

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH KINGSTOWN

v.

D. W.

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**C.A. No. T15-0003
14502503462**

DECISION

PER CURIAM: Before this Panel on March 25, 2015—Magistrate Abbate (Chair), Chief Magistrate Guglietta, and Magistrate Noonan, sitting—is D.W.’s (Appellant) appeal from a decision of Administrative Magistrate Cruise (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 21-28-4.01, “Possession of marijuana, one ounce or less, 18 years or older.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On October 17, 2014, Officer Navakauskas of the North Kingstown Police Department charged both the Appellant, and the passenger in Appellant’s vehicle (Co-defendant), with the aforementioned violation. The Appellant and his Co-defendant contested the charges, and the matters proceeded to trial on December 5, 2014. The matters were tried together. Appellant’s trial was heard first, and his Co-defendant’s trial was heard second. See Town of North Kingstown v. A.C., No. T15-0004.

Prior to the start of Appellant’s trial, Appellant’s counsel made an off-the-record motion to dismiss pursuant to the Medical Marijuana Act, § 21-28.6-6. The Trial Magistrate denied the motion and the trial commenced. (Tr. at 1.) Once on the record, Appellant’s counsel objected to

the denial of the motion to dismiss, arguing that he made an offer of proof consistent with the requirements of § 21-28.6-6. The Town clarified that the offer of proof was an application for the use of medical marijuana, dated December 30, 2014, six weeks after the stop on October 17, 2014. Id. The Trial Magistrate denied the motion and instructed the Town to proceed with the trial. Id. at 2.

The Town's first witness, Officer Navakauskas, testified that on October 17, 2014, he was on uniform patrol at the intersection of Post Road and Newcomb Road in North Kingstown. Id. Officer Navakauskas testified that while at the intersection, he observed a blue Volkswagen Passat positioned directly in front of him with an inoperable taillight. Id. Officer Navakauskas ran the registration for the vehicle, and the registration belonged to a 1995 gold Toyota. Id. at 3. Officer Navakauskas proceeded to follow the vehicle and initiated a traffic stop on Heritage Drive. Id. Officer Navakauskas made contact with the driver, who he identified as the Appellant. Id. Officer Navakauskas advised Appellant of the registration violation and the broken taillight. Id. Officer Navakauskas testified that Appellant stated he was aware of both violations. Id. The Appellant explained that he purchased the vehicle last month in Boston, and had not had the time to register the vehicle. Id. Officer Navakauskas testified that the Appellant explained the plates belonged to another vehicle registered to the passenger in his car, the Co-defendant. Id.

Officer Navakauskas further testified that while he was speaking with the Appellant, he could smell a strong odor of marijuana coming from the vehicle. Id. at 3-4. Officer Navakauskas asked Appellant how much marijuana was in the car, and the Appellant replied "[j]ust one bag." Id. at 4. Officer Navakauskas requested that the Appellant slowly hand him the bag, and Appellant reached under the driver's seat and gave Officer Navakauskas one bag. Id.

At that time, Officer Navakauskas asked Appellant for proof of insurance, his driver's license, and a bill of sale for the vehicle. Id. The Appellant then informed Officer Navakauskas that his license was suspended. Id. Officer Navakauskas asked Appellant to exit the vehicle, and he took Appellant into custody for driving on a suspended license. Id.

Officer Navakauskas testified that he secured Appellant in the back of his cruiser and approached the Co-defendant, who provided him with a bill of sale. Id. at 5. However, the bill of sale had neither the Appellant nor the passenger's name on it, and was not dated. Id. Officer Navakauskas testified that he advised Appellant that because the vehicle was unregistered, it was going to be towed, and an inventory search would be conducted. Id. Officer Navakauskas asked Appellant if there was any more marijuana in the vehicle, and the Appellant responded in the negative. Id.

Next, Officer Navakauskas testified that he and Officer Miatto, who had arrived to the scene as backup, asked the Co-defendant to step out of the vehicle so that they may conduct an inventory search. Id. at 6. Officer Miatto asked the Co-defendant if she had any weapons on her person, and she replied that there was a knife in her purse. Id. Officer Miatto searched the Co-defendant's purse and identified a pink folding knife as well as a medicine bottle filled with a green leafy substance, which the Co-defendant identified as marijuana. Id. The Co-defendant was then secured in the back of Officer Miatto's vehicle, and the officers completed the inventory search of the vehicle. Id. Officer Navakauskas testified that during the inventory search, he found a large purple Crown Royal bag with five additional bags of marijuana. Id. Officer Navakauskas brought the bag to Appellant, and Appellant admitted the marijuana was in the car, and indicated that it was for personal use. Id. at 7.

At this time, the Town entered photographs of the five marijuana bags taken from the car as full exhibits. Id. Officer Navakauskas stated that after transporting Appellant to the police station, he conducted a field test on the suspected marijuana using a NARC REGION field kit, and positively identified the substance as marijuana. Id. at 8. Officer Navakauskas testified that he was trained in the testing of marijuana during field training. Id. After setting this foundation, a photograph of the substance of the test kit used to test the marijuana was entered as a full exhibit. Id. at 9. Officer Navakauskas stated that the marijuana weighed .911 ounces. Id. at 10.

On cross-examination, Officer Navakauskas clarified that when he put Appellant in the back of his cruiser, the Appellant was under arrest for driving on a suspended license. Id. at 13. Appellant's counsel questioned Officer Navakauskas about the amount of marijuana that was found in the car, and Officer Navakauskas responded that the five additional bags of marijuana weighed less than one ounce per bag. Id. Appellant's counsel asked Officer Navakauskas if the Appellant stated at the time of the arrest that Appellant uses medical marijuana. Id. Officer Navakauskas replied that Appellant did not. Id.

At the close of cross-examination, the Town and Appellant stipulated that Officer Miatto's testimony would be substantially similar to the testimony of Officer Navakauskas. Id. at 14. Subsequently, the Town rested its case, and Appellant reiterated his objection to the Court's denial of a motion to dismiss under the Medical Marijuana Act, § 21-28.6-6.

After listening to the testimony at trial, the Trial Magistrate found Officer Navakauskas' testimony to be credible, and adopted the Officer's testimony as his findings of fact. The Trial Magistrate noted that Appellant raised the affirmative defense of medical marijuana and provided the Court with an application for a medical marijuana card dated December 30, 2014. The Trial Magistrate explained that he denied Appellant's motion to dismiss based on the

medical marijuana defense because the application was dated well-after the date of the violation, and because the Appellant was not approved for a medical marijuana card at the time of the violation. Furthermore, the Appellant was not approved for a medical marijuana card at the time of the trial. As a result, the Trial Magistrate found Appellant was in possession of less than an ounce of marijuana and the Trial Magistrate sustained the violation of § 21-28-4.01. Aggrieved by the Trial Magistrate's decision, Appellant timely filed the instant 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 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, Appellant contends the Trial Magistrate’s decision was in violation of constitutional or statutory provisions, and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant argues that (1) he was denied an evidentiary hearing pursuant to the Medical Marijuana Act, § 21-28.6-8, (2) the Trial Magistrate misinterpreted the evidentiary requirements for an affirmative medical marijuana defense, and (3) there was substantial evidence on the record to afford him the medical marijuana defense.

Appellant’s Evidentiary Hearing

The Appellant maintains that he was denied an evidentiary hearing pursuant to § 21-28.6-8(b) of the Medical Marijuana Act. The Medical Marijuana Act, enacted by the General Assembly in 2006, “protect[s] patients with debilitating medical conditions, and their physicians and primary caregivers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in the medical use of marijuana.” State v. DeRobbio, 62 A.3d 1113, 1116 (R.I. 2013) (quoting § 21-28.6-2(5)). The Act allows qualifying individuals the right

to possess a limited amount of marijuana. See id. However, in order to be a qualifying individual, a resident “must have been (1) diagnosed by certain medical practitioners as having a debilitating medical condition and (2) issued a registry identification card by the Rhode Island Department of Health.” Sec. 21–28.6–8(a).

Section 21-28.6-8 of the Medical Marijuana Act sets forth that if a person makes a motion to dismiss pursuant to the Act, that person shall be afforded an evidentiary hearing in order to establish that he or she has (1) been diagnosed as having a debilitating medical condition and (2) has been issued a registry identification card. See § 21-28.6-8(b) (stating “[a] person may assert the medical purpose for using marijuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the defendant shows the [two] elements listed in subsection (a) of this section”). Therefore, in order to be granted a dismissal, at the evidentiary hearing the individual must establish that they are a qualifying individual by fulfilling the two-pronged requirement of § 21–28.6–8(a). The Court in DeRobbio distinguished between an evidentiary hearing and a hearing on a motion to dismiss. DeRobbio, 62 A.3d at 1120. Specifically, the Court found that a hearing on the defendant’s motion to dismiss was held, however, no evidence was presented at that hearing, thus, no evidentiary hearing was held. Id.

Here, the record illustrates that Appellant was afforded an evidentiary hearing in accordance with § 21-28.6-8(b). See Tr. at 1. Prior to trial, the Trial Magistrate heard Appellant’s argument that he was enrolled in the Rhode Island Medical Marijuana Program, and allowed Appellant to make a motion to dismiss based on this argument. In contrast to the hearing in DeRobbio, at this hearing, Appellant’s counsel presented evidence in support of the medical marijuana argument. Id. Specifically, Appellant presented evidence of an application

for the Rhode Island Medical Marijuana Program. Id. The Trial Magistrate stated that he considered Appellant’s “application for the Rhode Island Medical Marijuana Program [] that [] was [] attested to by a qualifying doctor on December 30th.” Id. However, the Trial Magistrate noted that the citation was issued on October 17th, prior to the Appellant’s application. Id. at 2.

Even if Appellant had argued that pursuant to the reasoning in DeRobbio, he was only afforded a hearing on the motion to dismiss and not an evidentiary hearing; this Panel finds the distinction to be harmless error. Unlike the defendant in DeRobbio, Appellant was afforded an opportunity to present evidence in his defense. However, the evidence Appellant presented clearly indicated that he was not enrolled in the Rhode Island Medical Marijuana Program on the date of the violation. See id. Therefore, Appellant was provided an opportunity to present evidence to the Court; however, at that hearing, he did not establish that he was a qualifying individual by fulfilling the two-pronged requirement of § 21–28.6–8(a).

The Affirmative Defense of Medical Marijuana

The Appellant further contends that the Trial Magistrate misinterpreted the evidentiary requirements for an affirmative medical marijuana defense under the Medical Marijuana Act. Specifically, the Appellant maintains that the Act does not require a registry identification card in order to qualify for the medical marijuana defense; the card is only required to be eligible as a qualifying individual. Consequently, Appellant argues that there was substantial evidence on the record to provide him this affirmative defense.

Pursuant to Rhode Island General Law, the medical marijuana affirmative defense is presumed valid when the evidence provided at the evidentiary hearing supports that:

“(1) The qualifying patient's practitioner has stated that, in the practitioner's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide practitioner-patient

relationship, the potential benefits of using marijuana for medical purposes would likely outweigh the health risks for the qualifying patient; and

“(2) The qualifying patient was in possession of a quantity of marijuana that was not more than what is permitted under this chapter to ensure the uninterrupted availability of marijuana for the purpose of alleviating the person's medical condition or symptoms associated with the medical condition.” Sec. 21-28.6-8.

Our Supreme Court has interpreted this provision of the Act and has reiterated that the Act requires a “qualifying patient” be both (1) diagnosed as having a debilitating medical condition and (2) have been issued a registry identification card by the Rhode Island Department of Health. See DeRobbio, 62 A.3d at 1116 (emphasis added). In DeRobbio, the defendant, DeRobbio, was validly prescribed medical marijuana and was in possession of a registry identification card issued to him under the Act, identifying him as a qualifying patient. Id. at 1115. The State conceded that DeRobbio was a valid medical marijuana cardholder, but argued that he violated the medical marijuana possession limits set forth in the Act. Id. at 1117. Here, Appellant is not a qualifying patient, nor is he a valid medical marijuana cardholder. Appellant was never issued a registry identification card by the Rhode Island Department of Health. See Tr. at 17. The only documentation Appellant relies on for his defense is an application for the Medical Marijuana Program. Id. at 1-2. Section 21-28.6-8(a) clearly requires Appellant be both diagnosed with a debilitating medical condition and have a registry identification card. Section 21-28.6-8(a); see also DeRobbio, 62 A.3d at 1116.

It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” Accent Stores Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996). After interpreting the statute literally, and in light of the testimony and evidence

presented at trial, the Trial Magistrate determined that there was not sufficient evidence on the record for Appellant to qualify for the medical marijuana defense because Appellant did not have a valid registry identification card to use medical marijuana. See Tr. at 1-2. Moreover, the Trial Magistrate credited Officer Navakauskas' testimony that Appellant possessed an amount of marijuana less than one ounce. See Tr. at 17-18. And based on this testimony, the Trial Magistrate found sufficient evidence to sustain the charge of possession of marijuana, one ounce or less. See Tr. at 17-18. Thus, the Trial Magistrate was satisfied by clear and convincing evidence that the Town met its burden of proof in the case. Accordingly, the Trial Magistrate found the Appellant guilty.

Confining our review of the record to its proper scope, this Panel is satisfied that the Trial Magistrate's decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (The [appellate court] should give great deference to the [trial magistrate's] findings and conclusions unless clearly wrong.) This Panel is satisfied that the Trial Magistrate did not abuse his discretion, nor was the decision in violation of constitutional or statutory provisions, or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole 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 was supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the Trial Magistrate's decision was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied and the charged violation is sustained.

ENTERED:

Magistrate Joseph A. Abbate (Chair)

Chief Magistrate William R. Guglietta

Magistrate William T. Noonan

DATE: _____