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Division of Motor Vehicles v. Ann DePalma  
Cite as 2 *N.J.A.R.* 100

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**DIVISION OF MOTOR VEHICLES,**  
Petitioner,  
v.  
**ANN DE PALMA,**  
Respondent.

Decided January 26, 1981

**Initial Decision**

**SYNOPSIS**

On the basis of *N.J.S.A.* 39:5-30, the Division of Motor Vehicles proposed to suspend the driving privileges of Ann DePalma for a period of 18 months because of her alleged involvement in a fatal accident. The respondent was charged with violations of *N.J.S.A.* 39:4-129 (leaving the scene of an accident); *N.J.S.A.* 39:4-130 (failure to report an accident to the police by the quickest available means); and *N.J.S.A.* 39:4-97 (careless driving).

After a hearing, the administrative law judge found that the respondent was the driver of a vehicle which struck and killed a pedestrian on a public highway in New Jersey. However, the judge also found that at the time of the accident the respondent was driving within the speed limit, in a normal manner and was maintaining her observation of the roadway as she passed from a lighted intersection into a darker area of the roadway and struck a pedestrian who was wearing dark clothing and was highly intoxicated. Accordingly, the judge concluded that the respondent was not operating her vehicle carelessly or in a manner contrary to *N.J.S.A.* 39:4-97.

The administrative law judge also found that at the time of the accident, the respondent believed someone had thrown an object at her vehicle and did not know that she had struck an object. While *N.J.S.A.* 39:4-129(e) provides that a driver involved in an accident resulting in injury or death to another person or \$250 property damage shall be presumed to have knowledge of the accident, the judge observed that this presumption was rebuttable and that the evidence presented was sufficient to rebut the presumption of respondent's knowledge. Since the respondent was unaware of the accident, the judge concluded the respondent had not violated *N.J.S.A.* 39:4-129 by knowingly leaving the scene of an accident.

The judge did find that once the respondent had knowledge of the collision and the damage to her own vehicle, she failed to give notice of

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the accident to the police by the quickest means possible. Based upon this finding, the administrative law judge concluded that the respondent had violated *N.J.S.A.* 39:4-130.

On the basis of these conclusions, the administrative law judge ordered a one month suspension of the respondent's driving privileges which the judge felt served the rehabilitative, punitive and deterrent purposes of the license suspension provisions of *N.J.S.A.* 39:5-30.

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**Gary P. Sarlo**, Deputy Attorney General for the Petitioner (John J. Degnan, Attorney General of New Jersey, Attorney)

**Richard Galex**, *Esq.* for the Respondent (Heilbrunn, Finkelstein, Heilbrunn, Garruto and Galex, Attorneys)

**FIDLER, ALJ:**

This matter concerns the Proposed Suspension of the driving privileges of Ann DePalma, pursuant to *N.J.S.A.* 39:5-30, for a period of 18 months by reason of her alleged involvement in a fatal accident which occurred in East Brunswick Township, Middlesex County, New Jersey, on February 2, 1979, resulting in the death of James E. Slater. A Notice of Proposed Suspension was sent to the respondent on October 1, 1979, charging her with violating *N.J.S.A.* 39:4-129 (leaving the scene of an accident); *N.J.S.A.* 39:4-130 (failure to report an accident to the police by the quickest available means); and *N.J.S.A.* 39:4-97 (careless driving).

The respondent was advised by the Notice of Proposed Suspension that her entire driving record would be considered in determining the length of any suspension imposed as a result of this action. The respondent was also advised of her right to a hearing. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

At the commencement of the hearing, and prior to the taking of testimony, counsel for the parties stipulated to the admission into evidence of the respondent's certified abstract of driving record and the certified death certificate of James E. Slater, indicating his death on February 2, 1979. Counsel also stipulated to the admission into evidence of the Motor Vehicle accident diagram prepared by Patrolman Anthony Tabaszewski of the East Brunswick Police Department and six photos taken of the respondent's vehicle on February 3, 1979. Finally, it was stipulated by counsel that the decedent, James E. Slater, had a blood alcohol content reading of .213 percent.

The first witness to testify on behalf of the Division of Motor Vehicles was Patrolman Anthony Tabaszewski of the East Brunswick Police

Department. Patrolman Tabaszewski briefly established his qualifications as an expert in accident reconstruction and investigation, based upon his training and experience. According to the patrolman, he investigated the scene of an apparent motor vehicle fatality on Highway 18 in East Brunswick during the early morning hours of February 2, 1979. Although the body of the deceased, James E. Slater, had been removed prior to the patrolman's arrival, it was ascertained that the body had been found in the far right traffic lane of the three lane, southbound side of Highway 18, approximately 122 feet 6 inches south of the Highway's intersection with Racetrack Road. The body had been positioned approximately 4 feet away from the curb of the roadway.

Patrolman Tabaszewski testified that the intersection of Highway 18 and Racetrack Road was illuminated by a street light, but 2 lights on the barrier between the southbound and northbound sides of the Highway were not working. It was the patrolman's testimony that the roadway is straight and level, and there are no obstructions to visibility at the intersection. The patrolman estimated visibility from the intersection to be approximately 200 feet in the southbound direction.

Patrolman Tabaszewski testified that Mr. Slater had been wearing a dark green nylon jacket, dark green workshirt, blue jeans and tan work boots. There were no skid marks present on the roadway, and there was no evidence, in the patrolman's opinion, that the deceased had been struck by more than one vehicle. Based upon his training and experience in accident reconstruction and investigation, Patrolman Tabaszewski testified that he felt Mr. Slater had been somewhere near the center of the southbound side of the roadway when he was struck by the hood of a motor vehicle. He felt Mr. Slater then hit against the windshield of the vehicle and was thrown to the roadway. Mr. Slater's body then slid to a stop near the side of the roadway. Patrolman Tabaszewski testified that the deceased had a blood alcohol content of .213 percent.

It was the testimony of Patrolman Tabaszewski that he received a telephone call from Mr. Alexander DePalma at approximately 6:50 p.m. on February 2, 1979, in which Mr. DePalma indicated his wife might have been in an accident, since her car had been damaged. The patrolman went to the respondent's home and impounded her vehicle. After she was advised of her rights, the respondent voluntarily offered a statement to the police. According to the patrolman, the respondent stated that she had been driving at approximately 50 miles per hour on the southbound side of Highway 18 after having left work at approximately 2:45 a.m. on the morning of February 2, 1979. The respondent further stated that after she passed Racetrack Road, something hit her windshield, and after seeing nothing in her rearview mirror, she proceeded home, where her husband located

damage to the right front grill and windshield of her vehicle. A photo of the respondent's vehicle, reveals damage to the far right front and far right side of the windshield. The patrolman acknowledged on cross-examination that the respondent had stated she thought someone had shot at her windshield, and that she had looked for police that are usually at the Seville Diner on Highway 18. Patrolman Tabaszewski also acknowledged that the respondent had submitted to a polygraph examination which had supported her credibility.

The next witness to testify on behalf of the Division of Motor Vehicles was Johannes Hartschenko, a computer programmer who had been returning home from work on Highway 18 on the morning of February 2, 1979, when he saw what he initially thought was a big garbage bag on the side of the roadway. Mr. Hartschenko testified that he returned to pass the object two or three times more before he realized that it was a body on the roadway. According to the witness, he then proceeded to a phone booth on the opposite side of the roadway and called the police. Testifying on cross-examination, Mr. Hartschenko stated that the body was to the far side of the roadway. He stated that it was cold and dark during the early morning hours of February 2, 1979.

The final witness to testify on behalf of the Division of Motor Vehicles was Detective Robert Bennett of the East Brunswick Police Department. Detective Bennett testified that the Police Department received the call from Mr. Hartschenko concerning the body on the roadway at 2:59 a.m. on February 2, 1979. Detective Bennett also testified on cross-examination that the respondent was given a polygraph examination by State Police Detective Richard Capitan on February 9, 1979. According to Detective Bennett, the object of the polygraph examination was to determine whether the respondent had told the truth when she denied seeing the deceased before or after the accident. Detective Bennett testified that his file revealed the opinion that she had told substantially the truth.

Testifying on her own behalf, the respondent stated that she lives in Old Bridge, New Jersey with her husband and four children. On February 2, 1979, she had worked at ADP in East Brunswick, New Jersey, on the 5:00 p.m. to 1:00 a.m. shift for approximately four years. According to the respondent, she left work at approximately 2:45 a.m. on the morning of February 2, 1979, and proceeded to a donut shop and to a gas station. The respondent stated that she thereafter was driving normally on Highway 18 and did not observe any cars or persons in the roadway. It was her testimony that she heard a sound, as if something had been thrown at her car, and then saw the windshield shatter. The respondent stated that she then ducked down, afraid that she would be hit. She slowed her vehicle and looked in the rearview mirror, but saw nothing, as the area was unlit and dark.

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The respondent testified that she looked for approaching cars and saw none. She then looked for police cars at the nearby diner, to report that someone had thrown an object or shot at her car, but she saw no police car. According to the respondent, she then proceeded home and told her husband of the incident. At this point, Mr. DePalma advised her that he did not believe an object had been thrown at her car or that her car had been shot at, but that rather, she had hit something instead, like a garbage can in the roadway. The respondent stated that she then went to bed.

The respondent testified that she used the car as usual the next day, without washing it or taking it to a repair shop. She stated that she noticed the damage to the car, but saw no evidence that it had struck a person. After her husband called her that evening at work to advise her that she may have been in an accident, she returned home and cooperated with the police, including voluntarily submitting to a polygraph examination.

Testifying on cross-examination, the respondent stated that she had been driving normally, observing the roadway as she drove. She indicated that there were no cars or trees obstructing her vision, but that she did not see the deceased before or after the impact. She described the impact as being like a metal sound, and then the windshield shattered. The respondent repeated that she felt someone had thrown something at her car, and that she did not stop because she did not know that what had occurred was an accident. In fact, she felt at the time that she had been the victim of someone throwing something.

The respondent further testified that her four children range in the age from 7 years to 17 years and that she is home with them during the day, and that she works at night. Noting that there is no public transportation in her area, the respondent stated that she must drive one of her daughters to physical therapy, and that her husband works during the daytime and is not available to do this driving. The respondent also noted that her colleagues at work do not have the same work schedule that she has. The respondent was a sincere and candid witness and her testimony was entirely credible.

Testifying on the respondent's behalf was her husband, Alexander DePalma. Mr. DePalma stated that his wife had returned home on the morning of February 2, 1979, in a very excited state, having thought that someone had shot at her vehicle. According to Mr. DePalma, he examined the vehicle and concluded that it did not appear to have been shot at, but rather that it had struck something, perhaps a garbage can.

Later in the day, Mr. DePalma read in the newspaper about an accident and called his wife at work. He testified that his wife told him to call the police if he thought she had been in an accident. According to the witness, he then called the police. Mr. DePalma further testified that he would have

called the police when he first examined his wife's vehicle, if he had thought at that time that she had hit someone. Mr. DePalma was a sincere, candid and credible witness.

Having reviewed all of the testimony and other evidence offered in this matter, and having given fair weight thereto; and having observed the demeanor of the witnesses and having assessed their credibility, I **FIND**:

1. At approximately 2:55 a.m. on February 2, 1979, the respondent was the driver of a 1973 chevrolet which was proceeding at a speed of about 50 miles per hour in the southbound direction on Highway 18 near the intersection with Racetrack Road, in East Brunswick, New Jersey.

2. The respondent was driving in a normal fashion and was maintaining her observation of the roadway ahead of her as she passed the intersection of Highway 18 and Racetrack Road. When the respondent proceeded from the illuminated area of the intersection into the darker area of the roadway, the far right side of the front of her vehicle struck James E. Slater, who had walked onto the roadway. Mr. Slater's body then struck the windshield of the respondent's vehicle and was thrown to the side of the roadway.

3. As a result of being struck by the respondent's vehicle, James E. Slater sustained severe and fatal injuries, from which he died on February 2, 1979.

4. At the time he was struck by the respondent's vehicle, James E. Slater was wearing dark clothing and had a blood alcohol content of .213 percent.

5. Although the respondent maintained her observation of the roadway as she passed its intersection with Racetrack Road, she did not see James E. Slater either before or after he was struck by her vehicle. The respondent heard a metallic sounding impact and ducked down when her windshield was shattered.

6. The respondent concluded that someone had shot at her vehicle or had thrown an object at her vehicle, and after observing nothing in her rear-view mirror, she proceeded to look for a police car at a nearby diner so that she might report the incident.

7. The respondent did not observe any police cars at the diner and therefore proceeded to her home which was approximately four minutes away, and advised her husband of the incident on Highway 18.

8. The respondent's husband, Alexander DePalma, examined the respondent's vehicle and advised her that he did not believe that her vehicle had been shot at or that an object had been thrown at her vehicle. Rather, the respondent's husband advised her that he felt her vehicle had struck something in the roadway, such as a garbage can.

9. On the evening of February 2, 1979, Mr. DePalma called his wife at work and advised her that he had read in the newspaper about an accident on Highway 18 which had resulted in the death of James E. Slater. The re-

spondent thereafter returned home from work and cooperated with the investigating police who had been summoned to the respondent's home by her husband.

The credible proofs in the record establish that the respondent was the driver of a motor vehicle which struck James E. Slater on Highway 18 in East Brunswick, New Jersey during the early morning hours of February 2, 1979, resulting in the death of Mr. Slater. However, the credible proofs in the record also establish that the respondent was driving within the speed limit and in a normal manner, and was maintaining her observation of the roadway ahead of her as she passed from a lit intersection into the darker area of the roadway and struck a pedestrian who was wearing dark clothing and was highly intoxicated. Therefore, on the basis of the foregoing discussion and the specific Findings of Fact, I **CONCLUDE** that at the time of the accident on February 2, 1979, the respondent was not operating her vehicle carelessly, or without due caution and circumspection, or in a manner so as to endanger or be likely to endanger a person or property, contrary to *N.J.S.A.* 39:4-97.

The credible evidence in the record establishes that the respondent did not see James E. Slater either before or after he was struck by her vehicle. At the time of her vehicle's impact with Mr. Slater, the respondent believed that someone had thrown an object at her vehicle or had taken a shot at her vehicle. She did not know at that time that her vehicle had struck an object or person. *N.J.S.A.* 39:4-129(e) provides that the driver of any motor vehicle involved in an accident resulting in injury or death to any person or damage in the amount of \$250.00 or more to any vehicle or property shall be presumed to have knowledge that he was involved in such an accident. This is a rebuttable presumption, and the credible proofs in the entire record in this matter are sufficient to rebut the presumption of the respondent's knowledge of an accident at the time her vehicle struck the pedestrian in the roadway. Therefore, based upon the foregoing discussion and specific Findings of Fact, I **CONCLUDE** that the respondent did not knowingly leave the scene of an accident resulting in injury or death to any person or damage to any property, in contravention of *N.J.S.A.* 39:4-129.

The credible evidence establishes that the respondent proceeded from the accident scene to her home, where she informed her husband that she felt someone had thrown an object at her vehicle, or had taken a shot at her vehicle. At that time, the respondent's husband examined her motor vehicle and advised her that it did not appear that an object had been thrown at her vehicle or that a shot had been taken at her vehicle. Rather, he advised the respondent that it appeared her vehicle had hit an object in the roadway, such as a garbage can. At this point, the respondent was adequately on notice

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that she had collided with an object in the roadway which she and her husband assumed was property, rather than an individual. Having knowledge of a collision, and having observed the obvious damage to her own vehicle, the respondent was then obligated, pursuant to *N.J.S.A.* 39:4-130, to give notice of the accident to the police by the quickest means of communication. This the respondent failed to do. Therefore, based upon the foregoing discussion and specific Findings of Fact, I **CONCLUDE** that the respondent failed to report a motor vehicle accident to the police by the quickest available means, contrary to *N.J.S.A.* 39:4-130.

The purposes of the license suspension and revocation provisions are both punitive and rehabilitative. *Forsgate v. Strelecki*, 103 *N.J. Super.* 435 (App. Div. 1968), *affd.* 53 *N.J.* 55 (1968). Revocations and suspensions have deterrent effects as well, which also serve to protect the public. *Cresse v. Parsekian*, 43 *N.J.* 326 (1964). Having concluded that the respondent did not operate her vehicle carelessly, or without due caution or circumspection, and having concluded that the respondent did not knowingly leave the scene of an accident, but having concluded that the respondent failed to report an accident to the police by the quickest available means, I further **CONCLUDE**, pursuant to *N.J.S.A.* 39:5-30, that a one month suspension of the respondent's driving privileges would appropriately serve the rehabilitative, punitive and deterrent purposes of the license suspension provisions.

Accordingly, it is hereby **ORDERED** that the respondent's driving privileges be suspended for a period of one month.

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After reviewing the Initial Decision, the Division of Motor  
Vehicles on January 28, 1981 issued the following Final  
Decision:

The Division of Motor Vehicles adopts the decision of the administrative law judge.