STATE OF RHODE ISLAND **DISTRICT COURT**
PROVIDENCE, Sc. **SIXTH DIVISION**

ROBERTO ANDRADE

v. A.A. No. 6AA-2022-00210

STATE OF RHODE ISLAND,
(RITT PANEL)

JUDGMENT

This matter came before Caruolo J. on Administrative Appeal, and upon review of the record and a decision having been rendered, it is

ORDERED AND ADJUDGED,

that the decision of the RITT Appeals Panel is AFFIRMED.

Dated at Providence, Rhode Island, on this 22nd day of October 2024.

Enter: By Order:

_____/s/_____ _____/s/_____

STATE OF RHODE ISLAND **DISTRICT COURT**
PROVIDENCE, Sc. **SIXTH DIVISION**

ROBERTO ANDRADE

v. A.A. No. 6AA-2022-00210

RHODE ISLAND
TRAFFIC TRIBUNAL

DECISION

Caruolo, J.: In this case, Mr. Roberto Andrade ("Appellant"' or "Andrade") urges that an appeals panel of the Rhode Island Traffic Tribunal ("Appellee") erred when it denied his appeal of a trial magistrate's decision finding him guilty of refusal to submit to a chemical test pursuant to G.L. 1956 § 31-27-21.

This Court has jurisdiction pursuant to by G.L.1956 § 31-41.1-9. This matter has been referred to this Court for findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. For the reasons stated herein, I conclude that Appellee's decision is AFFIRMED.

I. PROCEDURAL HISTORY AND FACTS

The facts of the incident which led to the charge of refusal to submit to a chemical breathalyzer test being lodged against Appellant are comprehensively and fairly stated in the decision of the RITT Appeals Panel. Accordingly, this Court

will not entirely restate them here. Additional facts of record shall be introduced as necessary.

A. The Incident

At approximately 11:50 PM on September 11, 2021, Rhode Island State Police Trooper Samuel Hebb ("Trooper Hebb") observed Appellant, the driver of a brown pickup truck, make several abrupt lane changes without a turn signal. (Apr. 11, 2022 Tr. 20:1-12.) Accordingly, Trooper Hebb conducted a motor vehicle stop. *Id.* at 21:22-24. Trooper Hebb testified that, during this stop, he detected a "strong odor" of alcohol from the vehicle. *Id.* at 22:21-23. Trooper Hebb asked Appellant if he had consumed alcohol, and Appellant responded that he had consumed "a few beers" prior to driving. *Id.* at 24:8-11. Trooper Hebb also testified that Appellant's eyes were bloodshot and his speech was slurred. *Id.* at 25:11-17.

As such, Trooper Hebb testified that he asked Appellant to perform a series of field sobriety tests, with which Appellant complied. *Id.* at 25:15-24; 26:1. The Trooper noticed that Appellant moved his head contrary to instructions during the horizontal gaze nystagmus test. *Id.* at 28:12-20. Trooper Hebb testified that during the walk-and-turn test, Appellant lost balance and stumbled during instructions, stepped offline, and relied on his arms for balance during the test. *Id.* at 30:2-4; 32:21. Trooper Hebb testified that Appellant also failed the one-legged stand test. *Id.* at 34:4-5.

Having failed all three field sobriety tests, Trooper Hebb arrested Appellant, read him the Rights for Use at Scene and transported him to the Operation Blue BAT Mobile in Providence, Rhode Island. *Id* at 36:1-14; 38:3-4; 38:17-21. Trooper Hebb testified that Appellant was charged with failure to use turn signals, laned roadway violations, and refusing to submit to a chemical test. *Id.* at 44:4-5. Trooper Hebb testified that he handed Appellant a copy of a form titled Implied Consent Notice (Over 18) and read aloud to him the rights contained within the form as well as the potential penalties for refusing a chemical test. *Id.* at 39:5-8. After allowing Appellant a phone call, Trooper Hebb testified that he asked Appellant to submit to a chemical breath test and Appellant refused. *Id.* at 39:17-21; 40:1-2. Appellant signed the Implied Consent Form reflecting his refusal to submit to a chemical breath test. *Id.*

Pursuant to G.L. 1956 § 31-27-2.1, Trooper Hebb testified that he prepared a sworn affidavit the day after the incident. *Id.* at 41:17-24. However, Trooper Hebb testified that he mistakenly filed the Under 18 Implied Consent Form with the Traffic Court instead of the Over 18 form. *Id.* at 43:3-9. Trooper Hebb initially testified that there are no material differences between the two forms, but subsequently admitted that there are differences between the forms. *Id.* at 43:12-13; 49:1-3. Trooper Hebb testified that he never read Appellant the Under-18 form,

and that the filing of that form was simply an administrative error after Appellant had been released. *Id.* at 9-14.

The two forms differ in that the Over 18 form states "if you have had one or more previous offenses within the past five (5) years, your refusal to submit to a chemical test of breath or urine at this time can have criminal penalties" while the Under 18 form states "if you have had one or more previous offenses within the past five (5) years, your loss or modification of license, fine and community service sanctions can increase over those provided for a first offense." *See* Appellant's Exhibit 3 (Persons Under 18); Appellant's Exhibit 2 (Implied Consent Notice (Over 18)). Additionally, the Over 18 form states that "refusal to submit to a chemical test of blood shall not subject you to criminal penalties for the refusal itself, but if you have one or more previous offenses other civil penalties may increase" while the Under 18 form states "Refusal to submit to a chemical test shall not be considered a criminal offense." *Id.*

Trooper Hebb ultimately testified that all of the rights that would apply to somebody over 18 were read to Appellant, and that he never read Appellant anything from the Under 18 form. *See* Apr. 11, 2022 Tr. 65:5-11. Appellant contested the charges and the matter proceeded to trial on April 11, 2022 and April 27, 2022. *See* Docket.

B. The RITT Trial

On April 11, 2022, the trial magistrate held a trial regarding this matter. At this hearing, Trooper Hebb testified to his experience with conducting traffic stops and DUI enforcement. *See* Apr. 11, 2022 Tr. 8:7-16; 9:6; 10:2-19. As stated above, Trooper Hebb testified that he observed abrupt lane changes without turn signals and nearly colliding with other vehicles. *Id.* at 20:1-22:4. Trooper Hebb testified that he conducted a motor vehicle stop of Appellant, observed a smell of alcohol coming from the vehicle, and that Appellant informed Trooper Hebb he had consumed a few beers prior to driving. *Id.* at 22:1-3; 22:21-23; 24:8-11. As stated previously, Trooper Hebb testified that he observed Appellant had bloodshot and watery eyes as well as slurred speech. *Id.* at 25:11-14. Additional testimony is discussed *supra*.

On April 27, 2022, the magistrate sustained the three charges based on Trooper Hebb's testimony. *See State v. Roberto Andrade,* C.A. No. T22-0012. The magistrate concluded Trooper Hebb was a credible witness and adopted his testimony as its findings. *Id.* The magistrate imposed an $85 fine for both the Laned Roadway Violation and the Turn Signal Required charge. *Id.* Further, the magistrate found that Appellant was correctly advised of his rights and that he suffered no prejudice from the Trooper's clerical error in submitting the Under 18 form instead of the correct Over 18 form. *Id.* The magistrate imposed a six-month

suspension of Appellant's license, a $200 fine, a $500 Highway Safety Assessment fee, a $200 Department of Health fee, ten hours of community service, and participation in an Alcohol Education Program. *Id.*

C. Proceedings Before Appeals Panel

The RITT Appeals Panel heard Appellant's appeal on May 25, 2022. Appellee made the determinations that (1) Trooper Hebb had "reasonable grounds to believe that Appellant was operating a vehicle under the influence of alcohol based on Appellant's abrupt lane changes, failure to use a turn signal, proximity to other vehicles near Exit 23, admission of prior alcohol consumption, slurred speech, bloodshot eyes, and also the odor of alcohol emanating from Appellant's vehicle;" (2) Appellant refused a chemical test; (3) Appellant was informed his of his rights; and (4) Appellant was informed of the penalties for refusing a chemical test. *See* Decision of the Appeals Panel at 10. Based on these determinations, Appellee concluded that all elements of G.L. 1956 § 31-27-2.1 were met. *Id.*

Regarding the issue of whether the sworn report was valid, Appellee determined that Trooper Hebb's mistake was inadvertent, non-prejudicial, and did not warrant the dismissal of the refusal charge. *Id.* at 12. Relying on *State v. Jared Bisordi*, C.A. No. T13-0067, Jan. 15, 2015, R.I. Traffic Trib. (*Bisordi I*), and *Jared Bisordi v. State of Rhode Island* (RITT Appeals Panel), A.A. No. 2014-092 (6th

Dist. June 1, 2015) (*Bisordi II*), Appellee concluded that to sustain the refusal charge, the State need only show that a sworn report was created, not that it is completely accurate. (Administrative Appeal at 11.)

In its September 14, 2022 decision, the Appeals Panel upheld the trial magistrate's determination that Trooper Hebb executed a sworn report that his clerical mistake of submitting the Under 18 form did not warrant dismissing the charges against Appellant. Accordingly, the Appeals Panel denied Appellant's appeal and sustained the determination of the trial magistrate.

D. Proceedings in District Court

Five days later, on September 19, 2022, Appellant appealed the Appeals Panel's denial of his appeal of the trial magistrate's decision. On November 2, 2022, the Honorable Magistrate Ippolito ordered a stay on the suspension of Appellant's driver's license while the appeal is pending before this Court. Both parties have presented the Court with memoranda outlining their respective positions.

II. STANDARD OF REVIEW

The standard of review which this Court must employ in this case is governed by Rhode Island Gen. Laws 1956 § 31-41.1-9(d) which provides:

> "The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel,

> or 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 appeals panel's findings, inferences, conclusions or decisions are:
>
> > "(1) In violation of constitutional or statutory provisions;
> > "(2) In excess of the statutory authority of the appeals panel;
> > "(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."

This standard of review is a mirror-image of that found in Gen. Laws 1956 § 42- 35-15(g) — the State Administrative Procedures Act ("APA"). Accordingly, this Court may rely on cases interpreting the APA standard as guideposts in this process. Under the standard established by the APA, the District Court "may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.'" *Guarino v. Dep't of Soc. Welfare*, 410 A.2d 425, 428 (R.I. 1980). "In essence, if 'competent evidence exists in the record, the Court is required to uphold the agency's conclusions.'" *Auto Body Ass'n of R.I. v. State of R.I. Dep't of Bus. Regulation*, 996 A.2d 91, 95 (R.I. 2010) (quoting *R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd.*, 650 A.2d 479, 484 (R.I. 1994)). "It is well settled that this Court will affirm appeals panel decisions unless we determine that 'the panel misapplied the law,

misconceived or overlooked material evidence, or made findings that were clearly wrong.'" *State v. Bruno*, 709 A.2d 1048, 1049-50 (R.I. 1998) (quoting *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993)).

Further, our Supreme Court has stated, when handling refusal cases, reviewing courts lack "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. This Court's review, like that of the RITT 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." *Id.* Legally competent or substantial evidence is "relevant evidence that a reasonable mind might accept as adequate to support a conclusion and means [an] amount more than a scintilla but less than a preponderance." *Caswell v. George Sherman Sand & Gravel Co., Inc.*, 424 A.2d 646, 647 (R.I. 1981).

III. DISCUSSION

The sole issue before this Court is whether the decision of the RITT Appeals Panel was clearly erroneous in light of the reliable, probative, and substantial evidence of record or whether it was affected by error of law. In summary, whether the RITT Appeals Panel erred when it upheld Appellant's conviction for refusal to submit to a chemical test.

Appellant asserts that there was no valid sworn report because Trooper Hebb's sworn report was the form used for motorists under 18, instead of the correct Over 18 form. *See* Administrative Appeal at 5. Appellant argues that, because the sworn report contains "false facts," it is not a valid sworn report and therefore the Appeals Panel's decision to deny his appeal constituted an error of law.

Pursuant to Gen. Laws 1956 § 31-27-2.1:

> "(a) 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, saliva and/or urine for the purpose of determining the chemical content of his or her body fluids or breath.
>
> "(b)(1) At the initial traffic tribunal appearance, the magistrate shall review the incident, action, and/or arrest reports submitted by the law enforcement officer to determine if there exists reasonable grounds to believe that the person had been driving a motor vehicle while under the influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination thereof. The magistrate shall also determine if the person had been informed of the penalties incurred as a result of failing to submit to a chemical test as provided in this section and that the person had been informed of the implied consent notice contained in subsection (c)(10) of this section. For the purpose of this subsection only, 'driving a motor vehicle while under the influence of any controlled substance as defined in chapter 28 of title 21' shall be indicated by the presence or aroma of a controlled substance on or about the person or vehicle of the individual refusing the

> chemical test or other reliable indicia or articulable conditions that the person was impaired due to their intake of a controlled substance."

In *Link v. State*, a driver crashed their vehicle into a tree. *See Link*, 633, A.2d at 1346. The responding officer noted the driver's eyes were watery and bloodshot, that the driver had mumbled speech, poor balance, and the officer noted the odor of alcohol on the driver's breath. *Id.* The officer subsequently conducted a field sobriety test, which the driver, Link, failed. Link was then informed of her "on scene DWI rights" and placed under arrest. *Id.* At the station, she was informed of her "in station DWI rights." *Id.* Link refused to submit to a breathalyzer test and signed "a rights form" indicating her refusal. *Id.* Accordingly, Link was charged with refusal to submit to a chemical test. *Id.* The responding officer prepared a report stating that Link refused to submit to the chemical test. *Id.* On appeal before an administrative appeal judge, Link's attorney moved to dismiss the refusal charge because the police report was deficient as it "incorrectly listed the $147 fee as $115." *Id.* at 1347. The administrative judge dismissed the refusal charge on the grounds of a defective police report. *Id.* On appeal before the Appeals Panel, the Panel reversed the dismissal and remanded for a new hearing. *Id.*

Interpreting G.L. 1956 § 31-27-2.1(a), the Court held that "the requisite findings may be made based upon whatever evidence is adduced at the hearing and

are not dependent upon the validity of the sworn report required by subsection (a)." *Id.* at 1349. Further, the Court held that "Subsection (b) . . . does not require a hearing judge to find that the sworn report complied with § 31–27–2.1(a)." *Id.* "Therefore, the proper procedure under a literal application of § 31–27–2.1(b) [must provide] the state an opportunity to establish the facts necessary under subsection (b) to sustain [the driver's] breathalyzer refusal charge notwithstanding the defect in [the officer's] sworn report." *Id.*

In *Bisordi v. State of Rhode Island*, the responding officer arrived at the scene of a multi-car accident. *Bisordi II*, A.A. No. 2014-092 at 2. When the officer approached Bisordi, one of the drivers, he noted mumbled and slurred speech, an odor of alcohol, and bloodshot and watery eyes. *Id.* at 3. Accordingly, the officer conducted a field sobriety test, which Bisordi failed. *Id.* Bisordi was read his rights and arrested on suspicion of driving under the influence. *Id.* Although Bisordi consented to a breathalyzer at the station, after three failed attempts, the officer concluded Bisordi was not blowing air into the machine and accordingly charged him with refusal to submit to a chemical test. *Id.* at 4. The trial magistrate sustained the refusal charge. *Id.* at 11. On appeal before the Appeals Panel, Bisordi raised six errors. *Id.* Amongst these errors, Bisordi alleged that the charge must be dismissed because the officer's affidavit was not sworn. *Id.* at 12. The Panel affirmed the magistrate's decision. *Id.* Bisordi then appealed to the District Court. *Id.* Relying

on *Link*, this Court held that the trial judge or magistrate need not find the sworn report to be accurate, as long as sufficient evidence of a violation is adduced at the hearing independent of the validity of the sworn report. *Id.* at 45 (citing *Link*, 633 A.2d at 1349).

G.L. 1956 § 31-27-2.1(a) "empowers law-enforcement officers to prepare a sworn report and submit it to the AAC whenever a motorist arrested on suspicion of driving while intoxicated rejects the chemical test." *Link*, 633 A.2d at 1349. "[W]hen such a report fulfills the requirements set forth in § 31–27–2.1(a), the AAC must automatically suspend the license of the driver to whom reference is made in the report." *Id.*

§ 31-27.2.1(b) "permits the hearing judge to sustain the charge only upon finding that:

> 'the law enforcement officer making the sworn report [pursuant to § 31–27–2.1(a)] had reasonable grounds to believe that the arrested person had been driving a motor vehicle within * * * [Rhode Island] while under the influence of intoxicating liquor * * * or any controlled substance * * * and that said person while under arrest refused to submit to the [breathalyzer] test[ ] upon the request of a law enforcement officer, that the person had been informed of his rights in accordance with § 31–27–3, and that the person had been informed of the penalties incurred as a result of noncompliance with this section.' Section 31–27–2.1(b)." *Id.*

Here, Appellant does not contest that a sworn report was created; rather, he merely argues that it was inaccurate because it was the form for motorists under

18. In accordance with § 31-27-22.1(a), Trooper Hebb's report was submitted and the trial magistrate automatically suspended Appellant's license for six months pursuant to subsection (a). (4/27/202 Tr. at 31:12-14.)

Accordingly, at trial, it was the State's burden to establish that there were reasonable grounds to believe Appellant was driving under the influence, that Appellant failed to submit to a chemical test, and that Appellant was informed of his rights pursuant to § 31-27-3 and the penalties of a refusal of a chemical test. *See Link*, 633 A.2d at 1349. As outlined above, there is sufficient evidence within the record that Appellant was walking with poor balance, could not stand on one foot, that the officer smelled alcohol from the vehicle, that Appellant admitted to consuming "a few beers" prior to driving, that he was making sudden lane changes without a turn signal, and that he almost collided with other vehicles on the roadway. *See* Apr. 11, 2022 Tr. 20:1-12; 22:21-23; 24:8-11; 25:11-17; 25:15-24; 30:2-4; 34:4-5. Therefore, the record clearly demonstrates that Appellant was driving under the influence. Further, there is satisfactory proof that Appellant refused to submit to a chemical test. *See* Apr. 11, 2022 Tr. 36:1-14; 38:17-21; 39:5-8; 39:17-21; 40:1-2. Lastly, it is evident from the record that Appellant was informed of his rights and potential penalties for failure to submit to the chemical test. *Id.* As such, the State has satisfied its burden as set forth in subsection (b) of the statute.

Moreover, the Court in *Link* held that the State has a compelling interest in reducing the number of impaired drivers on the road, that requiring submission to chemical tests and summary license suspensions are justifiable means of achieving this interest, and that permitting the State to prove a refusal charge notwithstanding a clerical error on the police report advances this compelling state interest. *See Link*, 633 A.2d at 1349. Here, the State's compelling interests are similarly advanced by permitting the state to prove a refusal charge against Appellant despite the clerical error of the officer mistakenly stating that he submitted the incorrect form.

As held in *Link* and *Bisordi*, the inaccuracy of the police report does not amount to a reversible error of law. Therefore, this Court concludes that Appellant's claim fails.

IV. CONCLUSION

Based on a careful review of the record, I find that the Appellee's decision is not clearly erroneous or affected by clear error of law. G.L. 1956 § 42-35-15(g)(3),(4). Further, it also is not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; nor is it arbitrary or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. G.L. 1956 § 42-35-15(g)(5), (6). Accordingly, the decision of the Rhode Island Traffic Tribunal appeals panel is AFFIRMED.