STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND :
:
v. : C.A. No. T08-0047
:
NICHOLAS PICCHIONE :

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on October 8, 2008, Magistrate Noonan (Chair), Magistrate Cruise, and Magistrate Goulart sitting, is Nicholas Picchione's (Appellant) appeal from Judge Almeida's decision, sustaining the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test."[1] The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 20, 2007, Patrol Officer Michael Bronson (Officer Bronson) of the South Kingstown Police Department charged Appellant with violating the aforementioned motor vehicle offense. The Appellant contested the charge, and the matter proceeded to trial.

At the outset, Officer Bronson testified as to his training and experience with respect to DUI-related traffic stops and the administration of standardized field sobriety tests. (Tr. at 3-5.) Then, turning to the events of December 20, 2007, Officer Bronson testified that at approximately 6:30 p.m., he was traveling southbound on Route 1 to the

[1] The Appellant was also charged with violating G.L. 1956 § 31-15-11, "Laned roadways," G.L. 1956 § 31-16-5, "Turn signal required," G.L. 1956 § 31-17-6, "Yielding to emergency vehicle," and G.L. 1956 § 31-22-21.1, "Presence of alcoholic beverages while operating or riding in a motor vehicle." At the conclusion of the State's case-in-chief, the trial judge granted Appellant's Motion to Dismiss the charged violations of § 31-17-6 and § 31-22-21.1. Following the trial, the trial judge sustained the charged violations of § 31-15-11 and § 31-16-5. However, these violations are not the subject of the instant appeal.

scene of a disabled vehicle. (Tr. at 6.) As Officer Bronson traveled in the left-hand travel lane[2] with his cruiser's lights and siren engaged, he observed a pickup truck directly in front of his cruiser. Id. When Officer Bronson approached the vehicle, he observed it drift leftwards towards the median strip on three occasions before veering sharply into the right-hand travel lane, almost forcing several vehicles from the roadway. (Tr. at 7.) As the vehicle approached the vicinity of the South County Commons,[3] it began to straddle the white line separating the two southbound travel lanes, forcing vehicles onto the shoulder of the roadway. (Tr. at 8.) The vehicle straddled the white dividing line for approximately one-forth mile, before taking an on-ramp towards Narragansett. (Tr. at 9.)

Officer Bronson testified that as the vehicle traveled on the on-ramp, the operator applied the vehicle's brakes sporadically before bringing the vehicle to a "rolling stop." Id. After parking his police cruiser, Officer Bronson approached the driver's side of the vehicle and ordered the operator to place the vehicle in park and exit the vehicle. (Tr. at 10.) Officer Bronson observed that the operator of the vehicle—later identified at trial as Appellant—appeared confused, as he did not respond to Officer Bronson's request in a timely fashion. Id.

When Appellant opened the vehicle's door, Officer Bronson noticed that there was a "Miller Lite" can in the vehicle's center console and several "Miller Lite" cans on the passenger's seat. Id. Officer Bronson also noticed that Appellant appeared unsteady as he alighted from the vehicle, as he "stumbled" and leaned against his vehicle to

[2] Officer Bronson described Route 1 as a four-lane roadway, with two northbound travel lanes and two southbound travel lanes. (Tr. at 7.)

[3] The South County Commons is a shopping center located on Route 1 South approximately two miles south of the intersection of Route 1 and Route 138.

maintain his balance. Id. When Officer Bronson inquired whether Appellant had consumed alcohol, he responded that he had had four beers. Id. According to Officer Bronson, there was a strong odor of alcohol emanating from Appellant's breath. Id. In addition, Appellant's eyes appeared watery and bloodshot. Id.

Upon observing several indicia of alcohol consumption, Officer Bronson asked Appellant whether he would submit to standardized field sobriety tests, to which Appellant responded, "If I had been drinking, why the [expletive] would I submit to your tests?" Id. Upon Appellant's refusal to submit to field sobriety tests, Officer Bronson placed Appellant under arrest for suspicion of operating a motor vehicle under the influence. (Tr. at 12, 18.) Officer Bronson then read Appellant his "Rights for Use at Scene" from the pre-printed card. (Tr. at 12.) It was then that Officer Bronson asked Appellant for identification. (Tr. at 13.) When asked by Officer Bronson whether his driver's license was located in his vehicle or on his person, Appellant was combative and responded, "It's in my [expletive] pocket." Id.

The Appellant was then transported from the scene of the traffic stop to the South Kingstown Police Department for booking. (Tr. at 14.) Once Officer Bronson had read Appellant his "Rights for Use at Station," Appellant was afforded an opportunity to make a confidential phone call. (Tr. at 15.) When Appellant had completed his phone call, Officer Bronson asked Appellant whether he would submit to a chemical test; Appellant refused. Id.

Officer Brosnon then focused the Court's attention on the results of the inventory search of Appellant's vehicle.[4] Officer Bronson testified that the inventory revealed six

[4] On cross-examination by counsel for Appellant, Officer Bronson testified that the inventory search of Appellant's vehicle was conducted by an another officer, Officer Bethany Barrington. (Tr. at 26.)

"Miller Lite" beer cans: one in the vehicle's center console, three empty cans on the passenger's seat, and two full cans on the passenger's seat. (Tr. at 16.) He further testified that the beer can located in the vehicle's center console had been opened and partially consumed. Id.

At the conclusion of the State's case-in-chief, Appellant called John Mullaney (Mr. Mullaney) to the stand. Mr. Mullaney testified that at approximately 4:00 p.m. on the date in question, he visited Appellant at Dome Publishing in Warwick, Appellant's place of employment. (Tr. at 37.) Mr. Mullaney spent several minutes socializing with Appellant and his co-workers before proceeding to Richard's Pub[5] with Appellant.[6] When questioned by counsel for Appellant as to whether Appellant had consumed alcohol at Richard's, Mr. Mullaney indicated that Appellant consumed two twelve-ounce bottles of "Miller Lite" beer and a martini. (Tr. at 38.) However, Mr. Mullaney testified that Appellant did not appear impaired when he and Appellant left Richard's Pub approximately one hour after arriving, and that his speech, gait, and eyes were unexceptional. (Tr. at 38-39.)

At the conclusion of Mr. Mullaney's trial testimony, Appellant took the witness stand. The Appellant testified that Mr. Mullaney arrived at Dome Publishing at approximately 4:30 p.m. and that he and Mr. Mullaney departed for Richard's Pub at approximately 4:45 p.m. (Tr. at 46.) When questioned by his counsel as to whether he had consumed alcohol prior to Mr. Mullaney's arrival, Appellant responded in the negative. Id. While Appellant admitted to having consumed two "Miller Lites" and a

[5] Richard's Pub is located on South County Trail in East Greenwich. South County Trail is also known as Route 2.

[6] Mr. Mullaney indicated in his trial testimony that he and Appellant traveled to Richard's Pub in their respective vehicles. (Tr. at 38.)

martini at Richard's Pub, he added that he and Mr. Mullaney had shared an order of buffalo wings and an order of nachos. (Tr. at 47.)

The Appellant further testified that upon leaving the parking lot of Richard's Pub, he traveled southbound on Route 2 towards the "Wickford rotary," in order to connect to Route 4 South. Id. The Appellant traveled southbound on Route 4 and merged onto Route 1 South. Id. As Appellant traveled southbound on Route 1 towards the South County Commons, he began to experience what he described as an "allergy attack." (Tr. at 48.) The Appellant testified that, as a result of his "allergy attack," he was coughing and sneezing and that his eyes had become irritated. Id. It was at this time that Appellant became aware that Officer Bronson's police cruiser was directly behind his vehicle. Id.

When asked by counsel why he didn't yield to Officer Bronson's cruiser, Appellant testified that it was impossible to move into the right-hand travel lane due to traffic congestion. (Tr. at 49.) The Appellant testified that he attempted to maneuver his vehicle towards the median strip in order to allow Officer Bronson to pass, but that Officer Bronson chose not to do so. (Tr. at 50.) He further testified that when he took the on-ramp towards Narragansett, he became aware that Officer Bronson was attempting to stop his vehicle and, as such, brought his vehicle to a controlled stop. Id.

The Appellant testified that when Officer Bronson approached his vehicle and inquired whether he had consumed alcohol, he informed Officer Bronson that he had just left Richard's Pub and had had "a few beers." (Tr. at 51.) He added that he experienced no difficulty when alighting from his vehicle and that he did not stumble or fall at any time. Id.

On cross-examination by the State, Appellant admitted that there was a "Miller Lite" can in the center console of his vehicle and that he had "probably" consumed beer from the can before arriving at Richard's Pub. (Tr. at 54.) However, Appellant indicated that he consumed the beer in the parking lot of Dome Publishing prior to departing for Richard's Pub. Id.

Following a two-day trial, the trial judge sustained the charged violation of § 31-27-2.1. It is from this decision that Appellant now appeals. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8 reads, in pertinent part

> The appeals panel shall not substitute its judgment for that of the judge or magistrate on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions, or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the judge or magistrate;
> (3) Made following unlawful procedure;
> (4) Affected by another error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d

536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge's decision to sustain the charged violation of § 31-27-2.1 is affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. Specifically, Appellant contends that Officer Bronson had insufficient evidence to furnish him with probable cause to arrest Appellant on suspicion of driving under the influence. As the arrest of Appellant was unlawful, Appellant asserts that the charged violation of § 31-27-2.1 must be dismissed.

Our Supreme Court has made clear that "reasonable suspicion is the proper standard for evaluating the lawfulness of a stop." State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996). In the context of chemical test refusal cases, the Court has listed various specific and articulable facts upon which a law enforcement officer can properly conclude that "reasonable suspicion" exists to initiate an investigatory stop: swerving of the motorist's vehicle from lane to lane, State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1998), or other erratic movements of the vehicle, Jenkins, 673 A.2d at 1097; an appearance of

confusion on the part of the motorist, Bruno, 709 A.2d at 1050, and State v. Bjerke, 697 A.2d 1069 (R.I. 1997); an admission by the motorist that he or she had been drinking, Bruno, 709 A.2d at 1050; detection by the officer of an odor of alcohol on the motorist's breath or person, State v. Pineda, 712 A.2d 858 (R.I. 1998), and State v. Perry, 731 A.2d 720, 721 (R.I. 1999); exhibition by the motorist of bloodshot eyes, Pineda, 712 A.2d at 858, and Perry, 731 A.2d at 721; the motorist stumbles and falls against the vehicle upon exiting the vehicle, Pineda, 712 A.2d at 858, and Perry, 731 A.2d at 721.

In the case at bar, Officer Bronson had reasonable suspicion to stop and briefly detain Appellant for investigative purposes. See Jenkins, 673 A.2d at 1097 ("A police officer can stop and briefly detain a person for investigative purposes absent probable cause if the officer has reasonable suspicion based upon specific and articulable facts, and reasonable inferences can be drawn therefrom.") Officer Bronson testified at trial that he observed erratic movement of Appellant's vehicle, as Appellant's vehicle drifted leftwards toward the median strip before veering sharply into the right-hand travel lane. (Tr. at 7.) Officer Bronson stated that Appellant's vehicle straddled the white line separating the left and right southbound travel lanes for approximately one-forth mile, forcing several vehicles onto the shoulder. (Tr. at 8.) During his initial encounter with Appellant, Officer Bronson observed that Appellant appeared confused, that there was a strong odor of alcohol on Appellant's breath, that Appellant's eyes were watery and bloodshot, and that Appellant "stumbled" when alighting from his vehicle and leaned against the vehicle to maintain his balance. (Tr. at 7-10.) Further, Appellant admitted to Officer Bronson that he had consumed "a few beers" over the course of the evening. (Tr.

at 10.) Accordingly, this Panel is satisfied that Officer Bronson had reasonable suspicion to stop Appellant's vehicle based upon specific and articulable facts.

Further, the record reflects that Officer Bronson's arrest of Appellant was based upon probable cause to believe that Appellant had operated his motor vehicle under the influence of intoxicating liquor. "The existence of probable cause to arrest without a warrant 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). Our Supreme Court has said 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." In re Armand, 454 A.2d 1216, 1218 (R.I. 1983) (internal quotations omitted).

In light of the totality of the circumstances, Officer Bronson had sufficiently trustworthy information to believe that Appellant had committed the crime of operating a motor vehicle under the influence of intoxicating liquor. When Officer Bronson's personal observations of Appellant's erratic driving, physical appearance, and combative demeanor are coupled with his professional experience and training with respect to the investigation of DUI-related traffic stops, the "facts and circumstances known to [Officer Bronson] [were] sufficient to cause a person of reasonable caution to believe that a crime ha[d] been committed and [Appellant] ha[d] committed [it]." Perry, 731 A.2d at 723.

CONCLUSION

Having reviewed the entire record, this Panel concludes that the trial judge's decision to sustain the charged violation of § 31-27-2.1 is not affected by error of law. As there is reliable, probative, and substantial record evidence to sustain this charge, this Panel concludes that substantial rights of Appellant have not been prejudiced. Accordingly, the decision of the trial judge with respect to the refusal charge is sustained, and the Appellant's appeal is dismissed.

ENTERED: