

**WHARTON, J.**

This 4th day of April, 2019, upon consideration of the Opening Brief of Appellant–Defendant Below, Amber Timms, the Answering Brief of Appellee, State of Delaware, the Reply Brief of Appellant–Defendant Below, and the record in this matter, it appears to the Court that:

(1) Appellant–Defendant Below Amber Timms (“Timms”) filed a Notice of Appeal requesting judicial review of her November 26, 2018 conviction and sentence in the Court of Common Pleas for Driving Under the Influence and Inattentive Driving.<sup>1</sup> In considering this appeal, the Court must determine whether the Court of Common Pleas erred in finding probable cause for Timms’ arrest, and in admitting the Intoxilyzer results.<sup>2</sup>

(2) On February 3, 2018, Sergeant Jeffrey Stump of the Middletown Police Department responded to a multivehicle accident at the intersection of Route 299 and Route 301, arriving at the scene at 11:15 p.m.<sup>3</sup> Sgt. Stump engaged in an impaired driving investigation owing to the fact that a collision had occurred, the location and nature of the collision, Timms’ responses to several preliminary questions, the odor of alcohol on Timms, and her struggles with providing certain requested paperwork.<sup>4</sup> Sgt. Stump administered several standardized field sobriety tests (“SFSTs”), and arrested Timms for DUI.<sup>5</sup> Timms was transported to the Middletown Police station, where an Intoxilyzer test was administered at 12:36 a.m. on February 4, 2018.<sup>6</sup>

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<sup>1</sup> Appellant's Op. Br., at 3.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> Appellee's Ans. Br., at 3.

<sup>4</sup> *Id.* (citing Trial Tr. at 10-12, 20, 23).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

(3) On August 8, 2018, Timms filed a motion to suppress the Intoxilyzer results. On November 26, 2018, a bench trial was held in the Court of Common Pleas. The Court heard her suppression motion, denied it, and convicted her of both offenses charged. The Court sentenced her to a 12-month jail term suspended for probation and a \$500.00 fine for the DUI, and a \$25.00 fine on the other charge.<sup>7</sup>

(4) The Superior Court is authorized to consider appeals from the Court of Common Pleas in criminal matters.<sup>8</sup> When addressing appeals from the Court of Common Pleas, the Superior Court acts as an intermediate appellate court, with the same function as that of the Supreme Court.<sup>9</sup> In considering an appeal from the Court of Common Pleas to the Superior Court, the Superior Court determines whether there is legal error and whether the factual findings made by the trial judge are sufficiently supported by the record.<sup>10</sup> Factual findings by the Court of Common Pleas are given deference and are reviewed for plain error.<sup>11</sup> Legal questions are reviewed de novo.<sup>12</sup>

(5) The issues on appeal are: (1) whether the arresting officer had probable cause to arrest Timms for DUI; and (2) whether the State proved the Intoxilyzer test was administered within four hours of driving. Probable cause to arrest for the offense of DUI exists when an officer possesses “information which would warrant a reasonable man in believing that such a crime has been committed.”<sup>13</sup> Here, Sgt. Stump had probable cause to arrest Timms for DUI. Timms struck a car from behind

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<sup>7</sup> Appellant's Op. Br., at 3

<sup>8</sup> 11 Del. C. § 5301(c).

<sup>9</sup> *Fiori v. State*, 2004 WL 1284205, at \*1 (Del. Super. 2004) (citing *State v. Richards*, 1998 WL 732960 (Del. Super. 1998)).

<sup>10</sup> *Onkeo v. State*, 957 A.2d 2, at \*1 (Table) (Del. 2008).

<sup>11</sup> *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

<sup>12</sup> *DiSabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. 2002).

<sup>13</sup> *Lefebvre v. State*, 19 A.3d 287, 292 (Del. 2011).

at a red light, smelled of alcohol, struggled to produce her license and registration, and awkwardly answered the officer's questions, clearly indicating some sort of impairment to the officer.<sup>14</sup> Furthermore, as to the Walk and Turn test and the One-Legged Stand SFSTs, Timms failed to understand the directions, wobbled, and fell back against the car.<sup>15</sup> These factors listed above, regardless of performance on any SFSTs, are sufficient to establish probable cause.<sup>16</sup> Although Timms challenges the administration and probative value of the field tests, ample probable exists without consideration of the SFSTs.<sup>17</sup> Moreover, the Trial Court reviewed Sgt. Stump's body camera footage of the investigation and arrest. The video shows Timms swaying and lacking balance, complaining of sensitivity to light, struggling to count to nine, and failing to comprehend the officer's simple directions.<sup>18</sup> This Court has viewed the footage as well. It shows ample evidence of Timms' impairment. Therefore, the Trial Court did not err in holding that the officer clearly acted upon information which would warrant a reasonable man in believing that Timms had been driving under the influence.

(6) Timms' second argument, that the Trial Court erred in admitting the Intoxilyzer results, also fails. The General Assembly in 21 *Del. C.* § 4177 provided that an Intoxilyzer result is relevant and admissible only if the sample is taken within

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<sup>14</sup> Appellee's Ans. Br., at 5.

<sup>15</sup> *Id.*

<sup>16</sup> See *State v. Maxwell*, 624 A.2d 926 (Del. 1993) (holding that a traffic accident, admission to drinking, the odor of alcohol, and a dazed appearance was enough to establish probable cause for DUI); *Bease v. State*, 884 A.2d 495 (Del. 2005) (holding that a traffic violation, rapid speech, the odor of alcohol, admission to drinking, glassy eyes, and failed counting/alphabet tests were sufficient to establish probable cause).

<sup>17</sup> *Lefebvre*, 19 A.3d at 293-294 (holding that probable cause existed before any field sobriety testing was administered).

<sup>18</sup> Trial Tr. at 20-43.

four hours of driving.<sup>19</sup> Here, the Intoxilyzer result was admissible because there is clear and sufficient evidence in the record to indicate that it was administered within four hours of Timms having operated a motor vehicle. Sgt. Stump testified that he received a dispatch call to respond to a collision at 11:12 p.m. on February 3, 2018, and he arrived on scene just a minute or two later because “[T]he town is not that big.”<sup>20</sup> The accident scene was at the intersection of two major roads, Route 301 and Route 299.<sup>21</sup> Sgt. Stump investigated the collision for approximately 15-17 minutes before he arrested Timms. He administered the Intoxilyzer result at 12:36 a.m. on February 4, 2018.<sup>22</sup> Circumstantial evidence carries the same weight as direct evidence.<sup>23</sup> Sgt. Stump administered the Intoxilyzer test approximately 1 hour and 24 minutes after arriving at the scene.<sup>24</sup> He testified that he was able to get to the scene quickly.<sup>25</sup> The accident was not a one car collision where a driver veered off a backroad into a ditch. This was a multivehicle collision on a main, well-traveled road. It is unreasonable to think that a multivehicle crash in or near Middletown would sit wholly unreported for the 2 hours and 36 minutes necessary to invalidate the test as Timms contends. Put another way, ample circumstantial evidence supports the finding of the trial judge that the Intoxilyzer result was admissible.

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<sup>19</sup> *Fiori v. State*, 2004 WL 1284205, at \*2 (Del. Super. 2004).

<sup>20</sup> Trial Tr. at 12.

<sup>21</sup> *Id.* at 10.

<sup>22</sup> *Id.* at 82.

<sup>23</sup> *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

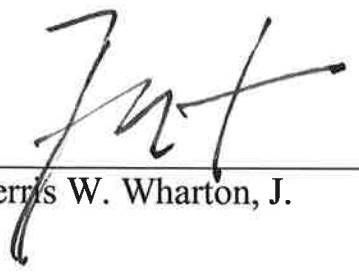
<sup>24</sup> Trial Tr. at 12, 82.

<sup>25</sup> *Id.* at 12.

(7) For the reasons set forth above, the Trial Court did not err in finding that the arresting officer had probable cause to arrest Timms, and in admitting the Intoxilyzer result.

THEREFORE, the judgment of the Court of Common Pleas is **AFFIRMED**.

**IT IS SO ORDERED.**



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Ferris W. Wharton, J.