

No. 32859 – Daniel J. David v. Commissioner of the West Virginia Division of Motor Vehicles

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Maynard, Justice, dissenting:

Although I had misgivings about the impact of the majority opinion, I originally did not reserve a dissent in this case. However, after serious reflection and considering the likely impact of this decision on the disposition and trial of DUI cases, I feel compelled to dissent.

I am now concerned that some lawyers will use the majority opinion to attempt to recover fees in almost every instance where there is a continuance in a DUI administrative hearing. Such a consequence would unfairly punish the Division of Motor Vehicles on those occasions when continuances are unavoidable. Also, when the need for a continuance arises, the Division may now be tempted to simply dismiss the license revocation proceeding rather than face the possibility of being forced to pay a drunk driver his or her hearing fees and costs. If this were to occur, revoking the licenses of drunk drivers would become much more difficult and, as a result, our State roadways would become much more dangerous. Finally, the necessity of avoiding continuances in license revocation hearings will likely put an additional strain on the already harried routines of hardworking law enforcement officers who are frequently summonsed to be in two different courts, sometimes miles apart, on the

same day or at the same time.

In sum, I now believe that the majority opinion will have the unintended effect of making the lives of drunk drivers easier and the work of the DMV and law enforcement officers harder, which is the exact opposite of what the law should do. Accordingly, I dissent.