STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No.T09-0072**
	:	
RICHARD DIPRETE	:	

DECISION

PER CURIAM: Before this Panel on September 30, 2009— Chief Magistrate Guglietta (chair), Judge Ciullo, and Magistrate DiSandro, sitting—is Richard DiPrete's (Appellant) appeal from Magistrate Goulart's decision, sustaining the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test." The Appellant appeared, represented by counsel, before this Panel. Jurisdiction is pursuant to § 31.41.1-1-8.

Facts and Travel

On April 14, 2009, the Rhode Island State Police were informed by a witness of a possible intoxicated motor vehicle operator. The informant told the police department of the location of the vehicle, and the State Police began to search for the vehicle. State Trooper Derek Melfi (Trooper or Trooper Melfi) observed the alleged intoxicated driver and performed a traffic stop, although Trooper Melfi did not witness any traffic violations or criminal activity. The Appellant was arrested and charged with violating the aforementioned motor vehicle offense. The Appellant contested the charge, and the matter proceeded to trial. The trial commenced over two days, beginning June 17, 2009 and continuing June 23, 2009.

At trial, Trooper Melfi started by describing his professional training and experience with respect to DUI-related traffic stops and the administration of

standardized field sobriety tests. He has been a trooper for approximately four and one-half years. (June 17 Tr. at 7-8.) While at the State Police Training Academy, Trooper Melfi became a certified breathalyzer operator and learned to administer field sobriety tests, including the horizontal gaze nystgamus (HGN), the walk-and-turn, and the one-leg stand test. (June 17 Tr. at 9-11.)

Focusing the Court's attention on the date in question at about 5:00 P.M., Trooper Melfi testified that he received a call over the radio that a witness had observed a hit and run motor vehicle accident and that the driver was possibly intoxicated. (June 17 Tr. at 12-14.) He was informed of the make, model, and license plate of the vehicle involved in the hit and run. (June 17 Tr. at 14.) He was also updated as to the location of the vehicle, since the witness of the hit and run was on the telephone line with the police department while following the Appellant's vehicle. (June 17 Tr. at 15-16.) Trooper Melfi located the vehicle and immediately activated his lights; however, the vehicle did not stop until several streets later. (June 17 Tr. at 16-17.) During the pursuit, the vehicle moved from the far right lane to the far left lane with a turn signal; however, with the turn signal still on, the driver passed several left-hand turns without turning. (June 17 Tr. at 18.)

The vehicle then stopped at a red light, and the Trooper exited his cruiser and approached the Appellant, who was still in his vehicle. (June 17 Tr. at 17, 19.) Trooper Melfi explained that he knocked on the window to get the driver's attention and noted that the driver was slow to react. (June 17 Tr. at 22.) The Trooper then opened the vehicle's door and spoke with the driver. (June 17 Tr. at 22.) The Trooper testified that he believed the driver told him that he had had two glasses of wine and maybe Klonopin. (June 17 Tr. at 25.) The parties stipulated that the Appellant was read his "Rights for Use

at Scene" and "Rights for Use at Station" in their entirety from the pre-printed forms. (June 17 Tr. at 30-31.) Trooper Melfi also informed the Appellant of his right to a medical examination and a confidential telephone call. (June 17 Tr. at 31.)

During cross-examination, Trooper Melfi was asked to clarify the events that occurred before conducting the traffic stop. Trooper Melfi stated that he did not see any traffic violations or visual clues of intoxication before he activated his emergency lights. (June 17 Tr. at 34.) Trooper Melfi further explained that he was attempting to stop the vehicle to investigate the hit and run that had occurred in Johnston. (June 17 Tr. at 41-42.) The only articulable facts Trooper Melfi relied on to initiate the traffic stop were the facts conveyed by the dispatcher. (June 17 Tr. at 36-37.) On redirect examination, Trooper Melfi clarified that the facts he relied on included: the caller was a witness to a hit and run motor vehicle in Johnston; the caller was following the vehicle involved in the accident; the caller described the location and erratic driving; and the caller informed the police department of the make, model and license plate of the vehicle. (June 17 Tr. at 39, 43.)

During the trial, Magistrate Goulart asked Trooper Melfi questions regarding the reasonableness of his response to dispatch. (June 17 Tr. at 43.) Magistrate Goulart asked Trooper Melfi about the information he received regarding the make, model, and license plate of the Appellant's vehicle, even though this question was not asked by the prosecutor directly. (June 17 Tr. at 43.) Also, Magistrate Goulart inquired as to the possible crime that Trooper Melfi was investigating, which Trooper Melfi replied was an alleged hit and run accident. (June 23 Tr. at 15.)

Finally, the Appellant testified and explained why he did not stop for Trooper Melfi. The Appellant said he was not aware of the accident since he did not notice until a few seconds later that his side mirror was flattened against his car, and he assumed something had struck the mirror. (June 23 Tr. at 27.) The Appellant explained that he did not notice the Trooper right away since he uses his side-view mirror, which had been flipped in and cracked due to the incident in Johnston. (June 23 Tr. at 27-28.) Also, the Appellant explained that he was adjusting to some new medication at the time of the accident, which may have made him appear unresponsive to the Trooper. (June 23 Tr. at 28.) Further, Appellant testified that the Town of Johnston never charged the Appellant with respect to the automobile accident. (June 23 Tr. at 27-28.)

Following the trial, the trial magistrate found that the Trooper had reasonable grounds to believe the Appellant was operating a motor vehicle under the influence at the time of the motor vehicle stop and that the vehicle was involved in a hit and run in Johnston. (Tr. at 58.) Accordingly, the trial magistrate sustained the charged violation. The 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(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.

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). 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 if 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, the Appellant argues the trial magistrate's decision is characterized by abuse of discretion and error of law. Specifically, the Appellant argues that the trial magistrate violated Rhode Island Rule of Evidence 614 when he asked questions that filled in missing elements of the prosecution's case. Also, the Appellant contends that there was no independent corroborative evidence presented by the Trooper as to the Appellant's impairment while operating a motor vehicle. Thus, the Appellant contends

that Trooper Melfi failed to provide adequate testimony to prove the charge. We disagree.

Rule 614

Rhode Island Rules of Evidence, Rule 614(b), provides, "[t]he court may interrogate witnesses, whether called by itself or a party." R.I.R. Evid. 614(b). In some circumstances, it may be "proper and commendable for a judge presiding in a jury trial to interrogate a witness as to relevant matters." State v. Amaral, 47 R.I. 245, 249-50, 132 A. 547, 549 (1926). However, the judge should interrogate witnesses "reluctantly, cautiously, and in limited circumstances." State v. Nelson, 982 A.2d 602, 614 (R.I. 2009). Questions should be limited to inquiry that "will clarify a matter which he justifiably feels is a cause for confusion in the minds of the jurors." Nelson, 982 A.2d at 614 (quoting State v. Figueras, 644 A.2d 291, 293 (R.I. 1994)).

Here, the Appellant argues the trial magistrate's questions resulted in the Trooper testifying that he was responding to a hit and run in Johnston. However, the record shows the prosecution asked the Trooper to describe the events that occurred on the day in question. (June 17 Tr. at 13.) In response to this question, the Trooper explained he received a call that a witness to a hit and run motor vehicle accident was following the driver, whom the witness described as possibly intoxicated. (June 17 Tr. at 13-14.) Also, on redirect examination, the prosecution asked the Trooper "why [he] want[ed] Mr. DiPrete to stop." (June 17 Tr. at 38-39.) The Trooper went on to answer that it was in response to a hit and run motor vehicle accident in Johnston, the driver of which was possibly intoxicated and that he wanted to investigate the crime. (June 17 Tr. at 38-39, 41-42.) Then, at the close of the direct examination, cross-examination, and redirect

examination, Magistrate Goulart asked questions to clarify the Trooper's testimony. For example, the trial magistrate asked: "so the information that you had, and I think you just indicated this on redirect; that there was what was considered to be a hit and run in the Town of Johnston and that this information was relayed to you through dispatch, correct?" (June 17 Tr. at 43.) This question asked by the Magistrate shows that he was clarifying the Trooper's testimony from the direct and redirect examination. See State v. Giordano, 440 A.2d 742, 745-46 (R.I. 1982) (where a trial justice's request to explain an answer to a question asked constituted a clarification).

Additionally, the Appellant contends that the trial magistrate asked the Trooper questions never asked by the prosecution regarding whether the Trooper was informed of the make, model, and license plate of the Appellant's vehicle. However, the record indicates that the Trooper explained he was able to locate the suspect vehicle, "the vehicle that the caller had described," in response to questioning by the prosecution. (June 17 Tr. at 16.) Again, at the close of the direct examination, cross-examination, and redirect examination, Magistrate Goulart simply clarified with the Trooper that he was informed of the make, model, and license plate of the vehicle. (June 17 Tr. at 43.)

In both instances, the Magistrate did not ask any questions that had not already been addressed in either direct or cross-examination. Cf. Nelson, 982 A.2d at 618 (where "questioning roamed beyond the boundaries of appropriate clarifying judicial interrogation because the question subtly rephrased a question that the prosecution had already asked and the witness has already answered"). The record demonstrates that when Magistrate Goulart asked questions about the hit and run accident and the description of the vehicle, he was simply trying to clarify Trooper Melfi's testimony in

order to determine whether there were specific and articulable facts to support the traffic stop. (June 17 Tr. at 14, 43.) See Giordano, 440 A.2d at 745-46 (holding that trial justice's request of a witness to explain an answer to a question asked on cross-examination constituted a clarification of the evidence). Compare Nelson, 982 A.2d at 618 (stating that "clarification does not include simply editing counsel's previous questions as to how the judge felt they should have been asked"). Here, since Magistrate Goulart was asking clarifying questions that raised nothing new, the Appellant was not substantially prejudiced, and therefore, there was no error of law or abuse of discretion. Accordingly, the questions asked by the Magistrate were within the scope of Rule 614 of the Rhode Island Rules of Evidence. The decision by the panel is made with full recognition of its recent Supreme Court decision in State v. Nelson. 982 A.2d 602. While Nelson is distinguishable from this case at bar since Nelson is a jury trial case, the panel did not need to reach the conclusion whether it could apply to a trial heard by a judge or magistrate. The panel finds in this case at bar that Magistrate Goulart's questions clarified previous testimony and is wholly consistent with Rule 614 and the proposals enumerated in Nelson.

Reasonable Suspicion To Stop the Appellant's Vehicle

When an individual is detained by law enforcement officers, "the Fourth Amendment is implicated and the detention must be in conformance with the strictures of that amendment." State v. Bjerke, 697 A.2d 1069, 1071 (R.I. 1997); see Terry v. Ohio, 392 U.S. 1, 18 (1968). In cases involving a warrentless stop and detention, "reasonableness is the touchstone for distinguishing lawful from unlawful seizures." Bjerke, 697 A.2d at 1071; see State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996). For a

lesser intrusive detention to be reasonable, the state must establish reasonable suspicion by pointing to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry, 392 U.S. at 21; see Bjerke, 697 A.2d at 1071.

In determining sufficient reasonableness to justify an investigatory stop, the "totality of the circumstances" is taken into account, allowing the officers to "draw on their own experience and specialized training." United States v. Arvizu, 534 U.S. 266, 273-74 (2002); see State v. DeMasi, 448 A.2d 1210 (1982). Some factors that may contribute to reasonable suspicion include: "the location in which the conduct occurred, the time at which the incident occurred, the suspicious conduct or unusual appearance of the suspect, and the personal knowledge and experience of the police officer." State v. Halstead, 414 A.2d 1138, 1148 (R.I. 1980) (citations omitted). A traffic stop is not permitted based on an anonymous tip without sufficient detail or corroboration. Bjerke, 697 A.2d at 1072; see Alabama v. White, 496 U.S. 332, 329-30 (1990).

Particularly, instructional on this issue is Alabama v. White. 496 U.S. 332. In this case, police officers received a telephone call from an anonymous person who noted the following: a particular person would be leaving from a specific apartment complex at a particular time; she would drive a brown Plymouth station wagon with a broken taillight parked in front of a certain building; she would be going to a motel; and that she possessed about an ounce of cocaine inside a brown attaché case she should be carrying. White, 496 U.S. at 327. However, when the officers arrived at the apartment complex and saw the station wagon with the broken taillight parked outside the building, they discovered that the person was not carrying anything. Id. at 327. The officers then

followed the vehicle to the highway on which the motel is located, where they stopped the vehicle and informed the driver that she was stopped because she was suspected of carrying cocaine. Id. at 327. At the driver's trial for possession of marijuana and possession of cocaine, the driver contended the officers lacked the necessary reasonable suspicion under Terry v. Ohio to justify the investigatory stop. Id. at 328. However, the Supreme Court held the unverified tip had sufficient "indicia of reliability" to justify the stop when considering the totality of the circumstances. Id. at 327. The court explained that while a tip may not be able to establish probable cause, a tip could be sufficiently reliable to justify a Terry stop, depending on the content of information by the police officers and the degree of reliability. Id. at 330-31. Here, the court held the tip was sufficiently corroborated to furnish reasonable suspicion, even though not every detail was verified. The court reasoned that since the informant was right about some details, then he was probably right about other facts alleged, including the criminal activity. Id. at 331.

In the instant matter, the Trooper could conduct a legitimate traffic stop by relying on the information he received from the dispatcher, despite the lack of any personal observations of a traffic violation or crime. See White, 496 U.S. at 331 (where officers conducted a legitimate traffic stop based on an anonymous tip and without any personal observations of a traffic violation or crime). In White the Court stressed the tip was more reliable since it predicted future behavior, thus demonstrating insider information. In this case, the tip was reliable since the informant observed a hit-and-run accident and continued to follow the vehicle. Also, the trooper verified significant aspects of the tip, all of which gave reason to believe the caller was honest and well informed to justify a

stop. Specifically, the witness provided specific information relating to the Appellant's vehicle, including the license plate and a description of the make and model of the vehicle. (June 17 Tr. at 12-14.) Also, the caller was reasonably trustworthy because he continued to follow the Appellant's vehicle, and later provided a police statement. See State v. Belcourt, 425 A.2d 1224, 1226-27 (where information was "reasonably trustworthy" since it was based on statements given by the victims of the crime). Compare State v. Soroka, 112 R.I. 392, 398, 311 A.2d 45, 47 (1973) (where a naked assertion from an unidentified and unproven source was an insufficient basis for an arrest). Furthermore, the willingness of informant to provide a statement to the police department strengthens his reliability and shows that he was not simply harassing the Appellant. See Florida v. J.L., 529 U.S. 266, 273 (2000) (where bare-boned tips are not sufficiently reliable since this would enable people to harass another simply by placing an anonymous call).

Based on the detailed information provided by the informant, he established his reliability and furnished the police with a basis, support, and underlying reason for his belief. See Draper v. United States, 358 U.S. 307 (1959) (delineating the guidelines to determine when and under what circumstances advice from an unidentified informer may be "reasonably trustworthy"). Accordingly, the tip provided by the informant was more reliable than an anonymous tip. See Alabama v. White, 496 U.S. at 329-30 (stating that an anonymous tip containing a range of details and demonstrating inside information, sufficiently corroborated, can exhibit sufficient indicia of reliability based on the totality of the circumstances).

Further, the description provided by the informant was corroborated by the Trooper. While Trooper Melfi neither made any independent observations of erratic driving, nor witnessed any traffic violations before he activated his emergency lights, he still had corroborated enough information to verify the tip. See In re John N., 463 A.2d 177 (where the officer was justified in stopping a vehicle by relying on departmental information and the officer's own personal observations). Specifically, Trooper Melfi was already investigating the hit and run that occurred in Johnston, and based on the information provided by the informant, the Trooper was attempting to stop the vehicle to investigate the crime. (June 17 Tr. at 41-42.) Additionally, Trooper Melfi was able to locate the Appellant's vehicle based on the information provided by the informer, including the location, make, model, and license plate number. See In re John N., 463 A.2d 174, 117 (R.I. 1983) (where corroborated and detailed information justifies an investigatory stop). Compare Bjerke, 697 A.2d at 1071-72 (where an anonymous caller did not support reasonable suspicion until independent evidence was corroborated). Accordingly, based on the sufficient evidence corroborating the informant's allegation of the Appellant's hit and run accident, intoxication, and specific and articulable facts to stop the Appellant, this Panel finds the trial court's decision is based on reliable, probative, and substantial record evidence. Therefore, the Appellant's appeal is denied, and the charged violation is sustained.

Conclusion

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

ENTERED: