

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

CHRISTOPHER TARRO

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C.A. No. T10-0025

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on October 27, 2010—Magistrate Goulart (Chair, presiding), Judge Parker, and Magistrate DiSandro sitting—is Christopher Tarro’s (Appellant) appeal from Magistrate Cruise’s decision, sustaining the charged violation of G.L. 1956 § 31-27-2.1, “Refusal to submit to a chemical test.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

In the early morning hours of January 18, 2010, a patrolman of the Warwick Police Department (Officer Hart), based upon previously received information, conducted a traffic stop of Appellant’s vehicle. Noticing Appellant to have watery eyes, slurred speech and emanating a smell of alcohol, the officer charged him with the aforementioned motor vehicle offense. The Appellant contested the charges, and the matter proceeded to trial.

The trial began with the testimony of Stanley Porter, a worker at Kenney Manufacturing in Warwick, Rhode Island. (Apr. Tr. at 3.) Porter testified that a little before 5:00 a.m. on the morning of January 18, 2010, as he was pulling into the Kenney

Manufacturing parking lot, he witnessed a black SUV with its fender pressed up against a fence with a man standing outside it. (Apr. Tr. at 4.) Porter testified that as he approached the vehicle, the man standing quickly got into the SUV, exited the parking lot, and headed south down Jefferson Boulevard. Id. Porter then called the Warwick Police Department to inform them of what had happened, and when police arrived in response to his call, he told them what he had witnessed and provided police with a description of the vehicle along with a license plate number. (Tr. at 7.)

Next the State called Officer Hart to the stand. (Apr. Tr. at 15.) He began his testimony describing his training and experience in law enforcement, including his training in both the Connecticut and Rhode Island Municipal training academies. (Apr. Tr. at 17.) He also informed the court of his specific training and experiences dealing with intoxicated motorists and drunk driving related traffic stops. (Apr. Tr. at 18.) Turning to the morning of January 18, 2010, Officer Hart testified that over his radio came a call concerning a vehicle—a dark SUV Rhode Island Registration, UX-181—that had struck a fence and fled on Jefferson Boulevard that morning. (Apr. Tr. at 20.) Soon after, Officer Hart spotted the described vehicle and conducted a traffic stop on Gorton Lake Road in Warwick. Id.

Officer Hart testified that Appellant “[had] the smell of alcohol on his breath. He had watery eyes and some slurred speech.” He also noted that Appellant’s vehicle had “damage on the left front fender, [and] the directional area of the light lens was broken.” (Apr. Tr. at 23.) The officer testified that when he asked questions regarding his whereabouts, Appellant was apparently confused, telling the officer that he was in Lincoln rather than Warwick. Id. Officer Hart then testified that when asked, Appellant

refused to perform any field sobriety tests, then placed his own hands behind his back and told the officer to arrest him. (Apr. Tr. at 25.) Subsequently, Officer Hart read Appellant the "Rights for Use at Scene" card, placed him in handcuffs, and transported him to the Warwick Police station. (Apr. Tr. at 27.)

At the station, Officer Hart read to Appellant the "Rights for Use at Station" form, after which Appellant was afforded the opportunity to make a confidential phone call. (Tr. at 30.) After making his call, Appellant informed police that he did not wish to submit to a breath test, and signed the "Rights for Use at Station" form indicating such. (Tr. at 32.)

On cross examination, Officer Hart informed the court that after initially hearing the call from his police radio, he was indeed on the look out for a vehicle which had left the scene of an accident. (Apr. Tr. at 37.) He testified that the matching license plate number along with the damage to Appellant's front left fender gave him reason to believe that Appellant's vehicle was the vehicle involved. ( Apr. Tr. at 37.) When tailing Appellant's vehicle, at no point did the officer witness the vehicle violate the posted speed limits, operate erratically, or violate any traffic laws whatsoever. (Tr. at 49.) Officer Hart also testified on cross that he asked Appellant if he had indeed been in an accident, which, at first, Appellant denied but then later admitted as such. (Tr. at 52.) When asked by Appellant's counsel whether or not the Appellant was free to leave during the traffic stop, the officer testified that he was not.<sup>1</sup>

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<sup>1</sup> It should be noted that at trial, both Officer Hart and counsel for Appellant referred to the incident on Jefferson Boulevard as a crime or criminal offense. However, Appellant was cited for a violation under § 31-26-5, "Duty in accident resulting in damage to highway fixtures." Violations of this section are not classified as crimes.

At the conclusion of testimony, the trial judge 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 (f), 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 Appellee 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 Appellant argues the trial magistrate's decision is characterized by abuse of discretion and error of law. Specifically, Appellant argues that he was unduly prejudiced by Officer Hart's failure to read Miranda warnings prior to any inquiries concerning the Jefferson Boulevard incident. Therefore, he contends the trial judge erred when he failed to suppress the State's evidence concerning the refusal charge. We disagree.

### Miranda

“The weight of authority is that Miranda warnings are necessary only when a defendant is subject to questioning by law-enforcement officials, their agents, and agents of the court while the suspect is in official custody.” In re Harold S., 731 A.2d 265, 268 (R.I. 1999). Put more succinctly, “Miranda requirements depend on the conjunction of two elements, custody and interrogation.” State v. Hobson, 648 A.2d 1369, 1371 (R.I. 1994). We find neither element present in the facts before us.

Beyond that general language from our own Supreme Court, the United States Supreme Court's holding in Berkemer v. McCarty, 468 U.S. 420 (1984), sheds light directly on the issue of Miranda warnings within the context of a traffic stop. In

Berkemer, the Court rejected the argument that Miranda warnings are required before a police officer's questioning during a traffic stop. Specifically, it stated: "[the] noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of Miranda." Id. at 443.<sup>2</sup>

Regardless of what may have prompted Officer Hart to pull over Appellant's vehicle, his stop was investigatory in nature. See generally State v. Casas, 900 A.2d 1120, 1132 (R.I. 2006.) (citing United States v. Sowers, 136 F.2d 24, 27 (1<sup>st</sup> Cir. 1998)). The record clearly indicates that the officer was on the "look-out" for the vehicle involved in the reported one-car accident on Jefferson Boulevard. (Apr. Tr. at 20.) Once he saw a vehicle with a matching license plate, he conducted the traffic stop to investigate this further, by questioning its operator and checking for damage to the vehicle's front bumper. (Apr. Tr. at 23.) His investigatory stop led to his reasonable suspicion that Appellant had been the one involved in the reported Jefferson Boulevard incident and more relevant for our purposes, that he had been operating his vehicle while under the influence of alcohol. (Apr. Tr. at 24.) Once the process of detainment for the drunk driving charge commenced, Officer Hart properly Mirandized the Appellant. (Apr. Tr. at 27.) Therefore, Appellant's argument that he was unduly prejudiced by Officer Hart's

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<sup>2</sup> The Berkemer Court enumerated various reasons in not applying Miranda to investigatory traffic stops. It especially noted the "out in the open" nature of such stops in general:

"Perhaps most importantly, the typical traffic stop is public, at least to some degree. Passersby on foot, or in other cars, witness the interaction of officer and motorist. This exposure to public view both reduces the ability of unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the motorist's fear that, if he does not cooperate, he will be subjected to abuse. The fact that the detained motorist typically is confronted by only one or at most two policemen further mutes his sense of vulnerability." Berkemer, 468 U.S. at 438.

failure to issue Miranda warnings at the outset of the traffic stop is without merit and the decision of the trial magistrate was not affected by error of law.

Assuming arguendo, the circumstances surrounding the traffic stop created a situation in which Officer Hart was obliged to immediately advise Appellant of his rights pursuant to Miranda, we would still find no error in the trial judge's decision to sustain the charges. Violations of Miranda may result in the suppression of testimonial evidence, such as coerced confessions. However, the suppression of physical, essentially non-verbal evidence is not an appropriate remedy. United States v. Patane, 542 U.S. 630, 644.

In the case before us, Officer Hart's request that Appellant submit to a chemical test was based on his own observations: the smell of alcohol, watery eyes, slurred speech. (Apr. Tr. at 24.) Even if we were to deem Appellant's statements regarding his whereabouts and his request to be arrested—facetious or not—as testimonial, it would not change the outcome of our analysis. The Rhode Island Supreme Court has held that in a refusal context, reasonable grounds depend on a variety of factors including when the motorist appears confused or disoriented, exhibits slurred speech, watery or bloodshot eyes, and/or when an odor of alcohol emanates from his or her vehicle and/or person. See State v. Perry, 731 A.2d 720, 721 (R.I. 1999). In other words, no one factor is dispositive, nor does a potential procedural violation warrant the suppression of other relevant evidence. Here, the record indicates that Officer Hart had reasonable grounds to request Appellant to submit to a breath test. Appellant refused to do so, thereby resulting in the charge under § 31-27-2.1.

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, we are satisfied that the trial magistrate's decision sustaining the charged violation of § 31-27-2.1 was not affected by error of law, clearly erroneous based on the reliable, probative, and substantial record evidence, characterized by abuse of discretion, or in violation of constitutional provisions. Finding that substantial rights of Appellant have not been prejudiced, we hereby deny his appeal and sustain the violation charged against him.

ENTERED:

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