STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T24-0007**
	:	**23302502002**
REBECCA RAY	**:**	

DECISION

PER CURIAM: Before this Panel on May 29, 2024—Magistrate Landroche (Chair), Magistrate Noonan, and Magistrate Welch—is the appeal of Rebecca Ray (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." Appellant's attorney, Gary Pelletier, 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 November 17, 2023, Officer Jennifer Dellefratte ("Officer Dellefratte") of the Middletown Police Department charged Appellant with violating § 31-27-2.1, "Refusal to Submit to Chemical Test," § 31-3-32, "Driving with Expired Registration," and § 31-15-11, "Laned Roadway Violations." (Summons No. 23302502002.)

At trial, Officer Dellefratte testified that at approximately 12:22 a.m. on November 17, 2023 while on duty in the area of West Main Road, she observed a Black Jeep make a wide turn into the opposite lane of travel for two car-lengths before correcting itself. (01/23/2024 Tr. 16:9-17:16.) Finding this odd, Officer Dellefratte ran the vehicle's plates and found that the vehicle's

registration had expired in March 2023. *Id*. at 17:24-25. As a result, Officer Dellefratte initiated a traffic stop. *Id*. at 18:13-20.

Officer Dellefratte testified that, when she walked up to Appellant's vehicle, she smelled a very strong odor of alcohol coming from inside the vehicle. *Id*. at 23:14-18. As she spoke to Appellant, she noticed that Appellant's speech was thick-tongued and slurred, and that Appellant's eyes were watery, glassy, and bloodshot. *Id*. at 23:27-24:5. Officer Dellefratte asked Appellant if she had been drinking to which she replied no. *Id*. at 24:23-26. She then asked Appellant to perform a few pre-exit tests, such as asking for the time, counting down between two numbers, and the fingertip touch test. *Id*. at 25:4-28-6. Appellant failed the pre-exit tests, so Officer Dellefratte asked her to perform the Standard Field Sobriety Tests ("SFST") which Appellant also refused. *Id*. at 32:25-33:2.

Officer Dellefratte then placed Appellant under arrest and read her the Rights for Use at Scene. *Id*. at 35:1-3. Officer Dellefratte stated that Appellant indicated that she understood her rights. *Id*. at 38:7-10. Officer Dellefratte then read Appellant her Rights for Use at Station (also known as the Implied Consent Form) and then offered her a confidential phone call. *Id*. at 38:26-28, 41:22-26. After the phone call was complete, Appellant was asked to submit to a chemical test, which she refused. *Id*. at 42:20-27. As such, Appellant circled "Refuse" on the Implied Consent Form and signed her name. *Id*. at 43: 1-8; *see also* Implied Consent Form. Officer Dellefratte then informed Appellant of the penalties for refusing a chemical test to which Appellant stated she understood. (01/23/2024 Tr. 43:10-17).

At trial, the Trial Magistrate found Officer Dellefratte's testimony "highly credible" and adopted it as her findings of fact. (03/05/2024 Tr. 5:12-14). Furthermore, the Trial Magistrate did not consider the pre-exit tests as evidence because the tests were not NHTSA approved. *Id*. at

10:11-13. The Trial Magistrate also dismissed the charges of Laned Roadway Violation because the Court could not ascertain that the movement of Appellant's vehicle between lanes was not made with safety, and dismissed the charge of Driving with Expired Registration, stating that the charge could not be sustained because the statute applies only to vehicles that are registered within the State of Rhode Island, and Appellant's vehicle was previously registered in the State of New Hampshire. (03/05/2024 Tr. 14:9-15:5.) However, the Trial Magistrate found that Officer Dellefratte's testimony included specific and articulable facts that a traffic violation had occurred and so sustained the Refusal to Submit to a Chemical Test charge. *Id*. at 15:25-27, 18:22-25. 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

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 in this state, Appellant impliedly consented to these chemical tests. *See id*. For the Tribunal 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 Dellefratte notified Appellant that she was under arrest for suspicion of driving under the influence ("DUI") and read the "Rights for Use at Scene" in its entirety. Tr. 35:2-3. 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 40:13-24, 43:1-17. She also was afforded the opportunity to make a confidential phone call. *Id*. at 41:22-26. 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 43:1-8. As such, this Panel finds that the elements required under § 31-27-2.1(d)(2)-(4) were met. Thus, this Panel needs only to determine whether Officer Dellefratte 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 that 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 Dellefratte had reasonable suspicion both for making the initial stop and for requesting that the motorist submit to a chemical test.

Appellant contends that Officer Dellefratte did not have reasonable suspicion to conduct the initial traffic stop. *See* Appellant's Mot. and Inc. Mem. in Supp. of Mot. to Dismiss and Finding of Not Guilty. When initiating a traffic stop, an officer needs only reasonable suspicion to conduct the stop. *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)). Thus, in order to conduct a traffic stop that comports with the Fourth Amendment, Officer Dellefratte 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 Dellefratte testified that she was traveling south on West Main Road when a Jeep traveling in the opposite direction crossed into the westbound lane of travel before correcting itself. (01/23/2024 Tr. at 17:6-16.) The observation of Appellant's vehicle moving over the double yellow lines, combined with Appellant driving with an expired registration, provided Officer Dellefratte 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. It is clear that the Trial Magistrate's finding that Officer Dellefratte 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 other 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 disturb that finding.

Moreover, the United States Supreme Court has held that reasonable suspicion is not extinguished 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. The officers found cocaine as a result of the stop. *Id*. However, the state law required only one working brake light; as such, the officer was mistaken regarding the law. *Id*. The Court found that did not diminish his reasonable suspicion because the mistake of law was reasonable, so the evidence from the search was still admissible. *Id*.

In the instant case, Officer Dellefratte failed to meet the burden of proof of clear and convincing evidence regarding the Laned Roadway Violation. In order to sustain a violation of § 31-15-11, the evidence on the record must demonstrate that: (1) the roadway is divided into 2 or more lanes, (2) the vehicle did not operate as nearly as practical within a single lane, and (3) the

vehicle moved from the lane at the time that the move could not be made with safety. G.L. § 31-15-11.

Here, Officer Dellefratte testified that she observed Appellant cross into the westbound lane of Miantonomi before correcting itself. (03/05/2024 Tr. 13:26-14:6.) From the testimony it was unclear whether there were, in fact, two lanes on the road. *Id*. at 14:7-9. Therefore, the Court could not ascertain if the movement could be made safely. *Id*. at 14:9-10. As a result, Appellant was found not guilty of the laned roadway violation.

As to the charge of Driving with an Expired Registration, § 31-3-32 states "every vehicle registration under Chapters 3 through 9 of this title and every registration card and registration plate issued under this chapter shall expire at midnight on the day of March of this year." G.L. § 31-3-32. Here, Officer Dellefratte testified that, after observing Appellant's moving violation, she ran the plate and discovered that Appellant's registration had expired on March 31, 2021. (03/05/2024 Tr. 14:17-27.) Despite the expired registration, a clear reading of Rhode Island General Laws 31-3-32 could only be construed to apply to vehicles registered within the State of Rhode Island. *Id*. at 14:27-15:2. Therefore, even if the New Hampshire registration was expired, the charge could not be sustained under this statute.

As such, the State was not required to sustain the alleged violations that precipitated the initial stop to sustain the refusal charge, it must only establish that there is reasonable suspicion to believe a traffic violation occurred. *See Terry*, 392 U.S. at 21.

B

Request for Appellant to Submit to a Chemical Test

After determining that there was reasonable suspicion to conduct the initial stop, this Panel next must determine whether there was also reasonable suspicion warranting a request that

Appellant submit to a chemical test. *See Perry*, 731 A.2d at 723.

On appeal, Appellant argues that the Trial Magistrate erred because Officer Dellefratte did not have reasonable suspicion that Appellant was operating a vehicle under the influence of alcohol in order to permit Officer Dellefratte'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 Dellefratte 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 Perry*, 731 A.2d at 723. 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 bloodshot eyes. *State v. Pineda*, 712 A.2d 858, 859 (R.I. 1998).

Once Officer Dellefratte 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 - such as watery, bloodshot, or glossy eyes, the odor of alcohol on the breath, slurred and thick-tongued speech - led Officer Dellefratte to suspect Appellant had been driving under the influence.

At trial, Officer Dellefratte testified that, when she walked up to Appellant's vehicle, she detected the strong odor of alcohol as Appellant was speaking. (01/23/2024 Tr. at 23:14-17.) She also detected an odor of an alcoholic beverage emanating from her breath, her speech was slurred and thick-tongued, and she had watery, bloodshot eyes. *Id*. at 23:24-24:6. Appellant stated she had not been drinking. *Id*. at 24:23-26. Officer Dellefratte also testified that Appellant refused to perform the SFSTs. *Id*. at 32:25-33:1. Based on Officer Dellefratte's personal observations of Appellant's physical appearance, coupled with her professional training with respect to the investigation of DUI-related traffic stops, the "facts and circumstances known to [Officer Dellefratte] . . . [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 Dellefratte 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 Officer Dellefratte, it would be impermissible for the Panel to second-guess the Trial Magistrate's impressions as she 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 her 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 Norman Landroche (Chair)

/s/
Magistrate William T. Noonan

/s/
Magistrate Mark Welch

DATE: August 6, 2024