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RECENT DEVELOPMENT

MOTOR VEHICLE ADMIN. v. ILLIANO: PURSUANT TO SECTION 16-205.1(B)(1) OF THE MARYLAND TRANSPORTATION ARTICLE, “STOP OR DETAIN” ALLOWS FOR OFFICERS TO DEVELOP A REASONABLE SUSPICION THAT A DRIVER IS UNDER THE INFLUENCE OF ALCOHOL AFTER THE INITIAL STOP

By: Stephen Gilpatric

The Court of Appeals of Maryland held that, pursuant to section 16-205.1 of the Maryland Transportation Article, “stop or detain” allows officers to develop a reasonable suspicion that a driver is driving under the influence *after* the initial stop. *Motor Vehicle Admin. v. Illiano*, 390 Md. 265, 888 A.2d 329 (2005) (emphasis added). Once the officer has a reasonable suspicion, he can request the driver submit to a breath test.

In the early morning hours of October 30, 2003, Officer J. Marll (“Marll”) was operating a speed radar trap on the shoulder of Route 170 in Anne Arundel County, Maryland. At approximately two o’clock in the morning, a car pulled up behind Marll’s patrol car and sat idling. Marll decided to check on the driver, Carmelina Illiano (“Illiano”), and backed his patrol car alongside the driver’s car. At this point the driver lowered her driver’s side window and Marll detected the smell of alcohol. As Marll was parking his cruiser behind her car, he observed Illiano get out and switch seats with the passenger. Marll approached the passenger side window and asked Illiano why she had stopped her car on the shoulder of the road. Illiano stated that she had been drinking and should not be driving. Based upon this response, and the fact that Illiano appeared intoxicated, Marll requested that Illiano complete some field sobriety tests. After Illiano failed the field sobriety tests, Marll placed Illiano under arrest for driving under the influence.

Initially, Illiano agreed to take a chemical breath test. However, upon arriving at the barracks, Illiano changed her mind and refused to submit to the chemical breath test. Accordingly, pursuant to Section 16-205.1(b)(3), Marll took the following actions: (1) he confiscated

her license, (2) he served her a one year suspension, (3) he issued her a temporary license, and (4) he informed her of her right to a hearing before an administrative judge. For the second time within five years, Illiano had refused to submit to a chemical breath test when requested to do so; as such Section 16-205.1(b) mandates that her license be suspended for one year.

On March 9, 2004, Illiano appeared before an Administrative Law Judge (“ALJ”). The ALJ had to determine whether Marll had reasonable grounds to believe that Illiano was driving a motor vehicle under the influence prior to requesting her to submit to a chemical breath test. The written findings of the ALJ, discredited Illiano’s testimony of the facts and upheld the one-year suspension of her license. Illiano filed a Petition for Judicial Review in the Circuit Court for Carroll County.

The circuit court held that Section 16-205.1(b)(2) clearly requires “an officer have reasonable grounds for detaining someone for driving under the influence.” Further, according to Section 16-205.1(b)(2), the results of a field sobriety test are irrelevant in determining whether the officer had reasonable grounds to originally detain the motorist. Based upon these conclusions, the circuit court held that Marll did not have reasonable grounds to detain the petitioner and subsequently reversed the decision to suspend Illiano’s license for one year. Subsequently, the Motor Vehicle Administration (“MVA”) appealed, and the Court of Appeals of Maryland granted *certiorari*.

The Court of Appeals began its analysis of the present case by noting Judge Eldridge’s description of the court’s role in reviewing an administrative agency’s decision as being narrow. *Illiano*, 390 Md. at 274, 888 A.2d at 335; *see Md. Aviation Admin. v. Noland*, 386 Md. 556, 571, 873 A.2d 1145, 1154 (2005). Additionally, the Court stated that the reviewing court has the limited duty of “determining if there is substantial evidence in the record to support the agency’s findings and conclusions, and to determine if the administrative decision is based upon an erroneous conclusion of law.” *Illiano*, 390 Md. at 274, 888 A.2d at 335 (quoting *Md. Aviation Admin.*, 386 Md. at 571, 873 A.2d at 1154 (2005); *see also, United Parcel v. People’s Counsel*, 336 Md. 569, 576, 650 A.2d 226, 230 (1994)). Eldridge stressed that, contrary to language present in some opinions issued by the Court of Appeals, a court’s duty “on review is *not* to substitute its judgment for the expertise of those persons who comprise the administrative agency.” *Illiano*, 390 Md. at 275, 888 A.2d at 335 (quoting *United Parcel*, 336 Md. at 576-77, 650 A.2d at 230) (emphasis added). Finally, courts

should give considerable weight to the statutory interpretations applied by administrative agencies. *Id.* at 275, 888 A.2d at 335; *see Lussier v. Md. Racing Comm.*, 343 Md. 681, 696-97, 684 A.2d 804, 811-12 (1996).

The Court next addressed the MVA's argument that Section 16-205.1(b)(2) allows for an officer to develop reasonable suspicion that a motorist is driving under the influence *after* making the initial stop. *Illiano*, 390 Md. at 276, 888 A.2d at 336 (emphasis added). This argument directly contradicted the findings of the circuit court, which found that any events subsequent to the initial stop cannot be considered when determining if the officer had reasonable grounds to detain a motorist. *Id.* at 277, 888 A.2d at 337. Thus, the Court of Appeals then had to determine which of these two extremely different interpretations of Section 16-205.1 was correct. *Id.* at 277, 888 A.2d at 337.

Section 16-205.1 states that "if a police officer 'stops or detains' an individual who the officer has reasonable grounds to believe is driving under the influence, the officer may request that the person submit to a breath test." *Id.*, *see Illiano*, 390 Md. at 278-79, 888 A.2d at 337-8.

In its interpretation of Section 16-205.1, the Court focused on the use of the word "or", in the phrase "stop or detain" contained in Section 16-205.1. *Illiano*, 390 Md. at 278-9, 888 A.2d at 337-8. The Court concluded that "the use of the conjunction 'or' indicates that the officer may have reasonable grounds to believe that the driver is under the influence either [prior to pulling them over] at the time of the [initial] stop or, due to events [that transpire] after the [initial] stop." *Id.* Therefore, an officer can pull over a motorist for any number of reasons—from generally enforcing the laws of the roadway through the issuance of a traffic citation—and subsequently develop reasonable suspicion that such driver is under the influence of alcohol. *Id.*, *see State v. Green*, 375 Md. 595, 609, 826 A.2d 486, 494 (2003). Once the officer develops reasonable suspicion that a motorist is under the influence, he can request that the person submit to a chemical breath test. *Illiano*, 390 Md. at 278-79, 888 A.2d at 337-78.

Based on this statutory interpretation, the Court held that the ALJ's interpretation of Section 16-205.1 was not based on an erroneous conclusion of law. *Id.* at 281, 888 A.2d at 339. Thus, the Court was left to the factual determination of whether there were reasonable grounds for Marll to believe that Illiano was driving under the influence. *Id.* at 282, 888 A.2d at 340-41.

In reviewing the factual findings of an administrative agency, each court must employ the substantial evidence test. *Id.* at 281-82, 888 A.2d at 339. This “requires that an agency’s factual determination[s] be supported by competent, material, and substantial evidence in light of the entire record as submitted.” *Id.* (quoting *Board of Physician Quality Assurance v. Mullan*, 381 Md. 157, 172, 848 A.2d 642, 651 (2004)). Here, the Court found that the record indicated the following facts: Marll smelled a strong odor of alcohol emanating from Illiano’s vehicle, Illiano made several inculpatory statements, and Illiano failed multiple field sobriety tests. *Id.* at 282, 888 A.2d at 339-40. The Court concluded that the ALJ’s finding that Marll had reasonable grounds to believe Illiano was driving under the influence was supported by substantial evidence. *Id.* at 282-83, 888 A.2d at 340.

Ultimately, the Court of Appeals reversed the circuit court’s decision, and directed that court to affirm the ALJ’s decision upholding the one-year suspension of Illiano’s license. *Id.*

The holding of this case makes it clear that police officers are required to possess reasonable grounds to believe that a motorist is operating a vehicle under the influence prior to requesting that a motorist take a chemical breath test. However, those reasonable grounds can be ascertained at anytime during an encounter with the police even if that encounter is not initially related to suspicion of driving under the influence. Practitioner’s need to be aware that this holding removes the requirement that police officers make a threshold determination as to a reasonable suspicion that a driver is under the influence of alcohol. That determination can now be made at any point during a traffic stop.