STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT
SIXTH DIVISION

STATE OF RHODE ISLAND :

VS. : A.A. NO. 03-124

ISABEL M. BOOTH :

JUDGMENT

This cause came on before Quirk, J. on an appeal from the Rhode Island Traffic Tribunal Appeals Panel, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision is reversed and remanded to the Traffic Tribunal.

Dated at Providence, Rhode Island, this 20th day of March , 2006

ENTER:

BY ORDER:

CHIEF CLERK

March 20, 2006

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **DISTRICT COURT**

SIXTH DIVISION

STATE OF RHODE ISLAND	:	
	:	
V.	:	**A.A. 03-124**
	:	**SUMMONS NO. 01-409-053498**
ISABEL M. BOOTH	:	

DECISION

QUIRK, J. This matter is before the Court on the appeal of the State of Rhode Island of a decision rendered by an Appeals Panel of the Rhode Island Traffic Tribunal which reversed a trial judge's finding that Booth had unlawfully refused to submit to a chemical test under the provisions of Rhode Island General Laws § 31-27-2.1. The Appellate Panel concluded the charging officer did not have probable cause to arrest Booth or reasonable grounds to believe that she was operating under the influence of intoxicating liquor or drugs. Booth has filed a cross appeal maintaining this court lacks jurisdiction to hear the State's appeal and the trial judge erred when holding the testimony of a police officer at the time

of trial constitutes the "sworn report" contemplated by the legislature in Rhode Island General Laws § 31-27-2.1(c).

FACTS AND PROCEDURAL HISTORY

On March 29, 2003, at approximately 7:13 p.m., Officer Brian McNally of the Providence Police Department was dispatched to an automobile accident reported to have taken place on Smith Street. Officer McNally observed two damaged motor vehicles upon his arrival at the scene, one with moderate damage to the rear end and the other with moderate damage to the front end. The record reveals both operators were in their cars at the time. Tr. at 13.

Officer McNally approached the vehicle with front end damage and observed a female through an open window seated behind the steering wheel. Tr. at 10, 12. This person was later identified as Isabel Booth, age 71. Tr. 55. The key to the vehicle was in the ignition and turned to the "on" position. The car was running. Id. Officer McNally reported the female appeared to be sleeping. Id. (The possibility of unconsciousness was raised during cross-examination and considered by the officer as a possibility. Tr. at 35). Officer McNally stated he had to physically wake Booth "by talking real loud until she was startled and looked at him." Tr. at 11.

The officer noticed blood coming from Booth's nose. Id. He asked for her license, registration and insurance card. Id. She responded by asking why the officer wanted these documents and was told by him that she had been involved in an accident. Tr. at 12. She indicated she did not know what he was talking about. Id. It was at this time that Officer McNally noticed she had bloodshot,

watery eyes and was speaking with slurred speech. Id. He also noted a strong odor of alcohol coming from the vehicle and her breath. Tr. at 12, 50.

Asked if she had been drinking, Booth told the officer "she had been drinking for several years, and she would never stop." Tr. at 13. Her license and registration was produced after a "short little argument." Tr. at 36. Officer McNally formed the opinion that Booth had been under the influence of alcohol while operating a vehicle. Tr. at 14. He read her "rights for use at the scene" while she remained seated in the driver's seat. Tr. at 13. She responded by reiterating that she had not been in an accident. Tr. at 19. She was asked to get out of the vehicle and did so appearing unsteady on her feet. Tr. at 13. She was transported to the hospital by rescue personnel. Tr. at 15.

At the hospital, Booth was read her "rights for use at the station/ hospital" by Officer McNally. She indicated she understood the rights and again stated she had not been involved in an accident. Tr. at 19. She refused to submit to a chemical test and was issued a summons for chemical test refusal. Tr.at 22.

A hearing was held before a Magistrate at the Traffic Tribunal on May 28, 2003 and the charge was sustained. A timely appeal was filed and the matter heard before a three member appellate panel on July 23, 2003. The Appellate Panel, voting two to one, concluded that the trial judge erred in sustaining the violation holding Officer McNally did not have probable cause to arrest Booth or reasonable grounds to believe she was operating under the influence of an intoxicating liquor or drugs.

DISCUSSION

This court must first address the claim of Booth that the court is without subject matter jurisdiction to consider her appeal because the State of Rhode Island is not entitled to appeal a decision of the Traffic Tribunal. Rhode Island General Laws § 31-41.1-9(a) provides that an appeal may be filed by "any person who is aggrieved by a determination of an appeals panel." Booth argues that the State is not a "person" as defined in Rhode Island General Laws § 31-1-17(g) as an "individual, firm, partnership, cooperation, or association."

This claim has previously been rejected. See State v. Resmini, A.A. No. 01-99 (R.I. Dist. Ct. 2003); State v. Lynch, A.A. No. 02-18 (R.I. Dist. Ct. 2003); State v. Cunha, A.A. No. 01-07 (R.I. Dist. Ct. 2001). Based upon careful review of these cases and the argument set forth by the parties here, independent consideration of this issue leads this court to the conclusion that the State may appeal the decision of the Appellate Panel.

The next issue for consideration involves the question of whether Officer McNally had probable cause to arrest Booth and reasonable grounds to believe she was operating under the influence of intoxicating liquor or drugs at the time he requested she submit to a chemical test. The trial judge, sustaining the violation, found he did based upon the circumstances known to the officer at the time. The Appellate Panel, relying on King v. Department of Transportation, A.A. 90-203 (R.I. Dist. Ct. 1991), reversed that decision declaring the facts known to the officer at the time of the arrest were not sufficient to establish the officer had

reasonable suspicion to believe Booth was operating a motor vehicle under the influence of an intoxicating liquor or drug.

> [T]he rule in King precludes this panel from finding that the alleged indicia of intoxication exhibited by appellant constitutes probable cause to arrest. The only factor common to both King and the instant case is the strong odor of alcohol emanating from the motorist's breath. The fact that appellant exhibited bloodshot, watery eyes and slurred speech might be explained by the head injuries she sustained in the accident. There was no moving violation alleged and appellant did not have difficulty producing her license and registration. In short, the factors in the instant case fall far short of the factors in King, which the District Court ruled were insufficient for a finding of probable cause to arrest. Appellate Decision at 8.

The standard this court must use when reviewing a trial court's finding of probable cause is a de novo standard of review. State v. Keohane, Jr., 814 A.2d 327 (R.I. 2003). Deference must be given to the findings of the trial judge which shall not be overturned unless they are clearly erroneous. In Re John W., 463 A.2d 174 (R.I. 1983).

Booth maintains there is no sufficient factual basis on the record for Officer McNally to conclude she had been operating the vehicle at anytime before he arrived and found her seated in the stopped vehicle and there was an "obvious alternative explanation" for her bloodshot watery eyes given that she had just suffered an "apparent head injury." Motorists' Reply Memorandum of Law at 8. Therefore, she believes the officer had no probable cause to believe she was operating under the influence of intoxicating liquor or drugs.

What facts constitute reasonable grounds or probable cause depends on "whether, under the totality of the circumstances, the arresting officer possesses

sufficient trustworthy facts and information to warrant a prudent officer in believing that the suspect has committed or was committing an offense." State v. Guzman, 752 A.2d 1, 4 (R.I. 2000). The Rhode Island Supreme Court recently cautioned that when a determination of whether probable cause exists to arrest a suspect "we deal with probabilities. These are not technical; they are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." State v. Castro, No. 2003-438, slip op. at 5 (R.I. 2006). The Court affirmed that "'the mosaic of facts and circumstances [available to the arresting officer] must be viewed cumulatively 'as through the eyes of a reasonable and cautious police officer on the scene, guided by his or her experience and training.'" Id. citing In Re Armand, 454 A.2d 1216, 1218 (R.I. 1983)(quoting In Re John C, 425 A.2d 536, 538-39 (R.I. 1981).

This court will now turn to this case and examine the mosaic of facts and circumstances presented to Officer McNally on the evening of March 29, 2003 when he asked Booth to submit to a chemical test. The officer was dispatched to the scene of an accident. Upon arrival he observed one vehicle with damage to the rear and one with damage to the front. He approached the female seated behind the driver's wheel in the vehicle with front-end damage and observed her through an open window. He concluded she was sleeping. He had to physically wake her by talking loud enough to startle her. The key was in the ignition and in the "on" position with the car running. Blood was flowing from her nose.

Officer McNally asked her for her license, registration and insurance card and, was met with a response that he described as argumentative. In particular,

he was asked why he wanted those documents. The officer informed this woman she had been involved in an accident. She told him he did not know what he was taking about. At this point, the officer noticed the female had bloodshot, watery eyes and was speaking with slurred speech. He also noticed a strong odor of alcohol coming from the vehicle and her breath. Asked if she had been drinking, she responded that she had been drinking for several years, and she would never stop, a response that could be described at best as evasive or at worst as belligerent.

The "mosaic of facts" could easily lead a trained police officer at the scene to conclude this woman had been operating her vehicle while under the influence of intoxicating liquor. The fact that Ms. Booth is anxious to attribute many of these facts to an "apparent head injury" does not mean that a trained officer could not discern an alternative explanation. As the trial judge stated, "the application of law need not result in the murder of common sense." Tr. at 70. "A police officer, on the scene of an accident, is not constitutionally required to sort out all the various inferences and interpretations of fact. These types of judgments are more appropriately left to the trier of facts when the case comes to trial. All that is needed at the arrest phase is for one of the reasonable interpretations of the facts and circumstances to establish probable cause." Pounds v. State, A.A. No. 02-40, 15-16 (R.I. 03), citing State v. Bruno, 709 A.2d 1048 (R.I. 1998)(where the officer had reasonable suspicion even though the motorist claimed erratic driving was due to medications and not alcohol consumption).

One reasonable interpretation of the facts in the case before this court "points to the probability" that Ms. Booth had operated her motor vehicle while under the influence of alcohol. Id. The request by Officer McNally for a blood sample was, therefore based upon reasonable grounds and permitted pursuant to § 31-27-2.1. Booth's refusal to submit to the chemical test was, therefore, in violation of the statute.

The next issue before the court is whether the trial judge erred when holding the testimony of a police officer at the time of trial constitutes the "sworn report" contemplated by the legislature in Rhode Island General Laws § 31-27-2.1(c). Section 31-21-2.1(c) provides "if the traffic tribunal judge finds *after the hearing* that the law enforcement officer making the sworn report had reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor ... the traffic tribunal judge shall sustain the violation." (Emphasis added). Section 31-27-2.1(b) addresses the "requirements for immediate suspension" of a person's driver's license pursuant to a refusal charge. This section of the statute allows "a judge of the traffic tribunal, *upon receipt of a report of a law enforcement officer*: that he or she had reasonable grounds to believe the arrested person had been driving a motor vehicle within this state under the influence of intoxicating liquor ... [and] that the person had refused to submit to the tests upon the request of a law enforcement officer" to promptly order immediate license suspension.

Booth contends that the filing of the "report of a law enforcement officer" described in § 31-27-2.1(b) is a condition precedent to a finding of violation

pursuant to § 31-27-2.1(c). Stated differently, she contends that the "sworn report" referred to in subsection (c) is the same as the "report" referred to in subsection (b). This court holds that it is not. The report referred to in § 31-27-2.1(b) serves a single purpose. It is the factual basis upon which a judge at the traffic tribunal is empowered by law to promptly order the immediate suspension of a drivers license after arrest. The sworn report referred to in § 31-27-2.1(c) serves an entirely different purpose and function. It is the factual basis for the traffic tribunal judge to sustain a refusal charge. A finding that a law enforcement officer had reasonable grounds to believe the arrested person had been operating a motor vehicle within this state while under the influence of an intoxicating liquor is a factual finding that must be made by the traffic tribunal judge *after a hearing* in order to sustain the violation. Link v. State, 633 A.2d 1345 (R.I. 1993). Such a finding is not dependent on the existence or the filing of a report pursuant to § 31-27-2.1(b).

CONCLUSION

For the reasons set forth above, the decision of the appellate panel to reverse the trial judge's decision finding a violation of § 31-27-2.1 is reversed and the case is remanded to the Traffic Tribunal.