SUPREME COURT OF MISSOURI

No. SC97656

JUSTIN D. O'BRIEN,
Petitioner/Appellant,

v.

SANDY KARSTEN,
Director, Department of Public Safety
Respondent.

BRIEF OF RESPONDENT

ERIC S. SCHMITT
Attorney General

Ross Keeling
Assistant Attorney General
Missouri Bar No. 65361
Supreme Court Building
207 W. High St.
P.O. Box 899
Jefferson City, MO 65102
Telephone: (573) 751-1337
Facsimile: (573) 751-5660
ross.keeling@ago.mo.gov

ATTORNEY FOR RESPONDENT

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STATEMENT OF THE FACTS

On December 17, 2015 the Director of the Department of Public Safety ("Department") filed a complaint with the Administrative Hearing Commission ("AHC") seeking to discipline Justin O'Brien's ("O'Brien") license as a peace officer as a result of his conduct toward his wife on September 26, 2013. L.F. *Doc. 5, p. 7.*

On that day, based on information that he saw on his wife's cell phone, O'Brien engaged in a physical altercation with his wife because he believed she was having an affair. L.F. *Doc. 4, p. 2.* During the altercation, O'Brien pushed his wife into a wall; pushed her onto the floor, and later on to a sofa; choked her, and caused her to feel threatened and in danger of physical injury. Id. O'Brien's wife fought back against O'Brien trying to choke her by kicking him in the groin to defend herself. Id. O'Brien's wife sustained bruising and soreness as a result of the altercation. Id. O'Brien's wife's daughter, who was then less than five years old, was present during most of the altercation. Id. During the altercation, O'Brien's wife sent the child to the basement to wake up the wife's brother for help. Id.

On June 3, 2014, O'Brien pled guilty to misdemeanor peace disturbance. The circuit court sentenced him to two years of supervised probation, which he completed, and gave him a suspended imposition of sentence. Id. Sometime after June 3, 2014, O'Brien and his wife divorced. Id.

After a hearing pursuant to Mo. Ann. Stat. § 590.080(2), the AHC issued its order finding cause to discipline O'Brien's peace officer license for committing the crime of domestic assault in the third degree. *L.F. Doc. 4, p. 6*. On November 2, 2017, the Department held a disciplinary hearing regarding the peace officer license of O'Brien, incorporating the pleadings, the record of the AHC, and the record of the Department in the record of the disciplinary hearing. *L.F. Doc. 14, p. 3*. At the disciplinary hearing, O'Brien testified about his military service, *L.F. Doc. 14, p. 5*; about his training at the police academy and experience as a police officer and sheriff's deputy, *Id. at 5-7*; and about his current employment as a police dispatcher. *Id at 5-7*. O'Brien also testified about his psychological treatment, *Id at 8-13*, and about his current employment, *Id at 14-15*. O'Brien submitted evidence on his behalf, including a letter from O'Brien's former employer, *L.F. Doc. 14 p.15; Doc. 5, p. 2*. and testimony by a former field training officer and supervisor. *Id at 17-18*. On November 2, 2017, the Department revoked O'Brien's peace officer license. *L.F. Doc. 3, p. 1; Doc 5, p. 1*.

O'Brien timely filed a Petition for Judicial Review in the Circuit Court of Clinton County, *L.F. Doc. 2*, which entered its Judgment affirming the disciplinary order on December 12, 2018. *L.F. Doc. 17*. O'Brien timely filed this appeal. *L.F. Doc. 16*.

STANDARD OF REVIEW

A. Constitutionality of a Statute

O'Brien argues that the determination of culpability for a criminal offense must be conducted before the judiciary, and not administrative agencies; therefore, an administrative agency's determination that an individual committed a criminal offense (in this case under §590.080.1(2)) violates the Separation of Powers provisions of the Mo. Const. art. II, § 1.

Whether a statute is constitutional is reviewed de novo. City of Arnold v. Tourkakis, 249 S.W.3d 202, 204 (Mo. banc 2008). Statutes are presumed constitutional and will be found unconstitutional only if they clearly contravene a constitutional provision. State v. Pribble, 285 S.W.3d 310, 313 (Mo. banc 2009). "The person challenging the validity of the statute has the burden of proving the act clearly and undoubtedly violates the constitutional limitations." Franklin Cty. ex rel. Parks v. Franklin Cty. Comm'n, 269 S.W.3d 26, 29 (Mo. banc 2008) (AlliedSignal, Inc. v. Moran, 231 S.W.3d 16, 29 (Tex. App. 2007), review granted, judgment vacated (May 2, 2008)). "[I]f it is at all feasible to do so, statutes must be interpreted to be consistent with the constitutions." State v. Stokely, 842 S.W.2d 77, 79 (Mo. banc 1992). "If a statutory provision can be interpreted in two ways, one constitutional and the other not constitutional, the constitutional construction shall be adopted." Murrell v. State, 215 S.W.3d 96, 102 (Mo. banc 2007).

B. Sufficient Competent and Substantial Evidence to Support Administrative Decisions.

Mo. Const. art. V, § 18 articulates the standard of judicial review of administrative actions involving professional licenses. Albanna v. State Bd. of Registration for Healing Arts, 293 S.W.3d 423, 428 (Mo. banc 2009). On appeal from the circuit court's review of an agency decision, the appellate court reviews the action of the agency, not the action of the circuit court. EBG Health Care III, Inc. v. Missouri Health Facilities Review Comm., 12 S.W.3d 354, 358 (Mo. App. W.D. 2000). The standard under Mo. Const. art. V, § 18 is "whether, considering the whole record, there is sufficient competent and substantial evidence to support the agency's decision." 293 S.W.3d at 428. "This standard would not be met in the rare case when the agency's decision is contrary to the overwhelming weight of the evidence." Id.

ARGUMENT

I. The Director of the Department of Public Safety did not err in revoking Justin O'Brien's Peace Officer license because an administrative agency's determination that an individual committed a criminal offense such that a professional license should be disciplined does not violate the Separation of Powers provisions of the Mo. Const. art. II, § 1. [Response to Appellant's Point 1]

Mo. Ann. Stat. § 590.080 allows the Director to discipline any peace officer under its terms. O'Brien argues that allowing an administrative agency to determine whether or not a person committed a criminal offense is an affront to the doctrine of Separation of Powers under the United States Constitution and the Missouri Constitution, article II, § 1. Here, O'Brien was not a criminal defendant. His life and liberty were not jeopardized by the AHC's finding that he committed a crime. However, O'Brien was a professionally licensed police officer, and it has long been established that the licensing process and the ability to discipline a licensee is an administrative mechanism delegated by the General Assembly to the licensing boards to protect the health and welfare of the state's citizens. State Bd. of Nursing v. Berry, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000).

"The courts of this state have routinely upheld the AHC's ability to determine whether a crime had been committed such that a professional license should be disciplined; this is so, as the statute indicates, whether or not a criminal charge was filed and, if so, whether the licensee had been found

guilty of the crime, had pled guilty, or had been acquitted." Schumer v. Lee, 404 S.W.3d 443, 447 (Mo. App. W.D. 2013). Schumer is the most recent decision stating the law in this matter, in an appeal filed in the Western District. In Schumer, the Western District rejected the argument that the state agency could not determine whether a crime was committed without violating Schumer's constitutional right to due process under the separation of powers doctrine. A nearly identical argument is presented in this case.

Arguing that agencies are nonetheless bound by the restrictions that apply to criminal prosecutions, O'Brien argues that the court first deviated from this concept in Wolff v. State Board of Chiropractic Examiners, 588 S.W.2d 4 (Mo. App. E.D. 1979). But long before Wolff, both the United States Supreme Court and this Court upheld the state's professional licensing mechanisms, specifically, an administrative body's findings of criminal conduct even in the absence of a criminal conviction. See: Younge v. State Bd. of Registration for Healing Arts, 451 S.W.2d 346, 349 (Mo. 1969) (holding that the statute authorizing revocation of physician's license to practice because of his performance of an unlawful abortion was not penal in nature, the purpose of the statute being the protection of the public); In re Sympson, 322 S.W.2d 808, 813 (Mo. banc 1959) ("[T]he fact that an attorney has been acquitted on a criminal charge is not a defense to the disbarment proceeding."); Lewis v. Frick, 233 U.S. 291, 302, 34 S. Ct. 488, 58 L. Ed. 967 (1914) ("The distinction

between a criminal prosecution and an administrative inquiry by an executive department or subordinate officers thereof have often been pointed out.") In Wolff, the court did not, and could not, reverse these precedents.

In Younge, this Court upheld the State Board of Registration for the Healing Arts' revocation of an individual's physician license based on the individual's performance of an unlawful procedure. 451 S.W.2d at 347. Prior to the Board's action, the physician had been acquitted of criminal charges. Id. The physician moved to dismiss the Board's complaint, arguing that the criminal acquittal gave rise to res judicata and collateral estoppel, and that the Board's action violated the constitutional prohibitions against Double Jeopardy. Id. This Court affirmed the denial of the physician's motion. Id. at 352. This Court held that "revocation proceedings are not penal, they are not quasi-criminal, they do not contemplate punitive sanctions and the provisions against double jeopardy do not apply." Id. at 349. This Court distinguished the civil licensing proceeding from a criminal case: "[t]he appellant is not being tried again for the same offense. He is not, in fact, being tried for any offense." Id. The acquittal did not bar subsequent civil action based on the same facts.

In Sympson there had been no acquittal; rather, Sympson was found guilty but granted a new trial in his criminal matter, and no final judgment had been rendered. Sympson, 322 S.W.2d at 813. This Court upheld his disbarment and declined to comment further on the criminal matters "because

the fact that an attorney has been acquitted on a criminal charge is not a defense to a disbarment proceeding." Sympson, 322 S.W.2d at 813.

Before Younge, the United States Supreme Court recognized the distinction in administrative hearings and criminal trials in regards to findings of criminal conduct. In Lewis, 233 U.S. 291, an alien was deported from the country after the Department of Commerce and Labor found that he had brought another alien into the United States for immoral purposes, specifically, prostitution. Id. at 294. The Department's deportation order was upheld by the Supreme Court despite the alien having been previously acquitted for the same conduct in a criminal trial. Id. at 301–302. In its holding, the U.S. Supreme Court explained that an "acquittal under the indictment was not equivalent to an affirmative finding of innocence, but merely to an adjudication that the proof was not sufficient to overcome all reasonable doubt of the guilt of the accused." Id. at 302. "The distinctions between a criminal prosecution and an administrative inquiry by an executive department or subordinate officers thereof has been often pointed out." Id. (citations omitted).

O'Brien also cites to several recent Missouri Supreme Court decisions he claims compromise the holding in Wolff and its progeny, namely: City of Springfield v. Belt, 307 S.W.3d 649 (Mo. banc 2010), TAP Pharmaceutical Products Inc., 238 S.W.3d 140 (Mo. banc 2007), and Slay v. Slay, 965 S.W.2d 845 (Mo. banc 1998). But none of these cases address the primary issue here,

which is whether an administrative agency may determine that a licensee committed a crime for the purposes of disciplining the license.

In Belt, this Court held that the City of Springfield had no authority to use an administrative procedure to penalize Belt for violating the city's red light ordinance because Mo. Ann. Stat. § 479.010, required such matters to be heard by divisions of the circuit court. 307 S.W.3d at 652. The case resolved a question of statutory construction, not a constitutional question.

TAP Pharmaceutical resolved a contract dispute, and did not address a constitutional issue. 238 S.W.3d at 142. Here, the state has not entered into a contract that bars an administrative action against O'Brien's license.

In Slay, this Court dismissed appeals from Family Court Commissioners who were not authorized to exercise judicial power by article V of the state constitution. This Court was without jurisdiction. 965 S.W.2d 845. The decision in Slay does not address whether the Director may make a determination that a licensee committed a crime, for licensure purposes.

O'Brien also argues that the holding in State Tax Comm'n v. Admin. Hearing Comm'n, 641 S.W.2d 69 (Mo. banc 1982) supports his contentions. In that case this Court stated that the AHC did not have subject matter jurisdiction to make declaratory judgments respecting the validity of administrative rules. 641 S.W.2d at 73. At issue was whether a formula for calculating the valuation of leased tangible personal property for taxation

purposes was valid in light of being promulgated without following the rulemaking procedures in Mo. Ann. Stat. § 536.021. In that case this Court held that the declaratory judgment is a judicial remedy. Id. at 75. A "declaratory judgment provides an appropriate method of determining controversies concerning the construction of statutes and powers and duties of governmental agencies thereunder." Id. at 75. Citing the Separation of Powers doctrine, this Court held that, to the extent Mo. Ann. Stat. § 161.333 (West) purports to authorize the AHC to render declaratory judgments, it contravenes the Missouri Constitution, and that the AHC was without subject matter in the declaratory judgment action.

As in Slay, the decision in State Tax Comm'n does not apply to the instant case because it does not address the matter of whether an administrative agency may make a determination of whether a crime was committed such that a professional license should be disciplined. Rather, it stands for the premise that the AHC does not have subject matter jurisdiction over a declaratory action to determine the validity of a regulation, and leaves the holdings in Younge, Sympson, and Lewis undisturbed.

Lastly, O'Brien argues that the AHC "took upon itself to determine that the criminal case was not properly decided" in this matter. App. Brf. p. 21. O'Brien theorizes that the AHC somehow took on the responsibility of correcting the mistake of the Circuit Court in the criminal case, and attempted

to make the correction in the administrative matter against him. See App. Brf. pp. 21-22. As stated previously, the AHC is not a court, and does not make decisions of criminal liability for the purpose of assigning criminal sanctions. State Bd. of Nursing, 32 S.W.3d at 642. Hence, the AHC is not bound to incorporate decisions on criminal prosecutions at the Circuit Court into its findings because the purpose of each proceeding is different. Id.

The burden of proof that the licensee has committed a crime is met by a preponderance of evidence in administrative proceedings for discipline. "The burden of proof in a civil case is different from the burden of proof in a criminal case because the purpose or each proceeding is different." Id. "Unlike a criminal case where the state charges an individual with a criminal violation, the proof of which jeopardizes life or liberty, the licensing process and the ability to discipline a [licensee] to practice . . . is an administrative mechanism delegated by the General Assembly to the Board to protect the health and welfare of the state's citizens." Id. "To prove a breach of [the criminal statute] the Board was compelled to prove . . . the elements of [the crime], not to the standard required for conviction in a criminal prosecution but to the standard of a civil matter, preponderance of the evidence." Id.

In Schumer, the Western District stated that "the legislature has specifically provided in section 590.080 that peace officer licenses may be disciplined when the licensee has committed a criminal offense, even if no

criminal prosecution has been initiated." Schumer, 404 S.W.3d at 448. "The only logical conclusion is that the determination of whether the crime has been committed, *for this purpose*, may be made administratively, and the constitutional protections afforded to criminal defendants are not extended to a professional licensee subject to discipline." Id.

There are two broad principles embodied in the constitutional mandate of separation of powers. First, a branch of government may not interfere with the other's performance of its constitutionally assigned power. Second, a branch may not assume a power that more properly is entrusted to another. State Auditor v. Joint Comm. on Legislative Research, 956 S.W.2d 228, 231 (Mo. banc 1997), as modified on denial of reh'g (Nov. 25, 1997). In this case, the AHC usurps no power of the judiciary by determining that a criminal violation has been committed by a licensee, for the purpose of determining cause for discipline of a professional license. The AHC does not have the power to enforce any criminal statute, or to impose a punishment for the conviction of a criminal violation.

The quasi-judicial function of the AHC is permissible under the separation of powers doctrine. Several agencies, including the AHC, often determine facts, apply law, and perform other functions traditionally viewed as "judicial" or "legislative". Many judicial or quasi-judicial "functions" are performed routinely by administrative agencies. Asbury v. Lombardi, 846

S.W.2d 196, 200 (Mo. banc 1993). Ordinarily, the delegation of functions normally associated with the judiciary does not violate Mo. Const. art. II, § 1, because the provision primarily separates "powers," not "functions." Id. Mo. Const. art. V, § 18, expressly recognizes that administrative bodies may make "decisions, findings, rules and orders … which are judicial or quasi-judicial and affect private rights." In those instances, the section requires administrative decisions to be "subject to direct review by the courts." Id. Thus, an agency may perform adjudicative functions without violating the Constitution so long as the agency's decision is subject to "direct review by the courts." Mo. Const. art. V, § 18. Id. The Constitution does not define "direct review," but the Supreme Court of Missouri has held that direct review means that a final decision of an administrative agency must be "immediately reviewable" by the appropriate court "without an intervening level of review." Impey v. Missouri Ethics Comm'n, 442 S.W.3d 42, 45 (Mo. banc 2014). In this case, the matter of O'Brien's cause for discipline of his peace officer's license was directly reviewable to the courts under Mo. Ann. Stat. § 536.100 (West), without an intervening level of review. O'Brien briefly states that "[I]t is emphatically the province and duty of the judicial department to say what the law is." (Quoting Marbury v. Madison) App. Brf. p. 20; however, O'Brien provides no authority to contradict the long history of case law that allows the AHC and the Director

to make decisions within the scope of administrative actions for the limited purpose of disciplining professional license holders.

The disciplinary action the Director took against O'Brien was properly conducted under Mo. Ann. Stat. § 590.080. O'Brien has failed to show that provisions of that statute, and other statutory schemes that provide the AHC with the ability to make determinations that a criminal violation has occurred for the purpose of disciplining a professional license, are unconstitutional. Any function the AHC and Director may have engaged for the purpose of finding cause to discipline O'Brien's peace officer license was conducted properly and subject to review by the appropriate court of record. Therefore, there was no violation of the separation of powers doctrine. Point 1 should be denied.

II. The Administrative Hearing Commission and the Department of Public Safety did not err in revoking Justin O'Brien's Peace Officer License because there was sufficient evidence offered at the hearing to demonstrate that the Director of the Department of Public Safety was justified in his decision to revoke his Peace Officer license. [Response to Appellant's Point 2]

ARGUMENT

After the AHC has determined that cause for discipline exists, the Director has the discretion to determine the form of discipline that will be imposed, and thereafter probate, suspend, or permanently revoke the license at issue. Mo. Ann. Stat. § 590.080. No evidence has been presented showing that the revocation of O'Brien's peace officer license was intended to be a

punishment, rather than a measure taken to protect the public from his violent conduct. Also, the case law O'Brien references is distinguishable on the facts, based on O'Brien's violent behavior, and his physical attack on his wife.

O'Brien argues that the Department failed to offer sufficient and substantial evidence on the whole record supporting the Department's decision to revoke his peace officer license in light of evidence in the record showing his fitness for continuing in the profession, including his prior service, psychological rehabilitation, knowledge, skills, and abilities.

O'Brien recites the rule set forth in Mo. Ann. Stat. § 536.140(6), which provides that a reviewing court is empowered to set aside an agency's discipline where it is against the weight of the evidence, arbitrary, capricious, and unreasonable. App. Brf. p. 24. O'Brien also argues that a reviewing court must look to see if the agency's decision is "against the logic of the circumstances." Missouri Real Estate Comm'n v. McCormick, 778 S.W.2d 303, 308 (Mo. App. S.D. 1989). In this case, none of the circumstances under which the Circuit Court may set aside the Director's decision is present. The evidence shows that O'Brien engaged in physical combat with his wife, pushing her to the ground and onto a sofa, *L.F. Doc. 9, pp. 3-4,* breaking her telephone, hitting her, *L.F. Doc. 6, p. 5; Doc. 9, p. 3*, strangling her, and causing her injury *L.F. Doc. 9, p. 3*. Combat between the two was not limited to just the bedroom, but was ongoing, and continued down the stairs and into the living room. *L.F. Doc 7, p.*

18; Doc. 9, pp. 3-5. The fight continued at least until the appearance of the wife's brother, who was summoned from sleeping in the basement. *L.F. Doc. 8, p. 6-7*. O'Brien issued this beating at least partly in the presence of his wife's daughter *L.F. Doc. 9, pp. 2-3*. O'Brien's wife's daughter was four years old at the time. *L.F. Doc. 11, p. 11*. Under these circumstances, the Director's revocation is not arbitrary, capricious, or unreasonable.

O'Brien cites Boyd v. State Bd. of Registration for Healing Arts, 916 S.W.2d 311 (Mo. App. E.D. 1995), Wasem v. Missouri Dental Bd., 405 S.W.2d 492, 497 (Mo. App. E.D. 1966), and Gard v. State Bd. of Registration for the Healing Arts, 747 S.W.2d 726 (Mo. App. W.D. 1988). In *Boyd*, O'Brien presents a fact pattern in which a physician was unjustly disciplined due to insufficient evidence to support "heavy discipline." App. Brf. p. 25. That case did not involve violent or potentially dangerous conduct by a licensee, as in the instant case, and did not involve a confrontational occupation, like being a police officer. The treatment of evidence in Boyd does not meet the issues in this case because the conduct, and the expectations of each profession, are too dissimilar to provide a useful analogy.

Wasem does not provide any more guidance for the "rational basis for preventing public harm" standard than Boyd. Dr. Wasem was a dentist who was convicted upon his plea of guilty to feloniously abetting an abortion. Wasem, 405 S.W.2d at 494. The facts in Wasem's criminal matter occurred on

three separate days, one week apart. 405 S.W.2d at 497. Wasem's case was about disciplining his license to practice dentistry. Here, once again, the nature of the criminal matters considered in Wasem are dissimilar enough to the facts in the present matter that there is no way to reasonably compare them. Wasem was not found to have engaged in physical combat with a family member, and his profession does not require carrying a firearm, or the use of force while engaging the public. Gard is not instructive here in terms of a "rational basis for preventing public harm" standard. And as in Boyd and Wasem, the issue in Gard involved a physician who had been convicted of felony of possession and sale of controlled substances. 747 S.W.2d 726. Hence, that case does not speak to the potential of an individual who displays violent behavior and seeks licensure in a confrontational profession such as that of a peace officer.

No evidence has been presented that shows O'Brien is no longer of the same disposition as the night he beat and choked his wife in front of her four-year-old daughter. His personal testimony about his own progress in that realm is self-serving, and cannot be independently verified as to whether any significant changes have occurred in his life that would alter his tendency toward violence. At the Director's disciplinary hearing he testified that prior to treatment he saw things as black and white, and that he has experienced some relief in that sense, *L.F. Doc. 14, pp. 13-14*; but O'Brien never discussed whether he believed he was wrong to beat his wife, or whether he would be less

likely to beat anybody else, given the level of frustration or anxiety he experienced the night of that incident. The physical evidence O'Brien produced included a certificate showing his completion of a treatment program; however, there was no evidence presented showing the content, goals, duration, or ultimate benefits achieved by attending that program. It is "a certificate of graduation that doesn't communicate anything other than that." *L.F. Doc. 5, p. 3; Doc. 14, p. 11.*

Several professional peace officers spoke on O'Brien's behalf at the Disciplinary Hearing in this matter. *L.F. Doc. 14, pp. 17-25.* None of those individuals claimed to be a mental health professional, or to understand the specific nature or treatment of O'Brien's condition, before or after the incident with his wife. O'Brien has not presented satisfactory evidence sufficient to show that he is not a risk to the safety of the public. Thus, O'Brien has failed to show that the Director abused his discretion in revoking O'Brien's peace officer license.

"In reviewing the commission's decision, the Court may not determine the weight of the evidence or substitute its discretion for that of the administrative body." Psychare Mgmt., Inc. v. Dep't of Soc. Servs. Div. of Med. Servs., 980 S.W.2d 311, 312 (Mo. banc 1998). "[T]he Court's function is to determine primarily whether competent and substantial evidence on the whole record supports the decision, whether the decision is arbitrary, capricious, or

unreasonable, and whether the commission abused its discretion." Id. "The temptation to substitute the Court's judgment on factual matters for the commission's fact-finding must be resisted." Id. "Questions of law, on the other hand, are matters for the independent judgment of this Court." Id.

Lastly, O'Brien argues that the Director elected to ignore the decision of the courts in the previous criminal matter, and suggests that the Director utilized the disciplinary proceedings in Mo. Ann. Stat. § 590.080, as a means of getting around the heightened standards of proof and protections afforded to criminal defendants. App. Brf. p. 21. O'Brien did, in fact, plead guilty to a charge of peace disturbance, and was issued a suspended imposition of sentence. *L.F. Doc. 8, p. 11.* However, a guilty plea resulting in a suspended imposition of sentence does not collaterally estop the Director from finding that O'Brien committed a criminal offense. Dir., Dep't of Pub. Safety v. Bishop, 297 S.W.3d 96 (Mo. App. W.D. 2009). A guilty plea is evidence of the conduct charged. The plea constitutes a declaration against interest, which the criminal defendant may explain away. Nichols v. Blake, 418 S.W.2d 188, 190 (Mo. 1967).

Limiting the available evidence to the decisions issued by the Court in a criminal matter would deny the Director the ability to address relevant facts in the administrative proceeding, and to take notice of those facts for the purpose of issuing appropriate discipline. It would impose the higher criminal

standards of proof, and protection of criminal defendants on AHC decisions, and limit the available evidence in any case to decisions that were subject to bargaining modifications between the defendant and prosecuting attorney, which the Director took no part in. Such a restriction would deny the Director the ability to do his duty to manage and direct the Department of Public Safety, as prescribed in Mo. Ann. Stat. Chapters 590 and 650.

O'Brien states no other basis for his argument than the AHC cannot consider evidence outside of the decision rendered by the Circuit Court in his criminal matter. O'Brien's argument that the AHC's decision may be invalid, or less valid, because it failed to restrict its decision to comport with the Circuit Court's decision in the criminal case is without merit.

CONCLUSION

For the foregoing reasons, O'Brien's Appeal in this matter should be denied, and the Agency Decision, and the Judgment of the Circuit Court affirming the Agency Decision in this matter should be upheld.

Respectfully submitted,

ERIC S. SCHMITT
Attorney General

/s/ Ross Keeling

Ross Keeling
Assistant Attorney General
Missouri Bar No. 65361

P. O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-1337
Telefax: 573-751-5660
ross.keeling@ago.mo.gov

Attorney for Respondent

CERTIFICATE OF COMPLIANCE WTH RULE 84.06

The undersigned counsel for Appellant certifies that the foregoing brief includes the information required by Rule 55.03, and complies with the requirements contained in Rule 84.06.

Relying on the word count of the Microsoft Word Program, the undersigned certifies that the total number of words contained in this brief is 5,256 words, which is within the applicable limitations on length set forth in Rule 84.06(b).

/s/ *Ross Keeling*
Ross Keeling
Assistant Attorney General
Missouri Bar No. 65361

P. O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-1337
Telefax: 573-751-5660
ross.keeling@ago.mo.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of May, 2019, the foregoing was filed electronically with the Clerk of Court, therefore to be served electronically by operation of the Court's electronic filing system to the following:

David F. Barrett
P.O. Box 104151
Jefferson City, MO 65110

/s/ *Ross Keeling*
Ross Keeling
Assistant Attorney General
Missouri Bar No. 65361

P. O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-1337
Telefax: 573-751-5660
ross.keeling@ago.mo.gov