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Recent Developments: MVA v. Chamberlain: Drunk Drivers Need Not Be Informed of All Disparities between Sanctions for Failing a Chemical Alcohol Concentration Test and Refusing to Take Such a Test Altogether

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preted the section as simply denoting that the Treaty related back to crimes which occurred before the Treaty was ratified. *Id.*

Next the Court determined that section 9 of the Treaty "provide[d] a mechanism [for extradition] which would not otherwise exist," but did not represent the only mechanism for gaining custody. *Id.* at 2193-94. Article 9 provided that after receiving an official request for extradition, a nation could either extradite the requested person or prosecute the person on its own. *Id.* at 2194. Thus, Alvarez contended, Article 9 specified the only manner in which a nation could gain custody over an individual on foreign soil. He asserted that the restrictions and procedures established by the Treaty became superfluous if either nation was allowed to circumvent the Treaty through forcible abductions. *Id.* The Court bolstered its position, however, by noting that Mexico had actual notice of the *Ker* doctrine and the doctrine's applicability to the Treaty. *Id.*

Finally, the Court ruled that the general international law's prohibition of forcible abductions did not have effect under the Treaty, nor required that a similar prohibition be implied into the Treaty. *Id.* at 2194. Alvarez recognized that under the Treaty, the rights of the abducted individual were a derivative of the rights of the allegedly aggrieved nation. As such, once that nation protested the abduction, the nation's rights under the Treaty were transformed into the individual's rights under the international law. Alvarez concluded that because both the abduction violated his individual rights and Mexico filed a protest, the Treaty must be enforced on his behalf to bar the *in personam* jurisdiction of the United States District Court. *Id.* at 2195. The Court rejected this theory for two reasons. First, the Court opined that such rigid enforcement produced unjust results if one nation acted offensively toward the other. *Id.* Second, the Court pronounced that only the law

between nations specifically applied to extradition treaties should be considered, not the full body of the general international law. *Id.*

A lengthy dissent written by Justice Stevens and joined by Justices Blackmun and O'Connor condemned the majority ruling for turning the terms of the Treaty into little more than verbiage. The dissent accused the Court's entire opinion of being critically flawed because it failed to differentiate between private conduct and governmental action. *Id.* at 2203. The dissent concluded that the abduction was expressly sanctioned by the Executive Branch and was therefore constituted a flagrant breach of the Treaty. *Id.*

Thus, the majority of the Supreme Court, in *U.S. v. Alvarez-Machain*, held that the U.S. government may solicit the forcible abduction of a foreign national in order to obtain jurisdiction over that person. In so doing, the Court established the rule that the existence of an extradition treaty between the nations is consequential only if the treaty is invoked. This decision may seriously affect the United States's future efforts to initiate joint actions with foreign nations who are already leery of the United States. After this case was decided, Mexico promptly ceased all joint actions with the DEA and also began the process of re-evaluating the Treaty. However, it is likely that the Court sought to make the "right" decision under the circumstances in order to allow the courts to decide the innocence, or guilt, of an alleged villain. By adopting the approach that an extradition treaty must be invoked to have affect, the Court eliminated treaty-based jurisdictional challenges to international abductions and granted the United States a free hand to grab suspected criminals and bring them to trial.

- Brett R. Wilson

***MVA v. Chamberlain*: DRUNK DRIVERS NEED NOT BE INFORMED OF ALL DISPARITIES BETWEEN SANCTIONS FOR FAILING A CHEMICAL ALCOHOL CONCENTRATION TEST AND REFUSING TO TAKE SUCH A TEST ALTOGETHER.**

In a unanimous decision interpreting sections of Maryland's transportation statutes relating to drunk driving, the Court of Appeals of Maryland in *MVA v. Chamberlain*, 326 Md. 296, 604 A.2d 919 (1992), ruled that a police officer is not required to inform an intoxicated motorist of all potential differences in penalties between refusing and failing a chemical alcohol concentration test. In so holding, the Court declined to recognize additional procedural protection for motorists who decline to submit to a blood alcohol test.

The defendant Chamberlain was stopped by a police officer for speeding and suspicion of driving while intoxicated. After the officer performed some field sobriety tests on Chamberlain, the officer placed Chamberlain under arrest for driving while intoxicated. Then, quoting section 16-205.1 of the Transportation Article of the Maryland Annotated Code, the officer informed Chamberlain of his rights pertaining to taking a chemical test to determine his blood alcohol level.

The officer told Chamberlain of his right to refuse to submit to the test but warned that a refusal would result in an administrative suspension of his Maryland driver's license. Additionally, the officer stipulated that "[s]uspension by the Motor Vehicle Administration shall be 120 days for a first offense and one year for a second or subsequent offense." *Chamberlain*, 326 Md. at 310, 604 A.2d at 921 (quoting Md. Trans. Code Ann. § 16-205.1(b) (1987)).

Chamberlain was also told of the consequences of failing to take the test. The officer, quoting from an advice of rights form, warned Chamberlain that if he submitted to the test, and the results indicated an alcohol concentra-

tion of .10 or more, an administrative suspension of his driver's license would result. The officer further informed Chamberlain that "[t]he suspension by the Motor Vehicle Administration shall be 45 days for a first offense and 90 days for a second or subsequent offense." *Id.* However, the officer did not tell Chamberlain that if he failed the test, the suspension could be modified or a restrictive license could be issued for work and alcohol education purposes.

Because Chamberlain refused to take the test, his license was temporarily confiscated and he was issued a temporary 45 day restrictive license. At his administrative hearing Chamberlain contended that the police officer had not properly advised him of the consequences of refusing to take the test or of failing it. *Chamberlain*, 326 Md. at 311, 604 A.2d at 920. The Administrative Law Judge ("ALJ") refused to consider Chamberlain's argument. The Circuit Court for Montgomery County, however, found the officer's advice to be inadequate and reversed the decision of the ALJ. *Id.* at 312, 604 A.2d at 920. The Court of Appeals of Maryland granted certiorari to consider the case because it found the matter to be of public importance. *Id.*

The heart of Chamberlain's argument on appeal concerned how much advice the police were required to give a detained driver who refused to submit to a chemical alcohol concentration test. *Id.* at 312, 604 A.2d at 922. Specifically, Chamberlain focused on the language of section 16-205.1(b)(2) of the Transportation Article which provides that "[t]he police officer shall . . . advise the person of the administrative sanctions that shall be imposed for the refusal to take the test." *Chamberlain*, 326 Md. at 313, 604 A.2d at 922 (emphasis added). Turning to earlier laws pertaining to chemical alcohol tests, Chamberlain pointed out that the word "penalties" in the prior statute had been replaced by the word "sanctions" in the current statute.

Id. Contending that the word "sanctions" was broader than the word "penalties," Chamberlain asserted that the Legislature intended for more advice to be given under the current statute than under the former. *Id.* Thus, Chamberlain argued that in addition to the length of the suspension, the detained driver must at least have been told of another possible consequence resulting from failing the test, but not from refusing it.

In opposition, the MVA contended that the police need only inform the detained driver of the difference in the lengths of the suspensions for refusing to take the test and for failing the test. *Id.* at 314, 604 A.2d at 922. Further, the MVA argued that possible eligibility for a restrictive license or modification of the suspension was not a "sanction" as contemplated by the Legislature and thus was not a fact of which the driver needed to be informed. *Id.*

In ruling against Chamberlain, the court of appeals first noted that in determining legislative intent, statutory construction mandated that the language of a statute be given its ordinary and common meaning. *Id.* at 314, 604 A.2d at 923 (citing *Dickerson v. State*, 324 Md. 163, 170-72, 516 A.2d 648, 651-52 (1991)). The court explained that section 16-205.9(b)(1) explicitly detailed the consequences for refusal and failure to take a chemical test and further pointed out that nowhere in subsection (b)(1) was the word "sanction" ever mentioned. Because of this omission, the court reasoned that subsequent paragraphs in the subsection which used the words "administrative sanctions" were merely using a "short hand equivalent" relating implicitly back to (b)(1); thus, the word "sanction" had no independent meaning from that given to it in (b)(1). *Chamberlain*, 326 Md. at 316, 604 A.2d at 924. The court determined that such an interpretation of the statutory language was "reasonable and consistent with the purposes of the statute." *Id.* at 317, 604 A.2d at 924.

The court also rejected Chamberlain's

assertion that advice concerning the possibility for suspension might be incentive to take the test and was therefore a "sanction" under the broad meaning of the word. *Id.* The court stated that such a possibility was not a sanction because, although the word "sanction" might in some contexts encompass rewards as well as penalties, not every conceivable incentive for action was a reward. *Id.* at 318, 604 A.2d at 924. Moreover, the court asserted that it was "inconceivable" that the Legislature intended sanctions to include advice about one's potential to obtain a modified license if one failed that chemical alcohol concentration test. *Id.* Whether a person would consider this possibility as an incentive to take the test was questioned by the court.

Furthermore, it was noted that informing a person that he or she might get a modified license by taking the test was misleading. *Id.* at 319, 604 A.2d at 925. Although a license could potentially be modified, an individual would have to meet statutory prerequisites in order to become eligible. Because the arresting officer would have no way of knowing whether or not a detained driver would meet the prerequisites, the court asserted that giving notification might falsely persuade the motorist to take the test.

Finally, the court reviewed decisions of other jurisdictions involving interpretation of drunk driving statutes. The court noted that the consensus of other states was that, although a driver was to be given the option of whether to take a chemical test, the driver need not be told of every possible consequence of each option. *Id.* at 320, 604 A.2d at 926. Aligning itself with the decisions of other states, the court of appeals held that Chamberlain had been sufficiently advised of the consequences of both refusing and failing a chemical test for alcohol. *Id.* at 323, 604 A.2d at 926. Thus, Chamberlain's license suspension was affirmed.

MVA v. Chamberlain affirms the

Legislature's intent that a driver need not be told of all possible consequences between refusing and failing a chemical test for alcohol. In addition, by finding that the word "sanctions" does not encompass mere possibilities, the court has refused to recognize additional procedural safeguards for persons who decline to take chemical alcohol concentration tests. By deciding that an officer is not required to advise a driver of potential eligibility for modification of suspension or restrictive license if a driver takes the chemical alcohol test, the court has implied that a person who refuses to take the test must be prepared to face the consequences.

- Ellen Marth

R.A.V. v. City of St. Paul: CITY ORDINANCE BANNING CROSS BURNINGS AND OTHER SYMBOLS OF HATE SPEECH VIOLATES THE FIRST AMENDMENT.

In *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992), the United States Supreme Court ruled that a city ordinance banning cross burnings and other hate crimes violated the First Amendment to the United States Constitution because it discriminated on the basis of speech content and was not reasonably necessary to achieve the compelling interest of protecting groups that have historically been the victims of discrimination. While the Court unanimously agreed that the law was facially invalid, it was divided over the proper analysis of the ordinance under the First Amendment. The Court's decision resulted in a clash of interpretations, with a four member concurrence charging the majority with abandoning long established First Amendment principles.

In 1990, the petitioner, a white teenager, burned a cross on the front lawn of a black family that had recently moved into the city of St. Paul, Minnesota. The petitioner was charged with violating a local hate crime law that prohibited the display of a symbol

which aroused anger, alarm, or resentment in others on the basis of race, color, creed, religion or gender. The ordinance specifically cited cross burning and swastika displays as acts punishable under its mandate.

The trial court dismissed the charges on the grounds that the law was substantially overbroad and impermissibly content-based. The Supreme Court of Minnesota rejected the overbreadth claim and upheld the ordinance because the statute limited its reach to "fighting words" and was narrowly tailored to serve a compelling governmental interest. The petitioner challenged the constitutionality of the statute, arguing that it infringed upon his First Amendment right to free speech. The Supreme Court granted certiorari to consider whether the ordinance discriminated impermissibly on the basis of content, and, if so, whether such discrimination was reasonably necessary to achieve the state's compelling interest in protecting those who have historically been the targets of discrimination.

Justice Scalia, writing for the Court, began his analysis by acknowledging that limited categories of speech - such as obscenity, defamation and fighting words - had been proscribed on the basis of content because their low social value was outweighed by a higher social interest. *R.A.V.*, 112 S. Ct. at 2543 (citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942)). In this case, however, the majority rejected the view that "fighting words," defined as insults which are likely to provoke the listener to react violently, were entirely without constitutional protection. *R.A.V.*, 112 S. Ct. at 2541. The Court determined that the government could proscribe "fighting words" in general because of the activity they provoked, but it could not proscribe specific sub-categories of fighting words because of the ideas they expressed or the classes they targeted. *Id.* at 2544. Thus, the majority found that the St. Paul ordinance was content discriminatory because it imposed spe-

cial prohibitions on those who expressed views on the disfavored subjects of race, color, creed, religion or gender, while at the same time permitting equally abusive messages which did not address those topics. *R.A.V.*, 112 S. Ct. at 2547. In addition, the Court reasoned that because there were content-neutral alternatives available, such as prosecuting the conduct under an arson statute, the city's compelling interest in protecting minority groups from victimization did not justify the law's discrimination. *Id.* at 2550.

The Court next outlined the two exceptions to content-based discrimination. The first exception occurs when the purpose of the distinction is content-neutral. *Id.* at 2545. As an illustration, the Court noted that a state could prohibit obscenity generally, but it could not prohibit obscenity that only included offensive political messages. *Id.* at 2546. Similarly, the Court noted that burning a flag in violation of an arson statute was punishable, but it had been held content-discriminatory to punish flag burning in violation of a law against dishonoring the flag. *Id.* at 2544 (citing *Texas v. Johnson*, 491 U.S. 397, 406-07 (1989)). "Fighting words," according to the Court, were unprotected because "their content embodie[d] an intolerable mode of expression." *R.A.V.*, 112 S. Ct. at 2549. Justice Scalia's analysis suggested that cross burning was not "especially offensive" as it did not communicate ideas in a "threatening (as opposed to a merely obnoxious) manner." *Id.*

The Court then addressed the second exception which would permit content-based discrimination: where the regulation was aimed at the secondary effects of the speech without reference to the content of the speech. *Id.* (citing *Renton v. Playtime Theaters Inc.*, 475 U.S. 41, 48 (1986)). The City of St. Paul cited this second exception as the basis for the discrimination in its ordinance, arguing that the St. Paul ordinance was not intended to stifle freedom of expression, but rather was