STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T13-0055**
	:	**13001521197**
DANIEL DELANO	**:**	

DECISION

PER CURIAM: Before this Panel on October 30, 2013—Chief Magistrate Guglietta (Chair, presiding), Judge Parker, and Magistrate Abbate, sitting—is Daniel Delano's (Appellant) appeal from a decision of Magistrate Noonan (trial judge), sustaining the charged violation of G.L. 1956 § 21-28-4.01(c), "Possession of marijuana, one ounce or less, 18 years or older." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On July 8, 2013, Trooper O'Donnell (Trooper) of the Rhode Island State Police charged Appellant with the aforementioned violation of the Uniform Controlled Substances Act. Appellant contested the charge, and the matter proceeded to trial on August 8, 2013.

At trial, the Trooper stated that on the day the violation occurred he was working out of the Lincoln Woods Barracks when he was dispatched to a two car accident. (Tr. at 4.) Upon arrival at the scene, the Trooper contacted the operator of one of the vehicles, whom he identified as the Appellant Daniel Delano of Providence, Rhode Island, through his Rhode Island driver's license. Id.

The Trooper attested that he opened the door of the vehicle to render aid to the Appellant after the Appellant communicated an injury and a lack of feeling in the right side of the body. Id. While opening the door, he observed a glass jar resting on the door pocket of the driver's side in 'plain view.' (Tr. at 4-5.) He testified that the jar was filled with a plastic bag of a greenish, leafy brown substance, which based upon his knowledge and training appeared to be marijuana. Id. Further, the Trooper testified that he seized the jar and issued a citation for the charge of possession. Subsequently, to verify the substance and amount, the Trooper stated that he weighed it and used a standard issue field testing kit for which he was trained to use at the Rhode Island State Police Training Academy. Id. He further explained that he always uses the kit, the Narco Pouch 908, to test for the presence of marijuana each time he effects an arrest for possession of the substance. Id.

In addition to the Trooper, the Appellant also testified at the trial. Appellant testified that the car he was operating on the day of the accident belonged to his girlfriend. (Tr. at 12.) He further stated that he did not know the marijuana was in the car until the Trooper seized it; he had not seen the jar before; and he has never used marijuana. Id. At the close of evidence, Appellant's attorney made a closing argument. She reiterated that the Appellant had no idea the marijuana was in the vehicle and that he was not in constructive possession. (Tr. at 13.)

After both sides finished presenting evidence, and closing arguments were heard, the trial judge issued a bench decision. In his decision, the trial judge credited the full testimony of the Trooper and adopted the Trooper's findings. (Tr. at 16.) Specifically, the trial judge found, by clear and convincing evidence the following: the Trooper was rendering aid to the Appellant when he opened the door of the car; the substance was in fact marijuana under one ounce; the marijuana was located within the plain sight of the Trooper; and the elements of constructive

possession were proven as there was enough evidence to infer that the Appellant must have had knowledge of the jar's presence and content while intentionally operating the vehicle in which it was located. (Tr. at 14-16.) Based upon these findings, the trial judge held that the Appellant was in possession, albeit constructive possession, of less than one ounce of the controlled substance marijuana. (Tr. at 14.) Accordingly, the trial judge sustained the charge.

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 as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it 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 judge'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 judge or magistrate;
> (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.

In reviewing a hearing judge or magistrate'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 [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance 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 [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental 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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant makes two arguments: (1) the Trooper illegally seized the evidence from the vehicle, and (2) the Appellant did not possess the illegal substance. Specifically, Appellant contends that the trial judge's ruling to sustain the charge for possession of a controlled substance was affected by error of law because it was based upon the evidence of the marijuana obtained as a result of an illegal search and subsequent illegal seizure.[1] Moreover, Appellant argues that there was insufficient evidence to fulfill the elements of possession.

A. Search and Seizure

The Appellant contends that it was clearly erroneous for the trial judge to find that the actions by the Trooper leading to the seizure of the marijuana-filled jar were reasonable. First, the Appellant asserts that the Trooper's act of opening the door to the car constituted an illegal search. Second, the Appellant avers that the seizure of the jar amounted to an illegal search.

[1] Although this Panel notes that the Appellant never moved to suppress the evidence, for the purposes of this appeal, it will assume that the trial judge's entertainment and subsequent rejection of Appellant's argument on the legality of the search and seizure was equitably treated as such a motion. See Rymanowski v. Rymanowski, 105 R.I. 89, 100, 249 A.2d 407, 413 (1960) ("In doing so, we rely upon our inherent powers in equity to look to the substance rather than the form of the right asserted.").

It is well-settled that in Rhode Island, individuals have "a double barreled source of protection which safeguards their privacy from unauthorized and unwarranted intrusions: the [F]ourth [A]mendment of the Federal Constitution[2] and the Declaration of Rights which is specified in the Rhode Island Constitution." Pimental v. Department of Transp., 561 A.2d 1348, 1350 (R.I. 1989) (quoting State v. Sitko, 460 A.2d 1, 2 (R.I. 1983) (internal citations omitted)). However, "[a]s a general rule this court follows federal precedents and interprets article I, section 6, of the Rhode Island Constitution as identical to the Fourth Amendment to the United States Constitution." State v. Taylor, 621 A.2d 1252, 1254 (R.I. 1993) (quoting Pimental, 561 A.2d at 1350). Only in rare cases has our Supreme Court found that the Rhode Island Constitution provides greater protection from searches and seizures than the Federal Constitution. See Pimental, 561 A.2d at 1350 (holding roadblocks serving as sobriety checkpoints were invalid under our constitution even though roadblocks are valid under the Federal Constitution); see also State v. Benoit, 417 A.2d 895, 900-01 (R.I. 1980), abrogated by State v. Werner, 615 A.2d 1010 (R.I. 1992), (refusing to follow the Fourth Amendment precedent in Chambers v. Maroney, 399 U.S. 42 (1970) and Texas v. White, 423 U.S. 67 (1975), which extended the automobile exception to include immobilized vehicles)[3]. In the instant action, this Panel sees no reason to depart from the minimum Fourth Amendment standards that have been articulated and reinforced through the expansive state and federal case law.

[2] The Fourth Amendment of the Bill of Rights was incorporated through the due process clause of the 14th amendment to apply to the states. Wolf v. Colorado, 338 U.S. 25 (1949) (The Supreme Court applied the Fourth Amendment to the States); Mapp v. Ohio, 367 U.S. 643 (1961). (The Supreme Court held that the suppression of evidence under the exclusionary rule applied to the states.); Ker v. California, 374 U.S. 23 (1963) (The Supreme Court held that the standards for judging whether a search or seizure undertaken without a warrant was "unreasonable" have also been incorporated against the states).

[3] Our Supreme Court has since departed from its holding in Benoit and accepted the automobile exception in State v. Werner, 615 A.2d at 1013.

I. Search

"It is well established that governmental 'searches conducted outside the judicial process, without prior approval by [a] judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few well-delineated exceptions. "' State v. Portes, 840 A.2d 1131, 1136 (R.I. 2004) (internal citations omitted). One such exception is the community caretaking exception. See Cady v. Dombrowski, 413 U.S. 433, 446–447, 93 S.Ct. 2523 (1973); State v. Cook, 440 A.2d 137 (R.I. 1982); State v. Roussell, 770 A.2d 858 (R.I. 2001). In creating this exception the Supreme Court acknowledged "the fact that extensive and often noncriminal contact with automobiles will bring local officials in 'plain view' of evidence, fruits, or instrumentalities of a crime, or contraband." Dombrowski, 413 U.S. at 442. When police officers investigate or respond to vehicle accidents in which there is no claim of criminal liability they engage in this community caretaking function. Id.

Specifically, this exception deems it reasonable for police officers to enter a vehicle for the purposes of rendering aid to a distressed person. United States v. Johnson, 410 F.3d 137, 144 (4th Cir. 2005) ("In upholding the search, the Court emphasized that the officer simply was 'reacting to the effect of an accident—one of the recurring practical situations that results from the operation of motor vehicles and with which local police officers must deal every day."' Id. at 446, 93 S.Ct. 2523.); 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 7.4(f) (5th ed. 2012); see also Anchorage v. Cook, 598 P.2d 939 (Alaska 1979) (reasonable for officer to open door of car at scene of accident when driver was either asleep or unconscious); Lapp v. Dep't of Transp., 623 N.W.2d 419, 421-424 (N.D.2001) (reasonable for officer to open door of truck in parking lot when driver was slumped over the steering wheel and did not respond to knock on window).

In other words, "[t]he community caretaking exception recognizes that the police perform a multitude of community functions apart from investigating crime. . . . [P]olice are 'expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing and provide an infinite variety of services to preserve and protect public safety.'" United States v. Coccia, 446 F.3d 233, 238 (1st Cir. 2006) (citing United States v. Rodriguez–Morales, 929 F.2d 780, 784–85 (1st Cir.1991)). This exception applies "so long as the police act reasonably in carrying out their community caretaking function . . . ." Rodriguez-Morales, 929 F.2d at 784.

One of a trooper's duties as a law enforcement officer is to respond to accidents and to render aid to injured persons involved in those accidents. See Dombrowski, 413 U.S. at 441. Similarly, in this case, the trial judge found that the Trooper had been dispatched to the scene of a serious accident and upon arrival decided to render immediate aide based upon comments by the Appellant indicating an injury. (Tr. at 14.) Further, the trial judge specifically found that the sole objective of the trooper in opening the door was to administer aid to the Appellant. In light of these factual findings, we hold that the Trooper acted reasonably under the community caretaking doctrine. See Roussell, 770 A.2d at 861 ("[W]e hold that the trooper acted reasonably under the community caretaking doctrine when he opened the defendant's passenger-side door and 'asked her what was the matter'"). Accordingly, the trial judge's finding that the opening of the car door did not constitute an illegal search was not affected by error of law or clearly erroneous.

II. Seizure

Similar to exceptions to the search warrant requirement of the Fourth Amendment, the Supreme Court has also recognized a 'plain view' doctrine for seizing evidence without a warrant. In discussing the 'plain view' doctrine, it has provided that "[i]t has long been settled

that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence." Harris v. United States, 390 U.S. 234, 236, 88 S. Ct. 992, 993 (1968) (citing Ker, 374 U.S. 23, 42-43, 83 S.Ct. 1623, 1634-35 (1963); United States v. Lee, 274 U.S. 559, 47 S.Ct. 746 (1927); Hester v. United States, 265 U.S. 57, 44 S.Ct. 445 (1924)). Thus, a lawful search is often a requirement for the 'plain view' doctrine because an officer must have a right to be in the position from which he or she makes their observation. See State v. Portes, 840 A.2d at 1136 ("[A]nalysis of the admissibility of the evidence harvested in the search . . . must begin with a determination of whether the police's entry was justified"). Specifically, the doctrine analysis has three prongs which must be met in order for a warrantless seizure to be lawful: " (i) the police officer who effects the seizure lawfully reaches the vantage point from which he sees an object in plain view; (ii) probable cause exists to support his seizure of that object; and (iii) he has a right of access to the object itself." United States v. Sanchez, 612 F.3d 1, 4-5 (1st Cir. 2010) (citing United States v. Allen, 573 F.3d 42, 51 (1st Cir.2009); United States v. Antrim, 389 F.3d 276, 283 (1st Cir.2004)).

In his findings, the trial judge addressed all three prongs. First, as discussed and subsequently confirmed earlier in this decision, the trial judge held that the Trooper was responding to an injured driver after being dispatched to the scene of an accident and that he entered the vehicle in order to render aid to the Appellant. See Roussell, 770 A.2d at 861; see also Coccia, 446 F.3d at 238. More importantly, the Trooper did not observe the contraband until after he had entered the car in the course of responding to his community caretaking function—a valid warrant exception. See Dombrowski, 413 U.S. at 441; see also United States v. Lott, 870 F.2d 778, 781 (1st Cir. 1989) (evidence which comes to light during the due execution of the caretaking function is ordinarily admissible). It logically follows that because the Trooper

was legally in the car; his observation of contraband was made from a legal vantage point. Sanchez, 612 F.3d at 5.

As for probable cause, the trial judge found that, based on his testimony, the Trooper believed—based on his training and experience—that upon observation, the green, leafy substance he saw in the jar was marijuana. (Tr. at 14.) "In the "plain view" context, . . . probable cause exists when the incriminating character of an object is immediately apparent to the police." Sanchez, 612 F.3d at 5 (citing United States v. Hamie, 165 F.3d 80, 83 (1st Cir.1999)). An officer's belief "need not be certain, but it must be based on no less than a "fair probability." Id. (quoting United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581 (1989)). Given the Trooper's training and experience in narcotics crimes and his initial identification of the substance, his belief that the jar contained marijuana was made immediately at first glance and was based on more than a fair probability.

Lastly, the trial judge found that the Trooper had the right to access the Contraband because he found that the jar was within the car which he had a right to enter; he also had access to the jar. This prong needs no further analysis as the right of the Trooper to enter the car was present. Based on the above analysis, this Panel concludes that trial judge's decision to find the seizure reasonable was supported by reliable, probative, and substantial evidence on the whole record and his application of the 'plain view' doctrine was not clearly erroneous.

B. Possession

Even if the search and seizure is found to be valid, the Appellant contends that he cannot be found to be in possession or constructive possession of the marijuana under § 21-28-4.01(c) because he did not know that it was in the car and he was not the owner of the car. In order to

be considered in possession of a controlled substance in Rhode Island, an individual must have "intentional control of (the) designated (substance) with knowledge of its nature." State v. Gilman, 110 R.I. 207, 215, 291 A.2d 425, 430 (1972). [4]

There are two types of possession: actual and constructive. State v. Jenison, 442 A.2d. 866, 875 (R.I. 1982). Constructive possession can be found when the elements of possession are met even though the object is not within the individual's "immediate physical possession." Id.; see also State v. Portes, 840 A.2d at 1139. Specifically, "[p]roof of constructive possession of a controlled substance requires a showing that defendant knew of the presence of the substance and that he intended to exercise control over it." State v. Jenison, 442 A.2d at 875. These two elements are inherently very fact specific and thus need to be decided by a thorough review of the circumstances in each individual case. Id. ("[T]hese two elements can be inferred from a totality of the circumstances.")

I. Knowledge

Proof of knowledge can be shown by circumstances from which inferences can be reasonably made that an individual knew of the existence of the particular illegal substance within the property in which it was found. State v. Berroa, 6 A.3d 1095, 1101 (R.I. 2010) (citing possession standard set forth in Gilman, 110 R.I. at 216, 291 A.2d at 508).

[4] Additionally there is an implicit element that the illegal substance is, in fact, the substance that the individual is charged with possessing and thus the composition of the substance must be proven. The First Circuit has held "that it was not necessary for the [illegal substance] to have been analyzed because proof based upon scientific analysis or expert testimony is not required to prove the illicit nature of a substance. Identification of a substance as a drug may be based upon the opinion of a knowledgeable lay person." United States v. Valencia-Lucena, 925 F.2d 506, 512 (1st Cir. 1991). Here, the trial judge, taking into account the knowledge, experience and testing of the Trooper, believed the Trooper's testimony that the substance was, in fact, marijuana under one ounce.

With regard to the element of knowledge, the record is replete with evidence from which the trial judge inferred that the Appellant knew, either immediately or soon after entering the vehicle that the car contained a jar and that the jar contained marijuana. First, the location of the substance found within the car was close to the Appellant, and this fact led the trial judge to conclude that the Appellant saw the substance. (Tr. at 15.) Additionally, focusing on the facts that the Appellant was driving the car of a person with whom he had a close relationship and the Appellant's claim that the substance belonged to his girlfriend, it is inconceivable that the Appellant was unfamiliar with the appearance of marijuana or would not recognize it upon sight. (Tr. at 12.); See In re Vannarith D., 731 A.2d 685, 689 (R.I. 1999) (where our Supreme Court held that a trial justice was allowed to properly draw inferences of the knowledge element of possession from allegations by defendant that substance belonged to a neighbor.)

The two inferences—that the Appellant has the knowledge to identify marijuana by sight and that he saw the substance—provided the trial judge with probative, evidence to conclude that Appellant knew the substance was in the car and that it was marijuana. See State v. Fortes, 110 R.I. 406, 408-09, 293 A.2d 506, 508 (1972) (where our Supreme Court overturned a conviction of drug possession while applying the Gilman standard for possession, reasoning in part, that "While there [was] ample testimony from which a fact finder could rationally conclude that defendant consciously possessed . . . the pills[,] there is no evidence whatsoever in that record which reasonably yields to the inference that defendant knew that the pills were barbiturates").

II. Intentional Control

In addition to knowledge of the substance's presence, the evidence must also show that the Appellant intended to exercise control over the illegal substance or inferred from evidence

that the Appellant intended to control the premises in which the illegal substance was found. See State v. Jenison, 442 A.2d at 875; see also State v. Berroa, 6 A.3d at 1101 ("[T]he fact the object is located within property under the individual's control does not, in and of itself, constitute constructive possession") (internal citations omitted). In other words, although it is clear that the Appellant was exercising control over the car, as the driver, his intentional control over the car alone is not enough to conclude that the Appellant was in constructive possession. Id.

The record also contains evidence from which the trial judge inferred that the Appellant intentionally exercised control over the illegal substance itself. In addition to the evidence offered by the Trooper which proved that the Appellant was the driver of the vehicle at the time of the accident, the testimony also indicated that the illegal substance was found in close proximity of the Appellant. (Tr. at 4-5.); see State v. King, 693 A.2d 658, 664 (R.I.1997) (where our Supreme Court emphasized a defendant's proximity to illegal drugs as important factor in finding constructive possession); see also United States v. Garcia-Carrasquillo, 483 F.3d 124, 130 (1st Cir. 2007) (proximity to drugs, when viewed with other circumstantial evidence may be enough to prove control over substance).

This testimony and reasonable inferences made by the trial judge, when viewed with the factual support on the record for satisfaction of the knowledge element, amounts to sufficient proof of the requirements needed to find the existence of intentional control. Accordingly this panel finds that there was reliable, probative and substantial evidence for the trial judge to make its conclusion that the Appellant had knowledge of the substance.

The trial judge, based on the totality of the circumstances, found the presence of the necessary elements of constructive possession. After carefully considering the evidence, this Panel finds that trial judge did not overlook or misconceive any material evidence on the whole

record. Thus, his conclusion that the Appellant constructively possessed the marijuana was not clearly erroneous or affected by error of law, and was consistent with State v. Gilman and State v. Jenison.

Conclusion

The trial judge's decision to sustain the charged violation is supported by legally competent evidence: the testimony of the Trooper and the facts of record. This Panel has reviewed the entire record before it and having done so finds that the trial judge's decision was (1) not clearly erroneous, (2) not affected by error of law, and (3) not an abuse of his discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

_____
Chief Magistrate William R. Guglietta (Chair)

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Associate Judge Edward C. Parker

_____
Magistrate Joseph A. Abbate

DATE: _____