No. 11-0352 - *Joe E. Miller, Commissioner of the West Virginia Division of Motor Vehicles v. Toler*

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OF WEST VIRGINIA

Ketchum, Chief Justice, dissenting:

A police traffic stop constitutes the seizure of a person. It is a seizure even if the police officer does not issue a ticket or if the stop only leads to a ticket with a possible penalty to be assessed in a civil or administrative proceeding. The Fourth Amendment applies to all governmental actions. Its protections apply to all people, not just criminal defendants or criminal investigations.[1]

Where there has been an unlawful traffic stop, the majority now allows the use of any evidence unlawfully obtained in the unlawful traffic stop (seizure) in an administrative hearing to revoke a person's drivers license. The majority allows evidence obtained during an unlawful stop to be used at an administrative hearing because the hearing is civil in nature rather than criminal. The police are now allowed to make investigatory stops based on hunches, or for no reason at all, knowing that the evidence obtained in violation of the Fourth Amendment can still be used to administratively revoke a person's drivers license.

As a result of the majority opinion, we now have a dual standard for vehicle stops by police in West Virginia. If criminal DUI charges are pursued, the officer must have

[1]*Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816 (1978).

had an "articulable reasonable suspicion"[2] to stop the motorist or the evidence obtained is not admissible in court. However, under the majority opinion, an officer is not required to set forth an "articulable reasonable suspicion" for stopping a motorist in an administrative hearing which could result in the civil suspension of a motorist's drivers license.

This dual standard is confusing and unnecessary. A single standard requiring an officer to articulate a reasonable suspicion for stopping a motorist, regardless of whether the stop leads to a criminal or civil sanction, would provide a clear and enforceable bright line rule for all police officers to follow, that would result in the uniform application of our laws. The dual standard set forth by the majority creates a nebulous distinction between lawful and unlawful stops that will result in confusion and an inconsistent application of our laws.

Our citizens should be free of any vehicle stops by the police unless the officer has an "articulable reasonable suspicion" that the motorist is violating the law. I, too, want intoxicated drivers off the road. However, police should only be able to stop motorists based on an "articulable reasonable suspicion" of a suspected violation, rather than on a hunch or for no reason at all.

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[2]"Police officers may stop a vehicle to investigate if they have an articulable reasonable suspicion that the vehicle is subject to seizure or a person in the vehicle has committed, is committing, or is about to commit a crime[.]" Syllabus Point 1, in part, *State v. Stuart*, 192 W.Va. 428, 452 S.E.2d 886 (1994).