STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF BARRINGTON	**:**	
	:	
v.	**:**	**C.A. No. T13-0081**
	:	**13101501255**
WILLIAM MATHEWS	**:**	

DECISION

PER CURIAM: Before this Panel on April 23, 2014—Magistrate Abbate (Chair, presiding), Judge Almeida, and Administrative Magistrate Cruise, sitting—is the Town of Barrington's (Appellant) appeal from a decision of Magistrate Goulart (Trial Magistrate), dismissing the charged violation of G.L. 1956 § 31-27-2.1(b), "Refusal to Submit to a Chemical Test." The Appellant was represented by the Attorney General before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On September 21, 2013, Officer Larson from the Barrington Police Department (Officer Larson or Officer) charged William Mathews (Appellee) with the above violation of the motor vehicle code. Appellee contested the charge and the matter proceeded to trial on December 12, 2013.

At trial the first witness presented was Officer Larson. He began his testimony by explaining his experience and training as a police officer, particularly in the area of DUI investigations. (Tr. at 9.) Specifically, the Officer testified to certain physical characteristics that he was taught to look for as signs of impairment, such as odor of alcohol, flushed red or blotchy face, bloodshot or watery eyes, and slurred speech. (Tr. at 4-5.) Additionally, Officer

Larson described the three Standardized Field Sobriety Tests (SFSTs) which he was trained to administer. (Tr. at 8.) The Appellee's counsel stipulated to Officer Larson's expertise in the administration of SFST's. Id.

On September 19, 2013, Officer Larson was dispatched to Route 114 at about midnight, after a caller[1] reported an erratic driver traveling the wrong way on the road. (Tr. at 10.) When Officer Larson spotted the vehicle matching the description, he explained that although it was not traveling in the wrong direction, he observed it straddling the white dotted line and crossing the double yellow line. (Tr. at 14.) Thereafter, Officer Larson testified that he initiated a traffic stop and approached the vehicle. Id.

Upon arresting the Appellee on suspicion of DUI, Officer Larson read the Appellee his rights for use at the scene. The Appellee requested to be examined by a physician. Officer Larson explained to Mr. Mathews that first he must be processed as quickly as possible. (Tr. at 36.)

At the station, Officer Larson began to read the rights for use at the station. The Appellee again expressed his desire to be examined by his physician. (Tr. at 67.) The Officer informed the Appellee that he would need to read the rights before Appellee could make a phone call to his attorney about the test. (Tr. at 68.) The Appellee called his lawyer and then signed the refusal form. The Appellee then waited for the justice of the peace to arrive so he could be arraigned. Over an hour later the justice of the peace arrived. The Appellee was arraigned at 2:58 A.M. and released. (Tr. at 47.)

During the hearing, the Trial Magistrate asked Officer Larson what opportunity was given to Appellee to exercise the right to be examined by a physician, Officer Larson responded

[1] The record was silent as to whether or not the identity of the caller was known to the police.

that he brought him back to the station and processed Appellee as quickly as possible, and faster than normal. (Tr. at 85.)

After testimony was presented, the Trial Magistrate rendered a bench decision dismissing the refusal charge. The Trial Magistrate held that the Officer did not provide the Appellee with a reasonable opportunity to immediately be examined by a physician. (Tr. at 130.) Specifically, he stated that it is unreasonable to wait until the justice of the peace shows up for an arraignment, before allowing the arrestee to exercise his or her right. Id. The Trial Magistrate held that when an arrestee requests a physician examination, the police have an obligation to afford that opportunity after processing. Id. The police can arrange for the examination by either informing the arrestee that a phone call may be made to schedule an examination or the police can transport the individual to the hospital or a physician's office. Id. The Trial Magistrate held that all of the other elements of a refusal under §37-21-2.1 were satisfied, except for compliance with §37-21-3. Accordingly, the Trial Magistrate found that the Town failed to meet its burden and dismissed 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:
>
> "(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

The Appellant, Town of Barrington contends that the Trial Magistrate committed an error of law when he dismissed the refusal charge against the Appellee. Specifically, the Town argues that it met its burden of proof because § 31-27-3 was followed and Appellee was afforded an opportunity to be examined by a physician. Conversely, the Appellee contends that his right to be seen immediately by a physician of his choosing was delayed by the arresting officer.

Under Rhode Island law, refusal to submit to a chemical test is a civil violation, and in order to sustain a violation under § 31-27-2.1, it must be proven

> "(1) that the law enforcement officer making the sworn report had reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of [drugs or alcohol]; (2) that the arrestee "refused to submit to the tests upon the request of a law enforcement officer; (3) that the arrestee had been informed of his or her rights in accordance with § 31–27–3, and; (4) that the arrestee had been informed of the penalties incurred as a result of the noncompliance." State v. Quattrucci, 39 A.3d 1036, 1042 (R.I. 2012)

Additionally, §31-27-3 codified the right for an accused to be physically examined after an arrest for suspicion of DUI, it provides

> "A person arrested and charged with operating a motor vehicle while under the influence of narcotic drugs or intoxicating liquor, whatever its alcoholic content, shall have the right to be examined at his or her own expense immediately after the person's arrest by a physician selected by the person, and the officer so arresting or so charging the person shall immediately inform the person of this right and afford the person a reasonable opportunity to exercise the right, and at the trial of the person the prosecution must prove that he or she was so informed and was afforded that opportunity."

It is well settled that when this Court examines an unambiguous statute, "there is no room for statutory construction and we must apply the statute as written." In re Denisewich, 643 A.2d 1194, 1197 (R.I. 1994). It is equally well established that, when confronted with statutory provisions that are unclear or ambiguous, our Supreme Court, as final arbiter of questions of statutory construction, will examine statutes in their entirety, and will "glean the intent and purpose of the Legislature 'from a consideration of the entire statute, keeping in mind [the] nature, object, language and arrangement' of the provisions to be construed." In re Advisory to the Governor, 668 A.2d 1246, 1248 (R.I. 1996) (quoting Algiere v. Fox, 404 A.2d 72, 74 (R.I. 1979)). The Rhode Island Supreme Court has held that "[a]lthough we must give words their

plain and ordinary meanings, in so doing we must not construe a statute in a way that would result in absurdities or would defeat the underlying purpose of the enactment." Commercial Union Ins. Co. v. Pelchat, 727 A.2d 676, 681 (R.I. 1999). "If a mechanical application of a statutory definition produces an absurd result or defeats legislative intent, this [C]ourt will look beyond mere semantics and give effect to the purpose of the act." Id. (internal citation omitted).

The refusal statute plainly states that in order to sustain a violation under statute, the motorist must be "informed of his or her rights in accordance with § 31–27–3." Sec. 31-27-2.1; see In re Denisewich, 643 A.2d at 1197 (applying a statute as written). Consequently, this Panel reads § 31-27-2.1 together with § 31–27–3, and pursuant to § 31–27–3, a motorist has the right to be examined by a physician of his or her own choice and at his or her own expense, immediately after the motorist's arrest. Sec. 31–27–3. To read these statutes separately would create an "absurd result" where a motorist is notified of his or her right to be examined by a physician of his or her choice at his or her own expense, but not able to exercise that right. See Commercial Union Ins. Co., 727 A.2d at 681.

Accordingly, the Town has the burden to prove that the arrestee was afforded an opportunity to be examined by a physician. See State v. Lefebvre, 78 R.I. 259, 262, 81 A.2d 348, 349 (1951) ("the prosecution must prove that such person was so informed and was afforded such opportunity.") In reading §31-27-3, our Supreme Court, in Lefebvre, interpreted the term "immediately" "in a broader relative sense." Id. However, the Court has not defined a "reasonable opportunity." See id. Alternatively, the Court has considered the meaning of a "reasonable opportunity" on a case by case basis. See id; see also State v. Langella, 650 A.2d 478 (R.I. 1994).

In Lefebvre, the suspected drunk driver did not invoke his right to be seen when his rights were read on the scene. 78 R.I. at 262-63, 81 A.2d at 349-50. Instead, he was given his rights twice and an officer gave him a telephone book to find his doctor's number. Id. Eventually, the officer called a doctor for the defendant from the police station. Id. When the doctor could not be reached, Lefebvre "did not insist upon any other call being made." Id. Thus, in Lefebvre, the Court found that defendant's rights were not prejudiced because Lefebvre was provided with a reasonable opportunity to be examined by a physician. Id.

Our Supreme Court further considered the defendant's rights under §31-27-3 in State v. Langella, 650 A.2d 478 (R.I. 1994). In Langella, the defendant was arrested, read his rights, and asked if he wished to make a phone call to a doctor. Id. at 479. Langella was informed of his right to be seen by his own physician, but he chose not invoke it. See id. The Court found that under those circumstances the police officer had properly advised the defendant of his rights and provided him with a reasonable opportunity in accordance with §31-27-3. Id.

In Dion v. State of R.I., the Rhode Island District Court also considered the defendant's rights under §31-27-3. A.A. No. 2010-246, Aug. 17, 2011. In Dion, the motorist expressed a desire to exercise his right to an independent medical examination, and the officer allowed the motorist to use the telephone for approximately 30 minutes in an effort to contact his physician. Id. at 14. Thus, the court determined that Dion's rights were not violated because he was given a reasonable opportunity to have an independent medical examination. Id. at 14-15.

In contrast to the aforementioned cases, the Appellee in this case attempted to invoke his right to be seen by a physician by specifically telling Officer Larson his desire to be examined. See Tr. at 36 and 67. Further, Appellee did this on two separate instances while in custody, and was not afforded an opportunity to arrange for the examination. See id. Officer Larson did not

inform the Appellee that he could use the phone to call a doctor. See id. at 85. The Appellee was simply released after he was arraigned, nearly three hours after his arrest. See id. Furthermore, when asked by the Trial Magistrate what steps were made to afford the Appellee the opportunity to invoke his right, the Officer responded that he expedited the process to take only a few hours. Id.

The Trial Magistrate found that processing the Appellee quickly and releasing him did not involve any actual steps to afford him any rights. Thus, the Trial Magistrate held that the Barrington Police Department failed to afford the defendant the opportunity to exercise his right under § 31-27-3.

In its appeal, the Town argues that the word "immediately" as used in the refusal statute does not create the strict timeframe that the Trial Magistrate interprets. The Town relies on our Supreme Court case of State v. Lefebvre to support its proposition that the term should be interpreted broadly.

This Panel believes that the Appellant's reliance on Lefebvre is misplaced due to the factual differences with the case at bar. 78 R.I. at 262-63, 81 A.2d at 349-50. Specifically, in Lefebvre the suspected drunk driver did not invoke his right to be seen when his rights were read on the scene. Id. Here, Appellee informed the Officer of his desire to be examined by a doctor at two different occasions, and the Officer did nothing. See Tr. at 36 and 67.

We interpret "immediately" within the context of the case. The Officer did not afford Appellant an opportunity for an examination. Even a broad interpretation of the word "immediately "in the statute, would not render the Trial Magistrate's decision erroneous. See Lefebvre, 78 R.I. at 262, 81 A.2d at 350 (explaining that a broad interpretation of immediately means "within such convenient time as is reasonably requisite, or may be reasonably necessary,

under the circumstances, to do the thing required; without unnecessary, unreasonable, or inexcusable delay, under all the circumstances"). Further, this Panel disagrees with the contention that the Trial Magistrate interpreted the term in a strict manner. A narrow interpretation of the word "immediately" would require that an individual invoking the right must be afforded such an opportunity as soon as he or she requests the examination. See id. Thus, this Panel does not find that the decision by the Trial Magistrate was clearly erroneous or an error of law.

Additionally, the Town suggests that a showing of prejudice must be made by the individual that the action by the police interfered with the ability to obtain exculpatory evidence to rebut the prosecution of the offense. In support of this proposition it relies on State v. Carcieri, which requires a showing of prejudice to dismiss a case for prosecutorial misconduct. 730 A.2d 11, 16 (R.I. 1999) (holding that when determining the appropriate remedy for police or prosecutorial misconduct, the court "will not dismiss a charge against a defendant unless that defendant has made a showing of demonstrable prejudice, or a substantial threat thereof"). We believe that the Appellant's reliance on this case is misplaced. The dismissal by the Trial Magistrate was not as a result of misconduct, but instead, because the Town failed to meet its burden of proof under § 31-27-3. The Town did not provide any evidence to prove that the Appellee was given an opportunity to be examined by a physician of his choice. Accordingly, this Panel upholds the decision of the Trial Magistrate dismissing the charge.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel conclude that the Trial Magistrate's decision was not affected by error of law, or in violation of constitutional provisions, and was supported by the reliable, probative, and substantial evidence of record. Substantial rights of the Appellant have not been prejudiced. Accordingly, the Appellant's appeal is denied.

ENTERED:

_____
Magistrate Joseph A. Abbate (Chair)

_____
Judge Lillian M. Almeida

DATE: _____

Note: Administrative Magistrate R. David Cruise participated in the decision but resigned prior to its publication.