

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

CRAIG HUNTLEY

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C.A. No. T09-0092

DECISION

10 JUL 26 PM 1:06

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

PER CURIAM: Before this Panel on December 16, 2009—Magistrate DiSandro (Chair, presiding), Judge Parker, and Judge Ciullo sitting—is Craig Huntley’s (Appellant) appeal from Chief Magistrate Guglietta’s decision, sustaining the charged violations of G.L. 1956 §§ 31-27-2.1, “Refusal to submit to a chemical test,” and 31-15-11, “Laned roadways.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

At 1:10 a.m. on the morning of June 23, 2009, Officer Thomas Pennell (Officer) of the New Shoreham Police Department was notified that there was a car accident on Corn Neck Road on Block Island. The Officer immediately proceeded to Corn Neck Road and discovered a large pickup truck lying across both lanes of the roadway. The Appellant was eventually identified as the driver of the crashed vehicle. Based on the Appellant’s behavior at the scene of the crash and in the hospital later that morning, the Officer charged him with the aforementioned violations of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

Officer Pennell commenced his trial testimony by describing at length his professional training and experience with respect to DUI-related traffic stops and the

administration of standardized field sobriety tests. He explained he has been with the New Shoreham Police Department since 2006 and was certified as a breathalyzer operator at the Municipal Police Academy. (Tr. at 6-7.)

Directing the Court's attention to the date in question, Officer Pennell testified that he was informed about a car accident on Corn Neck Road at 1:10 a.m. on the morning of June 23, 2009. (Tr. at 8.) Responding immediately, the Officer proceeded down Corn Neck Road until he observed a pickup truck that was "completely demolished" lying across both lanes of the roadway. (Tr. at 9.) After making an initial survey of the scene, Officer Pennell approached Craig Huntley (Appellant), who identified himself as the driver of the demolished truck. While talking to the Appellant, the Officer noticed "blood on the front of his shirt," and "an odor of an alcoholic beverage emanating from his breath." (Tr. at 15-16.) Further, the Officer observed that at that time, "[Appellant's] eyes were bloodshot and watery, and he was somewhat unsteady on his feet and he was sort of weaving back and forth." (Tr. at 15-16.)

The Officer further testified that he allowed on-site emergency medical personnel to assist the Appellant because the Officer was worried about his injuries. (Tr. at 16-17.) At one point, Appellant looked as if "he was going to fall asleep while sitting on the side of the road." (Tr. at 17.) The Officer specifically testified that he was instructed by his superiors to refrain from administering any field sobriety tests until after the Appellant had received proper medical treatment. (Tr. at 18.) Before entering an ambulance to drive to Block Island medical center, the Appellant admitted to Officer Pennell that he had been drinking alcohol that evening. (Tr. at 19.) Officer Pennell accompanied the Appellant during his ambulance ride to the medical center. While in the ambulance,

Pennell smelled "the odor of alcoholic beverage" that he concluded could only be emanating from the Appellant. (Tr. at 23.) The Officer made this conclusion after speaking with the attending medical personnel. (Tr. at 23.)

At the medical center, the Appellant again admitted that he was drinking on the night in question. (Tr. at 26.) The Officer testified that at this time, the Appellant's physical movements were fluctuating from calm to extremely angry, explaining that "[a]t one point he was clenching his fists and grinding his teeth," and "at times he was crying and at other times. . . he actually had to be held down in the bed." (Tr. at 30.) At 2:50 a.m., the Officer was able to evaluate the Appellant as his medical treatment was complete. The Officer articulated that he felt the Appellant was inebriated and that he read the Appellant the "Rights for Use at the Station / Hospital" card pursuant to § 31-27-2.1. (Tr. at 33-34.) After the Officer read the Appellant his rights, the Appellant indicated that he did not want to make a phone call, and he signed the document stating that he was going to refuse the chemical test. (Tr. at 37.)

The Court next heard testimony from Sergeant Paul Deane (Sergeant) of the New Shoreham Police Department. The Sergeant explained that he has been with the New Shoreham Police Department since 2003 and that he is a certified breathalyzer operator trained in detecting drunk drivers. (Tr. at 63-64.) He testified that at 1:15 a.m. on the date in question, he was called to the scene of a crash on Corn Neck Road. (Tr. 64-65). After observing the Appellant at the scene of the accident, the Sergeant noted that the Appellant had "watery, bloodshot eyes" and that there was an "odor of an alcoholic beverage" emanating from the Appellant's breath. (Tr. at 68.) While observing the Appellant in the medical exam room, the Sergeant again noted a "strong odor of alcohol"

emanating from the Appellant as well as his "bloodshot and watery eyes." (Tr. at 72.) At 2:50 a.m., the Sergeant and Officer Pennell made the joint decision to place the Appellant under arrest due to their shared belief that he was intoxicated. (Tr. at 74.)

Finally, the Court heard testimony from Trooper John J. Gadrow (Trooper), a member of the Rhode Island State Police since 2000. The Trooper explained that he was contacted by Chief Carlone of the New Shoreham Police Department early on the morning of June 23, 2009 to assist in accident reconstruction. Trooper Gadrow began his testimony by explaining his extensive training and experience. While at the Police Academy, the Trooper received eighty hours of training in basic accident investigation. Between 2000 and 2003, he became a specialist in accident reconstruction by completing basic, intermediate, and advanced training totaling two hundred and forty hours. (Tr. at 81.) Since 2003, the Trooper has investigated over forty serious motor vehicle accidents. He has been certified as a collision reconstruction expert in Rhode Island Superior Court as well as in the Rhode Island Traffic Tribunal. (Tr. at 81-82.) Subsequently, the trial magistrate certified Trooper Gadrow as an expert in the area of collision reconstruction.

The Trooper arrived at the crash site at approximately 10:00 a.m. on the morning of June 23, 2009. Trooper Gadrow first identified what he called a "critical speed yawmark" on the road surface of Corn Neck Road that was 122 feet wide. (Tr. at 91, 96.) The Trooper explained that a yawmark is caused by "a tire that is both slipping and sliding sideways simultaneously." (Tr. at 91.) He went on to explain that motorists create yawmarks when they attempt to negotiate a turn at a high rate of speed without braking. (Tr. at 91.) A forensic diagram confirmed the length of the yawmark and showed that the mark extended from the road surface into a grassy median for an

additional seventy-four feet and ten inches. (Tr. at 92.) The Trooper next identified four "furrows" located in the grassy median next to the road surface. He explained that furrows are marks left by tires traveling in a lateral direction. (Tr. at 93.) Specifically, the Trooper found that the furrows in the grassy median were a continuation from the same set of tires that caused the yawmark in Corn Neck Road. Ultimately, based on his experience and training, Trooper Gadrow concluded that the yawmarks and furrows were created by the Appellant's vehicle. (Tr. at 93.)

Trooper Gadrow continued to testify as to the vehicle's speed at the time of the accident and the exact location of the vehicle relative to the yellow lane divider on Corn Neck Road. Based on mathematical formulas, the Trooper was able to conclude that at the time the accident occurred, the Appellant was operating his vehicle at approximately sixty-nine miles per hour. The speed limit on Corn Neck Road is twenty-five miles per hour. (Tr. at 100). Further, based on the location of the yawmarks on the road surface, Gadrow concluded that Appellant's truck was five feet, two inches in the northbound lane while traveling south at the time the accident occurred. (Tr. at 98).

At the conclusion of testimony, the trial magistrate recessed to review the facts and consider the caselaw submitted by both parties. Ultimately, he found the testimony of Officer Pennell, Sergeant Deane, and Trooper Gadrow to be "truthful and credible." (Dec. Tr. at 18.) He described their recollection of the facts as "firm and direct." (Dec. Tr. at 18). While evaluating their demeanor, the trial magistrate did not see any indication that the witnesses were fabricating a story or embellishing any facts. (Dec. Tr. at 19). The trial magistrate was satisfied by clear and convincing evidence that Officer Pennell had reasonable grounds to believe that the Appellant was driving under the

influence of alcohol based on a mosaic of observations that he made on the date in question. (Dec. Tr. at 27-29). Further, he concluded that the Appellant was under arrest when he refused to submit to a chemical test and that he was sufficiently apprised of his rights pursuant to § 31-27-3. In regard to the laned roadway violation, the trial magistrate found that Trooper Gadrow's testimony was compelling and sufficient to demonstrate that the Appellant abrogated § 31-15-11 on the date in question. (Dec. Tr. at 21). Therefore, the Chief Magistrate sustained the charged violations of §§ 31-27-2.1 and 31-15-11. It is from this decision that Appellant now appeals. Forthwith is the 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 Mut. 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial magistrate made erroneous factual determinations. Specifically, Appellant contends that the State failed to prove that Officer Pennell had reasonable grounds to believe that the Appellant was operating a motor vehicle under the influence of intoxicating liquor. Next, Appellant argues that the Officer did not comply with the requirements of § 31-27-3 by failing to immediately inform the Appellant of his rights from the “Rights for Use at Scene” card. Finally, Appellant asserts that Officer Pennell failed to arrest the Appellant for driving under the influence of intoxicating liquor prior to requesting the Appellant to submit to a chemical test. This Panel will address each argument in turn.

Reasonable Grounds

The Appellant contends that Officer Pennell lacked sufficient reasonable grounds to believe that he had been driving a motor vehicle while under the influence of intoxicating liquor. He argues that the arresting officer did not have probable cause

because he did not personally observe the Appellant operating the truck on the date in question. Finally, the Appellant also cites the lack of any field sobriety tests as evidence that Officer Pennell acted without probable cause on the night in question.

Each case presents the trial court with a unique and challenging factual scenario. As the trial magistrate correctly stated, "the factual basis [of] each and every case that is before this Court on refusal to submit to a chemical test, is really left to its own facts, for us to determine whether or not their w[ere] reasonable grounds [to sustain the charge]. . . ." (Dec. Tr. at 26.) In this case, Officer Pennell did not have the opportunity to observe the Appellant driving the truck in question because he was called to respond to the scene of the accident. However, both Officer Pennell's observations at the scene and the Appellant's own admissions lent overwhelming credence to the trial magistrate's factual finding that the Officer had reasonable grounds to suspect that the Appellant was operating the truck under the influence of alcohol. See State v. Perry, 731 A.2d 720, 723 (R.I. 1999) (holding that probable cause exists where the facts and circumstances known to a police officer or of which he or she has reasonably trustworthy information are sufficient to cause a person of reasonable caution to believe that a crime has been committed).

Here, the Officer came upon a horrific car accident on Corn Neck Road and observed the Appellant to have "bloodshot watery eyes" and a distinct odor of "alcoholic beverage emanating from his breath." (15-16.) The Appellant identified himself as the driver of the demolished vehicle and acknowledged that he had been drinking on the night in question. Officer Pennell did not conduct the usual field sobriety tests because the Appellant was receiving emergency medical care at the time and the Officer did not

want to interfere with the medical team on scene. Further, as this Panel noted at oral argument, the standard field sobriety tests are merely one tool that police officers use to establish probable cause that an individual is driving under the influence of alcohol. Given the facts available to Officer Pennell, this Panel is satisfied that he had reasonable grounds to suspect that the Appellant was operating a motor vehicle under the influence of alcohol. See Perry, 731 A.2d at 723. Accordingly, the trial magistrate's decision was not clearly erroneous in light of reliable, probative and substantive record evidence.

Section 31-27-3

Appellant contends that the testimony of the State's witnesses clearly established that the State has failed to comply with the requirements of § 31-27-3 because Officer Pennell did not immediately inform the Appellant that he had the right to be examined by his own physician or afford him the opportunity to exercise that right. Appellant contends that Officer Pennell had ample time to arrest the Appellant at the scene if he had reasonable grounds to believe that Appellant had operated a motor vehicle under the influence of intoxicating liquor. The Appellant cites State v. Ciccone, T02-0076, and State v. Joyce, T05-0158, as support for his contention. Neither case mirrors the unique factual circumstances presented in the instant matter.

Here, the trial magistrate found that Officer Pennell and Sergeant Deane made a joint decision to arrest the Appellant at the Block Island medical center after emergency medical personal had completed their evaluation and treatment. Officer Pennell arrived at the accident scene after the emergency medical personnel and made reasonable observations of the Appellant without interfering with his medical treatment. As the Appellant was not under arrest at any point during treatment, Officer Pennell was not

compelled to read him the "Rights for Use at Scene" card. See State v. Bruskie, 536 A.2d 522, 523 (R.I. 1988) (noting that an officer was required to read a suspected drunk driver the "Rights for Use at Scene" card once the individual was handcuffed and under arrest). Instead, the Officer made observations of Appellant until treatment ended at the medical center, and then he arrested the Appellant based on the indicia of alcohol consumption that was exhibited. At that time, the Officer read the Appellant the "Rights for Use at Station/Hospital" card which plainly enumerates the rights afforded to suspected drunk drivers pursuant to § 31-27-3.

Unlike in State v. Joyce, where a refusal charge was dismissed because the arresting officer did not submit the "Rights for Use at Scene" card during trial, the State in this matter did submit the "Rights for Use at Station/Hospital" card as evidence during trial. See Joyce, T05-0158. Thus, the Appellant was successfully apprised of all his statutory rights pursuant to § 31-27-3. Further, this case is distinguishable from State v. Ciccione because here, the Appellant's injuries and subsequent medical treatment prevented Officer Pennell and Sergeant Deane from arresting the Appellant at the scene. See State v. Ciccione, T02-0076; see also State v. Teeters, 2002 WL 31443528, *3, 2002-Ohio-6001, 6013 (Ohio App. 7 Dist. Nov. 29, 2002) (noting that it would be unreasonable to require police officers to choose between delaying an injured party medical attention and potentially forgoing the arrest of an individual when there is evidence that the person was operating a motor vehicle under the influence of alcohol). Further, the allegedly impaired driver in Ciccone did not exhibit the kinds of overt indicia of alcohol consumption that the Appellant demonstrated in this case. Thus, this Panel

finds that the Officers complied with the requirements of § 31-27-3 and that the decision of the trial magistrate was not affected by error of law.

Failure to Arrest Prior to Request to Submit to Chemical Test

Appellant advances a number of theories regarding the time and place of his arrest. The Appellant first asserts that he was under arrest when Officer Pennell arrived at the scene at 1:19 a.m. and began questioning and observing the Appellant. He contends that any reasonably innocent person would believe that he or she was under arrest at the scene. Appellant next argues that if he were not arrested at the scene, then he was surely under arrest when Officer Pennell accompanied him for his ambulance ride to Block Island medical center. Finally, he maintains that if he was not under arrest in the ambulance, then he was placed under arrest at 4:02 a.m. when the Block Island Chief of Police advised him that he was in fact under arrest and read his Miranda rights. The Appellant rejects the State's contention that he was under arrest at 2:50 a.m., the time when his medical treatment ended.

This Panel has consistently relied on the factors outlined in State v. Bailey, 417 A.2d 915 (R.I. 1980) to ascertain when an individual is under arrest. Under Bailey, our Court examines (1) the extent to which the person's freedom of movement has been curtailed and the degree of force used by the police; (2) the belief of a reasonably innocent person in these same circumstances; and (3) whether the person had the option of not going with the police. See id. at 915-18.

When Officer Pennell first arrived on scene at 1:15 a.m., numerous emergency medical workers were attending to the Appellant and the two surviving passengers of the crash. During his time on scene, Officer Pennell never gave the Appellant any firm

directions or commands. He asked some preliminary investigative questions but did not interfere with the Appellant's medical treatment. When the emergency medical personnel decided to transport the Appellant to Block Island medical center, Officer Pennell accompanied him to continue his fact-finding investigation. (Tr. at 23.) At 2:50 a.m., Officer Pennell was informed that the Appellant's medical treatment was over. (Tr. at 32.) The trial magistrate made a factual finding that a legally valid arrest was effectuated when the medical team transferred custody of the Appellant to Officer Pennell and Sergeant Deane. Until the transfer of custody took place, the Officers had not given the Appellant any verbal command or exerted any degree of force on his person beyond assisting the medical personnel. See Bailey, 417 A.2d at 915. Further, once custody was transferred, the Appellant did not have the option to leave police supervision. See id. at 917-18. After the arrest, Officer Pennell read the Appellant his "Rights for Use at the Station/Hospital" card pursuant to § 31-27-3. Thus, this Panel is satisfied that the trial magistrate's factual findings regarding Appellant's time and manner of arrest are grounded in credible evidence and not characterized by abuse of discretion or error of law.

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 is not affected by error of law, characterized by abuse of discretion, or clearly erroneous in light of the reliable, probative, and substantial record evidence. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED: