STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T24-0005**
	:	**23507500972**
DAVID TURCO	**:**	

DECISION

PER CURIAM: Before this Panel on May 1, 2024—Magistrate DiChiro (Chair), Magistrate Noonan, and Magistrate Abilheira—is the appeal of David Turco (Appellant) from a decision of Magistrate Welch (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to Submit to Chemical Test – 1st Offense." The Appellant appeared with his counsel, Richard Humphrey, Esq., before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For reasons set forth in this Decision, Appellant's appeal is denied.

I

Facts and Travel

On November 25, 2023, Officer Shannon Kane ("Officer Kane") of the Charlestown Police Department charged Appellant with violating § 31-27-2.1, "Refusal to Submit to Chemical Test – 1st Offense," and § 31-15-11, "Laned Roadway Violations." (Summons No. 23507500972.)

Prior to trial, Appellant filed a Motion to Dismiss on Fourth Amendment grounds. *See* Docket; *see also* Appellant's Mot. to Dismiss. The Court took the motion under advisement (02/20/2024 Tr. 4:10-13), and the matter proceeded to trial on February 20, 2024. *See* Docket.

At trial, Officer Kane testified that, at approximately 4:55 p.m. on November 25, 2023 while on a stationary post on Post Road, she received a BOLO ("Be on the Lookout") for a black BMW with a license plate number of 1KH884, driving erratically. (02/20/2024 Tr. 14:18; 16:18-22.) The license plate was registered to a house on Old Coach Road in Charlestown. *Id*. at 17:2-4. While at her post, Officer Kane observed the vehicle from the BOLO pass her position. *Id*. at 18:1. She pulled out behind the vehicle and observed the driver's side wheels cross over the double yellow line. *Id*. at 18:1-4. The vehicle corrected itself, but shortly thereafter again crossed the double yellow line, overtaking half of the opposite lane of travel. *Id*. at 18:4-6. As they approached the intersection to Old Coach Road, Officer Kane activated her lights and attempted a traffic stop. *Id*. at 18:21.

The Turco vehicle failed to stop, however, and continued on Old Coach Road. *Id*. at 19:3-4. Officer Kane followed the vehicle into a driveway on Old Coach Road. *Id*. at 20:12-15. Officer Kane noted that Appellant had driven into the garage. *Id*. at 19:4-5. From her position in the driveway, she observed Appellant in the garage trying to exit the vehicle. *Id*. at 25:15-16. Officer Kane noticed that the garage was attached to the house. *Id*. at 61:13-15. She entered the garage by foot and approached the driver's side door. *Id*. at 22:21. When Officer Kane approached Appellant's vehicle, she observed that Appellant had red, bloodshot eyes. *Id*. at 22:21; 23:22-23. She explained to Appellant that during a traffic stop, he must remain seated in his vehicle. *Id*. at 25:1-2. Officer Kane advised Appellant that she had been attempting to stop him to which he replied, "okay" and gave her a confused look. *Id*. at 23:23-24:7. She alleged that when asked why he continued to drive into his driveway, he stated that he thought it was safe. *Id*.

Officer Kane explained to Appellant that she pulled him over because he was "all over the road." *Id*. at 24:11. She further claims that Appellant stated he was coming from his girlfriend's

house and could not explain why his car was "all over the road." *Id*. at 24:17-21. Officer Kane stated that as she spoke to Appellant, she ascertained that his speech was confused, slurred, thick-tongued, and she could smell the odor of an alcoholic beverage emanating from his breath. *Id*. at 27:3-7. She told him to remain in the vehicle while she returned to her cruiser to perform a Rhode Island Law Enforcement Telecommunications System ("RILETS") check. *Id*. at 25:1-3.

While performing the RILETS check, Appellant attempted to leave his vehicle, but Officer Kane ordered him back and explained that he needed to remain in the vehicle. *Id*. at 25:15-19. Appellant asked Officer Kane if he could sit on a chair in his garage and was told no to which he replied, "Seriously?" *Id*. at 25:19-21. As Appellant exited his vehicle, Officer Kane observed that he was unsteady on his feet and "shuffled out to his driveway." *Id*. at 26:13-15. She also noted that his zipper was down. *Id*. at 27:1.

Officer Kane requested that Appellant submit to a Standardized Field Sobriety Test ("SFST") which he refused. *Id*. at 26:20-24. Based on her observations of Appellant's driving, his slurred speech, bloodshot eyes, and the odor of alcohol on his breath, Officer Kane took Appellant into custody for suspicion of driving under the influence of alcohol. *Id*. at 28:7-11. Appellant was then placed in handcuffs and secured in the police cruiser while read his Rights for Use at Scene. *Id*. at 28:16; 29:15-26.

At the police station, Appellant was searched, handcuffs removed, and handed a copy of the Implied Consent Notice, which Officer Kane read to him aloud. *Id*. at 30:12-22. Appellant was offered and refused a confidential phone call. *Id*. at 32:2-8. He also refused to take a chemical test, and circled "refuse" on the form. *Id*. at 32:22.

At trial, the Trial Magistrate found Officer Kane to be a "credible and convincing witness and [he] incorporated her testimony as set forth previously . . . into [his] findings of fact."

(03/11/2024 Tr. 14:20-24.) He further stated that,

> "Officer Kane did have reasonable grounds to believe that Mr. Turco had been driving a motor vehicle in the State of Rhode Island under the influence of intoxicating liquor or a controlled substance or a combination of the two that rendered Mr. Turco incapable of safely operating a motor vehicle." *Id*. at 15:13-17.

Appellant had filed a Motion to Dismiss arguing that Officer Kane violated his constitutional rights by entering the garage without a warrant. *See* Def.'s Mot. to Dismiss. The Trial Magistrate denied Appellant's Motion to Dismiss, stating that Officer Kane's warrantless entry into Appellant's garage did not violate the Fourth Amendment to the United States Constitution because exigent circumstances existed. (03/11/2024 Tr. 19:26-27; 20:7-8.) The Trial Magistrate found that, "at no point in time did Officer Kane cease her pursuit of Mr. Turco." *Id*. at 16:8-9. Proceeding to the merits, the Trial Magistrate found the Refusal Charge was proven by clear and convincing evidence, but the Laned Roadway Violation was dismissed because the necessary elements were not proven by clear and convincing evidence. *Id*. at 20:18-23. Aggrieved by the decision, Appellant has filed this appeal.

II

Standard of Review

Pursuant to § 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. 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." *Id.* (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 '[c]learly 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." *Id.* "Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions" on appeal. *Id*.; *see Janes*, 586 A.2d at 537.

III

Analysis

As grounds for appeal, Appellant asserts that all evidence obtained after Officer Kane's warrantless entry into the garage should have been excluded at trial. *See* Notice of Appeal. Appellant also contends that there was no finding at trial that Officer Kane had reasonable suspicion to pull Appellant over. *Id*. He further states that Officer Kane did not observe the erratic

driving herself and that there was no evidence that the anonymous tip was reliable. *Id*.

A

Warrantless Entry

Appellant claims that Officer Kane's entry into his garage without a warrant violated his Fourth Amendment rights. *See* Notice of Appeal. The State argues that this case falls within the exigent circumstances exception, which justified warrantless entry because, "[M]otorists should not be allowed to ignore the police attempting to conduct a stop in order to reach their home where they will be able to take steps to eliminate the signs of intoxication while the police wait for a warrant outside." *See* State's Obj. to Def.'s Mot. to Dismiss.

An individual's right to privacy in his home is rooted in the clear language of the Fourth Amendment: "The right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const.Amend. IV. "[A]t the core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Payton v. New York*, 445 U.S. 573, 590 (1980)"Absent exigent circumstance, that threshold may not reasonably be crossed without a warrant." *Id*.

The curtilage of a home, the area to which extends the intimate activity associated with the "sanctity of a man's home and the privacies of life," is part of the home itself for Fourth Amendment purposes. *Boyd v. United States*, 116 U.S. 616, 630 (1886). Curtilage is defined by reference to the factors that determine whether an individual reasonably may expect that an area immediately adjacent to the home will remain private. *Collins v. Virginia*, 584 U.S. 586, 593-94 (2018). Attached garages are part of a home's curtilage. *See United States v. Dunn*, 480 U.S. 294, 307-08, 107 S.Ct. 1134 (1987) ("[T]he general rule is that the [c]urtilage includes all outbuildings

used in connection with a residence, such as garages ... connected with and in close vicinity of the residence.")

"[T]o conclude there was an exigency, the 'ultimate test is whether there is such a compelling necessity for immediate action as will not brook the delay of obtaining a warrant.'" *Gonzalez*, 136 A.3d at 1151 (quoting *United States v. Adams*, 621 F.2d 41, 44 (1st Cir. 1980)). In demonstrating a compelling and urgent necessity sufficient to circumvent the constitutional mandate of a warrant, the police "bear a heavy burden[.]" *Id*. (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 749, (1984)); *see also id*. ("[B]efore agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries." (quoting *Welsh*, 466 U.S. at 750)). "[T]he police [must] have an objective, reasonable belief that a crisis can only be avoided by swift and immediate action." *Id.* at 1151 (quoting *State v. Gonsalves*, 553 A.2d 1073, 1075 (R.I. 1989)).

Circumstances justifying warrantless entry include engaging in 'hot pursuit' of a fleeing suspect and preventing the imminent destruction of evidence. *Gonzalez*, 136 A.3d at 1164 (quoting *Missouri v. McNeely*, 569 U.S. 141, 148-49 (2013)).

> "The Court has also declared that exigent circumstances exist when evidence is likely to be lost, destroyed, or removed during the time required to obtain a warrant and when, because of the circumstances, it is difficult to secure a warrant, a warrantless entry and search may be justified." *State v. Jennings*, 461 A.2d 361, 366 (R.I. 1983).

In *McNeely*, the defendant was stopped for speeding and crossing the centerline. *McNeely*, 569 U.S. at 145. McNeely declined to take a breath test to measure his blood alcohol concentration (BAC). *Id*. He was arrested and taken to a hospital. *Id*. at 145-46. The officer did not attempt to secure a search warrant. *Id*. McNeely refused to consent to the chemical test, but the officer

directed a lab technician to take a sample anyway. *Id*. McNeely's BAC tested above the legal limit, and he was charged with driving while intoxicated. *Id*. The trial court suppressed the test result, concluding that the exigency exception to the warrant requirement did not apply because, apart from the fact that McNeely's blood alcohol was dissipating, no circumstances suggested that the officer faced an emergency. *Id*. The Missouri Supreme Court and U.S. Supreme Court affirmed. *Id*. at 147. The Court looked to the "totality of circumstances," declining to announce a *per se* rule. *Id*. at 156.

Conversely, in *Lange v. California*, the defendant there drove past a California highway patrol officer while playing loud music and honking his horn, which attracted the officer's attention. 594 U.S. 295 (2021). The officer initiated a pursuit and signaled for Lange to pull over. *Id*. However, Lange was near his home and chose to continue into his driveway and garage instead of stopping. *Id*. The officer followed Lange into his garage without a warrant, conducting a field sobriety test that Lange failed, leading to charges for driving under the influence (DUI) and a noise infraction. *Id*. Lange moved to suppress evidence obtained after the officer's entry, arguing the warrantless entry violated the Fourth Amendment. *Id*. The Supreme Court held that flight of a suspected misdemeanant does not always justify a warrantless entry into a home. *Id*. at 299.

The Supreme Court reasoned that the sanctity of the home is a core Fourth Amendment principle, warranting careful consideration before allowing warrantless entries. *Id*. at 303. Exigent circumstances can justify such entries, but the court rejected a categorical rule that any pursuit of a fleeing suspect constitutes an exigent circumstance. *Id*. at 296. Instead, the court emphasized a case-by-case analysis to determine if the specifics of the pursuit necessitate immediate action that would justify forgoing a warrant. *Id*. at 295. The court distinguished between the need to pursue based on potential harm, destruction of evidence, or flight from the scene, and situations where

such exigencies do not exist, indicating that not all misdemeanors will involve such exigencies. *Id*. at 308. The decision attempts to balance law enforcement needs with the Fourth Amendment's protection of in-home privacy, assessing the necessity of warrantless entry, and considering the circumstances of each case. *Id*. at 313.

Appellant cites to *Lange* to bolster his case; however, we concur with the Trial Magistrate and do not believe that the *Lange* decision is persuasive or controlling in this case. (03/11/2024 Tr. 17:14-16.) Though the facts are similar, the ruling did not go far enough to determine if the motorist's rights had been violated based on the specific facts in *Lange*. *Id*. at 17:17-23. In their concurrence, Chief Justice Roberts and Justice Alito stated that an officer can enter a property and complete an arrest that was lawfully initiated outside of the property. *Id*. at 10:17-18. A police officer may enter the property when in pursuit of a fleeing suspect, and that in itself is an exigent circumstance. *Id*. at 18:18-21.

Lange permits a case-by-case analysis where the totality of the circumstances is considered to determine if an exemption applies. The Supreme Court has instructed courts to look at the nature of the crime, the nature of the flight, and the surrounding facts to determine whether an exemption exists. Recently, the Supreme Court revisited *Lange*, finding that, when exigent circumstances exist (such as immediate or continuous pursuit) a warrant under the Fourth Amendment is not required. *U.S. v. McGrath*, --- F.Supp.3d ---- (2023).

In the instant case, Officer Kane entered Appellant's garage (the curtilage of the home) without a warrant. Therefore, the trial magistrate was required to find that an exception applied. As the trial magistrate found, first, Appellant displayed signs of impairment when he twice crossed over the double yellow lines. Secondly, Appellant fled the stop and forced Officer Kane to pursue him. The nature of Appellant's flight was hectic. Officer Kane activated her lights, Appellant

pulled over and so did Officer Kane. Appellant then began driving again despite Officer Kane pursuing him with her lights activated. The pursuit was continuous as *McGrath* required. Officer Kane had to continue the pursuit that lawfully began on the street. *See Lange* concurrence.

Once Appellant was in his garage, he attempted to leave his vehicle despite Officer Kane telling him to remain seated in the vehicle. Then, Officer Kane observed that Appellant emanated an odor of alcohol, had bloodshot eyes, was slurring his speech, and was unaware that the zipper on his pants was down. *Id*. at 23:22-25. These were all indicia of Appellant being under the influence of alcohol. As such, the exigency of the warrantless entry was valid. There was no way for Officer Kane to know whether Appellant would attempt to leave the premises while under the influence. Blood Alcohol Content is a unique type of evidence due to its time-sensitive nature as time and delay further reduces a defendant's BAC and possibly permanently destroys the only evidence other than witness testimony. *McNeely*, 569 U.S. at 151. Though the home is constitutionally protected, motorists should not be allowed to ignore police who are attempting to conduct a stop in order to reach their home, where they will be able to take steps to eliminate the signs of intoxication while the police wait for a warrant outside. In all, the trial magistrate correctly held that exigent circumstances existed for Officer Kane to enter Appellant's garage without a warrant.

B

Reasonable Suspicion

On appeal, Appellant also argues that the Trial Magistrate erred in sustaining the charged violation because Appellant alleges that Officer Kane did not have reasonable suspicion either to conduct a motor vehicle stop or to request that Appellant submit to a chemical test. *See* Notice of Appeal. Appellant also argues that because the State could not sustain the initial Laned Roadway

Violation, the refusal charge must also be dismissed.

On many occasions, an alcohol-related traffic offense (i.e., driving under the influence or refusal) results after a motorist has been stopped for the violation of a lesser (non-alcohol related) traffic offense. Such stops have been found to comport with the Fourth Amendment requirement that searches and seizures be reasonable. *See Whren v. United States*, 517 U.S. 808, 810 (1996); see also *State v. Bjerke*, 697 A.2d 1069, 1072 (R.I. 1997).

Our Supreme Court has held that, in connection with alcohol-related traffic offenses, reasonable suspicion plays a dual role as the standard that permits law enforcement officials to take two critical actions: (1) the initial stop and (2) the request of the motorist to submit to a chemical test. *State v. Perry*, 731 A.2d 720, 723 (1999). To sustain the refusal charge, the Trial Magistrate was required to find that Officer Kane had reasonable suspicion both for making the initial stop and for requesting that the motorist submit to a chemical test.

1

The Initial Stop

Appellant contends that Officer Kane did not have reasonable suspicion to conduct the initial traffic stop. *See* Notice of Appeal. When initiating a traffic stop, an officer needs only reasonable suspicion to conduct the stop itself. *State v. Keohane*, 814 A.2d 327, 330 (R.I. 2003). Reasonable suspicion exists when "the detaining authority can 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *Bjerke*, 697 A.2d at 1071 (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The United States Supreme Court has made clear that the decision to stop a vehicle is considered reasonable when the police have probable cause to believe that a traffic violation has occurred. *See Whren v. United States*, 517 U.S. 806 (1996). Therefore, in order to conduct a traffic stop that comports with

the Fourth Amendment, Officer Kane was required to have specific and articulable facts providing reasonable suspicion that a traffic violation had occurred. *See Terry*, 392 U.S. at 21. Officer Kane testified that there was a BOLO for an erratic operator. (02/20/2024 Tr. 15:14-16.) She observed a vehicle matching that description pass her location and that she saw "the vehicle's front tires cross over the double yellow line." *Id*. at 18:1-6. It then corrected itself, and "crossed over into the opposite lane of travel with half of its vehicle" crossing over the double yellow lines again. 18:4-11. The observation of Appellant's vehicle traveling over the double yellow lines multiple times, provided Officer Kane with "specific and articulable facts, [] taken together with rational inferences[,]" to justify a stop of Appellant's vehicle for Laned Roadway Violations. *See Bjerke*, 697 A.2d at 1071; *Keohane*, 814 A.2d at 330. As such, it is clear that the Trial Magistrate's finding that Officer Kane met the requisite standard to conduct a traffic stop was not clearly erroneous based on the substantial record evidence. *See Bjerke*, 697 A.2d at 1071.

Appellant additionally argues that, because the State could not prove the underlying Laned Roadway Violation by clear and convincing evidence, the following refusal charge must also be dismissed. However, Appellant's argument is misguided. When initiating a traffic stop, an officer needs only reasonable suspicion to conduct the stop itself. *Keohane*, 814 A.2d at 330. As long as the initial stop was valid and reasonable, there is no reason to suppress any evidence discovered after the initial stop. *State v. Roussell*, 770 A.2d 858, 860 (R.I. 2001) As such, the State was not required to sustain the laned roadway violation that precipitated the initial stop in order to sustain the refusal charge.

2

Request for Appellant to Submit to a Chemical Test

After determining that there was reasonable suspicion to conduct the initial stop, this Panel

must next determine whether there was also reasonable suspicion warranting a request of Appellant to submit to a chemical test. *See Perry*, 731 A.2d at 723.

On appeal, Appellant argues that the Trial Magistrate erred because Officer Kane did not have reasonable suspicion that Appellant was operating a vehicle under the influence. Appellant argues that his bloodshot eyes were the only indicia that he was under the influence of alcohol. To determine whether the decision of the Trial Magistrate was erroneous, the Panel must consider whether Officer Kane had reasonable grounds to believe that Appellant was operating his vehicle while under the influence of alcohol. *See State v. Jenkins*, 673 A.2d 1094, 1097 (R.I. 1996). In Rhode Island, a police officer has reasonable grounds to suspect that an individual is operating a motor vehicle under the influence of alcohol when that individual exhibits tangible indicia of alcohol consumption through his or her speech, physical appearance, and performance on field sobriety tests. *See State v. Perry*, 731 A.2d 720, 723 (R.I. 1999) (holding probable cause exists where the facts and circumstances known to a police officer or of which he or she has reasonable trustworthy information are sufficient to cause a person of reasonable caution to believe that a crime has been committed).

Our Supreme Court has provided us with numerous examples of "post vehicle operation" clues that could lead an officer to reasonably suspect a motorist of driving under the influence. These clues include: detection by the officer of an odor of alcohol on the motorist's breath or person, *see State v. Pineda*, 712 A.2d 858, 859 (R.I. 1998); *Perry*, 731 A.2d at 721, and exhibition by the motorist of bloodshot eyes, *see Pineda*, 712 A.2d at 859. *See also United States v. Trullo*,

809 F.2d 108, 111 (1 Cir. 1987) ("[T]he circumstances before the officer are not to be dissected and viewed singly; but rather they must be viewed as a whole.")

Here, once Officer Kane had reasonable suspicion to conduct the initial stop of Appellant's vehicle, "from that point on, any evidence obtained pursuant to that lawful stop, such as the odor of alcohol, the slurred speech, and bloodshot eyes, would in effect be in plain view of the arresting officer and would support an arrest for suspicion of driving while under the influence." *Bjerke*, 697 A.2d at 1072 (citing *State v. Aubin*, 622 A.2d 444 (R.I. 1993)). In this case, many of these previously mentioned "post vehicle operation" clues led Officer Kane to suspect Appellant had been driving under the influence. At trial, Officer Kane explained, "I noticed that [Appellant] eyes were bloodshot, red, and watery." (02/20/2024 Tr. at 23:22-23.) She also noticed that "he was a little unsteady on his feet, shuffling." *Id*. at 26:13-14. Appellant's speech was also "thick tongued, slurred and confused." *Id*. at 27:6-7. Appellant was also unaware that his zipper was down. *Id*. at 27:1. Officer Kane also testified that Appellant refused to take the Standard Field Sobriety Tests. *Id*. at 26:20-24.

Based on Officer Kane's personal observations of the scene and Appellant's physical appearance, coupled with Officer Kane's professional training with respect to the investigation of DUI-related traffic stops, the "facts and circumstances known to [Officer Kane] . . . [were] sufficient to cause a person of reasonable caution to believe that a crime ha[d] been committed and [Appellant] ha[d] committed the crime." *See Perry*, 731 A.2d at 723 n.1. This Panel therefore finds no error in the Trial Magistrate's conclusion that Officer Kane had the requisite level of suspicion,

or reasonable grounds, to believe Appellant had been operating his vehicle under the influence of alcohol.

C

Refusal to Submit to a Chemical Test

Refusal violations, which occur when an individual refuses to submit to a chemical test, are governed by § 31-27-2. Subsection 31-27-2.1(a) provides that "[a]ny 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, and/or urine for the purpose of determining the chemical content of his or her body fluids or breath." § 31-27-2.1(a). As such, by operating a motor vehicle, Appellant impliedly consented to these chemical tests. *See id*.

For the Court to sustain the refusal charge, four elements must be proven at trial:

> "(1) the law enforcement officer making the sworn report had reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; (2) the person while under arrest refused to submit to the tests upon the request of a law enforcement officer; (3) the person had been informed of his or her rights in accordance with § 31-27-3; and (4) the person had been informed of the penalties incurred as a result of noncompliance with this section[.]" § 31-27-2.1(d)(1).

Here, the first element was met, as previously discussed. Officer Kane testified that Appellant's eyes were bloodshot, red, and watery, and that Appellant's pants zipper was down. (02/20/2024 Tr. 23:22-23; 27:1.) She further stated that Appellant's speech was confused, slurred, and thick-tongued. *Id*. at 27:6-7. Appellant also had difficulty following instructions to stay in his vehicle. *Id*. at 25:15-16. When asked to step out of his vehicle, Appellant was unsteady on his feet and appeared to shuffle. *Id*. at 26:13-14. Officer Kane also testified that she read Appellant the "Rights for Use at Scene" and the "Informed Consent Form" in its entirety and that Appellant appeared to

understand the rights that were being read to him satisfying the third and fourth elements. *Id*. at 29:15-30:22. Finally, Officer Kane requested that Appellant submit to a chemical test and he refused; *Id*. at 30:20-22, satisfying the second element. Therefore, the Trial Magistrate properly found that all four elements of the charge were satisfied.

IV

Conclusion

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied.

ENTERED:

/s/
Magistrate Michael DiChiro (Chair)

/s/
Magistrate William T. Noonan

/s/
Magistrate Allison C. Abilheira

DATE: August 15, 2024