

Appellate court throws out breath analysis in drunken driving case

April 17, 2013 by ANN GIVENS / ann.givens@newsday.com

A state appellate court has thrown out the results of a chemical breath test given to a [Hempstead](#) woman accused of driving drunk and killing a pedestrian, saying the woman was denied access to her lawyer before the test.

Without the test results, prosecutors have said their evidence against Jonai Washington, 28, is "so weak in its entirety that any reasonable possibility of prosecuting such charge to a conviction has been effectively destroyed," according to court papers.

Washington was arrested Aug. 30, 2010, after prosecutors said she struck and killed Plutarco Caceres, 66, of [Uniondale](#), as he was walking east across [Uniondale](#) Avenue near Coleridge Road.

At [Nassau](#) County police headquarters that night, Washington consented to a breath test, according to the decision. About a minute later, a lawyer hired by her family called and told police, "You have to stop all questioning, and we're not consenting to any form of testing whatsoever."

Washington was never informed that her attorney had called, and she took the breath test eight minutes later, according to the decision.

"This goes to who we are as a society," said Washington's appeals attorney Frederick Brewington of [Hempstead](#). "When a person is in a coercive circumstance [following an arrest], law enforcement can't take it upon themselves to deprive them of access to counsel."

[John Byrne](#), a spokesman for [Nassau](#) District Attorney [Kathleen Rice](#), said they are reviewing the decision. Washington is facing manslaughter and drunken driving charges.

Caceres' relatives could not be immediately reached Wednesday.

There was one dissenting opinion on the Brooklyn-based Second Judicial Department's four-judge panel. Associate Justice Daniel D. Angiolillo said allowing a defendant to consent to a test, then revoke that consent, "goes too far" in expanding right to counsel.

[< back to article](#)

**ARE YOU PREPARED FOR A SIZZLING SUMMER?
INVEST IN A DUCTLESS MINI**

**SPLIT SYSTEM
AIR CONDITIONERS & HEATERS**

NO NOISE!
Energy Saver &
Environmentally Friendly!
Less than half of the
cost of Central Heat/Air

FREE ESTIMATES
At Your Convenience

A/C & APPLIANCE CENTER

MITSUBISHI • FRIGIDAIRE • FRIEDRICH • FUJITSU • LG • FUJISONIC • MIDEA

The advertisement features a white ductless mini-split air conditioning unit and a remote control. The Midea logo is visible in the bottom right corner of the ad.

advertisement | [advertise on newsday](#)