SUPREME COURT OF APPEALS OF WEST VIRGINIA
March 27, 2012 Argument Docket
2012 LAWS

State of West Virginia v. Brian John Stone, No. 11-0519

Procedural Background: This is an appeal of a criminal case. The petitioner was convicted and sentenced for the following offenses: DUI third or subsequent offense; five convictions for DUI recklessly causing death; seven convictions for DUI causing injury; five convictions for leaving the scene of an accident resulting in death; seven convictions for leaving the scene of an accident resulting in injury. The petitioner entered a guilty plea to one felony count of driving while license suspended or revoked. The sentences were ordered to run consecutively. Sentences can run consecutively or concurrently. When sentences run consecutively, that means that one sentence runs after another. The petitioner seeks a reversal of the conviction for which he stands convicted or, in the alternative, a new trial. Whether the petitioner can be convicted for multiple counts of fleeing the scene of an accident is an issue of first impression, which means that this issue has not been previously addressed by the Supreme Court of Appeals of West Virginia.

Factual Background: The petitioner was involved in a multi-vehicle accident on the interstate where five people were killed and seven others were injured. Following the accident, the petitioner exited his vehicle and set off on foot. The petitioner was placed under arrest. He refused to take a breath test. The police obtained a search warrant to secure a sample of petitioner's blood. The blood sample indicated that the petitioner's blood alcohol concentration was 0.23.

Petitioner's Argument: The petitioner argues that his right against double jeopardy was violated when he was sentenced for multiple counts of fleeing the scene of an accident. The double jeopardy clause protects against multiple punishments for the same offense. The petitioner states that the Legislature did not intend for an individual to be charged and sentenced multiple times under the statute for one accident. The petitioner also asserts that the circuit court erred in using the results of his blood test as evidence. The petitioner further argues that the police cannot issue a warrant to compel an individual to take a blood test in a DUI case.

Respondent's Argument: The respondent argues that the petitioner was properly charged for each of the twelve victims involved. The respondent states that when a crime is against a person, the general rule is that there are as many offenses as there are individuals affected. It is the position of the respondent that the petitioner had a duty to stay or to return to the scene of the accident to render aid to each of the twelve persons who were either injured or killed. In addition, the respondent argues that the blood test proving that the petitioner's blood alcohol concentration was 0.23 was obtained through a lawful search warrant. The results should be allowed because the police may withdraw a sample of a person's blood for evidence if probable cause exists that the person was under the influence.