No. 11-0147 – *Joe E. Miller, Commissioner of the West Virginia Division of Motor Vehicles v. David K. Smith*

FILED
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Benjamin, J., dissenting:

I dissent from the holding of the Court. I write separately to again question the Court's incorporation in the case *sub judice* of Syl. pt. 3, *Miller v. Toler*, ___ W. Va. ___, ___ S.E.2d ___ (No. 110352, June 6, 2012), which held, "The judicially-created exclusionary rule is not applicable in a civil, administrative driver's license revocation or suspension proceeding." As set forth in my dissenting opinion in *Toler*, I am disturbed that the majority opinion makes this Court complicit in the improper *and* unconstitutional acts of Executive Branch officials.

I do not believe the constitutional protections against unreasonable searches and seizures, which are not by their terms limited only to criminal prosecutions, sanctions the "ends justifies the means" test adopted by the Majority. Constitutional rights do not stop at the door of *either* a criminal or non-criminal proceeding, especially where the State's gathering of evidence was for the dual purpose of criminal and non-criminal prosecutions. To presume that the Legislature would recognize procedural rights, but not search and seizure rights, highlights the illogic of the majority opinion.

Indeed, even if one were to use a "balancing" approach, the majority opinion's reasoning is unpersuasive. This approach not only innoculates the State from the consequences of its unlawful conduct, it also diminishes the objectivity requirement of our search and seizure jurisprudence. The majority opinion seriously compromises the integrity of this Court and the process at issue.