WestVirginiaUniversity
THE RESEARCH REPOSITORY @ WVU

Volume 74
Issue 1 *Issues 1 & 2*

Article 17

August 1971

Constitutional Law–Motor Vehicle Safety Responsibility Statutes--Necessity for a Hearing on Liability

Stephen R. Crislip
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Constitutional Law Commons, and the Torts Commons

Recommended Citation

Stephen R. Crislip, *Constitutional Law--Motor Vehicle Safety Responsibility Statutes--Necessity for a Hearing on Liability*, 74 W. Va. L. Rev. (1971).
Available at: https://researchrepository.wvu.edu/wvlr/vol74/iss1/17

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

CASE COMMENTS

Constitutional Law—Motor Vehicle Safety Responsibility Statutes—Necessity for a Hearing on Liability

Georgia's motor vehicle safety responsibility statute provided that both the vehicle registration and the driver's license of any uninsured motorist involved in an accident would be suspended unless he posted security to cover the amount of the damages claimed by the aggrieved parties.[1] Although an administrative hearing was provided for,[2] fault or liability were completely irrelevant factors to the suspension process.

Bell was a clergymen whose ministry required him to travel by car in the rural communities of Georgia. In 1968, he was involved in an accident in which a five year old girl rode her bicycle into the side of his car. The girl's parents filed an accident report with the Director of the Georgia Department of Public Safety indicating that their daughter had suffered injuries for which they claimed $5,000 in damages. The director then informed Bell, who was uninsured, that a bond or security cash deposit in the amount of $5,000 would be required or his license would be suspended. Bell's proffer of evidence that the accident was unavoidable was rejected and he was given thirty days to comply with the security requirement.

Bell appealed *de novo* in the Superior Court of Georgia where it was determined that since he was not at fault his license should not be suspended. The Georgia Court of Appeals reversed, holding that fault or innocence were completely irrelevant factors.[3] The Georgia Supreme Court denied review and Bell applied to the United States Supreme Court for a writ of certiorari. *Held*: reversed. The Supreme Court held that since the whole statutory scheme was implicitly based upon fault, it was a violation of procedural due process not to hold a hearing *prior* to the suspension of the license in order to determine whether there was a "reasonable possibility" that a judgment in the amount claimed would be rendered against the licensee. *Bell v. Burson,* 402 U.S. 535 (1971).[4]

---

[1] GA. CODE ANN. § 92A-605 (1958).
[2] GA. CODE ANN. § 92A-602 (1958).
[3] 121 Ga. App. 418, 174 S.E.2d 235 (1970).
[4] Note that proof of future financial responsibility was not at issue.

The *Bell v. Burson* decision represents an application of due process requirements in the area of administrative hearings. More importantly, *Bell* clearly seems to invalidate a large portion of the West Virginia Motor Vehicle Safety Responsibility Law[5] and in so doing, necessitates immediate legislative action.

Financial responsibility statutes are common enactments in the majority of states and have as their aim the protection of the public against the operation of motor vehicles by financially irresponsible persons.[6] West Virginia's statute[7] has as its purpose the protection of the public against the operation of motor vehicles by "reckless and irresponsible persons."[8]

West Virginia's Safety Responsibility Law[9] is quite similar to that of Georgia's.[10] In West Virginia, any driver or owner of any vehicle subject to the registration laws of this state, which is involved in an accident causing bodily injury, death, or property damage exceeding $100 must file an accident report.[11] Unless the driver or owner falls within the statutory exemptions,[12] he must post security in the amount prescribed by the Commissioner of Motor Vehicles.[13] Failure to deposit the security within the time specified by the commissioner results in the suspension of the party's license.[14]

Both Georgia and West Virginia have provisions for hearings upon the request of the aggrieved persons.[15] In Georgia, the administrative hearing excluded consideration of the motorist's fault or liability for the accident. The West Virginia provision likewise accords no latitude to the Commissioner of Motor Vehicles to con-

---

[5] W. VA. CODE ch. 17D, art. 1-3 (Michie 1966).
[6] Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952); Annot., 35 A.L.R.2d 1003 (1954).
[7] W. VA. CODE ch. 17D, art. 1-3 (Michie 1966).
[8] Adkins v. Inland Mut. Ins. Co., 124 W. Va. 388, 20 S.E.2d 471 (1942); Nulter v. State Rd. Comm'n, 119 W. Va. 312, 193 S.E. 549 (1937).
[9] W. VA. CODE ch. 17D, art. 1-3 (Michie 1966).
[10] GA. CODE ANN. §§ 92A-601 *et seq.* (1958).
[11] W. VA. CODE ch. 17D, art. 3, § 1 (Michie 1966).
[12] *Id.* §§ 4 and 6; Security and suspension requirements shall *not* apply (a) to a driver or owner covered by an automobile liability policy or bond; (b) to a qualified self-insurer [*see* 17D-6-2]; (c) to a person under the jurisdiction of the public service commission who has qualified as a self-insurer; (d) to a single vehicle accident; (e) to a legally parked vehicle; (f) to the owner of a vehicle whose vehicle was being operated without his permission, express or implied.
[13] *Id.* § 2.
[14] *Id.* § 3.
[15] W. VA. CODE ch. 17D, art. 2, § 1 (Michie 1966); GA. CODE ANN. § 92A-602 (1958).

sider fault, but requires him simply to carry out his statutory duties.[16] In any event this provision for a hearing was rarely used in West Virginia.[17]

West Virginia's former Safety Responsibility Law,[18] which was superseded by the current statute, was held constitutional in the case of *Nulter v. State Road Commission.*[19] There, the West Virginia court said that "notice and hearing—a day in court—are matters of right in judicial proceedings; but not so, necessarily, in administrative proceedings."[20] The court asserted that the operation of a motor vehicle was not a natural right but "merely a conditional privilege which may be suspended or revoked under the police power, even without a notice or an opportunity. to be heard."[21]

These statements articulated in the *Nulter* case seem to have been overruled by the decision in *Bell v. Burson.* In deciding that the suspension of a license without the benefit of a hearing on fault was a denial of procedural due process, the Supreme Court said:

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth amendment.[22]

---

[16] W. VA. CODE ch. 17D, art. 2, § 1 (Michie 1966) provides:

> The commissioner shall administer and enforce the provisions of this chapter and shall make rules and regulations necessary for its administration, including provisions for hearings by the commissioner or his representative upon the request of persons aggrieved by any orders or acts by the commissioner, *but the granting of any such hearings shall not operate to prevent or delay any action by the commissioner which is mandatory under the provisions of this Chapter.* (emphasis added)

[17] To the best knowledge of the Director of Safety Responsibility only one request has ever been made for a hearing, and this was dropped when the motorist learned that fault would not be considered at the hearing. Interview with R.R. Bolen, Director of Safety Responsibility Division, Department of Motor Vehicles, in Charleston, August 2, 1971.

[18] Acts of the 42d Leg. ch. 61, Reg. Sess. (1935).

[19] 119 W. Va. 312, 193 S.E. 549 (1937).

[20] *Id.* at 316, 193 S.E. at 551.

[21] *Id.*. at 317, 193 S.E. at 552.

[22] 402 U.S. at 539 (1971).

Furthermore, the court declared that constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege."[23]

The *Bell* decision had immediate ramifications in West Virginia because of the large number of license suspensions of uninsured motorists each year.[24] The office of the Attorney General of West Virginia in an interdepartmental letter stated that the current West Virginia law does not give sufficient latitude to the commissioner to hold the type of hearing envisioned by the *Bell* case.[25] The result has been that all license suspensions of uninsured motorists who cannot post security have been halted, pending legislative clarifaction.[26] The only licenses currently being suspended under the West Virginia statute since the *Bell* decision are those of persons adjudged liable in a court of law.[27] The West Virginia Department of Motor Vehicles has given the decision retroactive effect and is in the process of returning previously suspended licenses upon the request of the licensee.[28] Also security held in deposit under the statute is being returned.[29] However, the public's response to this offer by the state has been minimal.[30]

Although the Department of Motor Vehicles has complied, to the extent of its powers, with the holding in the *Bell* case, the result has essentially been a *de facto* abolition of the Safety Responsibility Law in this state. Until the West Virginia Legislature enacts a law in compliance with *Bell,* there will be no Safety Responsibility Law for all practical purposes.

---

[23] *Id.* at 539; *see* Goldberg v. Kelly, 397 U.S. 254 (1970) (withdrawal of welfare benefits); Sherbert v. Verner, 374 U.S. 398 (1963) (disqualification from unemployment compensation); Speiser v. Randall, 357 U.S. 513 (1958) (denial of a tax exemption); Slochower v. Bd. of Higher Ed., 350 U.S. 551 (1956) (discharge from public employment).

The idea that due process was required when a "right" was involved but not necessarily so when a "privilege" was being adjudicated has been rejected in *Bell v. Burson* and in the cases noted *supra.*

[24] There were 23,895 suspensions of privileges issued in accident cases in fiscal year 1969-70 and 16,722 in fiscal year 1968-69. West Virginia Department of Motor Vehicles Annual Report (July 1, 1969-June 30, 1970).

[25] Letter from William F. Carroll, Assistant Attorney General, to Homer R. Shields, Commissioner of Motor Vehicles, June 3, 1971.

[26] Interview with R.R. Bolen, Director of Safety Responsibility Division, Department of Motor Vehicles, in Charleston, August 2, 1971.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] Charleston Daily Mail, August 12, 1971, at 1 col. 6. As of August 12, 1971, only about 3,000 out of possibly 20,000 to 30,000 affected persons had contacted the Department of Motor Vehicles.

The Legislature could adopt any one of the alternatives offered by the Supreme Court.[31] The Court suggested that the liability issue could be heard at a present hearing. This is not possible in West Virginia.[32] Or the hearing could be held in the *de novo* proceeding provided for under Georgia's law. This remedy, however, is not present in West Virginia.[33]

A third suggestion is to withhold the suspension until there is an adjudication of liability in an action for damages brought by the injured party. This alternative seems to obviate the very purpose of a Safety Responsibility Law. It is quite possible that no action will ever be brought by the injured party or that the irresponsible driver will be involved in another accident before any such adjudication takes place. On the other end of the spectrum, the Court suggested that Georgia [or West Virginia] could completely abandon its present scheme and adopt one of the various alternatives in force in other states.[34] Finally, all of the above could be rejected and some entirely new regulatory scheme could be devised.

The West Virginia Legislature must either change our law to comply with the hearing requirements of *Bell* or alter our current regulatory scheme in areas other than just the Safety Responsibility Law. The simplest method would be to enact a statute providing for a hearing on the issue of fault prior to the suspension of the license.

However, there are attendant legal problems in that approach. The court in *Bell* stated that the hearing need not be a full adjudication of the question of liability but rather one in which it is determined whether there exists a "reasonable possibility" that a judgment will be rendered against the licensee.[35] The hearing must be "meaningful" and "appropriate to the nature of the case."[36]

But questions immediately arise as to whether other due process safeguards will be extended to this preliminary administrative hear-

---

[31] 402 U.S. at 542 (1971).

[32] W. VA. CODE ch. 17D, art. 2, § 1 (Michie 1966). The wording of the West Virginia statute prohibits the hearing from interfering with the requirements for security following an accident.

[33] But, judicial review of contested administrative cases is provided for in W. VA. CODE ch. 29A, art. 5, § 4 (Michie 1966).

[34] The various alternatives include compulsory insurance plans, public or joint public-private unsatisfied judgment funds, and assigned claims plans. *See* R. KEETON & J. O'CONNELL, AFTER CARS CRASH (1967).

[35] 402 U.S. at 540 (1971).

[36] *Id.* at 542.

ing?[37] Will the licensee be allowed representation by counsel?[38] Will witnesses be present?[39] Will the hearings be retroactive to the licenses now under suspension?[40] Another anciliary problem is raised by those persons who, under the threat of suspension of their licenses, agreed under an unconstitutional statute to pay indemnity agreements.[41]

The *Bell v. Burson* decision has already significantly affected West Virginia's Safety Responsibility Law. However, the full effect of the decision will not be realized until the West Virginia Legislature acts. The decision will either force West Virginia to comply with

---

[37] In a related situation in *Goldberg v. Kelly*, 397 U.S. 254 (1970), where a hearing was required prior to termination of welfare benefits, the court particularized the essential elements of procedural due process as being (a) timely and adequate notice of the reasons for termination; (b) an effective opportunity to defend by confronting any adverse witness with oral arguments and evidence; (c) disclosure of the evidence used to prove the state's case; (d) the right to be heard by counsel retained by the recipient; (e) a decision resting solely on the legal rules and evidence brought forth at the hearing; and (f) an impartial decision maker. Not required were: (a) a complete record or comprehensive opinion; (b) a particular order of proof or mode of offering evidence; (c) absence of prior involvement in some aspects of the case by the decision maker; and (d) counsel provided for the recipient by the welfare agency. *See* 73 W. VA. L. REV. 80, 87 (1971).

[38] In civil cases and administrative proceedings, due process requirements are generally held to be satisfied by according the individual a right to counsel at his own expense. 73 W. VA. *L.* REV. 80, 88 (1971).

[39] See note 37, *supra.*

[40] Charleston Daily Mail, August 12, 1971, at 1, col. 6. If the Legislature decides to provide for a hearing and makes it retroactive to June 6, 1971, the department would start out with a hearing backlog of about 45,000 accidents.

[41] Following an accident involving property damage over $100 or personal injuries, form MV-100-SR was mailed to the licensee by the Department of Motor Vehicles. In order to prevent the suspension of his license, form MV-100-SR provided the licensee had to furnish one of the following:
(a) proof of an automobile liability policy, or; (b) cash, certified check or negotiable instrument in the amount stipulated by the commissioner to serve as security, or; (c) a notorized release for damages from all persons injured and from all persons whose property was damaged in excess of $100, or; (d) a transcript showing that the licensee was found not liable in a final adjudication in a civil action, or; (e) a covenant not to sue executed by all parties involved, or; (f) an agreement for payment of damages in installments executed by the licensee and all parties involved. For the uninsured indigent motorist the option of losing his license or selecting one of the alternative courses of action was a Hobson's choice. Alternatives (a) and (b) were precluded by indigency, while (c) (d) and (e) were nearly impossible to obtain, especially if the accident involved personal injuries. Often times the indigent's only method of keeping his license was by the "(f) agreement" for payment of damages in installments, regardless of whether he was at fault or not. The question now arises concerning the validity of these indemnity-type agreements that the licensees were "coerced" into signing without any prior determination of fault in order to retain their license.

due process hearing requirements or it will serve as a vehicle for far reaching changes in the state's regulatory scheme.

Stephen R. Crislip

Constitutional Law—Evidence—Use of Miranda-violative Confessions for Impeachment Purposes

Defendant Harris was charged with the sale of dangerous drugs. After being taken into custody, he made self-incriminating statements to the police prior to being warned of his right to appointed counsel. These statements were conceded by the prosecution to be in violation of the constitutional requirements set forth in *Miranda v. Arizona.*[1] However, there was never any contention by the defendant that the statements were coerced or involuntary.

At trial, an undercover agent testified that Harris had sold him heroin on two separate occasions. The prosecution, however, made no attempt to use Harris' incriminating statements in its case in chief. Harris later took the witness stand in his own defense and denied making the sale to the undercover agent on the first occasion. He admitted making a sale on the second occasion but asserted that the glassine envelope sold to the undercover agent contained only baking powder. On cross-examination, Harris was confronted with his illegally obtained prior contradictory statements, in which he had admitted to obtaining narcotics on *two* different occasions.[2] The trial court instructed the jury that these statements were to be used only for the purpose of assessing the defendant's credibility as a witness and not as substantive evidence of his guilt. On appeal, Harris contended that the illegally obtained statements could not be used by the state to impeach his credibility. *Held*: Conviction affirmed. A statement taken from an accused in violation of *Miranda* but otherwise

---

[1] 384 U.S. 436 (1966). *Miranda* requires that the defendant be given the following warnings: "He [the defendant] must be warned prior to questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning . . . ." *Id.* at 479. The *Miranda* decision permits the courts to avoid determination of whether or not a defendant's statements are voluntary by prescribing stringent procedural requirements which must be met before the statements are admissible.

[2] The essence of the prior statements "read in the presence of the jury is twofold: (1) on January 4, 1966 defendant acted as the undercover police officer's agent in obtaining narcotics and (2) on January 2, 1966 defendant obtained narcotics from an unknown person outside a bar and then sold the drugs to the undercover agent . . . ." People v. Harris, 298 N.Y.S.2d 245, 247 (1969).