STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF PORTSMOUTH :
:
v. : C.A. No. T09-0068
:
JESSE FARIA :

DECISION

PER CURIAM: Before this Panel on July 1, 2009—Magistrate Cruise (Chair, presiding) and Judge Almeida and Magistrate DiSandro, sitting—is Jesse Faria's (Appellant) appeal from a decision of Magistrate Goulart, 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 § 31-41.1-8.

Facts and Travel

On March 27, 2009, Officer Patrick O'Neill (Officer O'Neill) of the Portsmouth Police Department observed as a vehicle, operated by Appellant, crossed over the white divided lines three times. After determining that Appellant failed all three field sobriety tests and exhibited several indicia of being under the influence of alcohol, Officer O'Neill charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

Officer O'Neill began his trial testimony by describing his professional training and experience in conducting DUI-related traffic stops and administering standardized field sobriety tests. (Tr. at 12-15.) Officer O'Neill then testified that at approximately 11:16 p.m. on the date

[1] In addition to the charged violation of § 31-27-2.1, Appellant was also charged with violating § 31-15-11, "Laned roadways." However, this violation was dismissed at trial and is not presently before this Panel on appeal.

in question, while observing traffic from Turkey Hill on West Main Road, he observed a green pickup truck traveling northbound on West Main Road. (Tr. at 15.) Officer O'Neill pulled directly behind the green pickup and observed the vehicle cross over the white divided lane marker three times between West Main Road and Freeborn Street. (Tr. at 16-17.)

Officer O'Neill initiated a traffic stop of the vehicle and made contact with the operator, identified at trial as Appellant. (Tr. at 18.) Officer O'Neill then asked Appellant whether he had consumed alcohol earlier in the evening. (Tr. at 19-20.) The Appellant replied that he had had a few drinks. (Tr. at 20.) As they conversed, Officer O'Neill observed that Appellant's eyes were "bloodshot, watery, and glossy," yet noted his speech was not slurred. (Tr. at 20.) Officer O'Neill also detected a "strong" odor of an alcoholic beverage emanating from Appellant's breath. (Tr. at 21.)

Upon making these initial observations, Officer O'Neill asked Appellant whether he would consent to a battery of standardized field sobriety tests; Appellant consented to the tests and exited his vehicle. (Tr. at 21.) Officer O'Neill administered the field sobriety tests in accordance with his professional training and experience, ultimately concluding that Appellant had failed the tests. (Tr. at 21-30.) Officer O'Neill testified that he placed Appellant under arrest, read him his "Rights for Use at Scene," and transported him to Portsmouth Police headquarters, whereupon he read him his "Rights for Use at Station" and offered Appellant the opportunity to make a confidential phone call. (Tr. at 30-34.) Officer O'Neill testified that Appellant declined the opportunity to make a phone call, and he signed the section of the "Rights" form that indicated his refusal to submit to a chemical test. (Tr. at 34.)

On cross-examination by counsel for Appellant, Officer O'Neill testified that he had reasonable grounds to believe that Appellant had been driving while under the influence of

alcohol based on the erratic operation that he had observed as well as the strong smell of alcohol on Appellant's breath, the condition of his eyes, and his failure of the field sobriety tests. (Tr. at 61, 65, 68-69.) As Officer O'Neill explained, Appellant had poor balance because "he put his foot down and then used his arms for balance" on the field sobriety tests. (Tr. at 108.)

In rendering his decision from the bench, the trial magistrate stated that he was satisfied that "the State has more than satisfactorily established through clear and convincing evidence . . . that [Appellant] failed to take the [chemical] test." (Dec. Tr. at 34.) Additionally, the trial magistrate was satisfied that "[Appellant] refused to take the test after having been told that [he] could be examined by a physician of [his] choice [pursuant to § 31-27-3]." Id. Thus, the sole issue for resolution by the trial magistrate was whether Officer O'Neill possessed reasonable grounds to believe that Appellant was operating a motor vehicle under the influence of alcohol.

Focusing on the reasonable grounds issue, the trial magistrate explained, "I'm not convinced that [Appellant] was drunk. I'm not convinced that [Appellant] was under the influence, but that's not what I have to prove. What I have to decide is whether [Officer O'Neill] on that evening had reasonable grounds to believe that [Appellant was] under the influence." (Dec. Tr. at 37-38.) In determining that reasonable grounds existed, the trial magistrate went on to state that "what was known to Officer O'Neill at the time was poor driving . . . bloodshot watery, glossy eyes, strong odor of alcohol, admission of drinking and the failure of the standardized field sobriety tests. At that point . . . I think that [Officer O'Neill], in fact, did have reasonable grounds . . . to believe that [Appellant was] operating a motor vehicle while under the influence of alcohol." (Dec. Tr. at 37.)

Following the trial, the trial magistrate sustained the charged violation of § 31-27-2.1. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. The Panel's decision is rendered below.

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(f) provides in pertinent part:

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

In reviewing a hearing judge or magistrate'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 [or magistrate] 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 [or magistrate'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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial magistrate's decision is characterized by abuse of discretion, affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. The Appellant has advanced two arguments in support of his appeal, each of which will be addressed in seriatim.

First, Appellant contends that the trial magistrate abused his discretion in sustaining the charged violation of § 31-27-2.1 because three weeks after the trial the Portsmouth Police Department sent his counsel a package of supplemental discovery. Specifically, the Appellant maintains that the failure of the Portsmouth Police to provide this evidence prior to trial required dismissal of the charged violation. Second, Appellant asserts that the trial magistrate's decision is affected by error of law and clearly erroneous in light of the record evidence because Officer O'Neill did not have probable cause to arrest Appellant on suspicion of driving under the influence.

I

Appellant argues that this Appeals Panel must dismiss the charged violation due to the supplemental evidence submitted by the Portsmouth Police Department three weeks after the completion of Appellant's trial. According to Appellant, the Portsmouth Police Department had in its possession a written statement or "incident report" containing the observations of another

motorist who allegedly witnessed Appellant operating a motor vehicle on the night in question. Appellant contends that—although he did not make a request for discovery, there was no on-going discovery request nor did he make a motion for discovery—the Portsmouth Police Department was attempting to improperly include new facts after the completion of the trial.

The State argues that Appellant is not prejudiced by the incident report because prior to counsel for Appellant's presentment of the document during this appeal, the State had never seen the document before. Moreover, the Portsmouth Police Department did not possess the document, or have knowledge of the facts contained therein on the date of Appellant's trial nor the date the decision of the trial was rendered because the witness had not yet submitted the report to the Police Department. Thus the State asserts that the evidence sent to Appellant after the completion of his trial did not prejudice the Appellant in any way.

Specifically, Appellant's trial took place at the Rhode Island Traffic Tribunal on May 5, 2009 and the decision of such was rendered on May 15, 2009. On May 22, 2009, the trial magistrate entertained a motion to stay the order rendered by the trial magistrate on May 15, 2009. After the completion of Appellant's trial, counsel for Appellant received a package of supplemental discovery from the Town of Portsmouth post-marked May 27, 2000. The package contained a statement given by a motorist who apparently called the Portsmouth Police Department after observing Appellant operate his motor vehicle on the date in question. The statement was taken on May 22, 2009. Furthermore, the issue of the supplemental discovery package was not raised at trial because the witness had not yet submitted the report; therefore, Appellant had not yet received the report from the Police Department.

After reviewing the record, this Panel concludes that Appellant had not submitted a discovery order to the Town of Portsmouth, nor was there an on-going discovery request

submitted to the Town at the time Appellant received the supplemental discovery package. It has long been settled by our Supreme Court that it would "reverse the decision of a trial justice to impose a sanction . . . for noncompliance with a discovery rule or order only upon a showing of an abuse of discretion." Mumford, 681 A.2d 914, 916 (R.I. 1996) (citing Senn v. Surgidev Corp., 641 A.2d 1311, 1320 (R.I. 1994)). While the Court recognized "the severity of a final judgment dismissing the action [for noncompliance with a discovery order]," the Court indicated that it would "affirm a trial justice's use of this type of drastic sanction in the face of a party's persistent failure to comply with discovery obligations." Id. (citing Roberti v. F. Ronci Co., 486 A.2d 1087, 1088 (R.I. 1985)); see also Goulet v. OfficeMax, Inc., 843 A.2d 494 (R.I 2004) (finding that due to the plaintiff's continuous and willful noncompliance with discovery orders, the Superior Court Justice acted well within his discretion in dismissing plaintiff's complaint).

In this case, neither the State of Rhode Island nor the Portsmouth Police Department persistently failed to comply with their discovery obligation pursuant to Rule 11 of the Rhode Island Traffic Tribunal Rules of Procedure.[2] Appellant admitted to this Panel that there was no ongoing discovery request and no motion was made for additional discovery as required under

[2] Rule 11 of the Traffic Tribunal Rules of Procedure states in pertinent part, "(a) [r]eports of examinations and tests: Police reports and statements showing a person has been advised of his or her rights shall be made available to the defendant upon written request by the defendant; the Attorney for the state, city, town or agency shall permit the defendant to inspect and copy or photograph said statements and reports. (b) Upon motion of a defendant the court may order the attorney for the state to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places . . . which are within the possession, custody or control of the state, upon a showing of materiality to the preparation of the defendant's defense and that the request is reasonable. (e) A motion or written request under this rule may be made only within fourteen (14) days after arraignment or at such reasonable later time as the court may permit. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interests of justice. (f) If, subsequent to compliance with an order issued pursuant to this rule, and prior to or during the trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under the rule, the party shall promptly notify the other party's attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances." R.I. Traffic Trib. R.P. 11.

Rule 11. The statement of the witness in the supplemental package was not given to the Portsmouth Police Department until after the trial not "prior to or during" the trial. See R.I. Traffic Trib. R.P. 11. The members of this Panel are satisfied that neither the State of Rhode Island nor the Town of Portsmouth failed to comply with Rule 11 or with an order issued pursuant to this rule, because none was requested. As such this Panel agrees that the State of Rhode Island did not disobey Rule 11, and thus the appearance of the supplemental evidence after the trial does not warrant a dismissal of the charged violation.

Here, the record reflects that the Portsmouth Police Department did not engage in a pattern of "continuous and willful noncompliance with [a] discovery order[]" of this Tribunal to produce the requested "incident report." Goulet, 843 A.2d at 496. Indeed, the record reflects that the "incident report" was not in existence at the time fixed for Appellant's trial, and no evidence of it was presented at trial . As soon as the Portsmouth Police Department had in their possession such a report on May 22, 2009, a copy of the additional material was sent to the other party's attorney, post-marked May 27, 2009. As such, this Panel is satisfied that the State of Rhode Island did not violate Rule 11 of the Traffic Tribunal Rules of Procedure. Thus this Panel concludes that the trial magistrate did not abuse his discretion by failing to dismiss the charged violation based on the failure of the Portsmouth Police to provide Appellant with the requested evidence.

II

Next, Appellant maintains that the trial magistrate's decision to sustain the charged violation of § 31-27-2.1 is affected by error of law and is clearly erroneous in light of the record evidence because Officer O'Neill did not have probable cause to arrest Appellant on suspicion of

DUI or reasonable grounds to believe that Appellant had been operating his vehicle under the influence of alcohol.

Reviewing the record in its entirety, the members of this Panel are satisfied that the trial magistrate's decision on the issue of probable cause and reasonable grounds is supported by legally competent evidence and is not otherwise affected by error of law. Here, the record reflects that Officer O'Neill had reasonable suspicion to initiate a traffic stop of Appellant's vehicle based on the erratic movements of the vehicle. See State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996); see also State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1998). Officer O'Neill observed Appellant's vehicle cross over the white divided lane marker three times between West Main Road and Freeborn Street. (Tr. at 17.) Further, once Officer O'Neill made contact with Appellant on the side of the road, he observed a "strong" odor of an alcoholic beverage emanating from Appellant's breath. (Tr. at 21.) Likewise, Officer O'Neill observed that Appellant's eyes were "bloodshot, watery, and glossy." (Tr. at 20.) When these personal observations are coupled with the fact that Appellant failed two of the standardized field sobriety tests administered by Office O'Neill, the "facts and circumstances known to [Officer O'Neill were] sufficient to cause a person of reasonable caution to believe that a crime"—namely, driving under the influence of liquor or drugs in contravention of § 31-27-2—"had been committed and [Appellant] ha[d] committed [it]." State v. Perry, 731 A.2d 720, 723 (R.I. 1999) (holding that reports identifying defendant's license plate as having been at the scene of the accident, the fact that defendant was stumbling and smelled of alcohol, and the fact that defendant lived within a quarter-mile of the accident gave the officer reasonable suspicion to believe that defendant was operating a motor vehicle under the influence of alcohol).

Based on the foregoing, Appellant's contention that Officer O'Neill did not possess reasonable grounds is unavailing, as our Supreme Court has indicated that "probable cause" and "reasonable suspicion" are functionally equivalent. See Soares v. Ann & Hope of Rhode Island, Inc., 637 A.2d 339, 345 (R.I. 1994); Cruz v. Johnson, 823 A.2d 1157, 1161 n.2 (R.I. 2003). The trial judge explained that he was convinced that Officer O'Neill's arrest of Appellant was lawful and based upon probable cause, explaining that:

> "what was known to Officer O'Neill at the time was poor driving . . . bloodshot watery, glossy eyes, strong odor of alcohol, admission of drinking and the failure of the standardized field sobriety tests. At that point . . . I think that [Officer O'Neill], in fact, did have reasonable grounds . . . to believe that [Appellant was] operating a motor vehicle while under the influence of alcohol." (Dec. Tr. at 37.)

As such, this Panel is likewise satisfied that Officer O'Neill had reasonable grounds to believe that Appellant had been operating his motor vehicle while under the influence of intoxicating liquor. Accordingly, the trial magistrate's decision to sustain the charged violation of § 31-27-2.1 was neither affected by error of law nor clearly erroneous in light of the reliable, probative, and substantial record evidence.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision is not affected by abuse of discretion, error

of law, or clearly erroneous in view of the reliable, probative, and substantial record evidence. Substantial rights of Appellant have not been prejudiced.

Accordingly, Appellant's appeal is denied, and the charged violation sustained.