IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

**FILED**
**November 13, 2026**
**released at 3:00 p.m.**
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 24-81

STATE OF WEST VIRGINIA,
Plaintiff Below, Respondent,

v.

PAUL ANTHONY CONLEY,
Defendant Below, Petitioner.

Appeal from the Circuit Court of Logan County
Honorable Kelly Codispoti, Judge
Criminal Action No. CC-23-2020-F-72

AFFIRMED

Submitted: September 23, 2026
Filed: November 13, 2026

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JUSTICE WOOTON delivered the Opinion of the Court.

CHIEF JUSTICE BUNN concurs and reserves the right to file a separate opinion.

## SYLLABUS OF THE COURT

1. "On appeal, legal conclusions made with regard to suppression determinations are reviewed *de novo*. Factual determinations upon which these legal conclusions are based are reviewed under the clearly erroneous standard. In addition, factual findings based, at least in part, on determinations of witness credibility are accorded great deference." Syl. Pt. 3, *State v. Stuart*, 192 W. Va. 428, 452 S.E.2d 886 (1994).

2. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

3. "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. Words and clauses should be given a meaning which harmonizes with the subject matter and the general purpose of the statute. The general intention is the key to the whole and the interpretation of the whole controls the interpretation of its parts." Syl. Pt. 1, *State ex rel. Holbert v. Robinson*, 134 W. Va. 524, 59 S.E.2d 884 (1950).

4. "The 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).

**Wooton, Justice:**

Petitioner Paul Anthony Conley appeals his convictions for one count of Driving a Vehicle While in an Impaired State which Proximately Caused Death and one count of Driving a Vehicle While in an Impaired State which Proximately Caused Serious Bodily Injury, as set forth in the Circuit Court of Logan County's January 18, 2024, resentencing order. These convictions were entered pursuant to conditional guilty pleas wherein the petitioner reserved the right to appeal the circuit court's denial of his pre-trial motions to exclude the results of two blood alcohol concentration ("BAC") tests.

After reviewing the parties' arguments and the applicable law, we conclude that the blood test results would be admissible at a trial. As such, we affirm the convictions.

## I. Facts and Procedural Background

At 12:05 a.m. on September 12, 2019, the petitioner drove a truck across the center line of a county road in Logan County and struck, head-on, a vehicle driven by Brittany Duty. Both vehicles caught on fire. A state trooper was able to extricate Brittany Duty from her vehicle; she was severely injured and had to be life-flighted to a hospital. The passenger in Ms. Duty's vehicle, her mother-in-law Beverly Duty, was killed in the collision.

First responders were also able to remove the petitioner, who was seriously injured,[1] from his burning truck. The State represented that if this case had gone to trial, a state trooper and emergency medical services providers would have testified that they observed the petitioner behaving in a manner indicating he was under the influence of alcohol, such as being combative and slurring his speech, and that he smelled of alcohol. The first responders would testify that despite his severe injuries, the petitioner was so combative that they could not send him via helicopter to a trauma hospital. Instead, the petitioner had to be physically restrained and transported by ground ambulance to Logan Regional Medical Center. After his condition was stabilized at Logan Regional Medical Center, the petitioner was transported by helicopter to Cabell Huntington Hospital for further treatment.

Medical personnel at Logan Regional Medical Center drew a sample of the petitioner's blood at 1:55 a.m. A chemical test of this blood determined that the petitioner's BAC was .263 percent, by weight. Pursuant to a search warrant, medical personnel at Cabell Huntington Hospital took a second sample of the petitioner's blood at around 6:00 a.m. to 7:00 a.m. that same morning; a chemical test of this blood found a BAC of .131 percent, by weight. In addition to obtaining warrants for the petitioner's blood and BAC results, law enforcement conducted an accident reconstruction and attempted to retrieve

[1] Reportedly, the petitioner's injuries from this collision have left him partially paralyzed.

data from both vehicles' electronic systems. Also, an autopsy was performed on Beverly Duty's body to determine whether she died from injuries suffered in the crash or from the ensuing fire.

Police obtained a warrant for the petitioner's arrest on October 11, 2019, and he was arrested on November 8, 2019. On June 15, 2020, the Logan County Grand Jury indicted the petitioner for one count of Driving a Vehicle While in an Impaired State which Proximately Caused Death in violation of West Virginia Code § 17C-5-2(b) (2019), and one count of Driving a Vehicle While in an Impaired State which Proximately Caused Serious Bodily Injury in violation of West Virginia Code § 17C-5-2(c) (2019).[2]

The petitioner filed motions in limine to exclude from evidence the results of both BAC tests. He relied on West Virginia Code § 17C-5-8 (2013), the statute that

[2] The 2019 version of this statute was in effect at the time of this collision. West Virginia Code § 17C-5-29(b) and (c) provided:

> (b) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes the death of any person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years and shall be fined not less than $1,000 nor more than $3,000: *Provided*, That any death charged under this subsection must occur within one year of the offense.
>
> (c) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes serious bodily injury to any person other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years and shall be fined not less than $1,000 nor more than $3,000.

establishes certain presumptions of impairment based on the concentration of alcohol in a person's blood at the time he or she was driving.[3] As set forth in more detail below, the

[3] The 2013 version of West Virginia Code § 17C-5-8, which was in effect at the time of this collision, provided in relevant part:

> (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).
>
> (b) The evidence of the concentration of alcohol in the person's blood at the time of the arrest or the acts alleged gives rise to the following presumptions or has the following effect:
>
> (1) Evidence that there was, at that time, five hundredths of one percent or less, by weight, of alcohol in his or her blood, is prima facie evidence that the person was not under the influence of alcohol;
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> (2) Evidence that there was, at that time, more than five hundredths of one percent and less than eight hundredths of one percent, by weight, of alcohol in the person's blood is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;
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> (3) Evidence that there was, at that time, eight hundredths of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.
>
> . . . .
>
> (e)(1) A chemical analysis of a person's blood or breath, in order to give rise to the presumptions or to have the effect provided for in this section, must be performed in accordance with methods and standards approved by the state Bureau for Public Health.
>
> . . . .

petitioner argued that pursuant to the wording of West Virginia Code § 17C-5-8(g)(1), the results of chemical blood tests may only be admitted into evidence at a trial if the blood samples were taken within two hours of the driver's ***arrest***—and he was not arrested for almost two months after these blood draws. Therefore, despite the fact that his blood samples were taken within hours of his ***act*** of allegedly drunk driving, the petitioner argued that by operation of law, the test results could not be considered by a jury.

After holding a hearing, the circuit court entered a May 11, 2022, order denying the petitioner's blood test motions.[4] The court acknowledged the parties' stipulation that the Logan Regional Medical Center blood sample was drawn within two hours of the ***act*** giving rise to these criminal charges. The court ruled that as long as the State proved that this sample was analyzed in compliance with the Bureau of Public Health rules referenced in West Virginia Code § 17C-5-8(e), then the result would be admissible

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> (f) The provisions of this article do not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.
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> (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;
>
> . . . .

[4] The circuit court also addressed other pre-trial issues, but the petitioner's two-part assignment of error on appeal is limited to the admissibility of the results of the blood tests.

at trial pursuant to West Virginia Code § 17C-5-8. The court found that it would not make sense to require the police to make an arrest before they knew the facts. Regarding the blood taken at Cabell Huntington Hospital, which the parties stipulated was drawn more than two hours after the collision, the court noted that this sample was taken pursuant to a search warrant. The court concluded that when a person is not under arrest, the State may obtain a search warrant to have blood drawn for an analysis, and the time between the incident and the blood draw goes to the weight of the evidence and not to its admissibility.

On August 3, 2021, the petitioner entered conditional guilty pleas to both counts of the indictment, reserving the right to appeal the denial of his motions to exclude the blood test results. The circuit court accepted the conditional guilty pleas, adjudged the petitioner guilty, and on September 27, 2021, sentenced him to consecutive sentences totaling five to twenty-five years of imprisonment plus a fine totaling $6,000, along with the payment of certain costs. On January 18, 2024, the circuit court re-sentenced the petitioner for purposes of allowing him to file this appeal.[5]

## II. Standard of Review

Our established standard of review of a circuit court's ruling on a motion for the exclusion of evidence is set forth in *State v. Stuart*: "On appeal, legal conclusions made with regard to suppression determinations are reviewed *de novo*. Factual determinations

[5] The judge initially assigned to this case was the Honorable Eric O'Briant. The Honorable Kelly Codispoti presided over the re-sentencing.

upon which these legal conclusions are based are reviewed under the clearly erroneous standard. In addition, factual findings based, at least in part, on determinations of witness credibility are accorded great deference." Syl. Pt. 3, *State v. Stuart*, 192 W. Va. 428, 452 S.E.2d 886 (1994). Moreover, "[w]here the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995). With this in mind, we consider the parties' arguments.

## III. Discussion

The petitioner argues that the circuit court erred by denying his motions to exclude the results of both blood tests. As explained below, we reject the petitioner's arguments as contrary to statutory law and the trial court's authority to rule on the admissibility of evidence. Although his argument with regard to both tests relies on the application of West Virginia Code § 17C-5-8(g)(1), the times of the two blood draws were different so we will separately address the admissibility of each test result.[6]

### A. The Logan Regional Medical Center blood test.

The petitioner relies on the wording of West Virginia Code § 17C-5-8(a) and (g)(1), primarily (g)(1):

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[6] On appeal, the petitioner does not dispute that his driving caused the collision. He also does not assert any error regarding the methodology of how the blood samples were taken and tested, whether the blood draws were voluntary, or the validity of the warrants used to obtain his blood and blood test results.

> (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***[.]

*Id.* (emphasis added).[7] Subsection (a) refers to evidence of the amount of alcohol in a driver's blood "at the time of the arrest or of the acts alleged" and then incorporates subsection (g). However, because the words "or of the acts alleged" are not repeated in subsection (g)(1), the petitioner contends that a BAC test result cannot be admitted into evidence *unless* the sample was taken within two hours "of the person's arrest." The State responds that the petitioner is making an absurd argument clearly contrary to the meaning of West Virginia Code § 17C-5-8, which is a remedial statute that must be applied to accomplish the purpose for which it was enacted.

[7] This statute is quoted more fully in footnote 3, *supra.* Although West Virginia Code § 17C-5-8 was amended in 2026, subsections (a) and (g) were not changed.

We begin our analysis of the parties' arguments by emphasizing that when a court applies a statute, it must consider and harmonize the statute as a whole.

> 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. Words and clauses should be given a meaning which harmonizes with the subject matter and the general purpose of the statute. The general intention is the key to the whole and the interpretation of the whole controls the interpretation of its parts.

Syl. Pt. 1, *State ex rel. Holbert v. Robinson*, 134 W. Va. 524, 59 S.E.2d 884 (1950). "Simply stated, this Court is required to consider the *entire* language of a legislative enactment when presented with a case questioning the statute's meaning; we are not at liberty to selectively read a portion of the challenged statutory section and to disregard the remainder of the language employed by the Legislature." *Jackson v. Belcher*, 232 W. Va. 513, 518, 753 S.E.2d 11, 16 (2013). "When the statute, read in its entirety, is clear and unambiguous, we apply, rather than construe, the statute." *Id.* (citing Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968)). To quote the United States Supreme Court, "we do nothing more . . . than follow the cardinal rule that a statute is to be read as a whole . . . since the meaning of statutory language, plain or not, depends on context." *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) (citations omitted).

As the State observes, West Virginia Code § 17C-5-8 is a remedial statute applicable to both civil and criminal matters that involve impaired driving. *See id.* § 17C-5-8(a). Remedial statutes relate to practice, procedure and remedies and do not create new rights or take away vested rights. *Martinez v. Asplundh Tree Expert Co.*, 239 W. Va. 612,

618, 803 S.E.3d 582, 588 (2017). Additionally, "'[t]hat 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.' Syl. pt. 1, *Hasson v. City of Chester*, 67 W. Va. 278, 67 S.E. 731 (1910)." Syl. Pt. 1, *State v. Kerns*, 183 W. Va. 130, 394 S.E.2d 532 (1990).

Obviously, our State's criminal DUI laws are addressed to a driver's level of impairment at the time he or she was driving a vehicle, which is the critical issue common to both felonies for which the petitioner has conditionally plead guilty. Specifically, these statutes criminalize the act of "driv[ing] a vehicle in this state while he or she is in an impaired state . . . ." W. Va. Code § 17C-5-2(b)(1) and (2).[8] "Impaired state" is defined in the present tense as meaning a person "[i]s under the influence of alcohol" or "[h]as an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight." *See* W. Va. Code § 17C-5-2(a)(1)(A) & (E).

Drunk 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. West Virginia Code § 17C-5-8 contemplates situations, such as the one presented here, where the arrest happens later. Both subsections (a) and (b) refer to evidence of alcohol at "the time of the arrest or the acts alleged." *Id.* Subsection (b) specifies the amount of alcohol concentration in a person's

[8] Quoted *supra*, n.2.

blood that the Legislature deems to be presumptive evidence that a driver was, or was not, under the influence of alcohol:

> (b) The evidence of the concentration of alcohol in the person's blood at ***the time of the arrest or the acts alleged*** gives rise to the following presumptions or has the following effect:
>
> (1) Evidence that there was, ***at that time***, five hundredths of one percent or less, by weight, of alcohol in his or her blood, is prima facie evidence that the person was not under the influence of alcohol;
>
> (2) Evidence that there was, ***at that time***, more than five hundredths of one percent and less than eight hundredths of one percent, by weight, of alcohol in the person's blood is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;
>
> (3) Evidence that there was, ***at that time***, eight hundredths of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

*Id.* § 17C-5-8(b) (emphasis added). The petitioner's argument turns this statute on its head by contending that a blood sample is wholly inadmissible *unless* it was taken within two hours of an arrest.

When we read and harmonize all of the subsections of West Virginia Code § 17C-5-8 as a whole and in context with our criminal DUI laws, it is plain that the Legislature's inclusion of subsection (g)(1) was never intended to countermand other subsections of the statute. Instead, subsection (g)(1) serves to clarify that when the State is relying on the "at the time of arrest" provision in subsections (a) and (b), then the sample that was tested must have been taken within two hours of the arrest.

In short, the Legislature established that if a driver still has a concentration of alcohol of .08 percent or more, by weight, in his or her blood two hours after the act of driving, then that person is presumed to have been driving under the influence of alcohol. With the inclusion of subsection (g)(1), the Legislature was *not* saying that blood test evidence is only admissible if the sample was taken within two hours of the arrest. Rather, it was protecting a defendant's rights by clarifying that if the arrest is the operative time frame for purposes of the presumptions, then the sample must be taken within two hours of the arrest.

The parties stipulated that the sample of the petitioner's blood taken at Logan Regional Medical Center was drawn within two hours of the collision that killed Beverly Duty and seriously injured Brittany Duty. On appeal, the petitioner does not dispute that his driving caused this collision, and he does not assert any error regarding the methodology used in taking or testing this blood. *See id.* § 17C-5-8(e)(1) (2013) ("A chemical analysis of a person's blood or breath, in order to give rise to the presumptions or to have the effect provided for in this section, must be performed in accordance with methods and standards approved by the state Bureau for Public Health."). This test of this blood sample revealed a BAC of .263 percent, by weight, which is more than three times the level that the Legislature has established as being presumptively under the influence of alcohol. *See id.* § 17C-5-8(b)(3). As such, we find no error in the circuit court's conclusion that the Logan Regional Medical Center BAC test result would be admissible at a trial for

purposes of establishing that the petitioner was presumptively under the influence of alcohol at the time of the collision.

**B. The Cabell Huntington Hospital blood test.**

The blood sample taken at Cabell Huntington Hospital was drawn more than two hours after this collision. Accordingly, the test result for this sample is not admissible for purposes of the statutory presumptions in West Virginia Code § 17C-5-8(b). However, this does not mean that the test result is inadmissible for all purposes. While the Legislature decides how and when statutory presumptions may be applied, this Court is responsible for determining the admissibility of evidence in general.

The 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.

> Pursuant to the Rule-Making Clause of the West Virginia Constitution, the Supreme Court of Appeals "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." W. Va. Const. art. 8, § 3. "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, 372 S.E.2d 920 (1988). In this regard, "[t]he West Virginia Rules of Evidence remain the paramount authority in determining the admissibility of evidence in circuit courts." Syl. Pt. 7, in part, *State v. Derr*, 192 W. Va. 165, 451 S.E.2d 731 (1994).

*State Farm Fire & Cas. Co. v. Prinz*, 231 W. Va. 96, 105, 743 S.E.2d 907, 916 (2013) (invalidating the "Dead Man's Statute" as being contrary to the West Virginia Rules of Evidence). "The 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." *Derr*, 192 W. Va. at 168, 451 S.E.2d at 734, Syl. Pt. 7.

Our Rules of Evidence allow litigants to challenge the admission of proffered evidence on a myriad of grounds, including, inter alia, whether the proffered evidence is not relevant or is unfairly prejudicial. *See, e.g.*, W. V. R. Evid., R. 401 ("evidence is relevant if: . . . 'it has a tendency to make a fact more or less probable than it would be without the evidence; and . . . the fact is of consequence in determining the action.'"); *Id.* R. 403 ("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.").

The petitioner does not assert any challenge to this evidence under the Rules of Evidence. Instead, he argues that West Virginia Code § 17C-5-8 is the sole authority for determining the admissibility of any and all blood alcohol test results. However, he is confusing the admission of blood test evidence ***for purposes of the statutory presumption***

***of impairment*** with a trial court's general authority to regulate the admission of evidence at trial.

The Cabell Huntington Hospital sample was taken six to seven hours after the collision and was obtained pursuant to a search warrant; the petitioner does not challenge the methodology used in taking or testing the sample; and the test revealed that the petitioner still had a high concentration of alcohol in his blood. The circuit court ruled that the parties would be free to argue what weight the jury should assign to this evidence. It is well-settled that decisions regarding the admissibility of evidence are left to the discretion of the trial judge. *See, e.g.*, Syl. Pt. 4, *State v. Rodoussakis*, 204 W. Va. 58, 511 S.E.2d 469 (1998).

The circuit court's ruling finds support in *State v. Dyer*, 177 W. Va. 567, 355 S.E.2d 356 (1987), where defendant Dyer was charged with the hit-and-run death of a pedestrian because he was driving under the influence. His blood was drawn approximately four hours after the collision. Our Court found no reversible plain error because the test result of this blood was not offered as prima facie evidence of intoxication, and was not used as direct evidence that Dyer was under the influence at the time of the alleged offense. "Rather, the evidence was relied upon at trial to show that the appellant had consumed alcoholic beverages in substantial amounts on the day in question and was, therefore, relevant evidence of a probative fact. Similar evidence had been offered by other of the

State's witnesses and had been contained in appellant's own statements." *Id.* at 573, 355 S.E.2d at 362.

If this case had gone to trial, the petitioner could have asserted evidentiary challenges to the Cabell Huntington Hospital blood test result. However, he instead chose to waive those objections and plead guilty. Based on the record before us, the petitioner has not established that the circuit court abused its discretion in this evidentiary ruling.

## IV. Conclusion

For the foregoing reasons, we find no error in the circuit court's denial of the petitioner's motions in limine regarding the blood test evidence. The petitioner's convictions are affirmed.

Affirmed.