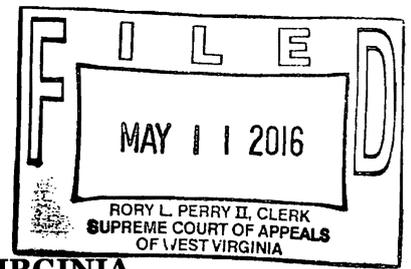


No. 15-1147



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

Respondent's Brief

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STATEMENT OF THE CASE

On September 21, 2010, Respondent, Benjamin C. McGrath, was in the driveway of his mobile home, located at 980 Maple Drive, Morgantown West Virginia, working on a truck he had recently purchased. His neighbor, Jake Madison, was also there, off and on, to watch him work, occasionally going back into his own home for periods of time.

At approximately 9:30 p.m., Respondent's (now ex) girlfriend, Jennifer Shultz, arrived at Respondent's home and the two began to argue. Shortly thereafter, Ms. Shultz threw Respondent's tool box - which contained both tools and sharp objects such as screws and nails - onto Respondent's driveway.

Because Respondent feared the sharp objects might puncture a tire, he immediately backed up his other truck four or five feet to shine his headlights onto the tools so that he could pick them up. At the time he backed up his truck, Respondent had only consumed one 12 ounce bottle of craft beer.

After moving the truck, but prior to picking up the tools, Respondent went back into his home and placed his keys on a hook in the kitchen where they stayed throughout the remainder of the night.

While inside his house, Respondent continued to argue with his girlfriend for approximately 45-50 minutes and during this time he consumed several more beers.

Respondent did not get back into his truck to drive it or any other vehicle at any time that night.

At approximately 10:55, Respondent went back outside to pick up the tools. A few minutes later, he was approached by a West Virginia State Trooper who asked him "How's it going?" to which Respondent replied, "How can I help you?" The State Trooper then asked Respondent what he was doing and Respondent told him he was picking up his tools.

Respondent saw another State Trooper and a Monongalia County Sheriff's Deputy walk down the long driveway toward Respondent. The first State Trooper turned away from Respondent and went to confer with the other officers.

A minute or two later, a Monongalia County Sheriff's Deputy, D.G. Logie, approached the Respondent and asked him what he was doing. Respondent told him he was picking up his tools. This answer did not seem to satisfy Deputy Logie who repeatedly asked Respondent what he was doing and also asked him about a broken rear car window, to which the Respondent said kept saying he he was piking up his tools and knew nothing about a broken car window. Later Respondent learned the broken window was information from the 911 call from 984 Maple Drive which had nothing to do with the Respondent.

Deputy Logie continued to inquire about the window even though the Respondent kept insisting he did not know what the officer was referring to. Deputy Logie began to accuse Respondent of lying and was becoming hostile and more agitated. Respondent began to feel frightened and intimidated.

After about ten or fifteen minutes of being questioned like this by Deputy Logie, Respondent saw one of the State Troopers' walk into the front door of his home. When Respondent yelled to the trooper "You have no probable cause to enter my

home,” Deputy Logie spit in Respondent’s face and yelled “He can do whatever the fuck he wants.”

That is when Deputy Logie really began to abuse the Respondent, cussing him out, calling him names.

Deputy Logie then administered a breathalyzer test. Respondent did not refuse to take the test because he had not been driving.

After the test Deputy Logie told Respondent he was arrested and when Respondent asked why, Deputy Logie refused to say.

In the car and at the jail, Deputy Logie continued to verbally abuse Respondent.

When Respondent hired attorney, Raymond Yackel, to represent him a few days later, he told him the entire story of what had happened that night. Respondent hired Mr. Yackel not only to represent him in his DUI case but to also help him do something about the abuse of police authority that he suffered that night when the State Trooper went into his home without a warrant and when Deputy Logie spit on him, called him names and falsely arrested him.

Mr. Yackel promised he would do just that but said he first wanted to “win the DUI case.” Not being a lawyer, Respondent relied on Mr. Yackel’s expertise and agreed.

Respondent was successful in having the criminal charges dropped in the case.

Prior to the Administrative Hearing, Respondent and his witness, Jake Madison, were scheduled to meet with Ray Yackel one hour prior to the hearing to go over their testimony. Mr. Yackel showed up for the hearing just minutes before the hearing started and did not have time to discuss what to expect at the hearing or go over what the Respondent and witness would say.

At the hearing, Deputy Logie lied repeatedly just as he did in the police report. Jake Madison never said he saw Respondent drive the truck, he just said he heard the truck motor. Respondent's trailer was situated at the end of the driveway which is very to Chestnut Ridge Road (aka Rt 705, a very busy highway).

Respondent did not drive his truck while he was drunk and Jake Madison did not see him do so nor does he testify that he saw him drive the truck while he was drunk. Over one hour of time elapsed between the time Respondent drove the truck and the police arrived on the scene.

This is simply a case of police abuse.

After the Administrative Hearing, Deputy Logie lost his job at the Sheriff's Department and Mr. Yackel told Respondent, Respondent's business partner and Respondent's mother it was because of complaints he was abusive on the job.

Respondent had no idea the DUI Administrative hearing would be his only opportunity to tell his side of the story and that - because he did not speak up at that hearing - in other words yell out that Deputy Logie was lying as he was testifying- because he was not told how he should deal with that situation by his attorney and because his attorney was clearly unprepared to cross examine Deputy Logie, Respondent might lose his license.

The Court system is not looking for truth. It is a game and the rules are rigged. The State of West Virginia (DMV) is taking advantage of the fact that Respondent's attorney was unprepared. The truth is not what matters here. Apparently "winning" is all that does. This case at the Supreme Court will change the law. It will mean a person standing in his or her own driveway, minding their

own business, can be accosted by an abusive police officer and be arrested and convicted of a DUI.

This has become a case of the entire justice system in the State of West Virginia working in exactly the way it should not.

The State of West Virginia will not “win” no matter what the Court decides. The Respondent – the owner of a tech business - moved back home to West Virginia from Florida in 2009 to grow his company here. He wanted to help the West Virginia economy after the 2008 crash – to retrain and hire West Virginian’s who are struggling to find work.

His business is growing and is now quite successful. However, license or no license, he is in the process of moving it out of this state where he will hire citizens from another state and pay taxes to that other state. His company made over \$500,000 in 2015 and is set to make 1,000,000 next year. This is West Virginia’s loss.

SUMMARY OF ARGUMENT

The State’s argument against the Respondent is based on lies. Since the Respondent does not know case law, the best he can do is repeat the facts and these are them:

The Respondent did not drive his truck while he was drunk. At least one and one half hours before the police arrived, he backed it up a few feet to shine the headlights on his toolbox in the dark driveway after his girlfriend threw them on the ground.

The police came to his house for a 911 call meant for someone else. A police officer abused his authority and arrested the Respondent who was just standing in his driveway.

REBUTTING THE STATE'S ARGUMENT

Even if you do find errors in the standard of review in the Order granted by the Circuit Court, the judge was correct in stating that the police officer had no right to stop the Respondent regardless of the technical definition of the word "stop."

The State says there are three predicate findings to support a proper license revocation:

1. The arresting officer had reasonable grounds to believe a person drove while under the influence
2. The person was lawfully placed under arrest for a DUI, and
3. The tests, if any, were administered in accordance with the provisions of this article and article five of this chapter (see citation in Petitioner's brief, page 10).

As Respondent has shown, the first 2 findings are lacking. There were no reasonable grounds. No one – no witness and no police officer - saw Respondent driving. He backed up his truck an hour before the police arrived and only after drinking one craft beer. This means that #2 is not true. There was no lawful arrest.

The encounter was not "consensual and legitimate" (as argued on page 11 of Petitioner's brief). That is entirely made up by the Deputy who lied under oath. Deputy Logie spit in Respondent's face, was abusive and intimidated him.

The arrest was false. It was an abuse of power.

CONCLUSION

For the above reasons, The Circuit Court's order should be affirmed.

Signed:

A handwritten signature in black ink, appearing to read 'B. McGrath', written over a horizontal line.

BENJAMIN C. MCGRATH, pro se
Respondent