

NO. 15-1147

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**PAT REED, COMMISSIONER
OF THE WEST VIRGINIA DIVISION
OF MOTOR VEHICLES,**

Petitioner,

v.

BENJAMIN C. MCGRATH,

Respondent.

PETITIONER'S REPLY BRIEF

**PATRICK MORRISEY
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I. The Facts Averred by the Respondent Are Not Supported by the Record.

The Respondent's iteration of the facts in the Respondent's Brief are not supported by the record. As he acknowledges ("Respondent had no idea that the DUI Administrative hearing would be his only opportunity to tell his side of the story..." Resp. Brf. at 4), he had an opportunity to defend the case. His *Respondent's Brief* is not an appropriate place to assert facts which are not in evidence in the case.

II. The Investigating Officer Had Reasonable Grounds to Believe That the Respondent Drove While under the Influence, and the Respondent Was Lawfully Arrested for Driving under the Influence.

The Respondent's argument is merely a continuation of the unfounded reasoning that the Investigating Officer had no reasonable grounds to believe that the Respondent drove under the influence, and that the Respondent was lawfully arrested. He attempts to support his argument with facts which are not in evidence and which cannot properly be considered by this Court. The Office of Administrative Hearings' *Decision of Hearing Examiner and Final Order of Chief Hearing Examiner* was supported by the record. "On appeal of an administrative order from a circuit court, this Court is bound by the statutory standards contained in W. Va. Code § 29A-5-4(a) and reviews questions of law presented *de novo*; findings of fact by the administrative officer are accorded deference unless the reviewing court believes the findings to be clearly wrong.' Syllabus point 1, *Muscatell v. Cline*, 196 W. Va. 588, 474 S.E.2d 518 (1996)." Syl. Pt. 1, *Carpenter v. Cicchirillo*, 222 W. Va. 66, 662 S.E.2d 508 (2008). "The 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 2, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996).

For the reasons set for more fully in the *Petitioner's Brief*, the investigating officer had reasonable grounds to believe that the Respondent drove while under the influence, and the Respondent was lawfully arrested for driving under the influence. The agency's decision was supported by the record and should not have been reversed.

CONCLUSION

For the above reasons, this Court should reverse the *Order Reversing Administrative Decision* of the circuit court.

Respectfully submitted,

**PAT REED, COMMISSIONER OF
THE WEST VIRGINIA DIVISION
OF MOTOR VEHICLES,**

By counsel,

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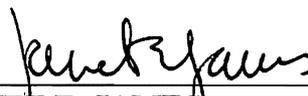
BENJAMIN C. MCGRATH,

Respondent.

CERTIFICATE OF SERVICE

I, Janet E. James, Senior Assistant Attorney General, and counsel for respondent, do hereby certify that the foregoing *Petitioner's Reply Brief* was served upon the following by depositing a true copy thereof, postage prepaid, in the regular course of the United States mail, this 25th day of May, 2016, addressed as follows:

Benjamin McGrath
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4810 Kincaid Street
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JANET E. JAMES