

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Joe E. Miller, Commissioner
of the West Virginia Division
of Motor Vehicles, Respondent
Below, Petitioner**

FILED

June 24, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs) **No. 101002** (Nicholas County 09-AA-2)

**James N. Britton, Petitioner
Below, Respondent**

MEMORANDUM DECISION

Petitioner Joe E. Miller, Commissioner of the West Virginia Division of Motor Vehicles, appeals from the circuit court's order reversing the Commissioner's revocation of the driver's license of respondent James N. Britton. Petitioner seeks a reversal of the circuit court's order.

On November 17, 2010, this Court entered an order deferring consideration of this appeal pending the issuance of its decisions in *Robin D. Davisson v. Joe E. Miller, Commissioner, West Virginia Division of Motor Vehicles*, Case No. 35674, and *Edward L Sims, II v. Joe E. Miller, Commissioner, West Virginia Division of Motor Vehicles*, Case No. 35673, given the similarities of the issues raised therein. On May 13, 2011, this Court issued a Memorandum Decision in *Davisson*, Case No. 35674, and an opinion in *Sims*, Case No. 35673, 2011 WL 1833452. This Court is of the opinion to, and hereby does, reverse and remand the case *sub judice* to the Circuit Court of Nicholas County for further proceedings in light of *Davisson* and *Sims*.

In addition, this Court notes that the circuit court based its reversal of the Commissioner's decision, in part, on a lack of evidence that the DUI occurred in Summersville, West Virginia, and on its conclusion that the arresting officer had no jurisdiction to effectuate an arrest outside the city limits of Summersville. The record reflects the arresting officer's testimony during the administrative hearing that he first observed the inoperative rear registration light on respondent's vehicle, which was the basis for the traffic stop, as respondent was traveling east on Route 39 near the sewer plant. On remand, the circuit court may want to consider whether this sewer plant is within the city limits of

Summersville, West Virginia, and whether West Virginia Code §8-14-3 gave the officer authority to pursue respondent beyond the city limits of Summersville.

This matter is dismissed from the docket of this Court.

Reversed and Remanded

ISSUED: June 24, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh