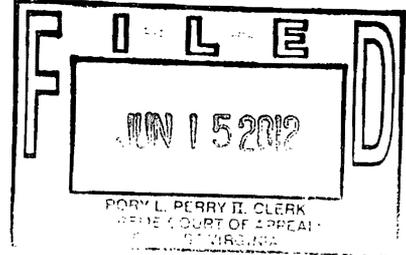


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**Docket No. 12-0202**

**JOE E. MILLER, COMMISSIONER  
OF THE WEST VIRGINIA DIVISION OF  
MOTOR VEHICLES,  
RESPONDENT BELOW, PETITIONER,**



**Vs.**

**BENJAMIN M. KNOPP,  
PETITIONER BELOW, RESPONDENT.**

**Respondent's Brief**

**Counsel for Respondent, Benjamin M. Knopp**

Richard D. Smith, Jr., WV Bar # 11107  
543 Fifth Street  
PO Box 2034  
Parkersburg, WV 26101  
(304) 865-0801  
Richard.Smith@RichSmithLaw.com  
Counsel for Respondent

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES**..... iii

**STATEMENT OF THE CASE** ..... 1

**SUMMARY OF THE ARGUMENT** ..... 2

**STATEMENT REGARDING ORAL ARGUMENT AND DECISION** ..... 3

**ARGUMENT** ..... 3

**I. THE CIRCUIT COURT DID NOT ERR IN REVERSING THE ORDER OF  
    REVOCATION ON THE BASIS OF W.VA. CODE § 17C-5A-1A DESPITE  
    RESPONDENT’S CONVICTION.** .....3

**A. TIMING OF EVENTS ARE CRITICAL MATTERS NOT TO BE IGNORED WHEN  
        APPLYING W.VA. CODE §17C-5A-1a.** ..... 10

**B. PETITIONER’S CLAIMED MANDATE TO REVOKE RESPONDENT’S DRIVER’S  
        LICENSE CONTRADICTS ITS OWN HEARING EXAMINER’S FINDINGS.**..... 11

**CONCLUSION** .....13

**CERTIFICATE OF SERVICE** .....14

## TABLE OF AUTHORITIES

### WEST VIRGINIA SUPREME COURT OF APPEALS

<i>Harrison v. Commissioner, Division of Motor Vehicles</i> , 226 W.Va. 23, 697 S.E.2d 59 (2010) .....	10, 11
<i>Mitchell v. Wheeling</i> , 202 W. Va. 85, 88, 502 S.E.2d 182, 185 (1998).....	4
<i>Retail Designs, Inc. v. West Virginia Div. of Highways</i> , 213 W.Va. 494, 500, 583 S.E.2d 449, 455 (2003) .....	4
<i>Shell v. Bechtold</i> , 175 W.Va. 792, 338 S.E.2d 393 (1985).....	11, 12
<i>Smith v. State Workmen's Comp. Comm'r</i> , 159 W.Va. 108, 219 S.E.2d 361 (1975).....	3
<i>State ex rel. Baker v. Bolyard</i> , 221 W.Va. 713, 656 S.E.2d 464 (2007).....	8, 9, 10, 11
<i>State ex rel. Stump v. Johnson</i> , 217 W.Va. 733, 619 S.E.2d 246 (2005).....	8, 9, 10
<i>State v. Epperly</i> , 135 W.Va. 877, 65 S.E.2d 488 (1951) .....	3
<i>State v. General Daniel Morgan Post No. 548, V.F.W.</i> , 144 W.Va. 137, 107 S.E.2d 353 (1959)..	3
<i>Williams v. West Virginia Div. of Motor Vehicles</i> , 226 W.Va. 562, 703 S.E.2d 533 (2010) .....	2

### WEST VIRGINIA STATUTES

W.Va. Code §17B-3-9 (2005) .....	7
W.Va. Code §17C-5A-1 (2004) .....	8
W.Va. Code §17C-5A-1a (2004).....	8
W.Va. Code §17C-5A-1a(a) (2004) .....	passim
W.Va. Code §17C-5A-1a(c) (2004) .....	3, 5, 6
W.Va. Code §17C-5A-1a(d) (2004) .....	passim

### OTHER AUTHORITIES

Blacks Law Dictionary (Sixth Edition).....	15
<i>Dep't of Highway Safety &amp; Motor Vehicles v. Grapski</i> , 696 So.2d 950, 951 (Fla. 4 <sup>th</sup> DCA 1997)..	9
Merriam-Webster Online .....	7

## STATEMENT OF THE CASE

On January 2, 2007, Respondent was arrested and charged with first offense Driving Under the Influence of Alcohol. A.R. at 7. By letter dated January 11, 2007, the Petitioner, Division of Motor Vehicles (“DMV”), notified the Respondent that pursuant to W.Va. Code §17C-5A-1(c), his privilege to operate a motor vehicle would be revoked. A.R. at 3.

On January 12, 2007, the Respondent requested an administrative hearing before the Respondent DMV to challenge the “[s]econdary chemical test of the blood, breath, or urine” and “[s]obriety checkpoint operational guidelines.” A.R. at 19. The Petitioner held an administrative hearing in Parkersburg, West Virginia. A.R. at 20.

As a matter of course, the Petitioner Commissioner, by his predecessor, issued a final order dated May 11, 2007. A.R. at 22-24. In the said final order the Petitioner adopted its hearing examiner’s conclusions of law: “1. The evidence in this matter does not prove that Benjamin M. Knopp drove a motor vehicle in this state while under the influence of alcohol on January 2, 2007. 2. Accordingly, the Order of Revocation heretofore entered in this matter must be rescinded.” A.R. at 23. Further, the Petitioner Commissioner held that “the Order of Revocation, dated January 11, 2007, revoking Benjamin M. Knopp’s privilege to drive a motor vehicle is hereby reversed, and this case is dismissed. The findings and conclusions herein are and shall be limited solely to the facts and circumstances in this particular case and shall have no effect upon any other suspension or revocation of Benjamin M. Knopp’s driving privilege which may currently be in effect.” A.R. at 23-24.

On May 22, 2007 the Respondent pled guilty to the underlying criminal offense. A.R. at 26-27. The Respondent was sent notification from the Petitioner indicating that his driver’s license would be revoked. A.R. at 9. However, said notification was not received by the

Respondent, (A.R. at 8, 48,) and he was unaware of any active suspension until a routine traffic stop in the Summer of 2011. A.R. at 12. On October 21, 2011, the Respondent petitioned the Kanawha County Circuit Court alleging petitioner unlawfully revoked Respondent's driver's license. A.R. at 10-30. On January 4, 2011, Judge Zakaib ultimately held that under W.Va. Code §17C-5A-1a(d) the DMV Commissioner did not have a mandatory duty to revoke Respondent's driver's license. A.R. at 52-59. Petitioner then filed the instant appeal on January 3, 2012.

### SUMMARY OF THE ARGUMENT

The interpretation of §17C-5A-1a(d) (2004) is before this Court as it was in *Williams v. West Virginia Div. of Motor Vehicles*, 226 W.Va. 562, 703 S.E.2d 533 (2010). However, the jurisdictional matter presented in *Williams* is not at issue in this case. (See A.R. 10-11 at ¶2.)

In this case, the DMV held an administrative hearing on the merits. The DMV issued a Final Order on the matter and rescinded its previous order revoking Respondent's driver's license. Subsequent thereto, Respondent pled guilty to the underlying criminal charges.

Respondent's driver's license was unlawfully revoked by the DMV based upon a guilty plea received **after** the DMV's Final Order was entered. The DMV's revocation of Respondent's driver's license directly contradicts its own findings and ignores the clear and concise language of W.Va. Code §17C-5A-1a(d).

Under the unique facts presented in this case, the clear and unambiguous language of W.Va. Code §17C-5A-1a(d) has been satisfied which prevents the DMV Commissioner from revoking the Respondent's license under W.Va. Code §17C-5A-1a(c).

## STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondent agrees with Petitioner that oral argument is appropriate because this Court has not specifically decided the issue in this matter. However, the Respondent is unaware of any split of authority among the circuits inasmuch as Petitioner has failed to cite any authority supporting this assertion.

### ARGUMENT

#### **I. THE CIRCUIT COURT DID NOT ERR IN REVERSING THE ORDER OF REVOCATION ON THE BASIS OF W.VA. CODE § 17C-5A-1A DESPITE RESPONDENT'S CONVICTION.**

Petitioner's revocation of Respondent's driver's license based upon a plea of guilty following an administrative hearing on the merits, and after a Final Order was rendered in his favor was arbitrary and capricious in disregard of the clear and concise language of W.Va. Code §17C-5A-1a(d) and in disregard of the findings of Petitioner's hearing examiner.

It is well-settled that "[t]he primary object in construing a statute is to ascertain and give effect to the intent of the Legislature." Syl. Pt. 1., *Smith v. State Workmen's Comp. Comm'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975). "A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect." Syl. Pt. 2., *State v. Epperly*, 135 W.Va. 877, 65 S.E.2d 488 (1951). "When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute." Syl. Pt. 5., *State v. General Daniel Morgan Post No. 548, V.F.W.*, 144 W.Va. 137, 107 S.E.2d 353 (1959). "[N]o part of a statute is to be treated as meaningless and we must give

significance and effect to every section, clause, word or part of a statute as well as to the statute as a whole." *Mitchell v. Wheeling*, 202 W. Va. 85, 88, 502 S.E.2d 182, 185 (1998). "It is well established that the word 'shall,' in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation." *Retail Designs, Inc. v. West Virginia Div. of Highways*, 213 W.Va. 494, 500, 583 S.E.2d 449, 455 (2003) (quoting Syl. pt. 1, *Nelson v. West Virginia Pub. Employees Ins. Bd.*, 171 W.Va. 445, 300 S.E.2d 86 (1982)).

West Virginia Code § 17C-5A-1a(d) is clear and unambiguous in its terms. "The provisions of this section shall not apply if an order reinstating the operator's license of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction." *West Virginia Code Annotated*, §17C-5A-1a(d) (2004).

The Circuit Court did not err in interpreting the statutory provision of §17C-5A-1a(d) as it applies to Respondent herein. West Virginia Code § 17C-5A-1a(d) and §17C-5A-1a(c) are located in the same section, §17C-5A-1a, under the heading "Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs." Under §17C-5A-1a, a person is not afforded a hearing on the merits prior to a revocation. West Virginia Code §17C-5A-1a(d) is intended to protect persons like the Respondent herein from any drivers license revocation stemming from the same criminal offense after asserting their right to an administrative hearing on the merits and winning, regardless of the outcome of the criminal disposition. On this issue, the Circuit Court held "[t]o find otherwise would require the DMV Commissioner to become dependent upon a court clerk's timely transmission of a record of criminal conviction before the DMV Commissioner could issue a ruling." A.R. at 43 ¶ 8.

West Virginia Code §17C-5A-1a(a) (1994) clearly states the purpose and Legislative

intent of the whole §17C-5A-1a: “If a person is convicted for an offense defined in section two, article five of this chapter ... the person’s license to operate a motor vehicle in this state shall be revoked or suspended in accordance with the provisions of this section.”

The Petitioner correctly identifies the section of W. Va. Code §17C-5A-1a, subsection (c), which grants it authority to revoke a person’s driver’s license for a DUI conviction. However, at issue in this case is the application of §17C-5A-1a(d). The duty under §17C-5A-1a(c) is triggered only if the DMV has not issued an order reinstating the operator’s license **prior to the receipt of the transcript of the judgment of conviction.**

The use of the term “provisions of this section” in §17C-5A-1a(a) provides that the Legislature intended that the authority to revoke a person’s drivers license post conviction is limited to the sections contained within §17C-5A-1a.

The Legislature in drafting §17C-5A-1a could not have intended that a license be revoked on conviction by “cherry picking” specific subsections of §17C-5A-1a. The Legislature intended that West Virginia Code §17C-5A-1a(d) operate in conjunction with §17C-5A-1a(c). The language that the Legislature uses at the beginning of §17C-5A-1a(d) (2004) “The provisions of this section shall not apply...” was intended to encompass all provisions of §17C-5A-1a including subsection (c) that the Petitioner heavily relies upon throughout its brief. Had the legislature intended a different meaning, they would have included language in (d) to the effect of excluding (c).

The term “if” in a clear and general sense is used to answer a question of whether some condition has been satisfied or not. The Legislature’s use and placement of the term “if” in §17C-5A-1a(d) is used to answer the question of whether or not “an order reinstating the operator’s license of the person has been entered by the commissioner prior to the receipt of the

transcript of the judgment of conviction.” Further, the Legislature intended that time of events be a key factor of whether the said question has been satisfied or not by the use of the term “prior to;” that is, at a point in time before. Accordingly, if the said question is satisfied in the affirmative, then the Legislature intended that no section of §17C-5A-1a be applied; that is, §17C-5A-1a in its entirety is not applicable.

The term “order reinstating” was intended to mean an order issued as a matter of course which serves to “restore to a previous effective state.” Merriam-Webster Online-Reinstate, <http://www.merriam-webster.com/dictionary/reinstate>. In the Respondent’s case, because there were no other pending suspensions or revocations of his driver’s license the effect of the May 11, 2007 Final Order, (see A.R. at 22-24,) put him in the same position had there never been an Order to revoke; that is, Respondent was restored to the status of a lawfully licensed driver free from any revocation or suspension. Had the legislature intended that “reinstating” mean what is stated in W.Va. Code §17B-3-9 they would have made reference to it in §17C-5A-1a(d). The Legislature did not make reference to W.Va. Code §17B-3-9 in any provision of §17C-5A-1a. Further, there is no additional language contained within a related code provision to challenge that the plain meaning of “reinstating” should be substituted. The Circuit Court below addressed the same argument Petitioner again brings to challenge the clear and unambiguous meaning of §17C-5A-1a(d) .

The Petitioner in its brief by somehow trying to distinguish a revocation based upon an officer’s affidavit under §17C-5A-1 and a revocation based upon a conviction under §17C-5A-1a is attempting to confuse the issue. The issue that was presented to the Circuit Court in this case was the interpretation of §17C-5A-1a, more specifically subsection (d). W. Va. Code §17C-5A-1 deals with the administrative revocation of a driver’s license based upon the submission of an

officer's affidavit; this section provides the Respondent the right to an administrative hearing on the merits; a right that the Respondent asserted. Respondent prevailed at the administrative hearing and a decision was rendered in his favor. As the Circuit Court found:

On April 23, 2007, an administrative hearing was held at the DMV in Parkersburg, West Virginia.

The Respondent Commissioner, by his predecessor in office, executed a Final Order dated May 11, 2007 adopting the following conclusions of law: "1. The evidence in this matter does not prove that Benjamin M. Knopp drove a motor vehicle in this state while under the influence of alcohol on January 2, 2007. 2. Accordingly, the Order of Revocation heretofore entered in this matter must be rescinded."

In the same Final Order, the Respondent Commissioner, by his predecessor in office, further adopted that "the Order of Revocation, dated January 11, 2007, revoking Benjamin M. Knopp's privilege to drive a motor vehicle is hereby reversed, and this case is dismissed. The findings and conclusions herein are and shall be limited solely to the facts and circumstances in this particular case and shall have no effect upon any other

suspension or revocation of Benjamin M. Knopp's driving privilege which may currently be in effect."

A.R. at 52-53.

Private Citizens have an interest in a government agency following the law. Whether revocation of a license is considered a criminal punishment or an administrative remedy is a trivial issue when the revocation is done unlawfully. Petitioner cites the Florida decision of *Dep't of Highway Safety & Motor Vehicles v. Grapski*, 696 So.2d 950, 951 (Fla. 4<sup>th</sup> DCA 1997) and its progeny in an attempt to justify its unlawful actions regarding the Respondent, herein. The State of Florida does not have a counterpart to our §17C-5A-1a(d). Also, the facts presented in *Grapski* and its progeny are not similar to the unique facts presented in this case. The Kanawha County Circuit Court correctly applied binding law.

The Kanawha County Circuit Court correctly held that the "Commissioner acted unlawfully when it issued its Order of Revocation dated September 26, 2007 under the plain

meaning of W.Va. Code §17C-5A-1a(d).” A.R. at 43. In reaching its decision, the Circuit Court correctly held in the affirmative that an order reinstating the operator’s license of the person was entered by the commissioner prior to the receipt of the transcript of the judgment of conviction; therefore, W.Va. Code §17C-5A-1a(d) was satisfied. *Id.* The Circuit Court’s holding was based upon the facts that

- 1) First, the Commissioner’s Final Order dated May 11, 2007, by its own terms, rescinded its January 11, 2007 Order of Revocation. Since the Petitioner was not subject to any other suspension or revocation, the act of rescinding its earlier Order of Revocation effectively reinstated the Petitioner’s driving status to a lawfully licensed driver; that is, free from any revocation or suspension.
- 2) Second, is the fact that the Respondent Commissioner’s Final Order was dated May 11, 2007 and the Petitioner did not plea guilty until May 22, 2007; that is, the Final Order was issued some eleven (11) days “prior to” the Petitioner’s guilty plea and “prior to” the time any transcript of conviction could have been received by the Respondent Commissioner.
- 3) Third, is the fact that the Final Order was, by its own terms, *final*; the Final Order dismissing the case did not contain any limiting language to put the Petitioner on notice that he could be subjected to revocation at a later time.

*Id.* at 43-44. The facts are not in dispute; yet Petitioner again argues against the clear meaning of W.Va. §17C-5A-1a(d).

In support of its claim, the Petitioner implies that the facts in *State ex rel. Baker v. Bolyard*, 221 W.Va. 713, 656 S.E.2d 464 (2007) and *State ex rel. Stump v. Johnson*, 217 W.Va. 733, 619 S.E.2d 246 (2005) are somehow similar to the facts of the Respondent herein; yet, Petitioner again fails to establish any such relationship. The Petitioner presents the Circuit Court’s conclusion out of context by ignoring the Circuit Court’s reasoning that addressed the facts of both *Stump* and *Baker*. As the Circuit Court found:

The facts in both *Stump* and *Baker* involved no contest pleas (at the time these cases were decided, a no contest plea was the equivalent of a guilty plea) to criminal charges which were entered into while the administrative process was *pending* before the Commissioner entered a Final Order; that is, both cases addressed circumstances where a then valid

criminal conviction became final *before* the Commissioner's Final Order was issued. In the Petitioner's case, the administrative process was completed and the "case dismissed" prior to pleading guilty.

Second, unlike the argument presented by the Petitioner in this case, neither the Court in *Stump* nor *Baker* addressed the application of W.Va. Code §17C-5A-1a(d) to the facts in the cases before them.

A.R. at 44-45.

Thus, the Circuit Court correctly applied the plain terms of W.Va. Code §17C-5A-1a(d) to the Respondent's case. By considering the timing of the events of the Respondent's DMV hearing, the effective date of the DMV's final order, and the date of the transcript of the criminal conviction the Circuit Court decision was in harmony with the Legislature's intent of §17C-5A-1a. Furthermore, the Circuit Court correctly identified that the facts and circumstances presented in *Baker* and *Stump* are distinguishable from the Respondent's case, herein. Lastly, the Circuit Court correctly identified the fact that neither the Court in *Baker* nor *Stump* addressed the application of West Virginia Code §17C-5A-1a(d).

The Respondent supports the Petitioner's endeavor in keeping DUI administrative proceedings and DUI criminal proceedings separate and distinct. However, in claiming that the two proceedings are separate, the Petitioner contradicts itself. In its brief, Petitioner focuses purely on the outcome of the Respondent's criminal proceeding and furthermore claims as a result thereof that Petitioner can now ignore its own findings held at the administrative proceeding. The Petitioner cannot have it both ways.

The Petitioner misinterprets the Respondent's purpose for filing his Writ of Prohibition in Circuit Court. The Respondent does not assert the criminal theory of double jeopardy or that he is being criminally punished as a result of the revocation of his license. The Respondent simply sought that the DMV follow the law. This was the crux of his request at the Circuit Court in his

Writ of Prohibition. And the Circuit Court correctly applied the rule of law to the Respondent's case given its plain meaning.

**A. TIMING OF EVENTS ARE CRITICAL MATTERS NOT TO BE IGNORED WHEN APPLYING W.VA. CODE §17C-5A-1a.**

The cases of *Baker* and *Harrison v. Commissioner, Division of Motor Vehicles*, 226 W.Va. 23, 697 S.E.2d 59 (2010) represent the notion, and the Circuit Court agreed, that timing of events is crucial in what law a Court applies to reach its conclusion. A Court can only reach its conclusion after harmonizing the law applicable to each case's unique facts. The Kanawha County Circuit Court considered the timing of events this Court considered in *Baker* and *Stump* that Petitioner raises again in its petition and correctly found that the facts relevant to the Respondent herein are unique in comparison. Specifically, the Circuit Court found:

the facts in *Stump* and *Baker* involved no contest pleas (at the time these cases were decided, a no contest plea was the equivalent of a guilty plea) to criminal charges which were entered into while the administrative process was *pending* before the Commissioner entered a Final Order; that is, both cases addressed circumstances where a then valid criminal conviction became final *before* the Commissioner's Final Order was issued.

A.R. at 44-45. Also, the Kanawha County Circuit Court correctly found that in direct contradiction to *Baker*, the administrative process for the Respondent herein was final and the case dismissed prior to the criminal disposition. A.R. at 45.

Contrary to the Petitioner's position, the facts currently before this Court are unique and are entirely dissimilar to the facts presented to the Court in *State ex rel. Baker v. Bolyard*, 221 W.Va. 713, 656 S.E.2d 464 and *Harrison v. Commissioner, Div. of Motor Vehicles*, 226 W.Va. 23, 697 S.E.2d 59 (2010). The facts presented to the Court in *Baker*, as discussed above, and the facts presented in *Harrison* did not trigger a discussion of §17C-5A-1a(d).

Also, the cases of *State ex rel. Baker v. Bolyard*, 221 W.Va. 713, 656 S.E.2d 464 (2007)

and *Harrison v. Commissioner, Div. of Motor Vehicles*, 226 W.Va. 23, 697 S.E.2d 59 (2010) as relied upon by the Petitioner are void of any application of §17C-5A-1a(d). Accordingly, the law as it was applied in these cases is irrelevant to the facts in the case herein.

The Petitioner claims that the facts applicable to the Respondent herein triggered a change in the applicable statutory provision controlling the revocation of Respondent's driver's license. However, in making its claim under W.Va. Code §17C-5A-1a Petitioner disregards any mention of §17C-5A-1a(d) which is no doubt located within the same statute that it claims supports its mandatory duty to revoke the Respondent's license. The Petitioner's request that this Court apply the holdings from *Baker* and *Harrison* to the facts currently before this Court is synonymous with a request to force a "square peg into a round hole;" that is, force the conclusion reached in *Baker* and *Harrison* to work with entirely different facts and disregard any mention of all subsections of §17C-5A-1a except (c). This request contradicts the Legislature's intent that §17C-5A-1a be applied in its entirety only after considering all of its provisions.

**B. PETITIONER'S CLAIMED MANDATE TO REVOKE RESPONDENT'S DRIVER'S LICENSE CONTRADICTS ITS OWN HEARING EXAMINER'S FINDINGS.**

Petitioner claims that it has a mandatory duty to revoke Respondent's license "[r]egardless of the fact that Petitioner rescinded the initial revocation because the arresting officer failed to appear at the administrative hearing." Petition at page 5. To support its claim, the Petitioner relies upon *Shell v. Bechtold*, 175 W.Va. 792, 338 S.E.2d 393 (1985) *Id.* at 5-6. The case in *Shell* was decided in 1981, well before the creation of §17C-5A-1a(d). Neither W.Va. Code §17C-5A-1a(d) nor the like was ever mentioned in *Shell*. Also, the fact that the Petitioner in *Shell* admitted to a prior DUI conviction in Florida during the administrative hearing held before the hearing examiner in West Virginia does not relate to our case either.

*Shell* at 794, 395.

Petitioner also relies on *Shell* to support its claim of mandatory revocation of the Respondent's license because a conviction is the functional equivalent of a finding that "the person did drive a motor vehicle under the influence of alcohol ... to a degree which renders him incapable of safely driving."

In drastically contradicting its earlier position, Petitioner completely ignores the fact that at another point in time Petitioner agreed with the Kanawha County Circuit Court. In making its ruling, the Circuit Court was only following the facts and conclusions of law that the Petitioner placed into its own Final Order. (See **Final Order** A.R. at 22-24.) Blacks Law Dictionary defines the term "Final Order" as "[o]ne which either terminates the action itself, or finally decides some matter litigated by the parties, or operates to divest some right; or one which completely disposes of the subject-matter and the rights of the parties." Blacks Law Dictionary (Sixth Edition). The Kanawha County Circuit Court correctly interpreted the wording within the Petitioner's order.

The Circuit Court concluded what the Petitioner had already concluded in a prior hearing: "[t]he evidence in this matter does not prove that Benjamin M. Knopp drove a motor vehicle in this state while under the influence of alcohol on January 2, 2007." A.R. at 23, 40.

The Circuit Court properly ruled on the matter by focusing on the plain terms of the Petitioner's own *Final Order* where the Petitioner held that "the Order of Revocation, dated January 11, 2007, revoking Benjamin M. Knopp's privilege to drive a motor vehicle is hereby reversed, and this case is dismissed." A.R. at 23-24, 40.

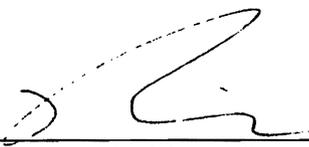
Also, the Circuit Court agreed with the Petitioner's prior holding that the decision to not administratively revoke the license was non-limiting where the Petitioner stated in its own *Final*

*Order:* "The findings and conclusions herein are and shall be limited solely to the facts and circumstances in this particular case and shall have no effect upon any other suspension or revocation of Benjamin M. Knopp's driving privilege which may currently be in effect." A.R. 24, 40.

## CONCLUSION

Therefore, for the foregoing reasons, the Respondent respectfully requests that this Honorable Court affirm the decision of the Circuit Court of Kanawha County.

**BENJAMIN M. KNOPP**  
By Counsel



---

Richard D. Smith, Jr. #11107  
P.O. Box 2034  
Parkersburg, WV 26102-2034  
304-865-0801

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 12-0202

JOE E. MILLER, COMMISSIONER  
OF THE WEST VIRGINIA DIVISION OF  
MOTOR VEHICLES,  
RESPONDENT BELOW, PETITIONER,

Vs.

BENJAMIN M. KNOPP,  
PETITIONER BELOW, RESPONDENT.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2012, true and accurate copies of the foregoing **Respondent's Brief** were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

Janet E. James  
c/o DMV – Office of the Attorney General  
PO Box 17200  
Charleston, WV 25317  
Counsel for Petitioner

Signed: 

Richard D. Smith, Jr., WV Bar # 11107  
543 Fifth Street  
PO Box 2034  
Parkersburg, WV 26101  
(304) 865-0801  
Richard.Smith@RichSmithLaw.com  
Counsel for Respondent