

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF NEWPORT

v.

COLLEEN LAWRENCE

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**C.A. No. T13-0007
07303006160**

DECISION

PER CURIAM: Before this Panel May 1, 2013—Magistrate Goulart (Chair, presiding), Judge Parker, and Magistrate DiSandro, sitting—is the appeal of Colleen Lawrence (“Appellant”) from a decision of Administrative Magistrate Cruise (trial judge), 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 September 2, 2012, Officer Jason Head (“Officer Head” or “Officer”) of the Newport Police Department charged the Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on February 1, 2012. The trial judge sustained the charged violation, and the Appellant filed this appeal.

The trial commenced with Officer Head’s testimony that he had been an officer with the Newport Police Department for ten years. (1/30/13, Tr. at 5.) Officer Head continued his trial testimony by describing his professional training and experience in conducting DUI-related traffic stops and administering standardized field sobriety tests. (1/30/13, Tr. at 5-14.) Officer

¹ In addition to the charged violation of § 31-27-2.1, Appellant was also charged with violating § 31-17-2, “Vehicle turning left or right—failure to yield.” However, this violation was dismissed at trial and is not presently before this Panel on appeal.

Head then testified that on September 2, 2012, at approximately 1:35 a.m., he was on a patrol shift specifically for DUI enforcement when he observed a vehicle behind him make an abrupt U-turn. (1/30/13, Tr. at 15-16.) Subsequently, Officer Head activated his emergency lights and siren, and turned around in order to initiate a traffic stop. (1/30/13, Tr. at 17.) Before Appellant pulled over, she barely missed making contact with a parked vehicle. (1/30/13, Tr. at 18.) Upon approaching the vehicle, Officer Head observed that the vehicle was missing a brake light, the operator had difficulty operating the window, and she already had her driver's license in her hand by the time the officer reached the vehicle. (1/30/13, Tr. at 18-19.) As he waited for Appellant to produce her registration and insurance, he observed Appellant's mumbled speech, detected an odor of alcohol emanating from the vehicle, and noted Appellant's bloodshot watery eyes. (1/30/13, Tr. at 21.) When asked by Officer Head whether she had consumed alcohol, Appellant responded that she had had two glasses of wine earlier in the evening. Id.

As the Appellant exited her vehicle upon the officer's request, Officer Head observed that Appellant "took a couple of off balance side steps . . . toward traffic." (1/30/13, Tr. at 23.) Appellant eventually gained her balance and walked to the rear of her vehicle by holding onto the vehicle for support. Id. Officer Head requested that the Appellant submit to a field sobriety test, to which the Appellant consented. (1/30/13, Tr. at 24.) Before Appellant consented, she informed the officer that she was on prescription medication. Id. As Appellant performed the field sobriety tests, Officer Head observed that Appellant had trouble balancing after she used her arms for balance, walked off of the line, and missed heel to toe. (1/30/13, Tr. at 28.) The Appellee failed both of the field sobriety tests that were administered, and Officer Head arrested the Appellant for suspicion of operating under the influence and advised her of her rights by

reading the “Rights For Use at the Scene” card. (1/30/13, Tr. at 33-34.) The Appellant was then transported to police headquarters. (1/30/13, Tr. at 36.)

At the station’s processing room, Officer Head advised the Appellant of her rights by reading the “Rights For Use at the Station” form and offered Appellant the opportunity to make a confidential phone call, which Appellant refused. (1/30/13, Tr. at 37-38.) Officer Head then requested that the Appellant submit to a chemical breath test, but the Appellant also refused. (1/30/13, Tr. at 38.) After Officer Head’s detailed and extensive testimony, the City rested. (Tr. at 76.)

At the start of the Defendant’s case, adult psychiatrist, Dr. Steven Karlin gave extensive testimony regarding his treatment of the Appellant. Dr. Karlin testified that he was employed at Northern Rhode Island Mental Health Center in Woonsocket. (1/30/13, Tr. at 79.) He further testified that he has treated the Appellant since 1998, which totals fourteen years of treatment. (1/30/13, Tr. at 80-82.) Dr. Karlin noted that he diagnosed the Appellant with post-traumatic stress disorder (PTSD), coupled with major depression and adult attention deficit disorder. (1/30/13, Tr. at 82.) He then indicated that the conditions she suffered from caused her to have difficulty with concentrating, delayed speech, and a dim recall of progress. (1/30/13, Tr. at 86.) The doctor went on to state that these conditions would have been present on the day of this traffic stop. (1/30/13, Tr. at 90.) According to Dr. Karlin, it was his opinion that the Appellant appeared delayed, anxious, and unsteady on the day of the traffic stop because of her “anxiety response,” and not due to alcohol or drugs. (1/30/13, Tr. at 91.)

Despite the presentation of this evidence by the defense, the trial judge sustained the charge of § 31-27-2.1, and concluded by finding that given the totality of the circumstances, Officer Head had properly requested Appellant to submit to a chemical breath test. (2/1/13, Tr.

at 16-17.) The trial judge further found, by clear and convincing evidence, that the Officer had reasonable suspicion to stop the Appellant's vehicle and believe that the Appellant was intoxicated. Id. In coming to this conclusion, the trial judge considered the following: Officer Head's observation that the Appellant almost hit a parked vehicle while attempting to pull over, the strong odor of alcohol on her person, her bloodshot watery eyes, and the Appellant stepping into traffic while almost losing her balance. (2/1/13, Tr. at 16.) Aggrieved by the trial judge's decision, the Appellant timely filed an appeal.

Standard of Review

Pursuant to § 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 Ins. 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 Envtl. 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, the Appellant contends that the trial judge’s decision was affected by error of law and was clearly erroneous based on the reliable, probative, and substantial evidence when he sustained the charged violations. First, the Appellant argues that Officer Head did not have probable cause to believe that Appellant was operating her vehicle while under the influence. Second, she argues that the Officer failed to testify whether Appellant was under the influence of drugs or alcohol.

Section 31-27-2.1 of Rhode Island General laws states, in pertinent part, that a “law enforcement officer making [a] sworn report [must 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 the reasonable grounds standard is the same as the reasonable suspicion standard. See State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996) (“Under the language of the statute it is clear that reasonable suspicion is the proper standard for evaluating the lawfulness of a stop.”). “[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). To determine whether an officer’s suspicions are sufficiently reasonable, the Court must take into account the totality of the circumstances.” Id. (citing United States v. Cortez, 449 U.S. 411, 417 (1981) and State v. Tavaréz, 572 A.2d 276, 278 (R.I. 1990)).

In this case, the trial judge found by clear and convincing evidence that the Officer had probable cause to believe that Appellant was operating her vehicle while under the influence. (2/1/13, Tr. at 16-17.) He reasoned that Officer Head considered the totality of the circumstances, including the Officer’s observation that the Appellant almost hit a parked vehicle while attempting to pull over, the strong odor of alcohol on her person, her bloodshot watery eyes, and the Appellant stepping into traffic while almost losing her balance (2/1/13, Tr. at 16). See In re Armand, 454 A.2d 1216, 1218 (R.I. 1983) (The mosaic of facts and circumstances available to the arresting officer, viewed cumulatively as through the eyes of a reasonable and cautious police officer on the scene, guided by his experience suggests that the driver was under the influence of a substance impairing his/her ability to safely operate his/her vehicle.). The trial judge further found, Dr. Karlin’s testimony to be “. . . interesting and forthright . . . [but the judge] believe[d] it did not have much impact on the ultimate issue” (2/1/13, Tr. at 17.)

Section 31-27-2.1 states:

“If a person having been placed under arrest refuses upon the request of a law enforcement officer to submit to the tests, as provided in § 31-27-2, none shall be given, but a judge of the traffic tribunal or district court judge, upon receipt of a report of a law enforcement officer: that he or she had reasonable grounds to believe the arrested person had been driving a motor vehicle within this state under the influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of these” (Emphasis added.)

Here, Officer Head testified at trial, “[f]rom my evidence of observation and . . . from observations of the vehicle in motion, to contact with the person, to all my observations with the results of the field sobriety test, I concluded that probable cause was established; that Colleen Lawrence was under the influence of alcohol or some sort of drug” (Tr. at 33.) Officer Head was able to conclude that the Appellant was under the influence of a substance codified in § 31-27-2.1, thus giving “the general words [drugs or alcohol] . . . their full and natural meaning, regardless of their connection with a series of specific words, [as] may be found in the context of the statute as a whole” 2A Norman Singer, Sutherland Statutory Construction §47:22 (7th ed. 2007).

This Panel finds no abuse of discretion made by the trial judge in his findings. The trial judge’s decision was supported by Officer Head’s testimony and the exhibits entered into evidence at trial. See Link, 633 A.2d at 1348.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision was not affected by error of law and was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Judge Edward C. Parker

Magistrate Domenic A. DiSandro, III

DATE: _____