

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAULA M. PERRERA )  
 ) No. 488, 2003  
 Defendant Below, )  
 Appellant, ) Court Below: Superior Court  
 v. ) of the State of Delaware in  
 ) and for Kent County  
 )  
 STATE OF DELAWARE, ) Cr. A. Nos. IK02-12-0733 and  
 ) IK02-12-0735  
 Plaintiff Below, )  
 Appellee. )

Submitted: May 11, 2004

Decided: June 25, 2004

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

***ORDER***

This 25<sup>th</sup> day of June 2004, upon consideration of the parties' briefs, it appears to the Court that:

1. A Superior Court judge convicted Paula Perrera of a Fourth DUI offense<sup>1</sup> and Overtaking a Vehicle on the Left.<sup>2</sup> On appeal, Perrera argues the trial judge abused her discretion by denying the defense's motion to suppress the evidence of Perrera's intoxilyzer results.

2. On the afternoon of December 18, 2002, Dover Police Officer David Gist was stopped in traffic on northbound Rte. 13. Perrera passed his stopped

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<sup>1</sup> 21 Del. C. § 4177.

<sup>2</sup> 21 Del. C. § 4116.

police car on the left by driving through the grass median between northbound and southbound lanes of Rte. 13. Immediately after Gist stopped Perrera, she got out of her car and approached Gist. He noticed that her eyes were bloodshot and glassy, and she smelled of alcohol. She admitted to drinking two beers, and beer cans were visible on the floor of her car. At the scene Perrera failed the alphabet and counting field sobriety tests, as well as the portable breathalyzer test (PBT).

3. Due to the heavy traffic on Rte. 13 at that time, Gist decided, for safety reasons, to take Perrera to the Dover Police Department to administer additional field sobriety tests. At the police station, Perrera passed the finger-to-nose and one-leg stand tests, but failed the horizontal gaze nystagmus test and a second PBT. Based on the results of all tests administered, Gist was convinced that Perrera was too impaired to operate a motor vehicle lawfully. He then gave Perrera an intoxilyzer test. She failed with a blood alcohol content (BAC) reading of 0.132.

4. Perrera concedes that Gist had sufficient probable cause to stop her vehicle, but argues that there was no probable cause to require her to take the intoxilyzer test. At trial, before the introduction of the intoxilyzer results, defense counsel moved to suppress the BAC reading on the basis that the police officer lacked probable cause to test Perrera. After hearing argument from counsel and reviewing Gist's testimony, the trial judge denied the motion.

5. In this case, competent evidence supports the trial judge's factual findings.<sup>3</sup> When Perrera drove in the grass median to pass Gist's stopped police car, reasonable suspicion existed for Gist to pursue Perrera and stop her motor vehicle. Further, considering Perrera's physical appearance, her admission of alcohol consumption, and the plainly visible beer cans in her vehicle, Gist had a reasonable and articulable suspicion to detain her at the scene to administer field sobriety tests.<sup>4</sup> Based on heavy traffic conditions at the time of the stop and her failure of two field tests, Gist appropriately transported Perrera to the police station for further testing.<sup>5</sup> The totality of the circumstances here constituted probable cause for Gist to administer the intoxilyzer test. Mixed results in field sobriety tests do not extinguish probable cause if other sufficient factors are present.<sup>6</sup> All of the police officers' observations after initial contact with the defendant may be considered factors used to support a reasonable articulable suspicion that may be combined with past custody observations to weigh for a probable cause determination. Accordingly, the trial judge did not abuse her discretion by denying the motion to suppress.<sup>7</sup>

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<sup>3</sup> *Viridin v. State*, 780 A.2d 1024, 1030 (Del. 2001).

<sup>4</sup> *Pike v. Shahan*, 2002 WL 31999372, at \*2 (Del. Com. Pl. 2002); *State v. Kang*, 2001 WL 1729162, at \*6 (Del. Super. 2001).

<sup>5</sup> *Williams v. Shahan*, 1993 WL 81264, at \*1 (Del. Super. 1993).

<sup>6</sup> See *Cantrell v. Div. of Motor Vehicles*, 1996 WL 453425, at \*1 (Del. Super. 1996); *Tribble v. Shahan*, 1998 WL 34058028, at \*1 (Del. Com. Pl. 1998).

<sup>7</sup> *Viridin*, 780 A.2d at 1030.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, **AFFIRMED**.

BY THE COURT

/s/ Myron T. Steele  
Chief Justice