
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 24-81

**SCA EFiled: Jul 10 2024
02:26PM EDT
Transaction ID 73619218**

STATE OF WEST VIRGINIA,

Respondent,

v.

PAUL ANTHONY CONLEY,

Petitioner.

RESPONDENT'S BRIEF

**PATRICK MORRISEY
ATTORNEY GENERAL**

**MARK L. GARREN
ASSISTANT ATTORNEY GENERAL
West Virginia State Bar No. 1341
Office of the Attorney General
1900 Kanawha Blvd. East
State Capitol
Building 6, Suite 406
Charleston, WV 25305
Telephone: (304) 558-5830
Fax: (304) 558-5833
Email: MGarren@wvago.gov**

TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	ii
Introduction.....	1
Assignment of Error.....	1
Statement of the Case.....	1
Summary of the Argument.....	5
Statement Regarding Oral Argument and Decision.....	5
Standard of Review	5
Argument	6
I. The circuit court correctly rejected Petitioner’s interpretation of West Virginia Code §§ 17C-5-8(a) and (g), which conflicts with the Absurd Results Doctrine and other tools of statutory construction.....	6
A. Strictly construing the plain text of West Virginia Code § 17C-5-8, both blood samples were taken within the period required by the statute	8
B. Petitioner’s interpretation of West Virginia Code § 17C-5-8 leads to an absurd result which must be rejected.....	10
C. West Virginia Code § 17C-5-8 is a remedial statute which the circuit court liberally construed to accomplish the purpose for which it was enacted	12
D. The circuit court correctly interpreted West Virginia Code § 17C-5-8 to implement the actual intent of the statute	14
E. The second blood sample result is also admissible under Rules 401 and 402 of the West Virginia Rules of Evidence.....	16
II. Petitioner’s interpretation of West Virginia Code §§ 17C-5-8(a) and (g) unconstitutionally infringes upon the authority of the courts and was correctly rejected by the circuit court	17
Conclusion	20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Abbott v. Potter</i> , 604 N.E.2d 804 (Ohio Ct. App. 1992).....	9
<i>Appalachian Power Co. v. State Tax Dep’t</i> , 195 W. Va. 573, 466 S.E.2d 424 (1995).....	6
<i>Barco v. Sch. Bd. of Pinellas Cnty.</i> , 975 So. 2d 1116 (Fla. 2008)	9
<i>Bennett v. Warner</i> , 179 W. Va. 742, 372 S.E.2d 920 (1988).....	18
<i>Christopher J. v. Ames</i> , 241 W. Va. 822, 828 S.E.2d 884 (2019).....	11, 12, 13, 14, 15
<i>State ex rel Cohen v. Manchin</i> , 175 W. Va. 525, 336 S.E.2d 171 (1984).....	13
<i>Dale v. Veltri</i> , 230 W. Va. 598, 741 S.E.2d 823 (2013).....	6, 7, 13
<i>Freeland v. Marshall</i> , 249 W. Va. 151, 895 S.E.2d 6 (2023).....	6
<i>Glaze v. Grooms</i> , 478 S.E.2d 841 (S.C. 1996)	9
<i>Hasson v. City of Chester</i> , 67 W. Va. 278, 67 S.E. 731 (1910).....	12
<i>State ex rel. Holbert v. Robinson</i> , 134 W. Va. 524, 59 S.E.2d 884 (1950).....	14
<i>Iowa State Dep’t of Health v. Hertko</i> , 282 N.W.2d 744 (Iowa 1979)	9
<i>Lawson v. Cnty. Comm’n of Mercer Cnty.</i> , 199 W. Va. 77, 483 S.E.2d 77 (1996).....	15
<i>State ex rel. Marshall Cnty. Comm’n v. Carter</i> , 225 W. Va. 68, 689 S.E.2d 796 (2010).....	17
<i>Martinez v. Asplundh Tree Expert Co.</i> , 239 W. Va. 612, 803 S.E.2d 582 (2017).....	12

<i>McDougal v. McCammon</i> , 193 W. Va. 229, 455 S.E.2d 788 (1995).....	19
<i>Ray Klein, Inc. v. Preheim</i> , 35 P.3d 1059 (Or. Ct. App. 2001).....	9
<i>Ringel-Williams v. W. Va. Consol. Pub. Ret. Bd.</i> , 237 W. Va. 702, 790 S.E.2d 806 (2016).....	11
<i>Sims v. Miller</i> , 227 W. Va. 395, 709 S.E.2d 750 (2011).....	7, 13
<i>Smith v. State Workmen's Comp. Comm'r</i> , 159 W. Va. 108, 219 S.E.2d 361 (1975).....	13
<i>State v. David K.</i> , 238 W. Va. 33, 792 S.E.2d 44 (2016)	17
<i>State v. Derr</i> , 192 W. Va. 165, 451 S.E.2d 731 (1994).....	17
<i>State v. Dyer</i> , 177 W. Va. 567, 355 S.E.2d 356 (1987).....	16, 17
<i>State v. Farley</i> , 238 W. Va. 596, 797 S.E.2d 573 (2017).....	5, 6
<i>State v. Henning</i> , 238 W. Va. 193, 793 S.E.2d 843 (2016).....	14
<i>State v. Kerns</i> , 183 W. Va. 130, 394 S.E.2d 532 (1990).....	11, 12, 15
<i>State v. Maichle</i> , 249 W. Va. 326, 895 S.E.2d 181 (2023).....	14
<i>State v. Stuart</i> , 192 W. Va. 428, 452 S.E.2d 886 (1994).....	5
<i>Taylor-Hurley v. Mingo Cnty. Bd. Of Educ.</i> , 209 W. Va. 780, 551 S.E.2d 702 (2001).....	11
<i>Teter v. Old Colony Co.</i> , 190 W. Va. 711, S.E.2d 728, 741 (1994).....	18
<i>Willis v. State</i> , 302 Md. 363, 488 A.2d. 171 (1985)	10
<i>Young v. Waldrop</i> , 109 P.2d 59 (Mont. 1941).....	9

Statutes

West Virginia Code § 17C-5-2.....	6
West Virginia Code § 17C-5-6.....	6, 16
West Virginia Code § 17C-5-8.....	1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 19, 20

Other Authorities

<i>Within</i> , MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2012).....	8
United States Constitution.....	18
West Virginia Constitution.....	18
West Virginia Rules of Appellate Procedure 18	5
West Virginia Rules of Evidence Rule 104.....	19
West Virginia Rules of Evidence Rule 401	16, 17
West Virginia Rules of Evidence Rule 402.....	16, 17, 18

INTRODUCTION

Two timely blood samples showed that Petitioner Paul Anthony Conley's blood alcohol content was well over the .08% limit in West Virginia Code § 17C-5-8(b)(3). In his sole complaint on appeal, Petitioner challenges the circuit court's denial of his motion¹ to suppress the tests. The first sample was taken within two hours of the deadly crash. The second was taken a few hours later. But Petitioner pairs the fact that he was not actually arrested until much later with a strained reading of the relevant statute to assert that the relevant blood samples must be excluded. Petitioner is wrong. The circuit court's factual findings were not clearly erroneous, and the circuit court correctly interpreted the statute. Accordingly, Respondent requests this Court to affirm the circuit court's denial of the motion.

ASSIGNMENT OF ERROR

Petitioner Paul Anthony Conley alleges a single error in his appellate brief:

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?

Pet'r's Br. 1.

STATEMENT OF THE CASE

Petitioner Paul Anthony Conley chose to drink alcohol to such an extreme that he still registered a blood alcohol content (BAC) of .263% almost two hours after destroying the lives of

¹ Petitioner filed two identical Motions to Suppress the two separate blood samples taken at 1:55 a.m. and 6:00-7:00 a.m. on September 12, 2019. Since both motions involve the same asserted errors, Respondent will reference both motions as one "motion" for simplicity of argument unless otherwise noted.

two innocent people in a 12:05 a.m. vehicular accident on September 12, 2019. App. 4, 7, 69, 71, 185; Pet'r's Br. 1. At the time of the crash, Petitioner's BAC was more than three times over the presumptive limit for impairment contained in West Virginia Code § 17C-5-8(b)(3). App. 86-87, 93. As a result of his decisions and actions, Petitioner killed Beverly Duty and forever ruined the life of Brittany Duty, who, along with her mother-in-law, suffered the head-on collision. App. 69-72, 86-87, 247. There were no independent eyewitnesses to the crash. App. 24.

The post-crash scene was chaotic. Both vehicles caught on fire, and the responding law enforcement officer pulled occupants from the burning vehicles. App. 29, 69-70, 265, 269. The officer, who received a medal for bravery for his actions, prioritized saving Petitioner's life over placing him in handcuffs. App. 8, 16-17, 55, 69-70, 87, 89, 233. Still, even with the smell of burning cars and burning flesh, the first responders smelled alcohol on Petitioner and observed his slurred speech and combative behavior. App. 70. Further, Petitioner himself sustained such severe injuries, including paralysis, that he needed to be life-flighted to a trauma hospital. But despite the efforts of the first responders, Petitioner could not be flown out due to his combative behavior. App. 7-8, 17, 70.

Instead, Petitioner was restrained and transported by ambulance to Logan Regional Medical Center for acute treatment. App. 4, 7-8, 70. The hospital drew and tested Petitioner's blood at 1:55 a.m., which showed his BAC was .263%. App. 4, 7-8, 70-71, 103, 185. The blood was drawn per the hospital's trauma protocol and not at the request of the investigating law enforcement officers. App. 4, 6-7, 71. The West Virginia State Police obtained a search warrant to obtain the BAC results from Logan Regional Medical Center. App. 4, 6-7, 137. Once stabilized, Petitioner was life-flighted from Logan Regional Medical Center to Cabell Huntington Hospital for additional treatment. App. 7-8, 70-71.

Upon arrival at Cabell Huntington Hospital, at the direction of law enforcement, another blood sample was taken between 6:00-7:00 a.m. App. 12-13, 70-71. The parties stipulated that the blood sample taken from Petitioner at Cabell Huntington Hospital was taken more than two hours after the September 12, 2019, accident. App. 16, 240; Pet'r's Br. 1. That blood was held in a secure storage facility at the hospital and was released to law enforcement upon execution of a search warrant. App. 15, 270-71. That second blood sample was taken to the West Virginia State Police laboratory and showed Petitioner's BAC was still .131% approximately seven hours after the accident. App. 20, 71; Pet'r's Br. 1. Petitioner was not in custody or under arrest at the time either blood sample was taken. App. 7, 12-13, 19-20, 240.

Although an arrest would typically occur swiftly, law enforcement did not immediately arrest Petitioner because of his severe injuries and his need for treatment at different hospitals. App. 7-9, 16-18. The Prosecuting Attorney also wanted confirmation from the medical examiner that Beverly Duty's death was a result of the traumatic injuries suffered in the crash as opposed to the ensuing vehicle fire following the crash. App. 71. An accident reconstruction conducted by law enforcement required the execution of search warrants to obtain the event data recorder (i.e. "command module" or "black box") from the two vehicles involved in the crash. App. 21-22, 30-31, 264-68. Consequently, following the September 12, 2019, crash, an arrest warrant was not issued until October 11, 2019, and Petitioner was eventually arrested on November 8, 2019. App. 4, 9, 99-107. Petitioner was ultimately indicted on one count of driving while impaired causing death and one count of driving while impaired causing serious bodily injury. App. 128-29.

Prior to trial, Petitioner filed a Motion to Suppress both BAC results, based upon West Virginia Code §§ 17C-5-8(a) and (g) (2013). App. 154-57, 178-79. Petitioner asserted that both blood samples and BAC results should be excluded under Subsection (g) because both samples

were taken more than two hours before his subsequent arrest although within hours of the crash. Petitioner did not challenge any of the other predicates contained in the statute. The circuit court denied Petitioner's motion. App. 239-42. Accordingly, the circuit court ruled that the first blood sample taken at 1:55 a.m. showing a BAC of .263% was admissible under West Virginia Code §§ 17C-5-8(a) and (b)(3) if the State established compliance with the other predicates for admission under the statute. App. 10-11, 240. Regarding the second blood sample taken between 6:00-7:00 a.m., the court ruled that the BAC of .131% was also admissible and held the time lapse between the time of the crash and the blood sample goes to the weight of the evidence and not its admissibility. App. 20, 241.

Thereafter, Petitioner conditionally pled guilty to both charges, reserving his right to appeal the circuit court's ruling on the suppression motions. App. 72-73, 186-97, 215-20. In the Plea Agreement, Petitioner acknowledged he had been drinking on the day of the accident and crashed into the victims' vehicle. App. 197. According to the Presentence Investigative Report, however, Petitioner refused to accept responsibility for his actions. App. 87. The circuit court sentenced Petitioner to three to fifteen years of incarceration on the count of driving under the influence causing the death of Beverly Duty and two to ten years of incarceration on the count of driving under the influence causing serious bodily injury to Brittany Duty, with the sentences to run consecutively. App. 93-94, 225-28. Petitioner filed a Motion to Reconsider the Sentence, which was denied. App. 233-34, 247-48. Petitioner then filed a motion to resentence Petitioner for appeal purposes, which was granted. App. 253-54, 259-60.

On appeal, Petitioner asserts that the circuit court erred in denying his motion to suppress the BAC test results because West Virginia Code §§ 17C-5-8(a) and (g) requires that both of his samples were taken more than two hours before his subsequent arrest. Petitioner, however, is

incorrect. The circuit court correctly interpreted West Virginia Code §§ 17C-5-8(a) and (g), and the denial of Petitioner's motions to suppress should be affirmed.

SUMMARY OF ARGUMENT

West Virginia Code § 17C-5-8 provides a statutory presumption that a driver's BAC of .08% or more *up to two hours after* the vehicular crash or the driver's arrest is prima facie evidence of such blood alcohol content at the time of driving. Petitioner proposes an interpretation of the statute that results in an absurdity and defeats the purpose of the statute. Petitioner's proposed statutory interpretation should also be rejected because it usurps the constitutional authority of the Court and circuit courts to determine the admissibility of the blood alcohol content results using the West Virginia Rules of Evidence. The circuit court's ruling squares with the purpose of the statute and the inherent constitutional authority of the court; thus, Petitioner's convictions should be affirmed.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary, and this case is suitable for disposition by memorandum decisions because the record is fully developed, and the arguments of both parties are adequately presented in both briefs. W. Va. R. App. P. 18(a)(3) and (4).

STANDARD OF REVIEW

"When considering a circuit court's ruling on a motion to suppress, we utilize the following standard of review: 'On appeal, legal conclusions made with regard to suppression determinations are reviewed *de novo*.'" *State v. Farley*, 238 W. Va. 596, 606, 797 S.E.2d 573, 583 (2017) (quoting syl. pt. 3, *State v. Stuart*, 192 W. Va. 428, 452 S.E.2d 886 (1994)). Factual determinations upon which these legal conclusions are based are reviewed under the clearly

erroneous standard and factual findings based, at least in part, on determinations of witness credibility are accorded great deference. *Id.*

“Interpreting a statute . . . presents a purely legal question subject to *de novo* review.” Syl. pt. 2, *Freeland v. Marshall*, 249 W. Va. 151, 895 S.E.2d 6 (2023) (citing syl. pt. 1, *Appalachian Power Co. v. State Tax Dep’t*, 195 W. Va. 573, 466 S.E.2d 424 (1995)).

ARGUMENT

I. The circuit court correctly rejected Petitioner’s interpretation of West Virginia Code §§ 17C-5-8(a) and (g), which conflicts with the Absurd Results Doctrine and other tools of statutory construction.

Petitioner asserts that West Virginia Code § 17C-5-8(g) limits the admissibility of BAC test results to blood draws that occur within two hours of arrest. He is wrong. This code section does not create a limitation on admissibility, but rather a presumption of admissibility.

West Virginia Code §§ 17C-5-2(b) and (c) prohibit driving while in an impaired state. “Impaired state” means a person has an alcohol concentration in his blood of eight hundredths of one percent (.08%) or more, by weight. W. Va. Code § 17C-5-2(a)(1)(E). The West Virginia Legislature enacted West Virginia Code § 17C-5-8 to address the nearly impossible burden of proving charges of drunk driving pursuant to West Virginia Code § 17C-5-6. Section 6 provides that blood may be withdrawn from a person suspected of driving while impaired to determine the alcohol concentration in their blood. W. Va. Code § 17C-5-6. While the blood draw itself is straight forward, the analysis is not. Once the blood is drawn, a lab (and/or expert) performs a retrograde extrapolation evaluation to the blood sample to determine the blood alcohol level of a driver at the time of the accident. “Retrograde extrapolation represents the technique through which experts estimate alcohol concentration at some earlier time based on the test results at some later time.” *Dale v. Veltri*, 230 W. Va. 598, 601 n.4, 741 S.E.2d 823, 826 n.4 (2013) (citation

omitted). This evaluation requires a complex scientific investigation of several factors unique to each individual, such as the time and amount of alcohol consumption and the rate of alcohol absorption specific to the individual. This Court has recognized that the complexity of this evaluation could place an impossible burden on law enforcement in proving cases of drunk driving. *Id.*

Recognizing the difficult burden that would be imposed by requiring the State to pinpoint a suspect's precise BAC at the time of an accident, the West Virginia Legislature enacted West Virginia Code § 17C-5-8. This Code section provides that certain "evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged" is admissible in a drunk driving prosecution. W. Va. Code § 17C-5-8(a). The section then creates a statutory presumption—found in West Virginia Code § 17C-5-8(b)—"that a BAC of .08% or more *up to two hours after* an arrest or the acts alleged is prima facie evidence of such BAC at the time of driving." *Veltri*, 230 W. Va. at 601, 741 S.E.2d at 826 (emphasis in original); *see also Sims v. Miller*, 227 W. Va. 395, 709 S.E.2d 750 (2011) (allowing the admission of evidence of a chemical analysis performed on a blood specimen that was collected within two hours of either the acts alleged or the time of the arrest). By focusing on the BAC at the time of the blood draw, the statute eliminates the need for a full retrograde analysis.

In 2013, the Legislature amended and reenacted West Virginia Code § 17C-5-8. The clarifying intent was to continue assisting with the enforcement of laws prohibiting the operation of a motor vehicle while under the influence of alcohol. H.B. 2513, 2013 Leg., Reg. Sess. (W. Va. 2013). The amendment involved, among other things, the inclusion of specific controlled substances and drugs to be included in the blood test procedures, requiring the Bureau of Public Health to review current blood testing methods and standards, and eliminating the urine test as an

available secondary chemical test. *Id.* The amendment did not alter or affect the statutory presumption of impairment contained in Subsections (a) and (b) regarding evidence of the amount of alcohol in a person's blood at the time of the arrest or of the acts alleged. *Id.* The amendment did, however, add Subsection (g), which provides that a blood sample 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. *Id.* This addition of Subsection (g) omitted any reference to the time of the acts alleged, which created an ambiguity in circumstances—such as the present case—in which the blood sample was taken within two hours of the acts alleged (i.e. vehicle crash) but the defendant was not arrested until much later. In particular, a test taken two hours after *arrest* in those circumstances would be essentially useless—the test would always show a BAC less than the statutory threshold.

A. Strictly construing the plain text of West Virginia Code § 17C-5-8, both blood samples were taken within the period required by the statute.

Petitioner asserts that the statutory purpose expressed in Subsections (a) and (b)—that is, to roughly approximate the results of a full retrograde analysis—can be negated simply because the arrest of Petitioner referenced in Subsection (g) was not effectuated within the same two-hour period following the acts alleged, regardless of the reasons. Indeed, Petitioner insists that the statute is “functionally a direction to police to arrest suspects shortly after auto accidents if they wish for blood draw results to be admissible.” Pet’r’s Br. 8. But Petitioner focuses on the wrong words in the statute.

Here, Subsection (g) provides the sample must be taken “within two hours from the time of the person’s arrest.” A literal interpretation of the plain text of Subsection (g) supports the admissibility of both BAC results. The term “within” in Subsection (g) is a function word to indicate enclosure or containment. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed.

2012). The term is used to indicate situation or circumstance in the limit or compass of. *Id.* In other words, the term “within” means before the end of a designated period of time. *See, e.g., Barco v. Sch. Bd. of Pinellas Cnty.*, 975 So. 2d 1116, 1124 (Fla. 2008) (construing “within” to be synonymous with “not later than”); *Abbott v. Potter*, 604 N.E.2d 804, 806 (Ohio Ct. App. 1992) (“The word ‘within,’ however, often means ‘no later than’ especially when it is used in conjunction with time periods.”); *Ray Klein, Inc. v. Preheim*, 35 P.3d 1059, 1060 (Or. Ct. App. 2001) (same); *Glaze v. Grooms*, 478 S.E.2d 841, 844 (S.C. 1996) (“When used relative to time ‘within’ means ‘any time before; at or before; at the end of; before the expiration of; not beyond; not exceeding; not later than.’” (citation omitted)); *Iowa State Dep’t of Health v. Hertko*, 282 N.W.2d 744, 751 (Iowa 1979) (“‘[W]ithin’ frequently means ‘not beyond, not later than, any time before, before the expiration of.’ In this sense ‘within’ fixes the end but not the beginning of the period of time.” (citation omitted)); *Young v. Waldrop*, 109 P.2d 59, 60 (Mont. 1941) (“‘[W]ithin’ means ‘not beyond’ or ‘not later than;’ ... it includes only the final limit and not the starting point.” (citations omitted)). In other words, the statute’s use of the word “within” does not define “a kind of window of opportunity like a space shuttle shot,” such that the blood draw may only be taken “during that time.” *Abbott*, 604 N.E.2d at 806.

Under that definition, both blood samples were “within” the statutory period because both were taken on September 12, 2019, well before and *within* two hours of the triggering statutory event, which was Petitioner’s subsequent arrest on November 8, 2019. Consequently, the circuit court’s decision to admit both BAC samples was consistent with the plain text of Subsection (g) and should be affirmed.

B. Petitioner's interpretation of West Virginia Code § 17C-5-8 leads to an absurd result which must be rejected.

Looking beyond the plain statutory text and definition of the term “within”, Petitioner’s statutory interpretation leads to an absurd result. The case at bar is a prime example of the absurdity, as Petitioner’s rule would have essentially required law enforcement to prioritize arresting Petitioner over saving the lives of victims and Petitioner himself. It would also require law enforcement to decide who or what caused the crash, with little or no time to investigate, all so that the narrow time window could be met. In a similar situation, the Maryland Court of Appeals held common sense dictates that upon arriving at an accident scene, the law enforcement officer’s paramount responsibility is to render any necessary emergency medical treatment and the officer’s investigatory responsibilities are subordinated to the more pressing responsibility of rendering emergency medical treatment and taking steps to secure the safety of both the victims and the public. *Willis v. State*, 302 Md. 363, 378, 488 A.2d. 171, 179 (1985). Only after the officer is relieved of these emergency medical and safety responsibilities may the officer pursue his investigation so long as it does not interfere with the treatment of the injured or jeopardize the safety or welfare of those involved. *Id* at 379, 488 A.2d at 180. Thus, the *Willis* Court held that that it was not until all necessary emergency treatment had been rendered that the officer could first “apprehend” defendant under Maryland’s comparable presumption of impairment statute, which triggered the two-hour window for obtaining admissible BAC results. The *Willis* Court noted any other interpretation of the statute would force law enforcement to choose between ensuring the safety of the accident victims and the prosecution of the accused. *Id*.

The West Virginia Legislature intended to provide a presumption of prima facie evidence of impaired driving, not render it practically impossible to prove charges of drunk driving. “Where a particular construction of a statute would result in an absurdity, some other reasonable

construction, which will not produce such absurdity, will be made.” Syl. pt. 3, *State v. Kerns*, 183 W. Va. 130, 394 S.E.2d 532 (1990) (citation omitted). Petitioner’s statutory interpretation results in an absurdity requiring some other reasonable construction, which will not produce such absurdity, be made. *Christopher J. v. Ames*, 241 W. Va. 822, 830, 828 S.E.2d 884, 892 (2019). “[T]he absurd results doctrine merely permits a court to favor an otherwise reasonable construction of the statutory text over a more literal interpretation where the latter would produce a result demonstrably at odds with any conceivable legislative purpose.” *Ringel-Williams v. W. Va. Consol. Pub. Ret. Bd.*, 237 W. Va. 702, 705 n.10, 790 S.E.2d 806, 809 n.10 (2016) (emphasis omitted) (quoting *Taylor-Hurley v. Mingo Cnty. Bd. Of Educ.*, 209 W. Va. 780, 788-89, 551 S.E.2d 702, 710-11 (2001)).

The logical extension of Petitioner’s statutory interpretation is extreme and completely at odds with any legislative purpose. For example, assume Petitioner had consumed a large amount of alcohol immediately prior to his ultimate November 8, 2019, arrest, which resulted in a BAC over the statutory limit. Under Petitioner’s view, that BAC blood test would be admissible into evidence to show his intoxication at the time of the alleged act, even though the test was taken two months after the September 12, 2019, crash. The absurd result doctrine prevents such a result from occurring. Petitioner does not offer any conceivable legislative purpose that would be served by his preferred gloss on the statute. Given that Petitioner’s reading instead defeats the Legislature’s intent to provide a rough substitute for retrograde analysis, the absurd result doctrine firmly applies here.

Strictly construing the literal terms of Subsection (g) as requested by Petitioner would thwart the purpose of the statute and lead to an absurd result. Petitioner’s statutory interpretation results in an absurdity requiring some other reasonable construction, which will not produce such

absurdity, be made. *Christopher J.*, 241 W. Va. at 830, 828 S.E.2d at 892. This Court should reject Petitioner's request under the absurd results doctrine and affirm the circuit's court's ruling that the BAC of .263% resulting from the blood sample taken within two hours of the crash is admissible as prima facie evidence that Petitioner was under the influence of alcohol at the time of the crash which killed one person and severely injured another.

C. West Virginia Code § 17C-5-8 is a remedial statute which the circuit court liberally construed to accomplish the purpose for which it was enacted.

The statute in question, Section 17C-5-8, is also a remedial statute. This Court has stated, “[s]tatutes which do not create new rights or take away vested ones are deemed to be remedial....” *Martinez v. Asplundh Tree Expert Co.*, 239 W. Va. 612, 617, 803 S.E.2d 582, 587 (2017) (citation omitted). “Generally, a remedial statute has been defined as ‘a statute that relates to practice, procedure, remedies and does not affect substantive or vested rights.’” *Id.* (citation omitted) “A remedial statute improves or facilitates remedies already existing for the enforcement or rights of redress of wrongs, as opposed to an enactment extinguishing a cause of action or barring a party from prosecuting a cause of action that affects substantive rights and, therefore, is not remedial.” *Id.* at 618, 803 S.E.2d at 588 (citation omitted). West Virginia Code § 17C-5-8 does not affect a vested or substantive right but eliminates the reliance upon a retrograde extrapolation evaluation to establish a driver's impairment at trial. The statute simply provides a presumption of impairment under specified conditions and, therefore, is a remedial statute.

A remedial statute, such as Section 17C-5-8, should be construed liberally to accomplish the purpose for which it was enacted. *Kerns*, 183 W. Va. at 134, 394 S.E.2d at 536. “That which is plainly within the spirit, meaning and purpose of a remedial statute, though not therein expressed in terms, is as much a part of it as if it were so expressed.” *Id.* (citing syl. pt. 1, *Hasson v. City of Chester*, 67 W. Va. 278, 67 S.E. 731 (1910)). “Some of the rules of statutory construction that we

have utilized are: Effect should be given to the spirit, purpose and intent of the lawmakers without limiting the interpretation in such a manner as to defeat the underlying purpose of the statute” Syl. pt. 6, *State ex rel Cohen v. Manchin*, 175 W. Va. 525, 336 S.E.2d 171 (1984). To that end, the Court has instructed “[t]hat which is necessarily implied in a statute, or must be included in it in order to make the terms actually used have effect, according to their nature and ordinary meaning, is as much a part of it as if it had been declared in express terms.” Syl. pt. 3, *Christopher J.*, 241 W. Va. 822, 828 S.E.2d 884 (citing syl. pt 4, *Smith v. State Workmen’s Comp. Comm’r*, 159 W. Va. 108, 219 S.E.2d 361 (1975)).

The West Virginia Legislature enacted West Virginia Code § 17C-5-8 to eliminate the difficult burden of pinpointing a suspect’s precise BAC at the time of a crash. This Code section provides that certain “evidence of the amount of alcohol in the person’s blood at the time of the arrest or of the acts alleged” is admissible in a drunk driving prosecution. W. Va. Code § 17C-5-8(a). The section then creates a statutory presumption—found in West Virginia Code § 17C-5-8(b)—“that a BAC of .08% or more *up to two hours after* an arrest or the acts alleged is prima facie evidence of such BAC at the time of driving.” *Veltri*, 230 W. Va. at 601, 741 S.E.2d at 826 (emphasis in original); *see also Sims*, 227 W. Va. 395, 709 S.E.2d 750 (allowing the admission of evidence of a chemical analysis performed on a blood specimen that was collected within two hours of either the acts alleged or the time of the arrest). That plain intent, spirit and purpose of Subsections (a) and (b) continues throughout the statute notwithstanding Subsection (g). Here, adopting Petitioner’s interpretation of Subsection (g) ignores the expressed intent of Subsections (a) and (b) by completely prohibiting the relevant BAC of a driver which was taken within two hours of the acts alleged. To avoid such a contrary interpretation, Subsection (g) should be liberally interpreted to necessarily imply that a blood sample taken within two hours of the acts

alleged, as referenced in Subsection (a), complies with the spirit, purpose and intent of the lawmakers expressed in Subsections (a) and (b), regardless of the time of any subsequent arrest of the driver. To hold otherwise would simply negate the purpose for which the statute was enacted.

D. The circuit court correctly interpreted West Virginia Code § 17C-5-8 to implement the actual intent of the statute.

Even aside from the statute's remedial nature, the Court must be careful to implement the Legislature's actual intent here. "A statute is enacted as a whole with a general purpose and intent, and each part should be considered in connection with every other part to produce a harmonious whole." *Christopher J.*, 241 W. Va. at 830, 828 S.E.2d at 892 (citing syl. pt 1, *State ex rel. Holbert v. Robinson*, 134 W. Va. 524, 59 S.E.2d 884 (1950)). This Court has held, "The general intention is the key to the whole and the interpretation of the whole controls the interpretation of its parts." *Id.* When we endeavor to give meaning to a legislative enactment, our main goal is to honor the intent of the Legislature. *State v. Maichle*, 249 W. Va. 326, 895 S.E.2d 181, 187 (2023). "[I]t is the duty of a court to construe a statute according to its true intent, and give to it such construction as will uphold the law and further justice." *State v. Henning*, 238 W. Va. 193, 198, 793 S.E.2d 843, 848 (2016).

The prior 2004 version of West Virginia Code § 17C-5-8 provided the same statutory presumption of impairment as contained in current Subsections (a) and (b) regarding evidence of the amount of alcohol in a person's blood at the time of the arrest or of the acts alleged. The 2013 amendment did not alter or affect the statutory presumption of impairment.

A statute should be so read and applied as to make it accord with the spirit, purposes and objects of the general system of law of which it is intended to form a part; **it being presumed that the legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, whether constitutional, statutory or common, and intended the statute to harmonize completely with the same** and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith.

Lawson v. Cnty. Comm'n of Mercer Cnty., 199 W. Va. 77, 81, 483 S.E.2d 77, 81 (1996) (emphasis added). Petitioner's statutory interpretation completely negates BAC results taken within two hours of the acts alleged, which disregards and contradicts the history and plain spirit, purpose and object of both the prior and present statute and should be rejected.

Again: Petitioner's reading flatly contradicts the statute's purpose and intent. To give effect to the intent and purpose of Subsections (a) and (b)(3), it is necessary to interpret them consistent with the spirit and purpose of the impairment statutes and include in Subsection (g) the opportunity for the blood sample to be taken within two hours of the acts alleged and not limit admissibility under the statute to only those samples taken within two hours of the actual, subsequent arrest of Petitioner. The acts alleged here occurred at 12:05 a.m. on September 12, 2019, and that is the relevant time frame for the admissibility of the blood alcohol content of Petitioner's blood samples under Section 8. Petitioner was arrested on November 8, 2019, and his blood alcohol level at that time is irrelevant in regards to his level of impairment two months earlier on September 12, 2019.

Here, pursuant to the Court's direction in *Christopher J.*, the circuit court construed Subsections (a), (e) and (g) of West Virginia Code § 17C-5-8 together to produce a harmonious whole which accomplished the purpose for which the statute was enacted. *Kerns*, 183 W. Va. at 134, 394 S.E.2d at 536; *Christopher J.*, 241 W. Va. at 830, 828 S.E.2d at 892; App. 239-42. To be admissible, the circuit court required the State to prove that the first blood sample taken at 1:55 a.m. otherwise complied with the other requirements of Section 17C-5-8, including that the laboratory performing the blood alcohol analysis was a qualified laboratory and the analysis complied with the Bureau of Public Health legislative rules referred to in Subsection (e). App. 240. The circuit court also required the State to prove that the blood was drawn by a doctor of medicine

or osteopathy, registered nurse or a trained medical technician consistent with Section 17C-5-6. App. 21. The circuit court correctly ruled that “it does not make sense under the law to put investigating officers in a position to make an arrest in order to preserve a time requirement prior to knowing the facts involved in the cause(s) of a motor vehicle accident.” App. 241. This is especially true regarding the first blood sample taken at Logan Regional Medical Center at 1:55 a.m. which was undisputedly taken within two hours of the crash. App. 240. At that moment, efforts were rightly focused on saving Petitioner’s life and it would not make sense for law enforcement to intervene just to effectuate an arrest for evidentiary admissibility purposes. App. 8, 16-17, 55, 69-70, 89, 233, 240-41. The circuit court reasonably construed the statute, harmonizing its provisions, and correctly applied it to Petitioner’s motions to suppress the blood alcohol test results. Accordingly, the circuit court’s decision squares with the rules of statutory construct and its ruling should be affirmed in regard to the first blood sample, if not also to the second sample.

E. The second blood sample result is also admissible under Rules 401 and 402 of the West Virginia Rules of Evidence.

Notably, the second blood sample was drawn between 6:00 a.m. and 7:00 a.m. on the day of the crash. Even though this blood draw occurred after the two-hour statutory window, it is still admissible evidence. Notwithstanding West Virginia Code § 17C-5-8(a), the Rules of Evidence still govern admissibility and will be discussed further in the following section. Rules 401 and 402 establish that relevant evidence, *i.e.*, evidence that tends to make a fact of consequence more or less probable than it would be without the evidence, is admissible. W. Va. R. Evid. 401 and 402. Petitioner’s BAC seven hours after the fiery crash that killed one and paralyzed Petitioner is still admissible to show that Petitioner had consumed a substantial amount of alcohol prior to the crash. In *State v. Dyer*, 177 W. Va. 567, 573, 355 S.E.2d 356, 362 (1987), this Court held it was not reversible error to admit such evidence when the evidence was not used at trial in conjunction with

the statutory presumptions regarding intoxication or as direct evidence that the driver was under the influence of alcohol at the time of the alleged offense. This Court held it was properly admitted when “the evidence was relied upon at trial to show that the appellant had consumed alcoholic beverages in substantial amount on the day in question and was, therefore, relevant evidence of a probative value.” *Id.* Here, the second blood draw between 6:00-7:00 a.m., if not admissible under West Virginia Code § 17C-5-8, is still admissible pursuant to Rules 401 and 402 to show that seven hours after the crash Petitioner still had a BAC of .131%. Like *Dyer*, this evidence is relevant to show that Petitioner had consumed alcoholic beverages in a substantial amount prior to the crash and it is, therefore, relevant evidence of a probative fact. *Id.* Consequently, the second BAC of .131% is admissible even if it is not used as prima facie evidence of intoxication under West Virginia Code § 17C-5-8(a) and (b). *Id.* The circuit court correctly held that the second BAC result was admissible and the lapse of time between the accident and the blood sample goes to the weight of the evidence and not its admissibility. Accordingly, the circuit court’s denial of Petitioner’s motion to suppress the second blood draw and BAC result should be affirmed.

II. Petitioner’s interpretation of West Virginia Code §§ 17C-5-8(a) and (g) unconstitutionally infringes upon the authority of the courts and was correctly rejected by the circuit court.

Petitioner’s construction of the statute violates the separation of powers between the West Virginia Legislature and Judiciary. This Court has held that the West Virginia Rules of Evidence remain the paramount authority in determining the admissibility of evidence in circuit courts. *State ex rel. Marshall Cnty. Comm’n v. Carter*, 225 W. Va. 68, 76, 689 S.E.2d 796, 804 (2010) (citing syl. pt. 7, *State v. Derr*, 192 W. Va. 165, 451 S.E.2d 731 (1994)). This Court has found that “judicial officers applying the Rules of Evidence remain the final arbiters of the admissibility of evidence in a legal proceeding, not the Legislature.” *Id.* at 76-77, 689 S.E.2d at 804-05; *see also, e.g., State*

v. David K., 238 W. Va. 33, 50, 792 S.E.2d 44, 61 (2016) (Workman, J., concurring in part, arguing that a statute on expert testimony was unconstitutional where it conflicted with Rule 702 of the West Virginia Rules of Evidence).

Further, Rule 402 of the West Virginia Rules of Evidence says that *all* relevant evidence is admissible unless the federal constitution, state constitution, or separate *judicial* rule provides otherwise. W. Va. R. Evid. 402 (emphasis added). This Court has been granted under Section 2 of Article VIII of the West Virginia Constitution rule-making authority in judicial proceedings, which includes the power to promulgate rules for all cases and proceedings, civil and criminal. *Teter v. Old Colony Co.*, 190 W. Va. 711, 724, 441, S.E.2d 728, 741 (1994). “Under article eight, section three of our Constitution, the Supreme Court of Appeals shall have the power to promulgate rules for all of the courts of the State related to process, practice, and procedure, which shall have the force and effect of law.” Syl. pt. 1, *Bennett v. Warner*, 179 W. Va. 742, 743, 372 S.E.2d 920, 921 (1988). “Under Article VIII, Section 8 [and Section 3] of the Constitution of West Virginia (commonly known as the Judicial Reorganization Amendment), administrative rules promulgated by the Supreme Court of Appeals of West Virginia have the force and effect of statutory law and operate to supersede any law that is in conflict with them.” Syl. pt. 2, *id.* (citation omitted).

Here, Petitioner asserts that West Virginia Code §§ 17C-5-8(a) and (g) controls the admissibility of the two blood alcohol content tests performed on samples taken from Petitioner within hours of the September 12, 2019, crash, without even discussing evidentiary rules. This assertion is contrary to our state Constitution and the West Virginia Rules of Evidence and should be rejected because it improperly places the Legislature’s determination of admissibility over this Court’s determination of what qualifies as admissible evidence. West Virginia Code §§ 17C-5-

8(a) and (g) were intended to be a method to assist the courts and litigants by providing a way to avoid the burdensome retrograde extrapolation evaluations applied to blood samples to determine the blood alcohol level of a driver at the time of a crash. The statute should not be interpreted in the manner proposed by Petitioner that usurps the constitutional authority of this Court or the circuit courts regarding the admissibility of such evidence.

This Court affords much respect and deference to circuit courts in determining the admissibility of evidence, noting that “[t]he West Virginia Rules of Evidence and the West Virginia Rules of Civil Procedure allocate significant discretion to the trial court in making evidentiary and procedural rulings.” Syl. pt. 1, *McDougal v. McCammon*, 193 W. Va. 229, 455 S.E.2d 788 (1995). Absent an abuse of discretion, this Court will not overturn a circuit court’s decision in this regard. *Id.* Moreover, Rule 104 of the West Virginia Rules of Evidence provides that the circuit court must decide any preliminary question about whether evidence is admissible. While the Legislature can provide guidance or assistance through statutory presumptions, the arbiter of the admissibility of evidence is the circuit court, as directed by the Rules of Evidence.

Here, the circuit court correctly read West Virginia Code §§ 17C-5-8(a), (b) and (g) together and held that Petitioner’s interpretation of the statute did not make sense and could put investigating law enforcement officers in a position of having to make an arrest just to coordinate with the timing of a blood sample before determining probable cause for the arrest. App. 10-11, 239-42. The circuit court noted the nonsensical nature of this position. App. 241. To that end, the circuit court ruled that the first blood sample taken at 1:55 a.m. showing a BAC of .263% was admissible under West Virginia Code §§ 17C-5-8(a) and (b)(3) if the State established compliance with the other predicates for admission under the statute. App. 10-11, 240. Regarding the second blood sample taken between 6:00-7:00 a.m., the court ruled that the BAC of .131% was also

admissible and held the time lapse between the time of the crash and the blood sample goes to the weight of the evidence and not its admissibility. App. 20, 241.

The circuit court correctly interpreted the statute because West Virginia Code §§ 17C-5-8(a) and (g) allow for a presumption of impairment for drunk drivers having a BAC of .08% or more. The statute is not otherwise a limiting statute regarding the admissibility of BAC evidence, and, under the Rules of Evidence, the evidence was admissible. Therefore, Petitioner's motion to suppress evidence of his BAC of .263% and subsequent .131% was properly denied by the circuit court under the statute. This Court should afford respect and deference to circuit court's rulings and affirm the rulings.

CONCLUSION

For the forgoing reasons, the State respectfully requests that this Court affirm the circuit court's denial of Petitioner's motions to suppress and Petitioner's convictions.

Respectfully submitted,

STATE OF WEST VIRGINIA,
By Counsel

PATRICK MORRISEY
ATTORNEY GENERAL



Mark L. Garren (WV State Bar No. 1341)
Assistant Attorney General
Office of the Attorney General – Appellate Division
1900 Kanawha Blvd. East
State Capitol
Building 6, Suite 406
Charleston, WV 25305
Telephone: (304) 558-5830
Fax: (304) 558-5833
Email: MGarren@wvago.gov

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 24-81

STATE OF WEST VIRGINIA,

Respondent,

v.

PAUL ANTHONY CONLEY,

Petitioner,

CERTIFICATE OF SERVICE

I, Mark L. Garren, counsel for Respondent, hereby certify that on July 10, 2024, I served the foregoing “*Respondent’s Brief*” on the below-listed individual *via* the West Virginia Supreme Court of Appeals E-filing System, File & ServeXpress, pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure:

Gary A. Collias, Esq.
Appellate Advocacy Division
Public Defender Services
One Players Club Drive, Suite 301
Charleston, WV 25311
gary.a.collias@wv.gov



Mark L. Garren (WV State Bar No. 1341)
Assistant Attorney General