October 31, 2019

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Defendant

Re: *Commonwealth of Virginia vs. William Stephens*, Case No. MI-2019-0894

Dear Ms. Watkins and Mr. Stephens:

This matter is before the court on Defendant, William Stephens' ("Defendant") *de novo* appeal from a conviction in General District Court for a high occupancy vehicle ("HOV") violation pursuant to Virginia Code § 33.2-501. The issue to be decided is whether the Supremacy Clause bars the Commonwealth of Virginia from regulating the use of autocycles in the HOV lane. After considering the pleadings and oral arguments of both parties, the court finds that the Supremacy Clause is not violated, therefore, this Court finds the Defendant guilty and imposes a statutory fine of $125.00 plus court costs.

I.   BACKGROUND

The facts are taken from the briefs and those presented at the evidentiary hearing. On April 23, 2019, State Trooper D.M. Rogers stopped the Defendant, who was traveling on the HOV lane Westbound on Route 66 at approximately 3:51PM. The Defendant was the sole occupant of a 2017 model Polaris Slingshot.

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Trooper Rogers issued a citation for an HOV Violation under Virginia Code § 33.2-501(B)(1). On July 7, 2019, Defendant was found guilty of violating § 33.2-501(B)(1) in Fairfax General District Court. On July 12, 2019, Defendant appealed the case.

On August 22, 2019, Defendant argued that Virginia had improperly circumvented a federal law by classifying his Polaris Slingshot as an "autocycle" instead of a "motorcycle," therefore prohibiting the vehicle from the HOV lane.

After considering both the oral arguments and the briefs, the court took the matter under advisement.

II.   ARGUMENTS

Defendant argues that the Supremacy Clause mandates that state courts are bound by the federal laws when state and federal laws are in conflict. Specifically, that when the United States Congress has enacted legislation on the matter it shall be controlling over state laws and/or preclude the state from enacting laws on the same subject. Defendant contends that because the Polaris Slingshot is classified as a motorcycle under the federal code, it cannot be labeled as an autocycle in Virginia. Thus, it was covered under the HOV exemption laws.

The Commonwealth argues that Congress has not expressed clear intent to preempt state law. Therefore, states may concurrently regulate the area. Moreover, the Commonwealth contends that there is no outright or actual conflict between the state and federal laws regarding the definition of a motorcycle. Thus, state laws may be more restrictive than federal laws on this subject matter. Lastly, Virginia' definition of motorcycle does not stand as an obstacle to the objectives of Congress.

III.   ANALYSIS

The Supremacy Clause states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. Art. IV, cl. 2.

Further, courts deciding issues under the Supremacy Clause ordinarily "accept the reading that disfavors preemption. *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005). Moreover, in *Carter v. Commonwealth*, the Virginia Court of Appeals explained that preemption occurs when:

> Congress, in enacting a federal statute, expresses a **clear intent to preempt state** law, when there is outright or actual conflict between federal and state law, where

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compliance with both federal and state law is in effect physically impossible, where there is implicit in federal law a barrier to state regulation, **where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the State to supplement federal law, or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.** 25 Va. App. 721, 724 (1997) (emphasis added).

Here, the federal government has not explicitly stated that the classification of autocycle is prohibited by federal law. In fact, both the House and Senate have tried to pass legislation defining certain vehicles as autocycles. Sen Rep. No. S.685 (2015-16). Although, the legislation has not been enacted, this illustrates that the question remains open to debate within the federal scheme. *Id.* Moreover, Congress has not legislated comprehensively regarding the ability of states, including Virginia, to place greater limitations on HOV lanes. For example, the federal government has stated that "States can override [the motorcycle] provision of federal law, if they determine that safety is at risk." 23 U.S.C. § 166. Thus, there is no clear intent to preempt state law. Therefore, states may concurrently regulate the subject-matter.

Although there are federal laws that define motorcycle, these laws are not enough to show that Congress had a clear intent to preempt state law. Therefore, Virginia is within its power to classify certain vehicles as autocycles.

Furthermore, in Virginia the Polaris Slingshot, does not require a motorcycle permit.[1] Thus, it is properly defined as an autocycle and not a motorcycle in Virginia. Virginia Code § 33.2-501, provides HOV exemptions for:

> Emergency vehicles such as firefighting vehicles and emergency medical services vehicles; Law-enforcement vehicles; Motorcycles; Transit and commuter buses designed to transport 16 or more passengers, including the driver; Any vehicle operating under a certificate issued under § 46.2-2075, 46.2-2080, 46.2-2096, 46.2-2099.4, or 46.2-2099.44; Vehicles of public utility companies operating in response to an emergency call; Vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-749.3, provided such use is in compliance with federal law; Taxicabs having two or more occupants, including the driver; or Any active duty military member in uniform who is utilizing Interstate 264 and Interstate 64 for the purposes of traveling to or from a military facility in the Hampton Roads Planning District.

Nowhere in the Code does it state "autocycles" are exempt from HOV lane requirements. Therefore, under methods of statutory interpretation the list is exhaustive and therefore limited to what is provided.
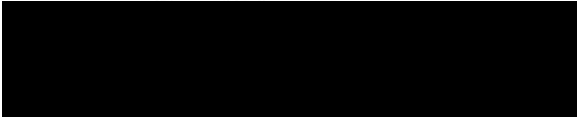
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[1] Forty-five states do not require a motorcycle license to operate a Polaris Slingshot. https://slingshot.polaris.com/en-us/license-requirements/.

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Because the Supremacy Clause does not prohibit Virginia from regulating in this sector and because the Polaris Slingshot is correctly defined as an autocycle, it is not permitted in HOV lanes.

IV. CONCLUSION

For the reasons stated herein, this court holds that the Supremacy Clause does not preempt Virginia from supplementing the regulations, and the Defendant is guilty of an HOV violation. The Court has attached the Order and imposed the statutory sanction of $125.00, plus court costs. The Defendant has a right to appeal. Should Defendant wish to appeal this Court's ruling, he has 30-days to notice his appeal pursuant to the Rules of the Supreme Court of Virginia.

Very truly yours,

Grace Burke Carroll
Judge, Circuit Court of Fairfax
County 19th Judicial Circuit of
Virginia

Enclosure

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	**CRIMINAL NUMBER MI-2019-894**
VERSUS	)	
WILLIAM C. STEPHENS	)	**APPEAL – HOV-2 VIOLATION**

FINAL ORDER

On August 22, 2019, Sarah Watkins, the Assistant Commonwealth's Attorney, and WILLIAM C. STEPHENS, the Defendant, appeared before this Court. The Defendant is charged with the misdemeanor of HOV-2 VIOLATION, and he appeared in accordance with the conditions of appeal.

The Defendant was arraigned upon the summons and the Defendant entered a plea of not guilty. The Court proceeded to hear and to determine the case without the intervention of a jury, trial by jury having been waived, to which the Attorney for the Commonwealth consented and the Court concurred.

The Court then proceeded to hear all of the evidence presented on behalf of the Commonwealth.

The Court heard all of the Defendant's evidence and argument of the parties.

The Court took the matter under advisement.

In consideration of the evidence presented, the briefs submitted, and argument of the parties, the Court found the Defendant, WILLIAM C. STEPHENS, guilty of HOV-2 VIOLATION, as charged in the summons.

The Court **ORDERED** that the Defendant pay a fine in the amount of $125.00, and pay the costs of this case.

The Defendant having entered a plea of not guilty to the charge was advised of the right to appeal the decision of the Court and the right to have counsel appointed for the purpose of the appeal, if found to be eligible.

Entered on October ___31 st___, 2019.

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JUDGE GRACE BURKE CARROLL

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