

Patricia Ann SIDES *v.*
STATE of Arkansas

CR 85-6

686 S.W.2d 434

Supreme Court of Arkansas
Opinion delivered March 25, 1985

AUTOMOBILES — DWI ACT — DOES NOT VIOLATE SEPARATION OF POWERS CLAUSE. — Act 549 of 1983 does not violate the separation of powers clause in Art. 4, § 1 of the Arkansas Constitution.

Appeal from Sebastian Circuit Court; *David Partain*, Judge; affirmed.

John W. Settle, by: *J. Randolph Shock*, for appellant.

Steve Clark, Att'y Gen., by: *Marci L. Talbot*, Asst. Att'y Gen., for appellee.

PER CURIAM. Patricia Sides was convicted in the Ft. Smith Municipal Court of violating the Omnibus DWI Act, Act 549 of 1983. On appeal to the Circuit Court she was tried before a jury and again convicted. She was fined \$800 and costs and her license was suspended for ninety days.

On appeal it is argued that Act 549 violates the separation of powers clause in Article 4, Section 1 of the Arkansas Constitution in that 1) the discretion given to prosecuting attorneys to bring criminal charges is transferred to police officers under the Act, and 2) the judicial function of judges or juries as fact finders is usurped by the provision of the Act which presumes guilt if the defendant's blood alcohol level equals or exceeds .10% by weight.

Those same arguments have been considered and rejected in other cases. See *Sparrow v. State*, 284 Ark. 396, 683 S.W.2d 218 (1985) and *Lovell v. State*, 283 Ark. 425, 678 S.W.2d 318 (1984).

Affirmed.