

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

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Appellate Case No. 2013-002225

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Tracy Lynn Adams ..... Appellant,

v.

South Carolina Department of Motor Vehicles ..... Respondent.

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**FINAL BRIEF OF THE RESPONDENT**

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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.2<sup>nd</sup> 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” (R. p. 15). 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"(R. p. 19). 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 UNCONSTITUTIONAL?*

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:

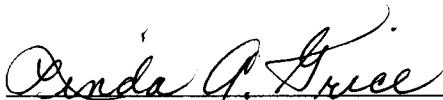
- (1) Was lawfully arrested or detained;
- (2) Was advised in writing of the rights enumerated in Section 56-5-2950;
- (3) Refused to submit to a test pursuant to Section 56-5-2950...

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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July 17, 2014

Blythewood, South Carolina

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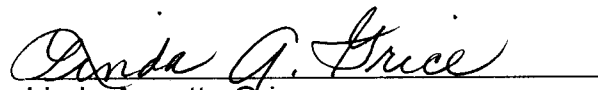
Of Whom the South Carolina Department of Motor Vehicles is the  
Respondent.

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**CERTIFICATE OF COUNSEL**

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The Undersigned Counsel certifies that the attached Final Brief is in  
compliance with SCACR 211(b).

  
Linda Annette Grice  
Assistant General Counsel  
SCDMV

July 17, 2014  
Blythewood, SC

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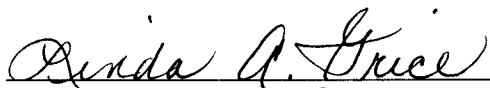
Of Whom the South Carolina Department of Motor Vehicles is the  
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**CERTIFICATE OF COMPLIANCE**

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The undersigned counsel hereby certifies that Respondent's Final Brief  
complies with South Carolina Supreme Court Order 2007-08-13-02, filed  
August 13, 2007.

  
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