

**ORIGINAL**

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

**FILED**  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

JUL 8 2005

WILLIAM S. HAMMONS, )  
)  
Plaintiff/Appellee, )

MICHAEL S. RICHIE  
CLERK

vs. )

Case No. 102,144

STATE OF OKLAHOMA, *ex rel.* )  
DEPARTMENT OF PUBLIC SAFETY, )

Defendant/Appellant. )

Rec'd (date)	7-8-05
Filed	RE
Mailed	RE
Distrib	RE
Publish	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

APPEAL FROM THE DISTRICT COURT OF  
CANADIAN COUNTY, OKLAHOMA

HONORABLE ROBERT E. DAVIS, TRIAL JUDGE

AFFIRMED

Mike O'Brien,  
Oklahoma City, Oklahoma,

For Plaintiff/Appellee,

J. Robert Blakeburn,  
Oklahoma City, Oklahoma,

For Defendant/Appellant.

## OPINION

ADAMS, Presiding Judge:

¶1 The State of Oklahoma, *ex rel.* Department of Public Safety (Department) appeals a trial court order which set aside Department's revocation of William Hammons' drivers license under Oklahoma's Implied Consent Law.<sup>1</sup> The trial court concluded the officer who stopped Hammons had no legitimate reason to do so, therefore his arrest was invalid and Hammons refusal to take a blood or breath test could not be a basis for revocation of his drivers license. Because we conclude the record contains evidence which supports the trial court's decision, we affirm.

¶2 The arresting officer testified that he stopped the vehicle Hammons was driving when he observed it turn onto the public roadway from a private parking lot in Mustang, Oklahoma at approximately 2:46 a.m. The officer testified that he stopped Hammons because the taillights on his vehicle were not illuminated, although the headlights were.

¶3 The officer testified that he had previously been advised by his dispatcher of a call from a member of the public concerning a possible drunk driver in a vehicle like the one being driven by Hammons in the area where the officer first made contact

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<sup>1</sup>47 O.S.2001 § 751 *et seq.*

with Hammons. The trial court sustained a hearsay objection from Hammons' counsel concerning what the caller told dispatch about what the caller observed,<sup>2</sup> and the officer eventually responded "no" to a question from Department's counsel, "[D]id you have any information before you actually laid eyes on [Hammons' vehicle] that would have helped in your decision-making process as to what you were going to do?"

¶4 The officer testified he smelled a strong odor of alcohol when he first approached Hammons, that he attempted to administer various field sobriety tests to Hammons, but terminated them to avoid possible injury to Hammons, and eventually placed Hammons under arrest for "DUI." The officer transported Hammons to the Mustang Police Department and had his vehicle impounded. After the officer gave Hammons the appropriate notice concerning implied consent testing, Hammons refused the test. There was no evidence that the officer issued Hammons a citation for driving a vehicle after dark without functioning taillights.

¶5 Upon his release from custody later that day, Hammons testified he checked his taillights and observed them to be working. He also immediately took the vehicle to

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<sup>2</sup>Department does not assign any error to the trial court's evidentiary ruling, and we do not address it.

an automobile service business, and the trial court admitted a report from that establishment which stated the taillights were functioning upon inspection there.

¶6 For purposes of this appeal, there is no issue concerning whether the officer complied with the legal requirements for offering the test, advising Hammons of the consequences of refusing the test, and documenting those facts. The single critical issue here is whether the officer made a valid arrest of Hammons.

¶7 According to *White v. Oklahoma Department of Public Safety*, 1980 OK 21, ¶6, 606 P.2d 1131, 1132, “a valid arrest is essential to invoke provisions of the Implied Consent Law giving a police officer the right to request a driver of a motor vehicle to submit to a chemical test for blood alcohol.” For purposes of this appeal, at least, the validity of the arrest is dependent upon the validity of the investigatory stop which gave the officer the opportunity to observe Hammons and obtain the information which led to his arrest. *See Lunsford v. State*, 1982 OK CR 168, 652 P.2d 1243.

¶8 A police officer may stop a moving vehicle not only when he or she observes a violation of law, but also when specific articulable facts indicate probable cause to believe a violation of law is present. *Smith v. State Department of Public Safety*, 1984 OK 16, 680 P.2d 365. Here, the officer’s stop was based on what he testified was his

observation of a violation of law, driving without functioning taillights after dark. It is apparent the trial court did not believe his testimony.

¶9 Department's argument appears to be based on a belief that the officer's testimony was entitled to presumptive veracity and that the burden was then cast on Hammons to prove that the lights were functioning at the time in question. No authority is cited to support such an approach.<sup>3</sup>

¶10 Our standard of review in these cases involving issues of fact requires us to affirm the trial court's determination if there is any evidence or a reasonable inference to be drawn from the evidence which tends to support it. *Davie v. State ex rel. Department of Public Safety*, 1995 OK CIV APP 80, 898 P.2d 180. Here, the trial court heard evidence from which it might be inferred that the officer was on the alert for a "drunk" driver in a vehicle like Hammons', and evidence that, despite the officer's testimony that the taillights were not working, they were working several hours later, immediately after the vehicle had been removed from impound.

¶11 On this evidence, the trial court was free to conclude that Hammons' taillights were working when the officer stopped him and that the officer had nothing other than

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<sup>3</sup>State does cite *Webb v. State ex rel. Department of Public Safety*, 1992 OK CIV APP 131, 848 P.2d 35, for the proposition that we may reverse a trial court order vacating a revocation "when uncontroverted evidence supports sustaining a revocation." However, *Webb* does not contain such a holding, and did not involve any questions of fact, only questions of law concerning the constitutionality of the notice provided the motorist.

the information from his dispatcher upon which to make an investigatory stop. Department argues that information alone was sufficient to give the officer authority to stop Hammons.

¶12 However, that argument is largely premised upon evidence which was not admitted at trial because the trial court sustained objections by Hammons. The *admitted* evidence only demonstrated that an unknown caller had reported a possible drunk driver in a vehicle like Hammons' in the area where the officer made contact with Hammons. There was no evidence admitted concerning whether the officer knew the identity of the caller, knew what alleged actions by Hammons caused the caller to conclude that he was probably drunk, or knew how the caller had obtained any information.

¶13 Without such admitted evidence, the trial court was not required to conclude that the officer had a reasonable suspicion that Hammons was violating the law. *See Lunsford*. The trial court's decision is supported by the evidence, and we affirm.

AFFIRMED

MITCHELL, J., and BUETTNER, C.J. (sitting by designation), concur.