

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARISSA ROSE HEROLD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44835

FILED

JUL 05 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of driving while under the influence of alcohol (DUI) causing substantial bodily harm. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Marissa Rose Herold to serve a prison term of 24 to 60 months.

On November 2, 2003, at 2:30 a.m., Washoe County Sheriff's Officer James Ellis observed a white Blazer, driven by Herold, run a stop sign and hit another vehicle. Officer Ellis testified at the suppression hearing that, immediately after the accident occurred, he assessed the injuries of the occupants of the vehicles, contacted the paramedics, and turned over the investigation to Sparks Police Officers because it was in their jurisdiction.

Sparks Police Officer Tom Crouse also testified at the suppression hearing, explaining that he responded to the scene and approached Herold. Officer Crouse detected the odor of alcohol coming from the vehicle, and asked Herold if she had been drinking; she answered affirmatively. Thereafter, Officer Crouse asked Herold how old she was and where she had been drinking. Herold responded that she was nineteen years old and explained that she had been drinking with friends

at her house. Due to the fact that Herold was under twenty-one years of age, smelled of alcohol, admitted to drinking and there were injuries involved in the accident, Officer Crouse asked Herold to submit to a preliminary breath test (PBT). The results of the PBT indicated that Herold was legally intoxicated, with a .099 blood alcohol level. Officer Crouse then ordered Herold to submit to a blood draw because she had admitted drinking, tested positive for alcohol, and there appeared to be substantial bodily harm to the individuals in the other vehicle. Officer Crouse explained that, even without the PBT results, he would have ordered a blood test because the accident was categorized as a injury accident resulting in substantial bodily harm.

On cross-examination, Officer Crouse admitted that he did not make a determination as to Herold's state of sobriety before administering the PBT, explaining that the PBT was administered to all minors in the possession of or under the influence of alcohol. Additionally, Officer Crouse conceded that he did not administer any field sobriety tests because of the degree of damage caused by the accident and because Herold's hand was injured and she was very upset. Upon further examination, Officer Crouse clarified that he had reasonable grounds to believe a PBT was necessary because Herold ran a stop sign, had the odor of alcohol coming from the vehicle, and admitted that she was nineteen-years old and had been drinking.

After hearing arguments from counsel and reviewing the transcripts of the suppression hearing, the district court denied the motion finding that "the testing was appropriate and consistent with the statutes." Herold thereafter entered a guilty plea but expressly preserved

the right to appeal the district court's denial of her motion to suppress.¹ Herold then filed this timely appeal.

Herold contends that the district court erred in denying the motion to suppress because Officer Crouse did not have reasonable grounds to believe she was driving under the influence of alcohol, as required by NRS 484.382(1). Specifically, Herold notes that Officer Crouse testified that, before administering the PBT, he did not administer field sobriety tests, did not know how much Herold had to drink, and did not determine her state of sobriety. We conclude that the district court did not err in denying the pretrial motion to suppress.

The district court found that the PBT test was proper and conducted in accordance with the DUI statutes. The district court's finding is supported by substantial evidence.² NRS 484.383(1), Nevada's Implied Consent Law, provides that a person is deemed to have given her consent to a PBT when the test is administered at the direction of a police officer who has reasonable grounds to believe that the person was driving a vehicle while under the influence of alcohol. This court has recognized that Nevada's Implied Consent Law should be liberally construed in order to promote the legislative policy of removing drivers from this State's highways who are under the influence of intoxicating liquor or controlled substances.³ Further, the Nevada Legislature has provided that a district

¹See NRS 174.035(3).

²See State v. Miller, 110 Nev. 690, 694, 877 P.2d 1044, 1047 (1994) ("findings of fact in a suppression hearing will not be disturbed on appeal if supported by substantial evidence").

³State, Dep't of Mtr. Vehicles v. Brough, 106 Nev. 492, 496-97, 796 P.2d 1089, 1091-1092 (1990).


court may not suppress evidence of a PBT if the police officer substantially complied with NRS 484.382-.393.⁴

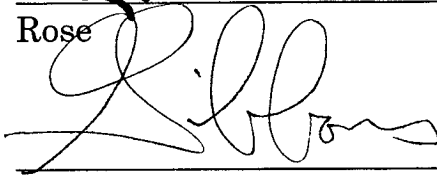
In this case, there was sufficient evidence presented at the suppression hearing that the police officer had reasonable grounds to believe that Herold was driving under the influence of alcohol. In particular, Officer Crouse testified that he believed a PBT test was necessary because Herold ran a stop sign, been involved in a traffic accident, had the odor of alcohol coming from her vehicle, and admitted that she was nineteen years old and had been drinking. Those circumstances support a conclusion that Officer Crouse substantially complied with Nevada's Implied Consent Law because he reasonably believed Herold was driving while intoxicated before administering the PBT. Accordingly, we conclude that the district court did not err in denying the motion to suppress.

Having considered Herold's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, C.J.
Becker

 _____, J.
Rose

 _____, J.
Gibbons

⁴NRS 484.389(2).

cc: Hon. Connie J. Steinheimer, District Judge
Larry K. Dunn & Associates
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk