Cite as: R. v. Parsons, 1982 NSCO 11

1982 C.A.R. No. 01088

IN THE COUNTY COURT OF DISTRICT NUMBER THREE

BETWEEN:

HER MAJESTY THE QUEEN

RESPONDENT

- and -

JOHN ANDERSON PARSONS

APPELLANT

HEARD: At Annapolis Royal, Nova Scotia, on the 25th day of May, A.D. 1982.

BEFORE: His Honour Judge Peter Nicholson, J.C.C.

DECISION: The 30th day of July, A.D. 1982 .

COUNSEL: David E. Acker, Esq., for the Crown

Darrell Carmichael, Esq., for the Appellant

NICHOLSON, J.C.C.

The Appellant takes this Appeal by way of Transcript and Argument against the Decision of His Honour Judge K. L. Crowell given at Middleton on 9 November, 1981, on a charge that:

> "He at or near Bridgetown in the County of Annapolis, Nova Scotia, on or about the 14th day of August 1981 did unlawfully, without reasonable excuse, fail to comply with a demand made to him by a peace officer to provide samples of his breath suitable to enable an analysis to be made, in order to determine the proportion, if any, of alcohol in his blood, contrary to Section 235(2) of the Criminal Code."

The facts are relatively simple. On 14 August, 1981, at 3:17 a.m. Constable Clarence Fidler, R.C.M.P. who was then at Moschelle, in the County of Annapolis received a message from his Headquarters at Halifax to the effect that there was an accident scene at Nictaux, in the County of Annapolis, on Provincial Trunk Highway # 201. Fidler requested that the Town Police in Middleton be asked to proceed to the scene and he would get there as soon as possible. The result of this, Constable Charles Brown, of the Middleton Police Force proceeded forthwith from Middleton in his police vehicle and arrived at the scene at Nictaux at approximately 3:30 a.m. On a bridge near Martin's Hill on Trunk Highway 201 he found a Cutlass motor vehicle in a damaged condition

situated almost crossways on the Bridge and in such a manner that it was not possible for traffic to proceed in either direction over the bridge. The railings of the bridge themselves were damaged indicating that the vehicle had collided with the side of the bridge. The headlights on the motor vehicle were not illuminated. The Appellant, John Anderson Parsons, was sitting behind the steering wheel and in the driver's seat. He was immediately recognized by Constable Brown because of the facts that the interior dome light of the car was on, and that Brown had known Parsons for some time. A lady was also in the automobile but her name was not disclosed in the evidence nor did she appear as a witness.

Constable Brown observed and testified as to the usual indicia of intoxication on the part of the Appellant, and as a result of that he asked him to come to the police vehicle and there he testified that he read the breathalyzer demand to him but he did not in his evidence say what any of the words were that comprised the demand. He asked the accused if he understood it and he replied that he did and that he would refuse the demand. The learned Trial Judge properly disregarded this particular event. In any event the Crown was obviously relying on the demand given to the Appellant by the Informant, Constable Clarence Fidler, of the

R.C.M.P., and not on the "demand" given by Constable Brown.

Constable Fidler testified that he arrived at the scene at approximately 3:40 a.m. and saw the Appellant's vehicle crossways on the bridge and also observed the Appellant sitting in the backseat of the Middleton police car. After having a conversation with Constable Brown, Fidler went to the Middleton police car, opened the door and spoke to the Appellant and asked him if he was injured and he replied that he wasn't. He noticed a strong smell of alcohol on the Appellant's breath and he asked him to accompany him to the R.C.M.P. car. On the way he staggered and Fidler went on to say he noticed the man's eyes were bloodshot and watery and a strong odor of alcohol came from his breath and his clothing was soiled and disarrayed. Fidler came to the conclusion that he was intoxicated. He then gave evidence as to reading to the Appellant, at 3:43 a.m., a breathalyzer demand from a card that he produced in Court. He asked the Appellant if he understood the demand and he said that he wanted to call a lawyer. Upon being asked by the prosecuting officer upon what basis he had made the demand, Fidler replied, "I asked Constable Brown if he knew who the driver was and Constable Brown said yes, John Parsons."

Fidler then immediately took the Appellant to the R.C.M.P. Detachment at Bridgetown and arrived there

at 4:09 a.m. Being a qualified breathalyzer operator, he was prepared to give the test if the Appellant consented to it. First of all he gave him a telephone book and made a telephone available to him and the Appellant apparently got somebody on the other end of the line and after awhile he heard him slam up the receiver. Fidler then gave him another opportunity in private to get in touch with his lawyer. For a period from 4:21 to 4:29 a.m. a phone in a private room was made available to the Appellant. At 4:29 a.m. Fidler saw through a window into the private room that the Appellant had put the receiver back on the hook. Fidler immediately came into the room and asked him what was his decision about the breathalyzer test, and thereupon the Appellant refused to take the test.

It appeared from the wording of the Notice of Appeal that the Appellant alleged that there was insufficient evidence on which Court could have found that Fidler formed a belief specified in Section 231(1), or that if he did form the requisite belief that he had no reasonable and probable grounds for the formation of that belief, specifically on the issue that Fidler had no knowledge as to what time the Appellant had been driving the motor vehicle, and further that there was really no evidence upon which one could come to the belief that an offence under Section 234 or

Section 236 had been committed within the preceding two hours.

It is settled law that the basis upon which one may have reasonable and probable grounds for believing that a person is committing or at any time within the preceding two hours has committed an offence under Section 234 or 236 may be founded on information supplied by a third party, indeed not even necessarily fellow police officers. The officer laying the Information may testify as to the contents of conversations which caused him to make the demand. The authority for the proposition is found in R. vs. Strongquill (1978) 43 C.C.C. (2d) at 232, a Decision of the Saskatchewan Court of Appeal.

The question as to whether or not there are reasonable and probable grounds for believing that the Appellant had the care and control of, or was driving, the motor vehicle within the two hours preceding the time at which Fidler gave the demand must be looked at in light of all the relevant circumstances. Having been told by Constable Brown that the Appellant had been the driver of the motor vehicle, surely there was nothing unreasonable in Fidler entertaining the belief that the vehicle in the position in which he saw it, i.e. crossways on a bridge on a trunk highway, was in all likelihood not in that position for a period of

approximately one and one-half hours before his arrival on the scene. Had the period been longer, one would have expected the occupants of the vehicle, that is the Appellant and the lady who was with him, would have left the scene and/or arranged for someone to remove the vehicle from the bridge, or alternatively that some passing motorist would have come upon it and assisted in the pulling or pushing it off the bridge.

From what Brown had told him, it also appears to me that Fidler was entitled to assume that Constable Brown had observed the Appellant in the position normally occupied by the driver of a motor vehicle when he came upon the scene. In those circumstances, even if there was no direct evidence as to driving in the material which Fidler had before him upon which to base his opinion, there would at least be the reasonable and probable conclusion that the Appellant had the care and control of the motor vehicle, being so seated.

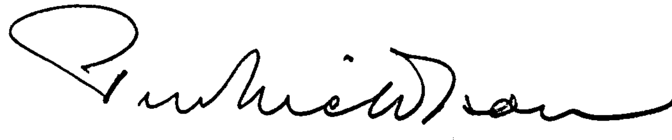
In my view there was ample information that accrued to Constable Fidler to justify him in making the demand upon the Appellant. It would be stretching one's credulity to say that an accompanying degree of reasonableness and improbability were lacking in all the circumstances.

The learned Trial Judge came to the conclusion

that Constable Fidler had reasonable and probable grounds and held the necessary belief requisite to making the demand upon the Appellant. There was evidence to support the conclusions to which the learned Judge came and there was nothing perverse in his findings, and they ought not to be disturbed. In addition my view of the whole case coincides with his. The Appeal is therefore dismissed, and the Decision of, and the penalty imposed by, the Trial Judge are confirmed.

There will be no Order as to costs.

DATED at Annapolis Royal, Nova Scotia, this 30th day of July, A.D. 1982.



JUDGE OF THE COUNTY COURT OF
DISTRICT NUMBER THREE

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