

**BRIEF FILED
WITH MOTION**

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
NO. 14-0372
(Circuit Court Civil Action No. 12-AA-54)**

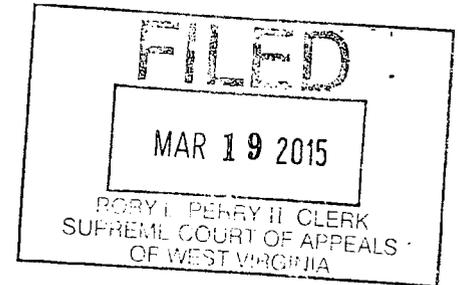
**STEVEN O. DALE, ACTING COMMISSIONER,
WEST VIRGINIA DIVISION OF
MOTOR VEHICLES,**

Petitioner,

v.

JAMES PETTIT,

Respondent.



SUPPLEMENTAL BRIEF OF THE DIVISION OF MOTOR VEHICLES

Respectfully submitted,

**PAT REED, Commissioner,
Division of Motor Vehicles,**

By Counsel,

**PATRICK MORRISEY
ATTORNEY GENERAL**

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Now comes Patricia S. Reed, Commissioner of the West Virginia Division of Motor Vehicles (“DMV”), and pursuant to Rule 10(h) of the Revised Rules of Appellate Procedure hereby submits the following *Supplemental Brief of the Division of Motor Vehicles*.

I. ARGUMENT

On September 23, 2014, Petitioner filed her reply brief in the above-captioned matter thus making the appeal mature for consideration by the Court pursuant to Rule 5(h) of the Revised Rules of Appellate Procedure. In her brief in this matter, Petitioner made two alternative arguments which have been affected by this Court’s subsequent decisions in *Dale v. Barnhouse*, No. 14-0056, 2014 WL 6607493 (W. Va. Nov. 21, 2014) (memorandum decision); *Dale v. Judy*, No. 14-0216, 2014 WL 6607609 (W. Va. Nov. 21, 2014) (memorandum decision); *Dale v. Haynes*, No. 13-1327, 2014 WL 6676546 (W. Va. Nov. 21, 2014) (memorandum decision); and *Fuller v. Reed*, No. 14-0043 (W. Va. Mar. 11, 2015) (memorandum decision). In these, the Court reiterated its opinion in *Clower v. W. Va. Dep’t of Motor Vehicles*, 223 W. Va. 535, 678 S.E.2d 41 (2009) that reasonable suspicion for the stop of a vehicle is a requisite to a lawful arrest.

In *Barnhouse, supra*, the Court specifically disavowed consideration of the principal question at the administrative hearing as set forth in W. Va. Code § 17C-5A-2(e), noted that it would refuse consideration of evidence that the respondent’s breath smelled of alcohol, that he had bloodshot eyes, and that he admitted drinking a beer 30 minutes before the stop. In *Haynes, supra*, the Court found that the stop of a vehicle by an officer who is not the investigatory officer is fatal to the license revocation, reiterating the requirement that reasonable suspicion for the stop is a requisite to lawful arrest.

In *Fuller, supra*, the Court opined that it is necessary to exclude evidence collected incidental to the stop of a drunk driver not by applying the judicially created exclusionary rule but by excluding

the evidence pursuant to W. Va. Code § 17C-5A-2(f). Citing *Dale v. Arthur*, No. 13-0374, 2014 WL 1272550 (W. Va. Mar. 28, 2014) (memorandum decision), this Court discussed *Clower, supra*, and noted that in applying the exclusionary rule in *Clower*, the Court ignored the evidence that the driver had slurred speech, smelled of alcohol, failed the field sobriety tests, and had a blood alcohol content of .182.

In *Judy, supra*, the Court once again rescinded the revocation of a driver who, *inter alia*, had the odor of alcohol on his breath, slurred speech, and a blood alcohol content of .154, finding that the respondent driver's testimony that he was not "speeding," as reflected on the DUI Information Sheet, was a successful rebuttal. Therefore, the Court opined that the investigatory officer had no reasonable suspicion to stop the car and the respondent was not lawfully arrested. The court reiterated that the evidence garnered as a result of the stop of the vehicle was properly excluded.

Accordingly, Petitioner relies on the arguments made in her brief and reply brief that the sobriety checkpoint was lawful; therefore, the arrest was lawful and the principal question must be answered by considering the evidence of DUI.

II. CONCLUSION

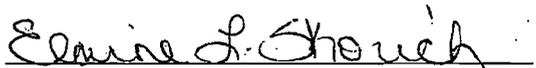
For the reasons set forth in Petitioner's brief and reply brief regarding the validity of the sobriety checkpoint, the decision of the circuit court should be reversed.

Respectfully submitted,

PAT REED, Commissioner,
West Virginia Division of
Motor Vehicles,

By Counsel,

PATRICK MORRISEY
ATTORNEY GENERAL



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III. CERTIFICATE OF SERVICE

I, Elaine L. Skorich, Assistant Attorney General, does certify that I served a true and correct copy of the forgoing **SUPPLEMENTAL BRIEF OF THE DIVISION OF MOTOR VEHICLES** on this 19th day of March, 2015, by depositing it in the United States Mail, first-class postage prepaid addressed to the following, *to wit*:

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Lewisburg, WV 24901


Elaine L. Skorich