

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF PROVIDENCE**

v.

**CHRISTINA MACHADO**

:  
:  
:  
:  
:

**C.A. No. T13-0019  
07409099642**

**DECISION**

**PER CURIAM:** Before this Panel on April 10, 2013—Magistrate DiSandro (Chair, presiding), Judge Almeida, and Magistrate Goulart sitting—is Christina Machado’s (Appellant) appeal from a decision of Magistrate Noonan, sustaining the charged violations of G.L. 1956 § 31-27-2.3, “Revocation of license upon refusal to submit to preliminary breath test,” and § 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**

This violation arose from an automobile accident that occurred at the intersection of Smith Street and Chalkstone Avenue in Providence. (Tr. at 11.) On November 11, 2012, Officer Michael Troia (“Officer Troia” or “Officer”) of the Providence Police Department responded to the scene of the accident around 5:48 p.m. Id.

Officer Troia began his trial testimony by describing his professional training and experience as a patrol officer with the Providence Police Department. (Tr. at 6-11.) Officer Troia then testified that upon arrival at the scene, he observed a Mazda sports utility vehicle (“SUV”) on Smith Street with extensive damage. (Tr. at 12.) He also observed the other vehicle

involved in the accident and identified it as a Chevy Malibu that also had extensive damage to it. Id.

Officer Troia further testified that upon speaking with Appellant about the accident, the officer observed that Appellant was slurring her speech, had bloodshot watery eyes, and had a strong odor of alcohol emanating from her person. (Tr. at 14-16.) When asked by Officer Troia whether she had consumed alcohol, Appellant responded that she had had two alcoholic beverages earlier in the evening. (Tr. at 16.)

Officer Troia requested that the Appellant submit to a preliminary breath test, to which the Appellant consented. (Tr. at 18.) As Officer Troia prepared the device to perform the preliminary breath test, Appellant refused to take the test. (Tr. at 19.) At this particular moment, Officer Troia determined that Appellant was impaired and unable to operate a vehicle safely. Id. Based on this conclusion, he then advised Appellant of her rights by reading the “Rights For Use at the Scene” card. Id. Subsequently, Officer Troia informed Appellant that she was under arrest and that he would meet her at the hospital. (Tr. at 21.)

Appellant was then transported to Roger Williams Hospital for full medical attention. (Tr. at 22.) Once Appellant was transported to the hospital, Officer Troia read her her “Rights for Use at Station/Hospital” and then offered the Appellant a confidential phone call, which Appellant refused. (Tr. at 23-24.) Officer Troia then requested that the Appellant submit to a chemical breath test, but the Appellant refused. (Tr. at 25.)

At the close of evidence, the trial judge recounted the aforementioned facts in his decision. In rendering his decision, the trial judge determined that the evidence presented at trial was sufficient to sustain the charges against the Appellant. (Tr. at 88.) The trial judge found it significant that the officer was credible and an arrest was effectuated despite the motorist’s

presence in the rescue vehicle without handcuffs. (Tr. at 82, 85.) Following the trial, the trial judge sustained the charged violations of §§ 31-27-2.3 and 31-27-2.1. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel.

### **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 contends that the trial magistrate committed reversible error of law when he sustained the charged violations. Specifically, Appellant claims that the officer did not have reasonable grounds to believe Appellant was operating a motor vehicle under the influence of alcohol. Appellant further argues that the City failed to prove that Appellant was ever arrested.

#### **A. Reasonable Grounds**

Appellant first argues that Officer Troia lacked reasonable grounds to believe that Appellant had operated a motor vehicle under the influence of alcohol. Appellant contends that the officer did not personally observe the Appellant operate her motor vehicle erratically, and therefore, Officer Troia did not have reasonable grounds to believe that Appellant had been operating the vehicle under the influence of alcohol.

Law enforcement officers must possess reasonable grounds to suspect that an individual has been driving under the influence of alcohol. Section 31-27-2.1 requires that the police officer have a reasonable suspicion that a person operating a vehicle is intoxicated. Our Supreme Court has stated that the reasonable grounds standard is the same as the reasonable suspicion standard. See Jenkins, 673 A.2d at 1097. “[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); see also State v. Bjerke, 697 A.2d 1069, 1071 (R.I. 1997) (upholding the reasonable suspicion standard in the context of a refusal to submit to a chemical test). Furthermore, the court must take into account the totality of the circumstances to determine whether an officer's suspicions are reasonable. State v. Taveras, 39 A.3d 638, 647 (R.I. 2012) cert. denied, 133 U.S. 249 (2012). Indeed, in determining reasonable suspicion, the fact finder may make permissive inferences when there exists "a rational connection between the fact proven and the inference to be drawn." State v. Lusi, 625 A.2d 1350, 1356 (R.I. 1993). Such inferences have been described by the Supreme Court as a "staple of our adversary system of factfinding." County Court of Ulster County v. Allen, 442 U.S. 140, 156 (1979).

In sustaining the violation, the trial judge noted the following—the officer's observation of Appellant's slurred speech, bloodshot watery eyes, admission of having had two alcoholic beverages, and the overwhelming smell of alcohol emanating from the Appellant—as constituting reasonable grounds for Officer Troia to believe that Appellant had driven her vehicle under the influence of alcohol. (Tr. at 82-83.); see Jenkins, 673 A.2d at 1097. Additionally, the trial judge noted that Officer Troia was trained in DUI investigation and familiar with the characteristics of intoxication, indicating Officer Troia's ability to properly identify Appellant as intoxicated. (Tr. at 81-82.) Therefore, the record demonstrates that Officer Troia did have reasonable grounds to believe that Appellant had operated a motor vehicle under the influence of alcohol.

This Panel finds the trial judge's findings were not affected by error of law or clearly erroneous. The trial judge's decision—taking into account the totality of the circumstances—was supported by Officer Troia's testimony and the exhibits entered into evidence at trial.

Therefore, the trial magistrate's decision was supported by the reliable, probative, and substantial evidence of record.

### **B. Proof of Arrest**

Appellant next contends that Officer Troia failed to take Appellant into custody because the officer allowed Appellant to remain in the ambulance and to be transported to the hospital while the officer remained at the scene to complete his investigation.

This Panel has consistently relied on the factors outlined in State v. Bailey, 417 A.2d 915 (R.I. 1980), to ascertain when an individual is under arrest. Under Bailey, our Court examines (1) the extent to which the person's freedom of movement has been curtailed and the degree of force used by the police; (2) the belief of a reasonably innocent person in these same circumstances; and (3) whether the person had the option of not going with the police. See id. at 915-18.

When Officer Troia first arrived on scene at approximately 5:48 p.m., Officer Troia asked some preliminary investigative questions after observing Appellant's present state. He then observed Appellant's bloodshot watery eyes, the strong odor of alcohol emanating from her, and Appellant's slurred speech. (Tr. at 14-16.) After the Appellant refused to take the preliminary breath test, the officer placed Appellant under arrest and read her her rights while she was on the gurney in the rescue vehicle, but still at the scene of the accident. (Tr. at 19-20.) At this moment, Officer Troia told Appellant that ". . . she was under arrest . . . [,]" thereby conveying to a reasonably innocent person that she was under arrest. (Tr. at 21.); see Bailey, 417 A.2d at 915. The Appellant's freedom of movement was not curtailed by the officer because Officer Troia did not accompany her when the emergency medical personnel transported the Appellant to Roger Williams Hospital, but soon after, he reported to the hospital. (Tr. at 23.); see Bailey, 417 A.2d

at 915. Lastly, Appellant did not have “the option” of going with Officer Troia due to Appellant’s medical injuries that resulted from the car accident. See Bailey, 417 A.2d at 915. The facts show that Officer Troia placed the Appellant into custody and read her her rights for use at scene while she was on the hospital gurney, and thus arrested the Appellant. (Tr. at 21.)

Moreover, the trial judge made a factual finding that a legally valid arrest was effectuated when the Appellant was in the rescue vehicle. (Tr. at 85.) In particular, the trial judge found that the Appellant was arrested when she was “confined on the gurney in the ambulance.” Id. The trial judge then went through the aforementioned Bailey factors to conclude that an arrest had been effectuated. (Tr. at 86-87.) In rendering his decision, the trial judge clearly stated: “I further find that after forming reasonable grounds to believe this motorist was operating while impaired by alcohol, an arrest was effectuated in the rescue when this motorist was read her rights for use at scene . . . .” Id. After the arrest, Officer Troia read the Appellant her “Rights for Use at the Station/Hospital” card pursuant to § 31-27-3. (Tr. at 23-24.) Thus, this Panel is satisfied that the trial judge’s factual findings regarding Appellant’s time and manner of arrest are supported by credible and competent evidence and not characterized by abuse of discretion or error of law. 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 conclude that the trial judge's decision was not affected by error of law, or in violation of constitutional provisions, and was supported by the reliable, probative, and substantial evidence of record. Substantial rights of the Appellant have not been prejudiced. Accordingly, the Appellant's appeal is denied.

ENTERED:

\_\_\_\_\_  
Magistrate Domenic A. DiSandro, III (Chair)

\_\_\_\_\_  
Judge Lillian M. Almeida

\_\_\_\_\_  
Magistrate Alan R. Goulart

DATE: \_\_\_\_\_