

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK

v.

JOANN MAIORANO

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C.A. No. T08-0087

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DECISION

PER CURIAM: Before this Panel on August 20, 2008, Magistrate DiSandro (Chair), Judge Parker, and Judge Ciullo sitting, is the State of Rhode Island's (State) appeal from Magistrate Noonan's decision, dismissing the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to Submit to Chemical Test." Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On May 3, 2008, Joann Maiorano (Appellee) was charged with violating the aforementioned motor vehicle offense by Officer James Vible of the Warwick Police Department (Officer Vible). The Appellee contested the charge, and the matter proceeded to trial.

At trial, the State and Appellee stipulated to the following proposed testimony by Officer Vible that, if testified to, would be found by the Court by clear and convincing evidence to establish the following: that Appellee was placed under arrest by Officer Vible for suspicion of driving under the influence of intoxicating liquor, handcuffed, and taken into custody; that Officer Vible informed Appellee of her "Rights for Use at Scene," a copy of which was introduced into evidence and received as Joint Exhibit 1; that Officer Vible transported Appellee to the Warwick Police Department where he

informed Appellee of her "Rights for Use at Station," including the penalties imposed for non-compliance and the motorist's right to an independent examination, a copy of which was introduced as Joint Exhibit 2; that Officer Vible offered Appellee a confidential phone call, and that Appellee availed herself of this opportunity; that upon completing her confidential phone call, Officer Vible requested that Appellee submit to a chemical test, which Appellee refused. The identity of Appellee as the motorist stopped and subsequently charged was also stipulated to. Lastly, the sworn report of Officer Vible was offered as Joint Exhibit 3 for the limited purpose of showing compliance with § 31-27-2.1.

Having thus stipulated, Officer Vible testified that he is employed by the Warwick Police Department in the position of patrol officer; that he received professional training at the Rhode Island Municipal Police Training Academy in DUI investigation, including the administration of standardized field sobriety tests. Officer Vible testified that he has had the opportunity to observe people under the influence of alcohol, having participated in approximately twenty-five prior DUI arrests. Officer Vible indicated that he is also certified to administer chemical breath tests.

Officer Vible testified that on May 3, 2008, at approximately 1:00 a.m., he was on duty operating his marked cruiser northbound on Providence Street in the City of Warwick. (Tr. a 6.) Vible observed a white Lexus enter northbound onto Providence Street from a private drive. Officer Vible described Providence Street as a two-lane roadway, one lane designated for southbound travel, one lane designated for northbound travel, and with each lane being separated and designated by a center yellow dividing line. Officer Vible stated that all land located to the west of said yellow line is within the

territorial jurisdiction of West Warwick, and that all land to the east of said yellow line is within the territorial jurisdiction of Warwick. Although Officer Vible's attention initially was drawn to the vehicle when it was in West Warwick, he did not observe any motor vehicle violations. Officer Vible observed the vehicle exit a private drive, cross the southbound lane of Providence Street, cross the double yellow center dividing line, cut in front of his police cruiser, enter the northbound lane of Providence Street, drift right across the northbound lane, and nearly strike the northbound right-side curb. Officer Vible continued to follow the vehicle as it slowly proceeded northbound on Providence Street, where it then straddled the double yellow dividing line by approximately one-half of the vehicle. (Tr. at 8.)

Officer Vible noted that the vehicle was traveling "a lot slower" than his police cruiser, which was traveling at approximately 30-35 m.p.h. Id. Officer Vible initiated a traffic stop of the vehicle in the 500 block of Providence Street, Warwick, Rhode Island. (Tr. at 9.)

Officer Vible approached the operator of the vehicle, identified before the Court as Appellee, and detected the faint odor of alcohol on her person. Officer Vible testified that Appellee seemed confused and unaware that she had straddled the center dividing line. Officer Vible further testified that Appellee displayed bloodshot, watery eyes, and had difficulty retrieving her registration and insurance documentation.

Officer Vible requested that Appellee perform the standardized "walk and turn" and "one-leg stand" field sobriety tests. Officer Vible testified that he administered the tests according to professional standards and offered his professional opinion that Appellee failed the tests, thereby indicating that Appellee was intoxicated.

At the conclusion of Officer Vible's testimony, Appellee moved to dismiss the charged violation on the grounds that Officer Vible's first observations of Appellee's vehicle was while it was located in the private drive within the territorial jurisdiction of West Warwick. Consequently, counsel for Appellee argued that Officer Vible lacked jurisdiction to effectuate an arrest of Appellee. (Tr. at 45.) The Appellee further argued that Officer Vible was not in "hot pursuit" of Appellee's vehicle at the time of the traffic stop and, as such, lacked the jurisdiction to effectuate an arrest in another jurisdiction. Id. The trial magistrate adopted Officer Vible's testimony in its entirety as his findings of fact, but found that since much of what Officer Vible witnessed had occurred in the Town of West Warwick, Officer Vible lacked jurisdiction to effectuate an arrest of Appellee.¹

Following the trial, the trial magistrate granted Appellee's motion to dismiss. It is from this decision that the State now appeals. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), 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(f) provides 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;

¹ The trial magistrate stated on the record that based on the credible testimony of the Officer, every essential element of § 31-27-2.1 was satisfied.

- (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, the State argues that the trial magistrate’s decision is clearly erroneous in view of the reliable, probative, and substantial evidence contained in the record. Specifically, the State contends that the trial magistrate misconstrued Officer Vible’s testimony to find that Appellee committed a motor vehicle offense within the territorial jurisdiction of West Warwick, thereby requiring the involvement of a West Warwick police officer.

Turning to the facts of the case at bar, this Panel concludes that the trial magistrate erred in finding that Officer Vible's arrest of Appellee was outside the territorial jurisdiction of the Warwick Police Department. It is well-settled that this Panel, in reviewing the decision of a trial magistrate, acts in the same manner as an appellate court with a limited scope of review. See Mine Safety Appliances v. Berry, 630 A.2d 1255, 1259 (R.I. 1993). Therefore, great deference must be given to the trial magistrate's decision. See R.I. Temps, Inc. v. Dept. of Labor and Training, 749 A.2d 1121, 1125 (R.I. 2000). However, this Panel "may reverse [the] findings of the [trial magistrate] . . . in instances where the conclusions and findings of fact are totally devoid of competent evidentiary support in the record, or from the reasonable inferences that might be drawn from such evidence. Bunch v. Bd. of Review, 690 A.2d 335, 337 (R.I. 1997).

Accepting—as we must—the trial magistrate's determinations as to the credibility of Officer Vible's trial testimony, see Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988), we nevertheless conclude that his decision to grant Appellee's motion to dismiss was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The record reflects that Officer Vible's suspicions regarding Appellee's driving were aroused within his territorial jurisdiction of Warwick: he observed Appellee's vehicle almost strike a curb in the northbound lane of Providence Street and then travel from the northbound lane of Providence Street and partially enter the southbound lane. (Tr. at 7-8.) Officer Vible had authority to initiate a traffic stop of Appellee's vehicle because his police cruiser's computer indicated that the location of the observed traffic violations and subsequent stop was within his territorial jurisdiction of

Warwick. (Tr. at 38.) The mere fact that Officer Vible initially observed Appellee's vehicle while it was in West Warwick does not negate the fact that the vehicle crossed into Warwick, where its operator committed a motor vehicle violation in the presence of a law enforcement officer who was lawfully within his jurisdiction of Warwick. Accordingly, as there is no indication that Officer Vible ever crossed into West Warwick in "hot pursuit" of Appellee or that he was responding to an emergency situation within the territorial jurisdiction of West Warwick, the trial magistrate's decision to grant Appellee's motion to dismiss on jurisdictional grounds is clearly erroneous in light of the record evidence before him and warrants reversal.

Conclusion

Upon a review of the entire record, this Panel concludes that the trial magistrate's decision granting Appellee's Motion to Dismiss was clearly erroneous in view of the record evidence. Substantial rights of the State have been prejudiced. Accordingly, this Panel reverses the trial magistrate's decision and remands the matter for a hearing on the merits.

ENTERED: