


IN THE TWENTY-FIRST JUDICIAL CIRCUIT  
STATE OF MISSOURI  
ST LOUIS COUNTY

**FILED**

MAY 21 2019

JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY

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)  
Petitioner, )  
vs. ) Cause No.15SL-AC28782  
)  
Director of Revenue for the )  
State of Missouri, )  
)  
Respondent. )

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

On December 21, 2018, Petitioner’s Petition for Review was called and heard. The Director of Revenue (“Director”) submitted Respondent’s Exhibit A which included certified copies from the Department of Revenue of the arresting officer’s Alcohol Influence Report (“AIR”) and the Arrest Narrative, over Petitioner’s objection. The Director also submitted Respondent’s Exhibit B which included a certified copy of the Petitioner’s guilty plea to the criminal D.W.I. case that is the underlying event giving rise to this civil matter, over Petitioner’s objection. The Petitioner, Officer Yaakub, and Petitioner’s expert witness, Travis Jones, testified. The Court took this matter under submission upon receipt of the parties’ proposed findings of facts and conclusions of law, all of which were filed by February 25, 2019. The Court issues its Judgment outside the time parameters of Section 517 RSMo with the consent of the parties.

## **I. Evidentiary Rulings**

### **a. Petitioner's objection to the admission of Director's exhibit under Section 302.312 RSMo. is overruled.**

Petitioner objected to the admission of Respondent's Exhibit A under Section 302.312

RSMo. Section 302.312 RSMo. provides:

Copies of all papers, documents, and records lawfully deposited or filed in the offices of the department of revenue or the bureau of vital records of the department of health and copies of any records, properly certified by the appropriate custodian or the director, shall be admissible as evidence *in all courts of this state* and in all administrative proceedings. (emphasis added). Section 302.312 RSMo.

Therefore, because Section 302.312 RSMo. provides that certified documents from the Director shall be admissible as evidence in all courts of this state, Petitioner's objection is overruled and Respondent's Exhibit A is admitted.

### **b. Respondent's Exhibit C is admitted**

Respondent's Exhibit C, which includes a certified copy of Petitioner's guilty plea to the underlying criminal case giving rise to this civil matter, is also admitted. Petitioner testified that it is a correct copy of the guilty plea that she entered after conferring with her attorney.

## **II. Burden of Proof.**

In order to revoke a license pursuant to § 577.041, the Director must show that: 1) the person was arrested; 2) the arresting officer had reasonable grounds to believe the person was driving a motor vehicle while in an intoxicated condition; and 3) the person refused to submit to a test." *Driskell v. Dir. of Revenue*, 169 S.W.3d 187, 189 (Mo.App. S.D.2005). The Director must establish all of these elements by a preponderance of evidence. *Kimbrell v. Dir. of Revenue*, 192 S.W.3d 712, 715 (Mo. App. W.D. 2006). "If the trial court determines one or more of these criteria have not been met, it must reinstate driving privileges." *Id.* Here, as there was no argument regarding Petitioner's arrest or refusal to submit to a chemical test, as well as the

record reflecting by way of Respondent's Exhibit A and Officer Yaakub's testimony, this decision will focus on whether Officer Yaakub had reasonable grounds to believe that (1) Petitioner was driving a motor vehicle and, if so, (2) whether Officer Yaakub had reasonable grounds to believe Petitioner was in an intoxicated condition.

**III. The Court finds that Officer Yaakub had reasonable grounds to believe the Petitioner was driving a motor vehicle.**

"Hearsay" evidence is admissible to establish probable cause; it is not relied upon to prove the truth of the matter, but rather to explain the basis for the belief that probable cause existed. *Davis v. Director of Revenue*, 416 S.W.3d 826 (Mo.App.S.D. 2013). Additionally, probable cause [can be] determined by [the] collective knowledge of all the officers participating in the arrest; [an] officer can rely on information provided by another officer for probable cause. *Burleson v. Director of Revenue*, 92 S.W.3d 218 (Mo.App.S.D. 2002); *Eskew v. Director of Revenue*, 17 S.W.3d 159 (Mo.App.E.D. 2000); *Farin v. Director of Revenue*, 982 S.W.2d 712 (Mo.App.E.D. 1998); *Jarboe v. Director of Revenue*, 468 S.W.3d 478 (Mo.App.E.D. 2015).

Here, Officer Yaakub testified that he responded to a traffic stop initiated by another officer. Based upon the information obtained from the other officer, Officer Yaakub understood that Petitioner had been pulled over while operating a motor vehicle for exceeding the posted speed limit and failing to maintain a single lane. In addition, Petitioner corroborated these facts by testifying that she was stopped while driving a motor vehicle by an officer who told her she was speeding and failing to maintain a single lane.

Pursuant to the multiple authorities listed above, Officer Yaakub could rely on the out of court statements of his fellow officer to form a reasonable belief that Petitioner had been operating a motor vehicle at the time she was stopped.

**IV. Officer Yaakub had Probable Cause to believe that Petitioner was in an Intoxicated Condition.**

“The issue to be determined in a license revocation case is whether officer had probable cause to believe the subject was intoxicated, not whether the subject was actually intoxicated”. *Soest v. Director of Revenue*, 62 S.W. 3d 619 (Mo.App.E.D. 2001). Also, probable cause can be developed without field sobriety tests. *Chancellor v. Director of Revenue*, 984 S.W.2d 857 (Mo.App.W.D. 1998). Additionally, a “subject’s refusal to submit to SFST’s is evidence of intoxication” *Edmisten v. Director of Revenue*, 92 S.W.3d 270 (Mo.App. W.D. 2002).

In this case, Officer Yaakub testified that he observed or possessed the following information related to Petitioner’s condition prior to her arrest: (1) she was stopped for speeding and failing to maintain a single lane, (2) she had a strong odor of an intoxicating beverage emanating from her person, (3) her speech was slurred, (4) she admitted to consuming multiple “vodka drinks,” (5) her eyes were glassy, (6) her balance was swaying, and (7) she refused to submit to SFST’s. The Court finds the testimony by Officer Yaakub is consistent with the report submitted in Respondent’s Exhibit A and finds him credible.

Petitioner has filed a request that the Court make three (3) factual findings related the Officer Yaakub’s use of the “Alphabet Test” prior to arresting Petitioner. The Court finds the record contains insufficient evidence to make a finding with regard to request “1.” With regard to request “2”, the Court finds insufficient evidence that NHTSA recognizes the “alphabet test” as indicator of intoxication. Further, Travis Jones testified that the test is unreliable. With regard to request “3”, the Court finds insufficient evidence in the record to make the requested finding. Finally, Petitioner’s request for findings are immaterial to the Court’s Judgment in this matter, as the Court has not relied on Officer Yaakub’s use and analysis of the “alphabet test”. Given the

totality of observations made by Officer Yaakub, as listed above, the Court finds sufficient evidence of probable cause without the alphabet test.

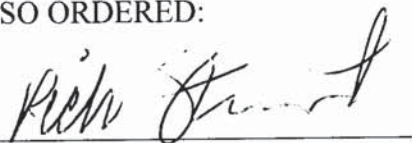
Petitioner also filed Motions to Preclude the Alphabet Test, and Evidence of Petitioner's Speech, Odor, and Eye Condition. All said motions are denied.

**V. Conclusion**

Therefore, this Court, having carefully reviewed all of the evidence, and assessed the credibility the witnesses, finds that the Director established the arresting officer had probable cause to believe that Petitioner was operating a motor vehicle in an intoxicated condition, and that there was a valid refusal in this matter.

WHEREFORE, the Court denies the relief prayed for in Petitioner's Petition for Review, and the order of the Director of Revenue revoking Petitioner's driving privileges is sustained. Costs taxed to Petitioner.

SO ORDERED:



Richard M. Stewart  
Associate Circuit Judge  
Circuit Court of St. Louis County  
State of Missouri

Date: 5/21/19