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Look Who's Talking

*Legal Implications of Twitter
Social Networking Technology*

by Steven C. Bennett

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Is the District Attorney a Permissible Guest at a “Pringle Hearing”?

By Joseph F. Castiglione

Vehicle & Traffic Law § 1193(2)(e)(7) (VTL) governs New York State’s law for the prompt driver license suspension hearings that are required to determine whether a person’s license to operate a motor vehicle in the state of New York should be temporarily suspended pending prosecution of, among other things, charges of driving while intoxicated and/or driving with more than .08% blood alcohol content (BAC) under VTL § 1192(2), (2-a), (3), or (4-a).

These VTL § 1193(2)(e)(7) prompt suspension hearings are known as “Pringle Hearings,” based upon the Court of Appeals’s decision in *Pringle v. Wolfe*.¹ Since the Court’s decision in *Pringle*, however, the issue of whether a district attorney’s office can participate in these civil proceedings has been widely discussed, most recently in the Appellate Division, Third Department’s July 2008 decision in *Schmitt v. Skovira*.² This article discusses *Skovira* and whether a district attorney has the legal jurisdiction to participate in a Pringle Hearing, either before or after a court makes its tentative findings under VTL § 1193(2)(e)(7).

The *Skovira* Decision

The Pringle Hearing statute dictates that “a court shall suspend a driver’s license, pending prosecution, of any person charged with a violation of [VTL § 1192(2), (2-a), (3) or (4-a)] who, at the time of arrest, is alleged to have had .08 of one percent or more by weight of alcohol in such driver’s blood as shown by chemical analysis of blood,

breath, urine or saliva.”³ VTL § 1193(2)(e)(7)(b) continues, stating that “[i]n order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of [Criminal Procedure Law (CPL) § 100.40] and there exists reasonable cause to believe [that] the holder” violated the statute. It then adds, in part, that “[a]t the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court’s findings.”⁴

The prompt suspension statute contemplates that the parties at a Pringle Hearing include “a court” and the accused “holder” of the driver’s license at issue. But what about the district attorney’s office? Since the statute was enacted, Pringle Hearings have generally been treated as private events involving only the court and the accused license holder. Recently, however, district attorney offices across the state have begun proactively seeking to participate in these proceedings. Does a district attorney’s office have any role to play at a Pringle Hearing? And does a district attorney have the legal capacity to partici-

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pate in what have been identified as civil administrative proceedings? The Appellate Division, Third Department dealt with the latter issue in *Skovira*.

In *Skovira*, the petitioners had been arrested and charged with violating various subsections of VTL § 1192.⁵ After a Pringle Hearing was scheduled for each petitioner, but “[b]efore the Pringle hearings could go forward, petitioners commenced [a] CPLR article 78 proceeding claiming that respondent Delaware County District Attorney should not be allowed to participate in the hearings,”⁶ as was permitted by the hearing courts. The “petitioners [had] assert[ed] on appeal that by participating in their Pringle hearing, the District Attorney would be acting in excess of his authorized powers. In that regard, petitioners [sought] relief in the nature of prohibition (see CPLR 7803[2]).”⁷ The Third Department ultimately concluded that, as solely related to the petitioners’ request for a writ of prohibition against the district attorney, there was no showing of “any existing provision of statutory or decisional law that prohibits public prosecutors from participating in *Pringle* hearings; accordingly, absent a clear legal right to relief, prohibition does not lie.”⁸

The Third Department did not actually determine in *Skovira* that a district attorney could affirmatively participate in a Pringle Hearing; it addressed only whether a writ of prohibition against the district attorney was proper.⁹ While the issue was not directly addressed by the court, a district attorney could arguably be allowed to participate in a Pringle Hearing, as limited by the hearing court’s determination of whether it is necessary for a district attorney to participate before the court makes its tentative findings under VTL § 1193(2)(e)(7)(b).

VTL § 1193(2)(e)(7) and the court’s inherent powers to control the Pringle Hearing and make findings without a district attorney participating in the hearing.

The provisions in VTL § 1193(2)(e)(7) indicate the court is in charge of conducting the proceedings at a Pringle Hearing: “[A] court shall suspend a driver’s license,” and “the court shall, as soon as practicable . . . suspend such license” and “[i]n order for the court to impose such suspension it must find that.”¹⁰ Apart from the direction in the VTL, New York jurisprudence recognizes that courts have the “inherent jurisdiction ‘to do all things reasonably necessary to enable [them] to administer justice effectively.”¹¹ As further explained by the Appellate Division, First Department:

The general principle that courts inherently may do that which is necessary to ensure the integrity of the proceedings over which they preside has been long recognized in New York. . . . Inherent power, by its nature, does not derive from express statutory authority, but is governed by the need to reasonably enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to

make its lawful actions effective. . . . Inherent power is a recognized adjunct to judicial power when a judge must discharge a responsibility, but lacks guidance from explicit legislative or decisional authority. Especially in such “gray area situations,” the exercise of inherent authority derives from common-law tradition as a means “to fill the gaps of express law and to respond to problems . . . that come up in carrying out their adjudicative duties . . . to fashion rules and create procedure so that the adjudicative process can function.”¹²

A court therefore also appears to have the inherent legal authority to direct the procedures and process at a Pringle Hearing.

Pringle Hearings have generally been treated as private events.

Under VTL § 1193(2)(e)(7) a court is required to find only that the accusatory instrument conforms to the requirements of CPL § 100.40 and that there exists “reasonable cause to believe” that the license holder operated a motor vehicle in violation of the VTL as stated. The “reasonable cause to believe” standard of proof is clearly far from the more onerous beyond all reasonable doubt standard.¹³ If the hearing court can do without the aid of a district attorney, either as a factual witness or as legal advocate, the court can simply make its tentative findings and then provide the accused with the opportunity to make a statement and present evidence to rebut the those findings. The statute does not say that a court must allow a district attorney to participate before making its tentative findings. The court appears to have the inherent authority to direct that the evidence it deems necessary to make its tentative findings be submitted by the necessary entities or persons, and then to make its findings without the district attorney’s assistance or participation. This seems consistent with the Appellate Division, Third Department’s decision in *Broome County District Attorney’s Office v. Meagher*, which concerned proceedings at a Pringle Hearing.¹⁴

In *Meagher*, the Third Department reversed a lower court’s “judgment prohibiting [a] Town Court from barring [the district attorney’s] participation during [the accused’s] rebuttal at the suspension hearing,”¹⁵ saying that the “threshold issue [was] whether prohibition is a proper remedy to challenge [a] Town Court’s rulings regarding the manner of proceedings in the prompt suspension hearing.”¹⁶ The Third Department specifically noted that the town court had “perceived no further role for the prosecution” when it precluded the district attorney’s office from participating in the Pringle Hearing.¹⁷

The appellate court ultimately held that the town court's ruling did not rise "to the level of acting in excess of its powers in violation of a clear legal right. Accordingly, there was no basis for issuing an order of prohibition."¹⁸

The *Meagher* decision therefore appears to support the conclusion that the plain language of VTL § 1193(2)(e)(7) does not require that a court allow a district attorney to participate in any capacity at a Pringle Hearing; the court just needs to review the evidence necessary to make its findings. Based upon the court's authority under VTL § 1193(2)(e)(7) and its inherent powers, a court appears also to have the authority to request that the district attorney's office participate in a Pringle Hearing, in a role deemed appropriate by the court; the district attorney could then arguably claim to have the power to legally participate in that hearing.

A court appears also to have the authority to request that the district attorney's office participate in a Pringle Hearing, in a role deemed appropriate by the court.

A district attorney arguably has the legal authority to participate in a Pringle Hearing.

The statutory "powers and duties" of district attorneys include "conduct[ing] all prosecutions for crimes and offenses cognizable by the court of [a district attorney's respective] county."¹⁹ These statutory powers also require that a district attorney "perform such additional and related duties as may be prescribed by law."²⁰ Further, New York jurisprudence recognizes that a district attorney's authority includes the powers and duties that are conferred by the Legislature, "either expressly or by necessary implication."²¹ These powers and duties could arguably extend to participation in Pringle Hearings, because these hearings are the means of imposing "sanctions" on individuals who commit crimes and offenses prosecuted under VTL § 1192.²²

Vehicle and Traffic Law Title VII – "Rules of the Road" – contains VTL Article 31. VTL Article 31 is titled "Alcohol and Drug-Related Offenses and *Procedures Applicable Thereto*."²³ Article 31 promulgates New York State's law governing "[o]perating a motor vehicle while under the influences of alcohol or drugs" in § 1192 and then sets out the related "[s]anctions" in § 1193.²⁴ Among other offenses, § 1192 addresses the criminal offenses for "[d]riving while ability impaired" (§ 1192(1)); "[d]riving while intoxicated; per se" (§ 1192(2)); "[a]ggravated driving while intoxicated; per se" (§ 1192(2-a)); "[d]riving while intoxicated" (§ 1192(3)); "[d]riving while ability impaired by drugs" (§ 1192(4)); and "[d]riving while ability impaired" by combination of drugs and/or alcohol (§ 1192(4-a)).²⁵ Then, § 1193(2) promulgates the related "[l]icense sanctions" for alleged charges and violations of VTL § 1192.²⁶

Section 1193 provides the specific "procedure" for "[s]uspension[s of licenses] pending prosecution."²⁷ The Pringle Hearings²⁸ are contained in that provision and identified as "[s]pecial provisions."²⁹ Section 1193's special procedure for determining whether a temporary license suspension is warranted pending prosecution is necessitated only by the prior existing charges/offenses being levied against individuals under VTL § 1192.

A district attorney's authority extends to prosecuting crimes and offenses and participating in the related procedures under VTL § 1192. However, Article 31 identifies the Pringle Hearings as the "*Procedures Applicable*" to the "Alcohol and Drug-Related *Offenses*" contained in § 1192.³⁰ While Pringle Hearings are considered civil administrative proceedings³¹ that impose a "civil sanction,"³² a district attorney's powers to prosecute the

crimes and offenses levied under § 1192 may plausibly, inherently, extend to participation in the related "license sanctions" procedures provided for in § 1193(2), if requested by a court. That is, if a district attorney has the authority to participate in the proceedings prosecuting the crimes/offenses under § 1192, a district attorney's inherent authority could reasonably extend to participating in the sanction proceedings in § 1193 because they are the "procedures applicable." This rationale regarding the interplay between the crimes/offenses promulgated under § 1192 and the temporary license suspension procedures under § 1193 is consistent with the title of Article 31 itself: "*Alcohol and Drug-Related Offenses and Procedures Applicable Thereto*."³³

A district attorney's interest in preserving evidence and witness testimony.

As stated earlier, a court is statutorily and inherently empowered to administer the proceedings and evidence at a Pringle Hearing. While a district attorney can seemingly participate in a Pringle Hearing if requested by the court, the statute does not require that a court allow a district attorney's office to participate in the hearing before the court is able to make its findings under VTL § 1193(2)(e)(7)(b). It should be noted, however, that, in certain limited circumstances, a court could possibly be considered to have inappropriately abused its inherent authority to control its proceedings if it precludes a district attorney's office from participating at a Pringle Hearing.

A district attorney's authority includes "conduct[ing] all prosecutions for crimes and offenses" recognized under applicable law.³⁴ That authority includes those powers

conferred upon a district attorney by the Legislature “either expressly or by necessary implication.”³⁵ By implication, that authority could extend to participation in any civil, administrative or criminal proceeding in order to reasonably preserve evidence or testimony that a district attorney would reasonably rely upon to properly prosecute crimes and offenses. If a court allows an accused at a Pringle Hearing to present or contest evidence that could be used at a subsequent time during the underlying criminal proceeding, and that evidence or testimony could reasonably affect the outcome of a trial or other pre-trial proceedings, a district attorney would clearly have an interest in protecting its evidence or witnesses. In those circumstances, a court’s decision to preclude a district attorney from participating in the Pringle Hearing could likely constitute an impermissible abuse of its inherent authority over its proceedings.

This seems consistent with the Third Department’s decision in *Meagher*. After noting that the town court had “perceived no further role for the prosecution” when it precluded the district attorney’s office from participating in the license suspension hearing, the Third Department determined that a writ of prohibition was improper. “There is no indication in the record that Town Court was about to permit [the accused] to turn his right to rebuttal into an opportunity for free-wheeling discovery regarding the criminal matter or to otherwise permit a protracted hearing running amok far beyond the parameters of the narrow issues before it.”³⁶ As such, at a Pringle Hearing, if a court allows an accused to “run amok” in such a manner, and then precludes a district attorney from participating in the Pringle Hearing, grounds for a writ of prohibition and/or to challenge the court’s decision, based upon the court abusing its inherent authority, would appear to exist.

Conclusion

No one enjoys the company of any person that shows up to a private event uninvited. In the long and the short, if you see a district attorney or the district attorney’s agent at a Pringle Hearing, be cautious: they don’t have to be kicked out; however, if the court or issues at the hearing go too far, they may try to stay all night. ■

1. 88 N.Y.2d 426, 646 N.Y.S.2d 426 (1996); see also *Broome County District Attorney’s Office v. Meagher*, 8 A.D.3d 732, 732, 77 N.Y.S.2d 567 (3d Dep’t 2004); see also *Schmitt v. Skovira*, 53 A.D.3d 918, 919, 862 N.Y.S.2d 167 (3d Dep’t 2008).

2. 53 A.D.3d 918.

3. VTL § 1193(2)(e)(7)(a).

4. VTL § 1193(2)(e)(7)(b). Note, the Legislature’s express use of the two different words “evidence” and “findings” indicates that the Legislature only intended that an accused be able to present “evidence” to rebut the court’s “findings”; the accused does not have the right to rebut the *evidence* the court relied upon in making its findings.

5. *Skovira*, 53 A.D.3d at 918–19.

6. *Id.* at 919.

7. *Id.* at 920.

8. *Id.* at 921 (citation omitted).

9. See also *id.* at 921 n.3 (stating, “[w]e do not comment on the merits of petitioners’ contention that a public prosecutor’s participation in a *Pringle* hearing would be an act in excess of his or her jurisdiction”).

10. See VTL § 1193(2)(e)(7)(a), (b).

11. *Alvarez v. Snyder*, 264 A.D.2d 27, 35, 702 N.Y.S.2d 5 (1st Dep’t 2000).

12. *Id.* at 35 (internal citations omitted); see also *People v. Green*, 170 Misc. 2d 519, 524, 653 N.Y.S.2d 1013 (Sup. Ct., Bronx Co. 1996) (stating that a court’s inherent powers include “the power to summon witnesses and compel their attendance”); see also *Trombetta v. Van Amringe*, 156 Misc. 307, 310, 280 N.Y.S. 480 (Sup. Ct., N.Y. Co. 1935) (stating that a court has inherent power “to compel the attendance of witnesses or to require the production of books and papers”).

13. The VTL § 1193(2)(e)(7)(b) standard of “reasonable cause to believe” appears to extend to the reliability of the chemical analysis test itself; *i.e.*, the court only need to find “reasonable cause to believe” that the chemical test the court has (and the results) are reliable and proper.

14. 8 A.D.3d 732, 732, 777 N.Y.S.2d 567 (3d Dep’t 2004).

15. *Id.* at 733.

16. *Id.* at 734.

17. *Id.*

18. *Id.* Relatedly, to the extent one reads *Skovira* as standing for the proposition that a district attorney *can* participate in a Pringle Hearing because the Third Department found that there was no statute prohibiting a district attorney from participating in the hearings, *Meagher* would then stand for the opposite, *i.e.*, a district attorney cannot participate in a Pringle Hearing because the court in *Meagher* found that there was no “clear legal right” that a district attorney *could* participate in those hearings.

19. N.Y. County Law § 700(1).

20. *Id.*

21. *E.g.*, *Czajka v. Breedlove*, 200 A.D.2d 263, 265, 613 N.Y.S.2d 741 (3d Dep’t 1994).

22. An opposing argument would seemingly be that there does not appear to be any statute that affirmatively states that a district attorney can participate in a Pringle Hearing. As a district attorney’s “authority is restricted to the powers and duties ‘conferred by the Legislature, either expressly or by necessary implication’” (*Skovira*, 53 A.D.3d at 919–20), without a statutory basis, there are not any express powers that would reasonably extend by necessary implication to participating in the “preconviction license suspension procedures [that] are civil administrative proceedings.” *Id.* However, as stated above and below, a district attorney’s powers to prosecute the underlying offenses under VTL § 1192, and the significant potentially negative impacts to their evidentiary interests in prosecuting the underlying offenses, both appear to be more probable and reasonable grounds to confer legal jurisdiction to allow a district attorney to participate in a Pringle Hearing.

23. Emphasis added.

24. The titles of both sections.

25. See VTL § 1192 (1), (2), (2-a), (3), (4), (4-a).

26. See also VTL § 1193(2)(a)(1) (stating sanctions for “[d]riving while ability impaired” under VTL § 1192(1)), and § 1193(2)(b)(1-a)–(3) (providing for license “revocation” for various violations of § 1192).

27. VTL § 1193(2)(e)(1).

28. See notes 31 and 32, *infra*.

29. See VTL § 1193(2)(e)(1), (7).

30. Emphasis added.

31. *Pringle*, 88 N.Y.2d at 435 (stating “civil statute”); *Skovira*, 53 A.D.3d at 919–20.

32. *State of N.Y. v. Roach*, 226 A.D.2d 55, 59, 649 N.Y.S.2d 607 (4th Dep’t 1996).

33. Emphasis added.

34. See County Law § 700(1).

35. *E.g.*, *Czajka v. Breedlove*, 200 A.D.2d 263, 265, 613 N.Y.S.2d 741 (3d Dep’t 1994).

36. *Meagher*, 8 A.D.3d at 734.