IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2012 Term

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 11-0352

JOE E. MILLER, Commissioner of the West Virginia
Division of Motor Vehicles,
Defendant Below, Petitioner

v.

CHRISTOPHER L. TOLER,
Plaintiff Below, Respondent

Appeal from the Circuit Court of Mercer County
The Honorable Omar J. Aboulhosn, Judge
Civil Action No. 10-C-488-0A

REVERSED AND REMANDED

Submitted: April 11, 2012
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JUSTICE WORKMAN delivered the Opinion of the Court.

CHIEF JUSTICE KETCHUM AND JUSTICE BENJAMIN dissent and reserve the right to file separate opinions.

SYLLABUS BY THE COURT

1. "In cases where the circuit court has amended the result before the administrative agency, this Court reviews the final order of the circuit court and the ultimate disposition by it of an administrative law case under an abuse of discretion standard and reviews questions of law *de novo*." Syl. Pt. 2, *Muscatell v. Cline*, 196 W. Va. 588, 474 S.E.2d 518 (1996). Syl. Pt. 1, *Clower v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 535, 678 S.E.2d 41 (2009).

2. "The purpose of this State's administrative driver's license revocation procedures is to protect innocent persons by removing intoxicated drivers from the public roadways as quickly as possible." Syl. Pt. 3, *In re Petition of McKinney*, 218 W. Va. 557, 625 S.E.2d 319 (2005).

3. The judicially-created exclusionary rule is not applicable in a civil, administrative driver's license revocation or suspension proceeding.

Workman, Justice:

This case is before the Court upon the appeal of the Petitioner Joe Miller, Commissioner of the West Virginia Division of Motor Vehicles (hereinafter "the Commissioner"), from an Order of the Circuit Court of Mercer County, West Virginia, reversing the Commissioner's revocation of the Respondent Christopher L. Toler's driver's license. The circuit court found that the Respondent was driving while under the influence of alcohol; however, because the circuit court also found that the vehicle equipment checkpoint at which the Respondent was stopped was unconstitutional, the Commissioner's decision to revoke the Respondent's license was reversed. The Commissioner argues that the circuit court erred: 1) in applying the prophylactic exclusionary rule to exclude all evidence in this case because the judicially-created exclusionary rule does not apply to civil proceedings; and 2) in excluding all the evidence because West Virginia § 17C-5A-2(f) (2008)[1] creates only a limited exclusionary rule that requires the suppression of secondary breath test evidence if administered without lawful custody, but does not otherwise bar the admission of other evidence.[2]

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[1]The 2008 version of West Virginia Code § 17C-5A-2 is applicable to the instant case.

[2]Based upon the record before the Court, this alleged error was not raised before the circuit court. "To preserve an issue for appellate review, a party must articulate it with such sufficient distinctiveness to alert a circuit court to the nature of the claimed defect." Syl. Pt. 2, *State ex rel. Cooper v. Caperton*, 196 W. Va. 208, 470 S.E.2d 162 (1996); *see also* Syl. Pt. 6, *In re Michael Ray T.*, 206 W. Va. 434, 525 S.E.2d 315 (1999) (stating that "[t]he (continued...)

I. Factual and Procedural Background

On December 28, 2008**,** Senior Trooper C.N. Workman and three or four other State Police Officers conducted a vehicle equipment checkpoint on State Route 71, near Montcalm, Mercer County, West Virginia. The purpose of the checkpoint was to check license, registration, insurance, and brake lights. At the checkpoint, Senior Trooper Workman asked the Respondent for his license, registration and insurance card. The trooper walked back to inspect the Respondent's registration and brake lights. Upon returning the Respondent's license and registration to the Respondent, Senior Trooper Workman testified that he smelled alcohol. The trooper testified that the Respondent admitted to consuming a couple of beers. The Respondent failed the standardized field sobriety tests. The Respondent was administered a preliminary breath test that measured .119. Senior Trooper Workman placed the Respondent under arrest for driving under the influence.

The Division of Motor Vehicles ("DMV") received the West Virginia D.U.I. Information Sheet on December 31, 2008. The DMV then issued an order, dated January 16, 2009, revoking the Respondent's privilege to drive in West Virginia. The Respondent timely

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[2](...continued)
responsibility and burden of designating the record is on the parties, and appellate review must be limited to those issues which appear in the record presented to this Court."). Accordingly, this Court declines to address the issue as it was not properly raised nor preserved as error below.

requested an administrative hearing, challenging the probable cause for the stop and the secondary chemical test, as reflected in a "Hearing Request Form" that was received by the DMV on January 27, 2009.[3]

On September 10, 2009, there was an administrative hearing regarding the Respondent's license revocation. Senior Trooper Workman testified about the vehicle equipment checkpoint. Senior Trooper Workman also testified that it was his understanding that this type of checkpoint could be done at any time and any location. He stated that they would typically check seat belts or lights, as well as registration, insurance and license. He further testified that every vehicle was to be checked. Senior Trooper Workman testified that he was not aware of any departmental guidelines that required prior approval before conducting a vehicle equipment checkpoint. The trooper also stated that he was not aware of any need to get pre-approval regarding location or duration of the checkpoint before conducting this type of checkpoint. Finally, the trooper testified regarding the evidence he

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[3]West Virginia Code § 17C-5A-2(a) provides that

> [u]pon the written request of a person whose license to operate a motor vehicle in this State has been revoked or suspended under the provision of section one [§ 17C-5A-1] of this article or section seven [§ 17C-5-7], article five of this chapter, the Commissioner of the Division of Motor Vehicles shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard.

W. Va. Code § 17C-5A-2(a).

obtained as a result of the vehicle safety checkpoint that led to the arrest of the Respondent for driving under the influence.[4]

Following the administrative hearing, in an undated final order, the Commissioner of the DMV, based upon the preponderance of the evidence that the Respondent was driving a motor vehicle while under the influence of alcohol, revoked the Respondent's license for a period of ninety days pursuant to West Virginia Code §§ 17C-5A-2(j) (2008)[5] and -3(c)(5)(A) (2008)[6] and West Virginia Code § 17B-3-9 (2005).[7] On

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[4]At the time of the administrative license revocation hearing, the Respondent's counsel, who was representing him in both the criminal and the administrative proceedings, stated on the record that the criminal charge was still pending and had not been litigated yet.

[5]West Virginia Code § 17C-5A-2(j) provides, in part, for a six-month revocation period upon a finding by a preponderance of the evidence that "the person did drive a motor vehicle while under the influence of alcohol . . . ." *Id*.

[6]West Virginia Code § 17C-5A-3(c)(5)(A) provides that

> [w]hen the period of revocation is six months, the license to operate a motor vehicle in this State shall not be reissued until: (I) At least ninety days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (ii) the offender has successfully completed the program; (iii) all costs of the program and administration have been paid; and (iv) all costs assessed as a result of a revocation hearing have been paid[.]

Id.

[7]West Virginia Code § 17B-3-9 (2005) generally provides that the DMV may not require, upon suspension or revocation of a license, that the license be surrendered to and (continued...)

September 30, 2010, the Respondent filed an administrative appeal in the Circuit Court of Mercer County, West Virginia. By order entered that same day, the circuit court granted the Respondent's request for a stay of his driver's license revocation that was scheduled take effect on October 13, 2010.

On December 21, 2010, a hearing was held before the circuit court regarding the Respondent's driver's license revocation. A copy of the transcript from this hearing was not a part of the record on appeal.

By Order entered January 31, 2011, the circuit court reversed the Commissioner's final order and reinstated the Respondent's driver's license. In its Order, the circuit court specifically stated that

> [t]he parties concurred that the only issue to decide in this case is whether the exclusionary rule applies in an administrative proceeding concerning the revocation of the Petitioner's license to drive a motor vehicle. The parties further agree that this issue . . . has not been directly addressed by the West Virginia Supreme Court."[8]

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[7](...continued)
retained by the DMV.

[8]The Respondent argues that "[i]n review of the opinion of the circuit court, there is no mention or finding of the exclusion of evidence, . . . or any other similar language suggesting the exclusionary rule was considered or applied." The Respondent's characterization of the circuit court's order is misguided at best. While there is no express conclusion of law that references the exclusionary rule, the circuit court does find that "the (continued...)

(footnote added). In resolving this issue, the circuit court concluded, as a matter of law, that the vehicle equipment checkpoint was unconstitutional, in light of the Court's decision in *State v. Sigler*, 224 W. Va. 608, 687 S.E.2d 391 (2009).[9] The circuit court, in reversing the Commissioner's decision, then implicitly applied the exclusionary rule to the civil, administrative driver's license revocation proceeding to exclude the evidence the state trooper had seized as a result of the stop.

II. Standard of Review

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[8](...continued)
checkpoint was unconstitutional" and reverses the Commissioner's decision revoking the Respondent's license based upon that determination. Thus, implicit in the circuit court's ruling is that it applied the exclusionary rule to exclude the evidence of driving under the influence obtained by the state police as a result of the "unconstitutional" checkpoint. Moreover, in direct contradiction to the Respondent's statement that the circuit court does not mention the exclusionary rule, the circuit court states twice in its Order that the issue before it is whether the exclusionary rule applies in an administrative proceeding concerning the revocation of a motorist's license.

[9]The *Sigler* decision will be discussed in greater detail *infra*. For ease of review, however, this Court held in syllabus point nine of *Sigler* that

> [s]uspicionless checkpoint roadblocks are constitutional in West Virginia only when conducted in a random and non-discriminatory manner within predetermined written operation guidelines which minimize the State's intrusion into the freedom of the individual and which strictly limits the discretion vested in police officers at the scene.

Id. at 610, 687 S.E.2d at 394, Syl. Pt. 9.

The Court's review of the circuit court's order in this case is set forth in syllabus point one of *Clower v. West Department of Motor Vehicles*, 223 W. Va. 535, 678 S.E.2d 41 (2009):

> "'In cases where the circuit court has amended the result before the administrative agency, this Court reviews the final order of the circuit court and the ultimate disposition by it of an administrative law case under an abuse of discretion standard and reviews questions of law *de novo*.' Syllabus point 2, *Muscatell v. Cline*, 196 W. Va. 588, 474 S.E.2d 518 (1996)."

See Syl. Pt. 1, *Miller v. Chenoweth*, No. 11-0148, 2012 WL 1660610, ___ W. Va. ___, ___S.E.2d ___ (W. Va. filed May 10, 2012).

III. Argument

The issue before the Court is whether the exclusionary rule applies in a civil, administrative hearing[10] concerning the revocation or suspension of a driver's license.[11] The

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[10]*See Carte v. Cline*, 200 W. Va. 162, 167, 488 S.E.2d 437, 442(1997) (stating that "[a]dministrative revocation hearings are civil in nature[]"); *see also Cain v. W. Va. Div. of Motor Vehicles*, 225 W. Va. 467, 473, 694 S.E.2d 309, 315 (2010) (stating that "[a]s we made clear in *Carte*, a license revocation proceeding is not a criminal proceeding but a civil proceeding subject to the Administrative Procedures Act[]").

[11]The issue is one of first impression. The Court, however, recognized in dicta in *State ex rel. State Farm Fire & Casualty Co. v. Madden*, 192 W. Va. 155, 451 S.E.2d 721 (1994), that "the exclusionary rule is not usually extended to civil cases." *Id*. at 163 & n.10, 451 S.E.2d at 729 & n.10. Further, the Court has found that the exclusionary rule is inapplicable in a probation revocation proceeding. *See* Syl. Pt. 3, *Hughes v. Gwinn*, 170 W. Va. 87, 290 S.E.2d 5 (1982) ("Evidence obtained under circumstances which would be in violation of rights secured by *U.S. Const*., Amend. IV and V and our equivalent *W. Va. Const*., Art. 3 § 5 and Art. 3 § 6 with regard to a person who is not on probation is still (continued...)

Commissioner argues that the circuit court erred in applying the prophylactic exclusionary rule to exclude all evidence in this case because the judicially-created exclusionary rule does not apply to civil proceedings. Conversely, the Respondent argues that the circuit court properly determined that the appropriate and effective remedy for a constitutional violation would be to exclude evidence stemming from an unconstitutional checkpoint conducted by law enforcement in an administrative, civil proceeding, as well as a criminal proceeding.

The exclusionary rule was created by the United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914), and is applied to prohibit the introduction of evidence obtained as a result of an illegal seizure conducted in violation of the Fourth Amendment to the United States Constitution. *See State v. Townsend*, 186 W. Va. 283, 286, 412 S.E.2d 477, 480 (1991) ("'The general rule is that where there is an illegal seizure of property, such property cannot be introduced into evidence, and testimony may not be given in regard to the facts surrounding the seizure of the property.'")(quoting Syl. Pt. 1, *State v. Davis*, 170 W. Va. 376, 294 S.E.2d 179 (1982)); *accord Miller*, No. 11-0148, 2012 WL 1660610, at pp. 4-5, ___ W. Va. at ___, ___ S.E.2d at ___. An understanding of the rationale behind the judicially-created exclusionary rule is necessary for resolution of whether the exclusionary rule should be extended to civil, administrative driver's license revocation or

[11](...continued)
admissible in a probation revocation proceeding.").

suspension proceedings. As the United States Supreme Court recently stated in *Davis v. United States*, 131 S. Ct. 2419 (2011), "[t]he Fourth Amendment[12] protects the 'rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Amendment says nothing about suppressing evidence obtained in violation of this command." *Id*. at 2426 (footnote added). Thus, "[e]xclusion is 'not a personal constitutional right,' nor is it designed to 'redress the injury' occasioned by an unconstitutional search." *Id*. (quoting *Stone v. Powell*, 428 U.S. 465, 486 (1976)). Consequently, "[t]he rule's sole purpose . . . is to deter future Fourth Amendment violations[,][13]" and "[w]here suppression fails to yield 'appreciable deterrence,' exclusion is 'clearly . . . unwarranted.'" 113 S. Ct. at 2426-27 (quoting, in part, *United States v. Janis*, 428 U.S. 433, 454 (1976)). Thus, "because the rule is prudential rather than constitutionally mandated," the Supreme Court has determined that it is "applicable only where its deterrence benefits outweigh its 'substantial social costs.'" *Pa. Bd. of Prob. and Parole v. Scott*, 524 U.S. 357, 363 (1998)(quoting, in part, *United States v. Leon*, 468 U.S. 897, 907 (1984)); *see Janis*, 428 U.S. at 454 ("[E]xclusion from federal civil proceedings of evidence unlawfully seized by a state criminal enforcement officer has not been shown to have a sufficient likelihood of deterring the conduct of the state police so that it outweighs the societal costs

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[12]*See* U.S. Const. amend IV; *see also* W. Va. Const. art. III, § 6.

[13]*See United States v. Janis*, 428 U.S. 433, 446 (1976)(stating that "the 'prime purpose' of the [exclusionary] rule, if not the sole one, 'is to deter future unlawful police conduct[]'")(quoting *United States. v. Calandra*, 414 U.S. 338, 347 (1974)).

imposed by the exclusion. This Court, therefore, is not justified in so extending the exclusionary rule.").

This Court has previously held that "[t]he purpose of this State's administrative driver's license revocation procedures is to protect innocent persons by removing intoxicated drivers from the public roadways as quickly as possible." Syl. Pt. 3, *In re Petition of McKinney*, 218 W. Va. 557, 625 S.E.2d 319 (2005). This purpose behind the administrative sanctions for driving under the influence set forth in West Virginia Code §§ 17-5A-1 to -4 (2009) would be thwarted if the exclusionary rule was applied in an administrative license revocation or suspension proceeding at a substantial cost to society. Other courts, likewise, have acknowledged this substantial cost of applying the exclusionary rule in a license revocation or suspension proceeding. For instance, in *Powell v. Secretary of State*, 614 A.2d 1303 (1992), the Supreme Judicial Court of Maine stated:

> Because the evidence has already been excluded from the criminal proceeding, there is little additional deterrent effect on police conduct by preventing consideration of the evidence by the hearing examiner. The costs to society resulting from excluding the evidence, on the other hand, would be substantial. The purpose of administrative license suspensions is to protect the public. *Thompson v. Edgar*, 259 A.2d 27, 30 (Me. 1969). *Because of the great danger posed by persons operating motor vehicles while intoxicated, it is very much in the public interest that such persons be removed from our highways.*

614 A.2d at 1306-07 (emphasis added). Additionally,

> [a] license revocation hearing "is entirely separate and distinct from the proceeding to determine the guilt or innocence of the person as to the crime of DWI." *See Schwartz*, 120 N.M. at 626, 904 P.2d at 1051 (internal quotation marks and citation omitted). The exclusionary rule excludes evidence of the illegal stop from the criminal DWI proceeding, thereby preventing the loss of the driver's liberty interest and deterring future police misconduct. The driver nonetheless loses his or her driver's license in order to temporarily remove the driver from the roads of the state if the police officer had reasonable grounds to believe the driver was DWI and if the other elements necessary for revocation are met. *The revocation serves to protect the public from a driver who has chosen either to refuse chemical testing or to ingest intoxicating alcohol or drugs before driving*, regardless of whether the initial traffic stop was valid or not.

Glynn v. State, Taxation and Revenue Dep't, Motor Vehicles Div., 252 P.3d 742, 750 (N.M. Ct. App.), *cert. denied*, 264 P.3d 520 (N.M. 2011) (emphasis added). Finally, in *Beller v. Rolfe*, 194 P.3d 949 (Utah 2008), the Supreme Court of Utah opined that

> [b]y keeping inebriated drivers off the roads, suspension and revocation proceedings serve the important policy function of disabling individuals who might put themselves and other citizens at risk. Such proceedings, which aim to protect rather than to punish, differ substantially from the objectives of the criminal law proscription against operating a motor vehicle while impaired.

Id. at 954.

Courts have found that applying the exclusionary rule in an administrative license revocation or suspension proceeding offers little deterrence for police misconduct.

As the Supreme Court of Connecticut reasoned in *Fishbein v. Kozlowski*, 743 A.2d 1110 (Conn. 1999):

> We conclude in this case that "the local law enforcement official is already 'punished' by the exclusion of the evidence in the state criminal trial. That, necessarily, is of substantial concern to him." *United States v. Janis*, supra, 428 U.S. at 448, 96 S. Ct. 3021. The exclusion of the evidence in the license suspension hearing would be of only incremental deterrent value. That value is substantially outweighed by the societal interest in having otherwise reliable evidence of probable cause to arrest for driving while intoxicated presented at the hearing. . . .
>
> The plaintiff argues that, if a reasonable and articulable suspicion for the initial stop need not be demonstrated at the license suspension hearing, and if the exclusionary rule does not apply at the hearing, then the police will be encouraged to conduct arbitrary or discriminatory stops on the mere chance of subsequently establishing probable cause to arrest for driving while intoxicated. We are unpersuaded by this argument for the following reasons: First, the exclusion of any illegally obtained evidence in criminal proceedings, which are the police officer's primary zone of interest, provides a deterrent to such conduct. Second, we will not assume that the police will expend scarce law enforcement resources to stop motorists whom they have no articulable reason to suspect of any offense on the mere chance of establishing probable cause.

743 A.2d at 1119. Likewise, the Court of Appeals of Arizona reasoned in *Tornabene v. Bonine ex rel. Arizona Highway Department*, 54 P.3d 355 (Ariz. Ct. App. 2003), that

> When a law enforcement officer stops a motorist on suspicion of DUI, the officer's "primary interest" is most likely criminal prosecution, rather than the collateral consequence of license suspension. *Fishbein*, 743 A.2d at 1118-19. Because use in the license suspension hearing of evidence obtained through an improper stop "'falls outside the offending officer's zone of

> primary interest,'" exclusion of such evidence in that civil context would not significantly affect a police officer's motivation in conducting a vehicle stop. *Id*., *quoting Janis*, 428 U.S. at 458, 96 S. Ct. at 3034, 49 L. Ed.2d at 1063. The officer is "already 'punished' by the exclusion of the evidence in the state criminal trial[, which] necessarily, is of substantial concern to him [or her]." *Id*. at 1119, *quoting Janis*, 428 U.S. at 448, 96 S. Ct. at 3029, 49 L. Ed.2d at 1057.

Tornabene, 54 P.3d at 364-65.

This Court agrees that if the exclusionary rule is extended to civil license revocation or suspension proceedings there would be minimal likelihood of deterring police misconduct because the real punishment to law enforcement for misconduct is derived by excluding unlawfully seized evidence in the criminal proceeding. When this minimal deterrent benefit is compared to the societal cost of applying the exclusionary rule in a civil, administrative driver's license revocation or suspension proceeding that was designed to protect innocent persons, the cost to society outweighs any benefit of extending the exclusionary rule to the civil proceeding.

Furthermore, at the time the safety equipment checkpoint occurred in this case, the state troopers were acting lawfully under the decision of this Court in *State v. Davis*, 195 W. Va. 79, 464 S.E.2d 598 (1995), *overruled by State v. Sigler*, 224 W. Va. 608, 687 S.E.2d 391 (2009). In *Davis*, the Court was presented with a challenge to the constitutionality of a police roadblock that was set up to verify the possession and validity of driver's licenses,

vehicle registration cards and mandatory insurance. *Id*. at 82, 464 S.E.2d at 601. The defendant argued that her motion to dismiss and motion to suppress in her criminal case of first offense driving under the influence of alcohol should have been granted because the roadblock which led to her arrest was an unreasonable search and seizure in violation of the Fourth Amendment to the United States Constitution and Article III, § 6 of the West Virginia Constitution. 195 W. Va. at 82, 464 S.E.2d at 601. The defendant was convicted of the crime of first offense driving under the influence. *Id*. at 80, 464 S.E.2d at 599. In that case, the Court affirmed the defendant's conviction determining that, contrary to the defendant's argument that the roadblock was a sobriety checkpoint, the roadblock was nothing more than a "routine road check." *Id*. at 84, 464 S.E.2d at 603. Thus, because the routine road check was not a sobriety checkpoint and, therefore, not governed by the more detailed scrutiny set forth by the Court in *Carte v. Cline*, 194 W. Va. 233, 460 S.E.2d 48 (1995),[14] the initial stop of a vehicle pursuant to a roadblock set up was lawful. *Id*. at 84, 464 S.E.2d at 603. Consequently, in *Davis*, because the initial stop was lawful, the officer's observations, which included the defendant's slurred speech and red eyes, the smell of alcohol, as well as the results of the horizontal gaze nystagmus test, provided sufficient evidence to support the defendant's arrest and criminal conviction for driving under the influence of alcohol. *Id*.

[14]In *Carte*, the Court held in syllabus point one that "[s]obriety checkpoint roadblocks are constitutional when conducted within predetermined operational guidelines which minimize the intrusion on the individual and mitigate the discretion vested in police officers at the scene." 194 W. Va. at 234, 460 S.E.2d at 49, Syl. Pt. 1.

Almost a year after the safety equipment checkpoint that occurred in the instant case, the Court determined in *State v. Sigler*, 224 W. Va. 608, 687 S.E.2d 391 (2009), that the manner in which the checkpoint occurred in this case was no longer constitutional. Specifically, the Court "expressly overruled" its prior decision in *Davis*. *Sigler*, 224 W. Va. at 610, 687 S.E.2d at 393, Syl. Pt. 3. The Court further held in syllabus point nine of *Sigler* that "[s]uspicionless checkpoint roadblocks are constitutional in West Virginia only when conducted in a random and non-discriminatory manner within predetermined written operation guidelines which minimize the State's intrusion into the freedom of the individual and which strictly limits the discretion vested in police officers at the scene." *Id*. at 610, 687 S.E.2d at 394, Syl. Pt. 9.

Recently, in *Davis*, the United States Supreme Court addressed the issue of whether to exclude evidence seized in a criminal case by the police acting under legal precedent that is later overruled. As the Supreme Court stated,

> "[t]he question here is whether to apply this sanction [referring to the exclusionary rule] when the police conduct a search in compliance with binding precedent that is later overruled. Because the suppression would do nothing to deter police misconduct in these circumstances, and because it would come at a high cost to both the truth and the public safety, we hold that searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.

131 S.Ct. at 2423-24. Thus, the Supreme Court refused to overturn a criminal conviction because "when binding appellate precedent specifically *authorizes* a particular police practice, well-trained officers will and should use that tool to fulfill their crime-detection and public-safety responsibilities." *Id*. at 2429. "Indeed, in 27 years of practice under *Leon*'s good faith exception, we have 'never applied' the exclusionary rule to suppress evidence obtained as a result of nonculpable, innocent police conduct." *Id*.; *see United States v. Robinson*, 2011 WL 6009839 (4th Cir. 2011)(applying *Davis* and determining that good faith exception to exclusionary rule applied). Therefore, it logically follows that if the exclusionary rule does not act to prohibit introduction of evidence in a criminal matter when law enforcement officers are acting in good faith under binding appellate precedent then neither should the exclusionary rule be applied or extended to a civil, administrative driver's license revocation or suspension proceeding where police misconduct is not at issue. Because the exclusionary rule is only meant to deter police misconduct, its application in the instant case would be completely unjustified.

A majority of jurisdictions that have already examined this issue have concluded that the exclusionary rule should not be extended to apply to civil, administrative driver's license revocation or suspension proceedings. *Nevers v. Alaska, Dep't of Admin., Div. of Motor Vehicles,* 123 P.3d 958, 964 (Alaska 2005) ("[W]e join the majority of jurisdictions and hold that the exclusionary rule is inapplicable to search and seizure

violations in administrative license revocation hearings.")*; Park v. Valverde*, 61 Cal. Rptr.3d 895, 902 (Cal. Ct. App. 2007) (concluding that "the exclusionary rule is inapplicable to the DMV administrative proceedings" where motorist who was driving under the influence was stopped based on outdated police information indicating vehicle he was driving was stolen); *Martin v. Kan. Dep't of Revenue*, 176 P.3d 938, 952 (Kan. 2008) (declining to apply exclusionary rule to license revocation proceedings, finding that "the reasoning and outcomes of the Arizona Court of Appeals and the majority of our sister states as more sound"); *Glynn*, 252 P.3d at 749 ("The majority of courts in other jurisdictions that have addressed this issue have concluded that the exclusionary rule does not apply in proceedings for the revocation of a driver's license."); *see Tornaben*, 54 P.3d at 365 (holding that "the exclusionary rule, although required to preserve and protect Fourth Amendment rights in the criminal context, should not be applied to civil license suspension hearings . . . ."); *Fishbein*, 743 A.2d at 1117 (concluding that "failure to comply with the requirements for a criminal prosecution as they apply to investigatory stops should not prevent suspension of license of a person arrested upon probable cause to believe that he was operating under the influence of intoxicating liquor"); *Powell*, 614 A.2d at 1306 (concluding that "the fourth amendment's exclusionary rule should not be applied[,]" in an administrative license suspension proceeding)*; Motor Vehicle Admin. v. Richards*, 739 A.2d 58, 70 (Md. 1999) (determining that exclusionary rule did not apply in civil administrative driver's license suspension proceeding)*; Riche v. Dir. of Revenue*, 987 S.W.2d 331, 334-35 (Mo. 1999) (declining to apply exclusionary rule to

administrative license suspension hearing to exclude evidence of intoxication even though evidence gathered after initial stop that was unsupported by probable cause); *Chase v. Neth*, 697 N.W.2d 675, 684 (Neb. 2005) (refusing to apply exclusionary rule to administrative licence revocation proceedings); *Lopez v. Dir., N. H. Div. of Motor Vehicles*, 761 A.2d 448, 451 (N.H. 2000) (declining to apply exclusionary rule to administrative license revocation proceeding); *Beller*, 194 P.3d at 955 ("[W]e hold that the exclusionary rule does not apply to driver license revocation proceedings."); *see also Janis*, 428 U.S. at 447 (stating that "[i]n the complex and turbulent history of the rule, the Court never has applied it to exclude evidence from a civil proceeding, federal or state.").[15]

[15]Of the jurisdictions examined by the Court that have extended the application of the exclusionary rule to civil license revocation or suspension proceedings, only one expressly addressed the exclusionary rule. *State v. Lussier*, 757 A.2d 1017, 1026-27 (Vt. 2000) ("[W]e conclude that it is appropriate to apply the exclusionary rule in civil license suspension proceedings to protect the core value of privacy embraced in Article 11, to promote the public's trust in the judicial system, and to assure that unlawful police conduct is not encouraged."). The other jurisdictions in the minority have either implicitly applied the rule or expressly declined to address the exclusionary rule. *See People v. Krueger*, 567 N.E.2d 717, 723 (Ill. App. Ct.), *appeal denied*, 580 N.E.2d 126 (Ill. 1991) (construing Illinois statute to condition power to suspend driver's license on presence of valid arrest and specifically limiting holding "on the construction of the statute that we have put forth rather than on the application of the exclusionary rule as such[]"); *Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 556 (Minn. 1985) (implicitly applying exclusionary rule where police lacked reliable evidence necessary for investigative stop); *Watford v. Bureau of Motor Vehicles*, 674 N.E.2d 776, 779 (Ohio Ct. App. 1996) (implicitly applying exclusionary rule where police officer's initial stop of vehicle found unlawful); *Pooler v. Motor Vehicles Div.*, 755 P.2d 701, 703-04 (Or. 1988) (concluding that administrative hearing officer must determine validity of arrest in driving under the influence license revocation proceeding and because state conceded that arrest was unlawful, evidence obtained from stop was excluded).

Therefore, we join the sound reasoning of the majority of other jurisdictions that have examined the application of the exclusionary rule in the context of civil, administrative license revocation proceedings in holding that the judicially-created exclusionary rule is not applicable in a civil, administrative driver's license revocation or suspension proceeding.

IV. Conclusion

Based upon the foregoing, the decision of the Circuit Court of Mercer County, West Virginia, is reversed, and the case is remanded for entry of an order that comports with the decision of the Court.

Reversed and remanded.