

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF BRISTOL

v.

MELISSA MALIK

:  
:  
:  
:  
:

C.A. No. T12-0064  
12102500064; 12102500065

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
13 JAN 31 PM 2:07

DECISION

PER CURIAM: Before this Panel on October 10, 2012—Magistrate Noonan, (Chair, presiding) Administrative Magistrate Cruise, and Magistrate Goulart sitting—is Melissa Malik’s (Appellant) appeal from a decision of Judge Ciullo, sustaining the charged violations of G.L. 1956 § 31-20-9, “Obedience to stop sign,” and § 31-27-2.1, “Refusal to submit to a chemical test.”<sup>1</sup> The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On June 2, 2012, Sergeant Paul Medeiros (Sergeant Medeiros) of the Bristol Police Department observed a vehicle, operated by Appellant, proceed through two stop signs with its trunk open, matching the description of a vehicle which had previously been in an accident. After determining that Appellant had failed two sobriety tests and exhibited several indicia of being under the influence of alcohol, another officer of the Bristol Police Department, Officer Rachel Gaffney (Officer Gaffney), charged Appellant with the aforementioned violations,

<sup>1</sup> In addition to the charged violations of §§ 31-20-9 and 31-27-2.1, Appellant was also charged with violating § 31-47-9, “Operating motor vehicle without evidence of insurance.” However, this violation was dismissed at trial and is not presently before this Panel on appeal.

obedience to stop sign and refusal to submit to a chemical test, of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

Sergeant Medeiros began his trial testimony by describing his professional training and experience as a sergeant with the Bristol Police Department. (Tr. at 4-5.) Sergeant Medeiros then testified that at approximately 1:00 a.m. on the date in question, while standing by the bars between John Street and Thames Street to assist with crowd control, he was approached by an individual, named Mr. King. (Tr. at 6-9.) Mr. King told Sergeant Medeiros that he had heard a loud bang in a nearby parking lot and had seen a dark colored vehicle leave the parking lot with its trunk open. (Tr. at 9-10.) Sergeant Medeiros immediately jumped in his cruiser and went in the direction of the suspected vehicle while reporting the incident to the other officers. (Tr. at 12.) When Sergeant Medeiros reached High Street, he observed “. . . a dark colored sedan going up Church Street with its trunk bouncing up and down.” (Tr. at 13.) As Sergeant Medeiros tried to catch up to the vehicle, he observed the vehicle proceed through two stop signs without attempting to stop. (Tr. at 14.)

Sergeant Medeiros initiated a traffic stop of the vehicle and let dispatch know his location. (Tr. at 15-16.) As Sergeant Medeiros inspected the vehicle for damage, Patrolwoman Gaffney and Patrolman Estrella arrived on the scene. (Tr. at 16.) From this moment on, Sergeant Medeiros did not make contact with the operator of the vehicle because he recognized the license plate and realized that he previously had had a personal relationship with the operator. (Tr. at 55-56.) Patrolwoman Gaffney and Patrolman Estrella then took over the investigation. (Tr. at 19.) Officer Gaffney immediately approached the operator, identified at trial as Appellant, once she arrived at the scene. (Tr. at 79.) Officer Gaffney then asked Appellant whether she had consumed alcohol earlier in the evening. (Tr. at 83.) The Appellant replied that

she had consumed two beers earlier in the evening. (Tr. at 83-84.) As they conversed, Officer Gaffney observed “. . . Appellant’s bloodshot, watery eyes, . . . her words were mumbled and slurred,” and a “. . . very strong . . .” odor of alcohol emanating from Appellant’s breath. (Tr. at 82-83.)

Upon making these initial observations, Officer Gaffney asked Appellant whether she would consent to a pre-exit dexterity test and a finger dexterity test; Appellant consented to the tests, but did not complete them satisfactorily. (Tr. at 84-85.) Officer Gaffney then asked Appellant to step out of her vehicle and perform some field sobriety tests. (Tr. at 86-87.) Officer Gaffney administered the field sobriety tests in accordance with her professional training and experience, ultimately concluding that Appellant had failed the tests. (Tr. at 89-95.) Officer Gaffney testified that she placed Appellant under arrest, read her her “Rights for Use at Scene,” and transported her to the Bristol Police headquarters. (Tr. at 97-105.) At the station, Officer Gaffney read Appellant her “Rights for Use at Station” and offered Appellant the opportunity to make a confidential phone call. Id. Officer Gaffney testified that Appellant declined the opportunity to make a phone call. (Tr. at 106.)

In rendering his decision from the bench, the trial judge stated that he was satisfied that the state met its burden of proof in presenting its case. The judge stated all of the relevant facts that led him to his conclusion. Following the trial, the trial judge sustained the charged violation of §§ 31-20-9 and 31-27-2.1. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. The Panel’s decision is rendered below.

### 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

On appeal, Appellant contends that the trial magistrate’s decision was characterized by an abuse of discretion and was not supported by the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant maintains that the prior personal relationship between Sergeant Medeiros and the Appellant tainted the case. Appellant also puts into question the credibility of Sergeant Medeiros because of some contradictory testimony given during the trial.

Reviewing the record in its entirety, the members of this Panel are satisfied that the trial judge’s decision was not an abuse of discretion. The record reflects that Sergeant Medeiros had reasonable suspicion to initiate a traffic stop of Appellant’s vehicle. First, the stop was sufficient based on the information received by a witness, Mr. King, that Appellant’s vehicle was in an accident and the vehicle was operating with the trunk open. See State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996); see also State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1998). Secondly, while attempting to locate the vehicle in the accident, Sergeant Medeiros observed a dark colored sedan with its trunk flapping open. (Tr. at 13.) Additionally, after following Appellant’s vehicle for some time, Sergeant Medeiros observed the vehicle drive through two stop signs. (Tr. at 14.)

Furthermore, once Officer Gaffney made contact with Appellant, she observed Appellant’s bloodshot, watery eyes, “. . . her words were mumbled and slurred,” and a “. . . very strong . . .” odor of alcohol emanating from Appellant’s breath. (Tr. at 82-83.) When these personal observations are coupled with the fact that Appellant failed two of the standardized field sobriety tests administered by Officer Gaffney, the facts and circumstances known to Officer Gaffney were sufficient to cause a person of reasonable caution to believe that a crime—namely,

driving under the influence of liquor or drugs in contravention of § 31-27-2.1—had been committed by the Appellant. Bruno, 709 A.2d at 1049 (holding that the fact that defendant failed a number of field sobriety tests, smelled of alcohol, appeared confused and slurred his speech, and the fact that defendant stated to the officer that he had been drinking and he had had “a lot of alcohol” to drink gave the officer reasonable suspicion to believe the defendant was operating a motor vehicle under the influence of alcohol).

Based on the foregoing, Appellant’s contention that Sergeant Medeiros’ past personal relationship with Appellant tainted the case is unavailing as there was enough reliable, probative and substantial evidence, including Officer Gaffney’s testimony alone, in the record to sustain the charge.<sup>2</sup> The trial judge explained that he was convinced that Officer Gaffney’s investigation and arrest of Appellant were lawful and based upon probable cause, explaining that:

[Officer Gaffney] indicate[d] the person driving the vehicle indicated that she had been drinking . . . That she had been drinking at Aidan’s. That she had a couple of beers. That she had difficulty . . . finding her license...and her insurance . . . And--had trouble finding her registration, also. [Officer Gaffney] did some field sobriety tests, which Ms. Malik said she could take the test, but in fact, she did not finish the tests, any of them. (Tr. at 190-191.)

It is well settled that 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, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As such, this Panel is likewise satisfied that Officer Gaffney had reasonable grounds to believe that Appellant had been operating her motor vehicle while under the influence of intoxicating liquor. Accordingly, the trial magistrate’s decision to

---

<sup>2</sup> The second issue on appeal regarding Sergeant Medeiros’ contradictory testimony during the trial need not be addressed since there was enough evidence to uphold the charges without considering the Sergeant’s testimony. Substantial rights of the Appellant have not been prejudiced.

sustain the charged violation of §§ 31-20-9 and 31-27-2.1 was neither affected by error of law nor clearly erroneous in light of the reliable, probative, and substantial record evidence.

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision was not an abuse of discretion, erroneous in light of the reliable, probative, and substantial record evidence, or affected by other error of law.

Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.