

14-0103

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

RECEIVED  
2014 JAN 30 PM 4:10  
D.M.V. COMMISSIONER  
KANAWHA COUNTY CIRCUIT COURT

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

Petitioner,

v.

CIVIL ACTION NO. 12-AA-140

JEFFREY HILL,

Respondent.

RECEIVED  
D.M.V. COMMISSIONER  
2014 JAN -2 AM 9:31

**FINAL ORDER**

This matter arises from an administrative license suspension hearing conducted before the Office of Administrative Hearings on the 7<sup>th</sup> day of November, 2011. Following that hearing, a final order was issued in which the Office of Administrative Hearings ordered rescision of the original order of revocation issued by the petitioner herein, Joe E. Miller. The petitioner appealed that decision and the matter was presented to this Court for review. Following review of the record of the underlying proceedings and the arguments of counsel for the parties, this Court makes the following findings of fact and conclusions of law as to the matters now before it.

**Findings of Fact**

1. On or about October 24, 2010, Dep. Delgado was on his way home after an evening of patrol in Taylor County, West Virginia. En route to his home, while on Middlevale Road, a narrow, unlined road that is "barely wide enough for two vehicles", Delgado testified that he was almost run off the road by an oncoming vehicle later determined to be driven by

respondent herein, Jeffrey Hill. Delgado testified that the area where the vehicles passed one another was near a rise in the roadway where the line of sight was partially blocked, but that he could see Hill's vehicle coming the other direction. Nonetheless, Delgado testified that he had to take quick evasive action to avoid a collision. Delgado testified that he felt Hill was traveling in excess of the 55 mile per hour posted speed limit and estimated Hill's speed at 65 to 70 miles per hour though he did not conduct radar to make that determination. Delgado testified that he was "hugging the edge of the road" as he approached the rise in the road. However, in a seeming contradiction, when questioned by the hearing examiner Delgado testified that as the vehicles passed, he swerved to the side to avoid the collision. Hill, to the contrary, testified that while he was not right at the right side roadway edge, he was more to the right of center than coming straight down the middle of the road as Delgado testified Hill had done.

2. After the vehicles passed, Delgado turned his cruiser and pursued, catching up to the vehicle after it had turned onto Smith Road. Upon catching up, Delgado initiated a traffic stop and Hill responded appropriately and timely according to Delgado. Delgado had Hill exit the vehicle, which he determined around this time to belong to the mother of one of Hill's passengers, Jared Dearth. Delgado testified that he had smelled an odor of an alcoholic beverage from the car and that he still smelled it on Hill after he exited. He asserted that Hill admitted to drinking four light beers over the course of several hours that evening.

3. Delgado noted that Hill was very cooperative although he did note that Hill was "excited" in the sense of appearing nervous because of the investigation being conducted. Hill exited his vehicle normally and appeared to be normal while walking to rear of his car with Delgado, though Delgado indicated that he felt Hill displayed a "slight sway" while standing and

speaking with him. Delgado noted that Hill was continually talking to him in an apparent effort to persuade Delgado to just let them go and not make an arrest. Delgado testified that due to Hill's nonstop efforts to persuade him to release them, Delgado became agitated because it was interfering with the conduct of the investigation and causing things to go more slowly than they might have otherwise. Delgado did not in any way appear to take this as a negative reflection on Hill and did not take action against Hill, but did ask him to stop talking and simply follow the instructions he was being given. Delgado never attributed this "excitement" on Hill's part to intoxication, but rather to the overall gravity of the criminal investigation being conducted.

4. After his initial personal contact with Hill at 2:07 a.m. and having him exit the vehicle, Delgado subjected Hill to field sobriety testing. Delgado first administered the Horizontal Gaze Nystagmus (HGN) test and admitted that he did not check for equal tracking prior to the test. Delgado also did not conduct 7 passes with the stimulus in administering this test to Hill. In the end, while Delgado noted 4 clues on this test on the DUI Information Sheet, he testified that he felt Hill had passed the HGN. Only upon extensive examination by counsel for the petitioner herein did Delgado concede that the observation of 4 clues is interpreted as an indicator that a person may have a BAC of .08 or more. However, he remained firm that the results he saw, alone, did not indicate that Hill was impaired. Delgado also administered the Walk and Turn (WAT) and One Leg Stand (OLS) tests to Hill. After initially testifying that Hill did not perform either test, Delgado then retracted that testimony and admitted that Hill did, in fact, submit to and pass both tests, showing zero clues of impairment on either test. Upon completion of the field sobriety tests, Delgado had Hill submit to the PBT at 2:15 a.m., just 8 minutes after making his initial contact with Hill. It is important to note that Delgado testified

that Hill had continued to talk during the entire process, explaining what he had been doing that evening and continuing in his efforts to convince Delgado to release him and his passengers. All of this continually occurred during the time that Delgado was explaining and administering the field sobriety tests to Hill. Those tests are referred to as "divided attention tests" by NHTSA because they involve both physical and mental components, requiring test subjects to accurately listen and interpret verbal instructions while maintaining a particular stance and to then perform physical actions consistent with the verbal instructions that were given. Hill's own actions in injecting additional discussion into the process are reasonably seen to have complicated his ability to accurately perform the tests, yet he did so nonetheless, displaying zero clues of impairment on either the WAT or OLS. Also of great interest is that Delgado testified he administered the same three field sobriety tests to Hill back at the jail facility and, although not recorded anywhere, Hill achieved the same exact results as Delgado had observed at the roadside. In fact, Delgado testified that he was actually surprised at the BAC readings obtained on both the PBT and EC/IR II because of how well Hill had done on the field tests. He further testified that if it were not for the results of those tests, the HGN alone, compared to the overall situation, would not have led him to arrest Hill for DUI.

5. After being placed under arrest for DUI, Hill was eventually transported to the jail at the Taylor County Sheriff's Department in Grafton. Delgado testified that the first thing he did upon arrival was have Hill execute the WV Implied Consent Statement, which was done at 3:54 a.m. Delgado then got the EC/IR II ready for testing and Hill submitted his breath sample at 4:11 a.m., just 17 minutes later. Hill's parents arrived a short while later and he was released to their custody. Hill's father, Rick Hill, testified that he picked his son up probably no more

than an hour after first being notified of the arrest and that, aside from being obviously nervous and upset about the situation, Hill did not appear to be in any different mental or physical state than he was at the time of the hearing. Rick Hill's feeling is that his son was not at all impaired by alcohol and that he felt he would readily know if Hill had been drunk because he has actively raised Hill, along with his wife, for Hill's entire life. He testified that he and his son are very close and that Hill is "probably my best friend." Rick Hill was very clear that just an hour after from first being notified of his son's arrest, he detected absolutely no signs of impairment when he spoke with his son along with Delgado at the Taylor County Sheriff's Office in Grafton. Had Hill been intoxicated, Rick Hill certainly would have been able to observe some signs of odd behavior in his son, but that was simply not the case.

6. Jared Dearth, one of the passengers in the car and the son of the owner of the car, was with Hill all evening. He testified that he doesn't really have a lot of recall about the later part of the evening because he ended up drinking an estimated 16 beers that night, but that he did recall Hill was not really drinking much at all. Dearth testified that he believed it was reasonable to believe Hill only had four beers over the course of probably five or six hours that they were present at the party they had attended.

#### **Conclusions of Law**

1. Petitioner argues that the validity of the stop is irrelevant to an administrative license proceeding, citing *Miller v. Toler*, 229 W.VA. 302, 729 S.E.2d 137. In that case, the West Virginia Supreme Court of Appeals held that the exclusionary rule does not apply to administrative license suspension procedure. That holding is not determinative of this case. While the illegal stop in this case did not trigger the exclusionary rule, it did necessitate

dismissal of the case, because it caused one of the requirements of the administrative license suspension statute to fail. This was not the case in *Toler*, because the version of W.Va. Code § 17C-5A-2(f) that applied to that case did not require a finding of lawful arrest. The version of that statute that applies in the instant case does require such a finding. Lawful arrest was a required finding before 2008, but it was removed that year. In 2010, it was restored, and was in effect at the time of the stop in the instant case. *See Miller v. Chenoweth*, 229 W.Va. 114, 272 S.E.2d 658, fn 5 (2012). Therefore, Petitioner's reliance on *Toler* is misplaced.

2. Once a law enforcement officer elects to utilize the NHTSA battery of standardized field sobriety exercises he was taught during his certification as a law enforcement officer at the West Virginia State Police Academy, logically he must comply with the procedures and methods of those exercises. Delgado admitted he was trained on the NHTSA standards for the standardized test battery in 2001 during his time at the Academy, so he should be held accountable to the standards for administration and scoring of the NHTSA field sobriety test battery. The concept of strict compliance with those standards is supported by language contained in the NHTSA student manual dealing with validation of results of the exercises which reads, in relevant part:

**IT IS NECESSARY TO EMPHASIZE THIS VALIDATION APPLIES**

**ONLY WHEN:**

**THE TESTS ARE ADMINISTERED IN THE PRESCRIBED,  
STANDARDIZED MANNER**

**THE STANDARDIZED CLUES ARE USED TO ASSESS THE SUSPECT'S  
PERFORMANCE**

**THE STANDARDIZED CRITERIA ARE EMPLOYED TO INTERPRET  
THAT PERFORMANCE.**

**IF ANY ONE OF THE STANDARDIZED FIELD SOBRIETY TEST  
ELEMENTS IS CHANGED, THE VALIDITY IS COMPROMISED.**

2000 NHTSA Student Manual, Pg. VIII-3 (Emphasis in the original). While it is not being argued that variation from the standards of administration must automatically and necessarily result in complete suppression of SFST results, it is being argued that variation from the standards of administration, of necessity, negatively impacts the validity of those results according to NHTSA. It is then the purview of the reviewing court to determine the extent of impact that incorrect administration has and what weight, if any is to be afforded to the results of the field sobriety tests. The West Virginia State Police Academy instructs all students at the academy based on the NHTSA Standardized Field Sobriety Test Battery of the horizontal gaze nystagmus, the walk and turn and the one-leg stand. Students are taught the NHTSA tests, based on NHTSA training standards with an expectation that they will follow the NHTSA guidelines when performing these tests in order to protect the fragile usefulness and validity of the tests. When an officer in the field administers the tests in a manner inconsistent with his NHTSA training, he has necessarily degraded the meaningfulness of the results and the DMV and OAH must be cognizant of that degradation. The language cited above is manifestly clear that any validity to be accorded to test results is conditioned on the tests always being administered the same way, every time, regardless of where, when, or by whom the tests are administered. Uniformity is the key to achieving the already mediocre levels of reliability the tests provide (77% reliability for HGN, 68% reliability for WAT, 65% reliability for OLS - 2002 NHTSA

Student Manual, pp. VIII-8, 12, 14). Following the rationale of *White v. Miller*, 724 S.E.2d 768, 228 W. Va. 797 (2012), a court must find that the officer complied with his training in Field Sobriety Testing as taught at the State Police Academy. More specifically, the arresting officer must show compliance with the test administration and scoring standards set forth in Section VIII of the National Highway Traffic Safety Administration's Field Sobriety Testing manual used at the Academy. While the *White* case dealt with the issue of Horizontal Gaze Nystagmus testing, the logic of the West Virginia Supreme Court suggests that it is concerned with an officer's proper application of proper field sobriety testing protocol. The Court indicated that officers must be prepared to demonstrate that they were trained and that they followed their training in the administration of the test for the results to be considered. Further, the Court found it relevant to note that the arresting officer had testified in the underlying matter that he was trained to the standards of Section VIII of the NHTSA manual and that "section VIII of the NHTSA manual state that, to be valid, field sobriety tests must be administered in the prescribed, standardized manner." *Supra*, at pg. 777. The Court also held:

. . . the police officer who administered the test, if asked, should be prepared to give testimony concerning whether he or she was properly trained in conducting the test, and assessing the results, in accordance with the protocol sanctioned by the National Highway Traffic Safety Administration and whether, and in what manner, he or she complied with that training in administering the test to the driver.

*White*, *supra* at pg. 777.

In the present case, this Court must make a determination as to the officer's adherence to the NHTSA standards and, based upon that determination, rule as to the admissibility of the field sobriety test evidence, whether same be in the form of live testimony, documentary evidence, or video evidence.

3. Delgado's testimony was that Hill failed the HGN by exhibiting two of the three clues looked for in each eye during the test. However, he also admitted Hill may have been exposed to the distraction of his cruiser's emergency lights during the test, calling the results into question on the basis of optokinetic nystagmus. The fact that Hill may have been exposed to the flashing lights should result in a finding that there is insufficient evidence he displayed true alcohol induced nystagmus, and rather that optokinetic nystagmus could just as likely have influenced the observations made by Delgado. Optokinetic nystagmus occurs when the human eye is exposed to quickly moving objects going in and out of the field of view. This can be caused by strobe or rotating lights such as those used on police cruisers and is not at all dependent on, or indicative of, alcohol consumption. Tests affected by the optokinetic effect cannot be considered valid tests because the conclusion of alcohol as the cause of nystagmus may be entirely false. The Student Manual states that the HGN test will not be affected by optokinetic nystagmus if administered properly. However, proper administration requires removal of any visual stimulus which could induce the optokinetic effect. (See, generally, 2002 NHTSA Student Manual, VIII-4). ) Given that Delgado was uncertain as to the impact his rotating lights may have had on Hill's performance of on the HGN, the proper conclusion to reach is the conclusion which favors Hill as Delgado and DMV bear the burden of proving that Hill drove while under the influence. Because optokinetic nystagmus may have been observed, and because Delgado's testimony regarding the HGN was contradicted by the DUI information sheet he had filled out, the OAH properly concluded that the results of the HGN test were not a reliable indicator that Petitioner was impaired on the date of the offense. This conclusion is further supported by Delgado's own testimony that, in his opinion, Hill passed the HGN test.

Whether that conclusion is due to an improper scoring of the test - a violation of the NHTSA standard - or because Delgado truly believed that something other than alcohol may have caused the results to which he testified, the fact remains that even Delgado had questions as to the proper results of HGN in Hill's case.

With respect to the two remaining field sobriety tests, Delgado's testimony was clear that Hill passed both with no clues of impairment being observed on either test. This is significant in that it shows strong evidence of sobriety. Delgado testified that in the absence of any other tests besides HGN, he would not have determined Hill to be impaired. Coupling that comment with the fact that Hill performed flawlessly on the WAT and OLS, this Court finds no error in the OAH's conclusion that the DMV had not shown by a preponderance of the evidence that Mr. Hill had driven under the influence of alcohol or other controlled substance. Clearly, the field sobriety test evidence mitigates in favor of a finding that Hill was not impaired. The nonstructured observations made by Delgado at the roadside all tended towards observations of unimpaired behavior by Hill. He appeared normal as he exited his vehicle and as he walked with Delgado. Delgado noted only that Hill appeared to have only a slight sway while he was standing talking to Delgado. Hill was lucid in his conversation and was cooperative, although he did display nervousness, a trait that Delgado admitted he often sees on traffic stops. The big picture at the roadside in this case simply does not add up to impairment. Hill's admission of consuming a few beers does not mean he is intoxicated. It shows honesty and an absence of effort to deceive the investigating officer. Further, Hill's constant nervous efforts to dissuade Delgado from arresting him constitute a further distraction that very easily could have negatively impacted his performance on the field sobriety tests, yet Hill performed almost perfectly. The

evidence from the roadside, as a whole, simply does not create a justification for an arrest for driving under the influence.

In light of the errors in administration and scoring evidence from the record of the underlying proceeding, it is clear that the respondent passed two of the three tests showing absolutely no clues of impairment. It is further clear that the arresting officer did not demonstrate a proper grasp of technique and procedure for the HGN test and that his lack of understanding, and his misapplication of the HGN concepts taught at the WV State Police Academy, is fatal to the admissibility of the results. As such, those results will not be considered, leaving only the results of the WAT and OLS tests, neither of which showed any clue of impairment.

4. Delgado testified that he administered a preliminary breath test at the roadside and that Hill failed that test. However, Delgado also admitted that he performed the PBT at 2:15 a.m., just eight minutes after initially contacting Hill at 2:07 a.m. The West Virginia CSR for preliminary breath testing requires that officers adhere to the device manufacturer's specifications for use of that device. In this case the device manual for the Intoximeters, Inc. SD-5 requires that officers wait for a period of about twenty minutes before taking a breath sample from a suspect as long as the circumstances do not prevent such a waiting period. Delgado was clear that nothing that night prevented him from waiting the prescribed time period. Because of this deviation from the CSR requirements, the results of the PBT was not reliable.

5. With respect to the secondary test Delgado administered using the Intoximeters, Inc., EC/IR II, § 64-10-7.3(a) of the rules of the West Virginia Bureau of Public Health requires:

The individual being tested shall be under constant observation for a period of twenty minutes before the test is administered to insure that the individual has

nothing in his or her mouth at the time of the test and that he or she has no food or drink or foreign matter in his or her mouth during the observation period.

Delgado did not constantly observe Hill for a period of 20 minutes prior to administering the secondary breath test. The most reliable evidence of the start of the observation period is generally the time of execution of the West Virginia Implied Consent warning. In reviewing this document executed by Delgado and Hill on the night of Hill's arrest, it is seen the Implied Consent form was executed at 3:54 a.m. The printer ticket from the secondary chemical test indicates that Hill's breath sample was provided at 4:11 a.m., a total of 17 minutes later. This documentation, all made part of the evidence in this matter at the administrative hearing, clearly indicates the arresting officer did not observe Hill for the full twenty minutes required under the aforementioned rule.

The Merriam-Webster online dictionary defines "constant" as continually occurring or recurring: regular. It is synonymous with unchanging and unvarying. The point is that the state rule on observation calls for that observation to be nonstop. Instead, the arresting officer conducted what is clearly a shortened observation period which he then also compromised by beginning the breath test sequence at 4:06 a.m. per the printer ticket, preparing the machine for use and inputting data into it. It is absolutely impossible from a purely common sense standpoint for the arresting officer to have constantly observed Hill while he was engaged in these other tasks beginning at least at 4:06, or just twelve minutes after starting the observation. As such, the twenty minute period of constant observation was clearly not met. The burden to prove compliance remains with the DMV at all times because the results are being asserted as evidence against Hill. The arresting officer's failure to properly observe Hill calls the entire breath test process into question and leads to only one conclusion, that being the suppression of the breath

test results.

While West Virginia has no authority on this point, many states have addressed the sufficiency of observation periods in their caselaw. In an effort to ensure that a breath sample collected from an individual is, in fact, an accurate reflection of his blood-alcohol content, a vast majority of states require that an individual suspected of driving under the influence be observed for a designated amount of time prior to offering a sample of his breath. The purpose of this so-called "observation period" is to ensure that "no foreign matter is present in the defendant's mouth that could retain alcohol and potentially influence the results of the [breath] test." See, e.g., *State v. Cook*, 9 S.W.3d 98, 100-101 (Tenn. 1999).

Other states have similar provisions like West Virginia's. South Dakota's "Intoxilyzer Operational Check List" requires, among other things, "constant observation of the subject for twenty minutes prior to the test so that there is 'no oral intake of any material.'" *State v. Richards*, 378 N.W.2d 259, 261 (S.D.,1985). Illinois' Department of Public Health demands "[c]ontinuous observation of the subject for at least twenty (20) minutes prior to collection of the breath specimen, during which period the subject must not have ingested alcohol, food, drink, regurgitated, vomited, or smoked." 77 Ill. Admin. Code, Ch. I, § 510.60. Pennsylvania's breath test procedure codifies its observation period rule in stating, "The person to be tested with breath test equipment shall be kept under observation by a police officer or certified breath test operator for at least 20 consecutive minutes immediately prior to administration of the first alcohol breath test." 67 Pa. Code § 77.24(a).

Several states go to great lengths to explain exactly what an observation period entails. In Arizona, for example, case law distinguishes between an observation period and a deprivation

period. For at least twenty minutes prior to offering his first breath sample, an individual must be observed closely to ensure that there he is not eating, drinking, smoking, belching, vomiting, regurgitating, or placing foreign objects in his mouth. *Richard v. Arizona Department of Transportation*, 931 P.2d 1143, 1147 (Ariz. App. Div. 1, 1997). This is very similar to what is required in West Virginia's Code of State Rules as discussed above. Along these lines, see also *State v. Richards*, 378 N.W.2d 259, 261 (S.D., 1985) (the twenty-minute period of observation must be nothing short of "constant."); *State v. Utz*, 125 Idaho 127 (Ct. App., 1993) (breath test results inadmissible because the administering officer did not "closely observe" the defendant for the requisite fifteen minute period); *State v. Smith*, 547 A.2d 69, 73 (Conn. App., 1988) (a defendant must be under "continuous observation" for the observation period requirements to be met); *State v. Kemper*, 905 P.2d 77, 80 (Hawaii, 1995) (the defendant shall be "continuously observed for not less than fifteen minutes prior to collection of the breath sample."); *State v. Deloit*, 964 S.W.2d 909, 915 (Tenn. Crim. App., 1997) (the defendant is not being observed while the arresting officer is writing an arrest report).<sup>WUPR</sup> Clearly, this partial sampling of a wide range of states shows that the observation period is not intended as a time for officer's to engage in multiple tasks, but rather is a time for them to be focused on one critical element of the breath test and its admissibility by observing the defendant. Even more directly on point with this case is a Tennessee decision that held the twenty minute observation period cannot take place while the observing officer is driving a police cruiser with the defendant in the back of the vehicle. In *State v. McCaslin*, 894 S.W.2d 310 (Tenn.App.1994), the Court ruled that the defendant could not be observed effectively while being transported in the rear seat of a police vehicle and held that the requirements for the mandated observation period were not met. Interestingly,

Tennessee also uses the Intoximeters, Inc., EC/IR II breath testing machine. Along this same line of rationale regarding observation in the rear seat of a police cruiser, see also *State v. Carson*, 133 Idaho 451, 988 P.2d 225 (Ct. App. 1999) and *Jones v. State ex rel. Wyoming Department of Transportation*, 991 P.2d 1251, 1255 (Wyo. 1999). The state of Colorado has made the prohibition against observation in a police cruiser part of its rules for collection of evidential breath tests. The Department of Public Health and Environment mandates in 5 CCR 1005 2, Rules Pertaining to Testing for Alcohol and Other Drugs, that “The observation period must not be conducted in the patrol car while driving to the approved EBAT facility.” § 4.3.1.5.5.

Under this analysis of the available evidence in the instant case contrasted against the wide-ranging case law and rules from a number of states, it is clear that the secondary breath test occurred before the required twenty minute observation period had elapsed. As such, the DMV did not prove the necessary compliance with the administrative rules for admissibility of the test results. While it may be argued that Hill had been in Delgado’s presence since 2:07 a.m., slightly more than two hours from the time Hill provided a breath sample, the fact remains that Hill was not under constant observation that whole time. Per Delgado’s testimony during the administrative hearing, he was engaged in a wide variety of actions during that time period, including handling two other individuals who were in the car with Hill, making stops to transfer those individuals to their parents, and driving to Grafton from just outside of Bridgeport.

Moreover, as the OAH noted, “certified records provided by the West Virginia Division of Motor Vehicles [did] not establish that the Investigating Officer was trained and certified to administer the Sd-5 Preliminary Breath Test.”

In light of the foregoing analysis, the OAH did not err in according the results of the PBT no evidentiary weight.

6. The testimony presented in the underlying proceeding is such that, after weighing the evidence and arguments addressed herein against the determination of credibility of the parties and witnesses who appeared before the hearing examiner, the OAH properly concluded that there was insufficient evidence that Hill operated a motor vehicle while he was under the influence of alcohol or that he was lawfully arrested for such an offense.

**WHEREFORE**, for the foregoing reasons, the Court does hereby **ORDER** that the *Final Order* of the Commissioner is **AFFIRMED**. It is further **ORDERED** that the above-styled action is **DISMISSED** and **STRICKEN** from the docket of this Court. The Circuit Clerk shall mail true copies of this Order to all counsel of record and to the Commissioner of the West Virginia Division of Motor Vehicles, at his address at the West Virginia Division of Motor Vehicles, Capitol Complex, Building 3, Charleston, West Virginia 25317.

The objections and exceptions of the Petitioner to this ruling are noted and preserved.

ENTERED this 30th day of December 2013.

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 FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
31st  
DRY  
CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Carrie Webster  
JUDGE CARRIE WEBSTER

NO.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STEVEN O. DALE, ACTING COMMISSIONER OF THE  
WEST VIRGINIA DIVISION OF MOTOR VEHICLES, AND  
SUCCESSOR TO JOE E. MILLER, AS COMMISSIONER,

Petitioner,

v.

JEFFREY HILL,

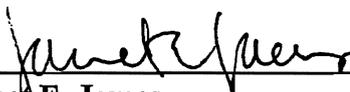
Respondent.

CERTIFICATE OF SERVICE

I, Janet E. James, Senior Assistant Attorney General, do hereby certify that a true and exact copy of the foregoing *Notice of Appeal* was served upon the following by depositing a true copy thereof, postage prepaid, in the regular course of the United States mail, this 29th day of January 2014, addressed as follows:

Todd F. La Neve, Esquire  
La Neve Law Offices  
117 ½ Nicholas Street  
Clarksburg, WV 26301

The Honorable Cathy Gatson  
Clerk of the Circuit Court  
Kanawha County Courthouse  
111 Court Street, Judicial Annex  
Charleston, WV 25301

  
\_\_\_\_\_  
Janet E. James