

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

JOSEPH SOUSA

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C.A. No. T08-0008

08 OCT 08 PM 3:01

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on October 1, 2008, Judge Ciullo (Chair), Chief Magistrate Guglietta, and Magistrate Goulart sitting, is Joseph Sousa’s (Appellant) appeal from Judge Almeida’s decision, sustaining the charged violation of G.L. 1956 § 31-27-2.1, “Refusal to submit to chemical test.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On June 27, 2007, Appellant was charged with violating the aforementioned motor vehicle offense¹ by Patrol Officer Jason Canario (Officer Canario) of the Warren Police Department. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Officer Canario testified as to his training and experience in the administration of standard field sobriety tests, the detection of DUI, and the operation of Breathalyzer equipment. (Tr. at 14-29.) Focusing the Court’s attention on the events of June 27, 2007, Officer Canario testified that he was on a traffic post at the intersection of Route 136 and Schoolhouse Road.² (Tr. at 29-30.) At approximately 12:20 a.m., Officer

¹ The Appellant was also charged with violating G.L. 1956 § 31-15-3, “Passing of vehicles proceeding in opposite directions,” and G.L. 1956 § 31-15-16, “Use of breakdown lane.”

² Schoolhouse Road is also known as Old Warren Road.

Canario received a radio dispatch that a dark-colored Dodge Dakota, traveling southbound on Route 136, was operating erratically. (Tr. at 31.) Shortly thereafter, Officer Canario observed a dark blue Dodge Dakota traveling southbound. Id. Officer Canario recorded the speed of the vehicle as 51 m.p.h. in a posted 45 m.p.h. zone. Id.

Officer Canario testified that he began following the vehicle from a distance of approximately 200 feet. (Tr. at 33.) At this time, he observed the vehicle travel in the breakdown lane for approximately one-quarter mile, before returning to the travel lane. Id. The vehicle then crossed the double yellow dividing line on two occasions, traveling approximately fifty feet each time. Id. Officer Canario indicated that when another vehicle approached the suspect vehicle from the northbound lane, the suspect vehicle returned to the travel lane in order to avoid an imminent head-on collision. Id.

The vehicle rounded a curve of the road onto Kickemuit Road and then turned right onto Arlington Avenue. Id. As the vehicle turned, Officer Canario observed the vehicle cross the white dotted line separating the left and right southbound travel lanes without the driver's using his turn signal. Id. Officer Canario then activated his emergency lights and siren and initiated a traffic stop. (Tr. at 33-34.)

When he approached the vehicle, Officer Canario recognized the operator as Appellant. (Tr. at 35.) Officer Canario testified that Appellant's eyes were severely bloodshot and that there was an odor of an alcoholic beverage emanating from his breath. (Tr. at 37.) Although Appellant was able to produce a valid driver's license and proof of insurance, he produced the incorrect passenger registration. Id. Officer Canario asked Appellant to turn off his vehicle's engine and to exit the vehicle. (Tr. at 38.) Before exiting the vehicle, Appellant said, "Please don't do this. I'm a really good guy." Id.

Officer Canario then proceeded to ask Appellant whether he would submit to a battery of field sobriety tests, and Appellant consented. (Tr. at 38.) Officer Bryant then administered the “walk and turn” and “one-legged stand” tests, both of which Appellant failed. (Tr. at 38-44.) The Appellant was subsequently placed under arrest and was read his “Rights for Use at Scene” from the pre-printed card. (Tr. at 44.)

Upon his arrival at the Warren Police Station, Appellant was placed in an observation room for approximately fifteen minutes. (Tr. at 51.) At the conclusion of the observation period, Appellant was read his “Rights for Use at Station” from the pre-printed form. Id. The Appellant signed the form and indicated to Officer Canario that he would not submit to a chemical test. (Tr. at 53.)

Prior to the conclusion of the trial, Appellant submitted an affidavit to the trial judge by his oncologist in an attempt to invalidate Officer Canario’s field sobriety tests. The affidavit indicated that Appellant was undergoing treatment for a medical condition and that he has a significant amount of bone loss in his back, pelvis, and right hip bone. (Appellant Aff. at 3.) As such, Appellant was required to undergo hip replacement surgery and walks with a pronounced limp. Id. However, the doctor wrote in the affidavit he “[didn’t] know whether [the hip replacement] might have contributed to” Appellant’s failure of the tests. Id. The trial judge evaluated Appellant’s medical affidavit and found it irrelevant as having no bearing on the issue of whether Appellant’s ability to perform the “walk and turn” and “one-leg stand” tests was compromised. (Tr. III at 113-115.) Accordingly, the trial judge sustained the charged violation of § 31-27-2.1 It is from this decision that Appellant now appeals.

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 judge's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial judge ignored material medical evidence adduced by Appellant in finding that Appellant's hip replacement surgery did not impair his ability to perform the field sobriety tests.

Our review of the trial judge's factual findings "is deferential. We do not disturb the trial justice's findings of fact unless it can be shown that he or she has overlooked or misconceived relevant and material evidence or was otherwise clearly wrong." Brown v. Jordan, 723 A.2d 799, 800 (R.I. 1998). This Panel "will not disturb the trial [judge's] findings where he or she has scrupulously considered all of the" evidence presented to the Court. Tarro v. Tarro, 485 A.2d 558, 560 (R.I. 1984).

Here, the record reflects that the trial judge carefully evaluated the medical affidavit adduced by Appellant in determining whether he was able to perform the "walk and turn" and "one-leg stand" tests. (Tr. III at 113-115.) Based on the fact that the doctor in the affidavit was unable to provide an opinion as to whether Appellant's hip replacement surgery affected his ability to perform the tests, the trial judge properly found that the affidavit was irrelevant and immaterial to the issue of Appellant's physical limitations. See State v. Champa, 494 A.2d 102 (R.I. 1985) ("Questions of relevancy are addressed to the sound discretion of the trial [judge], and [her] determination regarding the relevancy of evidence will not be disturbed on appeal absent a showing of abuse of that discretion.") Accordingly, this Panel concludes that the trial judge's decision to discount the probative value of Appellant's affidavit was within her discretion.

Conclusion

“In the case before us, our review of the evidence does not lead us to the conclusion that the trial [judge] overlooked or misconceived any material evidence.” Guertin v. Guertin, 870 A.2d 1011, 1020 (R.I. 2005). Having reviewed the entire record, this Panel concludes that the trial judge’s decision on the relevancy and materiality of the medical affidavit was within the sound discretion of the trial judge and was not characterized by abuse of that discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, the decision of the trial judge is sustained, and Appellant’s appeal is dismissed.

ENTERED: