STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T24-0009**
	:	**23201501354**
KRISTIN VIOLANTE	**:**	

DECISION

PER CURIAM: Before this Panel on May 29, 2024—Magistrate Landroche (Chair), Magistrate Noonan, and Magistrate Welch—is the appeal of Kristin Violante (Appellant) from a decision of Magistrate Abilheira (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." The Appellant's counsel, Joseph Altieri, Esq., appeared 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 December 22, 2023, Officer Tara Miller (Officer Miller) of the Coventry Police Department charged Appellant with violating § 31-15-11, "Laned Roadway Violations," § 31-26-5, "Duty in Accident Resulting in Damage to Highway Fixture," and § 31-27-2.1, "Refusal to Submit to Chemical Test." (Summons No. 23201501354.) Appellant contested the violations, and the matter proceeded to trial on March 21, 2024. *See* Docket.

Prior to trial, counsel for the State and Defense stipulated to Officer Miller's training and experience with DUIs and field sobriety tests. (03/21/2024 Tr. 5:26-6:10.) The stipulation also included that: (1) Officer Miller advised Appellant of her Rights for Use at Scene, (2) Appellant

understood those rights, (3) she was transported to the station and read the Implied Consent Notice (which advised her of the right to refuse at the station), (4) her right to be examined by an independent medical physician of her choice, (5) the penalty for remaining noncompliant, (6)she was afforded a confidential phone call, (7) Officer Miller requested Appellant to submit to a chemical breath test, (8) and Appellant refused to submit to the test. *Id*. The only issue not stipulated to and the only issue to be resolved at trial was whether the officer had reasonable grounds to believe the motorist/Appellant was driving/operating under the influence of liquor/drugs.

At trial, Officer Miller, the only witness for the State/Town, testified that she received a call for service regarding a vehicle that was parked in the middle of Hopkins Hollow Road. *Id*. at 11:25-26. Upon arrival, Officer Miller stated that she saw a white SUV parked in the middle lane of travel. *Id*. at 12:16-17. When she approached the vehicle, she saw Appellant sitting in the driver's seat; the vehicle's windshield was "heavily damaged" and Appellant had dried blood on her lips. *Id*. at 14:19. Officer Miller asked Appellant what happened, and Appellant alleged that she had hit a deer. *Id*. at 15:8. After asking if Appellant was alright, Officer Miller then checked the front end of the vehicle and saw it was "heavily cracked and dented." *Id*. at 14:17; 15:8-10. Officer Miller found no fur or blood on the front end of the vehicle. *Id*. at 17:4-5. Upon investigation, Officer Miller concluded that "[t]he damage was more consistent with the vehicle hitting a . . . structure instead of an animal." *Id*. at 16:9-10.

While conversing with Appellant, Officer Miller noticed Appellant was very pale, and her eyes were bloodshot and watery. *Id*. at 18:14-15. She also "smelled the odor of the consumption of an alcoholic beverage along with her bloodshot and watery eyes," and that her "speech was slurred when speaking with her." *Id*. at 20:14-16; 21:11. As such, Officer Miller asked Appellant

to submit to Standard Field Sobriety Tests ("SFSTs") to which Appellant agreed. *Id*. at 21:21-24.[1] Officer Miller noticed that Appellant had trouble keeping her balance as she exited the vehicle. (12/24/2023 Officer Narrative.) Appellant did not pass any of the three SFSTs she was asked to perform. *Id*. As a result, Officer Miller placed Appellant under arrest and read her the Rights for Use at Scene. *Id*.

Upon arrival at headquarters, Appellant was escorted into the DUI room and read the Implied Consent Notice, informed of her right to be examined by a physician of her choosing, and was offered a confidential phone call which she declined. *Id*. Officer Miller than asked Appellant to take a chemical breath test which Appellant also refused; Appellant circled the word "refuse" on the Implied Consent Form and signed her name. *Id*. After Appellant's release, Officer Miller was called to the scene of a destroyed traffic sign at the rotary on Victory Highway. (03/21/2024 Tr. 23:12-22.) Officer Miller responded to the call and upon arrival saw that, "a highway fixture [] had been completely snapped in half and there [were] vehicle parts in the roadway." *Id*. at 26:19-20. Officer Miller testified that the car parts found in the roadway appeared to be white and matched Appellant's vehicle. *Id*. at 30:13-28.

The Trial Magistrate stated that she found that Officer Miller was "professional, well presented, and [] highly credible" and so, she adopted Officer Miller's testimony as her findings of fact. (03/29/2024 Tr. 5:19-22.) Following trial, the Magistrate dismissed the charge of Laned Roadway Violation because no testimony or evidence was given that the vehicle had moved without safety, and no testimony or evidence as to the number of lanes. *Id*. at 9:10-10:20. However, the Trial Magistrate sustained the refusal charge because Appellant smelled of an alcoholic

[1] It should be noted that both the State and Appellant stipulated that the Standard Field Sobriety Tests showed signs of impairment.

beverage, had bloodshot, watery eyes, her speech was slurred, she had trouble keeping her balance, and "the vehicle was heavily damaged with a cracked windshield, a portion of missing glass completely as well as heavy front end damage that was cracked and dented," and that Appellant herself admitted to operating this vehicle. *Id*. at 11:11-23. Therefore, the Trial Magistrate found based on totality of circumstances, it was reasonable for the officer to believe that Appellant had not only operated the vehicle but operated the vehicle while under the influence of alcohol/drugs or while impaired.

The Magistrate dismissed the charge of Duty in Accident Resulting in Damage to Highway Fixture based upon the fact that although there was evidence of damage to the highway fixture, the record lacked evidence linking the defendant's motor vehicle to the specific roadway fixture and motor vehicle pieces. *Id*. at 10:16-20.

Aggrieved by the decision, Appellant 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

On appeal, Appellant claims that the State was unable to prove that Appellant was operating the vehicle and as such, the charge should be dismissed. *See* Notice of Appeal.

Section 31-27-2.1 requires that a law enforcement officer making [a] sworn report have reasonable grounds to believe that the arrested person had been driving a motor vehicle in this state while under the influence of intoxicating liquor. G.L. § 31-27.2.1(d)(1). Our Supreme Court has stated that the reasonable grounds standard is the same as the reasonable suspicion standard. *See*

State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996). "[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 (1997) applying 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. *Id*. (citing *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Indeed, in determining reasonable suspicion, the finder of fact may make permissive presumption 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). Nevertheless, such inferences are not mandatory and can be rebutted by competent evidence. *Lusi*, 625 A.2d at 1356.

Although Officer Miller did not see Appellant driving, Officer Miller was sent to the scene immediately after the accident occurred. When she arrived, she saw a vehicle that had clearly been in an accident. Appellant, who was sitting in the driver's seat of the motor vehicle parked in the middle of the road with a heavily damaged windshield and dried blood on her lips, stated to Officer Miller that she "hit a deer" gives rise to a permissible presumption that she had been driving the vehicle at the time of the alleged collision. This evidence – especially Appellant's contention that she "hit a deer" with her vehicle, together with her placement in the driver's seat of the vehicle – were more than sufficient to provide Officer Miller with reasonable grounds to believe that Appellant was the operator of the vehicle.

In *State v. Perry*, our Supreme Court determined that the officer had reasonable grounds to believe defendant was driving under the influence because (1) a motorist identified the defendant's

car as having struck his vehicle and the defendant made an inculpatory statement. 731 A.2d 720, 723 (R.I. 1999.) Similarly, in *State v. Turcotte*, the owner of a parked vehicle who did not observe his vehicle being struck by the defendant's vehicle, asked the defendant several times who was driving the car. He wouldn't tell. The last time he told me it was none of my business." 68 R.I. 119 (1942). Although the defendant admitted to the officers who responded that he was the driver, when tried on a charge of operating under the influence (second offense) he maintained that his brother, not he, was the driver. *Id*. at 26-27. The Supreme Court found that the Defendant's conduct, his admissions, and the failure to present his brother as a witness were sufficient to support jury's conclusion that the defendant was the driver. *Id*. at 27.

In this matter, Appellant's admission to Officer Miller that she "hit a deer" along with her conduct (sitting in the driver's seat with bloody lips and a damaged windshield) caused this Panel to believe that the aforementioned admission/statement along with Appellant's conduct was sufficient to prove the element of operation or for the Trial Magistrate to find Appellant operated the motor vehicle.

In sustaining the violation, with the parties stipulating to all necessary elements of the charge of Refusal to Submit to Chemical Test, except operation, the Trial Magistrate found that Officer Miller responded to a disabled vehicle call where Appellant was in the driver's seat with a bloody lip and sitting in a heavily damaged vehicle. (03/29/2024 Tr. 11:11-14). The Trial Magistrate further stated, "By her own admission, Miss Violante was operating this vehicle. It was reasonable for the officer to believe that she had operated it based on all of those facts stated prior." *Id*. at 11:21-23. This Panel discerns no error.

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 Norman Landroche (Chair)

/s/
Magistrate William T. Noonan

/s/
Magistrate Mark Welch

DATE: August 14, 2024