

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF PORTSMOUTH

:
:
:
:
:

v.

C.A. No. T12-0034

ALEC CAMBIO

12 NOV 30 PM 3:55

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on June 6, 2012— Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Judge Ciullo sitting—is Alec Cambio’s (Appellant) appeal from a decision of Magistrate DiSandro (trial magistrate), sustaining the charged violation of G.L. 1956 § 31-27-2.1, “Refusal to submit to a chemical test.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 4, 2012, Officer Michael Morse (Officer Morse) of the Portsmouth Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on May 11, 2012.

On the evening of the arrest, Officer Morse entered the Mobil Extra Mart on West Main Road to get a cup of coffee. (Tr. at 10-11.) The store clerks informed Officer Morse that a vehicle had pulled into the gas station in front of one of the pumps and had been parked there for approximately one half-hour to an hour. (Tr. at 10.) The clerks also informed Officer Morse that the operator had never exited the vehicle and that the vehicle was still running. Id.

Officer Morse approached the vehicle and observed Appellant seated in the driver’s seat with the motor running. (Tr. at 11.) Through the window, Officer Morse noted that Appellant’s

hands and head were on the steering wheel. Id. Officer Morse saw that Appellant was talking to himself and visibly distressed. Id. Officer Morse proceeded to knock on the driver's window. Id. Appellant did not respond to the knocking. Id. Officer Morse then opened the door to the vehicle and called to Appellant. (Tr. at 12.) When Appellant looked up, Officer Morse noted that Appellant's eyes were bloodshot, watery, and glassy. Id. Officer Morse also "detected a strong odor of an alcoholic beverage coming from his breath." (Tr. at 12-13.) Officer Morse asked Appellant where he had come from, and Appellant responded by apologizing to Officer Morse for driving drunk. (Tr. at 13.) Officer Morse also noted Appellant's speech was "slurred" and "mumbled." (Tr. at 14.)

Officer Morse next asked Appellant if he would step out of the car and submit to a standardized field sobriety test. (Tr. at 14.) Appellant agreed to participate in the sobriety test. Id. Officer Morse first conducted the horizontal gaze nystagmus. Id. Appellant struggled with the instructional phase of the test. (Tr. at 14-15.) Then, Officer Morse had Appellant perform the walk and turn test. (Tr. at 15.) During Appellant's performance of the walk and turn test, Officer Morse observed Appellant exhibit eight out of eight clues for intoxication.¹ (Tr. at 16.) Officer Morse testified that exhibiting two clues would constitute a failure of the test. (Tr. at 17-18.) Officer Morse then had Appellant perform a one leg stand test. (Tr. at 18.) Officer Morse noted that Appellant exhibited four out of four clues for intoxication.² (Tr. at 19.) During the course of this test, Appellant did not stand still, and even when granted a second attempt, "would

¹ During the instructional period of the test, Officer Morse observed the Appellant break his feet apart, stumble, and lift his arms. During the test itself, Appellant broke heel to toe, "stepped off of the line, made an improper turn, took an incorrect number of steps" and lifted his arms. (Tr. at 16.)

² Officer Morse observed Appellant put his foot down, sway, lift his arms for balance and hop. (Tr. at 19.)

lift one leg and then he would place it down and lift his other leg, place it down . . . as if he was marching forward to the gas station.” Id.

At this point, Officer Morse placed Appellant under arrest for suspicion of driving while under the influence. (Tr. at 20.) Officer Morse proceeded to read Appellant his “Rights for Use at the Scene.” Id. Appellant was then transported back to the police station where he was read his “Rights for Use at the Station.” (Tr. at 23-24.) Then, Officer Morse requested Appellant submit to a chemical breath test, which Appellant refused. (Tr. at 24.)

At the close of evidence, Appellant argued that the charged violation should be dismissed. Appellant argued that Officer Morse did not have reasonable grounds to believe that Appellant had been operating a motor vehicle under the influence of alcohol. As the vehicle had been sitting there for one half-hour to an hour, Appellant contended, Officer Morse could not know if Appellant were intoxicated while driving to the gas station or if he had consumed the alcohol in the parking lot. Additionally, Appellant argued that his initial statements about driving drunk were made while the Appellant was under constructive arrest and are thus inadmissible.

The trial magistrate determined that Officer Morse was a credible witness. (Tr. at 61.) The trial magistrate also found that—based on Officer Morse’s investigation and Appellant’s statements at the scene—Officer Morse had reasonable grounds to believe that Appellant had driven a motor vehicle under the influence of alcohol. (Tr. at 61-62.) As such, the trial magistrate sustained the violation of § 31-27-2.1. (Tr. at 62.) Appellant timely filed this appeal.

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 appellant have been prejudicial 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 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 contends that the trial magistrate’s decision to sustain the violation of § 31-27-2.1 was affected by error of law, in violation of constitutional provisions, and erroneous in view of the reliable, probative, and substantial evidence on the record. Specifically, Appellant alleges that statements made by Appellant when under constructive arrest are inadmissible as tainted by illegal arrest. Appellant further contends that Officer Morse did not have reasonable grounds to ask Appellant to submit to a chemical test.

I. Constructive Arrest

A threshold issue is whether Appellant’s initial interaction with Officer Morse constituted a seizure under the Fourth Amendment. Appellant argues that he was under constructive arrest as Officer Morse would not allow Appellant to leave the scene and should have been read his Miranda rights at that time. As a result, Appellant argues, his statements regarding driving while intoxicated are tainted and thus inadmissible. Appellee argues that as no evidence was presented to show that Appellant was prevented from leaving the scene, there was no constructive arrest and as such, the statements are admissible.

An individual is under arrest “within the meaning of the Fourth Amendment if, in view of all the circumstances surrounding the episode, a reasonable person would . . . believe he was not free to leave.” State v. Griffith, 612 A.2d 21, 23 (R.I. 1992) (quoting State v. Mead, 544 A.2d 1146, 1149 (R.I. 1998)). In applying this test, the court looks to the following factors: “(1) the extent to which the person’s freedom is curtailed; (2) the degree of force employed by the police; (3) the belief of a reasonable, innocent person in identical circumstances; and (4) whether the

person had any option of not accompanying the police.” State v. Diaz, 654 A.2d 1195, 1204 (R.I. 1995) (quoting Griffith, 612 A.2d at 24). Courts have widely held that the subjective belief of the police officer or the citizen is irrelevant in determining whether a de facto arrest has occurred. See Griffith, 612 A.2d at 24 (refusing to allow evidence of detectives’ subjective intent as to an assertion that detectives would not have let defendant turn around and head home after defendant had voluntarily agreed to drive to the police station); Commonwealth v. Fraser, 410 Mass. 54, 573 N.E.2d 979 (1991). Subjective intent of the police officer is only relevant if it is communicated to the citizen. State v. Ferola, 518 A.2d 1339, 1334 (R.I. 1986). If the citizen is not seized before making incriminating statements, such statements are not considered the “tainted fruit of illegal arrest.” Id. at 1339.

Here, Officer Morse did not express to Appellant in any way that he was not allowed to leave the scene until the time when Officer Morse informed Appellant that he was under arrest. As in Griffith, it is irrelevant whether Officer Morse would have let Appellant leave if Appellant had attempted to do so. The only force employed by Officer Morse in his initial interaction with Appellant was knocking on the car window and opening the car door to check on Appellant’s safety. Cf. State v. Guzman, 752 A.2d 1, 3 (R.I. 2000) (finding seizure where police officer exhibited force by grabbing the defendant by the arm and placing him in a locked police cruiser). Then, Appellant immediately admitted to driving drunk when asked where he had come from. (Tr. at 13.) Appellant had the option not to volunteer that information upon first speaking with the officer. Although implicit in Appellant’s interaction with Officer Morse is that Appellant would not have been allowed to drive away if he so chose, there is no evidence of coercion by Officer Morse in terms of eliciting statements or controlling the actions of Appellant. See State v. Johnson, 414 A.2d 477, 479 (R.I. 1980) (finding no seizure where police officer approached

the defendant and asked a series of questions in the absence of any additional display of force or show of authority). He simply knocked on the window and asked him a question. Appellant could have waited in the vehicle without volunteering information or submitting to the field sobriety tests. Thus, Appellant's statements regarding his driving while intoxicated are not tainted fruit of an illegal arrest and are admissible because Appellant offered that information freely to Officer Morse. See Diaz, 654 A.2d at 1197 (finding statements made to police, in the absence of any threats or promises, to be voluntary and thus admissible). Moreover, Officer Morse was still in the investigative process at the time such statements were made. See Johnson, 414 A.2d at 478 (finding no seizure where police officer was merely investigating and performing initial inquiries). Accordingly, the trial magistrate's decision was not affected by error of law or in violation of constitutional provisions.

II. Reasonable Grounds for Suspicion of Drunk Driving

Appellant further argues that Officer Morse lacked reasonable grounds to believe that Appellant had operated a motor vehicle under the influence of alcohol. Appellant contends that as Appellant could have consumed alcohol while in his car in the parking lot. Therefore, Officer Morse did not have reasonable grounds to believe that Appellant had been operating the vehicle under the influence of alcohol. Relying on State v. Capuano, Appellant argues that his actions of sitting in the car with the motor running did not constitute operation of a motor vehicle. State v. Capuano 591 A.2d 35, 37 (R.I. 1991). Appellee argues that as Appellant admitted to driving to the gas station while intoxicated, Officer Morse did, in fact, have reasonable grounds for his belief.

Section 31-27-2.1 requires that a law enforcement officer making [a] sworn report have reasonable grounds to believe that the arrested person had been driving a motor vehicle within

this state while under the influence of intoxicating liquor. (Emphasis added.) Our Supreme Court has stated that the reasonable grounds standard is the same as the reasonable suspicion standard. See State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996). “[R]easonable suspicion [is] based on articulable facts that the person is engaged in criminal activity.” State v. Keohane, 814 A.2d 327, 330 (R.I. 2003); see also State v. Bjerke, 697 A.2d 1069, 1071 (1997) (upholding the reasonable suspicion standard in the context of a refusal to submit to a chemical test). Furthermore, the court must take into account the totality of the circumstances to determine whether an officer’s suspicions are reasonable. Id. (citing United States v. Cortez, 449 U.S. 411, 417 (1981)). Indeed, in determining reasonable suspicion, the fact finder may make permissive inferences when there exists “a rational connection between the fact proven and the inference to be drawn.” State v. Lusi, 625 A.2d 1350, 1356 (R.I. 1993). Such inferences have been described by the Supreme Court as a “staple of our adversary system of factfinding.” County Court of Ulster County v. Allen, 442 U.S. 140, 1156 (1979). Nevertheless, such inferences are not mandatory and can be rebutted by competent evidence. Lusi, 625 A.2d at 1356.

In sustaining the violation, the trial magistrate held that Appellant’s admissions of drunk driving, as well as Appellant’s appearance and actions, constituted reasonable grounds for Officer Morse to believe that Appellant had driven his vehicle to the gas station under the influence of alcohol. (Tr. at 60.) The trial magistrate found Capuano inapplicable as proof of actual operation is not a necessary element of § 31-27-2.1. (Tr. at 59.) Additionally, the trial magistrate noted that Officer Morse was trained in DUI investigation and familiar with the characteristics of intoxication, indicating Officer Morse’s ability to properly identify Appellant as intoxicated. (Tr. at 61).

This Panel finds no error made by the trial magistrate's findings. The trial magistrate's decision— taking into account the totality of the circumstances— was supported by Officer Morse's testimony and the exhibits entered into evidence at trial. Even assuming arguendo that Appellant had not admitted to driving drunk, there were still other specific and articulable facts to believe that Appellant had driven the car into the gas station while he was under the influence of alcohol. For example, Officer Morse observed the Appellant's eyes were "bloodshot, watery, [and] glassy." (Tr. at 12.) See State v. Roussell, 770 A.2d 858, 859 (R.I. 2001) (finding bloodshot and watery eyes to be an indicator of intoxication). Officer Morse also noted a myriad of clues indicating Appellant's high level of intoxication during the field sobriety tests. (Tr. at 16-19.) See State v. Quatrucci, 39 A.3d 1036, 1037 (R.I. 2012) (finding the failure of field sobriety tests to be an indicator of intoxication).

Furthermore, the fact that the car was parked at the gas station with Appellant sitting in the driver's seat showing signs of intoxication supports the inference that Appellant had driven to the gas station while under the influence of alcohol and either fell asleep or was unable to continue driving the car. See Lusi, 625 A.2d at 1356 (upholding the use of inferences in factfinding where there exists a rational connection between the inference made and the facts presented). This inference is especially warranted in the absence, in this case, of any possible rebutting evidence. It is also important to note that the trial judge took into consideration the fact that the car was parked at the gas pump for a period of time. While Appellant argues that the elapsed time creates doubt as to whether the officer had reasonable grounds to believe the defendant had operated the vehicle while under the influence, the court evaluated the testimony

and found otherwise.³ Therefore, the trial magistrate's decision was not affected by error of law or erroneous in view of the reliable, probative, and substantial evidence on the record.

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 in violation of constitutional provisions, affected by error of law, or erroneous in view of the reliable, probative, and substantial evidence on the record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

³ The facts in this case were that the Appellant was at the gas pump for half an hour to an hour. This Panel takes no position on whether an analysis and conclusion would change if the time frame was longer than presented than the case at bar. The analysis of reasonable grounds should be on a case by case basis.