

No. 32651 – *State of West Virginia ex rel. F. Douglas Stump, West Virginia Division of Motor Vehicles v. Honorable Gary L. Johnson, Judge of the Circuit Court of Nicholas County; and Basil H. Bishop*

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**RORY L. PERRY II, CLERK
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Starcher, J., dissenting:

I have serious reservations about Syllabus Point 3. I would set the case for re-argument and ask the West Virginia Prosecuting Attorneys Institute and other *amici* to submit briefs on the issue raised by Syllabus Point 3.

The issue addressed by Syllabus Point 3 was not raised, briefed, or argued by the parties in the instant case. Syllabus Point 3 is not supported by any West Virginia case law on plea bargains – or on any other topic. Syllabus Point 3 is not necessary to the resolution of the instant case. In that sense, Syllabus Point 3 is merely gratuitous (and unwise) *dicta*.

Moreover, Syllabus Point 3 will have an unknown but very possibly large effect on the day-to-day operation and administration of the criminal justice system in every county.

Syllabus Point 3 would impose a broad, mandatory – yet vague and undefined – duty on police, prosecutors, and an undefined universe of “other persons” to affirmatively consider and not even accidentally impair the licensing practices of the DMV, in situations where there is no communication with or involvement by the DMV.

Syllabus Point 3 is probably contrary to the principle of prosecutorial discretion. Syllabus Point 3 is disrespectful of our police officers with respect to discretion

expected of them in the exercise of their duties. Syllabus Point 3 might make useful plea bargains in weak DUI cases much rarer. Before this Court considers making such a novel rule that could have such large consequences, fairness requires that the affected parties have their say. It's simply unfair to prosecutors and police to put these handcuffs on them, without their even having had a chance for input.

I also have serious reservations about the majority opinion's high-handedness in requiring West Virginians who wish to challenge the propriety of a DMV action in connection with a license suspension hearing to file their case in Charleston.

The DMV has license hearings in peoples' *home counties* because that is fair – and is required by the Legislature. The circuit court in a person's *home county* hears the appeal of a DMV decision because that is fair – and is required by the Legislature. And, the DMV now has regional offices scattered throughout the State.

From these examples, I have no trouble seeing that the Legislature's intent is NOT that a person in Martinsburg who is challenging a DMV licensing action should have to hire a lawyer hundreds of miles away in Charleston, and go to court hundreds of miles away in Charleston.

Rather, the circuit court where the DMV proceeding is to be held – a citizen's *home county* – should hear cases involving that hearing.

Is that so hard to figure out?

On this point, the majority opinion is embarrassingly out of touch with the reality of West Virginia's geographically diverse population – and with the wishes of the

Legislature.

It would behoove the Legislature to consider making its intent clear on this issue.

Accordingly, I dissent, and I am authorized to state that Chief Justice Albright joins me in this separate opinion.