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# Recent Developments: Motor Vehicle Admin. v. Weller: Preliminary Breath Tests Are Admissible in Administrative Hearings

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## RECENT DEVELOPMENT

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### ***MOTOR VEHICLE ADMIN. v. WELLER: PRELIMINARY BREATH TESTS ARE ADMISSIBLE IN ADMINISTRATIVE HEARINGS***

**By: McEvan H. Baum**

In a case of first impression, the Court of Appeals of Maryland held that preliminary breath tests (“PBTs”) are admissible in administrative hearings. 390 Md. 115, 121-22, 887 A.2d 1042 at 1046. In so holding, the Court concluded that such forums are not “court actions” or “civil actions” under MD. CODE ANN., TRANSP. Section 16.205.2(c). *Id.* at 139, 887 A.2d at 1056.

On May 16, 2004, Officer Shuster of the Hampstead Police pulled over respondent Steven Weller’s (“Weller”) white Chevrolet after it crossed over a set of double yellow lines. Upon approaching Weller, Officer Shuster observed several clues which led him to believe Weller was intoxicated. Weller subsequently admitted that he had consumed six beers. After Weller failed a field sobriety test, a PBT was administered, which indicated Weller’s blood alcohol concentration was 0.16. Weller was then arrested for driving under the influence.

Following his arrest, Weller refused to submit to a chemical breath test. In consequence, pursuant to Section 16-205.1, Weller was issued a Suspension Order informing him that his license would be suspended. In accordance with Section 16-205.1(b)(3)(v)(1), Weller requested an administrative hearing to allow him to show cause as to why his license should not be suspended.

During the hearing, the Motor Vehicle Administration (“Administration”) admitted several documents into evidence, including the DR-15 and the DR-15A Officer Certification and Order of Suspension which contained Weller’s PBT result. While Weller did not object to the admittance of any evidence, he did proffer that his one-year suspension (as a repeat offender) should be reduced so he could drive to and from daily inspections to fulfill his duties as an insurance adjuster. After considering the evidence before her, including the PBT result, the administrative law judge (“ALJ”)

suspended Weller's license for one year, as mandated by Section 16-205.1(b)(1)(i)(2)(B). The statute provides that where a "licensed person" who has already refused to submit to a chemical test refuses an additional test, that individual's license shall be suspended for one year.

The Circuit Court for Carroll County reversed the decision and vacated Weller's suspension on the primary ground that the ALJ violated Section 16.205.2(c) by considering Weller's PBT result. The Court of Appeals of Maryland granted *certiorari* to consider whether PBTs are admissible in administrative hearings under Section 16-205.2(c), as well as whether the circuit court "improperly substituted its judgment" for the Administration in reversing the ALJ's decision.

The Court initially addressed the Administration's position that Weller should not be able to appeal the PBT's admission because he failed to object to its introduction in the preceding forums. *Id.* at 128, 887 A.2d at 1050-51. The Court noted several cases where it opined that issues not raised during the administrative proceeding cannot be raised during judicial review. *Id.* at 128-30, 887 A.2d at 1050-51. However, the Court explained that the unpreserved issue needed to be decided in the instant case because the circuit court did not separate the issues that it considered. *Id.* at 130, 887 A.2d at 1051.

Addressing the ultimate issue of whether the PBT was properly admitted during the hearing, the Court first cited the language of Section 16-205.2(c), which provides in pertinent part that "[t]he taking of or refusal to submit to a preliminary breath test is not admissible in evidence in any court action." *Id.* at 133, 887 A.2d at 1053. While Weller argued that an administrative hearing can be considered a court action because MD. CODE ANN., CTS. JUD. PROC. Section 1-101(c) does not specifically define "court action," the Court was not persuaded by this interpretation. *Id.* at 135, 887 A.2d at 1054.

Examining the definitions of both "court" and "action," the Court declared that the "court action" language of Section 16-205.2(c) was clear and unambiguous. *Id.* at 135, 887 A.2d at 1054. After noting that the Black's Law Dictionary definition of action is "[a] civil or criminal judicial proceeding," the Court differentiated between actions and administrative hearings. *Id.* at 135-38, 887 A.2d at 1054-56. In so doing, the Court apprised that proceedings which take place in the Court of Appeals, Court of Special Appeals, circuit court, district court, or an orphans' court are court actions, while administrative hearings before administrative agencies or administrative judges

pursuant to Section 16-205.1 are not court actions. *Id.* at 135, 887 A.2d at 1054.

Continuing its analysis, the Court of Appeals discussed case law that buttressed its interpretation. *Id.* at 136-38, 887 A.2d at 1054-56. The Court began by citing *Janes v. State*, 350 Md. 284, 302, 711 A.2d 1319, 1328 (1998), where it found that collateral estoppel did not operate in driver's license suspension hearings because "Section 16-205.1-type proceedings do not sufficiently resemble court proceedings." *Id.* at 136, 887 A.2d at 1054. Explaining the distinction, the Court in *Janes* stated that administrative courts are provided in license suspension hearings to ensure that individuals receive "minimally necessary due process" before an "important privilege" is temporarily revoked. *Id.*, 887 A.2d at 1054. Moreover, the Court asserted that the General Assembly has unequivocally made certain that criminal proceedings under Section 21-902 of the Transportation Article and administrative proceedings pursuant to Section 16-205.1 of the Transportation Article are independent of one another by its enactment of Section 16-205(1)(1). *Id.*

The Court found additional support for its conclusion in *Harmon v. State*, 147 Md. App. 452, 809 A.2d 696 (2002), where the Court of Special Appeals found the trial court erred in admitting a defendant's PBT results into evidence at a probation violation hearing. *Id.*, 887 A.2d at 1054-55. The Court drew a distinction between *Harmon*, a criminal proceeding in circuit court, and the case *sub judice*, an administrative hearing before an ALJ. *Id.* at 137, 887 A.2d at 1055.

Delving further into its differentiation between court or civil actions and administrative proceedings, the Court enumerated the lenient evidentiary standards that govern administrative hearings. *Id.* at 137-38, 887 A.2d at 1055. Such proceedings are generally informal in nature and are not bound by technical rules of evidence. *Id.* Subsequently, the Court refuted Weller's contention that administrative hearings are court actions because they can be appealed; reasoning that they are subject to limited standards of review, and are considered as original actions for judicial review, rather than appeals. *Id.* at 138, 887 A.2d at 1056.

With respect to whether an administrative hearing could be considered a civil action, the Court found such a comparison was inapposite. *Id.* at 138, 887 A.2d at 1056. Unlike the procedural requirements which initiate an administrative hearing, a civil action is commenced when a complaint is filed with a court. *Id.* (citing Md. Rule 2-101(a)). Furthermore, Section 10-202(d) of the State

Government Article defines administrative proceedings as “contested cases,” rather than civil actions. *Id.* at 138-39, 887 A.2d at 1056.

Finally, the Court briefly addressed the second issue of whether the circuit court inappropriately substituted its judgment in place of the Administration’s in determining that the ALJ failed to consider Weller’s type of employment and the length of time passed since Weller’s prior chemical breath test refusal. *Id.* at 139, 877 A.2d at 1056. In holding that the circuit court applied an incorrect standard of review, the Court observed that the review of an administrative agency’s decision is limited to determining whether the record supports the agency’s findings and whether the decision was based on an erroneous conclusion of law. *Id.* at 141, 887 A.2d at 1057. Finding that the record satisfied the substantial evidence test, and having already concluded that the PBT was properly admitted in the administrative proceeding, the Court reversed the decision of the circuit court. *Id.* at 144-45, 887 A.2d at 1060.

In this case, the Court of Appeals established that PBTs are admissible in administrative hearings. In so holding, the Court has expanded the broad scope of evidence that can be admitted before administrative agencies. As a result, defense attorneys in DUI cases should anticipate that such evidence will be introduced against their clients in these proceedings.