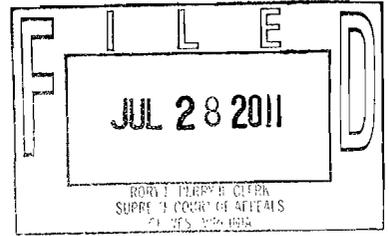


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 11-0555



STATE OF WEST VIRGINIA,

*Plaintiff Below, Respondent,*

v.

MARCELLA LORENZA DUNBAR,

*Defendant Below, Petitioner.*

---

BRIEF OF RESPONDENT STATE OF WEST VIRGINIA

---

DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

BENJAMIN F. YANCEY, III  
ASSISTANT ATTORNEY GENERAL  
State Capitol Complex  
Building 1, Room W-435  
Charleston, West Virginia 25305  
Telephone: (304) 558-2522  
State Bar No. 7629  
e-mail: [bfy@wvago.gov](mailto:bfy@wvago.gov)

Counsel for Respondent

## TABLE OF CONTENTS

	Page
I. STATEMENT OF THE CASE .....	1
II. SUMMARY OF ARGUMENT .....	3
III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION .....	4
IV. ARGUMENT .....	5
A. THE CIRCUIT COURT COMMITTED NO ERROR IN DETERMINING THAT A MISSING PASSENGER-SIDE MIRROR CONSTITUTED SUFFICIENT REASONABLE SUSPICION TO STOP THE VEHICLE IN WHICH PETITIONER WAS A PASSENGER .....	5
1. Standard of Review .....	5
2. When it was Originally Manufactured, the Vehicle Came Equipped With a Passenger-Side Mirror. In Such Cases, the law Requires That the Vehicle Have a Passenger-Side Mirror. Because the Vehicle had no Such Passenger-Side Mirror, the Police had Sufficient Reasonable Suspicion to Stop the Vehicle .....	6
B. THE CIRCUIT COURT COMMITTED NO ERROR IN DETERMINING THAT A POLICE OFFICER, WHO IS NOT A MEMBER OF THE DEPARTMENT OF PUBLIC SAFETY, HAD THE AUTHORITY TO STOP THE VEHICLE, IN WHICH PETITIONER WAS A PASSENGER, FOR DEFECTIVE EQUIPMENT .....	13
V. CONCLUSION .....	15

**TABLE OF AUTHORITIES**

**CASES**

*Berkemer v. McCarty*, 468 U.S. 420 (1984) ..... 7

*Clower v. West Virginia Department of Motor Vehicles*, 223 W. Va. 535, 678 S.E.2d 41 (2009) ..... 6-7

*Delaware v. Prouse*, 440 U.S. 648 (1979) ..... 6

*State v. DeWeese*, 213 W. Va. 339, 582 S.E.2d 786 (2003) ..... 9

*State v. Flippo*, 212 W. Va. 560, 575 S.E.2d 170 (2002) ..... 9

*State v. Lacy*, 196 W. Va. 104, 468 S.E.2d 719 (1996) ..... 5

*State v. Sigler*, 224 W. Va. 608, 687 S.E.2d 391 (2009) ..... 5

*State v. Stuart*, 192 W. Va. 428, 452 S.E.2d 886 (1994) ..... 5, 7, 10-11

*Strick v. Cicchirillo*, 224 W. Va. 240, 683 S.E.2d 575 (2009) ..... 9-10, 11

*Terry v. Ohio*, 392 U.S. 1 (1968) ..... 7

*U.S. v. Botero-Ospina*, 71 F.3d 783 (10th Cir. 1995) ..... 7

*U.S. v. Callarman*, 273 F.3d 1284 (10th Cir. 2001) ..... 8

*U.S. v. Cooper*, 133 F.3d 1394 (11th Cir. 1998) ..... 8

*U.S. v. Ozbirn*, 189 F.3d 1194 (10th Cir. 1999) ..... 8

*U.S. v. Strickland*, 902 F.2d 937 (11th Cir. 1990) ..... 7-8

*U.S. v. Winder*, 557 F.3d 1129 (10th Cir. 2009) ..... 8

**STATUTES**

W. Va. Code § 8-14-3 ..... 14

W. Va. Code § 17C-15-1(a) ..... 10, 11

W. Va. Code § 17C-15-5(c) ..... 11

W. Va. Code § 17C-15-35 ..... 9

W. Va. Code § 17C-16-1 ..... 10

W. Va. Code § 17C-16-2(a) ..... 13

**OTHER**

Rev. R.A.P. 19(a) ..... 5

U.S. Const. amend. IV ..... 6

W. Va. Const. art. III, § 6 ..... 6

W. Va. Code R. § 91-12-2.1 ..... 10

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 11-0555

STATE OF WEST VIRGINIA,

*Plaintiff Below, Respondent,*

v.

MARCELLA LORENZA DUNBAR,

*Defendant Below, Petitioner.*

---

BRIEF OF RESPONDENT STATE OF WEST VIRGINIA

---

I.

STATEMENT OF THE CASE

On January 28, 2010, Officer James Leist of the Huntington, West Virginia, Police Department initiated a traffic stop of a vehicle being driven by Marcella Dunbar (“Petitioner”) and Jerrod Dillon (“Dillon”).<sup>1</sup> App. 72-74. *See also* App. 10, 59. Officer Leist stopped the vehicle for defective equipment, as it was missing the passenger-side mirror.<sup>2</sup> App. 74. *See also* App. 10, 59. After stopping the vehicle, Officer Leist requested that a canine unit be dispatched to the scene to determine whether there was any drugs in the vehicle. App. 75.

---

<sup>1</sup> Dillon was actually driving the vehicle and Petitioner was seated in the front passenger seat. App. 75, 86, 100. Please note that the vehicle is owned by Dillon and registered in Ohio, which is Dillon’s state of residency; Petitioner is from Detroit, Michigan. App. 86, 92- 93.

<sup>2</sup> Please note that the parties have stipulated that Officer Leist’s sole reason for stopping the vehicle was due to the missing passenger-side mirror. App. 26. The parties have also stipulated that the vehicle was originally manufactured with this passenger-side mirror. App. 26.

Minutes later, the canine unit arrived, Petitioner and Dillon were removed from the vehicle, and a search of the exterior of the vehicle was conducted using the canine—the canine reacted positively indicating that drugs were in the vehicle.<sup>3</sup> App. 76, 78-79. *See also* App. 10, 59. Because of this positive reaction, the vehicle was searched, during which time 77 OxyContin tablets, 16 Soma tablets, and 20 morphine tablets were found in the vehicle’s middle console.<sup>4</sup> App. 82-83, 87, 100. *See also* App. 10, 59. Following the search and confiscation of these drugs, Petitioner and Dillon were arrested. App. 83.

On August 4, 2010, the Cabell County Grand Jury jointly indicted Petitioner and Dillon for three counts of possession of a controlled substance with intent to deliver.<sup>5</sup> App. 1-2.

On September 23, 2010, Petitioner moved the circuit court (“court”) to suppress the evidence recovered by the police during the traffic stop.<sup>6</sup> App. 3.

On October 22, 2010, a suppression hearing was held on Petitioner’s Motion to Suppress

---

<sup>3</sup> A positive reaction by a trained canine occurs when the canine smells drugs, or other contraband, and begins scratching at the vehicle. App. 75-76.

<sup>4</sup> A backpack was also found in the car. This backpack contained Dillon’s wallet, some syringes and a spoon, one Flexeril tablet, and several plastic “baggies” with one of these “baggies” containing crack cocaine residue. App. 85-86. *See also* App. 10, 59. A knife and some counterfeit money were also found, apparently belonging to Dillon. App. 87-88. *See also* App. 10, 59. Petitioner was also searched and found to have \$2,630.00 on him. App. 83-84.

<sup>5</sup> These controlled substances included oxycodone (Count 1), morphine (Count 2) and carisoprodol (Count 3). App. 1-2. Dillon was also indicted for the separate offense of carrying a concealed deadly weapon without a license (Count 4). App. 2.

<sup>6</sup> As discussed more fully below, the basis for Petitioner’s Motion consisted of his assertion that the police did not have the legal authority to make the initial traffic stop leading to the discovery of the evidence and, as such, the evidence was illegally obtained and should be excluded. *See generally* App. 3- 6.

Evidence.<sup>7</sup> App. 23.

On October 28, 2010, the court issued an Order denying Petitioner's Motion to Suppress Evidence. App. 51. *See also* App. at 103, 119.<sup>8</sup>

On February 11, 2011, Petitioner entered into a conditional, *Kennedy* Plea Agreement with the prosecution whereby he pled guilty to possession of a controlled substance with intent to deliver, as contained in Count 1 of the Indictment. App. 119-120. In exchange, the prosecution dismissed the remaining charges against Petitioner, as contained in Counts 2 and 3 of the Indictment. App. 121.<sup>9</sup>

On March 17, 2011, pursuant to his guilty plea, the court sentenced Petitioner to a term of 1 to 15 years in the penitentiary. App. 125-126. Thereafter, Petitioner brought the current appeal.

## II.

### SUMMARY OF ARGUMENT

Federal and state law permits a police officer to stop a vehicle to investigate if the officer has a reasonable suspicion that the vehicle is subject to seizure or any of the vehicle's occupants has

---

<sup>7</sup> Rather than immediately ruling on Petitioner's Motion, the court took the matter under advisement and instructed that it would give its final ruling on another date. App. 40.

<sup>8</sup> It should be noted that, on December 7, 2010, Petitioner filed a second Motion to suppress the evidence gathered by the police during the traffic stop. App. 53. In this second Motion, Petitioner asserted that the police's search of the vehicle exceeded the scope of the initial traffic stop and, thus, was inadmissible and should be excluded by the court. *See generally* App. 53-56. A hearing was held on this second Motion on January 7, 2011, during which the court also denied the second Motion. App. 69, 103. *See also* App. 117, 119. Please note that, in the current appeal, Petitioner does not assert any of the grounds he asserted in his second Motion to Suppress Evidence.

<sup>9</sup> As part of the Plea Agreement, Petitioner was also allowed to remain free on bond pending the outcome of the current appeal. App. 121.

committed, is committing, or is about to commit a crime. State law makes it a misdemeanor offense to drive a vehicle on a public thoroughfare when the vehicle is missing one of its parts and the vehicle was originally manufactured with the part. The vehicle that Petitioner was traveling in at the time that it was stopped by the police was missing its passenger-side mirror. This vehicle was originally manufactured with a passenger-side mirror. Because of this, the police had a reasonable suspicion that the vehicle's driver had committed and was continuing to commit a crime, thus giving the police the legal authority to stop the vehicle. Therefore, contrary to Petitioner's contention on appeal, the search and seizure of the drugs found in the vehicle following the stop were not "fruit of the poisonous tree" and were admissible, as properly found by the court.

Petitioner's assertion on appeal that the police officer who stopped the vehicle he was traveling in did not have the authority to do so because the officer was a city police officer and not an employee of the Department of Public Safety is without merit. There is nothing in the law prohibiting a city police officer from making a traffic stop when the officer observes a motorist violating the State's vehicle equipment laws, such as occurred in this case. In fact, the city police officer who stopped the vehicle had not only the power, but the duty to stop the vehicle.

### **III.**

#### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

The State believes that oral argument, under Rule 19 of the Revised Rules of Appellate Procedure, is necessary in this case for the following reasons:

1. Petitioner's assignments of error concern the admissibility of evidence, which involve the application of settled law;
2. The circuit court has discretion as to the admissibility of evidence and Petitioner

claims that it committed an unsustainable exercise of this discretion; and

3. This case involves narrow issues of law.

*See* Rev. R.A.P. 19(a).

Because of the importance of the issues involved, the State believes that this case is not appropriate for a memorandum decision. Finally, the State will defer to the discretion and wisdom of the Court on all these points.

#### IV.

#### ARGUMENT

#### A. **THE CIRCUIT COURT COMMITTED NO ERROR IN DETERMINING THAT A MISSING PASSENGER-SIDE MIRROR CONSTITUTED SUFFICIENT REASONABLE SUSPICION TO STOP THE VEHICLE IN WHICH PETITIONER WAS A PASSENGER.**

##### 1. **Standard of Review**

On appeal, legal conclusions made with regard to suppression determinations are reviewed *de novo*. Factual determinations upon which these legal conclusions are based are reviewed under the clearly erroneous standard. In addition, factual findings based, at least in part, on determinations of witness credibility are accorded great deference.

Syl. pt. 3, *State v. Stuart*, 192 W. Va. 428, 452 S.E.2d 886 (1994).

When reviewing a ruling on a motion to suppress, an appellate court should construe all facts in the light most favorable to the State, as it was the prevailing party below. Because of the highly fact-specific nature of a motion to suppress, particular deference is given to the findings of the circuit court because it had the opportunity to observe the witnesses and to hear testimony on the issues. Therefore, the circuit court's factual findings are reviewed for clear error.

*State v. Sigler*, 224 W. Va. 608, 615, 687 S.E.2d 391, 398 (2009) (*quoting* Syl. pt. 1, *State v. Lacy*, 196 W.Va. 104, 468 S.E.2d 719 (1996)).

**2. When it was Originally Manufactured, the Vehicle Came Equipped With a Passenger-Side Mirror. In Such Cases, the law Requires That the Vehicle Have a Passenger-Side Mirror. Because the Vehicle had no Such Passenger-Side Mirror, the Police had Sufficient Reasonable Suspicion to Stop the Vehicle.**

Generally, under the Fourth Amendment to the United States Constitution and Article III, Section 6 of the West Virginia Constitution, searches and seizures are prohibited unless they are made pursuant to a warrant supported by probable cause and approved by a judge or magistrate.<sup>10</sup> However, this general rule has a number of exceptions. One such exception involves ordinary, investigative traffic stops.<sup>11</sup> The standard required of a police officer in carrying out such a stop is reasonable suspicion. Specifically, the police officer must have a reasonable suspicion, based on objective–articulable facts, that the vehicle is subject to seizure or one of the vehicle’s occupants has committed, is committing, or is about to commit a crime.

“[U]nder the Fourth Amendment to the *United States Constitution* and Section 6 of

---

<sup>10</sup> The Fourth Amendment to the United States Constitution provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article III, Section 6 of the West Virginia Constitution likewise provides:

The rights of the citizens to be secure in their houses, persons, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue except upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, or the person or thing to be seized.

<sup>11</sup> As the Court is aware, “stopping an automobile and detaining its occupants constitute a ‘seizure’ within the meaning of . . . [the Fourth and Fourteenth] Amendments, even though the purpose of the stop is limited and the resulting detention quite brief.” *Delaware v. Prouse*, 440 U.S. 648, 653 (1979).

Article III of the *West Virginia Constitution* “[p]olice officers may stop a vehicle to investigate if they have an articulable reasonable suspicion that the vehicle is subject to seizure or a person in the vehicle has committed, is committing, or is about to commit a crime[.]”

*Clower v. West Virginia Dept. of Motor Vehicles*, 223 W. Va. 535, 541, 678 S.E.2d 41, 47 (2009) (emphasis added) (quoting Syl. pt. 1, in part, *Stuart, supra*).

[T]he usual traffic stop is more analogous to a so-called *Terry* stop, see *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968), than to a formal arrest. Under the Fourth Amendment, we have held, a *policeman* who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke suspicion.

*Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (emphasis added) (internal quotation marks and footnotes omitted).

“When evaluating whether or not particular facts establish reasonable suspicion, one must examine the totality of the circumstances, which includes both the quantity and quality of the information known by the police.” Syl. pt. 2, *Stuart, supra*. “[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968). The facts must be judged by an objective standard of whether “the facts available to the officer at the moment of the seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate[.]” *Id.*, at 21-22.

Additionally, vehicle stops based on reasonable suspicion/probable cause that equipment violations have occurred or are occurring have been held valid for purposes of the Fourth Amendment. See *U.S. v. Botero-Ospina*, 71 F.3d 783, 787 (10<sup>th</sup> Cir. 1995) (emphasis added) (“[A] traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation

or if the police officer has *reasonable articulable suspicion that a traffic or equipment violation has occurred or is occurring.*”); *U.S. v. Strickland*, 902 F.2d 937, 940 (11<sup>th</sup> Cir. 1990) (internal quotation marks omitted) (emphasis added) (“[A] police officer may stop a vehicle [w]hen there is . . . *probable cause to believe that a driver is violating any one of the multitude of applicable traffic and equipment regulations relating to the operation of motor vehicles.*”); *U.S. v. Ozbirn*, 189 F.3d 1194, 1197 (10<sup>th</sup> Cir. 1999) (internal quotation marks and citation omitted) (emphasis added) (“[A] traffic stop is reasonable under the Fourth Amendment at its inception if the officer has either (1) probable cause to believe a traffic violation has occurred or (2) a *reasonable articulable suspicion that this particular motorist violated any one of the multitude of applicable traffic and equipment regulations of the jurisdiction.*”); *U.S. v. Cooper*, 133 F.3d 1394, 1398 (11<sup>th</sup> Cir. 1998) (internal quotation marks omitted) (emphasis added) (“[L]aw enforcement may stop a vehicle when there is *probable cause to believe that the driver is violating any one of the multitude of applicable traffic and equipment regulations relating to the operation of motor vehicles.*”); *U.S. v. Callarman*, 273 F.3d 1284, 1286 (10<sup>th</sup> Cir. 2001) (emphasis added) (“[A] traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation or if the police officer has *reasonable articulable suspicion that a traffic or equipment violation has occurred or is occurring.*”); *U.S. v. Winder*, 557 F.3d 1129, 1134 (10<sup>th</sup> Cir. 2009) (emphasis added) (“A traffic stop is justified at its inception if an officer has (1) probable cause to believe a traffic violation has occurred, or (2) a *reasonable articulable suspicion that a particular motorist has violated any of the traffic or equipment regulations of the jurisdiction.*”).

With this “backdrop” in mind, on appeal, Petitioner asserts that the police’s “stoppage” of the vehicle that he was traveling in was invalid, as the police did not have the requisite reasonable

suspicion to stop the vehicle in the first place. Thus, argues Petitioner, the subsequent search and seizure of the drugs found in the vehicle constitutes “fruit of the poisonous tree” and should have been ruled inadmissible by the court.<sup>12</sup> *See generally* Pet’r’s Br. 3-4, 5-11. In making this argument, Petitioner relies heavily on the language of W. Va. Code § 17C-15-35, which provides as follows:

Every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

Petitioner argues that, under this provision,

the car in which the Petitioner was traveling was not required to be equipped with a passenger-side mirror. As the lack of the passenger-side mirror formed the only basis for the stop of the vehicle, the police officer lacked the predicate reasonable suspicion in order to make the initial stop. Therefore, all the evidence obtained as a result of the subsequent search should have been suppressed.

Pet’r’s Br. 11 (emphasis omitted).

The State agrees that the provision relied upon by Petitioner, W. Va. Code § 17C-15-35, does not require that the vehicle he was traveling in be equipped with a passenger-side mirror. However, Petitioner fails to acknowledge that other provisions of the Code do so require this passenger-side mirror. In ignoring these other Code provisions, Petitioner seems to be reading Section 17C-15-35 in a vacuum, which this Court has advised against:

*The equipment provisions contained in chapter fifteen were not intended to be read in a vacuum from the mandates set forth in section one. The criminal offense*

---

<sup>12</sup> “Under the fruits of the poisonous tree doctrine [e]vidence which is located by the police as a result of information and leads obtained from illegal[ ] [conduct], constitutes the fruit of the poisonous tree and is . . . inadmissible in evidence.” *State v. DeWeese*, 213 W. Va. 339, 346, 582 S.E.2d 786, 793 (2003) (internal quotation marks omitted). *See also State v. Flippo*, 212 W. Va. 560, 578 n.20, 575 S.E.2d 170, 188 n.20 (2002) (internal quotation marks omitted) (“Under the exclusionary rule no evidence seized in violation of the Fourth Amendment [can] be introduced at [a defendant's] trial unless he consents.”).

*established by the Legislature in section one for the operation of an unsafe or improperly equipped vehicle specifically includes a vehicle that does not have “lamps and other equipment in proper condition.” W. Va. Code § 17C-15-1(a).*

*Strick v. Cicchirillo*, 224 W. Va. 240, 244-45, 683 S.E.2d 575, 579-80 (2009) (emphasis added) (footnote omitted).<sup>13</sup>

Section 17C-15-1(a), as eluded to by the *Strick* Court, provides as follows:

*It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article, or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article.*

(Emphasis added.)<sup>14</sup> In analyzing this provision, the *Strick* Court held the following:

*When one or more of the tail lamps on a vehicle originally equipped with multiple tail lamps are not in proper working condition, the provisions of West Virginia Code § 17C-15-1(a) (2004) that establish a misdemeanor offense for the operation of an unsafe or improperly equipped motor vehicle are violated.*

Syl. pt. 2, *Strick, supra* (emphasis added). Building on this finding, the *Strick* Court reminded us that “[p]olice officers may stop a vehicle to investigate if they have an articulable reasonable suspicion that the vehicle is subject to seizure or a person in the vehicle has committed, is

---

<sup>13</sup> In fairness, Petitioner also cites a state regulation, namely W. Va. Code R. § 91-12-2.1, which does not require that a vehicle have a passenger-side mirror in order to pass a vehicle inspection. *See generally* Pet’r’s Br. 7-8 n.1. However, this case does not involve a vehicle inspection. Rather, it involves compliance with a statute, W. Va. Code § 17C-15-1(a), that mandates that it is a crime to drive a car on a public thoroughfare without one of its parts, such as a passenger-side mirror, which was a part of the car when it was originally manufactured.

<sup>14</sup> *See also* W. Va. Code § 17C-16-1 (emphasis added) (“No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, or pole trailer, or any combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this chapter and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon any highway.”).

*committing, or is about to commit a crime.*” Syl. pt. 3, *Strick, supra* (emphasis added) (*quoting* Syl. pt. 1, in part, *Stuart, supra*).

Whether its tail lamps or, as here, mirrors, W. Va. Code § 17C-15-1(a), as well as the *Strick* Court’s interpretation of this provision, apply.<sup>15</sup> There is no question that the vehicle that Petitioner was traveling in, at the time that it was stopped by the police, was missing its passenger-side mirror—this missing passenger-side mirror is why the police stopped the vehicle in the first place. There is also no question that this vehicle was originally manufactured with a passenger-side mirror—Petitioner has stipulated as much. Because the vehicle originally came with a passenger-side mirror, the vehicle’s driver, Dillon, was operating the vehicle in violation of Section 17C-15-1(a). Because of this violation, the police had reasonable suspicion that Dillon had committed and was continuing to commit a crime—albeit a misdemeanor. Thus, contrary to his contention on appeal, the police’s “stoppage” of the vehicle was lawful, and the drugs recovered by the police subsequent to the vehicle being stopped and searched were not “fruit of the poisonous tree.” So too was the finding of the court:

This matter is before the Court on defendant’s motion to suppress evidence obtained following a traffic stop of a vehicle in which the defendant was a passenger. Defendant contends the Huntington Police Department (HPD) did not have probable cause to stop the vehicle and any and all evidence acquired as a result should be excluded based upon the Fruit of the Poisonous Tree Doctrine.

---

<sup>15</sup> Please note that Petitioner argues that the *Strick* case is distinguishable from the present case in that *Strick* dealt with taillights and their finding that there was a statute, W. Va. Code § 17C-15-5(c), requiring that all taillights on a car be in working order whereas here, argues Petitioner, there is no statute requiring a vehicle to have a passenger-side mirror. With no offense intended, Petitioner is “splitting hairs” in making this argument. The import of the *Strick* case is that if a car is originally manufactured with a certain part, then that part must be present on the car and in good working order when the car is being driven down a public roadway. This is true regardless of whether the part is a headlight, taillight, etc., “and yes—even a passenger-side mirror.”

On January 28, 2010, HPD stopped a car being driven by Jerrod Dillon for defective equipment, specifically a missing passenger side mirror. Following the stop, the officer performed a canine search which resulted in the discovery of illegal drugs and cash leading to Defendant's current charges.

Defendant quotes West Virginia Code § 17C-15-35, asserting a passenger-side mirror is not required and thus the officer had no probable cause to stop the vehicle. Defendant also cites *Strick v. Cicchirillo*, 224 W. Va. 240, 683 S.E.2d 575 (2009) in which the West Virginia Supreme Court examined whether a police officer had probable cause to stop a motor vehicle that had multiple tail lamps but were not in proper working order. Defendant acknowledges that while the Supreme Court recognized that West Virginia law only required a motor vehicle to have one rear tail lamp, the Court also noted there was an additional statute [W. Va. Code § 17C-15-1 (a),] which required all tail lamps that were on a vehicle to be in proper working order. The *Strick* Court also cites a Michigan decision [ *People v. Williams*, 601 N.W.2d 138 (Mich. App. 1999),] in which that court reasoned "when multiple tail lamps are included in an automobile's design, they are intended, in part, to function together to enhance safety".

A *Strick* analysis is appropriate in the case before this Court. While the law does not specifically require a passenger-side mirror, the vehicle being occupied by the Defendant and driven by Mr. Dillon was, by design, equipped with both a driver's side mirror and a passenger's side mirror. Failure to have a passenger side mirror in proper working condition when originally equipped with such is defective equipment. As a result, it does give rise to probable cause for a traffic stop.

App. 49-50 (footnotes omitted).

In arguing that the police did not have reasonable suspicion to stop the vehicle, Petitioner also asserts that Ohio law, where the vehicle was actually registered, does not require that the vehicle have a passenger-side mirror. *See generally* Pet'r's Br. 3, 7, 11. Simply put, and as the court correctly found, the fact that Ohio may not require their vehicles to have a passenger-side mirror does not translate into West Virginia not being able to enforce its own vehicle equipment laws:

Defendant also argues that even if West Virginia does require a motor vehicle to have a passenger side mirror, that the officer still lacked probable cause because the vehicle is registered in Ohio and Ohio has no such requirement. Thus, Defendant asserts that West Virginia must give full faith and credit to the laws of Ohio.

In *United States v. Ramirez*, [86 Fed. Appx. 384 (10<sup>th</sup> Cir. 2004),] a defendant was driving a car with a Colorado license plate and was stopped in Utah by a trooper who believed his window tint was darker than Utah law permitted. The Court explained that Utah was not required to apply the window tinting statute of Colorado in lieu of its own under the Full Faith and Credit Clause. The same Court also held that “[t]he Full Faith and Credit Clause does not preclude a state from enforcing its own vehicle equipment laws.[”]

App. 50 (footnote omitted).

**B. THE CIRCUIT COURT COMMITTED NO ERROR IN DETERMINING THAT A POLICE OFFICER, WHO IS NOT A MEMBER OF THE DEPARTMENT OF PUBLIC SAFETY, HAD THE AUTHORITY TO STOP THE VEHICLE, IN WHICH PETITIONER WAS A PASSENGER, FOR DEFECTIVE EQUIPMENT.**

West Virginia Code § 17C-16-2(a) provides as follows:

The department of public safety may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

Citing this provision, Petitioner asserts that the

police officer who stopped the vehicle did not have authority to do so as he was a member of the Huntington Police Department. Pursuant to West Virginia Code § 17C-16-2, only employees of the Department of Public Safety have the authority to stop a vehicle for allegedly defective equipment. W. Va. Code § 17C-16-2. Due to the illegality of the stop, the evidence obtained during the subsequent search should have been excluded and the Circuit Court erred in not doing so.

Pet’r’s Br. 4.

First, to suggest that a city police officer, based on this statute, must “bury his head in the sand” and allow a motorist to continue driving down a public road when the vehicle he is driving is missing equipment and/or has defective equipment is, in the words of the court and the prosecution, “totally wrong” and “ludicrous[.]” App. 34, 38. There is absolutely nothing in Section 17C-16-2(a)

prohibiting a city police officer, such as Officer Leist of the Huntington Police Department, from stopping a car for missing and/or defective equipment. In fact, other provisions of the Code mandate that city police officers have not only the power, but a duty to stop vehicles in such situations. One such provision is W. Va. Code § 8-14-3, which provides, in pertinent part, as follows:

*[A]ny member of the police force or department of a municipality . . . shall have all of the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest or other process, which can legally be exercised or discharged by a deputy sheriff of a county. . . .*

*It shall be the duty of the . . . police officers of every municipality . . . to aid in the enforcement of the criminal laws of the state within the municipality. . . . Failure on the part of any such . . . officer to discharge any duty imposed by the provisions of this section shall be deemed official misconduct for which he may be removed from office.”*

(Emphasis added).

In short, the stop in this case was good, the search was good, the drugs recovered from the search were admissible, and the court properly so found.

V.

**CONCLUSION**

Petitioner's conviction should be affirmed.

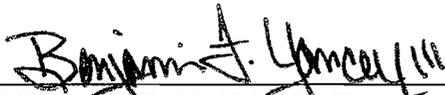
**Respectfully submitted,**

**STATE OF WEST VIRGINIA,**

**Respondent,**

**By counsel**

**DARRELL V. McGRAW, JR.  
ATTORNEY GENERAL**



---

**BENJAMIN F. YANCEY, III  
ASSISTANT ATTORNEY GENERAL**

State Capitol Complex  
Building 1, Room W-435  
Charleston, West Virginia 25305  
Telephone: (304) 558-2522  
State Bar No. 7629  
e-mail: [bfy@wvago.gov](mailto:bfy@wvago.gov)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 11-0555

STATE OF WEST VIRGINIA,

*Plaintiff Below, Respondent,*

v.

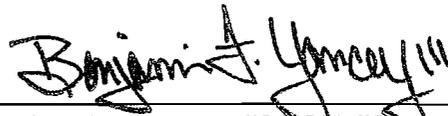
MARCELLA LORENZA DUNBAR,

*Defendant Below, Petitioner.*

CERTIFICATE OF SERVICE

The undersigned counsel for Respondent hereby certifies that a true and correct copy of the foregoing **BRIEF OF RESPONDENT STATE OF WEST VIRGINIA** was mailed to counsel for the Petitioner by depositing it in the United States mail, first-class postage prepaid, on this 28th day of July, 2011, addressed as follows:

R. Matthew Vital, Esquire  
James A. Spenia, Esquire  
Vital & Vital, L.C.  
536 Fifth Avenue  
Huntington, West Virginia 25701

  
BENJAMIN F. YANCEY, III