

Appeals court affirms right-to-counsel ruling in DWI case

May 7, 2014 by ANDREW SMITH / andrew.smith@newsday.com

Nassau police improperly prevented a Hempstead woman from talking to her attorney before she took a breath test, the state's highest court ruled Wednesday. As a result, manslaughter and DWI charges against her will be dismissed.

Jonai Washington, 29, was arrested after her car hit and killed Plutarco Caceres, 66, of Uniondale, as he crossed Uniondale Avenue on Aug. 30, 2010. After police said she failed a field sobriety test, she was taken to a precinct and asked to take a chemical breath test.

She agreed, but meanwhile, an attorney hired by her family had called the police and told them to stop questioning her and that there was no consent to testing. But police didn't tell Washington that the lawyer had called and tested her.

"In this case, when the attorney telephoned the police to intervene on defendant's behalf, the police should have informed defendant of this development since Breathalyzer testing had not yet begun," Court of Appeals Judge Victoria Graffeo wrote in the 4-3 decision affirming a lower-court ruling. As a result, the test must be suppressed, the court ruled.

Nassau prosecutors, who had appealed, said that without the test results, the case cannot go forward and will be dismissed.

"Every second counts when testing for intoxication levels after an accident and we will continue to seek to prosecute drunken driving cases as thoroughly as the law permits," said Shams Tarek, a spokesman for the Nassau district attorney's office.

Washington's attorney, Frederick Brewington of Hempstead, said his client was "exhilarated, and very thankful." He said she should not have been charged.

"This was a very bad accident," he said. "It's not a criminal matter, and it should not have been turned into a criminal matter."



advertisement | [advertise on newsday](#)

He said Caceres ran into the side of Washington's car as she drove home. Washington had been at a party hours earlier and had some drinks then, but was no longer intoxicated at the time of the accident, Brewington said.

But when an officer asked whether she'd had anything to drink, she said she did and was arrested.

Brewington said she failed the field sobriety test because the officer made her do it barefoot on a road with broken glass, while Caceres' body lay nearby.

She was subsequently indicted and charged with manslaughter and driving while intoxicated.

Brewington said there was no excuse for Washington to be kept unaware of an attorney calling for her at the precinct. "She was literally feet away from the phone," he said.

In a dissenting opinion, Judge Susan Phillips Read said there is not a statutory right to an attorney before taking a chemical breath test, and the court's ruling weakened police's ability to enforce DWI laws.

[< back to article](#)