

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH SMITHFIELD

v.

GEORGE FAYAD

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**C.A. No. T13-0003
07415018551**

PER CURIAM: Before this Panel on March 13, 2013—Chief Magistrate Guglietta (Chair, presiding), Magistrate DiSandro, and Magistrate Goulart sitting—is the appeal of George Fayad (“Appellant”) from a decision of Administrative Magistrate Cruise (trial judge), sustaining the charged violation of G.L. 1956 § 31-27-2.1, “Refusal to submit to chemical test.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On July 24, 2012, Lieutenant Jared Salinaro (“Officer Salinaro” or “Officer”) of the North Smithfield Police Department charged the Appellant with a violation of § 31-27-2.1, “Refusal to submit to a chemical test.” The Appellant contested the charge, and the matter proceeded to trial on January 16, 2013.

On July 24, 2012, at approximately 1:23 a.m., Officer Salinaro was on uniformed patrol in a marked cruiser traveling northbound on Route 146. (1/16/13, Tr. at 15.) At that time, Officer Salinaro observed, in his rearview mirror, a vehicle traveling at a high rate of speed in his direction. (1/16/13, Tr. at 16.) The vehicle proceeded to approach the Officer at a high rate of speed until it was one foot away from the Officer’s vehicle, when it swerved into the left lane

and passed the Officer. (1/16/13, Tr. at 17.) Officer Salinaro then observed Appellant's vehicle swerve into the left lane and back into the right lane of travel. (1/16/13, Tr. at 18.)

Subsequently, Officer Salinaro initiated a traffic stop and identified the vehicle's operator as George Fayad. (1/16/13, Tr. at 18-19.) Upon approaching the vehicle, Officer Salinaro detected a slight odor of alcohol on the Appellant, glassed over watery eyes, and slurred speech. (1/16/13, Tr. at 20.) When asked by Officer Salinaro whether he had consumed alcohol, Appellant responded that he had had two glasses of wine earlier in the evening. Id. In his testimony, Officer Salinaro also acknowledged that Appellant had difficulty locating his driver's license and registration. Id.

The Officer requested that the Appellant submit to a field sobriety test, to which the Appellant consented. (1/16/13, Tr. at 21.) At trial, Officer Salinaro testified that he was properly trained in field sobriety tests and has professional experience in DUI investigations, having participated in more than twenty DUI arrests. (1/16/13, Tr. at 14.) Before the tests were administered, the Appellant notified Officer Salinaro that he had an equilibrium problem, but reassured the Officer that it should not affect his performance. (1/16/13, Tr. at 32.)

After administering the sobriety tests and concluding that the Appellant was intoxicated, Officer Salinaro took Appellant into custody and transported him to the police station. (1/16/13, Tr. at 39.) Before transporting Appellant to the police station, Officer Salinaro advised him of his rights by reading the "Rights For Use at the Scene" card. Id. In the station's processing room, Officer Salinaro advised the Appellant of his rights by reading the "Rights For Use at the Station" form. (1/16/13, Tr. at 42.) Officer Salinaro then asked the Appellant to submit to a chemical breath test. (1/16/13, Tr. at 44.) The Appellant refused the request. Id. Thereafter,

Officer Salinaro asked the Appellant if he would like to make a phone call. Id. Appellant declined this offer. Id.

Subsequent to Officer Salinaro's testimony, Lieutenant Greg Landry, employed as a police officer for the North Smithfield Police Department, testified to the events that transpired on the very early morning of Appellant's traffic stop. Officer Landry testified that he responded to the traffic stop to provide assistance to arresting Officer Salinaro. (1/16/13, Tr. at 132.) He then testified that he was present when Appellant was processed and booked at the police station. Id. He also witnessed Officer Salinaro read Appellant his rights and afford him his right to a confidential phone call. (1/16/13, Tr. at 133.)

At the conclusion of the trial, the trial judge sustained the charge of § 31-27-2.1. (1/18/13, Tr. at 15.) In coming to this conclusion, the trial judge considered the totality of the circumstances, including Officer Salinaro's observation of Appellant's tires crossing the white lines, his odor of alcohol, his bloodshot eyes, the Appellant's admission to consuming two alcoholic drinks prior to operating the vehicle, his difficulty with locating the documents requested by the officer, and his failing field sobriety tests. (1/18/13, Tr. at 11-13.) Aggrieved by the trial judge's decision, the Appellant timely filed an appeal.

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 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." Link, 633 A.2d at 1348 (citing Envtl. 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 argues that the trial judge's decision is affected by reversible error. Appellant's argument on appeal is that there were no reasonable grounds to request the Appellant

to submit to a chemical test. Appellant also contends that the testimony given by the Officer at trial was incredible because the various times reported did not “add up.”

A. Reasonable Suspicion

The Appellant first argues that Officer Salinaro did not have reasonable grounds to request Appellant to submit to a chemical test. Section 31-27-2.1 of Rhode Island General laws states, in pertinent part, that a “law enforcement officer making [a] sworn report [must have] reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor” (Emphasis added.) Our Supreme Court has stated the reasonable grounds standard is the same as the reasonable suspicion standard. 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.”). “[R]easonable suspicion [is] based on articulable facts that the person is engaged in criminal activity.” State v. Keohane, 814 A.2d 327, 330 (R.I. 2003). To determine whether an officer’s suspicions are sufficiently reasonable, 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. Tavaréz, 572 A.2d 276, 278 (R.I. 1990)).

In this case, the trial judge found by clear and convincing evidence that the Officer had reasonable grounds to request Appellant to submit to a chemical test. (1/18/13, Tr. at 13.) He reasoned that Officer Salinaro considered the totality of the circumstances, including the Officer’s observation that the Appellant’s tires crossed the white lines, the odor of alcohol, the Appellant’s bloodshot eyes, the Appellant’s admission to consuming two alcoholic beverages prior to operating the vehicle, the Appellant’s difficulty with locating the documents requested by the officer, and the failed field sobriety tests. (1/18/13, Tr. at 11-13.) The trial magistrate

also noted that the Appellant came dangerously close to the Officer's marked police cruiser before switching into the next lane. (1/18/13, Tr. at 15.)

This Panel finds no abuse of discretion made by the trial judge in his findings. The trial judge's decision was supported by Officer Salinaro's testimony and the exhibits entered into evidence at trial. See Link, 633 A.2d at 1348. Therefore, the judge's decision was supported by reliable, probative, and substantial evidence on the whole record before him.

B. Incredible Testimony

In Link, our Supreme Court made clear 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, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Officer or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [the Trooper and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony, the trial judge determined that the Officer's testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. "[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact." Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the trial judge found it significant that ". . . Mr. Fayad's vehicle crossed the line on his lane . . . clearly enough to

establish a lane roadway violation, and . . . Mr. Fayad came within one foot of [Lieutenant Salinaro's] marked police cruiser" (1/18/13, Tr. at 15.) The judge concluded by stating, "[t]hese statements, which I find to be credible were undisputed at trial" Id. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (The [appellate court] should give great deference to the [trial judge's] findings and conclusions unless clearly wrong.)

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 supported by the reliable, probative, and substantial evidence of record. 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)

Magistrate Domenic A. DiSandro III

Magistrate Alan R. Goulart

DATE: _____