

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

EDWARD PEREZ

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C.A. No. T08-0099

DECISION

08/27/08 11:11:35  
STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL

PER CURIAM: Before this Panel on August 27, 2008, Judge Ciullo (Chair), Judge Parker, and Magistrate DiSandro sitting, is the State of Rhode Island's (State) appeal from Magistrate Noonan's decision, dismissing the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test." The Appellee, Edward Perez (Appellee), was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On February 24, 2008, Appellee was charged with violating the aforementioned motor vehicle offense by an officer of the Warwick Police Department. The Appellee contested the charge, and the matter proceeded to trial.

Prior to trial, Appellee filed a Motion to Dismiss the charged violation of § 31-27-2.1. (Tr. at 2.) As grounds for his dismissal motion, Appellee argued that there was insufficient evidence to establish probable cause to arrest Appellee. Id.

At trial on April 4, 2008, the parties stipulated to all of the essential elements of § 31-27-2.1, with the exception of the operation of Appellant's motor vehicle within the

State of Rhode Island on the date in question.<sup>1</sup> (Tr. at 1.) Following the trial, the trial magistrate denied Appellee's Motion and found that Appellee had been driving his motor vehicle while he was under the influence of intoxicating liquor. Id. The Appellee filed a timely appeal to this Panel. Id.

On June 4, 2008, Appellee appeared before an Appeals Panel consisting of Judge Ciullo, the Chairperson, Judge Parker, and Magistrate DiSandro. (Tr. at 2.) The Appellee argued that the trial magistrate's decision sustaining the charged violation was affected by error of law and clearly erroneous in view of the record evidence because the law enforcement officer making the sworn report pursuant to § 31-27-2.1 did not have reasonable grounds to believe that Appellee had been driving a motor vehicle within the State of Rhode Island while he was under the influence of intoxicating liquor. Id. However, as the proceeding unfolded, the Panel focused its attention on whether Appellee had waived his right to challenge the issue of probable cause to arrest Appellee, based on the stipulation entered into by the parties at trial. Id.

Having reviewed all the evidence before it, the Panel ultimately concluded that the trial magistrate did not find specifically that probable cause existed to arrest Appellee and did not issue a ruling on Appellee's pre-trial Motion to Dismiss.<sup>2</sup> (Tr. at 3.) The Chairperson of the Panel remanded the case to the trial magistrate to make specific findings on the issue of probable cause and to issue a ruling on Appellee's dismissal motion. Id.

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<sup>1</sup> Section 31-27-2.1 reads, in relevant part: "Any person who operates a motor vehicle within this state shall be deemed to have given his or her consent to chemical tests of his or her breath, blood, and/or urine for the purpose of determining the chemical content of his or her body fluids or breath." (Emphasis added.)

<sup>2</sup> According to Appellee, the previously constituted Appeals Panel of June 4, 2008 found that it was unclear, based on the trial magistrate's findings of fact, whether the trial magistrate found that there was probable cause to arrest Appellee when he found that the arresting officer had reasonable grounds to believe that Appellee had been operating his vehicle while under the influence of intoxicating liquor. (Tr. at 4.)

On remand, the trial magistrate explained his reasoning as follows: “So, I ma[de] a specific declaration that if I find operation, I find probable cause, and if I don’t find operation, I don’t find probable cause. And then I specifically found operation.” (Tr. at 4.) The trial magistrate stated that reasonable grounds and probable cause are synonymous for the purposes of § 31-27-2.1. (Tr. at 6.) As such, when the trial magistrate found the existence of reasonable grounds, he also found the existence of probable cause to arrest Appellee. *Id.*

Despite the fact that the trial magistrate found probable cause, he felt compelled to dismiss the charged violation of § 31-27-2.1 because he interpreted the Order of June 4, 2008 as a reversal of his original decision sustaining the charge. (Tr. at 10.) Accordingly, the trial magistrate dismissed the charge. The State has now filed a timely appeal to this Panel. Forthwith is this Panel’s decision.

#### **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 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 another 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**

On appeal, the State argues that the trial magistrate committed an error of law when the case was remanded to him by the previously constituted Appeals Panel. According to the State, the trial magistrate’s decision dismissing the charged violation of § 31-27-2.1 is affected by error of law because all of the essential elements of § 31-27-2.1—including the existence of probable cause to arrest Appellee—were proven at trial, and the trial magistrate so found. It is the State’s contention that the trial magistrate misinterpreted the Order of June 4, 2008 by treating it as an implied reversal of his earlier decision sustaining the refusal charge.

Having reviewed the entire record before it, this Panel is satisfied that all of the essential elements of § 31-27-2.1 were proven at trial. During the trial, the trial magistrate found that the parties had stipulated to all of the elements of § 31-27-2.1, with the exception of the operation of Appellee's motor vehicle within the State of Rhode Island. Following the trial, the trial magistrate found that the law enforcement officer making the sworn report pursuant to § 31-27-2.1 had reasonable grounds to believe that the arrested person, Appellee, had operated his vehicle under the influence. As this Panel agrees with the trial magistrate that reasonable grounds and probable cause are legally equivalent for the purpose of determining whether the State has proved each element of § 31-27-2.1 by clear and convincing evidence, we conclude that the trial magistrate's original disposition was unaffected by error or law. See Hill v. Rhode Island State Employees' Retirement Bd., 935 A.2d 608, 613 (R.I. 2007) (finding that probable cause to initiate malicious prosecution action exists where facts known to accuser provide reasonable grounds for belief that accused engaged in criminal activity); Henshaw v. Doherty, 881 A.2d 909, 916 n.7 (R.I. 2005) ("This is not to say . . . that the facts giving rise to prosecution must be so strong as to convince a prudent person that guilt exists beyond a reasonable doubt; it is sufficient that the facts known to the accuser provide reasonable grounds for a belief that criminal activity at the hands of the accused has occurred.") Accordingly, the trial magistrate's decision upon remand to dismiss the charged violation—even after stating on the record that probable cause exists—was affected by error of law and warrants reversal.

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**Conclusion**

Upon a review of the entire record, this Panel concludes that the trial magistrate's decision was affected by error of law. Substantial rights of the State have been prejudiced. Accordingly, this Panel grants the State's appeal and sustains the charged violation of § 31-27-2.1.

ENTERED: