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Recent Developments: State v. Jones: Temporary Administrative Suspension of Driver's License Prior to a Drunk Driving Conviction Does Not Constitute Punishment under the Law of Double Jeopardy

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State v. Jones:

**TEMPORARY
ADMINISTRATIVE
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OF DOUBLE
JEOPARDY.**

In a unanimous decision, the Court of Appeals of Maryland in *State v. Jones*, 340 Md. 235, 666 A.2d 128 (1995), held that a temporary administrative suspension of a driver's license does not constitute punishment under the law of double jeopardy. Section 16-205.1 of the Transportation Article of the Annotated Code of Maryland provides for the temporary suspension of a driver's license if a driver who is suspected of being intoxicated, refuses to take a test to determine his or her blood alcohol concentration, or takes a test and has a blood alcohol concentration of 0.10 or more. In upholding temporary license suspensions, the court found that the civil sanctions imposed by section 16-205.1 do not violate a defendant's Fifth Amendment protection against double jeopardy or Maryland's common-law prohibition against double jeopardy.

On April 25, 1994, Ernest Jones, Jr. ("Jones") was arrested and charged with driving while intoxicated. After his arrest, he consented to a blood alcohol test which registered 0.27. A hearing was held before the Motor Vehicle Administration ("Administration") and an administrative law judge ("ALJ") suspended Jones's driver's license for thirty days pursuant to section 16-205.1. On two prior occasions, Jones had been given probation before judgment for driving while intoxicated.

After the administrative

hearing, the District Court for Montgomery County found Jones guilty of driving while intoxicated. Jones appealed to the Circuit Court for Montgomery County and filed a motion to dismiss the conviction based on double jeopardy principles. The circuit court granted Jones's motion and held that to prosecute him for driving while intoxicated, after his driver's license had been suspended by the Administration for the same reason, constituted double jeopardy. The State appealed to the Court of Special Appeals of Maryland, at which time the Court of Appeals of Maryland granted certiorari prior to review by the intermediate appellate court. Upon review, the court of appeals reversed the judgment of the circuit court and remanded the case to that court for further proceedings.

Chief Judge Murphy, delivering the opinion for the court of appeals, began his analysis by recognizing that the Fifth Amendment to the United States Constitution protects individuals against double jeopardy. *Jones*, 340 Md. at 242, 666 A.2d at 131. The Fifth Amendment provides, in part, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." *Id.* (quoting U.S. Const. amend. V). Specifically, the Fifth Amendment "protects against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple

punishments for the same offense.” *Id.* at 242, 666 A.2d at 131 (quoting *United States v. Halper*, 490 U.S. 435, 440 (1989)). In the instant case, the court’s inquiry focused upon the third of these abuses; whether the criminal prosecution of Jones for driving while intoxicated, after the suspension of his driver’s license for the same reason, constituted multiple punishments for the same offense. *Id.* In resolving this issue, the court embarked on a detailed analysis of three recent Supreme Court decisions which, when taken together, have revised the test for deciding what constitutes punishment.

First, the court of appeals examined *United States v. Halper*, 490 U.S. 435 (1989), in which the government initially incarcerated and fined the defendant and subsequently sought to impose \$130,000.00 in additional civil penalties. *Id.* at 243, 666 A.2d 132 (citing *Halper*, 490 U.S. at 437). In *Halper*, the Court rationalized that the labels “criminal” and “civil” were no longer important in determining punishment. *Id.* at 244, 666 A.2d at 132 (citing *Halper*, 490 U.S. 446). Courts instead should evaluate the penalty and the purposes for imposing the penalty. *Id.* The test applied in *Halper* was whether a statute “may be ‘fairly’ said to be remedial . . . or whether the civil penalty bears a ‘rational relation’ to the government’s remedial goal.” *Id.* at 244-45, 666 A.2d at 132

(quoting *Halper*, 490 U.S. 448-49). The Supreme Court held that the civil tax penalty was a second punishment and therefore violated the constitutional prohibition against double jeopardy.

The court of appeals also reviewed the Supreme Court’s holding in *Austin v. United States*, 113 S. Ct. 2801 (1993). To determine whether a civil forfeiture law imposed punishment, the Court used the approach formulated in *Halper*, examining both the legislative history and historical use of forfeitures to determine whether the law’s effect was remedial or punitive. *Id.* at 245-46, 666 A.2d at 133. The *Austin* court held that the civil forfeiture law in question was a second punishment, although it did so in the context of the Excessive Fines Clause of the Eighth Amendment, rather than the Double Jeopardy Clause of the Fifth Amendment. *Id.* at 245, 666 A.2d at 132-33 (citing *Austin*, 113 S. Ct. at 2806).

Next, the court of appeals considered *Department of Revenue of Montana v. Kurth Ranch*, 114 S. Ct. 1937 (1994). In *Kurth Ranch*, the Court held that the taxation of illegal drugs seized by the government constituted punishment, when the tax equaled eight times the market value of the drugs. *Id.* at 246, 666 A.2d at 133 (citing *Kurth Ranch*, 114 S. Ct. at 1948). The Court reasoned that the drug seizure was the first punishment and that the imposition of the drug tax was a

second punishment forbidden by the Double Jeopardy Clause. *Id.* at 247, 666 A.2d at 133.

After careful examination of *Halper*, *Austin*, and *Kurth Ranch*, the Court of Appeals of Maryland proceeded with its own analysis. The court recognized that licensing systems were historically designed to protect the public from individuals who, if unlicensed, might operate in an unscrupulous or unskilled manner. *Id.* at 251, 666 A.2d at 136. In Maryland, for example, certain occupations have established specific standards, such as the attainment of a certain educational level or the passing of an examination, before persons can practice in those fields. *Id.* at 252, 666 A.2d at 136. The court emphasized that the procedures through which licenses are revoked or suspended have the remedial purpose of preventing a wrongdoer “from engaging in an activity when there is reason to believe they may perform the activity unsafely.” *Id.* at 254, 666 A.2d at 137. Specifically focusing on the language and structure of section 16-205.1, the court decided that the statute’s purpose did not differ from other types of license suspensions. *Id.* at 254-55, 666 A.2d at 137. The court explained that if the public would be endangered by offending drivers keeping their licenses, revocation or suspension is in accord with the policy of maintaining safety on public highways. *Id.* at 255, 666 A.2d at 138.

In rejecting Jones's argument that section 16-205.1 was punitive in nature, the court scrutinized whether the statute served the remedial purpose of removing drunk drivers from Maryland's roads. *Id.* at 256, 666 A.2d at 138. The court deduced that because Jones had a prior history of driving while intoxicated, there was a reasonable basis on which the State would fear that he might again drive while intoxicated. *Id.* Thus, section 16-205.1 was not punitive but instead served the remedial purpose of keeping dangerous drivers off the roads.

Similarly, the court rejected Jones's argument that the legislature intended section 16-205.1 to be solely punitive. *Id.* at 257, 666 A.2d at 139. Although section 16-205.1 was amended in 1989 to include longer time periods for license suspensions and to reduce an ALJ's discretion to modify such decisions, the legislature did not intend the statute to have only a punitive effect. *Id.* at 258, 666 A.2d at 139. The changes merely supported the legislature's intent of deterring persons who might drive while drunk and reducing "fatalities caused by drunk drivers who drive while awaiting criminal adjudication." *Id.* at 259, 666 A.2d at 139. Thus, the court concluded that in adopting the amendments to section 16-205.1, the legislature was motivated by both punitive and remedial purposes. *Id.* at 261, 666 A.2d at 141.

The court also disagreed with Jones's contention that the

sanctions imposed by section 16-205.1 are severe enough to be considered punishment. *Id.* at 262, 666 A.2d at 141. Distinguishing *Jones* from *Kurth Ranch*, where the Supreme Court decided that the imposed tax was "remarkably high," the court rationalized that the forty-five day or one year maximum suspension provided by section 16-205.1 was simply neither "remarkably high" nor severe enough to be considered punishment. *Id.* at 263, 666 A.2d at 141. Judge Murphy noted that "the interests advanced in removing drunk drivers from the highways 'are of such a nature and importance to society in general that the inconvenience occasioned by the temporary suspension of driving privileges pales by comparison.'" *Id.* at 263, 666 A.2d at 141 (quoting *City of Columbus v. Adams*, 461 N.E. 2d 887, 890 (Ohio 1984)).

In applying the holdings in *Halper*, *Austin*, and *Kurth Ranch* to the case at bar, the court abandoned its prior approach of focusing upon whether a proceeding was criminal or civil in nature. *Id.* at 242, 666 A.2d at 131. While none of the three cases provided a systematic approach, each was based upon the *Halper* test which focused on a statute's remedial nature. Applying *Halper* to *Jones*, the court explained that the remedial purpose of maintaining safety on Maryland's public highways justified the license suspension imposed by section 16-205.1. *Id.* at 265,

666 A.2d at 142.

The court concluded by finding that Jones's prosecution for driving while intoxicated was not barred under Maryland's common-law prohibition against double jeopardy, because Maryland's double jeopardy protection can be overridden by statute. *Id.* at 266, 666 A.2d at 143. Thus, if the court accepted Jones's assertion that the legislature intended to punish him, the court would find that section 16-205.1 overruled the common-law double jeopardy protection. *Id.*

State v. Jones is the first occasion where the court of appeals directly addressed a Fifth Amendment double jeopardy challenge to a civil sanction since the *Kurth Ranch* decision in 1994. In *Jones*, the Court of Appeals of Maryland ruled that temporary administrative suspension of a driver's license does not constitute punishment under the law of double jeopardy or under Maryland common law. The court's decision allows the State to deny driving privileges to those who drive drunk, while also pursuing criminal sanctions. Overall, the ruling keeps potentially dangerous drivers off the roads, which in turn maintains safety on Maryland's public highways.

- Beverly Heydon