

NO. 12-1509

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

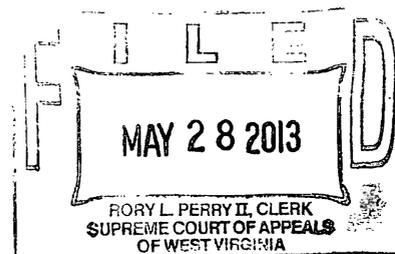
JOE MILLER, COMMISSIONER,
WEST VIRGINIA DIVISION
OF MOTOR VEHICLES,

Petitioner Below, Petitioner,

v.

CHAD DOYLE,

Respondent Below, Respondent.



PETITIONER'S REPLY BRIEF

STEVEN O. DALE, ACTING COMMISSIONER ,
WEST VIRGINIA DIVISION
OF MOTOR VEHICLES,

By counsel,

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PETITIONER'S REPLY BRIEF

Now comes the Petitioner, Steven O. Dale, Acting Commissioner and successor to Joe E. Miller, Commissioner of the West Virginia Division of Motor Vehicles (hereinafter, "Division"), by counsel, Janet E. James, Senior Assistant Attorney General, and submits this brief in the above-captioned case in reply to the *Summary Response* submitted by the Respondent.

At issue in this case is whether it is necessary that Trooper Glende, the Investigating Officer, had knowledge of whether the Respondent was driving on the night in question. As this Court held in *Carte v. Cline* 200 W.Va. 162, 488 S.E.2d 437 (1997),

W.Va.Code § 17C-5A-1a(a) (1994) does not require that a police officer actually see or observe a person move, drive, or operate a motor vehicle while the officer is physically present before the officer can charge that person with DUI under this statute, so long as all the surrounding circumstances indicate the vehicle could not otherwise be located where it is unless it was driven there by that person.

200 W.Va. 167, 488 S.E.2d 442. Respondent, who did not appear in person at the administrative

hearing, presented no evidence which showed that he was not driving the vehicle. When Trooper Glende approached the Respondent, he was in his vehicle. Trooper Glende asked the Respondent where he was coming from and headed to. Trooper Glende testified: “He advised me that he was coming from the race track. At that time, I observed him to have a strong odor of alcoholic beverage from his breath; his eyes to be bloodshot. And I asked him is he had anything to drink tonight; he advised he had consumed approximately five beers at the track.” “At that point, I instructed him to exit the vehicle for a series of standardized field sobriety tests.” A.R. Tr. At 11. Under these facts, Trooper Glende was absolutely correct with proceeding with investigation, and ultimately, arrest. All the surrounding circumstances indicated that Respondent’s vehicle could not otherwise be located where it is unless it was driven there by the Respondent, and this was not disproved by the Respondent at the administrative hearing.

That the 2008 amendments to W. Va. Code §17C-5A-2 removed the “lawful arrest” language, and that this language was amended back into the statute in 2010, is not determinative of the outcome of this case. This Court’s holdings in *Miller v. Smith*, 229 W. Va. 478, 729 S.E.2d. 800 (2012) and *Miller v. Toler*, 229W. Va. 302, 729 S.E.2d. 137 (2012) show that the holdings in *State v. Stuart*, 192 W.Va. 428, 452 S.E.2d 886 (1994), *Muscatell v. Cline* 196 W.Va. 588, 596, 474 S.E.2d 518, 526 (W.Va.,1996) and *Clower v. West Virginia Div. of Motor Vehicles*, 223 W. Va. 535, 678 S.E.2d 41 (2009) must be reconciled with current law. The *Toler* and *Smith, supra* cases show that the nature of the stop is of no consequence to revocation of the driver’s license if the investigating officer has reasonable grounds to believe that the person committed the offense of driving under the influence. *I.e.*, an arrest is lawful if the officer believes that the offense of driving under the influence has been committed. *See, Cain v. W. Va. Div. of Motor Vehicles*, 225 W. Va.

467, 694 S.E.2d 309 (2010) and *Groves v. Cicchirillo*, 225 W. Va. 474, 694 S.E.2d 639 (2010). Trooper Glende's arrest in this matter is justifiable and the evidence supports that he had reasonable grounds to believe that this offense had been committed.

CONCLUSION

For the above reasons, this Court should reverse the *Final Order Denying Petition for Judicial Review* entered by the circuit court.

Respectfully submitted,

**STEVEN O. DALE, ACTING
COMMISSIONER, WEST VIRGINIA
DIVISION OF MOTOR VEHICLES,**

By counsel,

**PATRICK MORRISEY
ATTORNEY GENERAL**



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CERTIFICATE OF SERVICE

I, Janet E. James, Senior Assistant Attorney General, do hereby certify that the foregoing *Petitioner's Reply Brief* was served upon the following by depositing a true copy thereof, postage prepaid, in the regular course of the United States mail, this 28th day of May, 2013, addressed as follows:

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211 W. Washington Street
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JANET E. JAMES