

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T08-0082

JOSEPH CARNASCIALE

RECEIVED
STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
PROVIDENCE, RHODE ISLAND

DECISION

PER CURIAM: Before this Panel on September 24, 2008, Judge Almeida (Chair), Chief Magistrate Guglietta, and Magistrate Cruise sitting, is Joseph Carnasciale’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 Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 23, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by Warwick Patrol Officer James Vible (Officer Vible). The Appellant contested the charge, and the matter proceeded to trial.

Officer Vible began his trial testimony by describing the training he received at the Municipal Academy with regard to DUI-related traffic stops. (Tr. at 5-7.) Officer Vible then proceeded to describe the events of March 23, 2008. On that date, at approximately 12:30 a.m., Officer Vible’s police cruiser was stopped at a red light at the

¹ The Appellant was also charged with violating G.L. 1956 § 31-13-6, “Specifications and meaning of traffic lights.” However, this charge was dismissed at trial.

intersection of West Natick Avenue and Lambert Lind Highway.² (Tr. at 8.) As he was stopped at the traffic signal, Officer Vible observed a white pickup truck approaching the intersection from the opposite direction. Id. When the traffic signal turned green and Officer Vible began to proceed through the intersection, he heard a “chirping” sound consistent with the squealing of tires. Id. He then noticed the white truck slow abruptly, without coming to a complete stop, and swerve into the parking lot of Agape Medical Center. (Tr. at 8-9.)

Officer Vible noted that once the vehicle entered the parking lot, it immediately made a left turn and then proceeded to accelerate. (Tr. at 9.) The vehicle then slowed abruptly and began to make a “lazy” right turn. Id. As the vehicle began to turn right, Officer Vible noticed that it hit the curb. Id. At this point, Officer Vible activated his police cruiser’s lights in order to investigate the vehicle’s erratic driving. (Tr. at 10.) Officer Vible approached the operator of the vehicle, later identified as Appellant, and asked him to roll down the driver’s side window. Id. As soon as Appellant rolled down his window, Officer Vible detected a strong odor of alcohol.³ Id. Upon questioning by Officer Vible, Appellant indicated that he had just come from Mardi Gras⁴ and that he had had “a couple beers.” Id.

Officer Vible testified that Appellant fumbled with his money clip and dropped it in his lap upon Officer Vible’s request for his driver’s license. (Tr. at 10-11.) The Appellant also fumbled when reaching for his passenger registration and proof of

² Officer Vible testified that his police cruiser was located on Lambert Lind Highway, facing northbound. (Tr. at 8.)

³ At trial, Officer Vible testified that the odor was consistent with that of beer. However, counsel for Appellant elicited on cross-examination that Officer Vible indicated in his incident report that he detected the odor of a fruity alcoholic beverage on Appellant’s breath. (Tr. at 31.) Officer Vible clarified this apparent discrepancy in his trial testimony by stating that he detected the odors of *both* beer and an unidentifiable fruity alcoholic beverage on Appellant’s breath. Id.

⁴ Mardi Gras is a nightclub located on Oaklawn Avenue in the city of Cranston.

insurance, dropping these documents on the floor of his vehicle. (Tr. at 11.) While Appellant was searching for the requested documentation, Officer Vible noticed that Appellant's movements appeared slow and methodical. (Tr. at 10-11.) Officer Vible also observed that Appellant had watery, bloodshot eyes. (Tr. at 11.) Upon request by the prosecution, Officer Vible identified Appellant as the operator of the vehicle. Id.

After Appellant produced the requested documentation, Officer Vible called for back-up and a supervisor in order to conduct a DUI-investigation. (Tr. at 12.) When Officer McMullen and Sergeant Boisseau responded to the scene, Officer Vible described his observations of Appellant's driving in the parking lot and the various indicia of alcohol consumption. Id. Officer Vible then proceeded to ask Appellant whether he would submit to a battery of field sobriety tests; Appellant consented and exited his vehicle without incident. (Tr. at 12-13.) When Appellant failed all of the field sobriety tests that Officer Vible administered, Officer Vible placed Appellant under arrest for suspicion of driving under the influence. (Tr. at 13-18.) Officer Vible testified that Appellant was read his "Rights for Use at Scene" immediately upon being placed under arrest. (Tr. at 20.)

Upon being transported to the Warwick Police Station, Appellant was read his "Rights for Use at Station" in their entirety and was provided with an opportunity to make a confidential phone call. (Tr. at 22-23.) When asked by Officer Vible whether he would be willing to submit to a chemical test, Appellant responded to the effect of, "[Expletive], I've already had a couple beers at Mardi Gras . . . and that's the limit. I'm already [expletive]." (Tr. at 23.) Upon his refusal to submit to a chemical test, Appellant was issued a citation for violating § 31-27-2.1. (Tr. at 26.)

At the conclusion of Officer Vible's trial testimony, counsel for Appellant called Brian Petrarca (Mr. Petrarca) as a witness. (Tr. at 43.) Mr. Petrarca testified that he was a passenger in Appellant's vehicle at the time Officer Vible initiated a traffic stop in the parking lot of Agape Medical Center. Id. Mr. Petrarca testified that he and Appellant had had dinner at Ted Montana's before proceeding to Mardi Gras at approximately 10:00 p.m. (Tr. at 44.) Mr. Petrarca indicated that he and Appellant left Mardi Gras at approximately 12:00 a.m. and were proceeding to a friend's residence when Appellant became lost. (Tr. at 45.) According to Mr. Petrarca, Appellant entered the parking lot of Agape Medical Center in order to enter his friend's address into his GPS navigation system. Id. It was at this point that Appellant and Mr. Petrarca encountered Officer Vible. (Tr. at 46.)

Upon direct examination by counsel for Appellant, Mr. Petrarca testified that Appellant experienced no difficulty in providing Officer Vible with the requested documentation, and that Appellant did not drop the documents at any time. Id. Mr. Petrarca provided the Court with his lay opinion that Appellant was not intoxicated on the night in question. (Tr. at 48.) When cross-examined by the prosecution, Mr. Petrarca was unable to testify as to how many drinks Appellant consumed over the course of their evening together. (Tr. at 50.) Speaking for himself, Mr. Petrarca testified that he had consumed approximately five alcoholic beverages over the course of the evening. (Tr. at 49.)

At the conclusion of the trial, the trial magistrate adopted Officer Vible's testimony in its entirety as his findings of fact. (Tr. at 69.) He then sustained Appellant's violation of § 31-27-2.1, finding that there was "ample" reasonable suspicion to

effectuate a traffic stop of Appellant's vehicle. (Tr. at 70.) The Appellant has filed a timely appeal of the trial magistrate's decision. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), 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.”

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 (R.I. 1993). The Appeals Panel is “limited to a determination of whether the hearing justice's decision is supported by legally competent evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained

in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

Analysis

On appeal, Appellant argues that the trial magistrate’s decision is clearly erroneous in light of reliable, probative, and substantial evidence in the record. Specifically, Appellant contends that Officer Vible did not have reasonable suspicion based upon specific and articulable facts to stop and briefly detain Appellant for investigative purposes. As such, Appellant argues that Officer Vible’s stop of Appellant’s vehicle was violative of Appellant’s Fourth Amendment protections against unreasonable searches and seizures.

In the context of Breathalyzer refusal cases, 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). The Court has listed the following as specific and articulable facts upon which a law enforcement officer can properly conclude that “reasonable suspicion” exists to initiate an investigatory stop: erratic movement of the motor vehicle, Jenkins, 673 A.2d at 1097; detection by the officer of an odor of alcohol on the motorist’s breath, State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1998); an admission by the motorist that he or she has been drinking; id.; poor performance by the motorist on “a number” of field sobriety tests, id., or failure of all field sobriety tests, State v. Pineda, 712 A.2d 858 (R.I. 1998); exhibition by the motorist of bloodshot eyes, Pineda, 712 A.2d at 858; State v. Perry, 731 A.2d 720, 721 (R.I. 1999); and an appearance of confusion, Bruno, 709 A.2d at 1050; State v. Bjerke, 697 A.2d 1069 (R.I. 1997).

Having reviewed the entire record before it, this Panel is satisfied that there was legally competent evidence from which the trial magistrate could have concluded that Officer Vible's stop of Appellant's vehicle was lawful. The trial magistrate believed Officer Vible's testimony that Appellant's vehicle was being operated erratically, that Appellant's movement into the parking lot was sudden and abrupt, and that Appellant's vehicle struck the curb of the parking lot. (Tr. at 70.) The trial magistrate also found credible Officer Vible's testimony that Appellant's breath smelled strongly of alcohol, that Appellant admitted to having consumed alcohol, that Appellant's movements were clumsy and slow, and that Appellant's eyes were watery and bloodshot. (Tr. at 71-72.) Weighing the relative credibility of Officer Vible and Mr. Petrarca in order to resolve the conflict between their testimonies, the trial magistrate chose to believe Officer Vible because his recollection would not, unlike Mr. Petrarca's, be affected by alcohol. (Tr. at 71.)

This Panel is mindful that, in reviewing the trial magistrate's decision for error of law, we lack the authority to assess witness credibility or to substitute [our] judgment for that of the trial magistrate concerning the weight of the evidence on questions of fact. See Liberty Mutual Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991). Here, we conclude that the trial magistrate's decision rests on a foundation of reliable, probative, and substantial record evidence. Accordingly, the trial magistrate's decision to sustain Appellant's violation of § 31-27-2.1 is affirmed.

Conclusion

Upon a review of the entire record, this Panel concludes that the trial magistrate's decision was not clearly erroneous in view of the reliable, probative, and substantial

evidence on the whole record. Substantial rights of Appellant have not been prejudiced. Accordingly, the trial magistrate's decision is affirmed, and the Appellant's appeal is dismissed.

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