STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF NEWPORT :
:
v. : C.A. No. T09-0018
:
MATTHEW COHEN :

DECISION

NOONAN, M., DISANDRO, M.: Before this Panel on April 15, 2009—Magistrate Noonan (Chair, presiding) and Judge Ciullo and Magistrate DiSandro sitting—is the State of Rhode Island's (State) appeal from a decision of Magistrate Goulart, dismissing a charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test."[1] The Appellee, Matthew Cohen (Appellee), was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. Judge Ciullo has filed a dissenting opinion.

Facts and Travel

On August 23, 2008, Officer Eric Geoghegan (Officer Geoghegan) of the Newport Police Department charged Appellee with the aforementioned violation of the motor vehicle code. The Appellee contested the charge, and the matter proceeded to trial.

Officer Geoghegan began his trial testimony by describing his professional training and experience with respect to DUI-related traffic stops and the administration of standardized field sobriety tests. (Tr. at 7-8.) Then, focusing the Court's attention on the date in question, Officer Geoghegan testified that at approximately 11:00 p.m., he was on patrol on Thames Street when he was dispatched to the scene of a motor vehicle accident on Harrison Avenue. (Tr. at 10.)

[1] The Appellee was also charged with violating G.L. 1956 § 31-14-1, "Reasonable and prudent speeds." However, Officer Geoghegan incorrectly listed the violation as "Failure to maintain control." This charge was dismissed following trial and is not presently before this Panel on appeal.

According to the dispatcher, one of the motorists involved in the accident appeared intoxicated and was attempting to leave the scene. (Tr. at 11.)

Approximately three to four minutes after receiving the dispatch, Officer Geoghegan responded to the vicinity of 36 Harrison Avenue. (Tr. at 12.) Upon arriving at the scene, Officer Geoghegan observed a red Jeep "pinned against a pick-up truck that was parked in front of 36 Harrison Avenue." Id. According to Officer Geoghegan, an older couple was standing on the sidewalk and a young male was sitting on the front steps of the house. Id. Officer Geoghegan noted that the young male was "not sitting upright [on the stairs], but more reclined. He looked confused." Id. At trial, Officer Geoghegan identified the young male as Appellee. (Tr. at 14.)

Once he had determined that Appellee was uninjured, Officer Geoghegan asked Appellee whether he had been driving. Id. The Appellee answered in the affirmative, stating, "I was driving. It was stupid." Id. During the course of his conversation with Appellee, Officer Geoghegan detected an odor of alcohol on Appellee's breath. Id. He also noted that Appellee's speech was slurred. Id. Upon making these observations, Officer Geoghegan asked Appellee whether he would submit to a battery of standardized field sobriety tests; Appellee consented to the tests. Id. As Officer Geoghegan walked with Appellee from the front steps of the home at 36 Harrison Avenue to the street, he noted that Appellee was "unsteady on his feet" and "nearly fell twice." (Tr. at 29.)

Officer Geoghegan administered the field sobriety tests in conformance with his professional training and experience and, upon completion of the tests, determined that Appellee had failed the tests. (Tr. at 14-19.) Thereupon, Officer Geoghegan "placed [Appellee] under arrest based on probable cause . . . that he was driving the vehicle that struck the pick-up truck in front of 36 Harrison Avenue and was driving under the influence." (Tr. at 25.) Before

transporting Appellee to the headquarters of the Newport Police Department for booking, he read Appellee his "Rights for Use at Scene" from the pre-printed card. (Tr. at 19-20.) The Appellee indicated to Officer Geoghegan that he understood the rights as read. (Tr. at 21.)

While Officer Geoghegan was transporting Appellee to police headquarters, Appellee vomited in the rear seat of Officer Geoghan's police cruiser. Id. At the station, Officer Geoghegan read Appellee his "Rights for Use at Scene" from the pre-printed form. Id. Officer Geoghegan asked Appellee whether he would like to avail himself of his opportunity to use a telephone within one hour of arrest; Appellee declined to exercise his right to a confidential phone call. (Tr. at 23.) The Appellee then signed the "Rights" form to indicate that he understood the rights as read and that he refused to submit to a chemical test upon the request of Officer Geoghegan. (Tr. at 22-23.)

When asked on cross-examination whether he could understand everything that Appellee said to him on the date in question, Officer Geoghegan testified that he "could understand [Appellee], but . . . could tell that [his speech] was affected." (Tr. at 26.) He further testified that he did not have to repeat anything to Appellee during the course of his encounter with him. Id. When asked by counsel whether he observed Appellee operating his vehicle on the date in question, Officer Geoghegan responded in the negative. (Tr. at 27-28.) He also indicated that he did not touch the hood of the Jeep to determine whether it had been recently operated, did not observe fluids leaking from the vehicle, and did not notice whether the keys to the vehicle were in the ignition when he arrived at 36 Harrison Avenue. (Tr. at 28.)

At the conclusion of Officer Geoghegan's trial testimony, both the State and Appellee rested, and the trial magistrate took the matter under advisement. The trial magistrate delivered his decision from the bench on February 20, 2009. In his decision, the trial magistrate found that

there was no "reasonable dispute that the State has . . . presented evidence which is clear and convincing that [Appellee], while under arrest, did refuse to submit to [a] [chemical] test." (Dec. Tr. at 9.) The trial magistrate was also satisfied by the clear and convincing evidence "that [Appellee] was informed of his . . . rights in accordance with [G.L. 1956 §] 31-27-3 . . . ." Id. Finally, the trial magistrate was satisfied by the clear and convincing evidence presented at trial that "[Appellee] in fact was informed of the penalties which would result if he failed to take the [chemical] test." (Dec. Tr. at 10.)

With respect to the issue of reasonable grounds, the trial magistrate was satisfied that "Officer Geoghegan, in fact, did have reasonable grounds to believe that [Appellee] had been driving a motor vehicle while under the influence . . . ." Id. However, the trial magistrate was "concerned because there was . . . no testimony elicited by the State regarding who the law enforcement officer was, whether a sworn report was . . . made." (Dec. Tr. at 12.) As the trial magistrate explained, "the State must prove by clear and convincing evidence that a law enforcement officer did make a sworn report and, in this matter, there is no evidence that a law enforcement officer made a sworn report." (Dec. Tr. at 13.) Based on the failure of the State to present evidence or testimony that Officer Geoghegan produced a sworn report in connection with his arrest of Appellee, the trial magistrate dismissed the charged violation of § 31-27-2.1.

The State, aggrieved by the trial magistrate's decision to dismiss the refusal charge, filed a timely appeal to this Panel. The Decision of Magistrate Noonan and Magistrate DiSandro is rendered below. Judge Ciullo, dissenting from this Decision, has filed a dissent.

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 Appellee 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, the State argues that the trial magistrate's decision is affected by error of law. Specifically, the State contends that the failure of the State to elicit testimony regarding the preparation of a sworn report by Officer Geoghegan does not require dismissal of the charged violation of § 31-27-2.1, as the State presented reliable, probative, and substantial evidence to prove each of the essential elements of the refusal charge to a standard of clear and convincing evidence.

With respect to chemical test refusal cases, in Link v. State, 633 A.2d 1345, 1349 (R.I. 1993), our Supreme Court explained that such cases are divided into "two distinct parts." The first part is the "pre-hearing procedure initiated by an arrested driver's refusal to submit to a chemical test." Id. Section 31-27-2.1 provides for automatic suspension of the individual's driver's license under the following procedure:

> If a person having been placed under arrest refuses upon the request of a law enforcement officer to submit to the tests, . . . none shall be given, but a judge of the traffic tribunal . . . , 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. . .; that the person had been informed of his or her rights in accordance with § 31-27-3; that the person had been informed of the penalties incurred as a result of noncompliance with this section; and that the person had refused to submit to the tests upon the request of a law enforcement officer; shall promptly order that the person's operator's license or privilege to operate a motor vehicle in this state be immediately suspended. (Emphasis added.)

The second part of the process provides for a hearing before the Traffic Tribunal to determine whether the refusal charge and suspension of the individual's license should be sustained or dismissed. Section 31-27-2.1 outlines this process as follows:

> If the judge finds after the hearing that: (1) the law enforcement officer making the sworn report had reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; (2) the person while under arrest refused to submit to the tests upon the request of a law enforcement officer; (3) the person had been informed of his or her rights in accordance with § 31-27-3; and (4) the person had been informed of the penalties incurred as a result of noncompliance with this section; the judge shall sustain the violation. (Emphasis added.)

Although the law enforcement officer's sworn report plays a critical role in the adjudication of refusal charges, the role of the report is nonetheless limited. In Link, our Supreme Court indicated that once the report is submitted and the individual's driver's license has been preliminarily suspended, the "role of the sworn report ends. . . ." Link, 633 A.2d at 1349. Further, upon an appeal to this Panel to determine whether the refusal charge should be sustained or dismissed, the required findings "may be based on whatever evidence is adduced at the hearing and are not dependent upon the validity of the [officer's] sworn report." Id. Accordingly, the Link Court held that the State has an opportunity at such an appeal to "establish the facts necessary . . . to sustain [the defendant's] breathalyzer refusal charge notwithstanding the defect in [the officer's] sworn report. Id.

Here, the record is silent as to whether Officer Geoghegan produced a report in connection with the charged violation of § 31-27-2.1 or, if such a report was prepared on the date in question, whether that report was properly sworn before a notary. However, Officer Geoghegan appeared before the trial magistrate and testified under oath concerning all of the

information that would have been contained in the sworn report—including that he had reasonable grounds to believe that Appellee had been driving a motor vehicle within the State while under the influence of intoxicating liquor.[2] Indeed, the trial magistrate stated on the record that he was satisfied that Officer Geoghegan—the law enforcement officer who ordinarily would have prepared the sworn report—"did have reasonable grounds to believe that [Appellee] had been driving a motor vehicle while under the influence . . . ." (Dec. Tr. at 10.) Accordingly, as Link makes clear that a chemical test refusal charge can be sustained in the absence of a "sworn" report where there is sworn testimony adduced at trial for the Court to consider and weigh, Link, 633 A.2d at 1349, two members of this Panel hold that a chemical test refusal charge can be sustained in the absence of testimony by the arresting officer that a sworn report was prepared. We are satisfied that Officer Geoghegan's appearance and live trial testimony regarding the issue of reasonable grounds cures the failure of the State to elicit testimony regarding the issue of reasonable grounds and renders its omission not substantially prejudicial. Therefore, upon reviewing the record in its entirety, two members of this Panel are satisfied that the trial magistrate's decision to dismiss the charged violation of § 31-27-2.1 in the absence of testimony by Officer Geoghegan that he prepared a sworn report is affected by error of law.

[2] Officer Geoghegan set forth in his trial testimony that he "placed [Appellee] under arrest based on probable cause . . . that he was driving the vehicle that struck the pick-up truck in front of 36 Harrison Avenue and was driving under the influence." (Tr. at 25.) (Emphasis added.) Our Supreme Court has held that "probable cause" and "reasonable grounds" are functionally equivalent. See Soares v. Ann & Hope of Rhode Island, Inc., 637 A.2d 339, 345 (R.I. 1994); Cruz v. Johnson, 823 A.2d 1157, 116 1 n.2 (R.I. 2003).

Conclusion

This Panel has reviewed the entire record before it. Having done so, Magistrate Noonan and Magistrate DiSandro are satisfied that the trial magistrate's decision is affected by error of law. Substantial rights of the State have been prejudiced. Accordingly, the State's appeal is granted, and the matter is remanded to the trial magistrate for the entry of judgment consistent with this Decision.

ENTERED:

Magistrate William T. Noonan (Chair)

Magistrate Domenic A. DiSandro III

DISSENT, CIULLO, J.: I write separately to express my dissent from the holding and reasoning of the majority Decision by two other members of this Panel. I believe that the trial magistrate's decision to dismiss the charged violation of § 31-27-2.1 based on the failure of the State to elicit sworn testimony from Officer Geoghegan regarding his sworn report is unaffected by error of law. Based on my reading of the chemical test refusal statute, the trial judge or magistrate must make a finding that the law enforcement officer who testifies at trial is the same officer who made out the sworn report following the arrest of a motorist on suspicion of DUI. Where, as here, an officer testifies at trial that he or she had probable cause / reasonable grounds to believe that the motorist had been operating in Rhode Island while under the influence of

alcohol, but fails to testify that he or she is the same officer who prepared the sworn report, the charged violation of § 31-27-2.1 cannot be sustained.

ENTERED:

Judge Albert R. Ciullo