

No. 22341 - Jennings E. Boley v. Jane L. Cline, Commissioner,  
Department of Motor Vehicles

Cleckley, J., concurring:

Because I believe the appellant failed to demonstrate the findings and conclusions made by the Commissioner were "clearly erroneous" or an "abuse of discretion," I concur.

From a factual and legal standpoint, this case is very difficult. Of course, there can be no doubt that Trooper Karastury had "reasonable suspicion" to stop the appellant and, while a closer call, had "probable cause" to make an arrest. The difficulty occurs, however, when we address the issue whether the Commissioner's ultimate determination of "driving under the influence" is supported by a preponderance of the evidence.

Unfortunately, the majority's opinion does not offer any insight as to the difference between these evidentiary standards.

This case highlights our need to clarify the law in this area of administrative proceedings, both as to the initial burden of proof and the standard of review.

As I have consistently argued, "'a standard of proof represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'" Schlup v. Delo, \_\_\_ U.S. \_\_\_, \_\_\_, 115 S. Ct. 851, 866, \_\_\_ L.Ed.2d \_\_\_, \_\_\_ (1995), quoting In re Winship, 397 U.S. 358, 370, 90 S. Ct. 1068, 1076, 25 L.Ed.2d 368, \_\_\_ (1970) (Harlan, J., concurring). Clearly, the standard of proof assigned to any adjudication should reflect the relative importance attached to the ultimate decision. Application of a "reasonable suspicion" or "probable cause" standard would give insufficient weight to the importance of taking one's driver's license. See Bell v. Burson, 402 U.S. 535, 91 S. Ct. 1586, 29 L.Ed.2d 90 (1971) (a person cannot be deprived of his driver's license without being afforded a modicum of procedural due process). The paramount importance of avoiding the injustice of mistakenly taking the driver's license of an innocent person requires application of at least the preponderance of proof standard, which is significantly higher than the probable cause standard. I have grave concern whether the preponderance standard was met in this case.