STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T23-0018**
	:	**23408506703**
JESSIE LEE ROCHA	**:**	

DECISION

PER CURIAM: Before this Panel on February 28, 2024—Magistrate Abilheira (Chair), Magistrate Abbate, and Magistrate Welch—is the appeal of Jessie Lee Rocha (Appellant) from a decision of Magistrate Noonan (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." Appellant's counsel, Thomas C. Thomasian, 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 September 28, 2023, Officer Thomas Letourneau (Officer Letourneau) of the Pawtucket Police Department charged Appellant with violating § 31-14-2, "Speeding 1 to 10 MPH in Excess of Posted Speed Limit – 1st Offense," § 31-16-5, "Turn Signal Required," and § 31-27-2.1, "Refusal to Submit to Chemical Test." (Summons No. 23408506703.) Appellant contested the violations, and the matter proceeded to trial on December 12, 2023. *See* Docket.

During the trial, Officer Letourneau testified that he was on routine patrol in a marked police cruiser driving north on Main Street in Pawtucket on September 28, 2023 at approximately 2:15 a.m. (12/12/2023 Tr.7:13-21.) At that time, Officer Letourneau saw a sedan traveling at a

high rate of speed. *Id*. at 8:1-3. Officer Letourneau attempted to conduct a motor vehicle stop, but the motorist, Appellant, did not have control of the vehicle and began to reverse towards the parked cruiser. *Id*. at 9:15-24. Officer Letourneau then used his air horn to prevent the motorist from reversing any further. *Id*. at 9:25-27. After the vehicle was stopped, Officer Letourneau spoke to Appellant and noticed an "odor of an alcoholic beverage emanating from her breath." *Id*. at 11:20-22. Officer Letourneau also noted that Appellant "struggled [] retrieving documents, at one point tryin[g] to hand [him] her wallet instead of her [] license and asked [him] to retrieve it." *Id*. at 11:23-25. He also noted that she had slurred speech. *Id*. at 12:16-17. Officer Letourneau then asked Appellant if she had been drinking, to which she admitted she had "like one or two shots." *Id*. at 12:22-23. Officer Letourneau then informed Appellant that he suspected her to be driving under the influence of alcohol and asked her to submit to field sobriety tests. *Id*. at 13:1-3. He concluded that Appellant was "too intoxicated to safely operate a motor vehicle." *Id*. at 14:20-21.

Officer Letourneau notified Appellant that she was under arrest for suspicion of Driving Under the Influence ("DUI") and read her Rights for Use at the Scene. *Id*. at 15:1-4. After Appellant was transported to the police station, she was placed in a cell block and read an Implied Consent form. *Id*. at 16:20-28. Officer Letourneau asked if she understood the penalties associated with a refusal to which Appellant indicated that she did. Id. at 18:19-21. Appellant then was afforded the right to make a confidential phone call. *Id*. at 17:18-21. Appellant was then asked to submit to a chemical test; she refused by signing her name to the form and circling "refuse." *Id*. at 18:5-12.

Following trial, the magistrate sustained the Refusal to Submit to a Chemical Test charge. *Id*. at 54:26-28. However, he dismissed the charge for Speeding 11+ MPH in Excess of Posted Speed Limit because the officer relied on an estimation of speed rather than by radar or clocking

the vehicle. *Id*. at 52:1-2. The magistrate also dismissed the Turn Signal Required charge because there was no evidence that Appellant turned without reasonable safety. *Id*. at 53:4-10. However, in doing so, the magistrate noted that Officer Letourneau provided credible testimony and had reasonable suspicion to stop Appellant's vehicle. *Id*. at 52:10-21. Aggrieved by the decision, Appellant filed this appeal. *See* 12/12/2023 Judgment Card.

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

Refusal violations, which occur when an individual refuses to submit to a chemical test, are governed by § 31-27-2.1. 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." Section 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 charged violation of § 31-27-2.1, 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).

In this case, the record indicates that Officer Letourneau notified Appellant that she was under arrest for suspicion of DUI and read the "Rights for Use at Scene" in its entirety and that Appellant appeared to understand the rights that were read to her. Tr. 14:25-15:4. She was transported to the police station, read an Implied Consent form, which detailed the penalties she would face if she refused the chemical test and she indicated she understood those penalties. *Id*. at 16:20-28, 18:19-21. She was also afforded the opportunity to make a confidential phone call. *Id*. at 17:18-21. Finally, Appellant was asked to submit to a chemical test and she refused by circling refuse and signing her name to the Implied Consent form. *Id*. at 18:19-21. As such, this Panel finds that the elements required in § 31-27-2.1(d)(2)-(4) were met. Thus, this Panel needs only to determine whether Officer Letourneau had reasonable grounds, or reasonable suspicion, to believe that Appellant was operating a motor vehicle while intoxicated.

A

Initial Stop

On many occasions, alcohol-related traffic offenses result after a motorist has been stopped for a lesser 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). Thus, to sustain the refusal charge, the Trial Magistrate was required to find that Officer Letourneau had reasonable suspicion both for making the initial stop and for requesting that the motorist submit to a chemical test.

Appellant contends that Officer Letourneau 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. at 21). Thus, in order to conduct a traffic stop that comports with the Fourth Amendment, Officer Letourneau was required to have specific and articulable facts providing reasonable suspicion that a traffic violation had occurred. *See Terry*, 392 U.S. at 21.

At trial, Officer Letourneau testified that he was traveling North on Main Street when a sedan traveling in the opposite direction passed his position at a high rate of speed. (Tr. at 8:31-3). The observation of Appellant's vehicle traveling at a high rate of speed, combined with neglecting to use a turn signal when pulling the vehicle over, provided Officer Letourneau with "specific and articulable facts, [] taken together with rational inferences[,]" to justify a stop of Appellant's vehicle for those violations. *See Bjerke*, 697 A.2d at 1071. As such, it is clear that the Trial Magistrate's finding that Officer Letourneau 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 charges by clear and convincing evidence, that the subsequent 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 anything that occurred after the initial

stop. *State v. Roussell*, 770 A.2d 858, 860 (R.I. 2001). Here, the trial court found the stop to be reasonable and this Panel sees no reason to dispute that finding.

Moreover, the United States Supreme Court has held that reasonable suspicion can still exist when an officer makes a mistake in law or fact.

> "Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: The facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law." *Heien v. North Carolina*, 574 U.S. 54, 61 (2014).

In *Heien*, the officer saw a vehicle with only one operational brake light and pulled it over. *Heien*, 574 U.S. at 54. Cocaine was found as a result of the stop. *Id*. However, the state law only required one working brake light, as such, the officer was mistaken regarding the law. *Id*. The court found that the evidence from the search was still admissible because the mistake of law was reasonable, so reasonable suspicion existed. *Id*.

In the instant case, Officer Letourneau made a reasonable mistake of law regarding the Turn Signal Required and Speeding requirements. He believed in good faith that Appellant was speeding, however, he did not use a proper device to capture it. Appellant did not use the turn signal and Officer Letourneau made a reasonable mistake of law about one of the elements of the charge. For these reasons, reasonable suspicion exists in the present case just as it did in *Heien*.

As such, the State was not required to sustain the alleged speeding and turn signal violations that precipitated the initial stop in order to sustain the refusal charge.

B

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 State v. Perry*, 731 A.2d 720, 723 (1999).

On appeal, Appellant argues that the Trial Magistrate erred because Officer Letourneau did not have reasonable suspicion that Appellant was operating a vehicle under the influence of alcohol in order to permit Officer Letourneau's request for Appellant to submit to a chemical test. To determine whether the decision of the Trial Magistrate was in error, the Panel must consider whether Officer Letourneau had reasonable grounds to believe that Appellant was operating her 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). 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, and exhibition by the motorist of bloodshot eyes. *State v. Pineda*, 712 A.2d 858, 859 (R.I. 1998).

Once Officer Letourneau 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. In this case, many of these previously mentioned "post vehicle operation" clues led Officer Letourneau to suspect Appellant had been driving under the influence. At trial, Officer Letourneau testified that, as Appellant was speaking, he could detect an odor of an alcoholic beverage emanating from her breath and she struggled retrieving documents from her wallet. (Tr. at 11:20-25.) He also noted she had slurred speech. *Id*. at 12:16-17. Appellant also admitted to drinking "one or two shots." *Id*. at 12:17-23. Officer Letourneau also testified that Appellant exhibited clues of impairment during both the Walk-and-Turn Test and the Horizontal Gaze Nystagmus ("HGN") Test. (Tr. 13:7-13). Based on Officer Letourneau's personal observations of the scene and Appellant's physical appearance, coupled with his professional training with respect to the investigation of DUI-related traffic stops, the "facts and circumstances known to [Officer Letourneau] . . . [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 Letourneau had the requisite level of suspicion, or reasonable grounds, to believe Appellant had been operating her vehicle under the influence of alcohol. As the members of this Panel did not have an opportunity to view the live trial testimony of either Officer Letourneau or Appellant, it would be impermissible for the Panel to second-guess the Trial Magistrate's impressions as he was able to "appraise [the] witness['s] demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (internal quotations omitted). Therefore, this Panel will not disturb the Trial Magistrate's credibility determinations or his assessment of the weight of the evidence in this case. *See Link*, 633 A.2d at 1348.

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 Allison Abilheira (Chair)

/s/
Administrative Magistrate Joseph A. Abbate

/s/
Magistrate Mark Welch

DATE: April 30, 2024