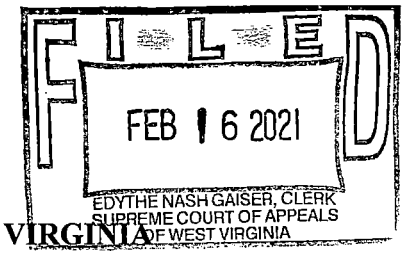

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
NO. 20-0901

EVERETT FRAZIER, COMMISSIONER OF THE WEST VIRGINIA DIVISION OF MOTOR VEHICLES,

Petitioner,

v.

HARRY G. ICKES,

Respondent.

BRIEF OF THE DIVISION OF MOTOR VEHICLES

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ASSIGNMENT OF ERROR

The circuit court erred in ignoring the substantial evidence of DUI when it relied on this court's judicially created remedy for violations of W. Va. Code § 17C-5-9 (2013) in *Reed v. Hall*, 235 W. Va. 322, 773 S.E.2d 666 (2015), and *Reed v. Divita*, No. 14-11018, 2015 WL 5514209 (W. Va. Sept. 18, 2015) (memorandum decision).

STATEMENT OF THE CASE

On October 31, 2018, Cpl. Kristen Richmond of the Brooke County Sheriff's Department ("Investigating Officer") was working in her official capacity and was approached by three employees of Wendy's restaurant in Wellsburg, Brooke County, West Virginia. (App[1]. 163, 164, 172, 245-247.) The Investigating Officer was informed that there was a driver in the drive-thru who may be impaired as he had slurred speech and droopy eyes. *Id.* The Investigating Officer approached the driver, who was sitting in the driver's seat of a white Kia Sportage in the drive-thru, and identified him as Harry G. Ickes, the Respondent in this matter. *Id.*

Mr. Ickes had thick and slurred speech, bloodshot and watery eyes, and droopy eyelids. (App. 164, 172, 246.) Mr. Ickes informed the Investigating Officer that he takes Methadone daily and took Clonazepam one hour prior to his contact with the officer. (App. 164, 167, 172, 248, 259.) Both Methadone and Clonazepam can cause impairment. (App. 248.)

The Investigating Officer directed the Respondent to park his vehicle and to exit the same. (App. 172, 247-248, 247, 248.) Mr. Ickes was unsteady while exiting the vehicle, while walking, and while standing. (App. 164, 172, 248.) The Investigating Officer asked Mr. Ickes to perform standardized field sobriety tests for which she was trained to administer at the West Virginia State Police Academy. (App. 172, 243.)

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[1] App. refers to the Appendix filed contemporaneously with the instant brief.

First, the Investigating Officer administered the Horizontal Gaze Nystagmus ("HGN") Test. (App. 165, 172, 249.) The Investigating Officer explained the test and confirmed that Mr. Ickes understood her explanation. (App. 165, 172, 250.) During the medical assessment portion of the HGN Test, the Respondent's eyes had equal pupils, no resting nystagmus, and equal tracking which made him a viable candidate for the test. (App. 165, 172, 250.) He exhibited impairment on this test because both of his eyes displayed a lack of smooth pursuit, distinct and sustained nystagmus at maximum deviation, and the onset of nystagmus prior to forty-five degrees. (App. 165, 172, 250-251.)

The Investigating Officer also explained the instructions for and demonstrated the Walk-and-Turn Test to Mr. Ickes, and he confirmed that he understood the instructions and demonstration. (App. 165, 172, 254.) The Respondent exhibited impairment on this test because he could not maintain his balance during the instruction stage, started the test too soon, stopped while walking, raised his arms to balance on all steps, stepped off the line of walk, and took an improper turn (he spun on the ball of one foot all the way around.) (App. 165, 172, 254.) Starting the test too soon and making a proper turn are unrelated to balance; rather, they relate to one's comprehension. (App. 255.)

The Investigating Officer also explained the instructions for and demonstrated the One-Leg Stand Test to Mr. Ickes who confirmed that he understood the instructions and demonstration for this test. (App. 165, 172, 256.) He exhibited impairment on this test because he put his foot down, used his arms for balance, and swayed while balancing. (App. 165, 173, 256-257.)

In addition, the Investigating Officer administered the Modified Romberg Balance Test and Lack of Convergence Test, and she was trained to do so during her Advanced Roadside Impaired Driving Enforcement ("ARIDE") training in August of 2016. (App. 243-244, 251.) During the

Modified Romberg Test, Mr. Ickes estimated 30 seconds in a 26 second time period and displaced a six inch sway from side to side, which is consistent with impairment. (App. 166, 173, 258.) During the Lack of Convergence Test, the Respondent's eyes failed to converge or cross, which is consistent with impairment. (App. 166, 173, 251, 252-253.) Individuals impaired by Clonazepam, a central nervous system depressant, display lack of convergence. (App. 253-254.)

The Investigating Officer had reasonable grounds to believe and concluded that Mr. Ickes had been driving while under the influence ("DUI") of alcohol, drugs, and/or controlled substances, advised Mr. Ickes that he was under arrest, arrested him, and transported him to the Brooke County Sheriff's Department. (App. 167, 258-259.) During a post-arrest interview, the Respondent admitted to taking Clonazepam in the morning and one hour prior to this encounter and admitted to taking Methadone in the morning. (App. 167, 263.) Mr. Ickes also admitted that he was under the influence of Benzodiazepams, which is Clonazepam, as well as Methodone. (App. 167, 263.)

At the Brooke County Sheriff's Department, the Investigating Officer requested that Mr. Ickes submit to a blood draw, and he agreed to the same. (App. 168, 172, 270.) Eddie Seladoki, a paramedic with Brooke County Emergency Medical Services ("EMS"), attempted to draw the Respondent's blood but was unsuccessful. (App. 168, 172, 260, 270.)

On November 16, 2018, the Division of Motor Vehicles ("DMV") sent Mr. Ickes an *Order of Revocation* for DUI of controlled substances and/or drugs (App. 161), and Mr. Ickes requested a hearing from the Office of Administrative Hearings ("OAH.") (App. 82.) On May 15, 2019, the OAH conducted an administrative hearing. (App. 233-307.)

On March 20, 2020, the OAH entered its *Final Order* which reversed the Commissioner's order of revocation for DUI. (App. 187-193.) The OAH found that the "medical technician made a single attempt to obtain a blood sample from" Mr. Ickes (App. 189) and that the "evidence adduced

at the administrative hearing is sufficient to prove, by a preponderance of the evidence standard, that the Investigating Officer [*sic*] failure to obtain a sample of [the Respondent's] blood for analysis violated the statutory and due process rights of [Mr. Ickes.]" (App. 191.)

On May 18, 2020, the DMV appealed the OAH's order to the Circuit Court of Kanawha County. (App. 200-231.) The DMV argued that the OAH erred in excluding the substantial evidence of DUI when the paramedic, not the Investigating Officer, failed to obtain the officer requested blood sample after one attempt and refused to make further attempts at drawing the Respondent's blood. On October 19, 2020, the circuit court entered its *Final Order* which upheld the OAH's order. (App. 2-10.) The circuit court concluded that regardless of who asked for the blood test, the Respondent's due process were violated because the Investigating Officer failed to provide Mr. Ickes with a blood analysis. *Id.*

SUMMARY OF ARGUMENT

The OAH found in its *Final Order* that the Investigating Officer had a lawful reason to encounter the Respondent and that the Respondent was lawfully arrested. However, the OAH ignored this acknowledged evidence and reversed the revocation because the paramedic could not obtain a blood sample after the Investigating Officer requested a blood draw and Mr. Ickes submitted to the same. The OAH relied on W. Va. Code §17C-5-9 (2013) to find that the Respondent's due process rights were violated because of the failure of the Investigating Officer to obtain a blood sample. The circuit court echoed the OAH's conclusion in its *Final Order,* including reliance on W. Va. Code §17C-5-9 (2013).

Because the overwhelming evidence in the record shows that Mr. Ickes did not demand or request a blood draw on the date of the arrest, W. Va. Code §17C-5-9 (2013) is not applicable to this case. "Because West Virginia Code § 17C-5-6 clearly applies to the facts of this case, the OAH and

circuit court's reliance on West Virginia Code § 17C-5-9 and the caselaw construing it, was misplaced and, indeed, unnecessarily complicated the question of whether the officers' failure to test Mr. Bragg's blood sample or make it available to him to conduct additional testing violated Mr. Bragg's rights and warranted reversal of the revocation order." *Frazier v. Bragg*, 851 S.E.2d 486, 492 (W. Va. 2020).

Both the OAH and the circuit court erred in failing to weigh the evidence of insobriety and in rescinding the revocation solely on the basis that no blood test result was produced at the administrative hearing.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Argument pursuant to Rev. App. Pro. 19 is appropriate on the bases that this case involves an assignment of error in the application of settled law; that the case involves an unsustainable exercise of discretion where the law governing that discretion is settled; and that this case involves a result against the weight of the evidence.

ARGUMENT

A. Standard of Review

This Court's review of a circuit court's order deciding an administrative appeal is made pursuant to W. Va. Code § 29A-5-4(a)(1998). The Court reviews questions of law presented *de novo*; and findings of fact by the administrative officer are accorded deference unless the reviewing court believes the findings to be clearly wrong. *Reed v. Hall*, 235 W. Va. 322, 773 S.E.2d 666 (2015).

"In reviewing the judgment of the lower court, this Court does not accord special weight to the lower court's conclusions of law, and will reverse the judgment below when it is based on an incorrect conclusion of law." Syllabus Point 4, *State ex rel. Miller v. Reed,* 203 W. Va. 673, 510

S.E.2d 507 (1998).

B. The circuit court erred in ignoring the substantial evidence of DUI when it relied on this court's judicially created remedy for violations of W. Va. Code § 17C-5-9 (2013) in *Reed v. Hall, supra*, and *Reed v. Divita, supra*.

The OAH found in its *Final Order* that the "Investigating Officer transported [Mr. Ickes] to the Brooke County Sheriff's Office for processing and a blood draw, agreed/requested to by [Mr. Ickes]." (App. 189.) In its discussion, the OAH stated that Mr. Ickes "testified he offered (requested) to take and agreed to a blood test in order to determine levels of the prescribed substances in his blood and could not understand why the blood draw was stopped after a single attempt failed. The [Respondent]'s testimony was unrefuted that after the sole unsuccessful attempt to obtain a blood sample the technician asked if the test was really necessary. The Officer advised the technician it was not." (App. 190-191.)

In its *Final Order*, the circuit court concluded that the "facts in the instant matter do not rise to the situation in *Reed v. Hall* where the driver's blood was drawn but never tested. Nor do they resemble *Reed v. Divita* where the blood sample was tested for alcohol, then destroyed. Instead, the simple fact is that Respondent Ickes was not afforded a blood test in any capacity. Indeed, his blood was never drawn. . ." (App. 7-8.) The court continued, "[t]his shifting of the blame to the EMT is entirely unconvincing. Precedent from the Supreme Court of Appeals of West Virginia provides the Respondent with a due process right to a blood test upon his arrest for DUI. This due process right is not alleviated simply because an individual outside the police department, the EMT, stated that it would be difficult to obtain a blood sample and asked if the blood test was absolutely necessarily. Instead, it is clear that Respondent was denied his due process right to a blood test, regardless of who is blamed for such failure. . . both W. Va. Code § 17C-5-9 and State Supreme Court precedent make clear that the due process right to a blood test is absolute and must be provided." (App. 8.)

The circuit court also determined that "it is not entirely clear that the Respondent merely complied with the blood test rather than requesting it himself." *Id.* Then the court erroneously concluded that its "holding is not affected by who requested the blood test. When the arresting officer requests a blood draw, the impetus upon the driver to also request a blood draw is removed, as the driver has been assured by the officer that a blood draw will occur if they acquiesce. To say that the driver loses constitutional and statutory protections by trusting that the officer will do as they say is unfounded and inconsistent with the Supreme Court of Appeals of West Virginia's precedent. This Court declines to hold that drivers' due process rights are contingent upon a race between the driver and the police officer to first request a blood draw and/or analysis thereof. In other words, the Court finds no meaningful distinction between a driver affirmatively demanding a test and a driver agreeing with an officer's request to be tested. Instead, this Court holds that the Respondent's due process rights were violated by Cpl. Richmond's failure to provide a blood test regardless of who first requested the test." (App. 9.)

Both the OAH and the circuit court erred by not making a definitive finding that the Investigating Officer requested the blood draw and that Mr. Ickes acquiesced to the officer's request. Both tribunals further erred by relying on this Court's precedent in *Hall* and *Divita* to ignore the substantial evidence of DUI and to conclude that Mr. Ickes's due process rights were violated because the paramedic only made one attempt to draw the Respondent's blood.

1. The evidence in the record shows that the Investigating Officer requested the blood draw and that Mr. Ickes acquiesced to the same.

The DUI Information Sheet (App. 168), the criminal narrative (App. 173), and the Investigating Officer's testimony are clear that the officer requested the blood test and that Mr. Ickes submitted to the officer's request. At the administrative hearing, Mr. Ickes asked the Investigating

Officer, "Whenever you had the guy from the EMT come up to take blood and ***whenever you asked***, or whenever I offered to give blood, why did he only take one attempt?" (Emphasis added.) (App. 270.) Mr. Ickes also asked the Investigating Officer if the West Virginia State Police Laboratory would determine whether or not the level of drugs in his blood "was too high," and the officer replied, "They would have, yes, analyzed the blood to take the level." (App. 271-272.) Mr. Ickes responded, "See, that's why I wanted to give blood and, or urine. I wasn't aware of the exact procedures on what it takes. But I know that if you – you know what I mean? – ***submit to those tests*** and you give something, then they have something to go on." (Emphasis added.) (App. 272.) The Investigating Officer responded, "Which is why I asked you for the blood in first place." *Id.* Mr. Ickes speculated on direct examination that the Investigating Officer asked for a blood test and that "I believe I ***may*** have offered one too at the same time." (Emphasis added.) (App. 282.)

At the time that the Investigating Officer wrote the DUI Information Sheet and criminal narrative statement shortly after the Respondent's arrest and later when the Investigating Officer testified, she was clear that she requested the blood test and that Mr. Ickes submitted to the same. In addition, when Mr. Ickes cross-examined the Investigating Officer, his word choices indicated that he submitted to a blood test at the officer's request. When he testified on direct examination, Mr. Ickes only speculated that he ***may*** have asked for a test as well as the Investigating Officer. The evidence is clear that Mr. Ickes did not request a blood test but only complied with the officer's request.

Those facts are substantially similar to those in *Frazier v. Bragg,* 851 S.E.2d 486 (W. Va. 2020). In that case, this Court determined that "West Virginia Code § 17C-5-9 does not apply to the facts of this case because Mr. Bragg did not demand that a sample of his blood be taken." *Frazier*

v. Bragg at 491. "[I]t is undisputed that the investigating officers asked Mr. Bragg if he would submit to a blood draw. Mr. Bragg agreed, and Trooper Williamson transported him to Williamson Memorial Hospital where a blood sample was taken by hospital personnel. Because the blood draw was performed at the request of law enforcement officers, the provisions of West Virginia Code § 17C-5-6 (2013), rather than West Virginia Code § 17C-5-9, apply." *Frazier v. Bragg* at 492.

Thus, the circuit court erred in relying on W. Va. Code § 17C-5-9 (2013) to uphold the rescission of the Respondent's license. "Because West Virginia Code § 17C-5-6 clearly applies to the facts of this case, the OAH and circuit court's reliance on West Virginia Code § 17C-5-9 and the caselaw construing it, was misplaced and, indeed, unnecessarily complicated the question of whether the officers' failure to test Mr. Bragg's blood sample or make it available to him to conduct additional testing violated Mr. Bragg's rights and warranted reversal of the revocation order." *Frazier v. Bragg* at 492.

Here, the circuit court determined that "it is not entirely clear that the Respondent merely complied with the blood test rather than requesting it himself" (App. 8) and concluded that its "holding is not affected by who requested the blood test. When the arresting officer requests a blood draw, the impetus upon the driver to also request a blood draw is removed, as the driver has been assured by the officer that a blood draw will occur if they acquiesce. To say that the driver loses constitutional and statutory protections by trusting that the officer will do as they say is unfounded and inconsistent with the Supreme Court of Appeals of West Virginia's precedent. This Court declines to hold that drivers' due process rights are contingent upon a race between the driver and the police officer to first request a blood draw and/or analysis thereof. In other words, the Court finds no meaningful distinction between a driver affirmatively demanding a test and a driver agreeing with

an officer's request to be tested. Instead, this Court holds that the Respondent's due process rights were violated by Cpl. Richmond's failure to provide a blood test regardless of who first requested the test." (App. 9.)

Mr. Ickes did not request a blood test, and he did not demand the analysis of the blood. "The language of West Virginia Code § 17C-5-6 is clear and unambiguous that a law enforcement officer's duty to make available information about the test performed at the request of the officer (including blood test results) does not exist absent a request for such information by the person who is tested." *Frazier v. Bragg* at 494. In this case, the DMV made all of its evidence available and had no duty to present further evidence. The evidence shows that the paramedic attempted to draw the Respondent's blood at the Investigating Officer's request.

The OAH found as fact that the Investigating Officer lawfully made contact with Mr. Ickes (App. 187) and that he did not dispute that he drove a motor vehicle in this State on the date of his arrest. (App. 189.) The OAH also found that the Investigating Officer had reasonable grounds to believe that Mr. Ickes was DUI: "He advised he was tired and the Officer noted his speech to be think and slurred, his eye lids were droop and his eyes were bloodshot and water. The [Respondent] was unsteady while exiting the vehicle, while walking to the roadside and while standing along the roadside." (App. 187-188.) Further, the OAH found that Mr. Ickes exhibited impairment during his performance on the HGN Test, the Walk-and-Turn Test, the One-Leg Stand Test, the Modified Romberg Test, and the Lack of Convergence Test. (App. 188-189.) Finally, the OAH found that Mr. Ickes admitted that he took Methadone in the morning and Clonazepam in the morning and another pill an hour prior to driving. (App. 189.)

Based on these findings of fact, the Respondent was DUI, and the OAH should have given

the blood test evidence or lack thereof the weight it deserved. The circuit court erred in affirming the OAH's analysis and lack thereof. No reasonable amount of weight given to the blood test evidence would lead to the revocation being rescinded. If the blood test result had been positive, it would have affirmed the Respondent's admissions of consumption and the indicia of intoxication shown by the evidence in the case. If it had been negative, the evidence of Respondent's DUI, including indicia of impairment, would still have to be considered and weighed. The stretching of the law to find that the absence of blood test results causes the exclusion of all other evidence and requires recision of the revocation is insupportable.

Finally, a secondary chemical test is not required to prove that a motorist was driving under the influence of alcohol, controlled substances, or drugs for the purpose of making an administrative revocation of the driver's license. Syl. Pt. 1, *Albrecht v. State*, 173 W. Va. 268, 314 S.E.2d 859 (1984); Syl. Pt. 4, *Coll v. Cline*, 202 W. Va. 599, 505 S.E. 2d 662 (1998); Syl. Pt. 2, *Dean v. W. Va. Dept. Motor Vehicles*, 195 W. Va. 70, 464 S.E.2d 589 (1995)(per curiam); and Syl. Pt. 2, *Boley v. Cline*, 193 W. Va. 311, 456 S.E.2d 38 (1995). "There are no provisions in either W. Va. Code, 17C-5-1, et seq., or W. Va. Code, 17C-5A-1, et seq., that require the administration of a chemical sobriety test in order to prove that a motorist was driving under the influence of alcohol, controlled substances or drugs for purposes of making an administrative revocation of his or her driver's license." Syl. Pt. 4, *Coll v. Cline*, 202 W. Va. 599, 505 S.E.2d 662 (1998)." Syl. Pt. 5, *Frazier v. Bragg, supra.*

"Lest we forget, '[t]he principal question at the [revocation] hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs ....' W. Va. Code § 17C-5A-2(e) (2015)." *Frazier v. Bragg* at 495. The revocation of the

Respondent's license for DUI is supported by *Albrecht, infra*: " 'Where there is evidence reflecting that a driver was operating a motor vehicle upon a public street or highway, exhibited symptoms of intoxication, and had consumed alcoholic beverages, this is sufficient proof under a preponderance of the evidence standard to warrant the administrative revocation of his driver's license for driving under the influence of alcohol.' Syl. Pt. 2, *Albrecht v. State*, 173 W. Va. 268, 314 S.E.2d 859 (1984)." Syl. Pt. 6, *Frazier v. Bragg*.

In *Bragg*, this Court determined "[h]aving concluded that the OAH erred in reversing the order of revocation based exclusively upon the fact that the blood sample withdrawn from Mr. Bragg was not tested or made available to him for independent testing, and because the OAH failed to otherwise evaluate the evidence of record, we remand this case for a determination of whether there was sufficient proof under a preponderance of the evidence standard to warrant the administrative revocation of Mr. Bragg's driver's license for driving under the influence of alcohol, controlled substances and/or drugs." *Frazier v. Bragg* at 495. In the instant matter, there is no need for remand. The clear evidence in the record is that the Investigating Officer requested the blood draw, and Mr. Ickes complied with the officer's request. The clear evidence of DUI, which was ignored by the circuit court, is sufficient to meet the *Albrecht* test.

Furthermore, pursuant to W. Va. Code § 17C-5C-1a (2020), the OAH will be terminated on June 30, 2021. There is insufficient time for this matter to be remanded to the circuit court and then possibly to the OAH. The Respondent should not be rewarded with rescission of his license revocation based upon a technicality when the overwhelming evidence in the record shows that he did not request a blood draw; that the condition of his veins caused the paramedic to stop at one attempt; and there is no requirement for a secondary chemical test. The facts in this case and the

manner in which it was decided illustrate that complete reliance on the blood test lets obvious offenders avoid revocation.

2. The unrebutted evidence in the record demonstrates that a blood test result would not have been exculpatory.

Even if this Court determines that Mr. Ickes requested a blood test and was denied the same, the results of a blood test would not have been exculpatory. The Respondent testified at the administrative hearing that he "wasn't under the influence of anything more than what I'm supposed to take, and that is my Clonazepam. I take the Methadone for pain at 5:00 in the morning. And I did take the Clonazepam before I went to sleep, about an hour or so before my mom called and woke me up and I went to Wendy's" (App. 49.) Then he testified that he "offered to – I said – she asked for a blood test, and I believe I may have offered one, too, at the same time . . . because that would be able to determine whether or not you're under the influence of anything." (App. 282.)

Mr. Ickes was cross-examined about his understanding of any blood test results.

Q. Okay. Now, do you understand, are you familiar with the laws in West Virginia that, I mean, I'm sure you've heard a .08 for alcohol, or you can be found to be driving drunk or something of that nature? Are you aware of that?
A. Yeah.
Q. Are you aware that in West Virginia there's no level like that for drugs? There's no level like that for your Clonazepam. Are you aware of that, that there's no specific level that you have to be at to be found to be impaired? Are you aware of that?
A. Umm, no, I'm not.
Q. Okay. And are you aware that the West Virginia State Police Lab, when they do testing, that the results of those testings simply indicates that you have those drugs in your system. Are you aware that that's what the test results would show?
A. Yeah, it would show what exactly is in your system.
Q. Well – exactly. So, you, sir, have candidly admitted today, both to Corporal Richmond and in your testimony, you were taking Clonazepam that day; you were taking Methadone that day, correct?
A. Yeah.
Q. Would you agree with me that there's no question those two drugs were in

your system, correct?
A. Correct.

(App. 289-290.)

Despite stating during the post-arrest interview that he consumed and was under the influence of Clonazepam and Methadone, despite his agreeing that there was no question Clonazepam and Methadone were in his blood and system, despite agreeing that Clonazepam can cause dizziness and Methadone can cause dizziness and drowsiness, and despite there being no *per se* level for drug impairment in West Virginia, Mr. Ickes testified that he felt the blood test was "a big deal because that would have been able to determine whether or not. . .you're under the influence of anything." (App. 282.)

The Respondent testified that he believed that a blood test result would show the level of drugs in his system which would determine his level of impairment. In actuality, because there is no *per se* limit for drug and/or controlled substance consumption in West Virginia, the results of a blood test would have shown that Mr. Ickes took his prescribed medications, a fact which remains undisputed.

In the instant matter, the OAH found that there was evidence that Mr. Ickes was operating a motor vehicle, exhibited symptoms of impairment, and had taken Clonazepam and Methadone. That is sufficient proof under a preponderance of the evidence standard to warrant the administrative revocation of his driver's license for driving under the influence of drugs and/or controlled substances pursuant to Syl. Pt. 2, *Albrecht v. State*, *supra*, and Syl. Pt. 6, *Frazier v. Bragg*, *supra.*

CONCLUSION

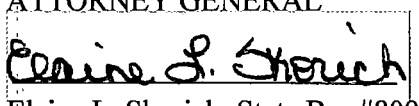
The *Final Order* of the Circuit Court of Kanawha County should be reversed.

Respectfully submitted,

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

By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
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EVERETT FRAZIER, COMMISSIONER OF THE WEST VIRGINIA DIVISION OF MOTOR VEHICLES,

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Respondent.

CERTIFICATE OF SERVICE

I, Elaine L. Skorich, Assistant Attorney General, do hereby certify that the foregoing *Petitioner's Brief* was served upon the following by U. S. Mail, postage prepaid, this 16th day of February, 2021, to the following:

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