respondent's driving record
[6] See Respondent's Ex. #2.

13. After taking steps to clear her suspension in the State of Georgia, including the payments of fines and fees in the approximate amount of $1000, on December 14, 2017, the SC DMV issued an Amended Notice of Driving Status, indicating that her pending suspension(s) had been cleared and that her driving privileges had been restored.

14. Respondent resides on Seabrook Island in Beaufort County and commutes approximately 1 ½ hours to and from her place of employment at a mail processing center for the U.S. Postal Service in North Charleston, South Carolina, where she has been employed since May 2016.

15. Respondent testified that she does not have anyone who could give her a ride to and from North Charleston, and that she will lose her job if unable to get back and forth to work. Respondent testified that there are no processing centers in Beaufort but that there are branch offices. She also testified that there are certain locations in Beaufort that have positions for the same job she performs at the processing center in North Charleston but that she has so far been unsuccessful in getting transferred to one of those positions in Beaufort.

16. Respondent has two children, ages 2 and 3, and they both attend daycare while Respondent works.

17. Respondent has been in the National Guard since November 2013. Respondent testified that she has to report to Hopkins, South Carolina, for drill once a month and that the commute is approximately two hours from her home. Respondent has been in the same National Guard unit since November 2013. Respondent testified that there are National Guard units throughout the state and placement in a particular unit is based upon interest and availability.

18. Respondent testified that she would not have spent the money, time, and effort to get her driver's license back at the end of 2017 if she had been aware in 2016 that her license would be suspended for an additional five years as a habitual offender.

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. 2018), 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 SC DMV. 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. 2018). 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. 2018).

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 SC DMV, 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. In this case, Respondent was convicted of three offenses of driving under suspension. Clearly, driving under suspension is considered a major traffic offense pursuant to §56-1-1020(a), and each of Respondent's driving under suspension offenses occurred on a different date within the course of a three-year period. Therefore, I conclude Respondent qualifies as a habitual offender as a result of being convicted of three separate and distinct major traffic offenses within a three-year period. Notwithstanding, Respondent argues that the five-year suspension of her driving privileges should be rescinded due to a two-year delay between the date of her January 13, 2016 driving under suspension conviction and the imposition of the resulting habitual offender suspension on January 24, 2018.

At the hearing, there was a factual dispute as to the conviction date for Respondent's third offense of driving under suspension, ticket #57873GO, for which she was charged on April 7, 2015. Although the SC DMV originally had the conviction date listed as January 13, 2016 on both its driving record and the notice of suspension issued to Respondent on January 24, 2018, prior to the hearing, the SC DMV changed the conviction date to January 11, 2018 based upon a handwritten notation at the bottom of the ticket by an unknown person. Respondent disputed the SC DMV's contention that the conviction date was January 11, 2018 rather than January 13, 2016. Based upon the supplemental documentation made a part of the record after the hearing by Respondent, which included a letter from the Beaufort County Magistrate's Office, a certified copy of the original ticket, and the affidavit of Respondent's attorney who represented her on the driving under suspension charge, I conclude the conviction date for ticket #57873GO was January 13, 2016. However, the SC DMV was not notified of the January 13, 2016 conviction until January 2018. A copy of the ticket inventory sheet from the Beaufort County Sheriff's Office dated January 12, 2018, and received by the SC DMV on January 18, 2018, indicates that the SC DMV did not receive notice of Respondent's January 13, 2016 conviction for driving under suspension, ticket #57873GO, until January 18, 2018, after which time it promptly posted the ticket to Respondent's driving record and imposed the resulting habitual offender suspension.

As a result, it appears that, through no fault of the SC DMV, there was a two-year delay between the conviction date and the date the habitual offender suspension was imposed. After considering the facts and circumstances of this case, I do not find that the imposition of the habitual offender suspension after the two-year delay would be fundamentally unfair or constitute a violation of due process.

In State v. Chavis, 261 S.C. 408, 200 S.E.2d 390 (1973), the Court found that a police department's one-year delay in notifying the South Carolina Highway Department of Chavis' conviction of driving under the influence did not estop the Highway Department from imposing a mandatory suspension of his driver's license as a result of the conviction. In reaching its conclusion that the suspension after the one-year delay did not violate fundamental fairness, the court noted that the delay was not attributable to the Highway Department and that there was no evidence to show that Chavis was prejudiced in any way by the delay or that he desired or acted to have the suspensions begin sooner. Id. at 411-412, 200 S.E.2d at 391. Notwithstanding, the court noted that there may be circumstances where the State would not have the right to suspend a driver's license after a long delay. Id. at 411, 200 S.E.2d at 391. Subsequently, in Hipp v. S.C. Dep't of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009) the Court held that the imposition of a driver's license suspension for a conviction of driving under the influence in the State of Georgia twelve years earlier, where neither Hipp nor the SC DMV were at fault for the delay, constituted a denial of fundamental fairness.

More recently, in Wilson v. S.C. Dep't of Motor Vehicles, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017), the Court of Appeals found that a five-year delay between Wilson's conviction for driving under the influence and the suspension of her driver's license, where neither Wilson nor the SC DMV were at fault for the delay, fell under the circumstances envisioned in Chavis and constituted a denial of fundamental fairness. In reaching its decision, the Court found that Wilson "demonstrated a high likelihood of injury or potential prejudice" if her license was suspended. Id. at 208, 796 S.E.2d at 543. Specifically, Wilson presented evidence that she lost her job after her arrest for driving under the influence, and after a two-year job search, she obtained a new job that required her to travel on behalf of her company, and that the suspension of her license would cause her to lose her job and suffer severe economic hardship. Id.

Additionally, Wilson actively sought to resolve the pending suspension in 2009 after she was convicted of driving under the influence. Id. at 209, 796 S.E.2d at 543.

Afterwards, in Davis v. S.C. Dep't of Motor Vehicles, 420 S.C. 98, 800 S.E.2d 493 (Ct. App. 2017), the Court found that a six-year delay between Davis' conviction for driving under suspension and the suspension of his driver's license constituted a denial of fundamental fairness. Davis was convicted of driving under suspension in October 2006, but because the SC DMV had not received notice of the 2006 conviction, Davis had his license reinstated in April 2010. Id. at 101, 800 S.E.2d at 494. In September 2011, the SC DMV received a copy of Davis' ticket, but because it was unable to determine what type of conviction Davis had received, it requested additional information from the sheriff's department in April 2012. The SC DMV received the requested information in October 2012, at which time the SC DMV sought to suspend Davis' license upon qualifying as a habitual offender. Id. Neither Davis nor the SC DMV were at fault for the delay, and the court found that Davis would suffer prejudice if the suspension were imposed because he had fulfilled the requirements to have his license reinstated, his license had already been reinstated for twenty months, and the delay exceeded the total time of the five-year suspension. Id. at 106, 800 S.E.2d at 497.

I find the facts of this case distinguishable from those in both Wilson and Davis. In finding that Davis would suffer prejudice based upon the imposition of the habitual offender suspension after a six-year delay, in Davis the court found significant that the delay exceeded the total time of the five-year habitual offender suspension. In Respondent's case, the delay was two years and clearly did not exceed the total time of the suspension. Additionally, in Davis, his license had been reinstated for a total of twenty months after he fulfilled the requirements to have it reinstated before the SC DMV sought to impose the habitual offender suspension. In this case, Respondent's license had only been reinstated for approximately one month after she fulfilled the requirements to have it reinstated in December 2017 – just after her previous habitual offender suspension had ended.

Furthermore, unlike in Wilson, Respondent has not had a significant change in personal or professional circumstances in the two years between her conviction and the imposition of the suspension. In finding that Wilson demonstrated she would be prejudiced by a suspension after five years, the Court looked at the fact that it had taken Wilson two years to find employment

after losing her job after her driving under the influence arrest and that travel for her company was a requirement of her new employment. Wilson also presented evidence she would suffer from severe economic hardship if she lost her job. Unlike in Wilson, Respondent has maintained employment in the same position with the U.S. Postal Service in North Charleston since May 2016, and she has been a member of the same National Guard unit since November 2013. Additionally, despite her commute and the suspension of her driving privileges since at least 2012 for a prior habitual offender suspension and other violations,[7] Respondent has maintained that employment and remained in the National Guard since that time. While Respondent testified that she will lose her job if unable to get back and forth to work, which would undoubtedly result in some economic hardship, Respondent also did not present specific evidence to show that she would suffer a severe economic hardship, as in Wilson, as a result. Therefore, based upon the evidence presented, I conclude that the imposition of the habitual offender suspension after the two-year delay would not be fundamentally unfair or constitute a violation of due process. Accordingly, the habitual offender suspension of Respondent's driver's license or driving privilege is sustained.

ORDER

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

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

AND IT IS SO ORDERED.

Brigette B. Autry

April 1, 2019
Columbia, South Carolina

Brigette B. Autry
Hearing Officer, OMVH

[7] See Respondent's driving record, Petitioner's Ex. #2.

000108

COA - 0203

Exhibits - Habitual Offender Hearing

Hearing: **SCDMV (Brandy Duncan, Esq.)** v. **Shante Michele Eugene (Arie Bax, Esq.)**
Petitioner Respondent

Docket No.: **18-OMVH-02-0605-CC**.

Date of Hearing: **April 6, 2018** Location: **Jasper County Court House**

Hearing Officer: **Brigette B. Autry**

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

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

PETITIONER:	
#1 -	Tickets #57873GO; G281787; and 78917GC*
	DMV Habitual Offender Notice of Suspension 1/24/18*
	Habitual offender warning letter - 2/21/14*
	Official 10-year Driving Record*
# 2 –	Amended Certified Driving Record
# 3 –	Ticket Inventory Sheet from Beaufort County Sheriff's Office

RESPONDENT:	
#1 -	SC DMV letter dated 10/31/17
#2 -	Official SC DMV notice dated 11/15/17
#3 -	Amended Notice of Driving Status dated 12/14/17
# 4 -	Letter from Beaufort County Magistrate's Office
	Certified Copy of Ticket #57873GO
	Affidavit of Jessica Saxon, Esq.

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

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

Date e-mailed April 1, 2019 or Date hand delivered _____

Signature Brigette B Autry

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

P2

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

A. L. Shelton

Driver Services, Deputy Director

Certification for Court

Customer No: 23177004 **Driver License No:**
Name: EUGENE, SHANTE MICHELE
Address: 26 WITSELL RD
City: SEABROOK **State:** SC **Zip:** 299403707
County: BEAUFORT
DOB: **Height:** 5'06 **Weight:** 180 **Eyes:** **Sex:** F **Race:** BLACK **Driver Training:** N
Status - DL: SUSPENDED **CDL:** DISQUALIFIED

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.	Document Indentifier (ACN / DDN)
Current								
DL	D	Re-exam	11/13/2017	06/09/2027	10/22/2003	N	N	1011713600008246
ID		Renewal	11/20/2013	11/20/2018		N	N	1011315600048291
Prior								
ID		Renewal	06/26/2013	06/26/2018		N	N	1011307500017794
DL	D	Re-exam	12/06/2007	06/09/2017	10/22/2003	N	N	N/A
DL	D	Returned	12/06/2007	06/09/2017	10/22/2003	N	N	N/A
DL	D	Re-exam	06/14/2006	06/09/2016	10/22/2003	Y	N	N/A
DL	D	Returned	06/14/2006	06/09/2016	10/22/2003	Y	N	N/A
DL	D	BP to DL	10/22/2003	06/09/2013	10/22/2003	Y	N	N/A
DL	D	Returned	10/22/2003	06/09/2013	10/22/2003	Y	N	N/A
BP	D	Returned	11/21/2002	11/21/2003	10/11/2001	N	N	N/A
BP	D	Renewal	11/21/2002	11/21/2003	10/11/2001	N	N	N/A
BP	D	Original	10/11/2001	10/11/2002	10/11/2001	N	N	N/A
ID		Original	09/02/1999	09/02/2004		N	N	N/A

Name Change -

Name: EUGENE, SHANTE M **Date Changed:** 11/21/2002

Point Summary

Total Current Points: 0
Driver Credit: -0
Adjusted Current Points: 0

Suspension Summary

Driving Under the Influence: Total 0 DUI Suspensions
Driving Under Suspension: Total 5 DUS Suspensions
Unlawful Alcohol Concentration: Total 0 Per Se Suspensions
Failure To Make Payment For Gasoline: Total 0 Gasoline Suspensions
Uninsured Motorist: Total 0 UM Violations

SUSP: 013 - Driving Under Suspension **Ticket#:** 57873GO
Special Driving Privilege: NONE
Suspension Beg: 02/08/2018 **Suspension End:** 05/08/2018
Causal: 04/07/2015 **Post:** 01/24/2018
Reinstatement Requirements Met: INDEFINITE **Reinstatement Fee Paid:** N
ACD: B26 **Withdrawal Loc Ref:** **Withdrawal Reason Ref:**
Suspension No: 15 **Violation No:** 21
Status: ACTIVE **Reason:** **Last Change:** 01/24/2018

Certification for Court

Customer No: 23177004
Name: EUGENE, SHANTE MICHELE

Driver License No:

VIOL: 496 - Driving Under Suspension
Violation: 04/07/2015 **Conviction:** 01/11/2018
ACD: B26 **Conviction Loc Ref:**
Conviction State: SC
Violation No: 21
Status: ACTIVE

Ticket#: 57873GO
Recd: 01/18/2018 **Post:** 01/24/2018
Conviction Reference:
Court Type: MAGISTRATE COURT

Last Change: 04/04/2018

SUSP: 013 - Driving Under Suspension
Special Driving Privileg e: NONE
Suspension Beg: 03/08/2014
Causal: 06/01/2013
Reinstatement Requirements Met: 06/08/2017
ACD: B26 **Withdrawal Loc Ref:**
Suspension No: 12 **Violation No:** 20
Status: ACTIVE **Reason:**

Ticket#: G281787

Suspension End: 06/08/2014
Post: 02/21/2014
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

Last Change: 06/08/2017

VIOL: 496 - Driving Under Suspension
Violation: 06/01/2013 **Conviction:** 02/04/2014
ACD: B26 **Conviction Loc Ref:**
Conviction State: SC
Violation No: 20
Status: ACTIVE

Ticket#: G281787
Recd: 02/10/2014 **Post:** 02/21/2014
Conviction Reference:
Court Type: MAGISTRATE COURT

Last Change: 02/21/2014

SUSP: 013 - Driving Under Suspension
Special Driving Privileg e: NONE
Suspension Beg: 09/24/2013
Causal: 05/31/2013
Reinstatement Requirements Met: 12/24/2016
ACD: B26 **Withdrawal Loc Ref:**
Suspension No: 10 **Violation No:** 18
Status: ACTIVE **Reason:**

Ticket#: 78917GC

Suspension End: 12/24/2013
Post: 09/09/2013
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

Last Change: 12/24/2016

VIOL: 496 - Driving Under Suspension
Violation: 05/31/2013 **Conviction:** 08/20/2013
ACD: B26 **Conviction Loc Ref:**
Conviction State: SC
Violation No: 18
Status: ACTIVE

Ticket#: 78917GC
Recd: 09/03/2013 **Post:** 09/09/2013
Conviction Reference:
Court Type: MAGISTRATE COURT

Last Change: 09/09/2013

VIOL: 441 - Speeding more than 10 mph b ut LT 25 mph

Violation: 06/13/2012 **Conviction:** 08/15/2012
ACD: S92 **Conviction Loc Ref:**
Conviction State: GA
Violation No: 17
Status: ACTIVE **Last Change:** 01/17/2013

Ticket#: 5694S
Actual Speed: 89 **Posted Speed:** 70
Recd: 01/14/2013 **Post:** 01/17/2013
Conviction Reference:
Court Type: COUNTY COURT

Violation Points: 4 **Current Points:** 0

SUSP: 022 - Habitual Offender
Special Driving Privileg e: NONE
Suspension Beg: 10/18/2012
Causal: 06/13/2012
Reinstatement Requirements Met: 10/31/2017
ACD: W01 **Withdrawal Loc Ref:**
Suspension No: 9
Status: ACTIVE **Reason:**

Suspension End: 10/18/2017
Post: 09/18/2012
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

Last Change: 10/31/2017

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

Driver Services, Deputy Director

Certification for Court

Customer No: 23177004
Name: EUGENE, SHANTE MICHELE

Driver License No:

SUSP: 013 - Driving Under Suspension
Special Driving Privileg e: NONE
Suspension Beg: 11/25/2012
Causal: 06/13/2012
Reinstatement Requirements Met: 02/25/2016
ACD: B26 **Withdrawal Loc Ref:**
Suspension No: 8 **Violation No:** 16
Status: ACTIVE **Reason:**

Ticket#: 5695S

Suspension End: 02/25/2013
Post: 09/18/2012
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

Last Change: 02/25/2016

VIOL: 496 - Driving Under Suspension
Violation: 06/13/2012 **Conviction:** 08/15/2012
ACD: B26 **Conviction Loc Ref:**
Conviction State: GA
Violation No: 16
Status: ACTIVE

Ticket#: 5695S
Recd: 09/13/2012 **Post:** 09/18/2012
Conviction Reference:
Court Type: COUNTY COURT

Last Change: 09/18/2012

VIOL: 421 - Speeding 10-mph or less
Violation: 07/07/2012 **Conviction:** 07/26/2012
ACD: S51 **Conviction Loc Ref:**
Conviction State: SC
Violation No: 15
Status: ACTIVE **Last Change:** 08/29/2012

Ticket#: 36315FY
Recd: 08/17/2012 **Post:** 08/29/2012
Conviction Reference:
Court Type: MUNICIPAL COURT

Violation Points: 2 **Current Points:** 0

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

SUSP: 013 - Driving Under Suspension
Special Driving Privileg e: NONE
Suspension Beg: 08/24/2012
Causal: 07/07/2012
Reinstatement Requirements Met: 11/24/2015
ACD: B26 **Withdrawal Loc Ref:**
Suspension No: 7 **Violation No:** 14
Status: ACTIVE **Reason:**

Ticket#: 36316FY

Suspension End: 11/24/2012
Post: 08/09/2012
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

Last Change: 11/24/2015

VIOL: 496 - Driving Under Suspension
Violation: 07/07/2012 **Conviction:** 07/26/2012
ACD: B26 **Conviction Loc Ref:**
Conviction State: SC
Violation No: 14
Status: ACTIVE

Ticket#: 36316FY
Recd: 08/03/2012 **Post:** 08/09/2012
Conviction Reference:
Court Type: MUNICIPAL COURT

Last Change: 08/09/2012

VIOL: 441 - Speeding more than 10 mph b ut LT 25 mph
Violation: 02/21/2012 **Conviction:** 03/28/2012
ACD: S92 **Conviction Loc Ref:**
Conviction State: SC
Violation No: 13
Status: ACTIVE **Last Change:** 05/09/2012

Ticket#: 58240FT
Actual Speed: 78 **Posted Speed:** 60
Recd: 04/25/2012 **Post:** 05/09/2012
Conviction Reference:
Court Type: MAGISTRATE COURT

Violation Points: 4 **Current Points:** 0

SUSP: 078 - FR Accident
Suspension Beg: 06/21/2012
Accident: 02/03/2012
Reinstatement Requirements Met: 12/19/2012
ACD: D38 **Withdrawal Loc Ref:**
Suspension No: 6 **SR 22 Required Until:**
Status: ACTIVE **Reason:**

Suspension End: 12/19/2012
Post: 05/07/2012

Withdrawal Reason Ref:

Last Change: 12/19/2012

8 Form DL-76A

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

P3

SOUTH CAROLINA TRAFFIC CITATION TRANSMITTAL FORM

CITATIONS AND AFFIDAVITS MUST ACCOMPANY THIS FORM

COUNTY/CITY/DISTRICT ISSUED: BEAUFORT SHERIFF'S OFFICE COUNTY:XXX CITY:

TRANSMITTED TO: SC DEPARTMENT OF PUBLIC SAFETY BY MAIL:XXX IN PERSON:

SUBMITTED BY: HEATHER M. BURT ON: 12 JANUARY 2018

RECEIVED BY: _____ ON: _____

DATE RECEIVED IN SCHPT INVENTORY SECTION: _____

CITATION #	CITATION #	CITATION #
20160190007090	62961GO	62040GO
82850GC	59076GO	56710GO
83198GC	86425GC	86482EB
64187FT	63670GO	62990GO
61507GO	83195GC	40655CJ
40657CJ	40656CJ	40659CJ
40658CJ	13259EY	67626DW
13577FI	4102P0331949	52438DF
58016GO	58007GO	58299GO
63522GO	63531GO	63965GO
63967GO	85087GC	57874GO
85087GC	57864GO	57873GO
75522GC	75518GC	75519GC
75520GC	75516GC	75517GC
20170190045118	20170190045119	20170190045120

TOTAL NUMBER OF CITATIONS LISTED AND ACCOMPANYING THIS FORM 45 Page: 1

JAN 18 2018

***PLEASE SIGN AND MAIL A COPY OF THIS CITATION TRANSMITTAL REPORT ACKNOWLEDGING RECEIPT. WE HAVE ENCLOSED A SELF ADDRESSED ENVELOPE FOR YOUR CONVENIENCE. ***THANK YOU.

R1

Henry McMaster
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

10/31/2017
EUGENE, SHANTE MICHELE
26 WITSELL RD
SEABROOK, SC 29940-3707

CUSTOMER NO: 23177804
FILE NO: 23389205
DL NO: 11617948

DEAR CUSTOMER:

DMV records indicate that the period of your South Carolina suspension(s) has ended. You have met the requirements to fully clear the suspension(s).

If you are eligible to obtain a South Carolina driver's license, you must apply at a local DMV Office. You may be required to take the following tests:

Vision
Knowledge
Skills

Driver Records Manager

Post Office Box 1498, Blythewood, South Carolina 29016

000114

COA - 0209

R2

Henry McMaster
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

11/15/2017
EUGENE, SHANTE MICHELE
26 WITSELL RD
SEABROOK, SC 29940-3707

CUSTOMER NO: 25177004
FILE NO: 23469437
DL NO: 11617948

OFFICIAL NOTICE

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

REASON: Failure to meet licensing requirements.

SECTION OF LAW: 56-1-240

A review of your application for a credential indicates that your driving privileges are cancelled, suspended or revoked in the state listed:

GEORGIA
DEPARTMENT OF DRIVER SERVICES
PO BOX 80447
CONYERS, GA 30013
678-413-8400

Credential Issue Date 11/13/2017

CANCELLATION BEGINNING DATE: 12:01 AM 01/14/2018

CANCELLATION ENDING DATE: When you receive notice from the Department that this action has been cleared.

SPECIAL DRIVING PRIVILEGES:
There are no special driving privileges available to you. You may not drive until you have done the following:

COMPLIANCE:
You must contact the Department of Motor Vehicles listed above to clear the matter and obtain a letter of clearance. You are required to present this letter of clearance to your local DMV Office or mail it to Driver Records, PO Box 1498, Blythewood, SC 29016-0028.

REINSTATEMENT FEE:
You must pay a $100.00 reinstatement fee if your clearance letter shows the clearance date on or after the cancellation beginning date listed above. 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.

Your license must be returned to any DMV Office or mailed to Driver Records if this cancellation is not cleared before the cancellation date listed above.

If you have any further questions, please contact the DMV Customer Service Unit at (803)896-5000.

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

Driver Records Manager

Post Office Box 1498, Blythewood, South Carolina 29016

000115

COA - 0210

R3

South Carolina
Department of Motor Vehicles

12/14/2017

EUGENE, SHANTE MICHELE
26 WITSELL RD
SEABROOK, SC 29940-3707

CUSTOMER NO: 23177004
FILE NO: 23611775
DL NO: 11617948

AMENDED NOTICE OF DRIVING STATUS

DEAR CUSTOMER:

This is official notification that the information on your driving record has changed effective 12/14/2017.

The Department has cleared your pending suspension(s) and your driving privileges will not be suspended.

AND/OR

The Department has cleared your suspension(s) and your driving privileges have been restored.

If your driver's license has been lost, misplaced or expired, you may make application for a driver's license at your local DMV Office. A vision, knowledge and/or skills test may be required before you may be issued a license.

Driver Records Manager

000116

COA - 0211

R4

Attorneys
Arie D. Bax
S. Naki Richardson-Bax*

Bax Law Firm

Contact Information
2 Merchants Lane Suite 210
Beaufort, SC 29907
P:(843) 522-0980
F:(843) 217-5815

May 10, 2018

Bridgette B. Autry, Hearing Officer
Office of Motor Vehicle Hearings
Edgar A. Brown Building Suite 325
1205 Pendleton Street
Columbia, SC 29201

Re: Shante M Eugene v. South Carolina Department of Motor Vehicles
Habitual Offender Declaration Hearing
Docket No: 18-OMVH-02-0605-CC
SCDL No. 11617948

To Whom It May Concern:

Please find supplemental documents pertaining to the hearing that transpired on April 6, 2018 enclosed. These documents include:

(1) Letter from Beaufort Magistrate Clerks Office
(2) Certified True Copy of original ticket after disposition
(3) Affidavit of Attorney Jessica Saxon with three exhibits attached.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Arie D. Bax

18-0605
April 6, 18

Cc: Duncan, Brandy A., SC DMV

FILED
MAY 10 2018
SCOMVH

RECEIVED
MAY 14 2018
SCOMVH

BEAUFORT MAGISTRATE
Multigovernment Center, Arthur Horne Building
104 Ribaut Rd. P.O. Box 2207
Beaufort, South Carolina 29901-2207
Phone (843) 255-5700 • Fax (843) 255-9427

May 4, 2018

Attn: Viola Pugh-Shivers

Good Morning. Attached is a certified true copy of our original green Trial Court Copy of ticket 57873GO. This case was heard at Transfer Court so we didn't have the yellow DMV copy of the ticket at the time of disposition. We received the yellow copy much later from the Sheriff's Office. Unfortunately we have no record of when the yellow copy was sent to SCDMV. The clerk who does the DL-76 report on Fridays did not keep copies of the transmittals at that time.

As you can see there are no other dates on the ticket except for the disposition date of January 13, 2016. Because we didn't receive the yellow copy until much later, two different clerks signed off the different copies of the ticket, however no one in the Magistrate's office put any other dates on the ticket except for the disposition date. The signature above the date of 01/18/18 is not anyone in this office. It had to be someone at the DMV who put that date on the ticket and I have no idea to what it refers. No action took place regarding this case on this date. The last action on this case was 01/13/2016 when it was disposed. Please feel free to call with any questions at 843-255-5637.

Sincerely,

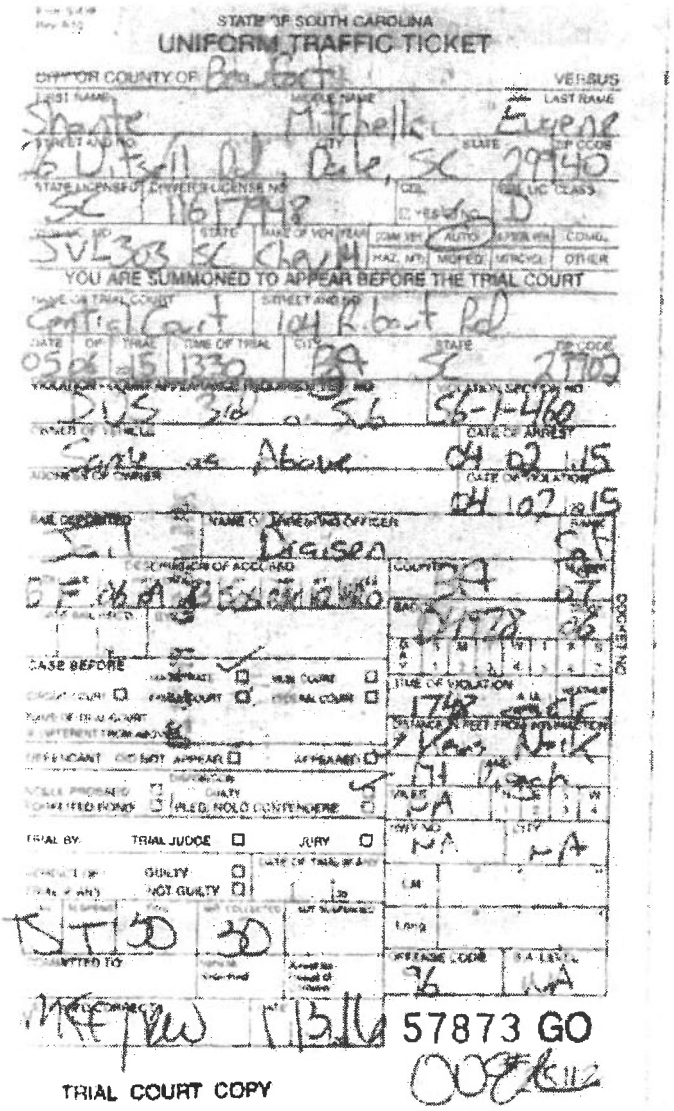
Beryl E. Cost

Senior Traffic and Criminal Team Leader

Beaufort County Magistrate

P.O. Box 2207

Beaufort, SC 29901



STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

Shante Mitchell Eugene
6 Dutch Rd Dale, SC 29940
SC 116179H8 D
SVL303 SC Chevy
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT
Central Court 104 Robert Rd
05 06 15 1330 Bea SC 29702
DUS 56-1-460
Same as Above 04 02 15
04 02 15
Deiser
F 06 A 3 Exc 12 MPH
57873 GO
TRIAL COURT COPY

2015 AUG 20 PM 3:57

Charge amended to DUS 2nd
MFH CW 1/13/16

AFFIDAVIT

I, Jessica M. Saxon, hereby swear and affirm the following:

1) I am an attorney licensed to practice law in the state of South Carolina and I am in good standing with the South Carolina Bar;
2) I am currently employed with the Beaufort County Public Defender's Office and have been employed with that office since July 1, 2013;
3) On April 2, 2015 Ms. Shante Eugene (Plaintiff) was arrested for the General Sessions charge of Habitual Traffic Offender (HTO) and the Magistrate charges of Driving Under Suspension 3rd or Subsequent (DUS 3rd) and Child Restraint Violation;
4) On April 15, 2015 I was appointed to represent Plaintiff on the charges of HTO, DUS 3rd and Child Restraint Violation;
5) On August 19, 2015 the Magistrate Court charges of DUS 3rd and Child Restraint Violation were brought up to the court of General Session to consolidate the cases to one court (Exhibit A);
6) During the pendency of the cases an offer was made to dismiss the HTO and remand the Child Restraint Violation and DUS 3rd to Transfer Court for a plea of Time Served;
7) Plaintiff accepted this offer which resulted in the HTO being dismissed, the DUS 3rd being reduced to a DUS 2nd and remanded to Magistrate Court and the Child Restraint Violation being remanded to Magistrate Court on January 13, 2016 (Exhibit B);

8) The dismissal and remand occurred on the same day that Plaintiff entered a guilty plea to the DUS 2nd and Child Restraint Violation charges, January 13, 2016;

9) The plea was heard before Magistrate Judge Mark Fitzgibbons on January 13, 2016;

10) It is the normal practice that a remand to transfer court and a plea happen on the same day, in this case on January 13, 2016;

11) Once the plea was completed I wrote the outcome on my file and then closed my case in my internal system (Exhibit C);

12) As of January 13, 2016 the charges Plaintiff were facing were resolved and the cases closed, no further action was taken on this case by the courts after this date;

13) January 13, 2016 was the final court date in this case. On that date the plea was heard before a Judge and accepted, a sentence of Time Served and Court Cost was handed down and the case was resolved;

Jessica M. Sakon
Bar # 80719

SWORN TO BEFORE ME THIS 8th DAY OF MAY 2018

Notary Public
State of South Carolina
My Commission Expires May 7, 2024

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE SUMMARY COURT
	)	
COUNTY OF BEAUFORT	)	Ticket No.(s): #57873GO; 57874GO
	)	
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
v.	)	ORDER OF CHANGE OF VENUE
Shante Eugene	)	IN A CRIMINAL CASE
	)	
Defendant	)	

2015 AUG 20 PM 3:20

Upon Motion of Julie Kate Keeney, the Solicitor in this action, and after due consideration, it appears that the interest of justice may best be served by the transfer of this case from the Beaufort County Magistrate Court to the Court of General Sessions to proceed upon receipt of all papers relating to the case, as if the case were originally filed in the Court to which it is now transferred.

AND IT IS SO ORDERED:

Judge

Beaufort County, South Carolina
August 19, 2015

EXHIBIT B

STATE OF SOUTH CAROLINA	)	INDICTMENT # 2015-GS-070- 1368
	)	
	)	WARRANT # 57873GO
vs.	)	
	)	
	)	ADMINISTRATIVE REMAND
	)	
Eugene Shante	)	
Defendant	)	
	)	

The above captioned Defendant is charged with Driving under Suspension, 3rd or subsequent offense. This charge is REMANDED on January 13, 2016 to be disposed of in Beaufort County, South Carolina Magistrate Court as Driving Under Suspension, 2nd Offense.

Arthur C. Utsey, IV
Assistant Solicitor
Fourteenth Judicial Circuit

2016 JAN 13 PM 4:13
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	INDICTMENT # 2015GS0701369
	)	
	)	WARRANT # 57874GO
vs.	)	
	)	
	)	ADMINISTRATIVE REMAND
	)	
Shante Eugene,	)	
Defendant	)	
	)	

The above captioned Defendant is charged with Child Restraint System Article Violation. This charge is REMANDED on January 13, 2016, to be disposed of in Magistrate Court.

Arthur C. Utsay, IV
Assistant Solicitor
Fourteenth Judicial Circuit

2016 JAN 13 PM 4:13
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
)
vs.)
)
)
)
Shante Eugene)
)

INDICTMENT #: 2015GS0700562
WARRANT #: 57875GO

THIS INDICTMENT IS NOLLE PROSSED ON 1/13/2016, BY Assistant Solicitor Arthur C. Utsey, IV FOR THE FOLLOWING REASONS:

Dismissed as part of a plea agreement.

Arthur C. Utsey, IV
Assistant Solicitor
Fourteenth Judicial Circuit

2016 JAN 13 PM 4:13
BEAUFORT COUNTY, S.C.
CLERK OF COURT

WITNESSES

Draisen-BCSO

ARREST WARRANT NUMBER

57875GO

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: JUL 30 2015

VERDICT

Foreperson of Petit Jury
Date: ,
INDICT

DOCKET NO. 2015GS0700562

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2015

THE STATE

vs.

Shante Mitchele Eugene

Indictment for

Habitual Traffic Offender

SC Code: 56-01-1100
CDR Code:0057

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2015GS0700562

At a Court of General Sessions, convened on July 30, 2015, the Grand Jurors of Beaufort County present upon their oath:

Habitual Traffic Offender

That in Beaufort County, South Carolina, on or about April 2, 2015, the Defendant, Shante Mitchele Eugene, did operate a motor vehicle in the State of South Carolina while her record as maintained by the Department of Motor Vehicles showed that she had accumulated convictions for separate and distinct offenses listed in Section 56-1-1020(a), (b) and (c) during a three year period; in violation of Section 56-1-1100, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statue in such case made and provided.

Solicitor

EXHIBIT C

Case File Detail

1/14/2016

CASE INFORMATION		CLIENT INFORMATION		CONTACT INFORMATION	
Opened:	04/15/2015	**Client:**	Eugene, Shante Mitchelle	**Daytime Phone:**	(334) 614-8335
File Number:	07A15-00000853	**DOB:**	06/09/1983	**Evening Phone:**	
Attorney:	JS - Saxon, Jessica	**SSN:**	--	**Alternate Phone:**	
Solicitor:	Utsey, Ceth	**Ethnicity:**	African American	**Address:**	26 Witsell Road
Closed:	01/13/2016	**Gender:**	Female		Seabrook, SC 29940
		Alias:			
		DL:			
		Inmate ID:			

CHARGES

1 **Initial Charge:** DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. of - *56-01-0460(A)(1)(c)*

Disp Charge: DUS / Driving under suspension, license not suspended for DUI - 2nd offense - *56-01-0460(A)(1)(b)*

Disposition: *01/13/2016* PGTC

Sentence: *01/13/2016* Time Served

Sentence Note: D pled to reduced DUS charge and child restraint violation for TS and CC in TC.

Ticket/Warrant: 57873GO **Indictment:**

2 **Initial Charge:** Traffic / Child passenger restraint system Article violation - *56-05-6450*

Disp Charge: Traffic / Child passenger restraint system Article violation - *56-05-6450*

Disposition: *01/13/2016* PGTC

Sentence: *01/13/2016* Time Served

Sentence Note:

Ticket/Warrant: 57874GO **Indictment:**

EVENTS

Docket Appearance ***05/06/2015 01:30 PM***, Attorney: JS - Saxon, Jessica
Note: Magistrate Court

No related people entries for this case

CASE NOTES

Jessica Saxon	01/14/2016 09:47 AM	D pled to DUS 2nd and child restraint violation for TS and CC in TC.
Jessica Saxon	07/08/2015 10:04 AM	Spoke to client about case/jury trial, etc. Told client about motion to dismiss and possibilites moving forward with trial vs. plea and told her to call CC to set up an appointment. She wants to move forward with trial at this point. Sgt Dralsen has conflict with current trial date and is requesting a continuance - will not object to this continuance.
Christy Compton	06/16/2015 12:10 PM	Received from Beaufort Magistrate Court summons regarding case numbers 57873-74GO which is scheduled for a Jury Trial scheduled on July 15, 2015 at 9:00am. Marked on calendar.
Jessica Saxon	06/02/2015 01:05 PM	D called. Returning from National Guard training late tomorrow and would not be back in time for court. We have also not met to discuss her case. Asked Magistrate court to continue tomorrow's date and it was denied becase "D has been assigned to PD's office since April and has had two continuances already." Will remake the motion tomorrow in court.

Case File Detail

CASE INFORMATION		CLIENT INFORMATION		CONTACT INFORMATION	
Opened:	04/15/2015	**Client:**	Eugene, Shante Mitchelle	**Daytime Phone:**	(334) 814-8335
File Number:	07A15-00000654	**DOB:**	06/09/1983	**Evening Phone:**	
Attorney:	JS - Saxon, Jessica	**SSN:**	--	**Alternate Phone:**	
Solicitor:	Ulsey, Ceth	**Ethnicity:**	African American	**Address:**	26 Witsell Road
Closed:	01/13/2016	**Gender:**	Female		Seabrook, SC 29940
		Alias:			
		DL:			
		Inmate ID:			

CHARGES

1 **Initial Charge:** Traffic / Habitual Traffic Offenders, DUS as per Habitual Traffic Offender status - *56-01-1100*
Disp Charge: Traffic / Habitual Traffic Offenders, DUS as per Habitual Traffic Offender status - *56-01-1100*
Disposition: *01/13/2016* DNP
Sentence:
Sentence Note:
Ticket/Warrant: 57875GO **Indictment:**

EVENTS

First Appearance *05/01/2015 09:00 AM*, Attorney: JS - Saxon, Jessica
Note: General Sessions

No related people entries for this case

CASE NOTES

Jessica Saxon	01/14/2016 09:46 AM	HTO charge dismissed as part of plea agreement. Pled to Mag charges in TC.
Jessica Saxon	10/22/2015 12:51 PM	D was at second appearances on 10/13. Gave her next CD of 11/18. Asked ASOL CU to look at dismissing HTO charge.
Jessica Saxon	10/06/2015 12:05 PM	D left VM asking about next court date. Checked with ASOL JKK and it is set for 10/13 appearance. Informed D via text and stated was still trying to work out case with State. D claims she had no notice from DMV of HTO.
Jessica Saxon	09/03/2015 12:39 PM	D was scheduled to call in this AM at 10:30 for a phone appointment - no call received.
Jessica Saxon	08/17/2015 08:46 AM	Having DUS brought up to GS. Attempting to get ASOL to let D plead to DUS and drop HTO. Called D to inform her of this.
Jessica Saxon	08/06/2015 11:49 AM	Met with client in office. Discussed case and next steps. Biggest concern is felony conviction - will try to figure out something with ASOL to avoid this.
Christy Compton	07/20/2015 03:54 PM	Received notice from Beaufort Magistrate Court regarding Jury Trial scheduled on August 18, 2015 at 1:00pm for case numbers 57873-74GO. Marked on calendar.
Christy Compton	07/08/2015 09:53 AM	Telephone call from client to schedule appointment. Client is waiting on a new court date. Scheduled appointment for August 4, 2015 at 2:00pm. Marked on calendar. Confirmed telephone number with client and informed client that if she received notice from the court that her court date was prior to the appointment date, she could call me back and reschedule the appointment.
Christy Compton	06/01/2015 04:10 PM	Attended Roll Call on 05/29/2015. Client's case was held back from the Grand Jury and not indicted - New Roll Call date of June 26, 2015
Christy Compton	05/12/2015 11:19 AM	Received from Beaufort Magistrate Court notice of court date now scheduled on June 3, 2015 at 1:30pm for ticket number 57873GO and 57874GO. Marked on calendar.
Christy Compton	04/29/2015 02:01 PM	Client, Shante Eugene came into the office and dropped off Orders that she received regarding training. Client requested that she not be required to appear at her next court date which is now scheduled for May 1, 2015 and May 29, 2015. Placed paperwork in Jessica Saxon's box for review. Continuance on May 8, 2015 was denied by Judge Sproatt.
Christy Compton	04/29/2015 11:57 AM	Telephone call from client regarding court date on May 8, 2015. Informed client that our office put in a continuance request, however it was denied. Client stated that she is going to be at training on this date and time. Informed client that she needed to provide proof of this to our office by Friday, May 1, 2015 so that we could forward it to the courts.

Henry McMaster
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina

Department of Motor Vehicles

June 7, 2018

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

RE: *Shante M. Eugene v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 18-OMVH-02-0605-CC
SCDL: 11617948

Dear Hearing Officer Autry:

The South Carolina Department of Motor Vehicles provides the enclosed documents for introduction into the record of this habitual offender hearing as agreed to by the parties and allowed by you during the hearing held on April 6, 2018. Please file the original of these documents and return a clocked copy to me in the self-addressed envelope.

Sincerely,

BADuncan

Frank L. Valenta, Jr., General Counsel
Brandy A. Duncan, Assistant General Counsel

Enclosures: South Carolina Traffic Citation Transmittal Form received 1/18/2018 from Heather M. Burt of the Beaufort County Sheriff's Office

cc: Arie Bax, Esquire

RECEIVED
JUN 11 2018
SCOMVH

FILED
JUN 11 2018
SCOMVH

Post Office Box 1498, Blythewood, South Carolina 29016

8 Form DL-76A

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

Driver Services, Deputy Director

SOUTH CAROLINA TRAFFIC CITATION TRANSMITTAL FORM

CITATIONS AND AFFIDAVITS MUST ACCOMPANY THIS FORM

COUNTY/CITY/DISTRICT ISSUED: BEAUFORT SHERIFF'S OFFICE **COUNTY:XXX** **CITY:**

TRANSMITTED TO: SC DEPARTMENT OF PUBLIC SAFETY **BY MAIL:XXX** **IN PERSON:**

SUBMITTED BY: HEATHER M. BURT **ON: 12 JANUARY 2018**

RECEIVED BY: _____ **ON:** _____

DATE RECEIVED IN SCHPT INVENTORY SECTION: _____

CITATION #	CITATION #	CITATION #
20160190007090	62961GO	62040GO
82850GC	59076GO	56710GO
83198GC	86425GC	86482EB
64187FT	63670GO	62990GO
61507GO	83195GC	40655CJ
40657CJ	40656CJ	40659CJ
40658CJ	13259EY	67626DW
13577FI	4102P0331949	52438DF
58016GO	58007GO	58299GO
63522GO	63531GO	63965GO
63967GO	85087GC	57874GO
85087GC	57864GO	57873GO
75522GC	75518GC	75519GC
75520GC	75516GC	75517GC
20170190045118	20170190045119	20170190045120

TOTAL NUMBER OF CITATIONS LISTED AND ACCOMPANYING THIS FORM 45 Page: 1

RECEIVED JAN 18 2018

***PLEASE SIGN AND MAIL A COPY OF THIS CITATION TRANSMITTAL REPORT ACKNOWLEDGING RECEIPT. WE HAVE ENCLOSED A SELF ADDRESSED ENVELOPE FOR YOUR CONVENIENCE. ***THANK YOU.

000134

Duncan, Brandy A

From: Duncan, Brandy A
Sent: Thursday, June 7, 2018 12:00 PM
To: 'Yolanda Williams'
Cc: arie.baxlaw@gmail.com; HPU
Subject: RE: Shante Eugene - dk# 18-0605
Attachments: SSCDMVCopie18060711530.pdf

Ms. Williams,

SCDMV has the following response:

1) SCDMV objects to Ms. Cost's states that the signature above the date of 1/18/18 "had to be someone at the DMV who put that date on the ticket and I have no idea to what it refers." This statement is speculation and would be an improper statement to be considered by this Court in the absence of any evidence to support it. SCDMV has no other objections to Ms. Cost's letter or the ticket attached to the letter.
2) Regarding Ms. Cost's statement that they "have no record of when the yellow copy was sent to SCDMV. The clerk who does the DL-76 report on Fridays did not keep copies of the transmittals at that time." According to SCDMV's records, we never received ticket #57873GO from the Beaufort Magistrate's Court. SCDMV received ticket #57873GO from the Beaufort County Sheriff's Office on 1/18/2018. A PDF of the transmittal sheet showing this ticket coming into SCDMV from the Beaufort County Sheriff's Office is attached to this e-mail and I will mail the certified copy of the same to the OMVH today for filing.
3) SCDMV already filed its' ticket inventory documents regarding this case and the ticket at issue with the OMVH on April 17, 2018.
4) Finally, SCDMV understands this Court's ruling on May 3, 2018 regarding additional information coming in from Jessica Saxon, however, SCDMV continues to object to any documents coming into evidence from Ms. Saxon, including Ms. Saxon's affidavit and the exhibits thereto. While the audio recording of this hearing speaks for itself, the undersigned simply does not recall agreeing to documents or an affidavit coming into evidence from Ms. Saxon, the Respondent's defense attorney related to ticket # 57873GO. Furthermore, having now had a chance to review Ms. Saxon's affidavit and the exhibits thereto, it appears they attempt to improperly bolster the testimony of Ms. Eugene, specifically with regard to Ms. Eugene's testimony that she did not realize she had been declared a habitual traffic offender on October 18, 2012.

Thanks,

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

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Attorneys
Arie D. Bax
S. Naki Richardson-Bax*

Bax Law Firm

Contact Information
2 Merchants Lane Suite 210
Beaufort, SC 29907
P:(843) 522-0980
F:(843) 217-5815

May 10, 2018

Bridgette B. Autry, Hearing Officer
Office of Motor Vehicle Hearings
Edgar A. Brown Building Suite 325
1205 Pendleton Street
Columbia, SC 29201

Re: Shante M Eugene v. South Carolina Department of Motor Vehicles
Habitual Offender Declaration Hearing
Docket No: 18-OMVH-02-0605-CC
SCDL No. 11617948

To Whom It May Concern:

Please find supplemental documents pertaining to the hearing that transpired on April 6, 2018 enclosed. These documents include:

(1) Letter from Beaufort Magistrate Clerks Office
(2) Certified True Copy of original ticket after disposition
(3) Affidavit of Attorney Jessica Saxon with three exhibits attached.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Arie D. Bax

Cc: Duncan. Brandy A., SC DMV

18-0605
April 6, 18

FILED
MAY 10 2018
SCOMVH

RECEIVED
MAY 14 2018
SCOMVH

BEAUFORT MAGISTRATE
Multigovernment Center, Arthur Horne Building
104 Ribaut Rd. P.O. Box 2207
Beaufort, South Carolina 29901-2207
Phone: (843) 255-5700 • Fax (843) 255-9427

May 4, 2018

Attn: Viola Pugh-Shivers

Good Morning. Attached is a certified true copy of our original green Trial Court Copy of ticket 57873GO. This case was heard at Transfer Court so we didn't have the yellow DMV copy of the ticket at the time of disposition. We received the yellow copy much later from the Sheriff's Office. Unfortunately we have no record of when the yellow copy was sent to SCDMV. The clerk who does the DL-76 report on Fridays did not keep copies of the transmittals at that time.

As you can see there are no other dates on the ticket except for the disposition date of January 13, 2016. Because we didn't receive the yellow copy until much later, two different clerks signed off the different copies of the ticket, however no one in the Magistrate's office put any other dates on the ticket except for the disposition date. The signature above the date of 01/18/18 is not anyone in this office. It had to be someone at the DMV who put that date on the ticket and I have no idea to what it refers. No action took place regarding this case on this date. The last action on this case was 01/13/2016 when it was disposed. Please feel free to call with any questions at 843-255-5637.

Sincerely,

Beryl E. Cost

Senior Traffic and Criminal Team Leader

Beaufort County Magistrate

P.O. Box 2207

Beaufort, SC 29901

Form S-438
Rev. 8/10

STATE OF SOUTH CAROLINA

UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Beaufort — VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
Shante	Mitchell	Eugene

STREET AND NO.	CITY	STATE	ZIP CODE
26 Ditch Rd	Dale	SC	29940

STATE LICENSED	DRIVER'S LICENSE NO.	CDL ☐ YES ☒ NO	CDL LIC CLASS
SC	116794B		D

VEH. LIC. NO.	STATE	MAKE OF VEH.	YEAR	COMM. VEH.	AUTO	PASSR VEH.	COMB.
SVL303	SC	Chevy	11	HAZ. MT.	MOPED	MTRCYCL	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT	STREET AND NO.
Central Court	104 Ribaut Rd

DATE OF TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
05/06/2015	1330	BF	SC	29902

VIOLATION - COURT APPEARANCE REQUIRED (YES / NO)	VIOLATION SECTION NO.
DUS 3rd or 5th	56-1-460

OWNER OF VEHICLE: Same as Above — DATE OF ARREST: 04/02/2015

ADDRESS OF OWNER — DATE OF VIOLATION: 04/02/2015

BAIL DEPOSITED	NAME OF ARRESTING OFFICER	RANK
Self	Driscoll	Cpl

DESCRIPTION OF ACCUSED

SEX	RACE	AGE	HGT	WGT	EYES
F	B	26	5'3"	162	BRO

COUNTY: BF — NUMBER: 07

BADGE: 1522 — TROOP: 06

DATE BAIL RECD. — BY

DOCKET NO.

CASE BEFORE: ☐ MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT

TIME OF VIOLATION: 1742 A.M. P.M. — WEATHER: Clear

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE

DISTANCE IN FEET FROM INTERSECTION OF: Knox Neck AND Pinecrest

DEFENDANT: ☐ DID NOT APPEAR ☐ APPEARED

DISPOSITION: ☐ NOLLE PROSSED ☐ FORFEITED BOND — GUILTY ☐ PLEA: NOLO CONTENDERE

MILES: NA — N ☐ 1 ☐ 2 — S ☐ 3 — W ☐ 4

TRIAL BY: TRIAL JUDGE ☐ JURY ☐

HWY NO.: NA — CITY: NA

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ — DATE OF TRIAL IF ANY: 1/20

Lat

FINE	SUSPEND	TIME	BAIL COLLECTED	BAIL SUSPENDED
$	TST	30	30	

Long

COMMITTED TO: Vehicle Searched — Arrest as Result of Collision

OFFENSE CODE: 96 — B.A. LEVEL: NA

ATTENDED CORRECTLY — DATE: 1/13/16

57873 GO

TRIAL COURT COPY

OUS 5112

2015 AUG 20 PM 3:57

I state that this is a true and Certified copy of the original record on file with the Court of County

Date 5-3-18

Change amended to DUS 2nd

Mff/cw 1/13/16

AFFIDAVIT

I, Jessica M. Saxon, hereby swear and affirm the following:

1) I am an attorney licensed to practice law in the state of South Carolina and I am in good standing with the South Carolina Bar;
2) I am currently employed with the Beaufort County Public Defender's Office and have been employed with that office since July 1, 2013;
3) On April 2, 2015 Ms. Shante Eugene (Plaintiff) was arrested for the General Sessions charge of Habitual Traffic Offender (HTO) and the Magistrate charges of Driving Under Suspension 3rd or Subsequent (DUS 3rd) and Child Restraint Violation;
4) On April 15, 2015 I was appointed to represent Plaintiff on the charges of HTO, DUS 3rd and Child Restraint Violation;
5) On August 19, 2015 the Magistrate Court charges of DUS 3rd and Child Restraint Violation were brought up to the court of General Session to consolidate the cases to one court (Exhibit A);
6) During the pendency of the cases an offer was made to dismiss the HTO and remand the Child Restraint Violation and DUS 3rd to Transfer Court for a plea of Time Served;
7) Plaintiff accepted this offer which resulted in the HTO being dismissed, the DUS 3rd being reduced to a DUS 2nd and remanded to Magistrate Court and the Child Restraint Violation being remanded to Magistrate Court on January 13, 2016 (Exhibit B);

8) The dismissal and remand occurred on the same day that Plaintiff entered a guilty plea to the DUS 2nd and Child Restraint Violation charges, January 13, 2016;

9) The plea was heard before Magistrate Judge Mark Fitzgibbons on January 13, 2016;

10) It is the normal practice that a remand to transfer court and a plea happen on the same day, in this case on January 13, 2016;

11) Once the plea was completed I wrote the outcome on my file and then closed my case in my internal system (Exhibit C);

12) As of January 13, 2016 the charges Plaintiff were facing were resolved and the cases closed, no further action was taken on this case by the courts after this date;

13) January 13, 2016 was the final court date in this case. On that date the plea was heard before a Judge and accepted, a sentence of Time Served and Court Cost was handed down and the case was resolved;

Jessica M. Saxon
Bar # 80719

SWORN TO BEFORE ME THIS 8th DAY OF May 2018

Notary Public
State of South Carolina
My Commission Expires June 26, 2026

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE SUMMARY COURT
	)	
COUNTY OF BEAUFORT	)	Ticket No.(s): #57873GO; 57874GO
	)	
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
v.	)	ORDER OF CHANGE OF VENUE
Shante Eugene	)	IN A CRIMINAL CASE
	)	
Defendant	)	

2015 AUG 20 PM 3:20

Upon Motion of Julie Kate Keeney, the Solicitor in this action, and after due consideration, it appears that the interest of justice may best be served by the transfer of this case from the Beaufort County Magistrate Court to the Court of General Sessions to proceed upon receipt of all papers relating to the case, as if the case were originally filed in the Court to which it is now transferred.

AND IT IS SO ORDERED:

Judge

Beaufort County, South Carolina
August 19, 2015

EXHIBIT B

STATE OF SOUTH CAROLINA	)	INDICTMENT # 2015-GS-070- 1368
	)	
	)	WARRANT # 57873GO
vs.	)	
	)	
	)	ADMINISTRATIVE REMAND
	)	
Eugene Shante	)	
Defendant	)	
	)	

The above captioned Defendant is charged with Driving under Suspension, 3rd or subsequent offense. This charge is REMANDED on January 13, 2016 to be disposed of in Beaufort County, South Carolina Magistrate Court as Driving Under Suspension, 2nd Offense.

Arthur C. Utsey, IV
Assistant Solicitor
Fourteenth Judicial Circuit

JEAN ANN ROSEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT
2016 JAN 13 PM 4:13

000144

COA - 0239

STATE OF SOUTH CAROLINA	)	INDICTMENT # 2015GS0701369
	)	
	)	WARRANT # 57874GO
vs.	)	
	)	
	)	ADMINISTRATIVE REMAND
	)	
Shante Eugene,	)	
Defendant	)	
	)	

The above captioned Defendant is charged with Child Restraint System Article Violation. This charge is REMANDED on January 13, 2016, to be disposed of in Magistrate Court.

Arthur C. Utsey, IV
Assistant Solicitor
Fourteenth Judicial Circuit

2016 JAN 13 PM 4:13
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

000145

COA - 0240

STATE OF SOUTH CAROLINA)
)
)
vs.)
)
)
)
Shante Eugene)
)

INDICTMENT #: 2015GS0700562
WARRANT #: 57875GO

THIS INDICTMENT IS NOLLE PROSSED ON 1/13/2016, BY Assistant Solicitor Arthur C. Utsey, IV FOR THE FOLLOWING REASONS:

Dismissed as part of a plea agreement.

Arthur C. Utsey, IV
Assistant Solicitor
Fourteenth Judicial Circuit

2016 JAN 13 PM 4:13
JEAN A. ROSEMEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

000146

WITNESSES

Draisen-BCSO

ARREST WARRANT NUMBER

57875GO

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: JUL 30 2015

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2015GS0700562

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2015

THE STATE

vs.

Shante Mitchele Eugene

Indictment for

Habitual Traffic Offender

SC Code: 56-01-1100
CDR Code:0057

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

0001471000

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2015GS0700562

At a Court of General Sessions, convened on July 30, 2015, the Grand Jurors of Beaufort County present upon their oath:

Habitual Traffic Offender

That in Beaufort County, South Carolina, on or about April 2, 2015, the Defendant, Shante Mitchele Eugene, did operate a motor vehicle in the State of South Carolina while her record as maintained by the Department of Motor Vehicles showed that she had accumulated convictions for separate and distinct offenses listed in Section 56-1-1020(a), (b) and (c) during a three year period; in violation of Section 56-1-1100, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statue in such case made and provided.

Solicitor

000148

EXHIBIT C

Case File Detail

CASE INFORMATION

Opened:	04/15/2015
File Number:	07A15-00000653
Attorney:	JS - Saxon, Jessica
Solicitor:	Utsey, Ceth
Closed:	01/13/2016

CLIENT INFORMATION

Client:	Eugene, Shante Mitchelle
DOB:	06/09/1983
SSN:	--
Ethnicity:	African American
Gender:	Female
Alias:	
DL:	
Inmate ID:	

CONTACT INFORMATION

Daytime Phone:	(334) 614-8335
Evening Phone:	
Alternate Phone:	
Address:	26 Witsell Road Seabrook, SC 29940

CHARGES

1 **Initial Charge:** DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. of - *56-01-0460(A)(1)(c)*
Disp Charge: DUS / Driving under suspension, license not suspended for DUI - 2nd offense - *56-01-0460(A)(1)(b)*
Disposition: *01/13/2016* PGTC
Sentence: *01/13/2016* Time Served
Sentence Note: D pled to reduced DUS charge and child restraint violation for TS and CC in TC.
Ticket/Warrant: 57873GO **Indictment:**

2 **Initial Charge:** Traffic / Child passenger restraint system Article violation - *56-05-6450*
Disp Charge: Traffic / Child passenger restraint system Article violation - *56-05-6450*
Disposition: *01/13/2016* PGTC
Sentence: *01/13/2016* Time Served
Sentence Note:
Ticket/Warrant: 57874GO **Indictment:**

EVENTS

Docket Appearance *05/06/2015 01:30 PM*, Attorney: JS - Saxon, Jessica
Note: Magistrate Court

No related people entries for this case

CASE NOTES

Jessica Saxon	01/14/2016 09:47 AM	D pled to DUS 2nd and child restraint violation for TS and CC in TC.
Jessica Saxon	07/08/2015 10:04 AM	Spoke to client about case/jury trial, etc. Told client about motion to dismiss and possibilites moving forward with trial vs. plea and told her to call CC to set up an appointment. She wants to move forward with trial at this point. Sgt Draisen has conflict with current trial date and is requesting a contiuance - will not object to this contiuance.
Christy Compton	06/16/2015 12:10 PM	Received from Beaufort Magistrate Court summons regarding case numbers 57873-74GO which is scheduled for a Jury Trial scheduled on July 15, 2015 at 9:00am. Marked on calendar.
Jessica Saxon	06/02/2015 01:05 PM	D called. Returning from National Guard training late tomorrow and would not be back in time for court. We have also not met to discuss her case. Asked Magistrate court to contiune tomorrow's date and it was denied becase "D has been assigned to PD's office since April and has had two contiuances already." Will remake the motion tomorrow in court.

Case File Detail

CASE INFORMATION

Opened:	04/15/2015
File Number:	07A15-00000654
Attorney:	JS - Saxon, Jessica
Solicitor:	Utsey, Ceth
Closed:	01/13/2016

CLIENT INFORMATION

Client:	Eugene, Shante Mitchelle
DOB:	06/09/1983
SSN:	--
Ethnicity:	African American
Gender:	Female
Alias:	
DL:	
Inmate ID:	

CONTACT INFORMATION

Daytime Phone:	(334) 614-8335
Evening Phone:	
Alternate Phone:	
Address:	26 Witsell Road Seabrook, SC 29940

CHARGES

1 **Initial Charge:** Traffic / Habitual Traffic Offenders, DUS as per Habitual Traffic Offender status - *56-01-1100*
Disp Charge: Traffic / Habitual Traffic Offenders, DUS as per Habitual Traffic Offender status - *56-01-1100*
Disposition: *01/13/2016* DNP
Sentence:
Sentence Note:
Ticket/Warrant: 57875GO **Indictment:**

EVENTS

First Appearance *05/01/2015 09:00 AM*, Attorney: JS - Saxon, Jessica
Note: General Sessions

No related people entries for this case

CASE NOTES

Jessica Saxon	01/14/2016 09:46 AM	HTO charge dismissed as part of plea agreement. Pled to Mag charges in TC.
Jessica Saxon	10/22/2015 12:51 PM	D was at second appearances on 10/13. Gave her next CD of 11/18. Asked ASOL CU to look at dismissing HTO charge.
Jessica Saxon	10/06/2015 12:05 PM	D left VM asking about next court date. Checked with ASOL JKK and it is set for 10/13 appearance. Informed D via text and stated was still trying to work out case with State. D claims she had no notice from DMV of HTO.
Jessica Saxon	09/03/2015 12:39 PM	D was scheduled to call in this AM at 10:30 for a phone appointment - no call received.
Jessica Saxon	08/17/2015 08:46 AM	Having DUS brought up to GS. Attempting to get ASOL to let D plead to DUS and drop HTO. Called D to inform her of this.
Jessica Saxon	08/06/2015 11:49 AM	Met with client in office. Discussed case and next steps. Biggest concern is felony conviction - will try to figure out something with ASOL to avoid this.
Christy Compton	07/20/2015 03:54 PM	Received notice from Beaufort Magistrate Court regarding Jury Trial scheduled on August 18, 2015 at 1:00pm for case numbers 57873-74GO. Marked on calendar.
Christy Compton	07/08/2015 09:53 AM	Telephone call from client to schedule appointment. Client is waiting on a new court date. Scheduled appointment for August 4, 2015 at 2:00pm. Marked on calendar. Confirmed telephone number with client and informed client that if she received notice from the court that her court date was prior to the appointment date, she could call me back and reschedule the appointment.
Christy Compton	06/01/2015 04:10 PM	Attended Roll Call on 05/29/2015. Client's case was held back from the Grand Jury and not indicted - New Roll Call date of June 26, 2015.
Christy Compton	05/12/2015 11:19 AM	Received from Beaufort Magistrate Court notice of court date now scheduled on June 3, 2015 at 1:30pm for ticket number 57873GO and 57874GO. Marked on calendar.
Christy Compton	04/29/2015 02:01 PM	Client, Shante Eugene came into the office and dropped off Orders that she received regarding training. Client requested that she not be required to appear at her next court date which is now scheduled for May 1, 2015 and May 29, 2015. Placed paperwork in Jessica Saxon's box for review. Continuance on May 6, 2015 was denied by Judge Sproatt.
Christy Compton	04/29/2015 11:57 AM	Telephone call from client regarding court date on May 6, 2015. Informed client that our office put in a continuance request, however it was denied. Client stated that she is going to be at training on this date and time. Informed client that she needed to provide proof of this to our office by Friday, May 1, 2015 so that we could forward it to the courts.

000151

Yolanda Williams

From: Yolanda Williams
Sent: Thursday, May 03, 2018 11:50 AM
To: Arie D. Bax (arie.baxlaw@gmail.com); 'Duncan, Brandy A'
Subject: RE: RE: SCDMV v. Shante Eugene; Docket No. 18-OMHV-02-0605-CC

RE: SCDMV v. Shante Michelle Eugene; Docket No. 18-OMVH-02-0605-CC

Having received Ms. Duncan's objection to Mr. Bax's request for an extension to submit additional evidence regarding the conviction date for ticket #57873GO, I have reviewed the recording of the hearing. At the hearing, Mr. Bax requested additional time to investigate and respond to the SCDMV's assertion that the conviction date for ticket# 57873GO was actually January 14, 2018, rather than January 13, 2016, as indicated on the SCDMV's suspension notice. In making that request, he specifically indicated that he would have contacted Jessica Saxon and the Clerk of Court's Office to obtain additional information regarding the conviction date. In response, Ms. Duncan stated that she did not have any objection to leaving the record open for Mr. Bax to submit additional information to clarify the conviction date as long as the SCDMV had a chance to respond and also supplement the record with its ticket inventory reports. Additional documentation was not specifically limited to the records of the Clerk of Court's Office. Therefore, Mr. Bax's request for an extension as set forth in his April 30, 2018, letter remains granted.

Mr. Bax must submit any additional documentation regarding the conviction date for ticket #57873GO to the OMVH no later than June 6, 2018. He must also forward a copy to the SCDMV. The SCDMV will have fifteen (15) days to respond to any additional documentation submitted by Mr. Bax. While I anticipate making a decision based upon the evidence already presented at the April 6, 2018, hearing and the additional written documentation/responses submitted by the parties, if there is a need to reconvene the parties for argument, I will set a date and time at the conclusion of the time frames set forth above.

Brigette Autry
Hearing Officer, OMVH

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

-----Original Message-----
From: Yolanda Williams
Sent: Thursday, May 03, 2018 8:11 AM
To: Arie D. Bax (arie.baxlaw@gmail.com) <arie.baxlaw@gmail.com>; Duncan, Brandy A <Brandy.Duncan@scdmv.net>
Subject: RE: SCDMV v. Shante Eugene; Docket No. 18-OMHV-02-0605-CC

RE: SCDMV v. Shante Eugene; Docket No. 18-OMHV-02-0605-CC

000152

The request for an extension to provide supplemental materials filed by Mr. Bax on April 30, 2018 is GRANTED.

Brigette Autry
Hearing Officer, OMVH

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

Yolanda Williams

From: Duncan, Brandy A <Brandy.Duncan@scdmv.net>
Sent: Wednesday, May 02, 2018 3:08 PM
To: Yolanda Williams; HPU
Cc: Arie Bax
Subject: Shante Eugene - dk# 18-0605

Ms. Williams,

Please pass on the following e-mail to Hearing Officer Autry. Thank you.

Hearing Officer Autry,

SCDMV received Mr. Bax's letter dated April 30, 2018 requesting an additional 30 days to "supply supplemental materials discussed in" this hearing regarding the conviction date for UTT # 57873GO. You graciously granted both parties in this case 30 days to provide specific supplemental document regarding this UTT. SCDMV filed its' supplemental documentation, the ticket inventory reports, on April 17, 2018. At the hearing for this matter, Mr. Bax requested and SCDMV consented to time for Mr. Bax to get additional documentation from the Court of conviction regarding the date of conviction for this UTT. Mr. Bax's letter states that he has requested additional materials form the clerk's office and that request is still being processed. As to records sought from the clerk's office, SCDMV has no objection to Mr. Bax's request for an additional 30 days to provide the documents to the OMVH.

Mr. Bax's April 30, 2018 letter also discusses obtaining records from Jessica Saxon, Respondent's public defender, and her file regarding Respondent. At the hearing for this matter, Mr. Bax never mentioned supplementing the record in this case with records from Respondent's public defender. Thus, records from Respondent's public defender were not part of the supplemental records you stated would be allowed to be submitted into the record within 30 days of this hearing. To the extent that Mr. Bax would have raised this issue at the hearing, SCDMV would have objected to leaving the record open to obtain additional records from Respondent's public defender. It is one thing for SCDMV to agree to additional records coming from the Clerk of Court's office, which is the official record keeper for criminal cases brought in their court. It would be quite another to agree to records coming from an unofficial source, with no opportunity for the SCDMV to cross examine the source of the unofficial records, such as Respondent's public defender. For these reasons, and several others, SCDMV would have objected to leaving the record open to allow for supplementation of the record with unofficial documents from Respondent's public defender. Thus, SCDMV objects to Respondent supplementing the record of this case with documents from any source other than the Clerk of Court's office, which was the only source named by Respondent at the hearing of this matter. As a result, SCDMV also objects to any continuance of time to supplement the record of this case with documents from any source other than the Clerk of Court's office.

Thanks,

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

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Visit http://www.scdmvonline.com/Driver-Services/Drivers-License/REAL-ID for more information on REAL ID.

000155

Yolanda Williams

From: Yolanda Williams
Sent: Thursday, May 03, 2018 8:11 AM
To: Arie D. Bax (arie.baxlaw@gmail.com); Duncan, Brandy A
Subject: RE: SCDMV v. Shante Eugene; Docket No. 18-OMHV-02-0605-CC

RE: SCDMV v. Shante Eugene; Docket No. 18-OMHV-02-0605-CC

The request for an extension to provide supplemental materials filed by Mr. Bax on April 30, 2018 is GRANTED.

Brigette Autry
Hearing Officer, OMVH

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

Yolanda Williams

From: Duncan, Brandy A <Brandy.Duncan@scdmv.net>
Sent: Wednesday, May 02, 2018 3:08 PM
To: Yolanda Williams; HPU
Cc: Arie Bax
Subject: Shante Eugene - dk# 18-0605

Ms. Williams,

Please pass on the following e-mail to Hearing Officer Autry. Thank you.

Hearing Officer Autry,

SCDMV received Mr. Bax's letter dated April 30, 2018 requesting an additional 30 days to "supply supplemental materials discussed in" this hearing regarding the conviction date for UTT # 57873GO. You graciously granted both parties in this case 30 days to provide specific supplemental document regarding this UTT. SCDMV filed its' supplemental documentation, the ticket inventory reports, on April 17, 2018. At the hearing for this matter, Mr. Bax requested and SCDMV consented to time for Mr. Bax to get additional documentation from the Court of conviction regarding the date of conviction for this UTT. Mr. Bax's letter states that he has requested additional materials form the clerk's office and that request is still being processed. As to records sought from the clerk's office, SCDMV has no objection to Mr. Bax's request for an additional 30 days to provide the documents to the OMVH.

Mr. Bax's April 30, 2018 letter also discusses obtaining records from Jessica Saxon, Respondent's public defender, and her file regarding Respondent. At the hearing for this matter, Mr. Bax never mentioned supplementing the record in this case with records from Respondent's public defender. Thus, records from Respondent's public defender were not part of the supplemental records you stated would be allowed to be submitted into the record within 30 days of this hearing. To the extent that Mr. Bax would have raised this issue at the hearing, SCDMV would have objected to leaving the record open to obtain additional records from Respondent's public defender. It is one thing for SCDMV to agree to additional records coming from the Clerk of Court's office, which is the official record keeper for criminal cases brought in their court. It would be quite another to agree to records coming from an unofficial source, with no opportunity for the SCDMV to cross examine the source of the unofficial records, such as Respondent's public defender. For these reasons, and several others, SCDMV would have objected to leaving the record open to allow for supplementation of the record with unofficial documents from Respondent's public defender. Thus, SCDMV objects to Respondent supplementing the record of this case with documents from any source other than the Clerk of Court's office, which was the only source named by Respondent at the hearing of this matter. As a result, SCDMV also objects to any continuance of time to supplement the record of this case with documents from any source other than the Clerk of Court's office.

Thanks,

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

000157

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Visit http://www.scdmvonline.com/Driver-Services/Drivers-License/REAL-ID for more information on REAL ID.

Attorneys
Arie D. Bax
S. Naki Richardson-Bax•

Bax Law Firm

Contact Information
2 Merchants Lane Suite 210
Beaufort, SC 29907
P:(843) 522-0980
F:(843) 217-5815

April 30, 2018

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

RE: Shante Eugene v. South Carolina Department of Motor Vehicles
Habitual Offender Declaration Hearing
Docket No: 18-OMVH-02-0605-CC
SCDL: 11617948

Dear Hearing Officer Autry,

This letter is to request a (30) day extension in efforts to supply supplemental materials discussed in our previous hearing concerning the correct conviction date in reference to ticket no: 57873GO. Additonal materials have been requested from the clercks office that is still being processed at this time. The previous attorney in this matter (Jessica Saxon) has not been available to render any further information in reference to this case due to illness, and as of the date of this letter is currently on vacation.

Additionally, Ms. Saxon ad to request Ms. Eugene's file from storage (which requires time to accomplish.) Due to the reasons stated above, I respectfully request an extension.

If you have any questions please don't hesitate to contact me.

Sincerely,

Arie Bax

Cc: Duncan, Brandy A., SC DMV

RECEIVED
MAY 02 2018
SCOMVH

FILED
APR 30 2018
SCOMVH

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BA

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

Form S-429
Rev. 8/98

STATE OF SOUTH CAROLINA

UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF [illegible] VERSUS

FIRST NAME [illegible] MIDDLE NAME [illegible] LAST NAME [illegible]

STREET AND NO [illegible] CITY [illegible] STATE [illegible] ZIP CODE [illegible]

STATE LICENSED: [illegible] DRIVER'S LICENSE NO: 16179[illegible] COL: YES NO DRV LIC CLASS: D

LICENSE NO: SVL3[illegible] STATE: SC MAKE OF VEH: Kia YEAR: 14 COMM VEH: AUTO TRSP HZ: COMB HAZ MT: MOPED MTRCYCL: OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT: Gaffney Court STREET AND NO: 104 Robert Rd

DATE OF TRIAL: 05 26 15 TIME OF TRIAL: 1330 CITY: GA STATE: SC ZIP CODE: 29340

VIOLATION - COURT JURISDICTIONAL REFERENCE NO: DUS 3rd - 56 VIOLATION SECTION NO: 56-1-460

OWNER OF VEHICLE: Same as Above DATE OF ARREST: 04 02 15

ADDRESS OF OWNER: DATE OF VIOLATION: 04 02 15

BAIL DEPOSITED: Nil NAME OF ARRESTING OFFICER: D. Garcia RANK: Cpl

DESCRIPTION OF ACCUSED: RACE: W SEX: F HT: 5'4" WT: 165 HAIR: BRO EYES: BRO COUNTY: 24 NUMBER: 7

DATE BAIL RECD: BY: BADGE: 2177 TROOP: 3

DOCKET NO

CASE BEFORE: MAGISTRATE ☒ MUN COURT ☐ CIRCUIT COURT ☐ FAM CT DIVISION ☐ FEDERAL COURT ☐

TIME OF VIOLATION: 1747 AM ☐ PM ☒ MPH/KPH:

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE:

DISTANCE IN FEET FROM INTERSECTION OF: [illegible] AND [illegible]

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☒

NOLLE PROSSED ☐ GUILTY ☐ FORFEITED BOND ☐ PLEA NOLO CONTENDERE ☐

STREET: [illegible] N ☐ NE ☐ E ☐ SE ☐ S ☐ SW ☐ W ☐

TRIAL BY: TRIAL JUDGE ☐ JURY ☐

HWY NO: [illegible] CITY: [illegible]

VERDICT OF: GUILTY ☐ TRIAL IF ANY: NOT GUILTY ☐ DATE OF TRIAL IF ANY: / /

Lat: [illegible]

TS + 30 30

Long: [illegible]

COMMITTED TO: [illegible] OFFENSE CODE: [illegible] B A LEVEL: [illegible]

CERTIFIED CORRECT: MF/BD DATE: 1/13/16

57873 GO

#25112

TRIAL COURT COPY

496
JM

CERTIFIED TRUE COPY

15535891

Charge amended to DUS 2nd offense
J. Elliott to MF/BD
01/18/18

000160

Henry McMaster
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina

Department of Motor Vehicles

April 17, 2018

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

RE: *Shante M. Eugene v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 18-OMVH-02-0605-CC
SCDL: 11617948

Dear Hearing Officer Autry:

The South Carolina Department of Motor Vehicles provides the enclosed documents for introduction into the record of this habitual offender hearing as agreed to by the parties and allowed by you during the hearing held on April 6, 2018. Please file the original of these documents and return a clocked copy to me in the self-addressed envelope.

For clarity, the term "unused" in these documents means the ticket has not been issued to anyone (i.e. it is unused at the time the inventory is being completed) and the term "Court" means the ticket is still in Court (i.e. the charge has not been adjudicated by the Court as of the date the inventory is being completed). Additionally, please be advised that the law requiring a ticket inventory to be completed each year was repealed after the 2016 ticket inventory. For this reason, there is no ticket inventory for 2017.

Sincerely,

Frank L. Valenta, Jr., General Counsel
Brandy A. Duncan, Assistant General Counsel

RECEIVED
APR 17 2018
SCOMVH

Enclosures: Ticket Inventory Report dated 7/11/2016
Ticket Inventory Report dated 8/4/2015
Ticket Inventory Report dated 7/9/2014

cc: Arie Bax, Esquire

FILED
APR 17 2018
SCOMVH

INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2016
BEAUFORT COUNTY SHERIFF'S DEPT (019)

CITATION STATUS CODES:
C-COURT S-SIGNED OFF (SENT TO SCDMV)
U-UNUSED X-VOID (SENT TO SCDMV)
N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

S57747GO	S57748GO	S57750GO			
FIRST OUTSTANDING TICKET 57734GO		LAST OUTSTANDING TICKET 57750GO		05/24/2013	8
C57776GO	C57789GO	S57792GO			
FIRST OUTSTANDING TICKET 57776GO		LAST OUTSTANDING TICKET 57792GO		05/24/2013	3
C57814GO	C57816GO	C57817GO	C57823GO	C57827GO	
C57847GO					
FIRST OUTSTANDING TICKET 57814GO		LAST OUTSTANDING TICKET 57847GO		05/24/2013	6
C57863GO	C57864GO	C57873GO	C57874GO	C57875GO	
C57897GO					
FIRST OUTSTANDING TICKET 57863GO		LAST OUTSTANDING TICKET 57897GO		05/24/2013	6
C57931GO	S57932GO	C57933GO	C57948GO		
FIRST OUTSTANDING TICKET 57931GO		LAST OUTSTANDING TICKET 57948GO		05/24/2013	4
S57967GO	C57977GO	C57978GO	C57980GO	C57996GO	
C58000GO					
FIRST OUTSTANDING TICKET 57967GO		LAST OUTSTANDING TICKET 58000GO		05/24/2013	6
C58007GO	S58009GO	C58013GO	C58014GO	C58016GO	
C58017GO	C58018GO	S58019GO	S58020GO	S58021GO	
U58022GO	U58023GO	U58024GO	U58025GO	U58026GO	
U58027GO	U58028GO	U58029GO	U58030GO	U58031GO	
U58032GO	U58033GO	U58034GO	U58035GO	U58036GO	
U58037GO	U58038GO	U58039GO	U58040GO	U58041GO	
U58042GO	U58043GO	U58044GO	U58045GO	U58046GO	
U58047GO	U58048GO	U58049GO	U58050GO		
FIRST OUTSTANDING TICKET 58007GO		LAST OUTSTANDING TICKET 58050GO		05/24/2013	39
C58088GO					
FIRST OUTSTANDING TICKET 58088GO		LAST OUTSTANDING TICKET 58088GO		05/24/2013	1
C58105GO	C58106GO	S58108GO	C58118GO	C58119GO	
C58120GO	C58121GO	C58123GO	C58131GO	S58134GO	
C58138GO	C58140GO	C58142GO	C58143GO	U58149GO	
C58150GO					
FIRST OUTSTANDING TICKET 58105GO		LAST OUTSTANDING TICKET 58150GO		05/24/2013	16
S58179GO	C58180GO	S58181GO	S58182GO	S58183GO	
S58184GO	C58185GO	S58186GO	S58187GO	S58188GO	
S58189GO	C58190GO	U58191GO	U58192GO	U58193GO	

000162

COA - 0257

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

Driver Services, Deputy Director

VS22BTKT SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES 08/04/2015 PAGE 1,926
INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2015
BEAUFORT COUNTY SHERIFF'S DEPT (019)

CITATION STATUS CODES:
C-COURT S-SIGNED OFF (SENT TO SCDMV)
U-UNUSED X-VOID (SENT TO SCDMV)
N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

C57657GO C57659GO S57661GO S57669GO S57672GO S57675GO S57676GO S57677GO C57678GO C57679GO
C57680GO U57681GO U57682GO U57683GO U57684GO U57685GO U57686GO U57687GO U57688GO U57689GO
U57690GO U57691GO U57692GO U57693GO U57694GO U57695GO U57696GO U57697GO U57698GO U57699GO
U57700GO
FIRST OUTSTANDING TICKET 57657GO LAST OUTSTANDING TICKET 57700GO 05/24/2013 31

C57701GO C57705GO S57710GO S57711GO S57713GO S57714GO S57715GO S57716GO S57717GO X57718GO
C57719GO S57720GO S57721GO S57722GO S57723GO S57724GO S57725GO S57726GO S57727GO C57728GO
S57729GO C57730GO C57731GO U57732GO U57733GO U57734GO U57735GO U57736GO U57737GO U57738GO
U57739GO U57740GO U57741GO U57742GO U57743GO U57744GO U57745GO U57746GO U57747GO U57748GO
U57749GO U57750GO
FIRST OUTSTANDING TICKET 57701GO LAST OUTSTANDING TICKET 57750GO 05/24/2013 42

S57763GO C57771GO C57776GO S57781GO S57785GO C57789GO S57790GO S57791GO C57792GO S57793GO
S57794GO S57795GO C57796GO S57797GO S57798GO S57799GO C57800GO
FIRST OUTSTANDING TICKET 57763GO LAST OUTSTANDING TICKET 57800GO 05/24/2013 17

S57803GO S57804GO S57812GO C57813GO C57814GO X57815GO C57816GO C57817GO S57818GO S57819GO
S57820GO S57821GO S57822GO C57823GO C57824GO C57825GO C57826GO C57827GO C57828GO U57829GO
U57830GO U57831GO U57832GO U57833GO U57834GO U57835GO U57836GO U57837GO U57838GO U57839GO
U57840GO U57841GO U57842GO U57843GO U57844GO U57845GO U57846GO U57847GO U57848GO U57849GO
U57850GO
FIRST OUTSTANDING TICKET 57803GO LAST OUTSTANDING TICKET 57850GO 05/24/2013 41

S57851GO S57852GO S57861GO C57863GO C57864GO C57873GO C57874GO C57875GO S57877GO S57878GO
S57879GO S57891GO S57892GO S57893GO S57894GO S57895GO C57896GO C57897GO S57898GO S57899GO
S57900GO
FIRST OUTSTANDING TICKET 57851GO LAST OUTSTANDING TICKET 57900GO 05/24/2013 21

S57908GO C57912GO S57913GO S57914GO S57915GO S57916GO S57917GO S57918GO S57919GO S57920GO
C57921GO S57922GO S57923GO S57924GO S57925GO S57926GO S57927GO C57928GO S57929GO S57930GO
C57931GO C57932GO C57933GO S57934GO S57935GO C57936GO S57937GO S57938GO S57939GO C57940GO
C57941GO C57942GO U57943GO U57944GO U57945GO U57946GO U57947GO U57948GO U57949GO U57950GO
FIRST OUTSTANDING TICKET 57908GO LAST OUTSTANDING TICKET 57950GO 05/24/2013 40

C57951GO C57952GO S57953GO S57954GO S57955GO S57956GO S57957GO C57958GO S57959GO S57960GO
S57961GO S57962GO S57963GO S57964GO S57966GO C57967GO S57968GO S57969GO S57970GO C57971GO
C57972GO C57973GO C57974GO C57975GO U57976GO U57977GO U57978GO U57979GO U57980GO U57981GO
U57982GO U57983GO U57984GO U57985GO U57986GO U57987GO U57988GO U57989GO U57990GO U57991GO
U57992GO U57993GO U57994GO U57995GO U57996GO U57997GO U57998GO U57999GO U58000GO
FIRST OUTSTANDING TICKET 57951GO LAST OUTSTANDING TICKET 58000GO 05/24/2013 49

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

D. L. Phelps
Driver Services, Deputy Director

000163
COA - 0258

VS22BTKT SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES 07/09/2014 PAGE 579

INVENTORY REPORT OF UNIFORM TRAFFIC CITATIONS FOR 2014

BEAUFORT COUNTY SHERIFF'S DEPT (019)

CITATION STATUS CODES:
C-COURT S-SIGNED OFF (SENT TO SCDMV)
U-UNUSED X-VOID (SENT TO SCDMV)
N-VOID (NOT SENT TO SCDMV, MUST SEND COPY OR AFFIDAVIT)

57691GO	57692GO	57693GO	57694GO	57695GO	57696GO	57697GO	57698GO	57699GO	57700GO

FIRST OUTSTANDING TICKET 57651GO LAST OUTSTANDING TICKET 57700GO 05/24/2013 50

57701GO	57702GO	57703GO	57704GO	57705GO	57706GO	57707GO	57708GO	57709GO	57710GO
57711GO	57712GO	57713GO	57714GO	57715GO	57716GO	57717GO	57718GO	57719GO	57720GO
57721GO	57722GO	57723GO	57724GO	57725GO	57726GO	57727GO	57728GO	57729GO	57730GO
57731GO	57732GO	57733GO	57734GO	57735GO	57736GO	57737GO	57738GO	57739GO	57740GO
57741GO	57742GO	57743GO	57744GO	57745GO	57746GO	57747GO	57748GO	57749GO	57750GO

FIRST OUTSTANDING TICKET 57701GO LAST OUTSTANDING TICKET 57750GO 05/24/2013 50

57751GO	57752GO	57753GO	57754GO	57755GO	57756GO	57757GO	57758GO	57759GO	57760GO
57761GO	57762GO	57763GO	57764GO	57765GO	57766GO	57767GO	57768GO	57769GO	57770GO
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57781GO	57782GO	57783GO	57784GO	57785GO	57786GO	57787GO	57788GO	57789GO	57790GO
57791GO	57792GO	57793GO	57794GO	57795GO	57796GO	57797GO	57798GO	57799GO	57800GO

FIRST OUTSTANDING TICKET 57751GO LAST OUTSTANDING TICKET 57800GO 05/24/2013 50

57801GO	57802GO	57803GO	57804GO	57805GO	57806GO	57807GO	57808GO	57809GO	57810GO
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57841GO	57842GO	57843GO	57844GO	57845GO	57846GO	57847GO	57848GO	57849GO	57850GO

FIRST OUTSTANDING TICKET 57801GO LAST OUTSTANDING TICKET 57850GO 05/24/2013 50

57851GO	57852GO	57853GO	57854GO	57855GO	57856GO	57857GO	57858GO	57859GO	57860GO
57861GO	57862GO	57863GO	57864GO	57865GO	57866GO	57867GO	57868GO	57869GO	57870GO
57871GO	57872GO	57873GO	57874GO	57875GO	57876GO	57877GO	57878GO	57879GO	57880GO
57881GO	57882GO	57883GO	57884GO	57885GO	57886GO	57887GO	57888GO	57889GO	57890GO
57891GO	57892GO	57893GO	57894GO	57895GO	57896GO	57897GO	57898GO	57899GO	57900GO

FIRST OUTSTANDING TICKET 57851GO LAST OUTSTANDING TICKET 57900GO 05/24/2013 50

57901GO	57902GO	57903GO	57904GO	57905GO	57906GO	57907GO	57908GO	57909GO	57910GO
57911GO	57912GO	57913GO	57914GO	57915GO	57916GO	57917GO	57918GO	57919GO	57920GO
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57941GO	57942GO	57943GO	57944GO	57945GO	57946GO	57947GO	57948GO	57949GO	57950GO

FIRST OUTSTANDING TICKET 57901GO LAST OUTSTANDING TICKET 57950GO 05/24/2013 50

57951GO	57952GO	57953GO	57954GO	57955GO	57956GO	57957GO	57958GO	57959GO	57960GO
57961GO	57962GO	57963GO	57964GO	57965GO	57966GO	57967GO	57968GO	57969GO	57970GO
57971GO	57972GO	57973GO	57974GO	57975GO	57976GO	57977GO	57978GO	57979GO	57980GO
57981GO	57982GO	57983GO	57984GO	57985GO	57986GO	57987GO	57988GO	57989GO	57990GO
57991GO	57992GO	57993GO	57994GO	57995GO	57996GO	57997GO	57998GO	57999GO	58000GO

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

COA - 0259

000164

Henry McMaster
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina

Department of Motor Vehicles

February 15, 2018

4-6-18
BA

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

RE: *Shante M. Eugene v. South Carolina Department of Motor Vehicles*
Habitual Offender Declaration Hearing
Docket No.: 18-OMVH-02-0605-CC
SCDL: 11617948

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,

Frank L. Valenta, Jr., General Counsel
Brandy A. Duncan, Assistant General Counsel
Office of General Counsel

RECEIVED
FEB 20 2018
SCOMVH

Enclosures: UTT 57873GO
UTT G281787
UTT 78917GC
Habitual Offender suspension letter dated 01/24/2018
Habitual Offender warning letter dated 02/21/2014
Certified Driving Record

cc: Shante M. Eugene

FILED
FEB 20 2018
SCOMVH

Post Office Box 1498, Blythewood, South Carolina 29016

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

A. L. Sheldon

Driver Services, Deputy Director

Form E-429
Rev. 8/09

STATE OF SOUTH CAROLINA

UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF [illegible] VERSUS

FIRST NAME [illegible] MIDDLE NAME [illegible] LAST NAME [illegible]

STREET AND NO [illegible] CITY [illegible] STATE [illegible] ZIP CODE [illegible]

STATE LICENSED: [illegible] DRIVER'S LICENSE NO: 116794[illegible] COL: YES ☑ NO ☐ THIS LIC CLASS: D

VEHICLE NO: SVL3[illegible] STATE: SC MAKE OF VEH: Chev YEAR: [illegible] COMM VEH: ☐ AUTO: ☐ PASS: ☐ COMB: ☐ HAZ MT: ☐ MOPED: ☐ MTRCYCL: ☐ OTHER: ☐

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT: Centric Court STREET AND NO: 104 Robert Rd

DATE OF TRIAL: 05 26 20 15 TIME OF TRIAL: 1330 CITY: BA STATE: SC ZIP CODE: 29102

VIOLATION - COURT APPEARANCE REQUIRED: YES ☑ NO ☐ VIOLATION SECTION NO.: 56-1-460

DUS 3rd o 56

OWNER OF VEHICLE: Same as Above DATE OF ARREST: 04 02 15

ADDRESS OF OWNER: DATE OF VIOLATION: 04 02 15

BAIL DEPOSITED: [illegible] NAME OF ARRESTING OFFICER: [illegible] RANK: [illegible]

DESCRIPTION OF ACCUSED: RACE W SEX M DOB 08 23 [illegible] HT 5'7 NAME [illegible] WT 140 EYES [illegible] COUNTY: [illegible] NUMBER: [illegible]

DATE BAIL REC'D: [illegible] BY: [illegible] BADGE: [illegible] TROOP: [illegible]

DOCKET NO

CASE BEFORE: MAG. COURT ☑ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE

DAY: S M T W T F S 1 2 3 4 5 6 7

TIME OF VIOLATION: 1742 AM ☐ PM ☑ PART OF: [illegible]

DISTANCE IN FEET FROM INTERSECTION OF: [illegible] AND [illegible]

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☑

DISPOSITION: NOLLE PROSSED ☐ FORFEITED BOND ☐ GUILTY ☑ PLED NOLO CONTENDERE ☐

MILES: [illegible] N ☐ NE ☐ E ☐ SE ☐ S ☐ W ☐

HWY NO: [illegible] CITY: [illegible]

TRIAL BY: TRIAL JUDGE ☐ JURY ☐

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ DATE OF TRIAL IF ANY: [illegible]

Lat: [illegible]

Long: [illegible]

TS + 30 30

COMMITTED TO: [illegible] OFFENSE CODE: [illegible] BA LEVEL: [illegible]

CERTIFIED CORRECT: TRP/BC DATE: 1/13/16

57873 GO

#25112

TRIAL COURT COPY

496
JN

CERTIFIED TRUE COPY

1553689

Charge amended to DUS 2nd offense
J.L. Watts TRP/BC
01/18/18

000166

COA - 0261

Rev. 9/10

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY

UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
Shante	Michelle	Eugene

STREET AND NO.	CITY	STATE	ZIP CODE
26 Witsell Rd	Seabrook	SC	

STATE LICENSED	DRIVER'S LICENSE NO.	COL	DRI LIC CLASS
SC	01167948	☐ YES ☐ NO	D

VEH LIC NO	STATE	MAKE OF VEH	YEAR	COML VEH	AUTO	TRAILER VEH	COMBL
BLB 4635	GA	dodg	12	HAZ. MT	MOPED	MTRCYCL	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT	STREET AND NO.
Summary Court	104 K. DAUT Rd

DATE OF TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
7 31 2013	1000	Beaufort	SC	29906

VIOLATION - COURT APPEARANCE REQUIRED YES NO 3rd — VIOLATION SECTION NO

Driving Under Suspension — 56-1-460

OWNER OF VEHICLE

DATE OF ARREST: 6 1 2013

ADDRESS OF OWNER: Columbus, Ga

DATE OF VIOLATION: 6 1 13

BAIL DEPOSITED	NAME OF ARRESTING OFFICER	RANK
JAIL	M G Davis	Cpl

DESCRIPTION OF ACCUSED

RACE	SEX	BIRTHDATE	HT	WT	HAIR	EYES
B	F	6 9 83	5'6"	151	BLK	BRO

COUNTY: BFT — NUMBER: 7

DATE BAIL REC'D: — BY: — BADGE: A 38 — TROOP: 6

DOCKET NO

CASE BEFORE: MAGISTRATE ☐ MUN COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE

DAY: S(1) M(2) T(3) W(4) T(5) F(6) S(7) — TIME OF VIOLATION MILITARY TIME: 0155 — WEATHER: CLR

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

I(1) U(2) P(3) S(4) O(5) — HWY NO: 21

NOLLE PROSSED ☐ FORFEITED BOND ☐ DISPOSITION: GUILTY ☐ PLEA NOLO CONTENDERE ☐

MILES: .75 — N(1) E(2) S(3) W(4)

CITY: Grand Coteau — CODE:

TRIAL BY: JURY ☐ TRIAL JUDGE ☐

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ — DATE OF TRIAL IF ANY: 10 1 13

Lat: 32° 35 572

FINE	SUSPENDED	TIME	AMT COLLECTED	AMT SUSPENDED
50	7+	210	BW	

Long: 80° 46 060

COMMITTED TO — Warrant No. 210 — Arrest as Fugitive Collateral NO — OFFENSE CODE: 90 — B.A. LEVEL

CERTIFIED CORRECT — DATE: 10 1 13

G 281787

ENFORCEMENT RECORDS COPY

DRIVERS

1496 15 Hld 22 r12d5

G281787

000167

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

Driver Services, Deputy Director

COA - 0262

Pled guilty to DUS 1st offense
50
652 / SIP
2-4-14
mdb/se



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Driver Services, Deputy Director

000168

Form S-438
Rev. 9/10

STATE OF SOUTH CAROLINA

UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Beaufort — VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
Shante		Eugene

STREET AND NO	CITY	STATE	ZIP CODE
26 Witsell Rd.	Seabrook	SC	29940

STATE LICENSED	DRIVER'S LICENSE NO	CDL	DRI LIC CLASS
SC	011617948	☐ YES ☒ NO	D

VEH LIC NO	STATE	MAKE OF VEH	YEAR	COMM'L VEH.	AUTO	10 PSGR. VEH.	COMB
BLB4634	GA	DODG	12	HAZ MT	MOPED	MTRCYCL.	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT	STREET AND NO
Central Court	104 Ribaut Rd

DATE	OF	TRIAL 20	TIME OF TRIAL	CITY	STATE	ZIP CODE
06	25	13	1430 pm	Beaufort	SC	29902

VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO: DUS 1st offense

VIOLATION SECTION NO: 56-1-460

OWNER OF VEHICLE: S A A.

DATE OF ARREST: 05 | 31 | 2013

ADDRESS OF OWNER: S. A A

DATE OF VIOLATION: 05 | 31 | 2013

BAIL DEPOSITED: None

NAME OF ARRESTING OFFICER: A Paul

RANK: PFC

DESCRIPTION OF ACCUSED

RACE	SEX	BIRTH DATE	HT	HAIR	WT	EYES
B	F	6 19 1983	506	BLK	140	BRO

COUNTY: BFT — NUMBER: 07

DATE BAIL REC'D: | | | 20 — BY:

BADGE: P6724 — TROOP: 06

DAY	S 1	M 2	T 3	W 4	T 5	F 6	S 7
						0	

DOCKET NO

CASE BEFORE: MAGISTRATE ☒ MUN COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

TIME OF VIOLATION: AM-1 PM-2 — WEATHER: CLR

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE

DISTANCE IN FEET FROM INTERSECTION OF: 21 Seabrook AND Rd

DEFENDANT DID NOT APPEAR ☒ APPEARED ☐

DISPOSITION

NOLLE PROSSED ☐ FORFEITED BOND ☐ GUILTY ☐ PLED NOLO CONTENDERE ☐

MILES	N 1	E 2	S 3	W 4
NA				

TRIAL BY: TRIAL JUDGE ☒ JURY ☐

HWY NO: 21 — CITY: NA

VERDICT OF TRIAL IF ANY: GUILTY ☒ NOT GUILTY ☐ — DATE OF TRIAL IF ANY: | | | 20

Lat: ° ' —

Long: ° '

JAIL	SUSPEND	FINE	AMT COLLECTED	AMT. SUSPENDED
		652.50	BUD	

COMMITTED TO: — Vehicle Searched — Arrest as Result of Collision

OFFENSE CODE: 96 — B A LEVEL: NA

CERTIFIED CORRECT: [signature] — DATE: 8/10/13

78917 GC

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

DRIVER'S RECORD COPY

803-255-5700

Driver Services, Deputy Director

000169

491

DA

7-25-13

South Carolina
Department of Motor Vehicles

01/24/2018

EUGENE, SHANTE MICHELE
26 WITSELL RD
SEABROOK, SC 29940-3707

CUSTOMER NO: 23177004
FILE NO: 23799265
DL NO: 11617948

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
04/07/2015	01/13/2016	57873GO	Driving Under Suspension
06/01/2013	02/04/2014	G281787	Driving Under Suspension
05/31/2013	08/20/2013	78917GC	Driving Under Suspension

BEGINNING DATE: 12:01 AM 02/23/2018 ENDING DATE: MIDNIGHT 02/23/2023

HEARING:
Section 56-1-1030 allows you to appeal the DMV's decision. There is a $200.00 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 tests.

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.

000170

Driver Services, Deputy Director

COA - 0265

South Carolina
Department of Motor Vehicles

02/21/2014

EUGENE, SHANTE MICHELE
8720 WATKINS AVE BLDG 9146
FORT BENNING, GA 31905-5523

CUSTOMER NO: 23177004
FILE NO: 16900533
DL NO: 11617948

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 that occurred within a three year period will be classified as a Habitual Offender.

Our records now reveal that you have accumulated 02 major and 03 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
Driving Under Suspension
Driving Under the Influence
Unlawful Alcohol Concentration
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.
Reckless Driving
Reckless Homicide
Felony in a Motor Vehicle
Felony Controlled Substance

Subsequent offenses of:
Failure to Stop for Blue Light

MINOR VIOLATIONS

Driving on wrong side of the road
Reckless driving
Failure to yield right of way
Passing stopped school bus
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
Following too closely
Speeding (over 10 MPH)
Turning Unlawfully
Passing unlawfully

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. Shelton
Driver Services, Deputy Director

000171

COA - 0266

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

Driver Services, Deputy Director

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 23177004 **Driver License No:** 11617948
Name: EUGENE, SHANTE MICHELE
Address: 26 WITSELL RD
City: SEABROOK **State:** SC **Zip:** 299403707
County: BEAUFORT
DOB: 6/9/1983 **Sex:** F **Driver Training:** N

Status - DL: SUSPENDED **CDL:** DISQUALIFIED

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.	ACN
Current								
DL	D	Re-exam	11/13/2017	06/09/2027	10/22/2003	N	N	1011713600008246
Prior								
DL	D	Re-exam	12/06/2007	06/09/2017	10/22/2003	N	N	N/A
DL	D	Returned	12/06/2007	06/09/2017	10/22/2003	N	N	N/A
DL	D	Re-exam	06/14/2006	06/09/2016	10/22/2003	Y	N	N/A
DL	D	Returned	06/14/2006	06/09/2016	10/22/2003	Y	N	N/A
DL	D	BP to DL	10/22/2003	06/09/2013	10/22/2003	Y	N	N/A
DL	D	Returned	10/22/2003	06/09/2013	10/22/2003	Y	N	N/A
BP	D	Returned	11/21/2002	11/21/2003	10/11/2001	N	N	N/A
BP	D	Renewal	11/21/2002	11/21/2003	10/11/2001	N	N	N/A
BP	D	Original	10/11/2001	10/11/2002	10/11/2001	N	N	N/A

Point Summary

Total Current Points: 0
Driver Credit: -0
Adjusted Current Points: 0

VIOL: 496 - Driving Under Suspension **Ticket#:** 57873GO
Violation: 04/07/2015 **Conviction:** 01/13/2016 **Recd:** 01/18/2018 **Post:** 01/24/2018
ACD: B26 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: SC **Court Type:** MAGISTRATE COURT

SUSP: 013 - Driving Under Suspension **Ticket#:** 57873GO
Special Driving Privilege: NONE
Suspension Beg: 02/08/2018 **Suspension End:** 05/08/2018
Causal: 04/07/2015 **Post:** 01/24/2018
Reinstatement Requirements Met: INDEFINITE **Reinstatement Fee Paid:** N
ACD: B26 **Withdrawal Loc Ref:** **Withdrawal Reason Ref:**

SR22 - Future Proof of Financial Responsibility (Insurance)

Effective: 01/15/2018 **Filing:** 01/16/2018 **Posted:** 01/16/2018
Type: NON-RESTRICTED **Policy Number:** 908270954
Company Code: 16322 **Company Name:** PROGRESSIVE DIRECT INSURANCE COMPANY

SR22 - Future Proof of Financial Responsibility (Insurance)

Effective: 10/30/2017 **Filing:** 10/31/2017 **Posted:** 10/31/2017
Type: NON-OWNERS LIABILITY **Policy Number:** 404630828
Company Code: 21164 **Company Name:** DAIRYLAND INSURANCE COMPANY
SR26 Cancel Date: 01/29/2018 **Reason:** NON-PAYMENT **Last Changed:** 01/30/2018

000172

COA - 0267

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 23177004 **Driver License No:** 11617948
Name: EUGENE, SHANTE MICHELE

VIOL: 496 - Driving Under Suspension **Ticket#:** G281787
Violation: 06/01/2013 **Conviction:** 02/04/2014 **Recd:** 02/10/2014 **Post:** 02/21/2014
ACD: B26 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: SC **Court Type:** MAGISTRATE COURT

SUSP: 013 - Driving Under Suspension **Ticket#:** G281787
Special Driving Privilege: NONE
Suspension Beg: 03/08/2014 **Suspension End:** 06/08/2014
Causal: 06/01/2013 **Post:** 02/21/2014
Reinstatement Requirements Met: 06/08/2017 **Reinstatement Fee Paid:** Y
ACD: B26 **Withdrawal Loc Ref:** **Withdrawal Reason Ref:**

SUSP: 013 - Driving Under Suspension **Ticket#:** 78917GC
Special Driving Privilege: NONE
Suspension Beg: 09/24/2013 **Suspension End:** 12/24/2013
Causal: 05/31/2013 **Post:** 09/09/2013
Reinstatement Requirements Met: 12/24/2016 **Reinstatement Fee Paid:** Y
ACD: B26 **Withdrawal Loc Ref:** **Withdrawal Reason Ref:**

VIOL: 496 - Driving Under Suspension **Ticket#:** 78917GC
Violation: 05/31/2013 **Conviction:** 08/20/2013 **Recd:** 09/03/2013 **Post:** 09/09/2013
ACD: B26 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: SC **Court Type:** MAGISTRATE COURT

VIOL: 441 - Speeding more than 10 mph but LT 25 mph **Ticket#:** 5694S
Actual Speed: 89 **Posted Speed:** 70
Violation: 06/13/2012 **Conviction:** 08/15/2012 **Recd:** 01/14/2013 **Post:** 01/17/2013
ACD: S92 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: GA **Court Type:** COUNTY COURT
Violation Points: 4 **Current Points:** 0

SUSP: 013 - Driving Under Suspension **Ticket#:** 5695S
Special Driving Privilege: NONE
Suspension Beg: 11/25/2012 **Suspension End:** 02/25/2013
Causal: 06/13/2012 **Post:** 09/18/2012
Reinstatement Requirements Met: 02/25/2016 **Reinstatement Fee Paid:** Y
ACD: B26 **Withdrawal Loc Ref:** **Withdrawal Reason Ref:**

SUSP: 022 - Habitual Offender
Special Driving Privilege: NONE
Suspension Beg: 10/18/2012 **Suspension End:** 10/18/2017
Causal: 06/13/2012 **Post:** 09/18/2012
Reinstatement Requirements Met: 10/31/2017 **Reinstatement Fee Paid:** Y
ACD: W01 **Withdrawal Loc Ref:** **Withdrawal Reason Ref:**

VIOL: 496 - Driving Under Suspension **Ticket#:** 5695S
Violation: 06/13/2012 **Conviction:** 08/15/2012 **Recd:** 09/13/2012 **Post:** 09/18/2012
ACD: B26 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: GA **Court Type:** COUNTY COURT

000173

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D. L. Sheldon
Driver Services, Deputy Director

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 23177004 **Driver License No:** 11617948
Name: EUGENE, SHANTE MICHELE

VIOL: 421 - Speeding 10-mph or less **Ticket#:** 36315FY
Violation: 07/07/2012 **Conviction:** 07/26/2012 **Recd:** 08/17/2012 **Post:** 08/29/2012
ACD: S51 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: SC **Court Type:** MUNICIPAL COURT
Violation Points: 2 **Current Points:** 0

SUSP: 013 - Driving Under Suspension **Ticket#:** 36316FY
Special Driving Privilege: NONE
Suspension Beg: 08/24/2012 **Suspension End:** 11/24/2012
Causal: 07/07/2012 **Post:** 08/09/2012
Reinstatement Requirements Met: 11/24/2015 **Reinstatement Fee Paid:** Y
ACD: B26 **Withdrawal Loc Ref:** **Withdrawal Reason Ref:**

VIOL: 496 - Driving Under Suspension **Ticket#:** 36316FY
Violation: 07/07/2012 **Conviction:** 07/26/2012 **Recd:** 08/03/2012 **Post:** 08/09/2012
ACD: B26 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: SC **Court Type:** MUNICIPAL COURT

VIOL: 441 - Speeding more than 10 mph but LT 25 mph **Ticket#:** 58240FT
Actual Speed: 78 **Posted Speed:** 60
Violation: 02/21/2012 **Conviction:** 03/28/2012 **Recd:** 04/25/2012 **Post:** 05/09/2012
ACD: S92 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: SC **Court Type:** MAGISTRATE COURT
Violation Points: 4 **Current Points:** 0

VIOL: 461 - Reckless driving **Ticket#:** F373165
Violation: 12/08/2011 **Conviction:** 01/19/2012 **Recd:** 02/23/2012 **Post:** 03/01/2012
ACD: M84 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: GA **Court Type:** TRAFFIC COURT
Violation Points: 6 **Current Points:** 0

SUSP: 003 - Point Suspension
Special Driving Privilege: NONE
Suspension Beg: 03/31/2012 **Suspension End:** 06/30/2012
Causal: 12/08/2011 **Post:** 03/01/2012
Reinstatement Requirements Met: 06/30/2015 **Reinstatement Fee Paid:** Y
ACD: W01 **Withdrawal Loc Ref:** **Withdrawal Reason Ref:**

VIOL: 441 - Speeding more than 10 mph but LT 25 mph **Ticket#:** 317674
Actual Speed: 65 **Posted Speed:** 45
Violation: 10/14/2011 **Conviction:** 11/15/2011 **Recd:** 01/11/2012 **Post:** 02/13/2012
ACD: S92 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: GA **Court Type:** MUNICIPAL COURT
Violation Points: 4 **Current Points:** 0

ACC: REPORTABLE
Accident: 02/03/2012 **Posted:** 03/16/2012
Accident Case Number: 12013818 **FR-10 Audit Number:** E-300243
Accident Jurisdiction: SC **Acc Loc Ref:** SCHDPT **History:** N
Contributed: N

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

Driver Services, Deputy Director

000174

COA - 0269

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 23177004 **Driver License No:** 11617948
Name: EUGENE, SHANTE MICHELE

VIOL: 442 - Disobeying an official traffic device **Ticket#:** 31590FP
Violation: 10/23/2011 **Conviction:** 11/15/2011 **Recd:** 12/06/2011 **Post:** 01/12/2012
ACD: M14 **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#:** 00000081776
Actual Speed: 86 **Posted Speed:** 70
Violation: 08/29/2008 **Conviction:** 10/14/2008 **Recd:** 10/24/2008 **Post:** 11/10/2008
ACD: S92 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: GA **Court Type:** MUNICIPAL COURT
Violation Points: 4 **Current Points:** 0

SR22 - Future Proof of Financial Responsibility (Insurance)
Effective: 05/31/2008 **Filing:** 06/05/2008 **Posted:** 06/06/2008
Type: NON-RESTRICTED **Policy Number:** 71421654
Company Code: 24260 **Company Name:** PROGRESSIVE CASUALTY INSURANCE COMPANY
SR26 Cancel Date: 10/25/2010 **Reason:** OTHER **Last Changed:** 01/06/2011

SC Driver License Surrendered **Posted:** 06/24/2015
License Type: DL **Class:** D **Function:** Returned **Issued:** 12/06/2007
Date Surrendered: 06/24/2015
Reason for Return: AFFIDAVIT / SUSPENDED LICENSE LOST **Returning State:** SC

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. Phillips
Driver Services, Deputy Director

000175

Attorneys
Arie D. Bax
S. Naki Richardson-Bax*

Bax Law Firm

Contact Information
2 Merchants Lane Suite 210
Beaufort, SC 29907
P:(843) 522-0980
F:(843) 217-5815

RECEIVED
MAR 05 2018
SCOMVH

February 27, 2018

Yolanda P. Williams, Administrative Coordinator
SC Administrative Law Court
Office of Motor Vehicle Hearings
Edgar A. Brown Building Suite 325
1205 Pendleton Street
Columbia, SC 29201

Re: Shante M Eugene v. South Carolina Department of Motor Vehicles
Habitual Offender Declaration Hearing
Docket No: 18-OMVH-02-0605-CC
SCDL No. 11617948

To Whom It May Concern:

Please be advised that the undersigned has been retained to represent the above-named individual in the hearing currently scheduled for April 6, 2018. Please forward all further information regarding this matter to my office.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Arie D. Bax

FILED
MAR 01 2018
SCOMVH

*licensed in North Carolina

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Motor Vehicles, Petitioner, vs. Shante Michelle Eugene, Respondent.	)	Docket No. 18-OMVH-02-0605-CC DL# 11617948 **NOTICE OF HEARING**

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) 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 B. Autry is scheduled to begin at **11:30 AM on Friday, April 6 2018 at Jasper County Court House 265 Russell Street Ridgeland 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**. 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) (as amended) 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 two (2) business days 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

February 8, 2018
Columbia, South Carolina

Yolanda Williams

From: Yolanda Williams
Sent: Thursday, February 08, 2018 11:08 AM
To: HPU@scdmv.net
Subject: Notice of Hearing, Shante Eugene, 04-06-18 dk# 18-0605
Attachments: Notice of Hearing, Shante Eugene, 04-06-18 dk# 18-0605.pdf

Mailed to Respondent
26 Whitsell Road
Seabrook, SC 29940-3707

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

To Whom It May Concern,

Per Section 56-1-1030 I am appealing the decision of the DMV. I just received letters and obtained my license back. The DMV has sent me letters saying that I have no suspensions and I successfully fulfilled my obligations to obtain my license back. Now I have received another notice on the 30th of January 2018 stating that my license is being suspended again for a ticket that was received well over 2 years ago. I believe this date should either be back dated for the suspension. I haven't been driving in over two years due to that ticket and the date was back in April 2015 and disposed in January 2016. Due to this being posted over two years later I can't revisit this case to get this ticket removed. I thought this ticket was dismissed. Enclosed is the 200 dollar fee. I have too much to lose due to all this confusion. So I am requesting an Administrative DMV Hearing.

Thank you
Shante Eugene

(Habitual Offender
02/23/2018)

000179

COA - 0274

RECEIVED
FEB 07 2018
SCOMVH

FILED
FEB 05 2018
SCOMVH

South Carolina
Department of Motor Vehicles

0005

01/24/2018

EUGENE, SHANTE MICHELE
26 WITSELL RD
SEABROOK, SC 29940-3707

CUSTOMER NO: 23177004
FILE NO: 23799265
DL NO: 11617948

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
04/07/2015	01/13/2016	57873GO	Driving Under Suspension
06/01/2013	02/04/2014	G281787	Driving Under Suspension
05/31/2013	08/20/2013	78917GC	Driving Under Suspension

BEGINNING DATE: 12:01 AM 02/23/2018 ENDING DATE: MIDNIGHT 02/23/2023

HEARING:
Section 56-1-1030 allows you to appeal the DMV's decision. There is a $200.00 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
FEB 05 2018
SCOMVH

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Certificate of Service

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

This 17th day of July 2019

By: Yolanda Pulliam

Title: **Administrative Coordinator, OMVH**

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED
Dec 08 2020
SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable H. W. Funderburk, Jr., Administrative Law Judge

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Case No. 2020-000980

Shante Michele Eugene . . . . . Respondent,

v.

South Carolina Department of Motor Vehicles . . . . . Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies pursuant to SCARC Rule 210(g) that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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

December 8, 2020
Blythewood, SC