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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

January 19, 1999

Joe J. Ard, Chief of Police
Scranton Police Department
P. O. Box 279
Scranton, South Carolina 29591

Re: Informal Opinion

Dear Chief Ard:

You have asked if "we are in our legal bounds to stop a motor vehicle because it is displaying a paper tag on it from where it was purchased and/or has no license tag at all." By way of background, you state that

[o]ur reasons for stopping these vehicles is the check and see that all paper work are in order, example insurance on vehicle, proper bill of sale that has not exceeded the 45 day period for applying for South Carolina tag or if the vehicle is stolen.

This agency has been stopping vehicles for this reason for a long period of time, please note that no other traffic violation has occurred other than not displaying a S.C. vehicle tag.

In addition, you wish to know "if a person stopped for not having a vehicle license can be charged with Failing to maintain proof of insurance (56-10-225) if this person has only a bill of sale on the vehicle."

Law / Analysis

Our Court of Appeals recently set forth in detail the standard for a police officer making an investigatory stop of a vehicle in State v. Lesley, 326 S.C. 641, 486 S.E.2d 276 (1997) as follows:

[a] police officer may stop a motor vehicle and briefly detain and question an occupant if they have a reasonable suspicion that the occupant is involved in criminal activity. Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983); State v. Robinson, 306 S.C. 399, 412 S.E.2d 411 (1991). This suspicion must be based on "specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968). The police may also order an occupant out of the vehicle and, if the exercise of reasonable caution so warrants, frisk the occupant for weapons. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977).

The term "reasonable suspicion" requires a particularized and objective basis "that would lead one to suspect another of criminal activity. United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, 629 (1981). In determining whether reasonable suspicion exists, the "whole picture" must be considered. United States v. Sokolow, 490 U.S. 1, 8, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1, 10 (1989).

As you indicate, S.C. Code Ann. Sec. 56-3-210 provides a "grace period" of 45 days for persons newly acquiring vehicles in order to register and license them. This Office has previously concluded that "anyone claiming an exemption from licensing provisions has the burden of proving that he is entitled to such exemption." 1964 Op. Atty. Gen., Op. No. 1740 (October 10, 1964). Section 56-3-840 makes it a misdemeanor to drive, move or operate on a highway a vehicle for which a registration and license are required but has not been obtained within thirty days of the date when required.

Based upon this same type of requirement, courts elsewhere have upheld a law enforcement officer's stop of a vehicle where there is reasonable suspicion that the temporary tag for a vehicle is improper or improperly displayed. See, Edwards v. State, 219 Ga. App. 239, 464 S.E.2d 851 (1995) [officer's initial stop of vehicle was valid where officer saw no license tag displayed and only upon stopping the vehicle did he see temporary tag]; Powell v. State of Fla., 649 So.2d 888 (1995) [officer had valid reason to stop truck when he saw no visible tag on vehicle]; State v. Allen, 638 So.2d 394 (La. 1994) [officer had reasonable cause for investigatory stop of vehicle for possible expired temporary license plate]. Green

v. State, 866 S.W.2d 701 (Tex. 1993) [officer had reasonable suspicion that car was not properly registered to stop vehicle where temporary cardboard license tag was improperly displayed]. Accordingly, so long as the officer possesses a reasonable, articulable suspicion that a vehicle is not properly registered and/or licensed, the officer's stop would be deemed valid. This, of course, depends upon all the facts and circumstances and the "whole picture" available to the officer at the time. State v. Lesley, supra.

With respect to your second question regarding § 56-10-225, such Section provides as follows:

(A) A person whose application for registration and licensing of a motor vehicle has been approved by the department must maintain in the motor vehicle at all times proof that the motor vehicle is an insured vehicle in conformity with the laws of this State and Section 56-10-510.

(B) The owner of a motor vehicle must maintain proof of financial responsibility in the motor vehicle at all times and it must be displayed upon demand of a police officer or any other person duly authorized by law.

(C) A person who fails to maintain the proof in his motor vehicle as required by subsection (A) is guilty of a misdemeanor and, upon conviction, is subject to the same punishment as provided by law for failure of the person driving or in control of a motor vehicle to carry the vehicle registration card and to display the registration card upon demand. A person failing to maintain in his vehicle the proof required pursuant to subsection (A), within thirty days of being cited for such failure, shall provide proof of insurance or have his driver's license suspended until satisfactory proof is provided. Further, this proof must be provided every quarter for one year after being cited for driving without proof of liability insurance. Failure to provide this proof when required shall cause his driver's license to be suspended until satisfactory proof is provided.

(D) The penalties provided in subsection (C) are in addition to, and not in lieu of, any other penalty, of whatever

nature; provided by law for failing to act as required in subsection (A).

Pursuant to the literal language of this provision, its applicability would, again, depend upon all the relevant facts and circumstances. Subsection (A) appears to be applicable only where a "person whose application for registration and licensing of a motor vehicle has been approved by the department" While Subsection (B) requires any "owner" to "maintain proof of financial responsibility in the motor vehicle at all times" which must "be displayed upon demand of a police officer or any other person duly authorized by law," Subsection (C), dealing with criminal penalties, appears only to relate to Subsection (A)'s requirement of proof of insurance. I would think that, in most instances, if the registration and licensing of a driver who has purchased a new vehicle is pending, Subsection (A) would not be applicable, because such has not yet "approved ... by the department" Again, however, the particular facts could lead to a charge under § 56-10-225 (e.g. where a person has purchased a new vehicle, had licensing and registration approved and yet not bothered to put the tags on or carry proof of insurance in the vehicle], but I would urge caution in this area. A charge made appears to depend upon whether the individual's application for registration and licensing has been approved.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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