IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
NO. 20-0192
(Circuit Court Civil Action No. 19-AA-80)

EVERETT J. FRAZIER, COMMISSIONER,
WEST VIRGINIA DIVISION OF
MOTOR VEHICLES,

Petitioner,

v.

JOSHUA DERECHIN,

Respondent.

REPLY BRIEF OF THE DIVISION OF MOTOR VEHICLES

PATRICK MORRISEY
ATTORNEY GENERAL

Elaine L. Skorich #8097
Assistant Attorney General
DMV Legal Division
Post Office Box 17200
Charleston, West Virginia 25317
Telephone: (304)558-2522
Telefax: (304) 558-2525
Elaine.L.Skorich@wv.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Page**

CASES **Page**

STATUTES **Page**

RULES **Page**

Now comes Everett J. Frazier, Commissioner of the West Virginia Division of Motor Vehicles ("DMV"), by and through his undersigned counsel, and pursuant to Rev. R. App. Pro. 10(g) (2010) submits the *Reply Brief of the Division of Motor Vehicles*.

ARGUMENT

1. Mr. Derechin was not actually and substantially prejudiced by the post-hearing delay of the Office of Administrative Hearings.

In his summary response, Mr. Derechin argues that the circuit court properly found that he was actually and substantially prejudiced because of the delay in the Office of Administrative Hearings ("OAH") issuing its final order because he is "regularly sent considerable distances on assignments by his company both in-state and out of state . . . is a bridge design engineer for Michael Baker International in Charleston. He lives in Elkview. . .Thirty percent of his time is spent on assignments outside of West Virginia. He also works in distant parts of the State." (Resp. Br. at P. 2.)

The Respondent and the circuit court below failed to consider the requirement that Mr. Derechin suffer "some type of detrimental **change in ...circumstances**...related to the delay in OAH issuing its final order." *Straub v. Reed*, 239 W. Va. 844, 851, 806 S.E.2d 768, 775 (2017) (emphasis added). *See also*, *Reed v. Boley*, 240 W. Va. 512, 517, 813 S.E.2d 754, 759 (2018) (finding that "Mr. Boley has not actually alleged 'some type of detrimental change in his circumstances, related to the delay in OAH issuing its final order.' ") Here, the circuit court did not make a finding that Mr. Derechin identified some type of detrimental change in his circumstances related to the delay in OAH issuing its final order, yet it concluded that he was actually and substantially prejudiced as a result of the post-hearing delay. The court's conclusion was clear error because after the administrative hearing, there was no detrimental change in Mr. Derechin's circumstances related to

the delay in the OAH entering its *Final Order*. Like Mr. Straub, Mr. Derechin could not identify a detrimental change in his circumstances ***as a result of or related to the delay.*** Mr. Derechin is not required to drive for his job like the school bus driver in *Reed v. Staffileno*, 239 W. Va. 538, 803 S.E.2d 508 (2017), and he failed to present evidence that he would actually lose his job if he were required to complete the statutory license revocation requirements. If Mr. Derechin cannot drive to his job locations, whether in Charleston or elsewhere, it would not be because of the delay in the issuance of the OAH order but because he is required to complete a 15-day revocation plus 125 days on Interlock or complete 90 days of revocation (App. at P. 215) because he drove a motor vehicle in this State while under the influence ("DUI") of alcohol. There has been no detrimental change in the Respondent's circumstances due to the delay of the OAH, and the circuit court erred in finding that Mr. Derechin has suffered actual and substantial prejudice.

2. The Investigating Officer is not a party to the civil, administrative license revocation proceeding.

In his summary response, Mr. Derechin alleges that the Investigating Officer is a party at the license revocation hearing pursuant to this Court's decision in Syllabus Point 1, *Carte v. Cline*, 200 W. Va. 162, 488 S.E.2d 437 (1997). (Resp. Br. at P. 7.) The Respondent further alleges that because the Investigating Officer is a party below, this Court should hold the DMV accountable for Charleston Police Department's failure to respond to Mr. Derechin's subpoena *duces tecum* because "Mr. Derechin was entitled to rely on the objective video evidence to oppose the irreconcilably inconsistent evidence provided by Lightner, who did not avail himself to the opportunity to clarify; and chose not to appear before the OAH where he would have been subjected to cross-examination." *Id.* at P. 8.

When this Court decided *Carte* in 1997, the DMV was the tribunal at the administrative hearing. In 2010, the OAH became a separate operating agency within the Department of Transportation with jurisdiction to hear and determine appeals from orders of the Commissioner of the DMV pursuant to W. Va. Code § 17C-5A-2 revoking or suspending a license. *See*, W. Va. Code §§ 17C-5A-1(a) (2010), 17C-5C-3(3) (2010). Hearings are now conducted by the OAH pursuant to that agency's legislative rules. Per W. Va. Code R. § 105-1-3.9 (2014), "'Party'" and 'parties' means the petitioner and the respondent." Petitioner "means the person contesting an order or decision of the Commissioner." W. Va. Code R. § 105-1-3.10 (2014). "Respondent" means the Commissioner. W. Va. Code R. § 105-1-3.11 (2014). The "'Investigating officer'" means a law-enforcement officer or officers as described in W. Va. Code §17C-5-4 or §17E-1-24, who is primarily responsible for the integrity of the investigation in the matter." W. Va. Code R. § 105-1-3.6 (2014).

In asking this Court to hold the DMV responsible for the Respondent's failure to enforce his subpoena *duces tecum* upon the Charleston Police Department, Mr. Derechin relies on syllabus point 2 of this Court's holding in *Tracy v. Cottrell ex rel. Cottrell*, 206 W. Va. 363, 524 S.E.2d 879 (1999):

> Before a trial court may give an adverse inference jury instruction or impose other sanctions against a party for spoliation of evidence, the following factors must be considered: (1) the party's degree of control, ownership, possession or authority over the destroyed evidence; (2) the amount of prejudice suffered by the opposing party as a result of the missing or destroyed evidence and whether such prejudice was substantial; (3) the reasonableness of anticipating that the evidence would be needed for litigation; and (4) if the party controlled, owned, possessed or had authority over the evidence, the party's degree of fault in causing the destruction of the evidence. The party requesting the adverse inference jury instruction based upon spoliation of evidence has the burden of proof on each element of the four-factor spoliation test. If, however, the trial court finds that the party charged with spoliation of evidence did not control, own, possess, or have authority over the destroyed evidence, the requisite analysis ends, and no adverse inference instruction may be given or other sanction

imposed.

However, in *Sims v. Miller*, 227 W. Va. 395, 709 S.E.2d 750 (2011), this Court found that the DMV's failure to produce a video at the administrative hearing did not warrant an adverse inference.

As explained above, by Legislative Rule, the Investigating Officer was not a party to the administrative proceeding below. The DMV, a state administrative agency which was the party to the administrative action, had no control, ownership, possession or authority over the body cam video which Mr. Derechin subpoenaed from the Charleston Police Department, a municipal law enforcement agency. Mr. Derechin has not shown any prejudice as a result of the missing body cam video. Although Mr. Derechin continues to argue that a body cam video existed, he has never produced proof that any video evidence even existed or produced any proof that the Charleston Police Department refused any lawful order to compel or to produce the evidence in question. (App. at PP. 493-496.) Mr. Derechin did not produce the police chief to testify about the existence or non-existence of the alleged video and to testify about whether the Charleston Police Department refused to produce the same. Next, the DMV could not have anticipated that a video which was not submitted to the DMV, which has not been conclusively proved to exist, and which was not under the DMV's care, custody, and control if it did exist, would be needed for litigation. Finally, because the DMV did not control, own, possess, or have authority over any police body cam videos, the DMV cannot be held accountable if the video was actually destroyed. The Respondent's entire spoliation of evidence argument is based upon blame shifting and supposition.

In its Final Order, the OAH denied Mr. Derechin's motion regarding spoliation of evidence. (App. at P. 388.) In the circuit court's final order, the court failed to discuss the OAH's conclusion and failed to cite any legal authority attributing the alleged destruction of a police video by a non-

party to the DMV which was a party below. Instead, the circuit court arbitrarily concluded that the OAH erred in failing to apply the doctrine of spoliation when Mr. Derechin failed to produce any evidence that a video existed or that production of the same was refused. The circuit court's arbitrary conclusion is clear error.

3. Mr. Derechin's allegations of impeachment and spoliation of evidence are not proof of the same.

In his response, Mr. Derechin alleges that "[i]t was undisputed at any level below that Officer Lightner had left his employment with the Charleston Police Department for reasons of official misconduct." (Resp. Br. at P. 5.) The Respondent further alleges that he "offered Newspaper Articles, as authorized by Rule 902(6) of the West Virginia Rules of Evidence, referring to Lightner's official dishonesty leading to his forced resignation." (Resp. Br. at P. 6.)

While the newspaper articles (App. at PP. 339, 343-346) submitted by Mr. Derechin were self-authenticating pursuant to W. Va. R. Evid. 902(6) (2014), their content does not impeach the Investigating Officer's credibility. As explained in the *Brief of the Division of Motor Vehicles*, the information in the newspaper articles is based upon unnamed sources, is a summary of an event which occurred more than a year ***after*** Mr. Derechin was arrested for DUI, does not constitute evidence of untruthfulness, has no bearing on the present case, and is not a criminal conviction which would impeach the Investigating Officer's documentary evidence in Mr. Derechin's case.

West Virginia R. Evid. 608(a) (2014) provides that a "witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked." Mr.

Derechin failed to present any evidence which is relevant to the truthfulness or untruthfulness of the Investigating Officer. Further, Mr. Derechin failed to present evidence that the Investigating Officer was convicted of a crime, and for all witnesses other than criminal defendants, W. Va. R. Evid. 609(a)(2)(B) (2014) requires evidence that the witness has been "convicted of a crime if it involved dishonesty or false statement."

The OAH addressed the exhibits submitted by Mr. Derechin and found that the "newspaper article has no relevance to the ultimate issue in this matter and does not speak to the officer's character or truthfulness. The exhibit is therefore excluded and not accorded evidentiary weight." (App. at P. 388.) The OAH did not err in relying on the DMV's evidence.

Mr. Derechin failed in his duty to provide ***evidence*** that the officer was convicted of a crime involving dishonesty or false statement, and the circuit court arbitrarily determined that the "hearing examiner below erroneously found as true all assertions of the arresting officer as factual, in spite of evidence of his demonstrable unreliability." (App. at P. 8.) This is clear error as "a reviewing court is obligated to give deference to factual findings rendered by an administrative law judge, [and] a circuit court is not permitted to substitute its judgment for that of the hearing examiner with regard to factual determinations." Syl. pt. 4, *Frazier v. S.P.*, 242 W. Va. 657, 838 S.E.2d 741 (2020).

Mr. Derechin also argues for the first time on appeal to this Court that ". . .Lightner's reports, as contained in the DMV record admitted in the OAH matter, are internally irreconcilable as to factual accuracy." (Resp. Br. at P. 6.) Mr. Derechin alleges that the time of initial contact on the DUI Information Sheet is 11:52 p.m., that the Investigating Officer conducted field sobriety tests, arrested Mr. Derechin, had his vehicle towed away, drove him to the police station, "once there and taken inside conducted the mandatory 20 minute observation prior to the secondary test and conducted the

intoxilyzer test there – all by 12:28[1] a.m., a total of 36 minutes, which is simply implausible by any stretch of the imagination." *Id.*

First, Mr. Derechin did not raise this issue in his *Petition for Appeal* (App. at PP. 192-194) or the *Petitioner's Memorandum* (App. at PP. 47-55) before the circuit court below; therefore, he is barred from raising the issue now. "The rule in West Virginia is that parties must speak clearly in the circuit court, on pain that, if they forget their lines, they will likely be bound forever to hold their peace." *W. Va. Univ./Ruby Mem'l Hosp. v. W. Va. Human Rights Comm'n*, 217 W. Va. 174, 179, 617 S.E.2d 524, 529 (2005). *See also Hanlon v. Logan County Bd. of Educ.*, 201 W. Va. 305, 315, 496 S.E.2d 447, 457 (1997) ("Long standing case law and procedural requirements in this State mandate that a party must alert a tribunal as to perceived defects at the time such defects occur in order to preserve the alleged error for appeal.").

Next, the Investigating Officer stopped Mr. Derechin's car at 700 Court Street in Charleston at 11:52 p.m. (App. at P. 326.) The officer conducted three field sobriety tests and arrested Mr. Derechin at 12:02 a.m. (App. at PP. 326-328.) Mr. Derechin did not submit to the preliminary breath test; therefore, the Investigating Officer did not need to wait an additional five minutes to ensure that Mr. Derechin had not smoked or consumed alcohol prior to taking the test. The Investigating Officer did not check the box that he observed the Respondent for 15 minutes. (App. at P. 328.) Even though Mr. Derechin testified that his car was towed and that his now ex- wife was left with the car (App. at PP. 534-535), there is nothing in the record to indicate that the Investigating Officer waited on a tow truck before taking Mr. Derechin to the police station for processing and the administration of

[1] Pursuant to the Intox EC/IR-II print-out, the subject (Mr. Derechin) provided a breath sample at 12:34 a.m.

the secondary chemical test. The Charleston Police Department is located at 501 Virginia Street in Charleston, which is ½ mile from 700 Court Street. With little traffic in downtown Charleston at midnight, it is plausible that the Investigating Officer reached the station and was able to read the West Virginia Implied Consent Statement by 12:08 a.m. (App. at P. 331.)

The requirement in W. Va. Code R. § 64-10-7.2(a) (2005) that a law enforcement officer shall keep the person being tested under constant observation for a period of twenty minutes before administering a secondary chemical breath test does not require the officer to start the observation period at the police station after he or she reads the West Virginia Implied Consent Statement. This Court has determined that "[b]eginning the observation period from the time when the implied consent form is signed would be a convenient way to ensure that the twenty-minute period is observed. However, the rule does not mandate that obtaining a signature on a form be the starting point for the observation. The rule only requires that the twenty-minute observation period occur before the administration of the test." *Reed v. Hill*, 235 W. Va. 1, 12, 770 S.E.2d 501, 512 (2015). In fact, the Investigating Officer could have started his visual observation of Mr. Derechin at the time of the initial contact at 11:52 p.m. because "[t]he requirement in West Virginia C.S.R. § 64–10–7.2(a) (2005) that a law enforcement officer shall keep the person being tested under constant observation for a period of twenty minutes before administering a secondary chemical breath test does not require uninterrupted visual monitoring. The observation may be accomplished by the officer's use of his or her visual, auditory, and olfactory senses." *Id.* at syl. pt. 6. Therefore, it is not only plausible but more than likely that the Investigating Officer made contact with Mr. Derechin at 11:52 p.m., conducted the field sobriety tests, arrested Mr. Derechin at 12:02 a.m., drove the ½ mile to the police station, read the Implied Consent Statement at 12:08 a.m., and completed the

secondary chemical test by 12:34 a.m. (App. at P. 325.)

More importantly, the hearing examiner found as fact that the Investigating Officer lawfully arrested Mr. Derechin (App. at P. 386, FOF 8), read and provided Mr. Derechin with the West Virginia Implied Consent Statement (*Id.* at FOF 10), observed Mr. Derechin for 20 minutes prior to the administration of the secondary chemical test (*Id.* at FOF 14), and administered the test "in accordance with Title 64, *Code of State Rules*, Series Ten." *Id.* at FOF 18. "[F]indings of fact made by an administrative agency will not be disturbed on appeal unless such findings are contrary to the evidence or based on a mistake of law. In other words, the findings must be clearly wrong to warrant judicial interference. ... Accordingly, absent a mistake of law, findings of fact by an administrative agency supported by substantial evidence should not be disturbed on appeal." *Modi v. W. Va. Bd. of Medicine,* 195 W. Va. 230, 239, 465 S.E.2d 230, 239 (1995). *See also*, *Lowe v. Cicchirillo*, 223 W. Va. 175, 179, 672 S.E.2d 311, 315 (2008); *Frazier v. S.P.*, 242 W. Va. 657, 838 S.E.2d 741, 746–47 (2020).

4. In its judicial review of the instant administrative appeal, the circuit court lacked authority to order costs, fees, and expenses against the DMV.

In trying to justify the circuit court's decision to award costs, fees and expenses against the DMV due to the delay of the tribunal, Mr. Derechin relies on his improper theory that the Investigating Officer is a party to the administrative license revocation proceeding. Mr. Derechin argues, "[a]s discussed *ante*, the officer, and by extension the department to which he was accountable, are in the applicable sense a party to the action. In that vein, while the DMV eventually went forward without Lightner's appearance, on a prior occasion, it had requested an emergency continuance minutes before the commencement of the hearing because of Lightner's announcement

that he could not appear for personal reasons. In sum, only a single continuance can be arguably attributed to Mr. Derechin." (Resp. Br. at 9.)

After asking for an administrative hearing on March 19, 2013 (App. at P. 219), Mr. Derechin asked for a continuance on June 18, 2013, because his counsel was going on vacation and did not offer to provide substitute counsel to cover the hearing. (App. at PP. 237-238). On the day of the rescheduled hearing, September 12, 2013, the DMV asked for an emergency continuance due to the unavailabilty of the Investigating Officer. (App. at P. 267.) On March 2, 2015, at Mr. Derechin's request, the OAH issued a subpoena *duces tecum* to the Chief of the Charleston Police Department (App. at PP. 310-312), and the day before the scheduled hearing, on March 11, 2015, Mr. Derechin asked for his second continuance because "there may not be compliance available for Thursday's hearing of the Subpoena duces Tecum issues [*sic*] to the Charleston Police Department." (App. at P. 314.)The OAH held the hearing on August 28, 2015. (App. at PP. 320-323, 474.) Although Mr. Derechin attempts to dismiss one of his continuance requests, the record reflects that two hearing continuances were attributable to the Respondent and that the DMV was responsible for one continuance.

In the *Brief of the Division of Motor Vehicles,* the Commissioner argued that the circuit court erred in failing to make a finding that Mr. Derechin was presumptively prejudiced as required by *Petry v. Stump,* 219 W. Va. 197, 632 S.E.2d 353 (2006), and *Reed v. Conniff,* 236 W. Va. 300, 779 S.E.2d 568 (2015), and that the circuit court compounded that error by ordering the DMV to reimburse Mr. Derechin for his "overall legal costs, attorney fees and expenses." (App. at P. 13.) In its brief, the DMV further argued that it was the tribunal in the *Conniff* matter and was responsible for all the continuances there while in the instant matter the DMV is the party opponent which was

attributable for only one of the continuances.

Revised Rule of Appellate Procedure 10(d) (2010) provides that "[i]f the respondent's brief fails to respond to an assignment of error, the Court will assume that the respondent agrees with the petitioner's view of the issue." In his summary response, Mr. Derechin failed to address the DMV's arguments regarding the circuit court's error in awarding Mr. Derechin costs, fees, and expenses. Accordingly, this Court should assume that Mr. Derechin agrees with the DMV's position.

5. The DMV's actual and substantial prejudice caused by the delay of the OAH is not moot.

In his response, Mr. Derechin improperly argues that the "with the revisions to West Virginia Code Article 5A of Chapter 17C phasing out the OAH, the policy reasons argued by the DMV are virtually moot." (Resp. Br. at P. 11.) "[O]nce the issue of mootness has been raised, "[t]he 'heavy burden of persua[ding]' the court that the [case has been rendered moot] lies with the party asserting mootness." *Friends of the Earth v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167, 189 (2000) (quoting *U. S. v. Concentrated Phosphate,* 393 U.S. 199, 203 (1968)). *See also, SER Bluestone Coal Corp. v. Mazzone,* 226 W. Va. 148, 156, 697 S.E.2d 740, 748 (2010); *SER. Wooten v. Coal Mine Safety Bd. of Appeals*, 226 W. Va. 508, 515, 703 S.E.2d 280, 287 (2010). Mr. Derechin conflates mootness of a particular case with retroactive application of an amended statute to future cases, and has, therefore, failed in his burden to prove that the instant matter is moot.

The amendments to W. Va. Code § 17C-5-2 (2020) were not in effect at the time Mr. Derechin was arrested for DUI February 2, 2013 (App. at PP. 326, 332), or at the time he asked for an administrative hearing on March 19, 2013. (App. at PP. 219-220.) West Virginia Code § 17C-5-2(u) (2020) specifically provides that "[t]he amendments made to this section during the 2020 regular session of the Legislature shall become effective on July 1, 2020."

This Court has determined that a "'statute is presumed to operate prospectively unless the intent that it shall operate retroactively is clearly expressed by its terms or is necessarily implied from the language of the statute. Syllabus Point 3, *Shanholtz v. Monogahela [Monongahela] Power Co.*, [165 W. Va. 305], 270 S.E.2d 178 (1980). Syllabus Point 2, *State ex rel. Manchin v. Lively,* 170 W. Va. 655 [672], 295 S.E.2d 912 (1982).' Syl. pt. 4, *Arnold v. Turek,* 185 W. Va. 400, 407 S.E.2d 706 (1991)." Syl. Pt. 1, *Myers v. Morgantown Health Care Corp.*, 189 W. Va. 647, 434 S.E.2d 7 (1993). "'The presumption is that a statute is intended to operate prospectively, and not retrospectively, unless it appears, by clear, strong and imperative words or by necessary implication, that the Legislature intended to give the statute retroactive force and effect.' Pt. 4, syllabus, *Taylor v. State Compensation Commissioner,* 140 W. Va. 572 [86 S.E.2d 114 (1955)]. Syl. Pt. 1, *Loveless v. State Workmen's Comp. Comm'r,* 155 W. Va. 264, 184 S.E.2d 127 (1971)." Syl. Pt. 6, *Miller v. Smith*, 229 W. Va. 478, 729 S.E.2d 800 (2012).

West Virginia Code § 17C-5-2(u) (2020) makes clear that the changes in the statute have no retroactive application; therefore, the pre-2020 statutory and case law regarding the administrative license revocation process remain applicable to Mr. Derechin's case. Because the instant matter is not moot, this Court is not required to complete the test in *Gallery v. W. Va. Secondary Sch. Activities Comm'n*, 205 W. Va. 364, 517 S.E.2d (1999) (per curiam) (explaining factors considered when deciding whether to address technically issues).

However, it is important for this Court to be aware that there ***are*** sufficient collateral consequences which will result from determination of the questions presented by the Petitioner on appeal. Although the nature of the administrative license revocation process changed in 2020 for DUI arrests occurring on or after July 1, 2020, the OAH maintains jurisdiction over DUI arrests from

June 11, 2010,[2] through June 30, 2020. There are approximately 333 administrative appeals pending before the OAH and approximately 180 administrative appeals pending in the circuit courts of this State and before this Court. For the more than 500 pending appeals, the "old" law is applicable, and the more stringent remedies appropriate for criminal actions should remain separate from the remedies more appropriate for administrative proceedings because the purpose of the administrative sanction of license revocation to remove persons who drive under the influence of alcohol and other intoxicants from our highways[3] remains in force for arrests occurring before July 1, 2020.

CONCLUSION

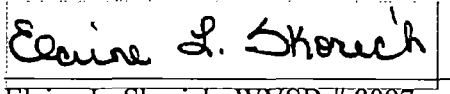
For the reasons outlined above as well as in the *Brief of the Division of Motor Vehicles*, the circuit court's *Final Order* must be reversed.

Respectfully submitted,

EVERETT J. FRAZIER, COMMISSIONER,
WEST VIRGINIA DIVISION
OF MOTOR VEHICLES,

By Counsel,

PATRICK MORRISEY
ATTORNEY GENERAL



Elaine L. Skorich, WVSB # 8097
Assistant Attorney General
DMV - Legal Division
P.O. Box 17200
Charleston, WV 25317-0010
Telephone: (304) 558-2522
Elaine.L.Skorich@wv.gov

[2] *See*, W. Va. Code § 17C-5C-1, *et seq.* (2010) and *Miller v. Smith, supra.*

[3] *See, Shell v. Bechtold,* 175 W. Va. 792, 796, 338 S.E.2d 393, 396 (1985) (per curiam).

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
NO. 20-0192
(Circuit Court Civil Action No. 19-AA-80)

EVERETT J. FRAZIER, COMMISSIONER,
WEST VIRGINIA DIVISION OF
MOTOR VEHICLES,

Petitioner,

v.

JOSHUA DERECHIN,

Respondent.

CERTIFICATE OF SERVICE

I, Elaine L. Skorich, Assistant Attorney General, does certify that I served a true and correct copy of the forgoing **REPLY BRIEF OF THE DIVISION OF MOTOR VEHICLES** on this 9th day of September, 2020, by depositing it in the United States Mail, first-class postage prepaid addressed to the following, to wit:

Mark McMillian, Esquire
1018 Kanawha Boulevard, East, Suite 900
Charleston, WV 25301

Elaine L. Skorich
Elaine L. Skorich