STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF BURRILLVILLE	**:**	
	:	
v.	**:**	**C.A. No. T18-0002**
	:	**18416500110**
S.W.	**:**	

DECISION

PER CURIAM: Before this Panel on June 6, 2018—Magistrate Abbate (Chair), Judge Almeida, and Magistrate Noonan, sitting—is the Town of Burrillville's (Appellant) appeal from a decision of Judge Edward C. Parker (Trial Judge) of the Rhode Island Traffic Tribunal, dismissing the charged violation of G.L. 1956 § 21-28-4.01(C)(2)(iii), "Possession of marijuana less than or equal to one ounce by a person eighteen (18) years of age or older." The Appellant appeared before this Panel represented by counsel. S.W. (Appellee) also appeared before this Panel, *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On January 22, 2018, Officer Rebecca Carvalho (Officer Carvalho), of the Burrillville Police Department issued Appellee a citation for the aforementioned violation. Tr. at 2-3; Summons No. 18416500110. The Appellee contested the charged violation, and the matter proceeded to trial on March 22, 2018.

At trial, Officer Carvalho was the first witness to testify. (Tr. at 3.) Officer Carvalho testified that on January 22, 2018, Officer Yakey of the Burrillville Police Department reported an accident that led to a foot pursuit of a suspect. *Id.* When Officer Carvalho arrived at the scene,

she observed that Officer Yakey had control of Appellee on the ground after deploying his taser. *Id.* An ambulance subsequently arrived and took Appellee to the hospital for his injuries. *See id.*

Officer Carvalho remained with Appellee while he was in the hospital. *Id.* at 5. When Appellee was released, Officer Carvalho took him into custody. *Id.* at 5. Officer Carvalho clarified that "at the time of the accident, [Appellee] was under arrest for suspicion of [driving under the influence]." *Id*. However, Appellee was taken into custody for disorderly conduct and resisting arrest. *See id.*

After Appellee was arrested and transported to the hospital, his vehicle—which remained "in [the] front yard of someone's house"—needed to be towed. *Id.* Officer Carvalho explained that Burrillville Police Department's policy mandates that when a vehicle is towed, an officer must conduct an inventory search of "the vehicle to make sure there [are] no belongings inside, which could be stolen . . . ." *Id.* Officer Carvalho added that an inventory search is also done to "make sure nothing was taken," and so the Burrillville Police "can attest to what was in the vehicle before it was towed from the scene." *Id.*

In addition, Officer Jason Nault of the Burrillville Police Department testified at trial. *Id.* at 3. Officer Nault was identified as the officer that "searched the car at the accident scene and discovered the marijuana." *Id.* at 3. Officer Nault noted that the marijuana was located in the vehicle's center console. *Id.* During the search, Officer Nault "also located a ceramic pipe with burnt marijuana in it." *Id.* at 6.

Officer Nault indicated that he then "performed a field test of the contents [of the bag of marijuana], which came back with a positive reading for marijuana." *Id.* After returning to the police station, Officer Nault determined that the marijuana weighed two-tenths of one gram. *See*

id. Photographs of the marijuana and pipe were taken and later admitted into evidence at trial. *Id.* at 7.

The Appellee also testified at trial. *See id.* at 7-10. The Appellee testified that he believed the charged violation should be dismissed, arguing that the current circumstances were similar to a prior incident in which he had been involved: "[T]here was no reasonable suspicion to search [his] vehicle, and since [the marijuana] was in the center console, that is not technically on [his] person." *Id.* at 7-8. The Trial Judge interjected, stating that Appellee's argument raised "a good question. There [was] no smell. There [was] no anything else and he [was] in the hospital." *Id.* at 8. Officer Carvalho responded by reiterating the Burrillville Police Department's policy regarding inventory searches of vehicles that need to be towed. *Id.* at 9.

After hearing all of the testimony, the Trial Judge stated: "There is nothing going on except an inventory, so that means any car you ever stop, you can inventory, with no reason to believe the marijuana [] is in the vehicle." *Id.* at 12. The Trial Judge found that "there [was] no connection . . . between the search and the marijuana[,]" and that there was "[n]o reason to be looking for the marijuana." *Id.* at 13. Ultimately, the Trial Judge dismissed the charged violation. *Id.*

Thereafter, the Town of Burrillville timely appealed the Trial Judge's decision. Forthwith is this Panel's Decision.

II

Standard of Review

Pursuant to § 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 Mut. Ins. 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." *Id.* (*citing Envtl. Sci. 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." *Id.* Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant contends that the Trial Judge's decision—finding that the search of Appellee's vehicle was unconstitutional— is "[i]n violation of constitutional or statutory provisions" and "affected by error of law." *See* § 31-41.1-8(f)(1), (4). Specifically, Appellant argues that the search did not violate the Fourth Amendment as it was conducted pursuant to the recognized exceptions to the warrant requirement; namely, that the search was a search incident to lawful arrest and an inventory search. Moreover, Appellant asserts that even if the search was an illegal warrantless search when the search occurred, the evidence found during the search is admissible pursuant to the inevitable discovery exception to the exclusionary rule.

Fundamentally, the Fourth Amendment of the United States Constitution "protects the right to be free from 'unreasonable searches and seizures.'" *State v. Tejeda*, 171 A.3d 983, 995 (R.I. 2017) (quoting *Davis v. United States*, 564 U.S. 229, 230-31 (2001)). "'[S]earches conducted outside the judicial process, without prior approval by [a] judge or magistrate, are *per se* unreasonable . . . subject only to a few specifically established and well-delineated exceptions.'" *State v. Terzian*, 162 A.3d 1230, 1239 (R.I. 2017) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Those well-delineated exceptions to the warrant requirement include searches incident to arrest and inventory searches. *See Tejeda*, 171 A.3d at 995; *State v. Grant*, 840 A.2d 541, 550 (R.I. 2004).

A

Search Incident to Lawful Arrest

First, Appellant maintains that the search of Appellee's vehicle was a valid search incident to arrest. The Rhode Island Supreme Court has long held that a warrantless search

incident to arrest is permissible if it is of "the arrestee's person or the area 'within his [or her] immediate control . . . meaning the area from within which he [or she] might gain possession of a weapon or destructible evidence.'" *Tejada*, 171 A.3d at 995 (quoting *Arizona v. Gant*, 556 U.S. 332, 339 (2009)); *see also State v. Locke*, 418 A.2d 843, 847 (R.I. 1980) (*citing State v. DeWolfe*, 121 R.I. 676, 681, 402 A.2d 740, 742 (1979)) ("Rhode Island law recognizes . . . the specifically established exception[] to the requirements of both a warrant and probable cause include[s] a search incident to a lawful arrest.") The search incident to arrest doctrine applies to the search of a vehicle '"only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.'" *State v. Santos*, 64 A.3d 314, 318 (R.I. 2013) (quoting *Gant*, 556 U.S. at 343).

A review of the record before this Panel reveals that Officer Yakey conducted a traffic stop of Appellee's vehicle, because Appellee exhibited signs of intoxication. (Tr. at 4.) At that time, Appellee was resistant, attempting to flee from Officer Yakey both in his vehicle and on foot. *Id.* at 3, 5. After Appellee was taken to the hospital by ambulance, Officer Nault conducted the search of Appellee's vehicle, which led to the discovery of the marijuana and pipe. *Id.* at 3.

In light of the fact that Appellee had been arrested and taken to the hospital prior to the search of his vehicle, this Panel finds that the search exceeded the scope of the search incident to arrest exception. When the search occurred, Appellee was secured in an ambulance with Officer Carvalho and, therefore, not within reaching distance of the vehicle's passenger compartment. *Santos*, 64 A.3d at 318 (quoting *Gant*, 556 U.S. at 343). Being that there was no risk that Appellee could gain possession of weapons or destructible evidence within the vehicle at the time of Officer Nault's search, the search incident to arrest exception does not apply. *Tejada*, 171 A.3d at 995 (quoting *Gant*, 556 U.S. at 339).

B

Inventory Search

The Appellant also contends that the Trial Judge erred by finding that the search of Appellee's vehicle was not a valid inventory search. The Rhode Island Supreme Court recognizes that inventory searches "are an exception to the search warrant requirement of the Fourth Amendment." *See State v. Grant,* 840 A.2d 541, 550 (R.I. 2004) (citing *South Dakota v. Opperman*, 428 U.S. 364, 373 (1976)). Our Supreme Court has stated: "Inventory searches serve three purposes: (1) to protect the owner's property while it remains in police custody, (2) to protect the police against claims or disputes over lost or stolen property, and (3) to protect the police or others from potential danger." *Id.* at 550 (citing *State v. Beaucage,* 424 A.2d 642, 644 (R.I. 1981)).

For an inventory search to be valid, it "must be conducted pursuant to *standardized criteria*, or as part of an *established routine*; it may not serve as a pretext for 'a general rummaging in order to discover incriminating evidence.'" *Id.* (quoting *Florida v. Wells,* 495 U.S. 1, 4 (1990)). Importantly, Rhode Island jurisprudence "recognize[s] the legitimacy of inventory searches conducted on an arrestee's personal effects inside a motor vehicle, as well as those searches extending beyond motor vehicles and encompassing one's personal property." *Id.* (citing *Beaucage,* 424 A.2d at 644; *State v. Halstead,* 414 A.2d 1138, 1149 (R.I. 1980)).

In the present matter, the record indicates that Officer Carvalho testified that Appellee's vehicle needed to be towed from the scene since the vehicle remained "in [the] front yard of someone's house" after Appellee had been arrested and transported to the hospital. (Tr. at 5.) Officer Carvahlo explained: "Before we towed the vehicle, policy is that . . . [w]e do an inventory search, just to make sure that nothing [is] taken, and we can attest to what was in the

vehicle before it was towed rom the scene." *Id.* When the Trial Judge questioned why police searched the vehicle after Appellee had been arrested and taken to the hospital, Officer Carvalho reiterated: "Per [the] policy of our department, whenever we tow a vehicle, we do an inventory search of the vehicle to make sure that there is no property of value that might be stolen, that [Appellee] could allege was stolen, once the vehicle was towed." *Id.* at 9.

After reviewing the record, this Panel finds that the search of Appellee's vehicle was a permissible inventory search. Officer Carvalho's testimony clearly indicates that the search was '"conducted pursuant to *standardized criteria*, or as part of an *established routine*[,]"' as it is Burrillville Police Department's policy—as well as the policy of most police departments—to conduct an inventory search of vehicles that must be towed. *See Grant,* 840 A.2d at 550 (quoting *Wells*, 495 U.S. at 4). Moreover, the search served the necessary purpose of protecting Appellee's property while the vehicle is in police custody, protecting the Burrillville police against claims over stolen property, and protecting against any potential dangers in the vehicle. *See id.* (citing *Beaucage*, 424 A.2d at 644).

Therefore, this Panel finds that the search of Appellee's vehicle was not a violation of Appellee's Fourth Amendment rights as it was within the inventory search exception to the search warrant requirement. As such, the Trial Judge's decision is "[i]n violation of constitutional or statutory provisions" and "affected by error of law." *See* § 31-41.1-8(f)(1), (4).

C

Inevitable Discovery Doctrine

Having found that the search was a valid inventory search, this Panel need not address Appellant's argument that the inevitable discovery exception to the exclusionary rule applies.

However, for the purpose of discussing each argument raised by Appellant, this Panel will briefly address the issue.

The exclusionary rule applies "to evidence that was the indirect product or 'fruit' of unlawful police conduct." *Nix v. Williams*, 467 U.S. 431, 441 (1984). However, the United States Supreme Court has emphasized "that evidence that has been illegally obtained need not always be suppressed." *Id.* As such, courts recognize the inevitable discovery doctrine, which stands for the proposition that "evidence derived from sources separate from a constitutional violation need not be suppressed under the exclusionary rule." *State v. Barkmeyer*, 949 A.2d 984, 998 (R.I. 2008) (citing *Nix*, 467 U.S. at 441).

Here, the search that uncovered the marijuana in Appellee's vehicle was not illegal; therefore, the evidence cannot be suppressed pursuant to the exclusionary rule. *See Id.*; Tr. at 3. In finding that Officer Nault conducted a valid inventory search, the inevitable discovery doctrine does not apply.

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel determine that the Trial Judge's decision is "[i]n violation of constitutional or statutory provisions" and "affected by error of law." *See* § 31-41.1-8(f)(1), (4). The substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted; the Trial Judge's decision is reversed, and the case is remanded for a new trial.

ENTERED:

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Magistrate Joseph A. Abbate (Chair)

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Judge Lillian M. Almeida

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Magistrate William T. Noonan

DATE: _____