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# State v. McPartland: Applying the Reasonable Articulable Suspicion Standard to Secondary Screening Referrals at Sobriety Checkpoints in Maine and the Proper Role of the Law Court in Reviewing a Trial Court's Application of this Standard

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*STATE V. MCPARTLAND: APPLYING THE REASONABLE ARTICULABLE SUSPICION STANDARD TO SECONDARY SCREENING REFERRALS AT SOBRIETY CHECKPOINTS IN MAINE AND THE PROPER ROLE OF THE LAW COURT IN REVIEWING A TRIAL COURT'S APPLICATION OF THIS STANDARD*

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*STATE V. MCPARTLAND*: APPLYING THE REASONABLE ARTICULABLE SUSPICION STANDARD TO SECONDARY SCREENING REFERRALS AT SOBRIETY CHECKPOINTS IN MAINE AND THE PROPER ROLE OF THE LAW COURT IN REVIEWING A TRIAL COURT'S APPLICATION OF THIS STANDARD

Holly L. Doherty\*

I. INTRODUCTION

In *State v. McPartland*,<sup>1</sup> Mallory McPartland challenged her conviction for operating under the influence, arguing that the trial court erred when it denied her motion to suppress evidence obtained in a sobriety checkpoint that led to her arrest.<sup>2</sup> In a 4-3 decision, the Supreme Judicial Court of Maine, sitting as the Law Court, affirmed the judgment against McPartland.<sup>3</sup>

This case centered on a matter of first impression in Maine—what constitutional standard should a law enforcement officer apply when determining whether a motorist, lawfully stopped at a sobriety checkpoint, may be kept for secondary screening?<sup>4</sup> The majority concluded, and the dissent agreed, that the appropriate standard is that a law enforcement officer must have a “reasonable articulable suspicion” that a motorist is driving under the influence in order to refer the motorist for secondary screening.<sup>5</sup> The difference between the dissent and the majority, however, was that the dissent did not believe that the standard was met in this case.<sup>6</sup>

In determining that the reasonable articulable suspicion standard was not met in this case, the dissent failed to recognize the proper roles of the trial court and the Law Court in applying the standard and neglected to take relevant precedent into account. The majority opinion was not flawless either, however, as it did not adequately address the problematic dissenting opinion. This Note explores the proper roles of the trial court in making decisions based on the reasonable articulable suspicion standard and the Law Court in reviewing those decisions. This Note also examines the relevant case law that should have been considered by the dissent in its reasoning. Analysis of these matters leads to the conclusion that, had the dissent properly understood the respective roles of the two courts, and had

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1. 2012 ME 12, 36 A.3d 881.

2. *Id.* ¶ 1.

3. *Id.*

4. *Id.* ¶ 6.

5. *Id.* ¶ 1.

6. *Id.* ¶ 18 (Jabar, J., dissenting).

it taken into account the precedent set by the Law Court, there would have been a unanimous decision affirming the trial court's judgment.

## II. THE *MCPARTLAND* CASE

### A. *Factual and Procedural Background*

On the night of August 27, 2010, the Old Town Police Department conducted a sobriety checkpoint on Stillwater Avenue in Old Town, Maine.<sup>7</sup> There were six officers involved in the checkpoint, and they were to stop every vehicle and have a "brief conversation" with the driver.<sup>8</sup> Officer Christine McAvoy was one of the officers assigned to the checkpoint that night.<sup>9</sup>

At approximately 2 a.m., Mallory McPartland was driving on Stillwater Avenue and approached the checkpoint.<sup>10</sup> Officer McAvoy made the observation that McPartland was driving toward the checkpoint at a faster rate compared to other vehicles that night, estimating her speed to be thirty-five miles per hour in a twenty-five mile-per-hour zone.<sup>11</sup> However, despite traveling at a faster rate, McPartland appropriately stopped at the checkpoint.<sup>12</sup> Officer McAvoy observed no other questionable conduct at that time.<sup>13</sup> When Officer McAvoy spoke with McPartland, she did not observe any signs that McPartland had been drinking.<sup>14</sup> However, during the course of their conversation, McPartland admitted that she had consumed a martini at a restaurant or pub at approximately 10 p.m.<sup>15</sup> Officer McAvoy referred McPartland to secondary screening<sup>16</sup> based on her observation that McPartland had been speeding and on McPartland's admission that she had consumed alcohol that night.<sup>17</sup> McPartland was ultimately charged with operating

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7. *Id.* ¶ 2.

8. *Id.*

9. *Id.*

10. *Id.* ¶ 3.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* ¶ 4.

15. *Id.*

16. Secondary screening involves additional testing to determine whether a driver is impaired. *See* 59 AM. JUR. *Trials* § 79 (1996) ("Field sobriety tests, or FSTs, are exercises that test a subject's balance, coordination, recollection, and ability to follow instructions. Observation of FST performance provides insight into a driver's condition and, inferentially, into a driver's ability to safely operate a motor vehicle. FSTs are qualitative, gauging the effect of drug or alcohol ingestion, rather than quantitative. . . . The National Highway Traffic Safety Administration (NHTSA) has approved and standardized five tests for use in ascertaining a driver's sobriety: (1) the Romberg Balance test, (2) the Walk and Turn test, (3) the One Leg Stand test, (4) the Finger to Nose test, and (5) Gaze Nystagmus tests. The first four test balance and divided attention, or the ability to perform multiple tasks simultaneously. . . . There are a number of nonstandardized sobriety tests used by field officers in the course of their normal DWI and DUI investigations. Use of a particular nonstandardized test may be limited to certain officers or departments in a jurisdiction. These include alphabet tests, number tests, and finger counting dexterity tests. Their use is probative to the extent that they elicit conduct that can be evaluated.").

17. *McPartland*, 2012 ME 12, ¶¶ 4, 20, 36 A.3d 881.

under the influence.<sup>18</sup>

McPartland filed a motion to suppress evidence, arguing that Officer McAvoy did not have “sufficient justification” to refer her for a secondary screening after the initial stop.<sup>19</sup> At the suppression hearing, the trial court determined that “McPartland’s admission of alcohol consumption, coupled with Officer McAvoy’s estimate that McPartland had approached the roadblock at an elevated speed, ‘taken together [were] sufficient to provide a reasonable suspicion of at least some limited impairment.’”<sup>20</sup> Accordingly, the trial court denied McPartland’s motion to suppress.<sup>21</sup> McPartland then entered a conditional guilty plea to operating under the influence in the Unified Criminal Docket, and she was subsequently convicted.<sup>22</sup> McPartland thereafter appealed to the Law Court, arguing that the trial court “erred in concluding that [Officer McAvoy] . . . had a reasonable articulable suspicion of impairment that was sufficient to justify additional sobriety screening.”<sup>23</sup>

### B. The Majority Opinion

A majority of the Law Court acknowledged that the issue presented in this case was one of first impression in Maine—what constitutional standard must law enforcement officers apply when determining whether to refer a motorist for secondary screening at a lawful sobriety checkpoint?<sup>24</sup> The majority first examined the dicta of a leading United States Supreme Court case, *Michigan Department of State Police v. Sitz*,<sup>25</sup> the decisions of other states’ appellate courts,<sup>26</sup> and the work of Fourth Amendment scholar Wayne R. LaFare,<sup>27</sup> all of which applied a reasonable articulable suspicion standard.<sup>28</sup> The majority also pointed out that the Law Court had applied the same standard in its own case law “concerning the constitutional propriety of a motorist’s continued detention after a lawful stop based on a civil traffic infraction.”<sup>29</sup> Furthermore, the majority noted that, in a

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18. *Id.* ¶ 1. See also 29-A M.R.S.A. § 2411(1-A)(A)(1)-(2) (2011) (“A person commits OUI if that person: A. Operates a motor vehicle: (1) While under the influence of intoxicants; or (2) While having an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.”). “A driver is operating under the influence if her mental or physical faculties or senses are impaired to the slightest degree or to any extent.” *McPartland*, 2012 ME 12, ¶ 16, 36 A.3d 881.

19. *McPartland*, 2012 ME 12, ¶ 5, 36 A.3d 881.

20. *Id.*

21. *Id.*

22. *Id.* ¶ 1.

23. *Id.*

24. *Id.* ¶ 6.

25. 496 U.S. 444, 451 (1990) (“Detention of particular motorists for more extensive field sobriety testing may require satisfaction of an individualized suspicion standard.”).

26. See *Mullinax v. State*, 938 S.W.2d 801, 806 (Ark. 1997); *People v. Bruni*, 940 N.E.2d 84, 86 (Ill. App. Ct. 2010); *Commonwealth v. Murphy*, 910 N.E.2d 281, 287-89 (Mass. 2009); *Commonwealth v. Bazinet*, 924 N.E.2d 755, 757 (Mass. App. Ct. 2010); *State v. Eggleston*, 671 N.E.2d 1325, 1331 (Ohio Ct. App. 1996).

27. 5 SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 10.8(d) at 378-79 (4th ed. 2004).

28. *McPartland*, 2012 ME 12, ¶ 7, 36 A.3d 881.

29. *Id.* ¶ 8.

recent case,<sup>30</sup> the Law Court had suggested that analyzing the validity of an officer's referral of a motorist to secondary screening at a sobriety checkpoint "might include a reasonable suspicion component."<sup>31</sup> Based on the Court's analysis of these authorities, the majority expressed the following standard: a law enforcement officer who stops a motorist at a sobriety checkpoint must have an objectively reasonable articulable suspicion that the motorist is operating under the influence—"even to the slightest degree"—in order to refer the motorist for secondary screening.<sup>32</sup>

Next, the majority applied this standard, undertaking a two-step inquiry to determine whether the State had satisfied its burden in showing that the officer's actions "were objectively reasonable under the circumstances."<sup>33</sup> First, the majority reviewed the trial court's findings for clear error.<sup>34</sup> The trial court had found that Officer McAvoy "subjectively suspected McPartland of driving while impaired," and the majority concluded that there was competent evidence in the record to support this finding.<sup>35</sup> According to the majority, this competent evidence included McPartland's admission to having consumed a martini earlier that evening, the time of night she was driving, and her speed as she approached the checkpoint.<sup>36</sup>

Second, the majority reviewed *de novo* the trial court's "conclusion that the officer's subjective suspicion was objectively reasonable as a matter of law."<sup>37</sup> The majority stated that a motorist's admission to having consumed alcohol "may be considered by a police officer in determining whether the officer has a reasonable articulable suspicion that the [motorist] might be impaired."<sup>38</sup> The majority also noted that both speeding and driving in the early morning hours can be "suggestive of impairment."<sup>39</sup> Therefore, given the "totality of the circumstances," the majority ultimately determined that there was a reasonable articulable suspicion that McPartland was operating under the influence.<sup>40</sup> Accordingly, the majority concluded that the motion to suppress was properly denied and affirmed the judgment.<sup>41</sup>

### C. The Dissenting Opinion

The dissent agreed with the standard set forth by the majority but did not agree with the majority's finding that the standard was satisfied in this case.<sup>42</sup> The dissent applied the same two-step inquiry undertaken by the majority.<sup>43</sup> First, the

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30. *State v. Kent*, 2011 ME 42, 15 A.3d 1286.

31. *McPartland*, 2012 ME 12, ¶ 9, 36 A.3d 881 (citing *Kent*, 2011 ME 42, ¶ 4, 15 A.3d 1286).

32. *Id.* ¶ 16.

33. *Id.* ¶ 12 (quoting *State v. Sylvain*, 2003 ME 5, ¶ 7, 814 A.2d 984).

34. *Id.* ¶ 13.

35. *Id.*

36. *Id.* ¶ 14.

37. *Id.* ¶ 12.

38. *Id.* ¶ 15.

39. *Id.*

40. *Id.*

41. *Id.* ¶ 17.

42. *Id.* ¶ 18 (Jabar, J., dissenting).

43. *Id.* ¶ 19.

dissent reviewed the trial court's factual finding that Officer McAvoy subjectively suspected that McPartland was operating under the influence.<sup>44</sup> In reviewing the trial court's factual findings, the dissent addressed Officer McAvoy's testimony that she had relied on McPartland's speed as she approached the checkpoint and her admission to having consumed alcohol as justification for referring McPartland for secondary screening.<sup>45</sup> The dissent determined that, based on this testimony, Officer McAvoy "could not have harbored a legitimate, subjective concern that McPartland was operating under the influence at the time of the initial roadblock stop."<sup>46</sup>

In support of its finding, the dissent focused specifically on Officer McAvoy's testimony that she would refer a motorist to secondary screening if she had a reasonable suspicion that the motorist "had been drinking."<sup>47</sup> The dissent argued that, while an admission to having consumed alcohol was a "factor in the calculus," an officer basing her decision to refer a motorist to secondary screening on a "'reasonable suspicion' that the motorist had been 'drinking'" was not the appropriate "'reasonable suspicion' standard."<sup>48</sup> Rather, the dissent argued, an officer must have a reasonable suspicion that a motorist is operating under the influence.<sup>49</sup> The dissent suggested that a standard that requires a reasonable suspicion that a motorist *had been drinking* is distinct from a standard that requires a reasonable suspicion that a motorist *is operating under the influence*, arguing that the former creates a "lower subjective threshold than would ordinarily be required to sustain an extended OUI investigation."<sup>50</sup> Accordingly, the dissent determined that Officer McAvoy's referral of McPartland to secondary screening based on her subjective suspicion that she had been drinking was not synonymous with a subjective suspicion that McPartland was operating under the influence, which was the proper standard.<sup>51</sup>

Additionally, the dissent argued that evidence of McPartland's speed as she approached the checkpoint "played only an incidental role in Officer McAvoy's articulated reason for referring [McPartland] to secondary screening."<sup>52</sup> In support of this argument, the dissent pointed out the following facts: the stop was for the purposes of the sobriety checkpoint and not due to McPartland's speed; McPartland "properly slowed and stopped" as directed; and Officer McAvoy "did not otherwise equate McPartland's speed . . . with the type of 'erratic driving or swerving' that would normally be indicative of a motorist's impaired faculties."<sup>53</sup>

Under the second step of the inquiry, the dissent argued that Officer McAvoy did not have an objectively reasonable articulable suspicion that McPartland was operating under the influence since she had "initially employed the incorrect legal

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44. *Id.*

45. *Id.* ¶ 20.

46. *Id.*

47. *Id.* (quoting Officer McAvoy).

48. *Id.* ¶ 21.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* ¶ 22.

53. *Id.*

standard” when she referred McPartland to secondary screening.<sup>54</sup> The dissent found this to be “especially true” in this case because Officer McAvoy “did not observe any indicia of intoxication or impairment.”<sup>55</sup> Based on the preceding analysis, the dissent concluded that the motion to suppress should have been granted by the trial court.<sup>56</sup>

### III. THE ROLES OF THE TRIAL COURT AND THE LAW COURT

A trial court engages in a two-step process when reaching a decision.<sup>57</sup> First, the judge must determine questions of fact consisting of “‘historical facts,’ i.e., facts ‘in the sense of a recital of external events and the credibility of their narrators.’”<sup>58</sup> When applying a reasonable suspicion standard, the questions of fact involve “[t]he nature of the detaining officer’s subjective suspicion and the nature of the observations upon which that suspicion is based.”<sup>59</sup> Based on its finding of “facts known to the officer” and the officer’s credibility, a trial court determines whether the officer “subjectively entertained a concern”<sup>60</sup> that a motorist was engaged in “criminal conduct, a civil violation, or a threat to public safety.”<sup>61</sup>

Second, the judge must determine questions of law whereby the judge “draw[s] legal conclusions from these facts.”<sup>62</sup> The question of law under such a reasonable suspicion standard is “[w]hether an officer’s suspicion is objectively reasonable.”<sup>63</sup> In making such a determination, a trial court must consider the “events which occurred leading up to the stop . . . and . . . whether those historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion.”<sup>64</sup> Reasonable suspicion is not a standard that can be “readily, or even usefully, reduced to a neat set of legal rules.”<sup>65</sup> However, the standard does require “more than speculation or an unsubstantiated hunch,”<sup>66</sup> and the court must take the totality of the circumstances into account.<sup>67</sup>

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54. *Id.* ¶ 23.

55. *Id.*

56. *Id.* ¶ 24.

57. *State v. Cefalo*, 396 A.2d 233, 239 (Me. 1979).

58. *Id.* (quoting *Brown v. Allen*, 344 U.S. 443, 506 (1963)).

59. *State v. Fillion*, 474 A.2d 187, 190 (Me. 1984).

60. *State v. Sylvain*, 2003 ME 5, ¶ 14, 814 A.2d 984.

61. *Id.* ¶ 11.

62. *Cefalo*, 396 A.2d at 239.

63. *State v. Cusack*, 649 A.2d 16, 18 (Me. 1994) (citing *State v. Nelson*, 638 A.2d 720, 722 (Me. 1994); *Fillion*, 474 A.2d at 190).

64. *Ornelas v. United States*, 517 U.S. 690, 696 (1996).

65. *Illinois v. Gates*, 462 U.S. 213, 232 (1983). *See also Cusack*, 649 A.2d at 18 (citing *State v. Carnevale*, 598 A.2d 746, 749 (Me. 1991) (“There is no mechanical standard by which we review a court’s finding of reasonableness.”)).

66. *State v. Porter*, 2008 ME 175, ¶ 9, 960 A.2d 321.

67. *State v. Dulac*, 600 A.2d 1121, 1121-22 (Me. 1992). *See, e.g., Cusack*, 649 A.2d at 18-19 (“We find here that the officer had more than speculation or an unsubstantiated hunch that the driver was operating a motor vehicle under the influence. Based upon the combined circumstances of defendant’s speed, repeated drifting, and the early morning hour, the District Court did not err in finding that the officer was justified in stopping the defendant. Although the circumstances of this case may not rise to the level of erratic driving found in several of our recent cases, *State v. Pelletier*, 541 A.2d 1296, 1297 (Me. 1988), *Carnevale*, 598 A.2d 746, and *State v. Burnham*, 610 A.2d 733 (Me. 1992), the combined



In reviewing a trial court's decision, the Law Court also engages in a two-step inquiry.<sup>68</sup> First, the Law Court reviews a trial court's factual findings "to determine whether those findings are supported by the record."<sup>69</sup> A trial court's factual findings are given "considerable deference" because, unlike the Law Court, a trial court "has had the opportunity to hear the witnesses and assess their credibility."<sup>70</sup> Accordingly, a trial court's factual findings "will be overturned only when clearly erroneous."<sup>71</sup>

Second, the Law Court reviews a trial court's legal conclusions *de novo*.<sup>72</sup> The Law Court conducts an independent examination of whether application of the law to the facts "warrants a particular legal conclusion."<sup>73</sup> Thus, like the trial court, the Law Court determines whether the officer harbored an articulable suspicion that was "objectively reasonable in light of all the circumstances."<sup>74</sup> The approach taken by the Law Court is also seen in the United States Supreme Court:

[A]s a general matter determinations of reasonable suspicion . . . should be reviewed *de novo* on appeal. Having said this, we hasten to point out that a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.<sup>75</sup>

#### IV. ANALYSIS

Under the first step of the two-step inquiry undertaken by both the majority and the dissent in reviewing the trial court's finding of reasonable articulable suspicion, the factual findings of the trial court were to be given considerable deference and set aside only if clearly erroneous.<sup>76</sup> The case of *State v. Sylvain*<sup>77</sup> is

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facts . . . are sufficient to support the conclusion that the officer's suspicion was objectively reasonable.")

68. *State v. McPartland*, 2012 ME 12, ¶ 12, 36 A.3d 881.

69. *State v. Sylvain*, 2003 ME 5, ¶ 8, 814 A.2d 984 (citing *State v. Cefalo*, 396 A.2d 233, 240 (Me. 1979)).

70. *Id.* (citing *Cefalo*, 396 A.2d at 239). See also *Ornelas v. United States*, 517 U.S. 690, 699-700 (1996) ("A trial judge views the facts of a particular case in light of the distinctive features and events of the community; likewise, a police officer views the facts through the lens of his police experience and expertise. The background facts provide a context for the historical facts, and when seen together yield inferences that deserve deference. . . . An appeals court should give due weight to a trial court's finding that the officer was credible and the inference was reasonable.")

71. *Sylvain*, 2003 ME 5, ¶ 10, 814 A.2d 984.

72. *Id.* ¶ 9. See also *State v. Brown*, 675 A.2d 504, 505 (Me. 1996) (citing *State v. Dube*, 655 A.2d 338, 340 (Me. 1995)) ("A ruling on a motion to suppress based on undisputed facts, however involves a legal conclusion that we independently review.")

73. *Sylvain*, 2003 ME 5, ¶ 9, 814 A.2d 984 (citing *Cefalo*, 396 A.2d at 239). See also *State v. Cusack*, 649 A.2d 16, 18 (Me. 1994) ("The key question on . . . appeal is whether the District Court properly applied legal principles to the undisputed facts in finding the officer's suspicions to be objectively reasonable."); *Cefalo*, 396 A.2d at 239 ("[T]he Law Court has a special responsibility to exercise its independent judgment to determine the validity of legal conclusions that are dispositive of a defendant's claim that he has been denied fair treatment in a criminal proceeding.")

74. *State v. Wood*, 662 A.2d 919, 920 (Me. 1995).

75. *Ornelas*, 517 U.S. at 699

76. *State v. McPartland*, 2012 ME 12, ¶ 12, 36 A.3d 881.

77. 2003 ME 5, 814 A.2d 984.

instructive on the proper role of the Law Court in reviewing the trial court's factual findings. *Sylvain* involved a roadside stop of a single vehicle<sup>78</sup> rather than a sobriety checkpoint, but the same reasonable articulable suspicion standard was applied.<sup>79</sup>

In *Sylvain*, a state trooper pulled over the defendant after observing that his truck had a non-functional headlight.<sup>80</sup> The trooper then observed that the defendant had bloodshot eyes.<sup>81</sup> When the trooper asked whether the defendant had recently been drinking, the defendant stated that he had consumed two beers.<sup>82</sup> The trooper then instructed the defendant to perform field sobriety tests.<sup>83</sup> The defendant was subsequently charged with operating under the influence, and the trial court granted his motion to suppress evidence obtained during his field sobriety tests.<sup>84</sup> On appeal, the State challenged "both the findings of fact and the application of the constitutional principles to those facts."<sup>85</sup> In a unanimous opinion, the Law Court appropriately reviewed the trial court's factual findings for clear error only.<sup>86</sup> The trial court had made factual findings that the defendant's truck had one headlight out, that the defendant had bloodshot eyes, and that the defendant had admitted to consuming two beers.<sup>87</sup> The Law Court determined that these findings were supported by the record and therefore would not be disturbed.<sup>88</sup> Furthermore, the trial court had found that the trooper had a subjective suspicion that the defendant was operating under the influence.<sup>89</sup> The Law Court deferred to the trial court and "accept[ed] [its] factual finding on that point."<sup>90</sup>

As in *Sylvain*, the majority in *McPartland* appropriately deferred to the fact-finding role of the trial court in its review of the court's factual findings, determining only that "competent evidence support[ed] the suppression court's findings."<sup>91</sup> The dissent in *McPartland*, however, did not defer to the trial court. Rather, the dissent concluded that Officer McAvoy "could not, as a matter of law, have harbored a subjective suspicion that McPartland was impaired."<sup>92</sup> In reaching this conclusion, the dissent disregarded the trial court's interpretation of Officer McAvoy's testimony as fact-finder and improperly substituted its own interpretation of the facts.

In conducting its own fact-finding, the *McPartland* dissent focused primarily on a distinction between alcohol consumption and alcohol impairment.<sup>93</sup> This was

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78. *Id.* ¶ 2.

79. *Id.* ¶¶ 8-9.

80. *Id.* ¶ 2.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* ¶ 5.

85. *Id.* ¶ 11.

86. *See id.* ¶ 12-13.

87. *Id.* ¶ 12.

88. *Id.*

89. *Id.* ¶ 13.

90. *Id.*

91. *State v. McPartland*, 2012 ME 12, ¶ 13, 36 A.3d 881.

92. *Id.* ¶ 13 n. 2.

93. *See id.* ¶¶ 20-21 (Jabar, J., dissenting).

a distinction first raised in *State v. Nelson*.<sup>94</sup> In *Nelson*, an officer had observed the defendant drinking a beer in a parked truck.<sup>95</sup> When the defendant began to drive off, the officer proceeded to pull him over.<sup>96</sup> The officer had not observed anything unusual about the defendant's driving.<sup>97</sup> The defendant was subsequently charged with operating under the influence, and the trial court denied his motion to suppress evidence obtained in the stop.<sup>98</sup> On appeal, a majority of the Court held that the trial court should have granted the defendant's motion to suppress, finding "a clear deficiency in the evidence supporting the reasonableness of the suspicion."<sup>99</sup> In reaching this decision, the Court noted that "[t]here was no evidence that the officer observed indicia of physical impairment or anything unusual in Nelson's appearance."<sup>100</sup> Accordingly, the Court concluded that the officer "observed nothing to support his suspicion that [the defendant] was operating under the influence of alcohol other than [the defendant's] consumption of a single can of beer over the course of nearly an hour."<sup>101</sup> The Court appeared to base this conclusion on the fact that alcohol consumption in a parked vehicle by an adult is "neither a crime nor a civil violation."<sup>102</sup>

The Law Court later clarified the holding of *Nelson* in *Sylvain*, noted above.<sup>103</sup> In *Sylvain*, the trial court had concluded that the trooper's suspicion was not objectively reasonable as a matter of law, drawing from *Nelson* "that the mere admission to previously drinking alcohol by a person operating a vehicle is insufficient to give [an officer] authority to request a further brief intrusion into the driver's life through the performance of sobriety tests."<sup>104</sup> The Law Court in *Sylvain* concluded that the trial court's finding came from an inappropriate "intermingling of the separate concepts of legality and articulable suspicion."<sup>105</sup>

While it may not be a crime solely to consume an alcoholic beverage and then operate a motor vehicle, it is a crime to operate while impaired. Thus, the officer in a roadside stop is not focused on whether the operator was legally entitled to consume alcohol before operating the vehicle, but whether that consumption has resulted in any level of impairment. An officer deciding whether or not to ask an operator to demonstrate that the operator is not impaired in any way by the consumption of alcohol or drugs need only entertain a reasonable suspicion that impairment may exist.<sup>106</sup>

Accordingly, the Court in *Sylvain* found that the trooper's suspicion was objectively reasonable based on his observation that the defendant's eyes were

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94. 638 A.2d 720 (Me. 1994).

95. *Id.* at 721.

96. *Id.* at 721-22.

97. *Id.* at 722.

98. *Id.* at 721.

99. *Id.* at 722.

100. *Id.*

101. *Id.*

102. *Id.*

103. *State v. Sylvain*, 2003 ME 5, ¶ 18, 814 A.2d 984.

104. *Id.* ¶ 16.

105. *Id.*

106. *Id.*

bloodshot and the defendant's admission to having consumed two beers.<sup>107</sup> The Court unanimously concluded that the motion to suppress should have been denied.<sup>108</sup>

The distinction between consumption and impairment resurfaced in *State v. King*.<sup>109</sup> In *King*, an officer pulled over the defendant's vehicle after observing that its muffler was dragging.<sup>110</sup> While speaking with the defendant, the officer smelled alcohol on her breath and saw beer bottles or cans in the vehicle.<sup>111</sup> When asked if she had consumed any alcohol that night, the defendant admitted to drinking five beers but stated that she did not feel impaired.<sup>112</sup> The officer then asked the defendant to "describe on a scale of one to ten the effects of the alcohol she had consumed" and the defendant indicated a three.<sup>113</sup> The officer had not observed anything unusual about the defendant's appearance, functioning, or the manner in which she had been driving.<sup>114</sup> The officer proceeded to administer field sobriety tests, and the defendant was charged with operating under the influence.<sup>115</sup> The trial court in *King* subsequently granted the defendant's motion to suppress evidence obtained from the field sobriety tests.<sup>116</sup> Like the trial court in *Sylvain*, the trial court in *King* "emphasized the distinction between evidence of *impairment* and evidence of *consumption*," citing to *Nelson* as support for its ruling.<sup>117</sup> On appeal, the Law Court in *King* again made efforts to clarify the holding in *Nelson*:

In *Sylvain*, we clarified that *Nelson* does not stand for the proposition that something more than a motorist's mere admission that he or she consumed alcohol is required for a reasonable suspicion. On the contrary, we reaffirmed that an officer does not need objective evidence of the impairment itself; rather, the officer "need only entertain a reasonable suspicion that impairment may exist."<sup>118</sup>

The Court in *King* concluded that the totality of the circumstances and the evidence established "as a matter of law, an objectively reasonable suspicion that [the defendant] might have been impaired," and this was sufficient to deny the defendant's motion to suppress.<sup>119</sup>

It appears that the *McPartland* dissent, like the trial courts in *Sylvain* and *King*, focused on distinguishing between consumption of alcohol and alcohol impairment. As noted above, the trial courts in *Sylvain* and *King*, relying on *Nelson*, determined that a motorist's admission to the consumption of alcohol was not sufficient to find an objectively reasonable suspicion that the driver was operating under the influence. The *McPartland* dissent made a similar argument. The dissenting

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107. *Id.* ¶ 18.

108. *Id.* ¶ 19.

109. 2009 ME 14, 965 A.2d 52.

110. *Id.* ¶ 2.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* ¶ 1.

117. *Id.* ¶ 7 (emphasis in original).

118. *Id.* ¶ 8 (quoting *State v. Sylvain*, 2003 ME 5, ¶ 16, 814 A.2d 984).

119. *Id.* ¶ 9.

judges focused on Officer McAvoy's testimony that she would direct a vehicle to an area for secondary screening "if she had a reasonable suspicion that the operator of a vehicle had been drinking."<sup>120</sup> Based on this testimony, the dissent argued that Officer McAvoy's reason for referring McPartland to secondary screening was based only on her subjective suspicion that "McPartland had consumed alcohol, not that the consumption had in any way impaired her ability to operate a vehicle."<sup>121</sup> However, as articulated in *Sylvain* and again in *King*, drawing such a distinction—and concluding that mere consumption of alcohol is an insufficient basis for conducting further tests—is incorrect. The Law Court clarified in both *Sylvain* and *King* that an officer "does not need objective evidence of the impairment itself,"<sup>122</sup> rather, a reasonable articulable suspicion that impairment "may exist" is sufficient.<sup>123</sup>

Additionally, the *McPartland* dissent questioned the factual findings of the trial court concerning McPartland's speed in approaching the checkpoint. The dissent noted that McPartland had "properly slowed and stopped" when she got to the checkpoint and that Officer McAvoy "did not otherwise equate McPartland's speed . . . with the type of 'erratic driving or swerving' that would normally be indicative of a motorist's impaired faculties."<sup>124</sup> Accordingly, the dissent concluded that Officer McAvoy's "subjective 'concern'" about McPartland's speed as she approached the checkpoint "played only an incidental role in Officer McAvoy's articulated reason for referring her to secondary screening."<sup>125</sup> The applicable standard of review does not call for the Law Court to make such an interpretation of the facts. It was for the trial court, as the fact-finder, to interpret the testimony and draw inferences from the evidence to determine whether Officer McAvoy held the requisite subjective suspicion that McPartland was operating under the influence. And the trial court, based on its findings of fact and its interpretation of those facts, determined that Officer McAvoy *did* hold the requisite subjective suspicion. Therefore, with the evidence supported by the record, the dissent should have deferred to the factual findings of the trial court.

Had the dissenters properly deferred to the factual findings of the trial court, they still could have made their argument that Officer McAvoy's suspicion was not objectively reasonable as a matter of law because the Court is entitled to conduct a *de novo* review on this point. However, the primary argument made by the dissent is not supported by Law Court precedent, as noted above. The dissent relied on *Nelson* to argue that, because McPartland did not show "any indicia of intoxication or impairment," Officer McAvoy's suspicion that McPartland was operating under the influence was not objectively reasonable.<sup>126</sup> However, as previously noted, the decisions of *Sylvain* and *King* made it clear that such "indicia" were not necessary to meet the reasonable articulable suspicion standard.

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120. *State v. McPartland*, 2012 ME 12, ¶ 20, 36 A.3d 881 (Jabar, J., dissenting).

121. *Id.* ¶ 21.

122. *King*, 2009 ME 14, ¶ 8, 965 A.2d 52.

123. *Id.* (quoting *Sylvain*, 2003 ME 5, ¶ 16, 814 A.2d 984).

124. *McPartland*, 2012 ME 12, ¶ 22, 36 A.3d 881 (Jabar, J., dissenting).

125. *Id.*

126. *Id.* ¶ 23.

## V. CONCLUSION

The *McPartland* dissent agreed with the majority's conclusion that a reasonable articulable suspicion standard should be used to determine whether an officer was justified in referring a motorist stopped at a sobriety checkpoint for secondary screening. However, in reviewing the trial court's factual findings, the dissent failed to limit itself to the proper standard of review. Rather than review for clear error only, the dissent engaged in its own fact-finding exercise, interpreting Officer McAvoy's testimony itself and drawing its own inferences from the evidence. In essence, the dissent conducted its own independent review of the evidence, thereby diminishing the fact-finding role of the trial court. The dissent did not give the trial court the considerable deference it is entitled to in determining questions of fact. Furthermore, in conducting its analysis, the dissent did not take into account the precedent previously set forth by the Law Court in *Sylvain* and *King*. Had these cases been addressed and their principles understood, the dissent would not have concluded that McPartland's motion to suppress should have been granted.

Finally, although the *McPartland* majority applied the proper standard of review, its opinion did not adequately address the dissent's review of the trial court's factual findings. In footnote 2 of the opinion, the majority acknowledged that the dissent had erroneously substituted its own interpretation of the evidence for that of the trial court.<sup>127</sup> Such error is significant, and had the dissent gained just one more vote, the motion to suppress would have been granted. In order to strengthen its argument, especially when faced with three dissenters, the majority should have devoted more than just a footnote to addressing the problem with the dissenting opinion's standard of review. Had more time been given to exposing the flaws of the dissent's reasoning, the majority could have undermined the influence of the dissenting opinion.

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127. *Id.* ¶ 13 n.2.