# NEW YORK COURT OF APPEALS ROUNDUP

# COURT DECIDES ISSUE OF LICENSE REVOCATION AFTER DRIVER REFUSES BLOOD TEST

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In *Matter of Endara-Caicedo v. New York State Department of Motor Vehicles*, the Court of Appeals recently addressed the circumstances in which a motorist will be subject to revocation of her driver's license for refusing to submit to a chemical blood alcohol test. The majority held that a motorist cannot avoid revocation even when the request to submit to a test takes place more than two hours after the arrest even though a two hour temporal limitation does apply to the use of that refusal as evidence in a subsequent criminal proceeding.

As everyone hopefully knows, it is unlawful to operate a motor vehicle while under the influence of alcohol or drugs. That is codified in §1192 of the Vehicle and Traffic Law (VTL). In order to facilitate the efforts of police officers to enforce impaired driving laws, §1194(2)(a) of the VTL provides that anyone who operates a motor vehicle in New York is deemed to have given consent to a chemical test of her breath, blood, urine or saliva to determine the alcohol and/or drug content of the individual's blood. This "deemed consent" is subject to certain restrictions including that: (1) the test is administered at the direction of a police officer, (2) the police officer has reasonable grounds to believe that the individual was operating a motor vehicle in violation of VTL §1192, and (3) the test is administered within two hours of the individual's arrest for the §1192 violation.

VTL §1194(2)(b) provides that if the individual refuses to submit to the chemical test after having been informed that the refusal will result in the suspension and revocation of her driver's license, the test will not be administered absent a court order but the police officer will make a written report of the refusal and the individual's motor vehicle license will be immediately suspended. The individual is then entitled to a hearing before an Administrative Law Judge pursuant to VTL §1194(2)(c) to determine whether her license should be revoked for at least a year.

In addition, VTL §1192(f) provides that evidence of the motorist's refusal to submit to the chemical test is admissible in any trial, proceeding or hearing based on a violation of VTL §1192 as long as the individual was given a sufficiently clear and unequivocal warning about the effect of her refusal.

The petitioner in this case was arrested in the Bronx on Jan. 30, 2016 for driving while intoxicated in violation of §1192. Approximately three hours after his arrest, the petitioner was warned about the effect of refusing to submit to a chemical test of his blood alcohol level but he nevertheless refused to submit to the test. An administrative due process hearing pursuant to VTL §1194(2)(c) was conducted on July 5, 2016 to determine whether petitioner's license should be revoked. The petitioner argued that, because he was not asked to submit to the test until more than three hours after his arrest and VTL §1194(2)(a)'s "deemed

consent" provision requires that the test be administered within two hours of the arrest, his refusal to submit could not be deemed a "refusal" within the meaning of the VTL to justify the suspension and revocation of his license. The Administrative Law Judge rejected this argument and revoked petitioner's motor vehicle license for at least a year. 59 Misc.3d 984, 986 (Sup. Ct. Bronx Cnty. 2018).

The petitioner appealed to the Department of Motor Vehicles (DMV) Appeals Board which rejected his appeal on Feb. 28, 2017. Id. The petitioner then commenced an Article 78 proceeding in Supreme Court, Bronx County challenging the DMV revocation of his driver's license. Id. The Supreme Court denied the Article 78 petition in a Decision and Order dated Jan. 4, 2019. 180 A.D.3d 499, 499 (1st Dep't 2020). The petitioner then appealed to the Appellate Division, First Department which affirmed. Id. at 500.

The Court of Appeals granted leave to appeal and affirmed the First Department in a decision written by Chief Judge Janet DiFiore and joined by Judges Garcia, Wilson, Singas and Cannataro. Judge Rivera issued a dissenting opinion and Judge Troutman did not take part in the decision.

The majority opinion focused on the language of VTL §1194(2)(c) governing the administrative revocation hearing. The majority framed the petitioner's argument as an attempt to take the two hour rule of VTL §1194(2)(a)(1) relating to the circumstances in which a motorist is deemed to consent to a chemical test and to import that rule into the administrative hearing requirements of VTL §1194(2)(c). The majority noted that the VTL expressly limits the issues at a revocation hearing to: (1) whether the police had reasonable grounds to believe the motorist had violated §1192; (2) whether the motorist's arrest was lawful; (3) whether the motorist had been sufficiently warned, prior to the refusal, that a refusal to submit to a chemical test would result in the suspension and revocation of her license; and (4) whether the motorist had refused to submit to the test. The statutorily prescribed issues do not include the question of whether there had been compliance with a two hour limit on testing. In the view of the majority, the two hour rule prohibits the evidentiary use of chemical test results or of the refusal to submit to a test in a criminal prosecution for driving while intoxicated, but it does not apply in a civil license revocation hearing.

The majority explained that this statutory framework has been carefully crafted over several decades with the goal of facilitating testing of impaired drivers and removing them from the road, and that allowing a driver to refuse to submit to a chemical blood alcohol test without consequence would be contrary to this goal. The majority examined the history and evolution of the statutory framework and noted that the mandatory administrative revocation hearing upon a refusal to submit to a chemical test had evolved independently from the two hour rule relating to the admissibility of blood alcohol testing results in criminal prosecutions. The majority accordingly affirmed the First Department's ruling.

Judge Rivera dissented. She framed the issues a bit differently than the majority did, finding that the appeal concerned the admissibility at a driver's license revocation hearing of a motorist's refusal to voluntarily submit to a blood alcohol chemical test pursuant to VTL §1194(2)(a). In Judge Rivera's reading of the VTL, it is clear that the chemical test referred to in the revocation hearing provisions of §1194(2)(c) is the same chemical test referred to in the deemed consent provisions of §1194(2)(a) and, since the latter is subject to a two hour limitation, the refusal of a motorist to submit to a chemical test requested by the police more than two hours after the motorist's arrest cannot serve as the basis for a suspension and mandatory revocation of his license pursuant to §1194(2)(c). Judge Rivera does not disagree with the majority with respect to the fact that the goal of the statutory framework is to combat the scourge of driving while under the influence of drugs or alcohol; she just disagrees on how that framework should be construed with respect to this particular issue.

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