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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 24-81 – *State of West Virginia v. Paul Anthony Conley*

BUNN, Chief Justice, concurring:

I agree with the majority's conclusion that the circuit court correctly denied Petitioner Paul Anthony Conley's motion to suppress two blood alcohol concentration ("BAC") test results and that his convictions and sentence should be affirmed. I write separately, however, because I disagree with the majority's reasoning that the plain language of the statute, West Virginia Code § 17C-5-8 (2013)[1], allows for the admission of the first BAC result from Logan Regional Medical Center ("Logan result"). Rather, I would find that, in this case, the plain language of the statute conflicts with the West Virginia Rules of Evidence because it impermissibly excludes relevant evidence, namely, the Logan result. Thus, the circuit court did not abuse its discretion in denying the motion.[2] Therefore, I concur.

A brief recitation of the pertinent facts is necessary for the analysis. On September 12, 2019, shortly after midnight, Mr. Conley drove a truck across the center line

[1] The Legislature has recently amended this statute; however, we apply the version in effect at the time of the incident.

[2] I acknowledge that the State did not raise this argument below but did so on appeal. This Court may affirm the decision for any just reason appearing from the record. Syl. Pt. 4, *N.C. v. W.R.C.*, 173 W. Va. 434, 317 S.E.2d 793 (1984) ("'This Court may, on appeal, affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment.' Syl. Pt. 3, *Barnett v. Wolfolk*, 149 W. Va. 246, 140 S.E.2d 466 (1965).").

of a county road in Logan County, West Virgina. His truck collided, head-on, with another vehicle. The driver of the other vehicle was severely injured and had to be transported to a hospital, while the collision killed another passenger in the other vehicle. Mr. Conley was also seriously injured. Within two hours after the incident, medical personnel at Logan Regional Medical Center drew a sample of Mr. Conley's blood. A chemical test of this blood sample determined that Mr. Conley's BAC was .263 percent, by weight, three times above the legal limit. Mr. Conley was later transported to Cabell Huntington Hospital. Approximately six to seven hours following the incident, medical personnel at Cabell Huntington Hospital took a second sample of Mr. Conley's blood pursuant to a search warrant. A chemical test of this blood sample found a BAC of .131 percent, by weight ("CHH result"), still above the legal limit. Law enforcement arrested Mr. Conley on November 8, 2019. Subsequently, a grand jury indicted Mr. Conley for one count of driving a vehicle while in an impaired state which proximately caused death[3] and one count of driving a vehicle while in an impaired state which proximately caused serious bodily injury.[4]

Mr. Conley moved to suppress the results of both BAC tests. Relying on West Virginia Code § 17C-5-8, Mr. Conley argued that pursuant to the statute's plain language, results of chemical blood tests may only be admitted into evidence at a trial if

[3] *See* W. Va. Code § 17C-5-2(b) (2019).

[4] *See* W. Va. Code § 17C-5-2(c) (2019).

the blood samples were taken within two hours of the driver's *arrest*, and he was not arrested until almost two months after the blood draws. The circuit court denied his motion. Mr. Conley then entered into a conditional plea agreement preserving his right to appeal the circuit court's refusal to suppress the evidence.

As a general matter, and as recognized by the majority "this Court is responsible for determining the admissibility of evidence," including setting the rules for the admission of evidence. Maj. Op. at 13. As further acknowledged by the majority, "[t]he West Virginia Constitution grants our Court the authority to make rules regarding the admission of evidence in trials held in the courts of this State, and we have exercised that authority through our promulgation of the West Virginia Rules of Evidence." *Id*.[5] Consequently, this Court has held that "[t]he West Virginia Rules of Evidence remain the paramount authority in determining the admissibility of evidence in circuit courts. These rules constitute more than a mere refinement of common law evidentiary rules, they are a comprehensive reformulation of them." Syl. Pt. 7, *State v. Derr*, 192 W. Va. 165, 451 S.E.2d 731 (1994). Significantly, "[t]his means that judicial officers applying the Rules of

[5] *See* W. Va. Const. art. 8, § 3 (stating that pursuant to the Rule-Making Clause of the West Virginia Constitution, this Court "shall have power to promulgate rules for all cases and proceedings, civil and criminal, for all of the courts of the State relating to writs, warrants, process practice and procedure, which shall have the force and effect of law."); Syl. Pt. 1, *Bennett v. Warner*, 179 W. Va. 742, 372 S.E.2d 920 (1988) ("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.").

Evidence remain the final arbiters of the admissibility of evidence in a legal proceeding, not the Legislature." *State ex rel. Marshall Cnty. Comm'n v. Carter*, 225 W. Va. 68, 76-77, 689 S.E.2d 796, 804-05 (2010).

The Court has previously found on multiple occasions that our Rules of Evidence prevail whenever a statute conflicts with the Rules. *See* Syl. Pt. 6, *State Farm Fire & Cas. Co. v. Prinz*, 231 W. Va. 96, 743 S.E.2d 907 (2013) ("Because it addresses evidentiary matters that are reserved to and regulated by this Court pursuant to the Rule-Making Clause, Article VIII, § 3 of the West Virginia Constitution, West Virginia Code § 57-3-1 (1937), commonly referred to as the Dead Man's Statute, is invalid, as it conflicts with the paramount authority of the West Virginia Rules of Evidence.").[6] The statute at issue, by precluding the admission of the Logan result simply by virtue of the time limitations, conflicts with our Rules of Evidence; by its plain language the statute impermissibly excludes relevant evidence.

[6] *See also* Syl. Pt. 3, *State v. Varlas*, 237 W. Va. 399, 787 S.E.2d 670 (2016) ("Rule 412 of the West Virginia Rules of Evidence provides the standard for the introduction at trial of a victim's sexual history, and it supersedes W. Va. Code § 61-8B-11 [1986] to the extent that the statute is in conflict with the rule."); Syl. Pt. 6, *Mayhorn v. Logan Med. Found.*, 193 W. Va. 42, 454 S.E.2d 87 (1994) ("Rule 702 of the *West Virginia Rules of Evidence* is the paramount authority for determining whether or not an expert is qualified to give an opinion. Therefore, to the extent that *Gilman v. Choi*, 185 W.Va. 177, 406 S.E.2d 200 (1990) indicates that the legislature may by statute determine when an expert is qualified to state an opinion, it is overruled."); *State v. Jenkins*, 195 W. Va. 620, 625 n.5, 466 S.E.2d 471, 476 n.5 (1995) (noting that a statute "address[ing] the admission of a handwriting analysis" "d[id] not affect our analysis of [West Virginia Rule of Evidence] 901").

West Virginia Code § 17C-5-8, entitled, "Interpretation and use of chemical test" specifically sets forth that evidence of the amount of alcohol in a person's blood "at the time of the arrest or of the acts alleged" is admissible at trial:

> (a) . . . [U]pon the trial of any . . . criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol . . . 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 . . . , *is admissible*, if the sample or specimen was taken within the time period provided in subsection (g).

(Emphasis added). Subsection (g) then limits the time period that the blood must have been drawn—within two hours of arrest—and asserts that otherwise, the blood results are inadmissible: "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*[.]"[7] (Emphasis added). Accordingly, pursuant to a plain reading of the statute, for Mr. Conley's BAC results to be admissible at trial, his blood sample must have been taken within two hours of his arrest. Despite the majority's well-intentioned, but tortured, interpretation of the plain language of the statute, this is the only conclusion. As discussed more fully below, the plain language of the statute leads to illogical results that conflict with—and violate—our Court's Rules of Evidence regarding admissibility of relevant evidence.

[7] The section also sets forth certain presumptions regarding different BAC levels. *See* W. Va. Code § 17C-5-8(b).

Rule 401 of the West Virginia Rules of Evidence provides that: "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Furthermore, Rule 402 of the West Virginia Rules of Evidence provides that relevant evidence is generally admissible. This general rule that relevant evidence is admissible is tempered by only by four sources: the United States Constitution, the West Virginia Constitution, other provisions of the Rules of Evidence, or other rules adopted by this Court. W. Va. R. Evid. 402. Notably, statutes are not among those sources that may override the admission of relevant evidence.

As stated above, pursuant to the plain language of the statute, BAC blood draw results are only admissible if the blood draw was conducted within two hours of a person's arrest. As the majority aptly points out, "[d]runk drivers are sometimes 'caught in the act' and immediately arrested; sometimes drivers flee and are arrested a few hours later; and sometimes, for medical, investigative, or other reasons, the arrest is made much later." Maj. Op. at 10. Here, medical reasons delayed the arrest, as the vehicle collision caused significant injuries to multiple individuals and law enforcement focused on providing life-saving measures to all those involved, rather than immediately arresting Mr. Conley without any investigation. Given this noble focus, law enforcement did not arrest Mr. Conley until almost two months after the incident. The Logan result, taken within two hours after the incident, showed Mr. Conley's BAC level was .263 percent, by weight, three times the legal limit. However, because the Logan blood draw did not occur within

two hours after Mr. Conley's *arrest*, under the plain language of the statute, this test result would not be admissible at trial.

The inadmissibility of this test result, pursuant to statute, is in direct conflict with our Rules of Evidence. The Logan result is undisputedly relevant pursuant to Rule 401 to whether Mr. Conley is guilty of the charged crimes on trial: driving a vehicle while in an impaired state which proximately caused death and of driving a vehicle while in an impaired state which proximately caused serious bodily injury. Specifically, the result of his blood test obviously has a "tendency to make a fact more or less probable than it would be without the evidence" and his BAC level close in time to the collision is "of consequence in determining the action." W. Va. R. Evid. 401.

The Rules of Evidence must prevail in this conflict with the statute. *See* Syl. Pt. 6, *State Farm Fire & Cas. Co.*, 231 W. Va. 96, 743 S.E.2d 907. Furthermore, Mr. Conley did not argue that this otherwise relevant evidence would be inadmissible pursuant to any provision of the United States Constitution or the West Virginia Constitution; any other Rule of Evidence; or any other Rule adopted by this Court. *See* W. Va. R. Evid. 402. As this Court has consistently stated, it is well-settled that decisions regarding the admissibility of evidence are left to the discretion of the trial judge. *See* Syl. Pt. 4, *State v.*

Rodoussakis, 204 W. Va. 58, 511 S.E.2d 469 (1998). Mr. Conley has failed to demonstrate that the trial court abused its discretion in denying his motion to exclude the Logan result.[8]

The same is true for the CHH result. Medical personnel took Mr. Conley's blood sample within six to seven hours following the incident and the CHH result still showed a BAC level of .131 percent, by weight. The circuit court followed the Rules of Evidence in determining that this result was also relevant evidence.[9] In regard to the CHH result, the majority recognizes that this Court has the ultimate authority regarding the general admissibility of evidence and agrees that under our Rules of Evidence, Mr. Conley has failed to demonstrate that the circuit court abused its discretion in denying his motion to suppress the CHH result. Maj. Op. at 13-16. In conclusion, while I agree with the

[8] As noted herein, West Virginia Code § 17C-5-8(b) also sets forth certain presumptions regarding different BAC levels. Mr. Conley, below and on appeal, only asserts that the BAC results should be suppressed as inadmissible. Setting such presumptions is properly within the purview of the Legislature, and I would not have disturbed their effect. My position relates solely to the portions of the statute that, in this case, patently conflict with the application of our Rules of Evidence. *Cf. State ex rel. Lorenzetti v. Sanders*, 235 W. Va. 353, 358, 774 S.E.2d 19, 24 (2015) ("The Legislature has 'substantive power to define crimes and prescribe punishments.' Syl. pt. 3, in part, *State v. Sears*, 196 W.Va. 71, 468 S.E.2d 324 (1996).").

[9] In addition, this principle can be drawn out to the extreme. For example, if Mr. Conley happens to be a chronic alcoholic, and when law enforcement arrested him months later decided to conduct a blood test within two hours of the arrest, that blood test could have shown a blood alcohol level of .263. The plain language of the statute mandates that evidence be admissible. This illogical result would be almost inconceivable and would not be relevant under Rule 401 as to whether Mr. Conley was driving under the influence two months prior. Thus, this irrelevant evidence would be admissible under the statute but inadmissible under our Rules of Evidence. *See* W. Va. R. Evid. 402 (providing that "[i]rrelevant evidence is not admissible.").

outcome reached by the majority, I would have declined to read the statute in a manner that is inconsistent with its plain terms. Instead, I would have simply found that this Court's Rules of Evidence allow for admission of both blood tests as relevant evidence, and to the extent the statute conflicts with those Rules, the statute must yield. I, therefore, concur.