

13-0821

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2013 JUL 25 PM 4:15  
CATHY S. ...  
KANAWHA COUNTY CIRCUIT COURT

STEVEN O. DALE, Acting Commissioner,  
of the West Virginia Division of  
Motor Vehicles,

Petitioner,<sup>1</sup>

v.

Civil Action No. 12-AA-138  
Judge Louis H. Bloom

ANTHONY CICCONE,

Respondent.

**FINAL ORDER**  
**DENYING PETITION FOR APPEAL**

Pending before this Court is a "Petition for Appeal" ("Petition") filed on November 26, 2012, by the Petitioner, Steven O. Dale, Acting Commissioner, West Virginia Division of Motor Vehicles ("Petitioner" or "DMV"), by counsel, Elaine L. Skorich. Said Petition requests this Court to reverse a "Decision of the Hearing Examiner and Final Order of the Chief Hearing Examiner" ("Final Order") entered by the Office of Administrative Hearings ("OAH") on October 25, 2012, following an administrative hearing on the matter held on March 24, 2011. The Final Order reversed the Petitioner's "Order of Revocation" dated December 9, 2010, which revoked the driving privileges of the Respondent, Anthony Ciccone ("Mr. Ciccone"), for the offense of driving a motor vehicle while under the influence of alcohol, controlled substances, or drugs.

<sup>1</sup> At the time of the filing of the Petition for Appeal, Joe E. Miller was serving as the Commissioner of the West Virginia Division of Motor Vehicles. However, Steven O. Dale was appointed Acting Commissioner by West Virginia Governor Earl Ray Tomblin in January 2013. Thus, the style of this case has been changed to reflect the change in administration.

Upon review of the record, the memoranda of the parties, and the applicable law, the Court is of the opinion that the Final Order of the OAH should be affirmed based on the following findings of fact and conclusions of law.

### FINDINGS OF FACT

1. On November 4, 2010, Officer T. R. Rutherford ("Officer Rutherford") of the Grafton City Police Department, and the investigating officer in this matter, arrested Mr. Ciccone for the offense of driving under the influence of alcohol in Taylor County, West Virginia. DUI Information Sheet, R. 6, Ex. 1, Nov. 5, 2010.

2. On December 9, 2010, the Petitioner entered an "Order of Revocation," revoking Mr. Ciccone's driver's license for driving under the influence. Order of Revocation, R. 6, Ex. 3, Dec. 9, 2010.

3. An administrative hearing was held on March 24, 2011. The evidence presented by the Petitioner at said hearing was the testimony of the Investigating Officer, Officer Rutherford; the testimony of the officer who initiated the traffic stop, Sergeant James Ian Davis ("Sgt. Davis"), also of the Grafton City Police Department; and the DMV's administrative file, including the DUI Information Sheet completed at the time of arrest. *See generally*, Administrative Hearing Transcript, R. 6, Ex. 23 ("Hr'g Tr."), Mar. 24, 2011.

4. At the administrative hearing before the OAH, Sgt. Davis testified that on November 4, 2010, he received a phone call from Sharon Marks ("Ms. Marks") at the Grafton City Police Department Station advising him that a motor vehicle, with Delaware registration, was being driven in an erratic manner while traveling south on U. S. Route 119 North, and that the driver was possibly intoxicated. *Id.* at 10; 14.

5. Sgt. Davis testified that based on this call he left the station and went to the intersection of U.S. Route 50 and 119 where he observed the described vehicle approach the intersection and proceeded to execute a proper left turn from U.S. Route 50 East onto Route 119 North. *Id.* at 14. According to Sgt. Davis, he then initiated a traffic stop of the vehicle and made contact with the driver of the vehicle, who was not Mr. Ciccone. *Id.* Sgt. Davis further clarified that he did not observe any erratic driving behaviors, but rather initiated a traffic stop of the motor vehicle on Route 119 North in Taylor County, West Virginia, based entirely upon the allegations of Ms. Marks. *Id.* at 29–30.

6. Additionally, Sgt. Davis testified that Mr. Ciccone was in the passenger seat of the vehicle at the time of the stop. *Id.* at 15:16. After explaining the complaint called in on the vehicle to Mr. Ciccone and the driver, Sgt. Davis testified that Mr. Ciccone admitted to him that he had been previously driving the vehicle to pick up his friend, the driver at the time of the stop, in Grafton. *Id.* at 15:8–13. However, Sgt. Davis testified that he never observed Mr. Ciccone driving the vehicle, and he did not see the driver and Mr. Ciccone switch places. *Id.* at 20–21.

7. At this point during the stop Officer Rutherford arrived at the scene. *Id.* at 33:14–20. Officer Rutherford testified that he asked Mr. Ciccone to step out of the vehicle to perform a few field sobriety tests. *Id.* Officer Rutherford testified that he performed the horizontal gaze nystagmus test, the walk-and-turn test, and the one-legged stand test. *Id.* at 34:9–11. According to Officer Rutherford, based on Mr. Ciccone's failure of the field sobriety tests and a preliminary breath test, he arrested Mr. Ciccone for driving under the influence of alcohol. *Id.* 41:12–14.

8. At the administrative hearing, neither the driver of the motor vehicle during the stop nor Ms. Marks testified. Although Mr. Ciccone appeared at the hearing, he offered no testimony regarding this matter.

9. On October 25, 2012, the OAH entered a Final Order reversing the Petitioner's revocation of Mr. Ciccone's driver's license. Final Order, R. 6, Ex. 13, Oct. 25, 2012. In the Final Order, the OAH Hearing Examiner concluded that the record was not sufficient to prove that Mr. Ciccone drove a motor vehicle under the influence of alcohol on November 4, 2010. *Id.* at 6. In reaching this conclusion, the Hearing Examiner relied on the standard set forth in *State v. Stuart*, 192 W. Va. 428, 452 S.E.2d 886 (1994), that a police officer may rely on a call to make an investigatory stop of a vehicle only if subsequent police work supports its reliability. *Id.* at 4. Because the traffic stop of the motor vehicle was initiated as a direct result of the allegations made by Ms. Marks and Sgt. Davis did not observe any erratic or unlawful driving, the Hearing Examiner determined the record was absent any credible testimony to establish that Sgt. Davis had a reasonable articulable suspicion to initiate a traffic stop of the vehicle. *Id.* at 5. Therefore, the Hearing Examiner determined that the specific findings of a lawful arrest and whether Mr. Ciccone had been driving under the influence as required under W. Va. Code § 17C-5A-2(f) (2012) could not be made. *Id.* 5-6.

10. On November 26, 2012, the Petitioner, by counsel, filed a Petition for Appeal with this Court. *See* Pet., R. 1-2, Nov. 26, 2012. A hearing was on the matter before this Court on April 11, 2013.

## STANDARD OF REVIEW

The Court reviews the DMV's Final Order pursuant to the West Virginia Administrative Procedures Act, which states as follows:

The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedures; or
- (4) Affected by other error of law; or
- (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

W. Va. Code § 29A-5-4(g). Furthermore, on appeal a circuit court reviews questions of law presented *de novo* and findings of fact by the administrative officer are accorded deference unless the court believes the findings to be clearly wrong. *See* Syl. Pt. 1, *Muscatell v. Cline*, 196 W.Va. 588, 474 S.E.2d 518 (1996); *see also* Syl. Pt. 4, *Clower v. W. Va. Dept. of Motor Vehicles*, 223 W. Va. 535, 678 S.E.2d 41 (2009).

## DISCUSSION

1. As grounds for relief, the Petitioner cites the following assignments of error: (1) the OAH was clearly wrong to ignore all evidence of drunk driving which was already admitted into evidence; (2) the OAH erred in conflating a "stop" with an "arrest;" (3) the OAH improperly relied on *Stuart*; and (4) the OAH was clearly wrong in applying the exclusionary rule in contravention of *Miller v. Toler*, 229 W. Va. 302, 729 S.E.2d 137 (2012), and *Miller v. Smith*, 229 W. Va. 478, 729 S.E.2d 800 (2012). Pet., R. 1-2, 3-4.

2. When conducting a hearing to review the revocation of a driver's license because that person has been accused of driving a motor vehicle under the influence of a controlled substance, the OAH

shall make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test; and (4) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.

W. Va. Code § 17C-5A-2(f) (2012) (emphasis in original).

3. The statute has been amended several times in recent history. First, it was amended in 2008 to remove the previously existing requirement that a finding must be made that the person was placed under lawful arrest.<sup>2</sup> See W. Va. Code § 17C-5A-2(f) (2008). In the 2008 version of the statute, which applies to revocations prior to June 11, 2010, see *Smith*, 229 W. Va. 478, 484, 729 S.E.2d 800, 806, only three specific findings were required: (1) whether the investigating officer had reasonable grounds to believe the

---

<sup>2</sup> The 2004 version of the statute required three specific findings, including whether the person was lawfully placed under arrest. See *Clower*, 223 W. Va. 535, 544, 678 S.E.2d 41, 50.

person to have been driving under the influence, (2) whether the person committed an offence involving driving under the influence, and (3) whether the sobriety tests were administered properly. *See* W. Va. Code § 17C-5A-2(f) (2008). In 2010, the legislature amended the statute again to add back into the statute the requirement of a finding that the person was lawfully placed under arrest for the offense of driving under the influence. *See* W. Va. Code § 17C-5A-2(f) (2012).<sup>3</sup>

4. “The inclusion of the requirement for a ‘lawful arrest’ in the 2010 statute constitutes a substantive alteration because it represents a change in the rights and obligations of the parties.” *Smith*, 229 W. Va. 478, 484, 729 S.E.2d at 806. Additionally, weight must be given to the inclusion of this requirement because “[a] cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute.” Syl. Pt. 3, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999).

5. Recently, the Supreme Court of Appeals of West Virginia determined that the exclusionary rule is not applicable in a civil, administrative driver’s license revocation proceeding. Syl. Pt. 3, *Toler*, 229 W. Va. 302, 729 S.E.2d 137; *see also* Syl. Pt. 7, *Smith*, 229 W. Va. 478, 729 S.E.2d 800. In doing so, however, the Court had “no occasion to elaborate upon what the lawful arrest language in the 2010 statute would have required” because it found the 2008 version of the statute applicable to that particular case. *Smith*, 229 W. Va. at 484 n.8, 729 S.E.2d at 806 n.8.

6. In interpreting the previous 2004 version of the statute, which required a lawful arrest finding, the Court has ruled that a lawful arrest for the offense of driving under the

---

<sup>3</sup> The statute was amended again in 2012 adding two new sections W. Va. Code § 17C-5C-4a and W. Va. Code § 17C-5C-4b, which are not applicable here.

influence requires a valid stop of the vehicle. *See, e.g., Clower*, 223 W. Va. 535, 544, 678 S.E.2d 41, 50. Specifically, the Court in *Smith* stated that Mr. Smith's reliance on *Clower* for "the proposition that the validity of an administrative license revocation is dependent upon the legality of the initial traffic stop" was misplaced because "that decision was premised upon a 2004 version of the West Virginia Code § 17C-5A-2 which included language indicating that a lawful arrest was necessary." 229 W. Va. 478, 484, 729 S.E.2d 800, 806. The current version of the statute, like the 2004 version of the statute, includes language indicating that a lawful arrest is a necessary finding. This language must be given weight, and as the Court has previously ruled, a lawful arrest is dependent upon the legality of the initial traffic stop. *See Clower*, 223 W. Va. 535, 544, 678 S.E.2d 41, 50 ("Based on these facts, the circuit court concluded that Mr. Clower was not lawfully placed under arrest because Trooper Kessel did not have the requisite articulable reasonable suspicion to initiate a traffic stop of Mr. Clower's vehicle. We agree.").

7. The appropriate standard by which to judge the legality of the initial traffic stop is the reasonable suspicion standard. *See id.*; *see also Muscatell*, 196 W.Va. 588, 596, 474 S.E.2d 518, 526 (citing *Stuart*, 192 W. Va. 428, 452 S.E.2d 886). "Police officers may stop a vehicle to investigate if they have an articulable reasonable suspicion that the vehicle is subject to seizure or a person in the vehicle has committed, is committing, or is about to commit a crime." Syl. Pt. 4, *Clower*, 223 W. Va. 535, 544, 678 S.E.2d 41 (quoting Syl. Pt. 1, *Stuart*, 192 W. Va. 428, 452 S.E.2d 886). "When evaluating whether or not particular facts establish reasonable suspicion, one must examine the totality of the circumstances, which includes both the quantity and quality of the information known by

the police.” Syl. Pt. 4, *Muscatell*, 1996 W. Va. 588, 474 S.E.2d 518 (quoting Syl. Pt. 2, *Stuart*, 192 W.Va. 428, 452 S.E.2d 886).

8. Additionally, “[a] police officer may rely upon an anonymous call if subsequent police work or other facts support its reliability and, thereby, it is sufficiently corroborated to justify the investigatory stop under the reasonable-suspicion standard.” Syl. Pt. 4, *Stuart*, 192 W.Va. 428, 452 S.E.2d 886.

#### *Ignoring Evidence of Drunk Driving*

9. First, the Petitioner argues that documents from the administrative record, including the DUI Information Sheet, received into evidence created a rebuttable presumption of their accuracy and were improperly ignored by the OAH. Brief of Pet., R. 8, 5, Feb. 7, 2013. For this proposition, the Petitioner cites *Crouch v. W. Va. Div. of Motor Vehicles*, 219 W. Va. 70, 631 S.E.2d 628 (2006).

10. The Court recognizes that the DUI Information Sheet as well as other documents included in the DMV’s file were admissible under W. Va. Code § 29A-5-2(b) and *Crouch*. However, this does not mean the Hearing Examiner must accord such documentation more weight than other evidence. As the Court in *Crouch* pointed out, “that the fact that a document is deemed admissible under the statute does not preclude the contents of the document from being challenged during the hearing. Rather, the admission of such a document into evidence merely creates a rebuttable presumption as to its accuracy.” 219 W. Va. at 76 n. 12, 631 S.E.2d 634 n.12. Additionally, in a license revocation hearing, it is “the DMV’s burden of demonstrating by a preponderance of the evidence that a respondent was unlawfully driving a vehicle while under the influence.” *Cain v. W. Va. Div. of Motor Vehicles*, 225 W. Va. 467, 473, 694 S.E.2d 309, 315 (2010).

11. Here, the Court finds that the OAH did not ignore the evidence contained in the administrative file, including the DUI Information Sheet, but rather, weighed all evidence in totality to reach its conclusion. The evidence contained in the file was clearly challenged in the hearing, and based on the evidence adduced at the hearing, the Hearing Examiner was unable to make the specific findings required by W. Va. Code 17C-5A-2(f). Therefore the Court finds no merit to this assignment of error.

*Conflating a "Stop" with an "Arrest" and Relying on Stuart*

12. Second, the Petitioner argues that The OAH erred in conflating a "stop" with an "arrest" and improperly relied on *Stuart*. The Petitioner argues "there are instances when a lawful arrest does not include a stop at all, and there are instances when an unlawful stop can still result in a lawful arrest." Brief of Pet., R. 8, 8. Further, the Petitioner argues, that Mr. Ciccone's arrest was lawful not because of the stop but because of the investigation conducted, and there were reasonable grounds for the Investigating Officer to believe Mr. Ciccone was driving under the influence. *Id.*

13. The Court finds this argument contrary to law in West Virginia. In making this argument, the Petitioner relies on cases that are distinguishable from the facts of the instant case for the proposition that the OAH erred in conflating a "stop" with an "arrest." The cases relied on by the DMV did not involve an investigatory stop like the instant case. For example, in *Cain*, the arresting officer "discovered Mr. Cain asleep on the ground in front of his vehicle." 225 W. Va. at 469, 694 S.E.2d at 311. In *Carte*, the arresting officer, responding to an emergency call, came upon the driver slumped behind the wheel of his vehicle at a stop light. 200 W. Va. at 163, 488 S.E.2d at 438. The driver

“appeared to be passed out with the engine running, the transmission in drive, and his foot on the brake.” *Id.* at 163–164, 438–39.

14. The instant case is of an entirely different character. Sgt. Davis did not just happen upon Mr. Ciccone asleep on the ground in front of his vehicle, passed out behind the wheel of his vehicle at an intersection, or at the scene of an accident. He stopped the vehicle based solely on the tip from Ms. Marks. As discussed above, in answering the question of whether Mr. Ciccone had driven under the influence of alcohol, the OAH is required to make specific findings, including whether the arrest of Mr. Ciccone was lawful. *See* W. Va. Code 17C-5A-2(f). Contrary to the Petitioner’s argument, the Court finds that where there is an investigatory stop, like the one performed on Mr. Ciccone by Sgt. Davis, the stop must be valid in order to have a lawful arrest. Here, the OAH was unable to make such a finding because subsequent police work by Sgt. Davis or other facts to support its reliability did not sufficiently corroborate the tip by Ms. Marks to justify the investigatory stop of the vehicle under the reasonable suspicion standard. *See* Syl. Pt. 4, *Stuart*, 192 W.Va. 428, 452 S.E.2d 886. Therefore, the Court finds no merit in this assignment of error.<sup>4</sup>

15. Additionally, the Petitioner makes the argument that the required findings of the OAH as outlined in W. Va. Code § 17C-5A-2(f) are predicates to the administration of the secondary chemical test and not dispositive to the authority to revoke. Brief of Pet., R. 8, 8. The Court finds no merit in this argument and finds that it is contrary to the clear language of the statute, which states, “In the case of a hearing in which a person is

---

<sup>4</sup> Also, the Court notes that it is questionable whether a finding could be made that Mr. Ciccone was actually *driving* under the influence because at the time of the stop he was a passenger in the vehicle driven by someone else, Ms. Marks was unable to identify him as the driver, and there was a lapse in time between Ms. Marks’s tip and the stop of the vehicle. However, this is not the issue before the Court.

accused of driving a motor vehicle while under the influence of alcohol . . . the Office of Administrative Hearings shall make specific findings.” W. Va. Code § 17C-5A-2(f).

16. Further, the Court notes that the Petitioner cites *Smith* for the proposition that “the validity of an underlying traffic stop is irrelevant to a civil administrative license revocation.” Brief of Pet., R. 8, 13. The Court finds this is a complete misstatement of the law. As stated above, the Court in *Smith* stated that Mr. Smith’s reliance on *Clower* for “the proposition that the validity of an administrative license revocation is dependent upon the legality of the initial traffic stop” was misplaced because “that decision was premised upon a 2004 version of the West Virginia Code § 17C-5A-2 which included language indicating that a lawful arrest was necessary.” 229 W. Va. 478, 484, 729 S.E.2d 800, 806. The current version of the statute, applicable here, like the 2004 version of the statute, includes language indicating that a lawful arrest is a necessary finding. And the Court in *Smith* had “no occasion to elaborate upon what the lawful arrest language in the 2010 statute would have required.” *Smith*, 229 W. Va. at 484 n.8, 729 S.E.2d at 806 n.8.

#### *Using the Exclusionary Rule*

17. The DMV also argues that the OAH erred by improperly excluding evidence of Mr. Ciccone’s intoxication obtained after the stop of his vehicle through the use of the exclusionary rule.

18. The Court recognizes that recently, the Supreme Court of Appeals of West Virginia determined that the exclusionary rule is not applicable in a civil, administrative driver’s license revocation proceeding. Syl. Pt. 3, *Toler*, 229 W. Va. 302, 729 S.E.2d 137; see also Syl. Pt. 7, *Smith*, 229 W. Va. 478, 729 S.E.2d 800. However, the Court finds the Petitioner’s argument wholly without merit. As discussed above, the OAH is required by

statute to make specific findings. *See* W. Va. Code § 17C-5A-2(f). One of those findings being that Mr. Ciccone was lawfully placed under arrest. *See id.* The OAH made no error in determining that without a finding that the legitimacy for the initial traffic stop existed, there was insufficient evidence to find the arrest of Mr. Ciccone was lawful as required by W. Va. Code § 17C-5A-2(f). As more fully stated above, an arrest for the offense of driving under the influence of alcohol is not lawful without a valid stop of the vehicle. This proposition is not reached by use of the exclusionary rule, but through specific requirements in the statutory language requiring a lawful arrest and the Supreme Court of Appeals of West Virginia's prior precedent interpreting such language.

#### CONCLUSIONS OF LAW

1. Based on the foregoing, the Court finds and concludes that the OAH did not error as a matter of law in reversing the Petitioner's "Order of Revocation" entered on December 9, 2010.

2. The Court concludes that the OAH did not ignore the evidence contained in the administrative file, including the DUI Information Sheet, but rather, weighed all evidence in totality to reach its conclusion.

3. Further, the Court concludes that OAH did not conflate a "stop" with an "arrest" and did not improperly rely on *Stuart*. The OAH applied the proper standard when determining it could not make the specific findings required by W. Va. Code § 17C-5A-2(f).

2. Additionally, the Court concludes there is no merit to the Petitioner's argument that the OAH improperly applied the exclusionary rule.

DECISION

Accordingly, the Court does hereby ORDER that the Petitioner's "Petition for Appeal" is DENIED and that the OAH's "Decision of the Hearing Examiner and Final Order of the Chief Hearing Examiner" dated October 25, 2012, is AFFIRMED. There being nothing further, the Court does further ORDER that the above-styled action be DISMISSED and STRICKEN from the docket of this Court. The objections of any party aggrieved by this Order are noted and preserved.

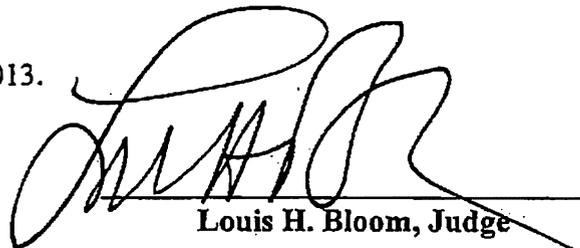
The Clerk is DIRECTED to send a certified copy of this Order to the pro se party and all counsel of record and to Steven O. Dale, Acting Commissioner of the Division of Motor Vehicles, at the following addresses:

Anthony Ciccone  
226 Southern Valley Court  
Mars, PA 16046

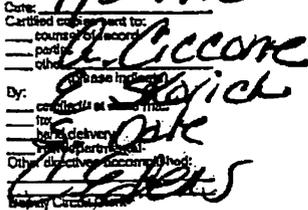
Elaine L. Skorich  
Assistant Attorney General  
DMV-Office of Attorney General  
P.O. Box 17200  
Charleston, WV 25317

Steven O. Dale, Acting Commissioner  
WV Division of Motor Vehicles  
1800 Kanawha Blvd., E., Building 3  
Charleston, WV 25317

ENTERED this 25 day of July 2013.

  
Louis H. Bloom, Judge

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY,  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE  
IS A TRUE COPY FROM THE CLERK'S OFFICE AND WAS  
GIVEN UNDER MY HAND AND SEAL OF SAID COUNTY  
ON THIS 25th DAY OF JULY 2013.  
Cathy S. Gatson  
Clerk

7/29/13  
Certified copy sent to:  
\_\_\_ counsel of record  
\_\_\_ party  
\_\_\_ other  
By:   
C. Ciccone  
E. Skorich  
S. O. Dale  
C. Gatson

SHORT CASE NAME: Dale v. Ciccone

---

**CERTIFICATIONS**

---

**STATE OF WEST VIRGINIA**

I hereby certify that I have performed a review of the case that is reasonable under the circumstances and I have a good faith belief that an appeal is warranted.

August 12, 2013

Date

Elaine L. Shorck

Counsel of record or unrepresented party

I hereby certify that on or before the date below, copies of this notice of appeal and attachments were served on all parties to the case, and copies were provided to the clerk of the circuit court from which the appeal is taken and to each court reporter from whom a transcript is requested.

August 12, 2013

Date

Elaine L. Shorck

Counsel of record or unrepresented party