STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT — RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH SMITHFIELD :
:
V. : C.A. No. T11-0034
:
THOMAS CASPERSON :

DECISION

PER CURIAM: Before this Panel on July 20, 2011—Chief Magistrate Guglietta (Chair, presiding), Judge Parker, and Magistrate Noonan, sitting—is the State of Rhode Island's (Appellant) appeal from a decision of Magistrate DiSandro, dismissing the charged violations of G.L. 1956 § 31-27-2.1, "Refusal to submit to a chemical test" and G.L. 1956 § 31-27-2.3, "Revocation of license upon refusal to submit to preliminary breath test," brought against Thomas Casperson (Appellee). Both parties were represented by counsel before this Panel. Jurisdiction is pursuant to G.L 1956 § 31-41.1-8.

Facts and Travel

On March 23, 2011, at approximately 12:15 a.m., Patrolman Ridge of the North Smithfield Police Department received a call from police dispatch that a blue Chevy pickup truck was driving erratically and had pulled into a McDonald's parking lot. Dispatch had received a call from Karen Labossiere, stating that a "blue Chevy pickup" had almost side swiped the vehicle she was driving on Route 116. (Labossiere Tr. at 3-4.) Ms. Labossiere decided to follow the vehicle to "keep an eye on him." (Labossiere Tr. at 4.) While Ms. Labossiere was following the vehicle, she observed the vehicle weave from one side of the road to the other. Id.

Ms. Labossiere continued to follow the vehicle until it pulled off the road and into the McDonald's parking lot. Id. At this point, Ms. Labossiere called the North Smithfield Police Department to report what she had observed. Id. Ms. Labossiere remained in the parking lot with the vehicle until the police arrived. (Labossiere Tr. at 5.)

Upon arriving at the scene, Patrolman Ridge observed the vehicle, which matched the description provided by dispatch, driving in the parking lot. (Ridge Tr. at 6.) Patrolman Ridge was unaware of the identity of the caller and the fact that the caller was also in the parking lot. Patrolman Ridge's investigation consisted of observing the vehicle operate in the parking lot. Patrolman Ridge observed the vehicle leave and re-enter the parking lot, which he described as "unusual." (Ridge Tr. at 8.) Patrolman Ridge did not observe the vehicle hit any other vehicles while in the parking lot, nor did he observe any erratic driving. (Ridge Tr. at 25.)

The vehicle then properly exited the parking lot for a second time and proceeded onto Eddy Dowling Highway. (Ridge Tr. at 8.) Patrolman Ridge followed the vehicle and did not observe any traffic violations. (Ridge Tr. at 25.) After following the vehicle for a short distance, Patrolman Ridge conducted a traffic stop. Id.

Patrolman Ridge approached the vehicle and identified the operator as the Appellee. (Ridge Tr. at 9.) Patrolman Ridge detected a strong odor of alcohol on the Appellee's breath. Id. Patrolman Ridge also observed that Appellee had bloodshot, watery eyes and was having trouble removing his license from his wallet. Id.

Suspecting that the Appellee was driving while intoxicated, Patrolman Ridge asked Appellee to exit his vehicle to perform a series of field sobriety tests. (Ridge Tr. at 10.) Patrolman Ridge conducted several tests, and according to Patrolman Ridge, the Appellee failed all of the tests. (Ridge Tr. at 10-14.) Based on Appellee's performance of the tests, Patrolman

Ridge asked if Appellee would submit to a preliminary breath test, which Appellee refused. (Ridge Tr. at 14.) At this time, Patrolman Ridge placed Appellee under arrest. Id.

Patrolman Ridge charged Appellee with violating § 31-27-2.1, "Refusal to submit to a chemical test" and § 31-27-2.3, "Revocation of license upon refusal to submit to preliminary breath test." Ms. Labossiere went to the police station the following day to give a statement describing what she saw. (Labossiere Tr. at 5.) Appellee contested the charge, and the matter proceeded to trial. At trial, Ms. Labossiere and Patrolman Ridge recounted the above facts.

At the conclusion of the prosecution's case in chief, the trial magistrate dismissed the violations against the Appellee. (Decision Tr. at 15.) In dismissing the violations, the trial magistrate held that the traffic stop violated the Appellee's Fourth Amendment rights. Specifically, the trial magistrate held that Patrolman Ridge did not have reasonable suspicion to stop Appellee. (Decision Tr. at 14.) The trial magistrate reasoned that "anonymous tips in the absence of additional corroboration typically lack the indicia of reliability needed to justify a stop under the reasonable suspicion standard." (Decision Tr. at 12.) The trial magistrate concluded that based upon Patrolman Ridge's observations at the scene; there were no articulable facts and no reasonable grounds to conclude that Appellee was operating his motor vehicle while under the influence of alcohol. (Decision Tr. at 14.) Appellant timely filed this appeal.

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 on questions of fact. The appeals panel may

affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced 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 following 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, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing a hearing judge'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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

Appellant argues that the trial magistrate erred in determining that Patrolman Ridge lacked reasonable suspicion to conduct an investigatory stop of Appellee's vehicle. Appellant argues that according to the "fellow-officer rule," an officer responding to a request for aid from

another officer is entitled to assume that the requesting officer has sufficiently determined probable cause. State v. Austin, 641 A.2d 56, 58 (R.I. 1994). Extending the rationale of the "fellow-officer rule," our Supreme Court has found that a probable-cause inquiry can rely on the collective knowledge of the police department; it is not limited to merely what the arresting officer knew. State v. Duffy, 112 R.I. 276, 308 A.2d 796 (1973). In expanding on the idea of "collective knowledge," the Duffy Court provided that "information relayed to a police officer via police radio may provide probable cause to arrest." Id. at 280, 308 A.2d at 799.

"Under the collective-knowledge doctrine—also called the "fellow officer rule"—the knowledge of one officer supporting a search or seizure may be imputed to other law enforcement officers acting in conjunction with the knowledgeable officer." U. S. v. Hensley, 469 U.S. 221 (1985). The doctrine, originally applied to probable cause determinations, has been extended to the lesser standard of reasonable suspicion. See id. at 221 (The Supreme Court of the United States determined that the investigatory stop of the defendant in reliance on another police department's wanted flyer, which was issued on the basis of articulable facts supporting reasonable suspicion, was constitutionally reasonable.) Additionally, our Supreme Court has stated that reasonable suspicion is the standard to determine the lawfulness of a stop regarding a violation of § 31-27-2.1. See State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996) ("Under the language of the statute it is clear that reasonable suspicion is the proper standard for evaluating the lawfulness of a stop.)

Appellant's argument that the "fellow-officer rule" applies to the instant matter is misguided. The purpose of the rule is that one highly-trained police officer may rely on another highly-trained officer's determination of probable cause or reasonable suspicion. The rule creates efficiency for officers and provides for greater officer safety. However, the rule

presupposes that a police officer is making the original reasonable suspicion determination, not a private citizen. See generally Am. Jur. 2d Arrest § 37 ("[A] police officer can make a lawful arrest even without personal knowledge sufficient to establish probable cause, so long as the officer is acting upon the direction of or as a result of communication with a fellow officer or another police agency in possession of information sufficient to constitute probable cause for the arrest."(emphasis added)). The rule does not extend to private citizens because they are not trained in legal principles such as reasonable suspicion and probable cause. See id. It would be imprudent to extend the rule's application to citizens because they do not possess the same training as police officers when it comes to DUI detection and other legal principles, such as reasonable suspicion and probable cause.

Instead tips from citizens are examined under different principles. The Supreme Court of the United States has stated that "[r]easonable suspicion can be based upon information from an informant if the tip bears sufficient indicia of reliability." Adams v. Williams, 407 U.S. 143, 147 (1972); see also Alabama v. White, 496 U.S. 325, 328 (1990). Additionally, when scrutinizing whether an informant's tip provides reasonable suspicion, the Court will look to a number of factors, including the officer's familiarity with the informant and the past reliability of the informant. U.S. v. Monteiro, 447 F.3d 39, 44 (1st Cir. 2006) (citations omitted). The "determination entails an examination of all the circumstances bearing upon the tip itself and the tipster's veracity, reliability, and basis of knowledge." U.S. v. Romain, 393 F.3d 63, 71 (1st Cir. 2004). However, tips are not to be automatically presumed to be true. The First Circuit stated that police should not be "indiscriminately credit[ing] gossip or innuendo." U.S. v. Barnes, 506 F.3d 58, 64 (1st Cir. 2007).

Furthermore, the police may stop a person for investigatory purposes if the police have "a reasonable suspicion based on articulable facts that the person is engaged in criminal activity." State v. Keohane, 814 A.2d 327, 330 (R.I. 2003). "An investigatory stop is defined as [a] brief stop of a suspicious individual, in order to determine his [or her] identity or to maintain the status quo momentarily while obtaining more information, [such a stop] may be most reasonable in light of the facts known to the officer at the time." State v. Gomes, 764 A.2d 125, 132 -133 (R.I. 2001) (quoting State v. Abdullah, 730 A.2d 1074, 1076 (R.I. 1999)) (internal quotations omitted.) "To determine whether an officer's suspicions are sufficiently reasonable to justify an investigatory stop, the Court must take into account the totality of the circumstances." Id. (citing United States v. Cortez, 449 U.S. 411, 417 (1981); and State v. Tavarez, 572 A.2d 276, 278 (R.I. 1990)).

Appellant contends that the information provided to the dispatch by Ms. Labossiere—including her name, a description of the suspect vehicle including license plate number and location, and that Appellee driver was driving all over the road and almost sideswiped some cars—was sufficient to provide Patrolman Ridge with reasonable suspicion.

However, it is well settled that a dispatch report of a suspected drunk driver, corroborated only by the location, make, model, and license plate, does not provide reasonable suspicion to stop a vehicle under prevailing Rhode Island case law. State v. Bjerke, 697 A.2d 1069, 1072 (R.I. 1997); State v. Soroka, 112 R.I. 392, 311 A.2d 45, 47 (1973). In Bjerke, the "Warwick police received an anonymous telephone call reporting that the operator of a tan-colored Oldsmobile bearing license-plate number TV-536 was traveling on Airport Road near Post Road and was possibly intoxicated." Bjerke, 697 A.2d at 1069. The investigating police officer

stopped the vehicle, but did not observe any erratic driving prior to the stop. Id. Our Supreme Court agreed with this Panel's determination that:

> "[T]he officer's reliance upon information furnished by the anonymous telephone caller concerning the probable intoxication of the driver of a tan Oldsmobile bearing license plate number TV-536 did not furnish reasonable suspicion that would permit the officer's stop of the vehicle and the detention of the defendant driver in order to determine his sobriety."[1] Id. at 72.

In the instant matter, the caller provided nearly an identical amount of information as the anonymous caller in Bjerke. Patrolman Ridge was provided with a dispatch report noting that an erratic operator was operating "all over the road" and was now in a parking lot in North Smithfield. The vehicle was identified as a blue Chevy pickup, with registration 30792. Like the officer in Bjerke, Patrolman Ridge had no evidence to corroborate any erratic operation of the motor vehicle before making the investigatory stop. See id. To the contrary, Patrolman Ridge observed only proper operation of the suspected motor vehicle, which directly contradicted the information provided by dispatch and Ms. Labossiere. See Adams v. Williams, 407 U.S. 143, 147 (1972) (When an initial police investigation into a tip of illegal activity reveals factors inconsistent with the tip, the reasonable suspicion analysis must take these indicia of unreliability into account along with any indicia of reliability.); but see In re John N., 463 A.2d 174, 177 (R.I. 1983) (The Court determined that the police officer's investigatory stop was reasonable because he had received departmental information regarding a specific criminal act, and the officer substantiated the activity with his own observations.).

The present case is also similar to the facts contained in Soroka. 112 R.I at 392, 311 A.2d at 46. In Soroka, the South Kingstown Police received an anonymous tip that a "tall, white male hitchhiker . . . dressed in a khaki jacket, dungarees and a ski-type toque" had recently left

[1] It should be noted that Bjerke was decided on other grounds.

his vehicle and could be found hitchhiking on Tower Hill Road at the intersection of Route 1 and Route 138. Id. The caller in Soroka stated that he believed the hitchhiker was in possession of marijuana and possibly other drugs. Id. A police officer identified the hitchhiker precisely where the caller said he would be, placed him under arrest, and patted him down locating marijuana on his person. Id. In Soroka, our Supreme Court stated "that kind of naked assertion, emanating as it did from an unidentified and unproven source, could not reasonably have justified the South Kingstown police in concluding that their unidentified informant had a reasonable opportunity to acquire the personal knowledge he purported to possess." Id. at 47. The Court went on to say that "for aught they knew his reported belief was no more than a baseless suspicion or spiteful prank." Id. (internal quotations omitted.) In so holding, the Court determined that:

> "[W]hat was relayed to the arresting officer concerning the defendant's appearance and where he would be found, while accurate, was insufficient as a basis for an arrest unless accompanied by 'reasonably trustworthy information' placing him in criminal circumstances, and in that aspect the knowledge supplied the arresting officer was deficient." Id.

In the present case, just as in Soroka, the caller merely identified the Appellee's appearance (in this case, his vehicle) and where the Appellee could be found. See id. It is precisely this type of information that Soroka has deemed insufficient to detain or seize a defendant. See id.

While the one distinguishing fact from the case at bar and Soroka is that the tipster here was not anonymous. It is still does not change this Panel's ultimate conclusion about Patrolman Ridge's investigatory stop of the Appellee. It is well-settled that a known informant increases the indicia of reliability to sustain a reasonable suspicion finding. See Florida v. J.L., 529 U.S. 266 (2000) (The Court held the indicia of reliability is increased because the informant's

reputation can be assessed and can be held responsible for fabrication.) Here, the informant Ms. Labossiere was a known informant. She identified herself to the dispatch, gave a statement to the police, and testified at the trial. Thus, the indicia of reliability relating to information she provided is increased. However, despite the identification of Ms. Labossiere, her overall reliability was unknown at the time of the stop. There is no evidence in the record that she had provided information to the police before that night. Additionally, Patrolman Ridge was unfamiliar with Ms. Labossiere at the time the tip was received, thus limiting his ability to corroborate the tip. The lack of independent corroboration by Patrolman Ridge offsets any reliability Ms. Labossiere had at the time she gave the tip.[2] Simply stated, Ms. Labossiere's reliability as an informant and her tip in general were unreliable at the time Patrolman Ridge first witnessed the Appellee. See State v. Keohane, 814 A.2d 327, 330 (R.I. 2003) (Our Supreme Court stated that a tip with unknown reliability can be corroborated by independent police investigation and the resulting investigation can establish probable cause.); see also Richard DiPrete v. State of Rhode Island, A.A. No. 10-0173 (court held that reliability of the informant is the key determination in a reasonable suspicion analysis) (citing White, 496 U.S. 325)).

It is indeed well established under both Rhode Island law and the United States Supreme Court's decision in Terry v. Ohio, 392 U.S. 1 (1968) that a police officer must have reasonable suspicion based upon specific and articulable facts. See id. at 30. To hold that reasonable suspicion is present based only on a private citizen's phone call to the authorities would amount to the deputization of all private citizens. Without requiring corroborating observable facts made by a police officer, any private citizen with a grudge, or any other motive, would have the power to effectuate a stop of a potentially innocent citizen. While this Panel remains mindful of the

[2] It is important to distinguish an anonymous tip and a tip with an identified caller. While the former has no identity and the latter does, the identification of a party alone does not provide an indicia of reliability necessary to form reasonable suspicion.

dangers of drunk driving, and indeed the magnitude and volume of DUI refusal cases heard on a yearly basis, this Panel must also adhere to the protections afforded to citizens by the United States Constitution. As our Supreme Court has stated, "a determination of [reasonable suspicion] . . . is not whether particular conduct is 'innocent' or 'guilty.'" Abdullah, 730 A.2d at 1077.

Furthermore, the reasonableness of a stop is to be measured by what the officer knew before he or she conducted the search or seizure. See J.L., 529 U.S. at 271. Here, at the time of the stop of Appellee, Patrolman Ridge—possessed knowledge of an uncorroborated tip from Ms. Labossiere and saw proper operation of the Appellee's vehicle—did not have reasonable suspicion to conduct an investigatory stop. Finally, nothing in the record demonstrates that the trial magistrate overlooked or misconceived the evidence at trial. After hearing testimony from both Patrolman Ridge and Ms. Labossiere, the trial magistrate determined that Patrolman Ridge lacked the requisite reasonable suspicion to stop Appellee. This Panel feels that this decision is supported by the facts presented at trial and the aforementioned case law.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel concludes that the trial magistrate's decision was not clearly erroneous or affected by error of law. Substantial rights of the Appellant have not been prejudiced. Accordingly, the Appellant's appeal is denied.