

21322

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

**APPEAL FROM SOUTH CAROLINA  
DIVISION OF MOTOR VEHICLES**

---

**The Honorable Shirley C. Robinson  
Appellate Case No. 2013-002225**

---

**Tracy Lynn Adams, ..... Appellant,**

**v**

**South Carolina Department of Motor Vehicles, and South Carolina Department of Public  
Safety, ..... Respondents.**

---

**RECORD ON APPEAL**

---

**FRANK L. VALENTA  
Office of General Counsel  
P.O. Box 1498  
Blythewood, SC 29016  
(803) 896-9902**

**Attorney for Respondent**

**C. RAUCH WISE  
Attorney at Law  
305 Main Street  
Greenwood, SC 29646  
(864) 229-5010**

**Attorney for Appellant**

---

Philip S. Porter  
P.O. Box 1498  
Blythewood SC 29016  
803-896-9900

---

Linda Annette Grice  
1539 Friendly Woods Road  
Blythewood SC 29016  
803-786-1985

**RECEIVED**

JUN 16 2014

**SC Court of Appeals**

INDEX

Order of the Administrative Law Judge dated September 20, 2013 ..... 1

OMVH Record on Appeal ..... 6

Certificate of Counsel ..... 51

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**SC ADMIN. LAW COURT**

Tracy Lynn Adams, )  
)  
Appellant, )  
v. )  
)  
South Carolina Department of Motor )  
Vehicles and South Carolina Department )  
of Public Safety, )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. 12-ALJ-21-0379-AP

**ORDER**

**STATEMENT OF THE CASE**

This matter is an appeal by Appellant Tracy Lynn Adams (“Appellant”) from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings (“OMVH”) dated July 30, 2012. The OMVH’s decision was issued following an administrative hearing held pursuant to S.C. Code Ann. § 56-5-2951(B)(2). Upon careful review of the matter, OMVH’s decision is affirmed.

**BACKGROUND**

On February 10, 2012, Trooper O’Dell of the South Carolina Department of Public Safety observed a green Nissan pickup truck swerving back and forth in its lane of travel. Specifically, the Appellant’s vehicle tires crossed over the yellow line into the median and the broken white lines that divide the traffic lanes. Trooper O’Dell initiated a traffic stop of the vehicle, and when he approached the vehicle, Trooper O’Dell identified Appellant as the driver. While speaking with Appellant during the traffic stop, Trooper O’Dell observed an odor of alcoholic beverage coming from the vehicle. In response to an inquiry by Trooper O’Dell, the Appellant stated that she had been drinking. Trooper O’Dell asked Appellant to exit the vehicle and perform three field sobriety tests: the Horizontal Gaze Nystagmus (“HGN”); the walk and turn test; and the one-leg stand test. Appellant performed poorly on all the field sobriety tests. Following Appellant poor performance on the field tests, Trooper O’Dell read Appellant her Miranda Rights and placed Appellant under arrest for driving under the influence and transported her to the Greenwood Detention Center for a DataMaster test.

Prior to requesting a breath sample from the Appellant, Trooper O’Dell advised Appellant of

her Advisement of Implied Consent Rights, verbally and in writing, and observed Appellant for the requisite time period. When Trooper O'Dell requested Appellant submit a breath sample, she refused. Based upon the refusal, Appellant was issued a notice of suspension. After the Department received the notice of suspension, it suspended Appellant's driver's license in accordance with state law. Appellant subsequently requested an administrative hearing. The hearing was held on April 12, 2012. On July 30, 2012, the OMVH Hearing Officer issued a Final Order and Decision sustaining Appellant's suspension. Appellant then filed this appeal with the ALC on August 18, 2012.

### STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. See S.C. Code Ann. § 1-23-660. Therefore, the OMVH is an "agency" under the Administrative Procedures Act ("APA"). See S.C. Code Ann. § 1-23-310(2). As such, the APA's standard of review governs appeals from decisions of the OMVH. See S.C. Code Ann. § 1-23-380; see also Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). The standard used by appellate bodies, including the ALC, to review agency decisions is outlined in S.C. Code Ann. § 1-23-380(5). This section 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 [of the agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

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

S.C. Code Ann. § 1-23-380(5).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best W. Royal Motor Lodge, 282 S.C. 634, 641, 321 S.E.2d 63, 68 (Ct. App. 1984). A decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, Inc., 276 S.C. 130,

136, 276 S.E.2d 304, 307. The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing Kearse v. State Health and Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). The party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

### ISSUES ON APPEAL

1. Did the Hearing Officer err in finding that the stop and arrest of Appellant was lawful and based upon probable cause?
2. Did the Hearing Officer err in failing to declare the implied consent law unconstitutional?

### DISCUSSION

#### Probable Cause

Appellant argues that the Hearing Officer erred by concluding that Trooper O'Dell's testimony established that he had probable cause to stop Appellant. As noted above, the Hearing Officer's factual conclusions must be affirmed if there is evidence in the Record that would allow a reasonable mind to reach the same conclusion as the Hearing Officer. Based upon the Record in this matter, there is evidence that supports the conclusion reached by the Hearing Officer.

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, 201, 539 S.E.2d 414, 416 (Ct. App. 2000) (stating that an officer is reasonable in stopping a vehicle if he has probable cause to believe that a traffic violation has occurred). Further, an officer may also stop and briefly detain a vehicle if he has a reasonable suspicion that the occupants are involved in criminal activity. Id.

In this case, Trooper O'Dell observed and testified that Appellant's vehicle swerved within its lane of travel and crossed over the yellow and white dotted lines – on two occasions, which

established reasonable suspicion that Appellant may have been driving under the influence. This testimony demonstrated that Trooper O'Dell was justified in stopping Appellant. See Kelly v. S.C. Dep't of Highways, 323 S.C. 334, 474 S.E.2d 443 (Ct. App. 1996) (finding probable cause to arrest for driving under the influence where officer observed motorist's car swerve abruptly to the right, motorist smelled of alcohol, motorist admitted to having drunk a few beers, and motorist performed poorly on field sobriety tests); 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); State v. Thomte, 413 N.W.2d 916 (Neb. 1987) (finding stop was justified where Officer observed motorist's vehicle weave twice within lane, including one “sharp weave”); State v. Ellanson, 198 N.W.2d 136 (Minn. 1972) (finding stop was justified where Officer observed motorist's vehicle weaving within its lane, even though Officer did not feel that weaving constituted a violation of the traffic laws).

Appellant next argues that Trooper O'Dell's testimony did not establish that he had probable cause to arrest Appellant for driving under the influence. Pursuant to State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006), the fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. Id. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. Id.

Here, Trooper O'Dell testified at the administrative hearing that he identified Appellant as the driver of the vehicle, and he also testified that he smelled an odor of alcoholic beverage coming from Appellant's person. Further, Appellant admitted to drinking alcohol, and she performed poorly on all three field sobriety tests. Based upon the totality of the circumstances, the Hearing Officer did not err in concluding that Trooper O'Dell's testimony established that probable cause existed for Appellant's arrest for driving under the influence. See Lapp v. S.C. Dep't of Motor Vehicles, 387 S.C. 500, 692 S.E.2d 565 (Ct. App. 2010) (finding probable cause for arrest for driving under the

influence based upon admission of driving, odor of alcohol and refusal to perform field sobriety tests). Whether probable cause exists depends upon the totality of the circumstances, and not a particular set of facts. See Baccus, 367 S.C. at 49, 625 S.E.2d 904 (1978). Further, South Carolina courts have found probable cause to arrest for driving under the influence where there was no mention of evidence that the motorist had slurred speech or bloodshot eyes. See e.g., Kelly v. S.C. Dep't of Highways, 323 S.C. 334, 474 S.E.2d 443 (Ct. App. 1996); State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978).

Accordingly, the Hearing Officer did not err in concluding that Trooper O'Dell's testimony established probable cause for Appellant's traffic stop and subsequent arrest for driving under the influence.

### **Constitutionality of Implied Consent Law**

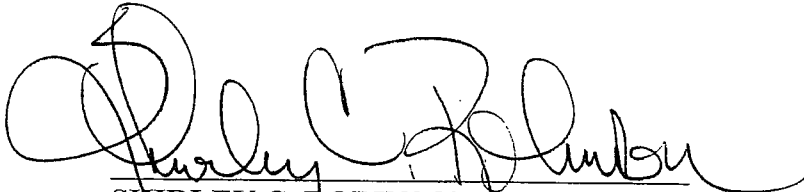
Appellant also argues that the Hearing Officer erred in failing to address the constitutionality of the Implied Consent Law. The Court disagrees. It is well established that the ALC does not have the authority to rule on the facial constitutionality of statutes. See Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) ("ALJs are an agency of the executive branch of government and must follow the law as written until its constitutionality is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation.").

Accordingly, the Court concludes that the OMVH Hearing Officer did not err in sustaining Appellant's suspension.

### **ORDER**

**IT IS HEREBY ORDERED** that the OMVH Final Order and Decision sustaining the suspension of Appellant's driver's license or driver's privilege is **AFFIRMED**.

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
Administrative Law Judge

September 20<sup>th</sup>, 2013  
Columbia, South Carolina

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 thereof in the United States mail, postage paid, or in the Postage and Mail Service addressed to the party(ies) or their attorney(s).

This 20 day of September 2013  
By: Jeelba Henderson  
Judicial Clerk



INDEX

Post-Hearing ..... 1

- Notice of Assignment
- Transcript
- Order of Transcript
- Request for Transcript
- No Transcript Request Received
- No appeal served on OMVH as required in accordance with ALC Rule 33
- Transcript Ordered/Pending
- Audiotape Request
- Brief of Appellant
- Notice of Appeal
- Order of Dismissal
- Final Order and Decision
- Order for Motion to Reconsider
- Motion to Reconsider
- Objection to Motion to Reconsider
- No Audiotape Available: \_\_\_\_\_

Hearing / Exhibits ..... 2

- Notice of Suspension
- Breath Alcohol Test Report
- Implied Consent Advisement
- Datamaster Certification
- Accident Report
- Character Affidavits
- Official 10-year Driver Record
- VHS/DVD available in OMVH office
- Other Exhibits \_\_\_\_\_

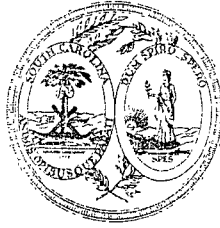
Pre-Hearing..... 3

- Order of Continuance: \_\_\_ 2<sup>nd</sup> \_\_\_ 3<sup>rd</sup> \_\_\_ 4<sup>th</sup>
- Request for Continuance \_\_\_ Granted \_\_\_ Denied
- Subpoena Request
- Legal Representation Letter
- Pretrial Motion
- Notice of Hearing
- Hearing Request Receipt
- Petition for Reduction of 5-year Suspension Period
- Official 10-year Driver Record
- Written Request for Hearing
- SCDMV Notice of Suspension
- General Correspondence

Certificate of Service..... 4

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

October 9, 2012

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

Re: S.C. Dept of Motor Vehicles  
vs  
Tracy Lynn Adams  
SCDL/Customer NO.: 011124392

Dear Ms. Shealy:

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

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

Sincerely,

Yolanda P. Williams  
Administrative Coordinator, OMOVH

Cc: C. Rauch Wise, Esquire  
Frank L. Valenta, SCDMV General Counsel

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Tracy Lynn Adams, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 South Carolina Department of Motor )  
 Vehicles and South Carolina Department )  
 of Public Safety, )  
 )  
 Respondents. )  
 )

**NOTICE OF ASSIGNMENT  
(Appeal)**

DCCKET NO. 12-ALJ-21-0379-AP

NOTICE IS GIVEN that a notice of appeal seeking review of a decision of the Office of Motor Vehicle Hearings was filed on August 18, 2012. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2011), the **Honorable Shirley C. Robinson**, 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.

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](http://www.scalc.net).

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the twenty-fourth day of August, 2012.

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**

AUG 24 2012

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

1  
2  
3  
4 South Carolina Department )  
of Motor Vehicles, )  
5 )  
6 Petitioner, )  
7 vs. )  
8 Tracy Lynn Adams, )  
9 Respondent. )  
----- )

TRANSCRIPT OF  
HEARING  
April 12, 2012

10  
11 **THE COURT:** My name is Tracy Holland. I've been  
12 appointed by the Office of Motor Vehicle  
13 Hearings and Administrative Law Court to  
14 preside over this contested case hearing held  
15 in accordance with the Administrative  
16 Procedure's Act. This hearing's provided by  
17 Section of Law 56-5-2950, Code of Laws of South  
18 Carolina, as amended. For departmental  
19 reference, this is docket number 12-OMVH-01-  
20 0849, in reference to the issuance of a notice  
21 of suspension to Tracy Lynn Adams for refusing  
22 to submit to a chemical test on February 10,  
23 2012, by the South Carolina Department of  
24 Public Safety. South Carolina License number  
25 is 011124392. And this notice was issued on

1 February 10<sup>th</sup> and all parties have been notified  
 2 of this hearing for today, April 12, 2012, here  
 3 at the Greenwood County Park Plaza, Greenwood,  
 4 South Carolina. Let the record show that the  
 5 respondent is present. She's also represented  
 6 by legal counsel, Attorney Rauch Wise. This  
 7 hearing -- hearing is tape recorded for  
 8 departmental reference and it is a matter of  
 9 public record. If the petitioner will please  
 10 state your full name and agency for the record,  
 11 I'll swear you in.

12 **TROOPER O'DELL:** Senior Trooper F. O'Dell, South  
 13 Carolina Department of Public Safety.

14 **THE COURT:** Please raise your right hand. Do you  
 15 solemnly swear the testimony you give in this  
 16 matter will be the truth, the whole truth, and  
 17 nothing but the truth?

18 **TROOPER O'DELL:** Yes, ma'am.

19 **THE COURT:** Thank you. Attorney Wise, will the  
 20 respondent be testifying in this matter?

21 **MR. WISE:** She will not.

22 **THE COURT:** Okay. Thank you. The issues for this  
 23 administrative hearing is provided by Section  
 24 of Law 56-5-2951(f). Attorney Wise, what  
 25 issues will you be contesting?



1 **MR. WISE:** The issue's going to be the lawfulness of  
2 the arrest. Reviewing the videotape there's no  
3 question about the refusal. I would also like  
4 to add another issue, if I may --

5 **THE COURT:** Okay.

6 **MR. WISE:** -- for the record. I would move to  
7 rescind the refusal -- suspension for refusal  
8 on the ground that the procedure by which the  
9 license is suspended for refusing is  
10 unconstitutional in that the defendant is being  
11 punished for not blowing. Had she blown and  
12 blown .08 or greater as the refusal notice  
13 advisement says, she could have been charged  
14 with unlawful alcohol concentration. In which  
15 case, the State would not be required to prove  
16 she is materially and appreciably impaired. By  
17 refusing to go forward with the DUI charge,  
18 which is the only charge the State can go  
19 forward with now, of course, the State has to  
20 prove she's materially and appreciably  
21 impaired. I think that in essence what the  
22 scheme that the legislature has set up is  
23 unconstitutional, violates due process of the  
24 State and Federal Constitutions because she, in  
25 essence, is being punished for making the

1 State's job more difficult because they cannot  
2 now charge her with unlawful alcohol  
3 concentration. They have to charge her with  
4 DUI and now have to prove material and  
5 appreciable impairment.

6 **THE COURT:** Okay. I will let that be your opening  
7 statement for the record.

8 **MR. WISE:** All right.

9 **THE COURT:** That is not something I must rule upon.  
10 It is beyond the scope.

11 **MR. WISE:** Beyond your payment.

12 **THE COURT:** Yes, that too.

13 **MR. WISE:** But I have to make the motion now to  
14 preserve it for later.

15 **THE COURT:** Right, and that's -- that's just for the  
16 record.

17 **MR. WISE:** Correct.

18 **THE COURT:** It's nothing that I have to rule upon.  
19 It's for any other --

20 **MR. WISE:** Technically, you do have to rule on it, I  
21 think.

22 **THE COURT:** Well, okay --

23 **MR. WISE:** But, anyway.

24 **THE COURT:** I'll answer it in the Order.

25 **MR. WISE:** There you go.

1 **THE COURT:** But yeah.

2 **MR. WISE:** So that the Order reflects I made the  
3 motion.

4 **THE COURT:** Right. The motion has been made and I  
5 will not make a ruling at this point and I will  
6 go forward with the administrative hearing --

7 **MR. WISE:** Fine.

8 **THE COURT:** -- which -- and receive all evidence  
9 into the record. He's -- you are stipulating  
10 that she was advised in writing of implied  
11 consent rights --

12 **MR. WISE:** Correct.

13 **THE COURT:** -- and that she did refuse?

14 **MR. WISE:** Right.

15 **THE COURT:** The only contested issue is the  
16 lawfulness of the arrest?

17 **MR. WISE:** Correct.

18 **THE COURT:** That's correct. All right. Do you have  
19 an opening statement, Officer -- Trooper?

20 **TROOPER O'DELL:** No, ma'am.

21 **THE COURT:** Okay. No opening. Thank you. He's  
22 contesting the lawfulness of the arrest. If  
23 you will prove your case.

24 **DIRECT TESTIMONY BY TROOPER O'DELL:**

25 **TROOPER O'DELL:** All right, ma'am. On 2010 2012 in

1 Greenwood County I was on routine patrol on  
2 Montague Avenue. I was traveling north on  
3 Montague, observed a green Nissan pick-up  
4 truck. We were both traveling in the left  
5 lane, traveling northbound. I observed the  
6 vehicle swerving back and forth, tires were  
7 going over into the median and onto the white  
8 dotted lines that split the left and the right-  
9 hand lane traveling north. Made a traffic  
10 stop. When I went up to get the subject's  
11 information, I found her to be Tracy Lynn  
12 Adams. I could smell a strong odor of alcohol  
13 coming from the vehicle. At that point in  
14 time, I asked Ms. Adams if she had been  
15 drinking. She stated she had been. I offered  
16 three field sobriety tests, the HGN, one --  
17 walk and turn, and one-leg stand. She  
18 performed the tests; failed all three tests.  
19 At that time, I placed her under arrest for  
20 driving under the influence, transported her to  
21 -- read her Miranda rights, transported her to  
22 the Greenwood Detention Center to the  
23 Breathalyzer room. Offered her a Breathalyzer  
24 test, read her Miranda -- I mean read her  
25 implied -- advisement of implied consent,

1 offered the test. She refused to take the  
2 test. Waited the 20 minutes. Offered her --  
3 gave her that paperwork, which I don't have to  
4 present any of that because he's not contesting  
5 it, correct?

6 **MR. WISE:** Right.

7 **THE COURT:** Uh-huh (affirmative response). That's  
8 right.

9 **TROOPER O'DELL:** I gave her her refusal or notice of  
10 suspension. That's it.

11 **THE COURT:** Okay. State is resting, cross-  
12 examination?

13 **TROOPER O'DELL - EXAMINATION BY MR. WISE:**

14 **Q:** You say you were on routine patrol. Where did  
15 you first see her pick-up?

16 **A:** When I was seeing the -- we were on 25  
17 somewhere. I might have seen the vehicle,  
18 couldn't tell you what it was, but I knew there  
19 was a vehicle ahead of me somewhere on Hampton  
20 or that would have been Calhoun Avenue,  
21 approaching where the parts --

22 **Q:** You may know where they change names, I don't  
23 know if I do.

24 **A:** Okay. On 25 -- on 25 North somewhere between  
25 Lander University where Frank's is --

- 1 Q: Right.
- 2 A: -- and where now Park Sterling Bank is.
- 3 Q: All right. So somewhere -- it would be correct  
4 to say somewhere south of Frank's Car Wash?
- 5 A: Actually, it would be north, sir. I would have  
6 been north of Frank's traveling north toward  
7 Park Sterling.
- 8 Q: All right. Go back to the entrance of Lander,  
9 where were you in relation to the entrance to  
10 Lander University?
- 11 A: Would have been past it.
- 12 Q: All right. When you first saw her?
- 13 A: Yes, sir.
- 14 Q: All right. So when you first saw her is when  
15 you turned your video on?
- 16 A: Negative, sir.
- 17 Q: When did you turn your video on?
- 18 A: Probably when I turned the blue lights on. My  
19 camera has -- I have the new digital camera.  
20 Jumps back 30 seconds.
- 21 Q: It jumps back 30 seconds?
- 22 A: Yes, sir.
- 23 Q: All right. So --
- 24 A: When I -- sir, to say where I -- I would have  
25 to see it exactly to tell you exactly when I --

1 if I activated my camera or if it was when I  
2 turned my blue lights on, but there's going to  
3 be a -- I don't know if you've watched the  
4 video.

5 Q: I have.

6 A: There's a silent period up until the time I  
7 either hit record or I hit my blue lights. It  
8 jumps back 30 seconds from that point in time.

9 Q: You were good enough to give me the stuff ahead  
10 of this hearing. I appreciate it.

11 A: Yes, sir.

12 Q: So you had -- where had you been let's say two  
13 minutes before this particular stop? Where had  
14 you been patrolling?

15 A: On 25, but exactly where I was at that point in  
16 time, if I was south of Main Street or had  
17 turned off of North Main Street or anywhere  
18 like in that area to travel north, I could not  
19 tell you exactly.

20 Q: All right. The first time you saw her, though,  
21 was in the vicinity of Frank's Car Wash?

22 A: Somewhere between there and probably Park  
23 Sterling.

24 Q: Okay.

25 A: I saw -- I saw a vehicle ahead of me --

- 1 Q: Right.
- 2 A: -- that was going around that curve.
- 3 Q: Okay. And then you stopped her on down right
- 4 before you get to Sports Break?
- 5 A: Parking -- in the Sonoco gas station parking
- 6 lot --
- 7 Q: Right, okay.
- 8 A: -- that's where she pulled over, yes, sir.
- 9 Q: And the reason for stopping her was she was
- 10 crossing into the median and she was crossing
- 11 the broken white line dividing the lanes of
- 12 traffic?
- 13 A: And her wheels were running over both of them.
- 14 Q: Both of them.
- 15 A: Correct. Back and forth.
- 16 Q: Not touching them, but running over them?
- 17 A: It was -- they were going right on and just
- 18 over into the median, not completely over.
- 19 Q: Okay. And that was -- that was the basis for
- 20 the stop. Wasn't speeding?
- 21 A: No, sir.
- 22 Q: Okay. Didn't do anything else that would be a
- 23 reckless act or careless act?
- 24 A: No, sir.
- 25 Q: Okay.

1 **MR. WISE:** I would like to introduce a copy of the  
2 video and I have it here if the Court cares to  
3 see it now.

4 **THE COURT:** No, sir, you have to introduce a hard  
5 copy for me to view --

6 **MR. WISE:** I got one for you.

7 **THE COURT:** Okay. But I won't view it during the  
8 hearing.

9 **MR. WISE:** Okay.

10 **THE COURT:** Yes, sir.

11 **MR. WISE:** I thought I had it loaded; I didn't.

12 **THE COURT:** Okay. The State's -- the -- I'm sorry.

13 Q: This is a copy of what you gave me.

14 A: Yes.

15 **THE COURT:** The respondent is introducing into  
16 evidence a CD of Tracy Adams and you're saying  
17 it's the in-car video?

18 **MR. WISE:** That's correct.

19 **THE COURT:** And even though it's not written on here  
20 the in-car video --

21 **TROOPER O'DELL:** It's written on mine.

22 **MR. WISE:** It's written on --

23 **THE COURT:** Okay. So this is a duplicate copy of --

24 **MR. WISE:** Well, let's do this. Yeah, let's  
25 introduce the one that he gave me because I

1           have made a copy. I accidentally took some of  
2           it off, but that was -- that was unintentional.

3   **THE COURT:** Okay. So this is the --

4   **MR. WISE:** That was the one he gave me.

5   **THE COURT:** -- in-car video that the Trooper gave to  
6           you --

7   **MR. WISE:** That's correct.

8   **THE COURT:** -- so you're giving me the copy that you  
9           gave -- that you gave -- that the Trooper gave?

10   **MR. WISE:** Correct. Because I made a duplicate  
11           copy.

12   **THE COURT:** Do you have any objection to this being  
13           offered into evidence?

14   **TROOPER O'DELL:** No, Your Honor.

15   **THE COURT:** No objection.

16   **MR. WISE:** I would also like to introduce in keeping  
17           with my other motion --

18   **THE COURT:** Uh-huh (affirmative response).

19   **MR. WISE:** -- the advisement form, which I believe --  
20           - have you introduced that? You didn't  
21           introduce the advisement --

22   **THE COURT:** You stipulated it.

23   **MR. WISE:** Right, but as a provision, the advisement  
24           form that I think is relevant to my motion.

25   **THE COURT:** Okay. Relevant to your motion.

1 **MR. WISE:** Right.

2 **THE COURT:** Okay.

3 **MR. WISE:** Let me get it. And it's the portion  
4 where they talk about charging with unlawful  
5 alcohol concentration.

6 **THE COURT:** Okay. He's introducing it only for the  
7 sake of his motion, not as evidence --

8 **TROOPER O'DELL:** No objection.

9 **THE COURT:** -- because it's stipulated.

10 **MR. WISE:** Okay.

11 **THE COURT:** Thank you. The respondent's not -- are  
12 you finished with cross?

13 **MR. WISE:** Yes.

14 **THE COURT:** Okay. You've offered your evidence?

15 **MR. WISE:** That's it.

16 **THE COURT:** And so this means the testimony and  
17 evidentiary part of this administrative hearing  
18 is closed. We're now ready for closing  
19 statements. Trooper have first closing, then  
20 the attorney, and then the Trooper will have  
21 the final closing. First closing?

22 **TROOPER O'DELL:** As I stated, I made a lawful stop  
23 for improper lane usage, swerving back and  
24 forth. It doesn't have to be in a reckless  
25 manner -- another reckless manner for me to

1 stop somebody for a violation. I smelled a  
2 strong odor of alcohol. She failed the field  
3 sobriety. It was a lawful stop and it was a  
4 lawful arrest. That's all. The State rests.

5 **MR. WISE:** I would just point out if you -- when you  
6 --

7 **THE COURT:** Go ahead.

8 **MR. WISE:** When you review the videotape I think  
9 you'll see in there that as the officer  
10 testified, there was no speeding. The video  
11 starts with her probably a couple of hundred  
12 yards, maybe 300 yards, in front of him as she  
13 rounds the curve. After he rounds the curve,  
14 he does get behind her. I think you will  
15 notice in the video that she never crosses the  
16 broken white line to the right. On one or two  
17 occasions she may touch the yellow line and it  
18 certainly is -- violates no law of the State of  
19 South Carolina to touch the line. She  
20 certainly is not weaving all over the road, not  
21 even weaving in lane as -- is another phrase  
22 that's used a lot. And I think you will see  
23 that there were no laws of the State of South  
24 Carolina violated that gave rise to probable  
25 cause for him to -- to arrest her.

1 **THE COURT:** Okay.

2 **MR. WISE:** That's all on the video.

3 **THE COURT:** (Inaudible)

4 **TROOPER O'DELL:** As Attorney Wise has said, she  
5 touched the white line; she touched the yellow  
6 line. That's weaving back and forth. She  
7 can't run over the yellow line. Also, the  
8 video will not show all observations up until  
9 the point in time I caught up with her. There  
10 was other observations that were made prior to  
11 that as I'm getting -- as I'm trying to -- as  
12 I'm coming up, okay, until the video's  
13 activated. The other crossings is not quite as  
14 observable. I watched the video myself. Like  
15 I said, it was a lawful stop and it was a  
16 lawful arrest.

17 **THE COURT:** This administrative hearing is adjourned  
18 and both parties will be notified by mail as to  
19 the results. Thank you.

20 **MR. WISE:** Okay. Thank you.

21 (There being nothing further, the hearing was  
22 concluded.)

23

24

25

**CERTIFICATE**

This is to certify that the within hearing in the matter of South Carolina Department of Motor Vehicles vs. Tracy Lynn Adams, consisting of Fifteen (15) pages, is a true and correct transcript and was prepared by me from an audio recording provided to me. This transcript was prepared by me without the benefit of my being present at the hearing of this matter.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal on October 3, 2012.

Carenn N. Moore  
Carenn N. Moore  
Notary Public for South Carolina  
My Commission Expires: 3/24/2019

**Yolanda Williams**

*Transcript Request*

*Appeal*

**From:** Yolanda Williams  
**Sent:** Tuesday, August 21, 2012 8:42 AM  
**To:** 'Crystal Kaminer'; Creel Reporting (amanda@creelreporting.com)  
**Subject:** Transcript Request for Tracy Lynn Adams  
**Attachments:** Adams, Tracy Lynn d12-0849\_20120412-1101\_01cd189b90af0880.trs; Adams, Tracy Lynn d12-0849\_20120412-1101\_01cd189b912ff850.trm; Adams, Tracy Lynn d12-0849\_20120412-1106\_01cd189c445442b0.trm; Adams, Tracy Lynn d12-0849\_20120412-1111\_01cd189cf724c7c0.trm

*12-0849*

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

C. Rauch Wise  
Attorney at Law  
305 Main Street  
Greenwood, SC 29646  
864-229-5010

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

H-0849

LAW OFFICE OF  
**C. RAUCH WISE**  
Attorney & Counselor at Law  
305 Main Street  
Greenwood, SC 29646  
e-mail rauch@emeraldsc.com

C. Rauch Wise

Telephone  
(864) 229-5010  
Facsimile  
(864) 229-2665

August 16, 2012

State of South Carolina  
Administrative Law Court  
Division of Motor Vehicle Hearings  
Edgar A. Brown Building  
1205 Pendleton Street, Ste. 325  
Columbia, SC 29201

Attn: Tracy Holland, OMVH Hearing Officer

Re: SCDPS and SCDMV vs. Tracy Lynn Adams

Dear Ms. Holland:

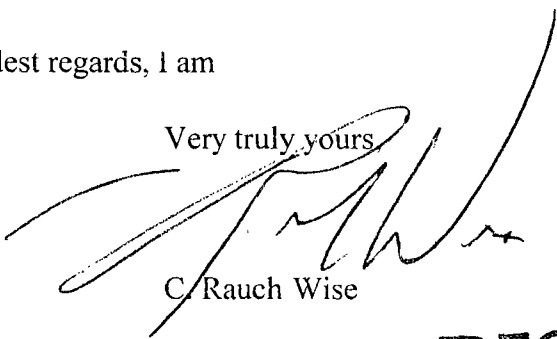
On April 12, 2012, the hearing in the above referenced matter was heard in Greenwood County.

I request that you provide me with a transcript of the proceedings.

I have enclosed herewith a check in the amount of Ten (\$10.00) Dollars to cover the charge for this transcript.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/slt

cc Frank L. Valenta, Jr., SCDMV  
South Carolina Administrative Law Court, Clerk

**RECEIVED**  
AUG 20 2012  
**SCOMVH**  
**FILED**  
AUG 18 2012  
**SCOMVH**

LAW OFFICE OF  
**C. RAUCH WISE**

Attorney & Counselor at Law  
305 Main Street  
Greenwood, SC 29646  
e-mail rauch@emeraldis.com

C. Rauch Wise

Telephone  
(864) 229-5010  
Facsimile  
(864) 229-2665

August 16, 2012

South Carolina Administrative Law Court  
Edgar Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

Attn: Clerk

Re: SCDPS and SCDMV vs. Tracy Lynn Adams

Gentlemen:

I am enclosing herewith for filing the original Notice of Appeal together with the Affidavit of Service and filing fee of One Hundred Fifty (\$150.00) Dollars regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,

*C. Rauch Wise*

C. Rauch Wise

CRW/slt

cc Hon. Tracy G. Holland, OMVH  
Frank L. Valenta, Jr., SCDMV  
General Counsel

**RECEIVED**

AUG 16 2012

28 SCOMVH

**FILED**

AUG 16 2012

SCOMVH

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM ADMINISTRATIVE LAW COURT  
DIVISION OF MOTOR VEHICLES HEARINGS

Tracy G. Holland, Administrative Law Judge

---

Case No. 12-OMVH-01-0849-CC

---

South Carolina Department of Public Safety and SCDMV ..... Respondent,

vs.

Tracy Lynn Adams ..... Appellant.

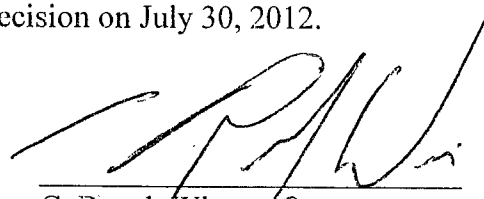
---

NOTICE OF APPEAL

---

Tracy Lynn Adams hereby appeals the decision of the Honorable Tracy G. Holland dated July 30, 2012. Appellate received a copy of this decision on July 30, 2012.

August 16, 2012



C. Rauch Wise  
Attorney at Law  
305 Main Street  
Greenwood, SC 29646  
(864) 229-5010

Attorney for Appellant

Other Counsel of Record:

Linda A. Grice, Asst. General Counsel  
South Carolina Department of Motor Vehicles  
Post Office Box 1498  
Blythewood, SC 29016-0020

**FILED**

AUG 16 2012

**SCOMVH**

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

South Carolina Department of Public Safety	)	Docket No. 12-OMVH- 01-0849-CC
and South Carolina Department of Motor	)	
Vehicles,	)	
Petitioners,	)	
	)	<b>FINAL ORDER AND DECISION</b>
v.	)	
	)	
Tracy Lynn Adams,	)	
	)	
Respondent.	)	
	)	

---

**Appearances:**

For the Respondent: Rauch Wise, Esq. and Tracy L. Adams  
For the Petitioners': (Witness), SCDPS, Trooper F.O. Deal

**Other information:**

Respondent's Driver's License No. 011124392  
Type of Hearing: Implied consent (S. C. Code Ann. § 56-5-2950) (Supp. 2011)  
[Refusal to take chemical test(s)]

**INTRODUCTION**

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) upon request by Respondent, Tracy Lynn Adams, for a hearing. Respondent was arrested on February 10, 2012 for an offense arising out of an act alleged to have been committed while she was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. Upon refusal to submit to a breath, blood or urine test, Respondent was charged with a violation of S.C. Code Ann. §56-5-2950 (Supp. 2011). As a result of the refusal, the primary investigating officer issued a written notice of suspension to Respondent suspending her driver's license or driving privilege.

Pursuant to written notice to the parties, a hearing was held before me on April 12, 2012 at Greenwood County Park Plaza, Room 104 in Greenwood, South Carolina. After reviewing the entire record and considering all the evidence, I find that the suspension of Respondent's driver's license or driving privilege must be sustained.

### OPENING STATEMENT

Counsel for the Respondent moved to rescind the suspension for a refusal on the grounds that the procedure for a license suspension for refusing is unconstitutional. He argued that the Respondent is being punished for not blowing because had she blown and blown a .08% (Eight one hundredth of one-percent) or greater, she could have been charged with unlawful alcohol concentration. By refusing, the only charge the state can go forward with now is the DUI (driving under the influence) charge and the state has to prove that she was materially appreciatively impaired. He argued that what the legislature has set up is unconstitutional, violates due process of the State and Federal Constitution. Further, he says she is in essence being punished for making the state's job more difficult because they cannot charge her with driving with an unlawful alcohol concentration.

I conclude that this motion is beyond the scope of the administrative hearing pursuant to S.C. Code Ann. § 56-5-2950 (Supp.2011) and Section 56-5-2951(F) (Supp. 2011). Therefore, the motion to rescind for this reason is denied.

### EXHIBITS

The following exhibits were introduced and made part of the record:

Petitioner: (1) Advisement of Implied Consent Rights.

Respondent: (1) In-car Video Recording (DVD)

### FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following findings of fact by a preponderance of the evidence:

1. Notice of the date, time, place and subject matter of the hearing was timely given to the parties - Respondent, Tracy Lynn Adams, and the South Carolina Department of Public Safety and the South Carolina Department of Motor Vehicles.

2. Respondent's driver's license is 011124392.
3. On February 10, 2012, Trooper F.O. Deal, as recorded on his in-car video, was on routine patrol in Greenwood County and traveling northbound in the left lane on Montague Avenue (US25), when he observed a green Nissan pickup swerving back and forth. The left tires of the Nissan crossed over the yellow line in the median and white dotted lines on two occasions.
4. Trooper Deal initiated a traffic stop and identified the Respondent as the driver.
5. Trooper Deal smelled a strong odor of alcohol coming from the Respondent's vehicle.
6. Respondent stated she had been drinking. The Respondent stated on video that she had two Tequilas and one other drink.
7. Trooper Deal explained and demonstrated the field sobriety tests to the Respondent. Trooper Deal administered the HGN (Horizontal Gaze Nystagmus), the walk and turn, and the one-leg stand tests.
8. Respondent failed all three performed field sobriety tests.
9. Trooper Deal placed the Respondent under arrest for driving under the influence and read her Miranda Rights and roadside DUI Advisement. The Respondent was transported to the Greenwood Detention Center for a DataMaster breath test.
10. As stipulated, the Respondent was advised verbally and in writing of her Advisement of Implied Consent Rights.
11. As stipulated, the Respondent refused to submit to the breath test as requested by Trooper Deal.
12. On February 10, 2012, Respondent was given a written Notice of Suspension of her driver's license for refusing to give a breath sample.
13. Respondent was charged with a violation of S.C. Code Ann. §56-5-2950 for refusing to give a breath sample.

The Respondent was present and did not offer testimony.

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude as a matter of law the following:

### **General**

1. In S. C. Code Ann. §1-23-660 (Supp. 2011), the General Assembly provided for the creation of the South Carolina Department of Motor Vehicle Hearings (DMVH). Effective January 1, 2006, the DMVH was authorized to employ Hearing Officers to preside over contested case hearings involving suspensions, cancellations, or revocations of drivers licenses. Effective October 1, 2008, the General Assembly changed the name to the Office of Motor Vehicle Hearings (OMVH).
2. All hearings presided over by Hearing Officers of OMVH must be conducted in accordance with the Administrative Procedures Act (APA) and the rules of procedure of the South Carolina Office of Motor Vehicle Hearings (SCOMVH).
3. Petitioner is an administrative agency of the State of South Carolina which is charged with administering its motor vehicle laws and delivering accurate and secure credentials and transaction documents to the citizens of this state. S. C. Code Ann. §56-1-5 (2006).
4. 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 since it will be subject to an adverse ruling if no evidence is introduced, Petitioner bears the burden of proof in this enforcement action. *See Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers*, Second Edition, 2001, § 9:3, p. 366.

### **Unlawful to drive while under the influence-**

5. Pursuant to S. C. Code Ann. §56-5-2930, it is unlawful for a person to drive a motor vehicle within this State while:
  - a. under the influence of alcohol to the extent that the person's faculties to drive are materially and appreciable impaired;

- b. under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciable impaired; or
- c. under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciable impaired.

**Implied consent to submit to testing**

6. S.C. Code Ann. § 56-5-2950(A) (Supp.2011) provides:

A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol or drugs or the combination of alcohol and drugs if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. A breath test must be administered at the direction of the law enforcement officer who arrested [the] person....

Furthermore, the breath test must be administered by a person trained and certified by South Carolina Department of Public Safety (SCDPS), pursuant to State Law Enforcement Division (SLED) policies. S.C. Code Ann. §56-5-2950(A)(Supp. 2011).

7. S.C. Code Ann. § 56-5-2950(B) (Supp. 2011) further provides:

No tests may be administered or samples obtained unless upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

- (1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;
- (2) his privilege to drive must be suspended for at least one month if he takes the tests or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent or more;
- (3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;
- (4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and
- (5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

8. Upon motion by any party, the OMVH Hearing Officer may review the application of the policies, procedures, and regulations promulgated by SLED. If the Hearing Officer finds that the failure to follow any of the policies, procedures, regulations or other provisions of S.C. Code Ann. § 56-5-2950 materially affected the accuracy or reliability of the test results or the fairness of the testing procedure, the test results shall be excluded from evidence. The hearing officer must rule specifically as to the manner in which the failure materially affected the accuracy or reliability of the test results or the fairness of the procedure, See S.C. Code Ann. § 56-5-2950(J) (Supp.2011).

9. If a person drives a motor vehicle and has an alcohol concentration of fifteen one-hundredths of one percent or more, Petitioner must suspend the person's driver's license, permit or nonresident operating privilege or deny the issuance of a license or permit to that individual. The arresting officer issues a notice of suspension, which is effective beginning on the date of the alleged violation. See S.C. Code Ann. § 56-5-2951(A) (Supp. 2011)

10. A person may request an administrative hearing within thirty (30) days of the issuance of the notice of suspension. S.C. Code Ann. § 56-5-2951(B) (Supp.2011). Section 56-5-2951(F) (Supp. 2011) requires that the scope of the hearing be limited to whether the person:

- (1) was lawfully arrested or detained;
- (2) was given a written copy of and verbally informed of the rights enumerated in Section 56-5-2950;
- (3) refused to submit to a test pursuant to Section 56-5-2950; or
- (4) consented to taking a test pursuant to Section 56-5-2950, and the:
  - (a) reported alcohol concentration at the time of testing was fifteen one-hundredths of one percent or more;
  - (b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;
  - (c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950; and
  - (d) the machine was working properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

11. After reviewing the facts of this case and the applicable law, I find and conclude that the Respondent was lawfully arrested for driving under the influence. The trooper observed the

Respondent swerving back and forth, as recorded on the in-car video. The Respondent's tires crossed the yellow line in the median and the white dotted lines on two occasions. The trooper smelled a strong odor of alcohol coming from the Respondent's vehicle. The Respondent admitted to drinking. The Respondent stated she had two Tequilas and one other drink. The trooper explained and demonstrated the administered field sobriety tests to the Respondent. The Respondent performed and failed the HGN (Horizontal Gaze Nystagmus), the walk and turn, and the one-leg stand tests.

South Carolina Code Ann. §56-5-1900, Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply: (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety. (b) Upon a roadway which is divided into three lanes and provided for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when the center lane is clear of traffic within a safe distance or in preparation for making a left turn or where the center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle in proceeding and such allocation is designated by official traffic-control devices. In this case the trooper observed the Respondent fail to maintain her position in her lane of travel; therefore, I find that the trooper had probable cause to initiate a traffic stop.

As stipulated, the Respondent was advised verbally and in writing of her Advisement of Implied Consent Rights and the officer was certified.

The Respondent refused to submit to the breath test as requested by the DataMaster Operator. At the end of the twenty-minute waiting period, the Respondent refused to submit a breath sample. The SLED Breath Analysis Test Report (DUI) printed the Respondent's refusal and she signed it.

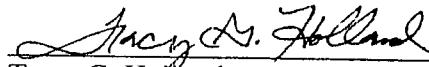
I therefore conclude as a matter of law that the Petitioner met its burden of proof. Accordingly, the relief requested by the Respondent must be denied.

**ORDER**

Based upon the above findings of facts and conclusions of law, it is hereby:

**ORDERED** that the suspension of Respondent, Tracy Lynn Adams, driver's license or driving privilege must be sustained.

**AND IT IS SO ORDERED.**



---

Tracy G. Holland  
OMVH Hearing Officer

July 30, 2012  
Columbia, South Carolina

**FILED**

AUG 16 2012

**SCOMVH**

**CERTIFICATE OF SERVICE**

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

*Yolanda P. Williams*

---

Yolanda P. Williams

July 30, 2012  
Columbia, South Carolina

**FILED**

AUG 16 2012

**SCOMVH**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM ADMINISTRATIVE LAW COURT  
DIVISION OF MOTOR VEHICLES HEARINGS

Tracy G. Holland, Administrative Law Judge

---

Case No. 12-OMVH-01-0849-CC

---

South Carolina Department of Public Safety and SCDMV ..... Respondent,

vs.

Tracy Lynn Adams ..... Appellant.

---

AFFIDAVIT OF SERVICE

---

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on August 16, 2012, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Notice of Appeal in the above case addressed to Frank L. Valenta, Jr., SCDMV General Counsel, P.O. Box 1498, P.O. Box 1498 Blythewood, SC 29016-0020, and Hon. Tracy Holland, SC Administrative law Court, 1205 Pendleton St., Ste. 325, Columbia, SC 29201.

SWORN to and Subscribed

before me this 16 day

of August, 2012.

Mary Jane Hester (L.S.)  
Notary Public for South Carolina  
My Commission expires: 1/24/13

Sandy Traynham

**FILED**

AUG 16 2012

**SCOMVH**

Exhibits

Hearing: Petitioner: SCDPS v. Respondent: Tracy Lynn Adams  
Attorney: C. Rauch Wise.

Docket No.: 12-OMVH-01-0849

Date of Hearing: April 12, 12 Location: Greenwood Cty Pk Plaza Rm 104

Hearing Officer: Tracy G. Holland

- I hereby certify that neither party offered exhibits into the record.
- I hereby certify that exhibit(s) were offered into the record and are indicated below.
- Petitioner's Motion to Reconsider and/or Response from other party.

**PETITIONER:**

**RESPONDENT**

- |  |  |
|--|--|
| <input type="checkbox"/> Notice of Suspension                            | <input type="checkbox"/> Notice of Suspension                      |
| <input checked="" type="checkbox"/> Advisement of Implied Consent Rights | <input type="checkbox"/> Advisement of Implied Consent Rights      |
| <input type="checkbox"/> SLED Breath Alcohol Analysis Test Report.       | <input type="checkbox"/> SLED Breath Alcohol Analysis Test Report. |
| <input type="checkbox"/> In-car videotape                                | <input checked="" type="checkbox"/> In-car videotape               |
| <input type="checkbox"/> Datamaster site videotape                       | <input type="checkbox"/> Datamaster site videotape                 |
| <input type="checkbox"/> Datamaster certification card                   | <input type="checkbox"/> Datamaster certification card             |
| <input type="checkbox"/> Other: _____                                    | <input type="checkbox"/> Other _____                               |

I hereby certify that no exhibits were attached to this form and it was delivered to the OMVH Office by either \_\_\_\_\_ hand delivery or \_\_\_\_\_ mail courier.

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

Date placed in the mail \_\_\_\_\_ or Date hand delivered \_\_\_\_\_

Signature Tracy G. Holland

for motion/resp

### ADVISEMENT OF IMPLIED CONSENT RIGHTS

TRACY CYN ADAAS  
Subject's Name (Print)



8-7-75  
Date of Birth

011124342  
Driver's License Number

SC  
State Licensed

#### DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here → - Inform subject of video recording.  
If answer is No, start here → - Inform subject of type samples requested (i.e. breath, blood, urine).
- (B) Provide subject with a written copy of the following advisement and read the advisement to the subject:
  - You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
  - The arresting officer has directed that samples be taken for alcohol and/or drug testing.
  - The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
  - You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least six (6) months and your refusal may be used against you in court.
  - If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
  - If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month.
  - You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
  - You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
  - If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.
- If applicable, perform the following procedures:
- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
- (D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
- (E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)

#### ADVERTENCIA PORMANEJAR BAJOS LOS EFECTOS DE ALCOHOL O DROGAS(DUI)

- (A) ¿Se grabará en video el análisis? Si la respuesta es Si, empieza aqui → - Informe al sujeto que va a ser grabado en video.  
Si la respuesta es No, empieza aqui → - Informe al sujeto de lo que se requiere (ejemplo: soplar, sangre, urina.)
- (B) De al sujeto una copia escrita de la siguiente advertencia y lea la advertencia al sujeto:
  - Usted queda detenido por Manejar Bajo los Efectos de Alcohol o Drogas (DUI), Sección 56-5-2930, del Código de Leyes de Carolina del Sur de 1976, según su enmienda.
  - El agente que efectuó la detención dispuso que se sacaran muestras de alcohol y/o drogas para ser analizada(s).
  - Se obtendrán y se analizarán las muestras según la Sección 56-5-2950 y las normas de SLED.
  - Usted no está obligado a hacerse los análisis ni a sacarse las muestras, pero si se niega a someterse a estos análisis, se le tendrá que suspender o negar el derecho de manejar en Carolina del Sur por lo menos durante seis (6) meses y el hecho de que usted se niega, podrá usarse en su contra en un tribunal.
  - Si usted se somete a los análisis o se saca las muestras y tiene una concentración de alcohol de ocho centésimos del uno por ciento (0,08%) o más, entonces se lo podría acusar de Manejar con una Concentración Ilegal de Alcohol (DUAC), según la Sección 56-5-2933.
  - Si usted tiene una concentración de alcohol de quince centésimos del uno por ciento (0,15%) o más, se le deberá suspender el derecho de manejar en Carolina del Sur por lo menos durante un (1) mes.
  - Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice sus propios análisis adicionales, los cuales usted mismo tiene que pagar y en ese caso, el agente debe brindarle ayuda si usted lo solicita.
  - Usted tiene el derecho de solicitar una audiencia administrativa dentro de los treinta (30) días de la fecha en que se emitió la notificación de la suspensión.
  - Si usted no solicita una audiencia administrativa o si se le confirma la suspensión en la audiencia administrativa, usted tiene que matricularse en un Programa de Medidas Contra el Abuso del Consumo del Alcohol y las Drogas.
- Si aplica, efectue los siguientes procedimientos:
- (C) Inspecciona la boca del sujeto y quite material extraño de la boca. (Ignora si se niega el sujeto.)
- (D) Anade datos biograficos en el DataMaster DMT. (Esto es requerido para todos los exámenes aunque se niege el sujeto.)
- (E) Observe al sujeto un minimo de (20) minutos antes de obtener un ejemplar de su respiro. (Ignora si se niega.)

**(Stipulated)**  
PETITIONER'S  
EXHIBIT

*Tracy Cyn Adams*  
Subject's Signature  
Firma del Sujeto (Recibió una copia)

41

STRO FOL 2-10-12/442  
Officer's Signature  
Firma del Agente  
000036  
date/time  
fecha/hora



## Frances Inabinet

---

**From:** Frances Inabinet  
**Sent:** Thursday, February 16, 2012 12:31 PM  
**To:** hpu@scdmv.net; 'dwyongue@schp.org'  
**Subject:** Notice of Hearing, Tracy Adams 4-12 dkt# 0849  
**Attachments:** Notice of Hearing, Tracy Adams 4-12 dkt# 0849.pdf

No atty mailed to resp  
2606 Old Hwy 246 Lot 36  
Ninety Six SC 29666

Frances L. Inabinet  
Scheduling Assistant to Hearing Officers  
Tracy Holland  
Brigette Autry  
Phil Hayes  
Robert Harley  
Phil Addington  
SC Administrative Law Court  
Office of Motor Vehicle Hearings  
1205 Pendleton St. Ste.325  
Columbia SC 29201  
803-734-3209  
803-734-3200 (fax)

Cash Receipt

**Number:** CR1202-0308  
**Till:** OMOVH Till  
**Posted:** Yes

**Dated:** 02-15-2012  
**Total Paid** \$150.00

Void Information

**Void Method:**  
**Void Posted:** No  
**Void Explanation:**

**Voided:** No

Generate

Cash Receipt

Generate

Invoices (1)				
Date	Number	Item Type	Customer	Paid
02-15-2012	NV: 202-0304	Case Filing Fee - \$150	Adams, Tracy Lynn	150.00

Payments (1)		
Payment Method	Reference	Paid
Money Order		150.00



# South Carolina Department of Motor Vehicles Notice of Suspension

2012-OMVH-0.1-0849  
MV-65  
Rev. 3/06

Defendant's Name TRACY LYNN ADAMS Address 701 CEDAR SPRINGS RD BRADLEY  
BP/DL Number 01124392 State SC Zip Code 29819 Date of Birth 8-2-75

Vehicle: License Plate Number GWZ 813 Vehicle Type: Commercial  Yes  No Hazardous Material  Yes  No

**YOUR PRIVILEGE TO DRIVE IN SOUTH CAROLINA IS SUSPENDED IMMEDIATELY FOR THE FOLLOWING:  
(CHECK ONLY ONE BOX)**

**UNDER THE AGE OF TWENTY-ONE (21) AND NOT UNDER ARREST FOR DUI\***

Registering an alcohol concentration of .02 or greater\*

Refusing to submit to a breath, blood or urine test\*

**ANY AGE UNDER ARREST FOR DUI**

Registering an alcohol concentration of .15 or greater

Refusing to submit to a breath, blood or urine test

\*A person who is taken for testing under 56-1-286 cannot be prosecuted under 20-7-8920, 20-7-8925, 56-5-2930 or 56-5-2933. Everyone who receives this Notice of Suspension can have a hearing to challenge the suspension. A hearing will be scheduled if within thirty days of the date on this notice of suspension the South Carolina Administrative Law Court RECEIVES your written request for a hearing. There is a \$150.00 filing fee for a hearing. (Personal checks not accepted.) See the back of this form for more information on how to ask for a hearing.

If a hearing is scheduled, you may be able to get a temporary alcohol restricted license. The temporary alcohol restricted license costs \$100.00 and allows you to drive without restrictions until the hearing results are mailed to you. See the back of this form for instructions on how to get a temporary alcohol restricted license.

If you do not get a temporary alcohol restricted license, your suspension continues. You cannot drive until you either get a route-restricted license or your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do get a temporary alcohol restricted license and the hearing officer rules against you after your hearing, your suspension will go back into effect. If you were suspended after having been arrested for DUI, you may be eligible for a route-restricted license to allow you to drive for the remainder of the suspension. There are instructions on the back of this form to explain how to get a route-restricted license. If you do not get a route-restricted license or if you are under the age of twenty-one and were arrested for DUI, you cannot drive until your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do get a temporary alcohol restricted license and the hearing officer rules in your favor, the suspension will be cancelled. Your driving privileges will be reinstated. However, you must go to a DMV office and have a regular license issued.

If you were suspended after having been arrested for DUI, you may be entitled to have a route-restricted license during your suspension period. You do not have to request a hearing to be eligible for a route-restricted license. The route-restricted license costs \$100.00 and allows you to drive only to and from work, college, ADSAP classes, and a court-ordered drug program, plus during the course of your employment or college. However, you must enroll in ADSAP before a route-restricted license will be issued. See the back of this form for instructions on how to get a route-restricted license.

I understand that I cannot drive until a license has been issued to me. Tracy L Adams  
Signature of Defendant

Defendant's license or permit surrendered (yes or no) YES. (If yes, license must be attached to yellow copy of this form)

Date 2-10-2012 Signature of Arresting Officer S/Tracy FO Deal Printed Name of Arresting Officer S/Tracy FO Deal

Agency Name SCHP (GREENWOOD 24) Agency Code 5CHP0200 Agency Telephone Number 864-227-6012

Date 2-10-2012 Signature of DataMaster Operator S/Tracy FO Deal Printed Name of DataMaster Operator S/Tracy FO Deal

Agency Name SCHP (GREENWOOD 24) Agency Code 5CHP0200 Agency Telephone Number 864-227-6012 000048

**HEARING REQUEST**

By signing this hearing request form, I understand that if the SC Administrative Law Court does not receive my hearing request within thirty days of the date on this notice of suspension, I will not be given a hearing and I will not be issued a temporary or restricted license.

2-14-12

Tracy Adams  
Signature of Defendant

2606 Old Hwy 246 Lot #6  
Defendant's Current Address  
96, SC 29666

864-970-0110  
Phone

Pro-Se

Attorney's Name

Attorney's Address

Phone

If you do not list an attorney above, you must tell your attorney when your hearing is scheduled.

**INSTRUCTIONS FOR USING THIS FORM TO REQUEST A HEARING**

Complete the Hearing Request part of this form, giving the current address and telephone number where you can be reached. There is a \$150.00 filing fee for a hearing. (Personal checks not accepted.) Bring or mail this completed form, plus the filing fee, to the South Carolina Administrative Law Court, 1205 Pendleton Highway, Suite 325, Columbia, SC 29201. This completed form and the fee must be RECEIVED by the Administrative Law Court within thirty days of the date on this notice of suspension for a hearing to be scheduled.

**INSTRUCTIONS FOR REQUESTING A HEARING WHEN NOT USING THIS FORM**

Submit a written request that includes all information that is requested in the blanks on this form: your name, date of birth, driver license number, state in which licensed, current address, telephone number where you can be reached, license plate number of vehicle, whether it was a commercial vehicle, whether you surrendered your license, whether you were under arrest for DUI, and whether you were suspended for refusing the test or for taking the test and having too high a reading. You must also list the names and agencies of the arresting officer and of the DataMaster operator, plus contact information for your attorney. There is a \$150.00 filing fee for a hearing. (Personal checks not accepted.) Bring or mail your completed request, plus the filing fee, to the South Carolina Administrative Law Court, 1205 Pendleton Highway, Suite 325, Columbia, SC 29201. The completed request and the fee must be RECEIVED by the Administrative Law Court within thirty days of the date of your suspension for a hearing to be scheduled.

**INSTRUCTIONS FOR GETTING A TEMPORARY ALCOHOL RESTRICTED LICENSE**

If you met the deadline for requesting a hearing, you may be eligible for a non-commercial temporary alcohol restricted license. Temporary alcohol restricted licenses are not available in Class A, B or C commercial driver licenses. The fee for the temporary alcohol restricted license is \$100.00. After you file your request for a hearing, the Department of Motor Vehicles will determine whether you are eligible for a temporary alcohol restricted license. If you are eligible, DMV will mail you a letter stating your eligibility. IF YOU ARE A SOUTH CAROLINA LICENSED DRIVER, you may take that letter to any DMV office in the state, pay the \$100.00 license fee, and have the temporary alcohol restricted license issued. IF YOU ARE A LICENSED DRIVER FROM ANOTHER STATE, you may take that letter and the \$100.00 license fee to DMV Specialized Services, 1630 Shop Road, Columbia, SC (2 miles north of I-77 exit 6). That office can issue the temporary alcohol restricted license. You may also mail that letter, a completed Driver's License Application (Form 447, available on the Internet at <http://www.scdmvonline.com>), and the \$100.00 license fee to DMV/Driver Records, P. O. Box 1498, Blythewood, SC 29016. That office will mail you the temporary alcohol restricted license.

**INSTRUCTIONS FOR GETTING A ROUTE-RESTRICTED LICENSE**

If you were suspended after having been arrested for DUI, you may be eligible for a non-commercial route-restricted license. Route-restricted licenses are not available in Class A, B or C commercial driver licenses. A route-restricted license allows you to drive only to and from work, college, ADSAP classes, and a court-ordered program, plus during the course of your employment or college. The fee for the route-restricted license is \$100.00. If you are licensed in another state, you must also properly pay the reinstatement fee. You must enroll in ADSAP before a route-restricted license will be issued. You do not have to re-pass a hearing to be eligible for a route-restricted license. You must apply for a route-restricted license by submitting an application (Form DL-127). This application will be mailed to you with your suspension notice. It is also available on the Internet at <http://www.scdmvonline.com>. You are advised to complete the application and bring it, with the \$100.00 license fee (and the \$100.00 reinstatement fee if you are licensed in another state) to DMV, Specialized Services, 1630 Shop Road, Columbia, SC (two miles north of I-77 exit 6) or mail the application, and the fee, to that office. If approved, that office can issue the route-restricted license. You may also mail the application, a completed Driver's License Application (Form 447, available on the Internet at <http://www.scdmvonline.com>), the \$100.00 license fee (and the \$100.00 reinstatement fee if you are licensed in another state) to DMV/Driver Records, P. O. Box 1498, Blythewood, SC 29016. Upon approval of the application and route, that office will mail you the route-restricted license.

ADSAP is an abbreviation for Alcohol and Drug Safety Action Program, which is operated under the direction of the Department of Motor Vehicles. Other Drug Abuse Detection (DAODAS). You must go to an ADSAP office to enroll. Numbers for ADSAP are in the Yellow Pages or Section C of the telephone directories. If you reside in another state, you can make arrangements to enroll in ADSAP.

Tracy Adams  
2606 Old Hwy 246 Lot #6  
Ninety Six, S.C. 29666  
(864) 970-0110

February 14, 2012

Attn/ Lana  
SC Administrative Law Court  
Division of Motor Vehicle Hearings  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 325  
Columbia, SC 29201

RE: Tracy Adams  
DL #:011124392  
Ticket #:  
SCHP FO Deal

Dear Lana:

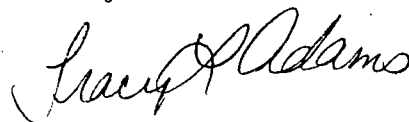
I write to request an Administrative Hearing resulting from a DUI arrest in Greenwood County on February 10, 2012 by Trooper F.O. Deal with the SCHP, Greenwood County. Please note your file and notify me of any hearings scheduled.

Please find enclosed the notice of suspension and \$150.00 money order for the Administrative Hearing Fee.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your attention in this matter.

Sincerely,

*Tracy Adams*



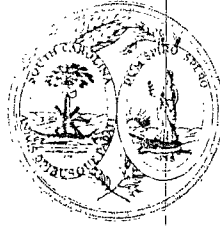
Enclosure

47

000042

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

August 21, 2012

C. Rauch Wise  
Attorney at Law  
305 Main Street  
Greenwood, SC 29646

Re: Tracy Lynn Adams  
Docket No. 12-OMVH-01-0849  
Hearing Date: April 12, 2012

Dear Mr. Wise:

Enclosed please find the \$10 check that was sent to our office for a copy of the audio. A transcript has been ordered and you will receive a copy with the Record on Appeal. You will also receive the invoice from Creel Court Reporting at that time.

If you have any questions or any additional information please feel free to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Yolanda P. Williams".

Yolanda P. Williams  
Administrative Coordinator, SCOMVH

Enclosure

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER. SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES.

**C. RAUCH WISE, ATTORNEY AT LAW**  
305 MAIN STREET  
GREENWOOD, SOUTH CAROLINA 29646

REMITTANCE ADVICE					

67-448/539

11793

PAY See 170/100

DATE	TO THE ORDER OF
8/17/12	SC Administrative Law Court

DOLLARS
CHECK AMOUNT
1000

C. RAUCH WISE, ATTORNEY AT LAW



*Abey Opae Hartter*

⑈00011793⑈ ⑆053904483⑆ 764930129⑈

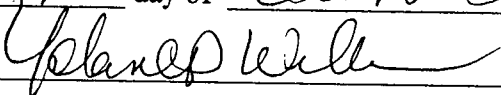
49

000044

**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 9<sup>th</sup> day of October 2012

By: 

Title: Administrative Coordinator, OMVH

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA  
DIVISION OF MOTOR VEHICLES

---

The Honorable Shirley C. Robinson  
Appellate Case No. 2013-002225

---

Tracy Lynn Adams, ..... Appellant,

v

South Carolina Department of Motor Vehicles, and South Carolina Department of Public  
Safety, ..... Respondents.

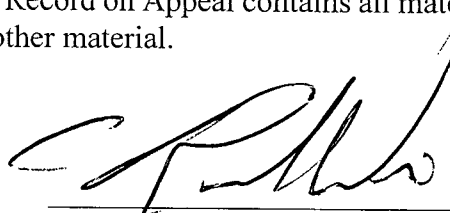
---

CERTIFICATE OF COUNSEL

---

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

June 3<sup>rd</sup>, 2014



C. RAUCH WISE  
Attorney at Law  
305 Main Street  
Greenwood, SC 29646  
(864) 229-5010  
S.C. Bar No. 00188

Attorney for Appellant

**RECEIVED**  
JUN 16 2014  
SC Court of Appeals