STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT
SIXTH DIVISION

STATE OF RHODE ISLAND :
:
VS. : A.A. NO. 04-40
:
LAURENCE H. BANIGAN, III :

JUDGMENT

This cause came on before Gonnella, J. on an appeal from the Rhode Island Traffic Tribunal Appeals Panel, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Appeals Panel sustaining the violation for refusing to submit to a chemical test is hereby affirmed.

Dated at Providence, Rhode Island, this 17th day of November , 2005.

ENTER: BY ORDER:

CHIEF CLERK

November 17, 2005

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. DISTRICT COURT

SIXTH DIVISION

STATE OF RHODE ISLAND

vs. A.A. 04-40

LAURENCE H. BANIGAN, III

DECISION

Gonnella, J. This appeal raises the single issue of whether the facts as found by the trial judge amounted to a reasonable suspicion of criminal activity by a motorcyclist which, in turn, justified the police officer in making an investigatory stop. For the reasons set forth in this opinion, the court concludes that the officer had reasonable suspicion that the motorcyclist was operating his vehicle while under the influence of alcohol or drugs and the investigatory stop was, therefore, constitutional. Based upon this conclusion, the decision of the trial judge at the Traffic Tribunal as

well as the Appeals Panel in sustaining the violation of refusing to submit to a chemical test is affirmed.

FACTS AND TRAVEL

On August 23, 2003, at approximately 9:30 p.m. Sgt. Coffey of the Warwick Police Department received a radio broadcast that a motorist was following a motorcyclist who was driving in an erratic manner and was possibly operating his motorcycle under the influence of alcohol. The broadcast indicated that the motorcyclist was in the Apponaug section of Warwick. Sgt. Coffey responded to that area and upon arriving he observed a motorcyclist stopped at a traffic light with a passenger on the rear. When the light turned green, Sgt. Coffey observed the motorcyclist accelerate forward and lose his balance to the extent that the motorcyclist needed to put his foot on the street to stop his motorcycle from falling over. Based upon the information received in the radio broadcast and his own observations of the motorcyclist, Sgt. Coffey made an investigatory stop. Once stopped, Sgt. Coffey made additional observations of the motorcyclist and conducted field sobriety tests which led him to conclude that the motorcyclist was probably operating the motorcycle while under the influence of intoxicating liquors. An arrest was made and a later request to take a breath test was refused by

the motorcyclist.[1] The motorcyclist was cited for refusing to submit to a chemical test. R.I.G.L. § 31-27-2.1

After listening to this evidence, the trial judge determined that Sgt. Coffey had the right to stop the motorcyclist in order to investigate what he observed to be unsafe driving and, thereafter, based upon the officer's observations of the motorcyclist after the initial stop, had probable cause to request a chemical test. Thus, the trial judge sustained the charge of refusal to submit to a chemical test pursuant to R.I.G.L. § 31-27-2.1.

The Appeals Panel of The Traffic Tribunal upheld the trial judge's decision on the grounds that the stop was proper since it was made in the "interests of public safety". Appeals Decision at 5. In a concurring opinion, one judge of the appeals panel found that the motorist's tip was corroborated by the police officer's observation of erratic movement of the motorcyclist, and the combination of this information established reasonable suspicion for the stop. (Yashar, J. concurring).

STANDARD OF REVIEW

The District Court has jurisdiction to hear appeals from the Appeals Panel of the Traffic Tribunal pursuant to R.I.G.L. § 31-41.1-9. The

[1] The single issue raised by Defendant in this appeal is whether there were reasonable grounds for the investigatory stop. Defendant does not contest the probable cause to arrest or the refusal to submit to the chemical test.

District Court's jurisdiction is limited, however, by R.I.G.L. § 31-41.1-9 (d) which provides:

> *(d) Standard of review.* The Judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial [sic] because the appeals panel's findings, inferences, conclusions or decisions are:
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> 1. In violation of constitutional or statutory provisions;
> 2. In excess of the statutory authority of the appeals panel;
> 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.

The District Court, therefore, lacks the authority to assess witnesses' credibility or to substitute its judgment for that of the Appeals Panel concerning the weight of the evidence on questions of fact. *Link v. State*, 633 A.2d 1345 (R.I. 1993). The District Court is limited to a determination of whether the Appeals Panel's decision is supported by competent evidence. *Marran v. State*, 672 A.2d 875 (R.I. 1996). Thus, the District Court may reverse a decision of the Appeals Panel only where the decision "is clearly

erroneous in light of the reliable, probative, and substantial evidence", or where it is so arbitrary and capricious that it is characterized as an abuse of discretion. *Costa v. The Registry of Motor Vehicles*, 543 A.2d 1307, 1309 (R.I. 1988). In short, the District Court is not entitled to substitute its judgment for that of the Appeals Panel on questions of fact "even in a case in which the court 'might be inclined to view the evidence differently and draw inferences different from the agency.'" *Johnston Ambulance Surgical Ass'n, Inc. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000) (citations omitted). In reviewing a finding of the existence of probable cause, however, this court will use a *de novo* standard of review. *State v. Keohane*, Jr., 814 A.2d. 327 (R.I. 2003), *citing*, *State v. Abdullah*, 730 A.2d. 1074 (R.I. 1999). In so doing this court will "...give deference to the findings of the trial justice and shall not overturn his findings unless they are clearly erroneous." *In re John N.*, 463 A.2d. 174, 176 (R.I. 1983).

THE STOP / REASONABLE SUSPICION

It is no longer in dispute that the Fourth Amendment's right to be free from unreasonable search or seizures is implicated when officers conduct an investigatory stop of an individual either on the street or in a car. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) (*Terry*

type stops extended to automobiles). The Fourth Amendment applies, of course, "to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." *Brown v. Texas*, 443 U.S. 47, 50, 99 S.Ct. 2637, 2640, 61 L. Ed. 2d 357, 359 (1979) (Citations omitted). "Whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person and the Fourth Amendment requires that the seizure be reasonable." *United States v. Brignoni-Ponce, supra,* at 878, 95 S.Ct. at 2578, 45 L.Ed.2d at 607 (1975).

What is reasonable depends upon the totality of the circumstances and "...on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Pennsylvania v. Mimms*, 434 U.S. 106, 109, 98 S.Ct. 330, 332, 54 L.Ed.2d 331 (1977). Thus, a consideration of the constitutionality of such investigatory stops involves a "weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Brown, supra*, at 49, 99 S.Ct. at 50-51, 61 L. Ed. 2d at 2640. To this end, the Fourth Amendment requires that investigatory stops be based upon specific, objective facts which give rise to a reasonable suspicion that the individual is involved in criminal activity. Id.

> Based upon [the] whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.

United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 695, 66 L. Ed. 2d 621, 627 (1981).

What constitutes reasonable suspicion in a given context depends upon many factors. Some of these factors may include: (1) The personal observations of a police officer; (2) his/her training and experience in a particular field of criminal activity; (3) Information received from other sources and it's indicia of reliability and trustworthiness. This last category of information, used by police officers to establish reasonable suspicion, has been given considerable attention by courts, especially in the context of what has been called "the anonymous tip". *See, Alabama v. White*, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed. 2d 301 (1990); *State v. Bjerk*, 689 A.2d 1069 (1997). The general rule is that an unverifiable anonymous tip needs corroboration in order to raise a reasonable suspicion of criminal activity and form the basis of an investigatory stop. *White, supra; Florida v. J.L.*, 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000).

Anonymous tips, however, can come in many forms. Some are totally unreliable and need substantial corroboration in order to raise a reasonable

suspicion,[2] while others, by their own nature, have some indicia of reliability and trustworthiness and need very little corroboration. *White, supra.* (some anonymous tips can be from a reliable source and provide basis of knowledge). Assessments of "veracity," reliability," and "basis of knowledge" of the person providing the anonymous tip help courts to determine how much weight to give to the "anonymous tip" information. *White, supra.* These assessments, along with the personal observations of a trained police officer, provide the formula for determining whether the totality of circumstances supports a particularized suspicion that the person stopped is, or had been, engaged in criminal activity.

In this case, Sgt. Coffey received a radio broadcast that a motorist was following a motorcyclist who was operating his motorcycle in an erratic manner, possibly operating it under the influence of alcohol, and was traveling towards the Apponaug area of Warwick. Upon arriving at that location, Sgt. Coffey observed a motorcyclist at a traffic light. The motorist's tip, in this context, has some indicia of reliability and trustworthiness. First, a private citizen who fortuitously is observing

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[2] *Alabama v. White, supra; Florida v. J. L., supra.* In *White*, the anonymous tip simply stated that Vanessa White would be leaving a particular apartment in a brown station wagon with a broken taillight and traveling to Dobey's Motel with cocaine in a brown attaché case. In *Florida v. J.L.,* the anonymous tip was that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. In both of these cases, the Supreme Court noted that there was no other information provided to the police to establish either that the informant was a reliable person or that the informant possessed personal knowledge of the illegal conduct.

suspicious conduct has little motive to call the police and lie about their observations of another motorist. There is a presumption of reliability of the information provided by a private citizen who is simply reporting suspicious behavior. *See, Marben v. State of Minnesota, Department of Public Safety*, 294 N.W.2d 697 (Minn. 1980) ("informant was a private citizen and thus presumed to be reliable"). Contrast this with the anonymous tip from an unknown informant that is providing information about drugs being located in a particular vehicle or a gun located on a particular person. The reliability or veracity of that informant is not so inherently clear. *White, supra; Florida v. J.L., supra.* Second, this motorist had a reliable basis for the knowledge that the motorcyclist was operating in an erratic manner, and possibly under the influence of alcohol, since he was following the motorcyclist and making personal observations. Again, contrast this with an anonymous tip in which there is no way of assessing whether the tipster is providing information from personal knowledge. *Florida v. J.L., supra*. Third, the reliability of the motorist was corroborated by the fact that the officer found a motorcyclist at a traffic light in the location that the motorist said he would be.

This type of information, because it carries with it some indicia of reliability and trustworthiness, needs less corroboration by the police officer in order establish a reasonable suspicion that the individual on the

motorcycle was driving under the influence of alcohol. What corroborative information did Sgt Coffey receive? When the light turned green and the motorcyclist began to accelerate he lost his balance. And how does this information corroborate the motorist's tip? Sgt. Coffey testified that in his training and experience one sign of intoxication is unsteadiness and loss of balance. Thus, the information from the motorist's tip, that the motorcyclist was possibly operating the motorcycle under the influence of alcohol, was then corroborated by the observations of Sgt. Coffey. At that point, there were particularized reasons to support Sgt. Coffey's suspicions that a crime was being committed.[3] Given the totality of these circumstances, it was prudent for Sgt. Coffey to conduct an investigatory stop since he had a reasonable suspicion that the motorist was operating his motorcycle under the influence of alcohol. *R.I.G.L.* § 31-27-2; *See, State v. Ratteni*, 117 R.I. 221, 366 A.2d 539 (1976) (there was a duty to investigate the tip — good police work required no less). At that moment, The Fourth Amendment's balance between a person's liberty and freedom of movement, and the public's interest in identifying and removing drunk drivers from our streets and highways tipped in favor of a brief investigatory stop.

[3] The court is by no means intending to suggest that there was an abundance of evidence in this case to support a reasonable suspicion of wrongdoing. On the contrary, the court views this as a close case, marginal at best. Nevertheless, the court finds enough evidence to break the threshold of reasonable suspicion.

> The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response... A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed. 2d 612 (1972).

For these reasons, this court finds that the stop of the motorist was based upon a reasonable suspicion and was otherwise constitutional.[4] The decision of the Appeals panel sustaining the violation for refusing to submit to a chemical test is hereby affirmed.

[4] Because the court finds that the stop was constitutional it will not reach the issue of whether the police had the right to stop Defendant on a "public safety" basis.