

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF PORTSMOUTH

v.

STEPHEN ABBRUZZI

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C.A. No. T08-0071

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on July 16, 2008, Judge Ciullo (Chair), Chief Magistrate Guglietta, and Magistrate DiSandro presiding, is Stephen Abbruzzi's (Appellant) appeal from Magistrate Noonan's decision, 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 G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 18, 2008, Patrolman Khatu Khubchandani (Patrolman Khubchandani) of the Portsmouth Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial, the parties stipulated as to all of the essential elements of the charged violation of § 31-27-2.1, namely: that while on patrol on the date in question, Patrolman Khubchandani stopped Appellant's vehicle and briefly detained him for investigative purposes; that Patrolman Khubchandani had reasonable grounds to believe that Appellant

¹ The Appellant was also charged with violating G.L. 1956 §§ 31-15-11, "Laned roadways," and 31-27-2.3, "Refusal to submit to preliminary breath test." However, these charges were subsequently dismissed and are not presently before this Panel on appeal.

had been operating his motor vehicle while under the influence of intoxicating liquor; that Appellant was advised of his “Rights for Use at Scene” and “Rights for Use at Station” in their entirety; that Appellant was advised of his right to a confidential phone call pursuant to G.L. 1956 § 12-7-20, and that Appellant availed himself of this right; and that Appellant, while under arrest, refused to submit to a chemical test upon the request of Patrolman Khubchandani. (Tr. at 4-5.) Having thus stipulated, the focus of the trial became whether Patrolman’s stop was lawful as based on reasonable suspicion.

Patrolman Khubchandani testified that at approximately 4:13 p.m., he responded to a dispatch call stating that a black van was heading northbound on East Main Road and was operating in an erratic fashion. (Tr. at 8.) The Patrolman indicated that several anonymous 9-1-1 calls had been received by the Portsmouth Police Department stating that a black van with the words “Water Brothers” on the side had run a traffic signal at the intersection of East Main Road and Stubtoe Lane. Id. The Patrolman stated that he took a position at Portsmouth Town Hall—to the north of the intersection of East Main and Stubtoe—and observed the Appellant’s vehicle after a few minutes. Id.

The Patrolman testified that he started to follow the Appellant’s vehicle, and that had an unobstructed view of the Appellant’s vehicle for the duration of the pursuit. (Tr. at 10.) The Patrolman testified that he noticed that “the van on several occasions drifted from the travel lane to the passing lane and back into the travel lane, approximately eight to ten inches [and] between three and four times.”² (Tr. at 8.) When asked to describe the roadway to the Court, the Patrolman testified that the section of East Main Road upon which he and the Appellant were driving was “a steep hill . . . congested with traffic.”

² When referring to the travel and passing lanes, the Patrolman described East Main Road as having two northbound lanes and two southbound lanes, separated and distinguished by painted yellow lines. (Tr. at 9-10.)

(Tr. at 9.) The Patrolman testified that he effectuated a traffic stop of the Appellant's vehicle in a parking lot because he felt that East Main Road "wasn't a safe place to pull [the] vehicle over." Id.

Following a trial, the trial magistrate sustained Appellant's violation of § 31-27-2.1. Appellant has filed a timely appeal of the trial court's decision. Forthwith is this Panel's decision.

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 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;
- (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, Appellant argues that the trial magistrate's decision to sustain the charged violation of § 31-27-2.1 is affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. Specifically, Appellant asserts that Patrolman Khunchandani did not have reasonable suspicion, based on specific and articulable facts, to initiate an investigatory stop of his vehicle. As such, Appellant maintains that since the underlying stop of his vehicle was unlawful, the charged violation of § 31-27-2.1 cannot be sustained.

Our Supreme Court has made clear that “reasonable suspicion is the proper standard for evaluating the lawfulness of a stop.” State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996). In the context of chemical test refusal cases, the Court has listed various specific and articulable facts upon which a law enforcement officer can properly conclude that “reasonable suspicion” exists to initiate an investigatory stop: swerving of the motorist's vehicle from lane to lane, State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1998), or other erratic movements of the vehicle, Jenkins, 673 A.2d at 1097; the description of

the suspect vehicle matches one given to the police, State v. Perry, 731 A.2d 720, 721 (R.I. 1999).

In the case at bar, Patrolman Khubchandani certainly had reasonable suspicion to initiate an investigatory stop of Appellant's vehicle. Here, the Portsmouth Police Department was provided with a detailed physical description of a vehicle traveling northbound on East Main Road that was being operated in an erratic fashion. This detailed description was then conveyed to Patrolman Khubchandani by dispatch and, when Patrolman Khubchandani made contact with the suspect vehicle several minutes later, the description proved accurate. Patrolman Khubchandani maintained an unobstructed view of the black van bearing the words "Water Brothers" for approximately one to two minutes prior to initiating the traffic stop, during which time he directly observed the left tire of Appellant's vehicle drift approximately eight to ten inches into the passing lane on three to four separate occasions. In addition, Patrolman Khubchandani made clear in his trial testimony that the traffic on East Main Road at the time of the traffic stop was "congested," and that the continued operation of Appellant's vehicle on the roadway would compromise public safety. (Tr. at 29-30.) Consequently, this Panel is satisfied that the trial magistrate had reliable, probative, and substantial evidence upon which to determine that Patrolman Khubchandani's stop of Appellant's vehicle was lawful as based on reasonable suspicion.

Further, this Panel disagrees with Appellant's contention that evidence of the chemical test refusal must be suppressed because the trial magistrate dismissed the charged violation of § 31-15-11. As the Jenkins Court made clear, the trial magistrate's finding of not guilty with respect to the Appellant's laned roadway violation would have

no bearing on whether Appellant is guilty of refusing to submit to a chemical test, since two statutes, each with distinct elements, are involved in the present case. See Jenkins, 673 A.2d at 1097.

Here, the trial magistrate found that the Patrolman had reasonable suspicion to stop the Appellant's vehicle, and that the Patrolman "did what I wish all officers did . . . he made certain [independent] observations that combined with the [anonymous] tip[s] [and which] tended to enhance the veracity of the tip." (Tr. at 31.) Since the parties entered into a preliminary stipulation as to all of the essential elements of § 31-27-2.1, the trial magistrate was correct in sustaining the Appellant's violation of the refusal statute.

Conclusion

Upon a review of the entire record, this Panel concludes that the trial magistrate's decision was not clearly erroneous and was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations sustained.

DATE: 2.25.09