

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK

v.

ERIC AHLBORG

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C.A. No. T09-0058

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on June 17, 2009—Magistrate Noonan (Chair, presiding) and Judge Parker and Judge Almeida sitting—is Eric Ahlborg’s (Appellant) appeal from a decision of Chief Magistrate Guglietta, 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 G.L. 1956 § 31-41.1-8.

Facts and Travel

On September 28, 2006, Officer Theodore Bulis (Officer Bulis) 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.

At trial, the Court first heard testimony from a defense witness, John Harwood (Mr. Harwood). Mr. Harwood testified that on the night in question, at approximately 10:30 p.m., he met Appellant at Mills Tavern in Warwick. (Tr. at 9-10.) Mr. Harwood went on to testify that Appellant exhibited none of the telltale signs of intoxication, although Appellant appeared tired. (Tr. at 11.) Mr. Harwood also stated that he did not

observe Appellant consume alcohol at Mills Tavern and that Appellant left between 11:00 and 11:15 p.m. (Tr. at 12.)

The State called only one witness, Officer Bulis. On direct examination, Officer Bulis testified as to his experience conducting DUI-related traffic stops and administering standardized field sobriety tests. (Tr. at 14.) He testified that “a little before midnight” on the date in question, he was traveling southbound on Warwick Avenue when he observed a “vehicle swerve over to the left and the two driver’s side tires cross[] the double yellow lines that separate the north and southbound lanes.” (Tr. at 40.) He then observed “the vehicle swerve to the right and the two passenger side tires cross over the white lines that separate the two southbound lanes, [whereby] the vehicle went back over to the left and the two driver’s side tires crossed over the double yellow lines a second time.” (Tr. at 40-42.) Approximately one quarter of a mile later, Officer Bulis initiated a traffic stop of the vehicle. (Tr. at 43.) Officer Bulis identified the operator of the vehicle as Appellant. (Tr. at 45.)

Upon approaching Appellant’s vehicle, Officer Bulis “detected a moderate odor of an alcoholic beverage emanating from [Appellant’s] breath and person.” (Tr. at 46.) With respect to Appellant’s physical appearance and demeanor, Officer Bulis testified that Appellant “had bloodshot glassy eyes and his speech had some slur to it.” *Id.* When Officer Bulis asked Appellant to exit his vehicle, he observed that “[Appellant] swayed a little bit when he walked.” (Tr. at 48.) Upon Appellant’s consent, Officer Bulis administered a set of three standardized field sobriety tests. The results of only two of the three were offered as evidence, both of which Appellant failed. (Tr. at 48-51.)

Officer Bulis then placed Appellant under arrest and secured him in the rear of his police cruiser. (Tr. at 55.) In the cruiser, Officer Bulis read Appellant his “Rights for Use at Scene.” Id. Officer Bulis then transported Appellant to the headquarters of the Warwick Police Department, whereupon Appellant was read his “Rights for Use at Station” and offered the opportunity to make a confidential phone call. (Tr. at 57-58.) After completing his phone call, Appellant refused to take a chemical breathalyzer test and signed the “Rights” form to indicate that refusal. (Tr. at 61.)

The Court next heard testimony from Tanya Ahlborg (Mrs. Ahlborg), Appellant’s wife. Mrs. Ahlborg testified that at approximately 11:00 p.m. on the date in question, Appellant was following her back to their home when he was stopped by Officer Bulis. (Tr. at 125.) According to Mrs. Ahlborg, prior to the traffic stop, she did not notice Appellant’s vehicle swerve or leave its lane of travel. (Tr. at 126.) She went on to state, “If I had seen [Appellant] swerve or drive erratically, I would have pulled my car over, and said, ‘Why don’t you leave your car and get in mine.’” Id. In addition, Mrs. Ahlborg testified that she did not hear Appellant slur his speech or observe Appellant have difficulty walking at any point prior to the stop of his vehicle by Officer Bullis. (Tr. at 128.)

In his written decision, the trial magistrate discussed the four essential elements of § 31-27-2.1 and whether he was or was not satisfied that they had been proven by the State to a standard of clear and convincing evidence. The trial magistrate was “satisfied from the testimony of the Officer by the clear and convincing standard that in fact [Appellant] refused the [chemical] test.” (Dec. Tr. at 19.) He was likewise “satisfied that [Appellant] was informed of his rights under §31-27-3.” Id. The trial magistrate found,

based on the testimony of Officer Bulis and the fact that Appellant signed the “Rights” form, that Appellant “was knowingly informed of his rights . . . and of the penalties [for refusal]. (Dec. Tr. at 20.) The trial magistrate then discussed the standard for determining whether “reasonable grounds” existed for Officer Bulis to believe that Appellant had been operating a motor vehicle while under the influence of alcohol. (Dec. Tr. at 25.)

In determining that reasonable grounds existed, the trial magistrate explained,

“I think if we evaluate this particular case, there were the motor vehicle violations, which were the basis for the stop. We had additional indications, the moderate odor of alcohol, the speech, the glossy eyes, the failed field sobriety tests, and . . . an admission by [Appellant] that he had [consumed] alcohol that evening. Those types of evidence clearly, which I found to be credible by this Officer, lead me to the conclusion that at the time of this stop that Officer Bulis had reasonable grounds to believe that [Appellant] was operating this motor vehicle under the influence of alcohol.” (Dec. Tr. at 35-36.)

The trial magistrate sustained the charged violation of § 31-27-2.1. The Appellant, aggrieved by this decision, 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

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 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 to sustain the charged violation of §31-27-2.1 is characterized by abuse of discretion and affected by error of law. Specifically, Appellant maintains that the trial magistrate abused his discretion by choosing to credit Officer Bulis' trial testimony that Appellant's vehicle was driving erratically and that he exhibited several indicia of alcohol consumption at the time of the traffic stop, and by choosing to discount Mr. Harwood's and Mrs. Ahlborg's testimony regarding their respective impressions regarding Appellant's sobriety.

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 Mr. Harwood, Mrs. Ahlborg, or Officer Bulis, it would be impermissible to second-guess the trial magistrate's "impressions as he . . . observe[d] [Mr. Harwood, Mrs. Ahlborg, and Officer Bulis] [,] 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. Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate's decision is supported by legally competent evidence and is not affected by an abuse of discretion.

In order to sustain the charged violation of § 31-27-2.1, the trial magistrate was required to find, based on the clear and convincing evidence adduced by the State, that Officer Bulis had reasonable grounds to believe that Appellant had been driving a motor

vehicle while under the influence of intoxicating liquor. The State was not required to prove to a standard of clear and convincing evidence that Appellant was “drunk” at the time Officer Bulis encountered him.

Reviewing the record in its entirety, the members of this Panel are satisfied that the trial magistrate’s decision on the issue of reasonable grounds is supported by legally competent evidence and is not otherwise affected by error of law. Here, the record reflects that Officer Bulis had reasonable suspicion to initiate a traffic stop of Appellant’s vehicle based on the erratic movements of Appellant’s vehicle. See State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996); State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1998). Officer Bulis observed Appellant leave his lane of travel without signaling on multiple occasions. (Tr. at 40-42.) Further, once Officer Bulis made contact with Appellant on the side of the roadway, he “detected a moderate odor of an alcoholic beverage emanating from [Appellant’s] breath and person.” (Tr. at 46.) With respect to Appellant’s physical appearance and demeanor, Officer Bulis testified that Appellant “had bloodshot glassy eyes and his speech had some slur to it.” Id. When these personal observations are coupled with the fact that Appellant failed two standardized field sobriety tests administered by Office Bulis, the “facts and circumstances known to [Officer Bulis] [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].” State v. Perry, 731 A.2d 720, 723 (R.I. 1999).

Based on the foregoing, Appellant’s contention that Officer Bulis 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 Bulis’s arrest of Appellant was lawful and based upon probable cause, we are likewise satisfied that Officer Bulis 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.

### **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 characterized by abuse of discretion, clearly erroneous in view of the reliable, probative, and substantial record evidence, or otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED: