STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT
SIXTH DIVISION

STATE OF RHODE ISLAND	:	
VS.	:	A.A. NO. 003-125
SAMANG PHIM	:	

JUDGMENT

This cause came on before Cenerini, 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 Traffic Tribunal is hereby affirmed in part and reversed in part.

Dated at Providence, Rhode Island, this 20th day of May , 2004.

ENTER:

Cenerini J.

BY ORDER:

CHIEF CLERK

May 20, 2004

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC **DISTRICT COURT**
SIXTH DIVISION

STATE OF RHODE ISLAND	:	
	:	
v.	:	**A.A. No. 03-125**
	:	
SAMANG PHIM	:	

DECISION

CENERINI, J. In the instant appeal, Appellant Samang Phim (Appellant) seeks judicial review of the decision rendered by the Appellate Panel of the Rhode Island Traffic Tribunal (P), which remanded the trial Magistrate's decision to dismiss the charge against Defendant for violation of G.L. 1956 § 31-27-2-1, refusal to submit to a chemical test. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-9.

FACTS AND TRAVEL

On January 18, 2003, at approximately 6:55 p.m., Appellant was involved in a two-car-rear-end collision on Broad Street in Providence, Rhode Island. Appellant was driving the second vehicle involved in the accident. Patrolman David Gerard of the Providence Police Traffic Division responded to the scene.

Upon arrival at the scene, Patrolman Gerard spoke with Appellant, who attempted to explain that the accident was his fault. (Tr. at 71.) However, Appellant's words came out sounding like "it's not my fault." (Tr. at 71.) While speaking with Appellant, Patrolman Gerard stated that he smelled "an alcoholic-type beverage on his [Appellant's]

breath" and noted that Appellant's eyes were "bloodshot, red and watery," and was unable to stand up steadily when he exited the vehicle. (Tr. at 8, 18.) Patrolman Gerard explained that he read Appellant his rights at the scene and proceeded to transport Appellant to the police station. (Tr. at 10.)

Upon arrival at the police station, Patrolman Gerard stated that he read Appellant his rights for use at the station, which included a request that Appellant submit to a chemical test. (Tr. at 28, 30, 34, 35.) Appellant signed the form on the refusal line, and Patrolman Gerard charged Defendant with a violation of G.L. 1956 § 31-27-2.1.

This case was heard before Magistrate Veiga during the weeks of March 4 through March 18, 2003. At trial, Appellant testified with the use of an interpreter. Appellant testified that he has lived and worked in the United States since 1984. (Tr. at 84.) Appellant further testified that he works in a jewelry factory and if he does not understand something in English, his brother is able to translate it for him. (Tr. at 86.) It was Appellant's contention that he does not speak English, despite the fact that he has lived and worked in the United States for almost twenty years and has obtained a driver's license and insurance during that time. (Tr. at 87.) Two of Appellant's family members testified in support of Appellant's contention that he neither speaks nor understands sufficient English to enable him to make a knowing and voluntary refusal. The State's witness, Patrolman Gerard, relayed his recollection of the evening of January 18, 2003 and stated that at no time did he believe that English was not Appellant's first language. (Tr. at 18.) Gerard testified that the Appellant spoke to him in English when he initially approached the car and was able to answer the questions Gerard posed to him in English. (Tr. at 17, 18, 23, 24.)

After hearing the testimony, Magistrate Veiga determined that Appellant could not knowingly or voluntarily refuse to take the chemical test, in light of his lack of understanding of the English language, and therefore did not sustain the violation of G.L. 1957 § 31-27.1. The State of Rhode Island time filed an appeal of that decision to the Rhode Island Traffic Tribunal for clear error of law and fact, pursuant to G.L. 1956 § 31-41.1.8(f).

The Panel determined that Magistrate Veiga did not support her ultimate decision with adequate findings of fact and law. The Panel concluded that Magistrate Veiga's failure to set forth specific findings of fact constituted an abuse of discretion resulting in reversible error and remanded the case for a new trial before another trial judge. Appellant timely filed this appeal requesting this Court to reverse the Panel's decision, pursuant to G.L. 1956 § 31-41.1-9.

STANDARD OF REVIEW

Pursuant to G.L. 1956 § 31-41.1.9, the Rhode Island District Court possesses appellate jurisdiction to review an order of an appeals panel of the Rhode Island Traffic Tribunal. Section 31-41.1.9 provides in pertinent part:

> "(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 because the appeals panel's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provision;
(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 aforementioned standard mirrors standard of review delineated in the State Administrative Procedures Act. See G.L. 1956 § 42-35-15(g). This Court is not entitled to substitute its judgment for that of the agency 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 those of the agency.'" Johnston Ambulatory Surgical Ass'n, Inc. v. Nolan, 755 A.2d 799, 805 (R.I. 2000) (citations omitted). However, a decision can be vacated where it is "clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record." Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

This Court notes that its review is a second-tier review, as the Panel's review is itself appellate in nature. Thus, in considering an appeal from the decision of the Panel, this Court engages in a limited review of a limited review.

PANEL'S DECISION

Section 31-41.1-9(g)(3) expressly states that the District Court shall reverse or modify the Appeals Panel decision if such decision was "arbitrary or capricious or

characterized by abuse of discretion or clearly unwarranted exercise of discretion." The Rhode Island Supreme Court has explained that the purpose behind remanding a case is to clarify the intent of the lower court's or agency's decision when it is unclear. See Pier House Inn, Inc. v. 421 Corp., 812 A.2d 799, 806 (R.I. 2002). When the lower court or agency decision is lacking with regard to specific findings of fact, the remedy is to remand the case to the previous decision-maker for further clarification. See id. "The authority to 'remand the case for further proceedings' is a broad grant of power, but it is in essence merely declaratory of the inherent power of the court to remand, in a proper case, to correct deficiencies in the record and thus afford the litigants a meaningful review." Lemoine v. Department of Mental Health, Retardation & Hosps., 320 A.2d 611, 614 (R.I. 1974) (citing Ferrilli v. Department of Employment Security, 261 A.2d 906 (R.I. 1970)).

Recently, in Cullen v. Town Council, No. 2001-212-M.P., slip op. at 1 (R.I. 2004), the Rhode Island Supreme Court remanded a matter before it to the Town Council with instructions to make sufficient factual findings and conclusions of law to allow for judicial review. The Cullen Court declared:

> "The requirement that a municipal council's decision be accompanied by sufficient factual findings is especially important when evidentiary conflicts abound. It is only by making basic findings of fact that a reviewing court is able to determine how such conflicts were resolved." Id. at 6.[1]

The Cullen Court went on to quote from the Rhode Island Supreme Court's decision in Hooper v. Goldstein, 241 A.2d 809, 815 (1968), wherein the Court stated:

> "If a tribunal fails to disclose the basic findings upon which its ultimate findings are premised, we will neither search

[1] It is important to note that the transcript in the instant case appears to be ripe with conflicts of fact.

> the record for supporting evidence nor will we decide for ourselves what is proper in the circumstances."

Similar to the situation faced by the Supreme Court in Cullen, in the present case the Traffic Tribunal found that there were insufficient factual findings to support Magistrate Veiga's decision to grant Appellant's motion to dismiss the charge of refusing to submit to a chemical test, in violation of § 31-27-2-1. That statute provides in pertinent part:

> "Any person who operates a motor vehicle within this state shall be deemed to have given his or her consent to chemical tests of his or her breath, blood, and/or urine for the purpose of determining the chemical content of his or her body fluids or breath. No more than two (2) complete tests [ ] shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within this state while under the influence of intoxicating liquor . . . ."

In making determinations as to whether an individual's comprehension of the English language is sufficient for that individual to give proper consent to officers, courts typically look to the testimony of all the witnesses presented and examine the record for consistency. See e.g., United States of America v. Bueno, 21 F.3d 120 (6th Cir. 1994); Campaneira v. Reid, 891 F.2d 1014 (2nd Cir. 1989). For example, in Bueno, the Sixth Circuit of Appeals concluded that the defendant's argument that his inability to understand English precluded him from giving voluntary consent was unpersuasive, where defendant was a thirty-six-year old naturalized citizen who had been living in the United States for eight years. Bueno, 21 F.3d at 127. The Bueno Court looked to the specific facts of the case, noting that the defendant had taken classes in both English and Spanish at a community college in the states and the testimony of the witnesses presented indicated that the defendant was able to understand the English language. Id. Similarly,

in Campaneria, the Second Circuit Court of Appeals rejected a defendant's contention that his poor grasp of the English language and confusing surrounding circumstances prevented him making a knowing and intelligent waiver of his constitutional rights. Campaneria, 891 F.2d at 1020. The Campaneria Court pointed out that although the defendant's native tongue was Spanish, the record and transcripts of a recorded interview indicated that "his command of English was sufficient for him to have understood the Miranda warnings given to him." Id.

In contrast to the above noted cases where the courts supported their conclusions with specific facts in the record, in the present case Magistrate Veiga never set forth how she derived her determination that the Appellant could not knowingly or voluntarily refuse to take the chemical test. The record indicates that the Appellant has been living and working in the United States for almost twenty years. (Tr. at 84.) Additionally, the testifying officer stated that the Appellant was able to understand and answer his question as to whether Appellant was injured in English and that when the officer first approached Appellant, the Appellant spoke to him in English. (Tr. at 17, 18, 23, 24.) The Panel accurately pointed out that Magistrate Veiga never reconciled the above facts with her ultimate findings and did not make any specific references to the record sufficient to support her ultimate conclusion. The only reason Magistrate Veiga provided for her decision was that it was clear from the testimony of the witnesses presented that the Appellant does not speak English. (Tr. at 104.) No findings were ever reached as to the extent to which the Appellant could or could not comprehend the English language regarding his understanding or lack thereof as it relates to whether he voluntarily and

knowingly refused the breathalyzer test, after having given his statutory consent to the same by accepting an operator's license.

CONCLUSION

The decision of the Panel is sustained in part and reversed in part. This Court affirms the Panel's holding, finding that Magistrate Veiga's dismissal of the charges against Appellant was not supported by the reliable, substantial, and probative evidence on the whole record. However, this Court reverses the Panel's decision, remanding the case for a new hearing, unless Magistrate Veiga is unavailable to issue a new decision in accordance with the original trial evidence and the directives set forth herein. If Magistrate Veiga is unavailable, it is hereby ordered that a new trial will be afforded to the parties forthwith before a different Magistrate or Judge of the Traffic Tribunal.