

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SOA EFiled: May 23 2024
01:48PM EDT
Transaction ID 73205194

STATE OF WEST VIRGINIA

Plaintiff,

v.

Supreme Court No.: 24-81
Circuit Court No.: 20-F-72
Circuit Court of Logan County, WV

PAUL ANTHONY CONLEY

Petitioner.

PETITIONER'S BRIEF

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ASSIGNMENT OF ERROR

The results of blood draws are only admissible in DUI cases to prove blood alcohol concentration if they are taken within two hours of arrest. Petitioner entered a conditional plea to DUI causing death and serious bodily injury because the circuit court ruled it would admit the results of two blood draws that occurred outside this window.

Did the circuit court err by ruling the evidence admissible without limitation, including for purposes of proving blood alcohol concentration at the time of the accident?

STATEMENT OF THE CASE

On June 15, 2020 the Petitioner Paul Conley was indicted for one count of DUI causing death and one count of DUI causing serious bodily injury under W.Va. Code § 17C-5-2(b) and (c). A.R. 128. Petitioner filed a pretrial “Motion To Suppress/In Limine.” A.R. 154. This motion accurately alleged, among other things, that blood was drawn from the Petitioner after the accident, but not within two hours of arrest, as required by W.Va. Code § 17C-5-8(a) and (g), in order to have the results of chemical analysis of the blood be admissible. A.R. 154-55.

The Petitioner’s motion to suppress came on for hearing on July 27, 2021. A.R. 1. The facts regarding this motion were undisputed and agreed upon by both parties and the court. The automobile accident took place at about 12:05 a.m. on September 12, 2019. A.R. 7. After the accident the Petitioner was taken to Logan Regional Medical Center (LRMC) and blood was drawn from his body at 1:55 a.m. A.R. 7, 11. The blood alcohol concentration (BAC) based on the chemical analysis of this sample was .263 %. A.R. 185. Later that morning the Petitioner was flown to Cabell Huntington Hospital (CHH). A.R. 8. Blood was drawn from the Petitioner at CHH at about 6:00 to 7:00 a.m. and was stipulated by the parties to have been drawn more than two hours after the accident. A.R. 12, 16, 71, 240. The BAC based on this sample was .131 %. A.R. 71. The police chose not to arrest the Petitioner that day. A warrant for the arrest of the Petitioner was issued on October 11, 2019, and he was arrested on November 8, 2019. A.R. 100-04. The parties and the court all agreed that the LRMC draw was within two hours of the accident but not within two hours of the arrest, and that the CHH draw did not take place within two hours of the accident *or* the arrest. A.R. 4-18, 71, 240-41.

Subsections (a) and (g) of W.Va. Code § 17C-5-8 read as follows:

- (a) Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, or upon the trial

of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood or breath, is admissible, if the sample or specimen was taken within the time period provided in subsection (g).

(g) For the purposes of the admissibility of a chemical test under subsection (a):

(1) A sample or specimen taken to determine the alcohol concentration of a person's blood, must be taken within two hours from the time of the person's arrest; or

(2) For a sample or specimen to determine the controlled substance or drug content of a person's blood, must be taken within four hours of the person's arrest.

At the pretrial hearing on the motion to suppress the Petitioner made the straightforward argument that the results of the chemical analysis of both the LRMC and the CHH blood draws were inadmissible since they were taken weeks before the Petitioner's arrest in November 2019. This was well outside the two-hour window established by § 17C-5-8(g) in order to be admitted. A.R. 4-5, 9, 14.

With regard to the LRMC blood sample the prosecutor argued that it was taken "well within the two-hour limit" required by § 17C-5-8(a) and (g). A.R. 7-8. This argument was made in spite of the fact that the State agreed and stipulated that the arrest of the Petitioner was weeks after this blood was drawn. A.R. 9, 12, 16, 18, 240. The circuit court ignored the plain text of § 17C-5-8(a) and (g) and ruled that the State would only have to prove that the LRMC sample was taken within two hours of the "incident," not the arrest, in order for evidence of the BAC to be admitted. A.R. 10-11, 240-41.

With regard to the CHH blood sample the prosecutor argued that even though the sample was taken well outside the two-hour period from both the arrest and the incident, the court should substitute its judgment for that of the Legislature and admit the BAC test results anyway, creating what the prosecutor called a "common sense exception" to the plain language of the statute. A.R. 16-18. The prosecutor further repeatedly stated that "it cannot possibly be the law" that the CHH sample BAC evidence should not be admitted. A.R. 16-18. The circuit court ruled that the CHH

blood result would be admitted and “that the time frame between the incident and the draw of the blood goes to the weight and not the admissibility of the evidence” even though § 17C-5-8(g) plainly refers to admissibility. A.R. 20-21, 240-41. The court further indicated that in its judgment to construe the statute differently made no sense and that somehow subsection (a) referred to the time of “arrest *or* of the acts alleged. Whereas subsection (g) refers only to the two hours from the time a person is arrested.” A.R. 20-21, 240-41.

On August 3, 2021, the Petitioner entered a conditional plea of guilty to both charges pursuant to Rule 11(a)(2) of the W.Va. Rules of Criminal Procedure. A.R. 50, 215. The Petitioner preserved his right to appeal the adverse rulings made by the court, including the ruling concerning the admission of the LRMC and CHH blood draw test results. A.R. 51-52, 60, 65, 73, 95, 189, 215. On September 27, 2021, the Petitioner was sentenced to 3 to 15 years imprisonment for DUI causing death and to 2 to 10 years imprisonment for DUI causing serious bodily injury. A.R. 93-94, 186, 225-26. The sentences were ordered to run consecutively for an effective sentence of 5 to 25 years imprisonment. A.R. 93-94, 225-28.

On October 5, 2021, the sentencing order was entered. A.R. 225. On February 7, 2022, a motion for reconsideration of sentence was filed by the Petitioner. A.R. 233. On May 11, 2022, the court entered an order denying in writing the pretrial motions of the Petitioner that were orally denied at the July 27, 2021 hearing. A.R. 239. On May 25, 2022, the court entered an order denying the motion for reconsideration of sentence. A.R. 247. On October 28, 2022, the Petitioner filed a motion requesting that the Petitioner be resentenced so that a timely appeal could be taken. A.R. 253. The circuit court held a resentencing hearing on March 29, 2023. A.R. 277. By order of January 18, 2024, the court granted the motion for resentencing and sentenced the Petitioner to the identical sentence previously imposed. A.R. 259. On February 8, 2024, the Petitioner filed a timely appeal to the circuit court’s, January 18, 2024, resentencing order.

SUMMARY OF ARGUMENT

In a DUI causing death and serious bodily injury case the circuit court denied the Petitioner’s motion to suppress evidence from two blood alcohol concentration (BAC) tests and ruled that they could be admitted at trial. The parties and the court agreed that both blood draws were conducted outside the two hours from arrest period provided by W.Va. Code § 17C-5-8(a) and (g).

The court below ruled that the first test result would be admitted because the blood sample was taken within two hours of the accident giving rise to the charges, although not within two hours of the arrest. A.R. 10, 240-41. This is contrary to what the statute dictates. The court ruled that the second test result would be admitted, even though the blood sample was taken outside both the two-hour period from arrest *and* the accident, because excluding the evidence “does not make sense” and the time period exclusion of the evidence under the statute “goes to the weight of the evidence and not its admissibility” even though § 17C-5-8(g) plainly says admissibility. A.R. 20-21, 240-41.

The plain text of W.Va. Code § 17C-5-8(a) and (g) provides the blood samples must be taken within two hours of the arrest. There is absolutely nothing ambiguous about the statute. The police must arrest the accused and blood must be drawn within two hours of that arrest. In this case the police chose not to do so. When, as here the plain text of a statute is clear and without ambiguity the language must prevail, and the plain meaning accepted. *Ancient Energy Ltd. v. Ferguson*, 239 W.Va. 723, 726, 806 S.E.2d 154, 157 (2017) and *State v. McClain*, Syl. Pt. 4, 247 W.Va. 423, 880 S.E.2d 889 (2022).

Petitioner entered a conditional plea of guilty pursuant to Rule 11(a)(2) of the W.Va. Rules of Criminal Procedure, thus preserving this issue for this appeal. The circuit court erred in ignoring the plain, clear, and unambiguous text of the statute and instead substituting its own judgment as to what the law should be.

STATEMENT REGARDING ORAL ARGUMENT

The Petitioner requests Rule 20 oral argument as this case presents a question of first impression as to whether the current version of W.Va. Code § 17C-5-8(a) and (g) requires that in order to be admissible blood draws in DUI cases must take place within two hours of arrest, or two hours of the auto accident, or as ruled by the court below, in some cases such evidence is admissible even though not drawn within two hours of either. This is a question of great public and legal significance since there are hundreds of DUI prosecutions in West Virginia each year and this is a reoccurring issue. Furthermore, the decision of this Court will give guidance to law enforcement officers concerning when they must arrest suspects in DUI cases in order for blood draws to be admissible. Petitioner’s conditional plea makes this case an excellent vehicle to decide and clarify this matter since the court below ruled that BAC test results could be admitted

even if drawn outside *both* the two hours from arrest and the two hours from accident windows. *State v. Lilly*, 194 W.Va. 595, 605-07, 461 S.E.2d 101, 111-13 (1995) (Cleckley, J., *concurring*) (stating the benefits of conditional pleas). Accordingly, Petitioner requests a signed and published opinion.

ARGUMENT

The results of blood draws are only admissible in DUI cases to prove blood alcohol concentration if they are taken within two hours of arrest. Petitioner entered a conditional plea to DUI causing death and serious bodily injury because the circuit court ruled it would admit the results of two blood draws that occurred outside this window.

Did the circuit court err by ruling the evidence admissible without limitation, including for purposes of proving blood alcohol concentration at the time of the accident?

STANDARD OF REVIEW: “Interpreting a statute ... presents a purely legal question subject to *de novo* review.” *Freeland v. Marshall*, Syl. Pt. 2, 249 W.Va. 151, 895 S.E.2d 6 (2023); quoting in part *Appalachian Power Co. v. State Tax Dept.*, Syl. Pt. 1, 195 W.Va. 573, 466 S.E.2d 424 (1995).

The law related to the interpreting of a statute is clear and well established in West Virginia. “When interpreting a statute, we first consider whether the language of the statute is plain.” *State v. Finley*, __ W.Va. __, __ S.E.2d __, 2023 WL 6804936 *5 (2023); see also *State v. General Daniel Morgan Post No. 548, VFW*, Syl. Pt. 5, 144 W.Va. 137, 107 S.E.2d 353 (1959). “In determining how a specific statute should be applied, ‘[w]e look first to the statute’s language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed.’” *Ancient Energy Ltd. v. Ferguson*, 239 W.Va. 723, 726, 806 S.E.2d 154, 157 (2017); quoting *Appalachian Power Co. v. State Tax Dept.*, 195 W.Va. 573, 587, 466 S.E.2d 424, 438 (1995). Also see *State v. Folse*, 249 W.Va. 523, __, 896 S.E.2d 689, 694 (2023) and *Freeland v. Marshall*, 249 W.Va. 151, __, 895 S.E.2d 6, 13 (2023). “Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.” *State v. McClain*, Syl. Pt. 4, 247 W.Va. 423, 880 S.E.2d 889 (2022); quoting *State v. Elder*, Syl. Pt. 2, 152 W.Va. 571, 165 S.E.2d 108 (1968). Also see *Freeland v. Marshall*, 895 S.E.2d at 13, *State v. Finley*, at *5, and *Edward S. v. Raleigh County Housing Authority*, Syl. Pt. 5, 248 W.Va. 458, 889 S.E.2d 31 (2023). “The Legislature is presumed to intend that every word used in a statute has a specific purpose and meaning.” *Edward S. v. Raleigh County Housing Authority*, 248 W.Va. at 469, 889 S.E.2d at 42,

quoting *State ex rel. Johnson v. Robinson*, 162 W.Va. 579, 582, 251 S.E.2d 505, 508 (1979). “Courts are obligated to ‘presume that a legislature says in a statute what it means and means what it says there.’” *Freeland v. Marshall*, 895 S.E.2d at 14; quoting *State ex rel. Biafore v. Tomblin*, 236 W.Va. 528, 533, 782 S.E.2d 223, 228 (2016); quoting *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

In the present case the statute in question, W.Va. Code § 17C-5-8(a) and (g), is absolutely clear and without any ambiguity. To be admissible blood draw results must be taken within two hours of arrest.

For purposes of analysis, subsection (a) of § 17C-5-8 may be divided into three parts. The first part of this subsection reads: “Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs,” This language refers to the type of case or legal action in which the results of chemical analysis of blood or breath might be admitted. This language is clear and is not at issue in this appeal.

The second part of subsection (a) reads: “evidence of the amount of alcohol in the person’s blood at the time of the arrest or the acts alleged, as shown by chemical analysis of his or her blood or breath, is admissible,” This language refers to the nature, purpose, and relevance of the BAC evidence sought to be introduced.

Finally, and most importantly, the third part of subsection (a) provides that the BAC test result is only admissible: “if the sample or specimen was taken within the time period provided in subsection (g).” So, the answer to *when* a BAC test result must be taken in order to be admissible is to be found in subsection (g).

Subsection (g) of § 17C-5-8 reads as follows: “For purposes of admissibility of a chemical test under subsection (a): “(1) A sample or specimen taken to determine the alcohol concentration of a person’s blood, must be taken within *two hours* from the time of the person’s *arrest*; or (2) For a sample or specimen to determine the controlled substance or drug content of a person’s blood, must be taken within four hours of the person’s arrest.” [emphasis added]. The plain text of subsection (g)(1) could not be more clear. In alcohol cases the blood or breath sample must be taken within two hours of *arrest* to be admissible.

The police in the present case did not comply with the statute and the circuit court did not apply the statute as written to the undisputed and stipulated facts of this case. The State argued that the LRMC blood sample was taken “well within the two-hour limit” required by § 17C-5-8(a) and (g). A.R. 8. This is demonstrably false. The sample was taken within two hours of the *accident*, not within two hours of *arrest*, which was weeks later. A.R. 4-11, 18, 100-04. The court then ruled, clearly ignoring the plain wording of subsection (g) that the State would only “have to prove that the sample was taken within two hours of the *incident*.” A.R. 10. In resolving the admissibility issue concerning the LRMC sample the prosecution and the court merely pretended that it was taken within two hours of the arrest, or in the alternative, pretended that the statute required the sample be taken within two hours of the incident. Either way the court was wrong and committed error in finding that the LRMC blood sample results were admissible.

As to the CHH blood sample test results the facts are even more favorable to the Petitioner’s position that they should have been excluded from evidence. The CHH blood sample was not taken within two hours of either the accident *or* the arrest. A.R. 4-7, 11-12, 16, 100-04, 240-41. The accident was at 12:05 a.m. on September 12, 2019, the CHH blood draw was more than two hours later that morning, and the police did not get around to arresting the Petitioner until weeks later, as shown by the record, agreed and stipulated by the parties, and found by the court. A.R. 16, 18, 100-04, 240-41. There can be no serious question that the CHH blood sample BAC results fall outside the two-hour window provided by the statute, even if the word “arrest” is taken to mean or include the time of the accident.

Apparently recognizing that the plain text of § 17C-5-8(a) and (g) required the exclusion of the evidence, the prosecutor argued for a “common sense exception” to the plain language of the statute and kept repeating that “it cannot possibly be the law” that the CHH sample results should not be admitted. A.R. 16-18. The circuit court then made the astonishing ruling that the CHH BAC results would be admitted but “that the time frame between the incident and the draw of the blood goes to the weight and not the admissibility of the evidence. A.R. 20-21, 240-41. This distinction is of course absurd, since evidence is always admitted subject to the weight that the trier of fact chooses to place upon it. The court further indicated that in its judgment to construe the statute differently made no sense and that somehow subsection (a) referred to the time of “arrest or of the acts alleged. Whereas subsection (g) refers only to the two hours from

the time a person is arrested.” A.R. 20-21, 240-41. The circuit court ignored the plain text of the statute and substituted its judgment as to what the law should be for that of the Legislature.

When the rules of statutory construction set forth in the case law cited above are applied, the result is clear. The language of § 17C-5-8(a) and (g) is plain. *State v. Finley*, at *5; *State v. General Daniel Morgan Post* 548, Syl. Pt. 5. Next, the text of subsections (a) and (g), given their plain meaning, answer the interpretive question, and therefore the language must prevail and further inquiry is foreclosed. *Ancient Energy Ltd. v. Ferguson*, 239 W.Va. at 726, 806 S.E.2d at 157; *Appalachian Power v. State Tax Dept.*, 195 W.Va. at 587, 466 S.E.2d at 438. In the present case the language of the statute is clear and without ambiguity and therefore its plain meaning is to be accepted. *State v. McClain*, Syl. Pt. 4; *State v. Elder*, Syl. Pt. 2. Finally, the Legislature is presumed to intend every word in a statute to have a specific purpose and meaning, and courts are obligated to presume the Legislature says what it means and means what it says in a statute. *Edward S. v. Raleigh County Housing Auth.*, 248 W.Va. at 469, 889 S.E.2d at 42; *Freeland v. Marshall*, 895 S.E.2d at 14; *State ex rel. Biafore v. Tomblin*, 236 W.Va. at 533, 782 S.E.2d at 228. The inescapable conclusion is that BAC test results of blood draws made outside the two-hour window provided by subsection (g) are inadmissible and the circuit court erred when it ruled that they would be admitted in this case.

CONCLUSION

The court below decided to substitute its judgment for that of the Legislature as to when a BAC test result would be admissible. The prosecution argued that the circuit court should completely abandon “textualism” and launch off into a brave new world of courts determining what the law should be based on what makes sense to a judge and ignore the actual language of statutes. This is a dangerous precipice from which there is no return once over the edge. W.Va. Code § 17C-5-8(a) and (g) is absolutely clear and unambiguous as to what it says and what it means. Blood draws must be conducted within two hours of arrest, or they may not be used as evidence. This statute is functionally a direction to police to arrest suspects shortly after auto accidents if they wish for blood draw results to be admissible. The police failed to do so in this case.

Considering all the above, this Court should reverse the conviction of the Petitioner and remand this case to the circuit court with directions to permit the Petitioner to withdraw his conditional plea of guilty and to suppress and exclude from any future trial BAC evidence from the two blood draws in question.

Respectfully Submitted,
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