STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF WARWICK	:	
	:	
v.	:	**C.A. No. T08-0142**
	:	
DON CHHOEN	:	

DECISION

PER CURIAM: Before this Panel on March 25, 2009—Magistrate Goulart (Chair, presiding) and Judge Parker and Magistrate Cruise sitting—is Don Chhoen's (Appellant) appeal from a decision of Magistrate DiSandro, sustaining the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test."[1] The Appellant was represented by counsel before this Panel.[2] Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On May 18, 2008, Officer Stephen Major (Officer Major) of the Warwick Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

Officer Major began his trial testimony by describing his professional training and experience with respect to DUI-related traffic stops and the administration of standardized field sobriety tests. (Tr. at 6-9.) Then, focusing the Court's attention on the date in question, Officer Major testified that at approximately 1:00 a.m., he was on patrol in the "north end of the city," in the vicinity of Post Road, Elmwood Avenue, and Warwick Avenue. (Tr. at 9-10.) At this time,

[1] The Appellant was also charged with violating G.L. 1956 § 31-21-4, "Places where parking or stopping prohibited." However, this charge was dismissed at trial and is not presently before this Panel on appeal.
[2] The Appellant was represented at the trial and appellate levels by a student attorney under the supervision of Roger Williams University School of Law Professor Andrew Horwitz.

he received a dispatch that there was a motor vehicle "stopped in the roadway" in the intersection of Elmwood Avenue and Post Road. (Tr. at 10-11.) According to the dispatch, the individual who contacted the Warwick Police Department described the operator as "passed out or drunk at the wheel." (Tr. at 11.)

Officer Major responded to the scene, whereupon he observed a white SUV "stopped diagonally" across the two southbound lanes of Post Road. (Tr. at 11.) According to Officer Major, the vehicle was "diagonally across the staggered white lines" separating the two southbound travel lanes. Id. The vehicle's brake lights were not illuminated, but its engine was running. (Tr. at 13.)

Upon approaching the vehicle, Officer Major observed that the operator—later identified at trial as Appellant—was seated in the driver's seat and was "slumped over" the steering wheel. (Tr. at 12-13.) Officer Major rapped on the closed driver's side window to rouse Appellant and, once Appellant was alert, asked him whether he needed assistance. (Tr. at 13.) The Appellant rolled down the window and answered that he had just come from Providence. Id. Officer Major indicated that Appellant's statement was not responsive to his inquiry. (Tr. at 14.)

When asked to describe Appellant's physical appearance and demeanor, Officer Major testified that Appellant's eyes were "glassy," "bloodshot," and "watery." Id. Although Appellant spoke in "broken English," Officer Major noted that his speech was slurred. Id. In addition, Officer Major detected the odor of an alcoholic beverage on Appellant's breath. Id.

Officer Major asked Appellant to exit the vehicle and submit to a battery of standardized field sobriety tests. (Tr. at 15.) The Appellant consented, but Officer Major "had to open the door for him." Id. As Appellant alighted from the vehicle, he leaned against the vehicle's door to maintain his balance. Id.

Once another officer had moved Appellant's vehicle from the roadway, Officer Major administered a battery of standardized field sobriety tests. (Tr. at 17-26.) Based on his professional training and experience, Officer Major concluded that Appellant failed the tests. (Tr. at 26.) At this time, Officer Major formed an opinion that Appellant was under the influence of alcohol and was incapable of safely operating a motor vehicle. Id. Pursuant to Warwick Police Department protocol, Officer Major contacted his supervisor and described his observations of Appellant. Id. According to Officer Major, his supervisor agreed with his determination that Appellant should be placed under arrest on suspicion of operating while under the influence of alcohol and/or drugs. (Tr. at 27.)

The Appellant was handcuffed and placed in the rear of Officer Major's police cruiser. Id. At this time, Officer Major read Appellant his "Rights for Use at Scene" in their entirety from the pre-printed card. (Tr. at 27-28.) According to Officer Major, he asked Appellant whether he understood the rights contained therein, and Appellant nodded his head. (Tr. at 29.) The Appellant was then transported to the headquarters of the Warwick Police Department for booking. Id.

Once at headquarters, Appellant was un-handcuffed and seated next to the Department's chemical testing equipment. (Tr. at 30.) The Appellant was then read his "Rights for Use at Station" in their entirety from the pre-printed form. (Tr. at 30, 32.) When asked whether Appellant understood the rights contained on the "Rights for Use at Station" form, Officer Major testified that Appellant "kept referring to wanting to go home." (Tr. at 32.)

The Appellant was then afforded an opportunity to use a telephone in accordance with G.L. 1956 § 12-7-20. (Tr. at 33.) While Officer Major indicated that Appellant placed a confidential phone call, he made clear that Appellant "need[ed] assistance in using the phone."

Id. Officer Major explained that it is necessary "to dial nine to get an outside line" from the booking room telephone. Id. The Appellant experienced difficulty obtaining an outside line, requiring the assistance of Officer Major. Id. According to Officer Major, Appellant contacted his daughter[3] and spoke with her for several minutes; however, he "waved [Officer Major] back in[to] the [booking] room because [he] had to explain to [Appellant's] daughter what was going on." (Tr. at 34.)

At the conclusion of his conversation with Appellant's daughter-in-law, Officer Major escorted Appellant to the chemical testing equipment and asked Appellant whether he would submit to a chemical test. (Tr. at 35.) The Appellant responded that he "wanted to go home" and that he "didn't want a problem." Id. Officer Major renewed his request "numerous times"; Appellant responded by "a shaking of his head 'No.'" (Tr. at 36.) Officer Major "took [this] as a refusal" and charged Appellant with violating § 31-27-2.1. Id. When asked by counsel for the State whether Appellant complied with his requests and instructions, Officer Major answered in the affirmative. (Tr. at 40.)

On cross-examination by counsel for Appellant, Officer Major testified that he did not observe Appellant operate his vehicle prior to encountering him in the intersection of Elmwood Avenue and Post Road. (Tr. at 42.) Officer Major also acknowledged that Appellant "understands English only to a limited point . . . ." (Tr. at 43.) When pressed by counsel as to whether "it's standard police procedure to at least attempt to elicit verbal responses when . . . [a] suspect [is] under arrest," Officer Major answered in the affirmative. (Tr. at 44.) Officer Major made clear that he asked Appellant to respond to his requests verbally, and that Appellant "refused to give [him] a verbal response." Id.

[3] Counsel for Appellant subsequently clarified that Appellant had contacted his daughter-in-law. (Tr. at 45.)

Officer Major was also asked on cross-examination whether it is standard procedure, when confronted with an arrestee who "speak[s] very little to no English at all, . . . to bring in an interpreter to make sure that they're informed of their rights . . . ." (Tr. at 48-49.) Officer Major answered that interpretive services would be requested "[i]f it's feasible." (Tr. at 49.) Officer Major added that the Warwick Police Department does not "have anyone that speaks Cambodian," Appellant's native language, and that he "[didn't] know who [they] would call at that time of night." Id. Officer Major indicated that no attempt was made to procure a Cambodian interpreter for the benefit of Appellant. Id.

At the conclusion of Officer Major's trial testimony, counsel for Appellant moved to dismiss the charged violation of § 31-27-2.1. Counsel first argued that the charged violation had not been proved to a standard of clear and convincing evidence, as the State failed to prove that Appellant operated his vehicle on the date in question. (Tr. at 52.) Next, counsel asserted that dismissal was warranted because the State failed to prove to a standard of clear and convincing evidence that Appellant "was informed of the legal consequences that would follow the refusal to submit to the Breathalyzer." Id. According to counsel, "the State . . . put forth ambiguous head nods and statements . . . both of which were non-responsive to Officer Major's request to submit to the Breathalyzer." Id. Counsel maintained that "the right to an interpreter . . . is a fundamental due process right that attaches after being seized . . . ." As Appellant did not have access to a Cambodian interpreter, counsel argued that he was not properly informed of the penalties for refusal to submit to a chemical test. Id. The trial magistrate denied the motion. (Tr. at 54.)

Counsel for Appellant then proceeded to call Chad Chhoeun (Mr. Chhoeun), Appellant's son, to the witness stand. Mr. Chhoeun testified that Appellant is from Cambodia and that he

knows only "a few words" of English. (Tr. at 57-58.) Mr. Chhoeun indicated that he and his father communicate entirely in Cambodian. (Tr. at 58.) On cross-examination, Mr. Chhoeun testified that Appellant had lived in the United States for approximately twenty years. (Tr. at 60.)

At the conclusion of the trial, the trial magistrate took the matter under advisement. The trial magistrate subsequently rendered a bench decision,[4] wherein he found that the State proved to a standard of clear and convincing evidence "that Major had reasonable suspicion to investigate [Appellant's] vehicle based on the dispatch for him to investigate an operator passed out behind the wheel of a vehicle, parked in the roadway, situated near the intersection of Elmwood Avenue and Post Road . . . ." (Dec. Tr. at 15.) Additionally, the trial magistrate found that "reasonable grounds existed for [Officer] Major to believe that [Appellant] had operated his vehicle while under the influence of alcohol based upon [Officer] Major's testimony relative to [Appellant's] . . . characteristics indicative of intoxication, including bloodshot, watery, glassy eyes; slurred speech; and the odor of alcohol coming from [Appellant's] mouth." (Dec. Tr. at 16.) With respect to Appellant's "Rights for Use at Scene" and "Rights for Use at Station," the trial magistrate found that Appellant had been fully apprised of his rights and that he indicated to Officer Major that he understood the rights as read. (Dec. Tr. at 16-17.)

With regard to whether Appellant's decision to refuse a chemical test upon the request of Officer Major was knowing and voluntary, the trial magistrate found that "[a]ll of [Appellant's] responses indicate . . . [that] he understood the seriousness of the situation and what was being requested of him." (Dec. Tr. at 18.) In sustaining the charged violation of § 31-27-2.1, the trial magistrate "reject[ed] [counsel's] suggestion that [Appellant] did not freely and knowingly refuse because of a language barrier between [Officer] Major and [Appellant]." Id. Rather, the

[4] A Cambodian translator was provided for Appellant. (Dec. Tr. at 2.)

trial magistrate was satisfied, based on "Major's very credible and unwavering testimony," that "all of [Appellant's] responses . . . [were] relevant, timely and appropriate." (Dec. Tr. at 18, 20.)

Aggrieved by the trial magistrate's decision to sustain the charged violation of § 31-27-2.1, Appellant filed a timely appeal to this Panel. Our 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 argues that the trial magistrate's decision is in violation of constitutional provisions, affected by error of law, and clearly erroneous in light of the reliable, probative, and substantial record evidence. The Appellant has advanced three arguments in support of his appeal.

The Appellant first argues that the State failed to prove to a standard of clear and convincing evidence that Appellant was fully informed of his rights and of the penalties that he would incur if he refused to submit to a chemical test. It is Appellant's contention that his inability to speak, write, or understand the English language rendered him incapable of being fully informed of these rights and penalties, as the ubiquitous "Rights" forms were read to Appellant in English and without the use of a Cambodian interpreter. Next, Appellant asserts that the State failed to prove to a standard of clear and convincing evidence that Appellant had operated his vehicle while under the influence of alcohol. As Officer Major did not observe movement of Appellant's vehicle, Appellant maintains that the charged violation cannot be sustained. Finally, Appellant argues that the matter must be remanded for a new trial because the trial magistrate, in rendering his decision, relied on facts not in evidence, thereby violating

Appellant's due process rights. Each of the arguments advanced by Appellant will be addressed in seriatim.

I

The Appellant's first argument on appeal is that Appellant did not knowingly and voluntarily refuse to submit to a chemical test because his limited grasp of the English language prevented him from understanding the rights and penalties outlined in the "Rights" forms. As there is no Rhode Island statutory or case law on this issue, Appellant primarily relies on a case decided by the Commonwealth Court of Pennsylvania, Dep't of Transp., Bureau of Motor Vehicles v. Yi, 562 A.2d 1008 (1989).

In Yi, the Pennsylvania Department of Transportation (Department) appealed from an order of a trial judge which rescinded the Department's suspension of the driver's license of appellee for refusal to submit to a chemical breath test. Id. at 1008-1009. The suspension of appellee's driver's license was lifted because he later "testified that he did not understand the ramifications of refusing the test and the trial court found his testimony to be credible." Id. at 1009. The trial judge found that the appellee's refusal was not "knowing and conscious" because he "testified through an interpreter that he had no understanding of the English language and that he did not understand the ramifications of his refusal." Id. In addition, the appellee "never answered any questions asked without the aid of an interpreter," and the arresting officers "could not be certain" that the appellee understood them. Id. On appeal, the Commonwealth Court of Pennsylvania upheld the trial judge's determination as to appellee's English fluency as supported by competent record evidence. Id. The Yi Court was satisfied that "the trial judge had a first-hand opportunity to evaluate the appellee's testimony on the stand . . . that he does not speak English." Id.

The Appellant's reliance on Yi is misplaced, as the vast majority of jurisdictions have held that the failure of law enforcement to procure an interpreter for a non-English-speaking arrestee prior to asking him or her to submit to a chemical test does not require dismissal of a refusal charge or otherwise invalidate the results of a chemical test of the arrestee's breath. The Supreme Court of Georgia's recent decision in Rodriguez v. State, 257 Ga. 283, 565 S.E.2d 458 (2002), is instructive.

The appellant in Rodriguez, who speaks Spanish and not English, appealed from his conviction for driving while under the influence of alcohol. Id. at 283, 565 S.E.2d at 459. He contended that the Georgia statute setting forth the rights and penalties associated with refusal to submit to a chemical breath test was violative of equal protection, as "non-English-speaking defendants, unlike English-speaking defendants, do not have their implied consent notice read to them in a language that they can understand." Id. at 284, 565 S.E.2d at 460. He also maintained that "due process requires that a driver be read his implied consent notice in his [or her] native language so that he [or she] is meaningfully advised of the rights and can exercise those rights in a meaningful fashion." Id.

The Rodriguez Court flatly rejected the appellant's equal protection argument on the ground that the statute did not require the rights and penalties to be read only in English, thereby "creat[ing] a classification of English-speaking defendants and non-English-speaking defendants . . . ." Id. at 285, 565 S.E.2d at 461. The court reaffirmed that law enforcement officers are not required to read the rights and penalties to the defendant in his or her native language. Id. at 286, 565 S.E.2d at 461. As the Rodriguez Court explained, "a police department could require its officers to read the rights in other languages or an individual officer could do so on his own. The statute[] thus, on [its] face, do[es] not create a classification. [It] only require[s] that the implied

consent rights be read to defendants." Id. Further, even assuming arguendo that the statutory scheme created a classification between non-English-speaking and English-speaking arrestees, the Rodriguez Court was satisfied that it would survive rational basis review, as it did not discriminate against a suspect or quasi-suspect class. Id. at 286-287, 565 S.E.2d at 461-462. The court found the classification constitutional for three reasons:

> First, reading all drivers their implied consent rights in English will advise most people of their implied consent rights. Second, requiring that officers advise drivers of the implied consent rights in their native language would impose severe administrative costs in that officers would have to be equipped to issue warnings in any and every language spoken by drivers in this State or would have to have access to an interpreter to issue the warnings. The logistics of such a requirement would be extremely problematic in a society as pluralistic and diverse as the United States. Third, the requirement used by [the appellant]—that an interpreter be made available to read a non-English-speaking driver his rights—could lead to delay in obtaining the driver's blood-alcohol level, which dissipates over time, and thus would interfere with one of the purposes of the implied consent law. Id. at 287, 565 S.E.2d at 462.

With respect to the appellant's due process challenge to the statute, the Rodriguez Court rejected the appellant's contention that "due process requires that a driver be meaningfully advised of the implied consent rights so that he or she can exercise those rights in a meaningful fashion." Id. Characterizing the implied consent warnings as "a matter of legislative grace," the court held that "due process does not require that the warnings be given in a language that the driver understands." Id.

The holding and reasoning of Rodriguez are consistent with a long line of cases holding that non-English-speaking arrestees are not entitled to have the rights and penalties for refusing to submit to a chemical test read to them in their native tongue. See State v. Olquin, 216 Ariz. 250, 165 P.3d 228 (2008) (holding that Spanish-speaking arrestee with only two or three years of formal education was sufficiently informed of his rights, despite failure of arresting officers to

procure assistance of officer or interpreter fluent in Spanish, because officers attempted communication in Spanish and arrestee responded that he understood); Furcal-Peguero v. State, 255 Ga.App. 729, 566 S.E.2d 320 (2002) (concluding that Spanish-speaking arrestee with "marginal" command of English not entitled to have results of breath test suppressed, even though officers advised arrestee of rights in English and had immediate access to telephonic translation service, as law did not require arresting officers to ensure that arrestee understood rights as read); and Kim v. Kansas Dep't of Revenue, 22 Kan.App.2d 319, 916 P.2d 47 (1996) (finding that due process rights of arrestee, a Korean immigrant who claimed to have problems understanding English, were not violated by failure of officers to present him with oral and written warnings in Korean, as failure to understand warnings not a valid defense).

The Yi decision is also contrary to another line of cases holding that a non-English-speaking arrestee need not understand the rights and penalties as read; rather, it is sufficient that the arrestee understands that he or she has been asked to submit to a chemical test. The Court of Appeals of Minnesota's decision in Yokoyama v. Commissioner of Public Safety, 356 N.W.2d 830 (1984), is noteworthy.

In Yokoyama, the appellant appealed the revocation of his driver's license, claiming that he was denied his statutory right to refuse to take a chemical test "for the sole reason that he does not understand English." Id. at 831. When the Japanese-speaking appellant was arrested on suspicion of driving while intoxicated, the arresting officer was unable to locate a Japanese translator. Id. The arresting officer read the State's implied consent advisory to the appellant in English and indicated that he wanted appellant to submit to a chemical test of his breath. Id. The appellant did not understand the rights and penalties associated with refusal, but complied with the officer's request. Id. The trial court held that "it was not necessary to read appellant the

implied consent advisory in Japanese," and the Court of Appeals agreed. Id. The Yokoyama Court explained that while "making an interpreter available when possible is desirable, finding an interpreter is not absolutely necessary and should not interfere with the evidence-gathering purposes of the implied consent statute." Id. (Internal citations and quotations omitted.) The court made clear that "the only understanding required by the licensee is an understanding that he [or she] has been asked to take a test." Id.

Based on the foregoing, it is clear that the Yi decision cited by Appellant represents an extreme minority position. Accordingly, the members of this Panel find its holding and reasoning unpersuasive. However, based on the guidance provided by the Rodriguez and Yokoyama lines of cases and this Panel's review of the record as a whole, the members of this Panel are satisfied that Appellant was fully apprised of the rights and penalties associated with refusal by the "Rights for Use at Scene" and "Rights for Use at Station" forms, (Tr. at 30, 32), and that his knowledge of the English language was not so limited that he could not understand that Officer Major wanted him to submit to a chemical test of his breath. While Appellant did not respond verbally to Officer Major's request that he submit to a chemical test, he indicated his refusal by moving his head from side to side in a negative fashion. (Tr. at 36.) Accordingly, the trial magistrate's decision is not in violation of constitutional or statutory provisions or otherwise affected by error of law.

II

The Appellant next argues that the charged violation of § 31-27-2.1 cannot be sustained because the State failed to prove to a standard of clear and convincing evidence that Appellant operated his motor vehicle on the date in question while under the influence of alcohol. The

Appellant maintains that our consideration of his appeal is controlled by our Supreme Court's decision in State v. Capuano, 591 A.2d 35 (R.I. 1991).

In Capuano, the defendant argued that "sitting at the controls of an idling motor vehicle while intoxicated does not constitute operating or driving a motor vehicle pursuant to G.L. 1956 § 31-27-2," our State's criminal DUI statute. Id. at 35. Our Supreme Court, in reversing the defendant's DUI conviction, explained that "the jury was [not] warranted in finding beyond a reasonable doubt that defendant either drove or operated his motor vehicle" based solely on the fact that "the defendant, at the time of his arrest, was intoxicated, was within the State of Rhode Island, and was in possession of a motor vehicle." Id. at 37. The Capuano Court reasoned that the General Assembly, in removing language from § 31-27-2 regarding "actual physical control of any motor vehicle," had "intended that more than simple possession of a motor vehicle was necessary to constitute operating or driving." Id. The Court went on to state that "[i]f the Legislature had wished to criminalize mere possession of a motor vehicle while intoxicated, then the Legislature surely would not have purposefully omitted the actual physical control language" from § 31-27-2. Id.

However, as our Supreme Court recognized in State v. Perry, 731 A.2d 720 (R.I. 1999), the holding and reasoning of Capuano are inapplicable in the civil chemical test refusal context because "the Capuano case involved a [criminal] conviction for driving a motor vehicle under the influence of intoxicating liquor" and, as such, the defendant's "operation was required to be proven beyond a reasonable doubt." Id. at 723. As the Perry Court made clear, "reasonable suspicion [is] the appropriate standard upon which to satisfy the [operation] requirement of a violation of § 31-27-2.1." Id.

The record before this Panel reflects that Officer Major certainly had reasonable suspicion to believe that Appellant had operated his motor vehicle prior to his encounter with Appellant in the center of the intersection. While Officer Major did not observe an "erratic" movement of Appellant's vehicle such as drifting over the center dividing line or swerving from lane to lane, he did encounter Appellant's vehicle "stopped diagonally" across the two southbound travel lanes of Post Road, with its engine running and Appellant "slumped over" at the steering wheel, unresponsive. (Tr. at 11-13.) Once Officer Major had roused Appellant by rapping on his driver's side window, it became clear that Appellant was under the influence of alcohol: Appellant's eyes were "glassy," "bloodshot," and "watery." (Tr. at 14.) In addition, Officer Major noted that Appellant's speech was slurred and that there was a detectable odor of alcohol on Appellant's breath. Id. The Appellant experienced difficulty exiting his vehicle; Officer Major had to open the vehicle's door for Appellant and, once Appellant had alighted from the vehicle, he had to lean against the vehicle's door to maintain his balance. (Tr. at 15.) Further, Appellant failed all of the standardized field sobriety tests administered by Officer Major. (Tr. at 17-26.) Consequently, this Panel is satisfied that the trial magistrate had reliable, probative, and substantial evidence upon which to determine that Appellant had operated his motor vehicle while under the influence of alcohol.

Further, the record reflects that Officer Major's arrest of Appellant was based on probable cause to believe that Appellant had been driving while under the influence of alcohol. "The existence of probable cause to arrest without a warrant depends on whether, under the totality of the circumstances, the arresting officer possesses sufficient trustworthy facts and information to warrant a prudent officer in believing that the suspect has committed or was committing an offense." State v. Guzman, 752 A.2d 1, 4 (R.I. 2000). Our Supreme Court has

said that "the mosaic of facts and circumstances [available to the arresting officer] must be viewed cumulatively as through the eyes of a reasonable and cautious police officer on the scene, guided by his or her experience and training." In re Armand, 454 A.2d 1216, 1218 (R.I. 1983) (internal quotations omitted).

Based on the totality of the circumstances, it is clear that Officer Major had sufficiently trustworthy information to formulate probable cause to place Appellant under arrest. When the information received from dispatch and Officer Major's direct observations of Appellant's vehicle in the roadway and Appellant's physical appearance, demeanor, and performance on standardized field sobriety tests were viewed cumulatively in light of Officer Major's prior experience conducting DUI-related traffic stops, the "facts and circumstances known to [Officer Major] [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—"had been committed and [Appellant] ha[d] committed [it]." Perry, 731 A.2d at 723. Further, the fact that Officer Major based his probable cause determination—at least in part—on the information received from Warwick Police dispatch is not problematic, as our cases make clear that "[p]robable cause . . . need not be based upon direct personal observations of the arresting officer. The determination may be grounded upon hearsay information relayed to the arresting officer, as long as there exists a substantial basis for relying on the information." State v. Castro, 891 A.2d 848, 853 (R.I. 2006) (citing State v. Burns, 431 A.2d 1199, 1204 (R.I. 1981)).

Based on the foregoing, the Appellant's contention that Officer Major did not possess reasonable grounds is unavailing, as our Supreme Court has indicated that "probable cause" and "reasonable grounds" are functionally equivalent. See Soares v. Ann & Hope of Rhode Island, Inc., 637 A.2d 339, 345 (R.I. 1994); Cruz v. Johnson, 823 A.2d 1157, 1161 n.2 (R.I. 2003). As

the members of this Panel are satisfied that Officer Major's arrest of Appellant was lawful and based upon probable cause, we are likewise satisfied that Officer Major had reasonable grounds to believe that Appellant had been operating his motor vehicle while under the influence of intoxicating liquor. Accordingly, the trial magistrate's decision to sustain the charged violation of § 31-27-2.1 was not affected by error of law.

III

The Appellant's third and final appellate argument is that the case must be remanded for a new trial because the trial magistrate relied on facts not in evidence when rendering his decision. The trial magistrate made the following factual determinations that, Appellant maintains, are not supported by the evidentiary record: (1) that Appellant understood the "Rights for Use at Station" as read to him by Officer Major (Dec. Tr. at 17, 20); (2) that Officer Major expressed his opinion that Appellant understood the "Rights" forms (Dec. Tr. at 9); that Officer Major asked Appellant to sign the "Rights for Use at Station" form in order to evidence his refusal to submit to a chemical test (Dec. Tr. at 10); that Appellant refused to sign the "Rights" form (Dec. Tr. at 17); and that Officer Major decided not to seek the interpretive services of a Cambodian translator because he believed that Appellant had a sufficient grasp of the English language (Dec. Tr. at 12).

Having reviewed the trial magistrate's decision and the record as a whole, this Panel is satisfied that the aforementioned factual determinations are not supported by legally competent record evidence. However, our review of the record satisfies us that there was sufficient reliable, probative, and substantial evidence before the trial magistrate—apart from the facts not in evidence—to support the trial magistrate's decision to sustain the charged violation of § 31-27-2.1. See Russo v. Stearns Farms Realty, Inc., 117 R.I. 387, 394, 367 A.2d 714, 718 (1977)

(affirming decision of trial justice that made reference to facts not in evidence, as decision was supported by "ample testimony" and extra-record evidence merely used to interpret and understand that testimony). Accordingly, this Panel will not remand this matter for a new trial.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision is not in violation of constitutional provisions, affected by error of law, or clearly erroneous in light of the reliable, probative, and substantial record evidence. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED: