

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
The Honorable Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2013-002225

Tracy Lynn Adams Appellant,

v.

South Carolina Department of Motor Vehicles Respondent.

INITIAL BRIEF OF THE RESPONDENT

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MAY 28 2014

SC Court of Appeals

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STATEMENT OF ISSUES PRESENTED

- I. *DID THE HEARING OFFICER ERR IN FINDING THAT THE STOP OF TRACY ADAMS WAS LAWFUL AND BASED UPON PROBABLE CAUSE?*
- II. *DID THE HEARING OFFICER ERR IN FAILING TO DECLARE THE IMPLIED CONSENT LAW UNCONSTITUTIONAL?*

STATEMENT OF THE CASE

The Respondent accepts the Appellants statement of facts.

ARGUMENT

- I. *DID THE HEARING OFFICER ERR IN FINDING THAT THE STOP OF TRACY ADAMS WAS LAWFUL AND BASED UPON PROBABLE CAUSE?*

Generally, an officer is reasonable in stopping a vehicle when he has probable cause to believe that a traffic violation has occurred. *State v. Butler*, 343 S.C. 198, 539 S.E.2nd 414, 416 (Ct. App. 2000). However, an officer may also stop and briefly detain a vehicle if he has reasonable suspicion that the occupants are involved in criminal activity.

Id.

In the instance matter, the arresting officer testified that he made a traffic stop after he “observed the vehicle swerving back and forth, tires were going over the median and onto the white dotted lines that split the left and the right hand lane” (Trans. P. 6). A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity. *State v. Khingratsaiphon*, 352 S.C. 62,

572 S.E.2d 456 (2002); *State v. Nelson*, 336 S. C. 186, 519 S. E. 2d 786 (1999). The Hearing Officer found that the trooper observed the Appellant fail to maintain her position in her lane of travel as required by South Carolina Code § 56-5-1900 and found that there was, therefore, probable cause to initiate a traffic stop. The observance of erratic driving in violation of law is sufficient for a traffic stop. *City of Orangeburg v. Carter*, 303 S. C. 290, 400 S. E. 2d 140 (1991). On cross examination, the officer confirmed that he observed the Appellant's wheels crossing into the median and crossing the broken lines dividing the lanes of traffic, "running over both of them", "back and forth"(Trans. p. 10). There was sufficient justification for stopping the Appellant's vehicle. See, *State v. Durr*, 618 S.E.2d 117 (Ga. Ct. App. 2005) (finding stop was justified where arresting officer observed motorist weaving within his lane); *People v. Greco*, 783 N.E. 2d 201, 204 (Ill. App. Ct. 2003) ("[E]rratic driving, including weaving within a single lane, is sufficient to justify a traffic stop."); *State v. Malaney*, 871 S. W. 2d 634 (Mo. Ct. App. 1994) (finding stop was justified where Officer observed motorist's vehicle weave within lane three times over approximately a mile).

The trooper testified further that there was a strong odor of alcohol coming from the vehicle and the Appellant stated that she had been drinking. The Appellant failed three field sobriety tests and was placed under arrest for driving under the influence. His testimony was not contradicted during cross or by other evidence. Whether probable cause exists depends upon the totality of circumstances, and not a particular set of facts. See *State v. Baccus*, 367 S. C. 41, 49, 625 S. E 2d 904 (1978).

The Hearing Officer correctly found that there was probable cause for the stop and the Appellant's subsequent arrest was lawful.

II. *DID THE HEARING OFFICER ERR IN FAILING TO DECLARE THE IMPLIED CONSENT LAW?*

The Appellant's argument that the Hearing Officer erred in failing to declare the implied consent law unconstitutional is totally without merit. The Hearing Officer held that the constitutionality of the statutes was beyond the scope of the administrative hearing pursuant to S. C. Code Ann. §56-5-2950 and §56-5-2951 (Supp. 2011). Paragraph (F) of Section 56-5-2951 states, in pertinent part:

...The scope of the hearing must be limited to whether the person:

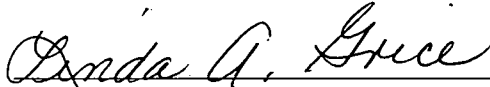
- (1) Was lawfully arrested or detained;
- (2) Was advised in writing of the rights enumerated in Section 56-5-2950;
- (3) Refused to submit to a test pursuant to Section 56-5-2950...

The Administrative Law Court does not have the authority to rule on the facial constitutionality of statutes. *See Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000); *Ward v. State* 343 S.C. 14, 538 S.E.2d 245 (2000). The relief requested by the Appellant was therefore properly denied by the OMVH and sustained by the ALJ.

CONCLUSION

For the reasons set forth above, the order of the administrative law judge sustaining the order of the OMVH hearing officer should be affirmed.

Respectfully submitted,



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May 23, 2014
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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The Honorable Shirley C. Robinson, Administrative Law Judge

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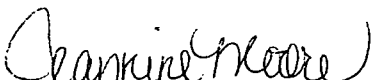
v.

South Carolina Department of Motor Vehicles Respondent.

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, May 27, 2014,
I served one (1) copy of the Respondent's Initial Brief and Designation of Matter by
depositing with the United States Postal Service, correct postage prepaid, to Counsel for
the Appellant at the address indicated below:

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May 27, 2014
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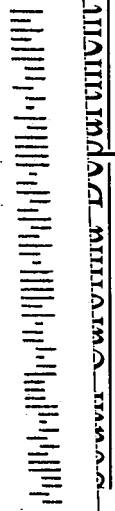
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Form 103

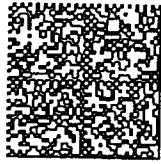
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