

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

KIMBERLY MEDEIROS

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C.A. No. T08-0033

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on October 1, 2008, Judge Ciullo (Chair), Chief Magistrate Guglietta, and Magistrate Goulart sitting, is Kimberly Medeiros' (Appellant) appeal from Judge Almeida's decision, sustaining the charged violations of G.L. 1956 § 31-26-4, "Duty on collision with unattended vehicle," and G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 18, 2007, Appellant was charged with violating the aforementioned motor vehicle offenses by Patrol Officer Joseph Salvatore (Officer Salvatore) of the Johnston Police Department. The Appellant contested the charges, and the matter proceeded to trial.

At trial, the State of Rhode Island (State) called Pedro Basilio (Mr. Basilio) as its first witness. Mr. Basilio testified that on the date in question, at approximately 4:30 p.m., he was leaving Town Fair Tire (Town Fair) after having his vehicle serviced. (Tr. 1/17/08 at 9.) At this time, Appellant, whose vehicle was parked in the Town Fair lot, put her vehicle into reverse and backed into Mr. Basilio's parked vehicle. (Tr. 1/17/08 at 12.) Mr. Basilio testified that Appellant then put her vehicle into drive, drove forward

several feet, and reversed direction, colliding with Mr. Basilio's vehicle a second time. (Tr. 1/17/08 at 15.) When Appellant was told by Mr. Basilio that he was going to contact the police, Appellant said something to the effect of, "I'm going to go get my husband across the street."<sup>1</sup> Id. The Appellant then left the scene of the collision and crossed Atwood Avenue to locate her husband. (Tr. 1/17/08 at 25.)

Mr. Basilio testified that a police officer detained Appellant at the entrance of Mr. Biggs Saloon and returned to the scene of the collision approximately five to ten minutes later, with Appellant seated in the back seat of the police cruiser.<sup>2</sup> (Tr. 1/17/08 at 36-37.) When the police returned, Mr. Basilio was asked to identify Appellant. (Tr. 1/17/08 at 30, 37.) Mr. Basilio positively identified Appellant as the operator of the vehicle that collided with his parked vehicle. Id. However, on cross-examination by counsel for Appellant, Mr. Basilio testified that there was no physical damage to his vehicle. (Tr. 1/17/08 at 20.)

The Court next heard testimony from Randy Souto (Mr. Souto), the manager of Town Fair. Mr. Souto testified that at approximately 3:00 p.m., Appellant arrived at Town Fair to have her vehicle serviced. (Tr. 1/17/08 at 42.) The Appellant turned over her keys to Mr. Souto, and indicated that she was going to have "a couple drinks" at the bar across the street while her car was being worked on. (Tr. 1/17/08 at 42, 44.) Mr. Souto testified that Appellant returned to Town Fair at approximately 3:45 p.m. and inquired as to whether her vehicle was ready for pick up. (Tr. 1/17/08 at 45, 47.) When she was informed that her vehicle was still being serviced, Appellant responded to the effect of, "Oh, well, you know, I'll go back across the street until the car is done." (Tr.

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<sup>1</sup> Mr. Basilio later testified that Appellant was referring to Mr. Biggs Saloon, a bar located on Atwood Avenue approximately 0.1 miles away from the parking lot of Town Fair. (Tr. 1/17/08 at 36.)

<sup>2</sup> Mr. Basilio testified that he did not notice whether Appellant was handcuffed. (Tr. 1/17/08 at 37.)

1/17/08 at 45.) When asked by the State about Appellant's physical appearance, Mr. Souto testified that he detected a faint odor of alcohol on Appellant's breath. (Tr. 1/17/08 at 46.)

Mr. Souto testified that Appellant returned to Town Fair at approximately 4:20 p.m. and was informed that her vehicle was ready. (Tr. 1/17/08 at 47.) At this time, Mr. Souto noticed that the odor of alcohol on Appellant's breath was more pronounced, that Appellant was slurring her speech, and that Appellant was "very giggly." (Tr. 1/17/08 at 48, 64.) As Appellant walked to her vehicle in the Town Fair parking lot, Mr. Souto observed that Appellant was unable to walk in a straight line and that her movements appeared "awkward," "unsteady," and "unbalanced." (Tr. 1/17/08 at 48-49, 61-62, 65.) Mr. Souto testified that after Appellant's vehicle collided with Mr. Basilio's vehicle, a Town Fair employee said to Appellant, "You know what you did," to which Appellant responded, "I've got to go." (Tr. 1/17/08 at 50.) When Appellant walked across the street to Mr. Biggs Saloon, an employee of Town Fair contacted the Johnston Police. Id.

During his testimony, Mr. Souto was asked by the State whether he observed any damage to Mr. Basilio's vehicle; Mr. Souto noted that there was a slight scratch. (Tr. 1/17/08 at 51.) However, on cross-examination by counsel for Appellant, Mr. Souto indicated that he was unable to testify whether the scratch antedated the collision with Appellant's vehicle. (Tr. 1/17/08 at 67.)

The State next called Dennis Grimes (Mr. Grimes), an employee of Town Fair. Mr. Grimes' trial testimony largely corroborated the testimonies of Mr. Basilio and Mr. Souto with regard to the events surrounding the collision and the arrival of the Johnston Police. (Tr. 1/17/08 at 72-77.) Mr. Grimes added that he provided the Johnston Police

with a description of Appellant and that he positively identified Appellant upon her return to the scene. (Tr. 1/17/08 at 80-81.)

The Court next heard testimony from the arresting officer, Officer Salvadore. Officer Salvadore began his trial testimony by describing his training and experience with regard to DUI investigations. (Tr. 1/17/08 at 84-86.) Focusing the Court's attention on the events of December 18, 2007, Officer Salvadore testified that at approximately 5:00 p.m., he was dispatched to a "hit and run motor vehicle accident" at Town Fair on Atwood Avenue. (Tr. 1/17/08 at 87.) According to Officer Salvadore, he was advised by dispatch that the operator of the suspect vehicle had left the scene and was walking eastbound on Hartford Avenue towards the parking lot of Mr. Biggs Saloon. (Tr. 1/17/08 at 89.) Officer Salvadore responded to the area of Mr. Biggs Saloon to search for Appellant, while Patrol Officer Troy Maddocks responded to the scene of the collision. Id. When he arrived at Mr. Biggs Saloon approximately 45 seconds after receiving the dispatch, Officer Salvadore observed a woman matching the description provided to the Johnston Police by Mr. Grimes. (Tr. 1/17/08 at 89, 116.) Officer Salvadore made clear that Appellant was the only person in the parking lot at the time and that there was no one else in the vicinity matching that description. (Tr. 1/17/08 at 116-117.)

Upon approaching Appellant, Officer Salvadore inquired whether she had just been involved in a vehicular collision. (Tr. 1/17/08 at 118.) The Appellant responded that she had been at Town Fair Tire having her tires repaired and that she didn't hit a parked car in the parking lot. Id. According to Officer Salvadore, Appellant appeared agitated and began pacing nervously back and forth, flailing her arms. (Tr. 1/17/08 at 90.) Officer Salvadore noted that Appellant was having difficulty maintaining her

balance and that her speech was slurred. (Tr. 1/17/08 at 91.) Officer Salvadore also detected a strong odor of alcohol emanating from Appellant's breath and person. (Tr. 1/17/08 at 93.) When questioned about the appearance of Appellant's face and eyes, Officer Salvadore testified that her face was flushed and that her eyes were watery and bloodshot. Id. He also testified that Appellant admitted to having consumed "a few drinks." (Tr. 1/17/08 at 94.)

Based on the conditions extant in the parking lot of Mr. Biggs Saloon,<sup>3</sup> Officer Salvadore decided not to conduct field sobriety tests there. (Tr. 1/17/08 at 96.) After forming an opinion that Appellant was under the influence of alcohol and incapable of safely operating her vehicle, Officer Salvadore detained Appellant and read her "Rights for Use at Scene" from the pre-printed card. (Tr. 1/17/08 at 102.) The Appellant was then placed in the rear of Officer Salvadore's police cruiser and was transported to the parking lot of Town Fair for identification purposes. (Tr. 1/17/08 at 98.) Once Appellant had been positively identified by Mr. Basilio and Mr. Grimes as the operator of the "hit and run" vehicle, she was formally placed under arrest and was transported to the Johnston Police Department. (Tr. 1/17/08 at 101.)

Officer Salvadore testified that, upon her arrival at the Johnston Police Department, Appellant was subjected to a fifteen-minute observation period and then asked whether she would submit to field sobriety tests. (Tr. 1/17/08 at 98, 111.) The Appellant refused to submit to the tests. (Tr. 1/17/08 at 110.) Pursuant to § 31-27-2.1, Appellant was informed that she had the right to be examined at her own expense

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<sup>3</sup> Officer Salvadore decided not to administer field sobriety tests in the parking lot of Mr. Biggs Saloon because the surface of the parking lot was icy, sloped and poorly lit. (Tr. 1/17/08 at 96.)

immediately by a physician of her choice. (State Ex. III) Officer Salvadore subsequently asked Appellant whether she would submit to a chemical test, and Appellant refused. Id.

Following a two-day trial, the trial judge sustained the charged violations of § 31-26-4 and § 31-27-2.1. It is from this decision that Appellant now appeals. Forthwith is this Panel's decision.

### Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced 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 following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

This Panel lacks 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 v. State, 633 A.2d 1345 (R.I. 1993). The Appeals Panel is “limited to a determination of whether the hearing justice's decision is supported by legally competent evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at

1348). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

### **Analysis**

#### **I Section 31-26-4**

On appeal, Appellant first argues that the trial judge’s decision to sustain the charged violation of § 31-26-4 is affected by error of law. According to Appellant, in order to sustain a violation of § 31-26-4, the trial judge must make three findings based on the record evidence: (1) that the driver of a vehicle has collided with an unattended vehicle; (2) that damage has resulted to either vehicle as a result of the collision; and (3) that the owner or operator of the vehicle doing the striking failed to notify the owner or operator of the unattended vehicle, and/or a nearby office of local or state police. See § 31-26-4. Here, Appellant asserts that the trial judge sustained Appellant’s charged violation of § 31-26-4 based solely on the fact that Appellant collided with an unattended vehicle in the parking lot of Town Fair and subsequently left the scene. As there was no finding that either Appellant’s vehicle or that of Mr. Basilio had sustained damage, Appellant argues that the trial judge’s decision warrants reversal.

Having reviewed the entire record before it, this Panel is satisfied that the trial judge erred in finding that § 31-26-4 had been violated. Although it is undisputed that Appellant’s vehicle collided with the vehicle of Mr. Basilio in the parking lot of Town Fair, and that Appellant subsequently left the scene of the collision to find her husband, there is no evidence in the record that either vehicle sustained even *de minimis* physical

damage from the collision. Mr. Basilio testified that there was no physical damage to his vehicle following the collision. (Tr. 1/17/08 at 20.) Further, Mr. Souto was uncertain whether the slight scratch that he observed on Mr. Basilio's vehicle was caused by the collision with Appellant's vehicle. (Tr. 1/17/08 at 67.) As there is no legally competent evidence in the record from which the trial judge could have concluded that either of the vehicles involved in the collision sustained damage as a result, Appellant's appeal with respect to the charged violation of § 31-26-4 is granted and the charge dismissed.

## II Section 31-27-2.1

Next, Appellant argues that the trial judge's decision to sustain the charged violation of § 31-27-2.1 is affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. Specifically, Appellant contends that the dispatch received by Officer Salvadore was insufficient to furnish him with probable cause to arrest Appellant for leaving the scene of an accident. As the arrest of Appellant was unlawful, Appellant asserts that the charged violation of § 31-27-2.1 must be dismissed.

Although our Supreme Court has made clear that "reasonable suspicion is the proper standard for evaluating the lawfulness of a stop," State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996), the Court has thus far not enumerated all of the facts that must exist in order for a police officer to determine that reasonable suspicion exists. As our cases illustrate, the "reasonable suspicion" analysis is fluid and case-specific. In the context of chemical test refusal cases, the Court has listed various specific and articulable facts upon which a law enforcement officer can properly conclude that "reasonable suspicion" exists to believe that a motorist was operating under the influence of alcohol: detection by the



officer of an odor of alcohol on the motorist's breath, State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1998); exhibition by the motorist of slurred speech, id.; an admission by the motorist that he or she has been drinking, id.; exhibition by the motorist of bloodshot eyes, State v. Pineda, 712 A.2d 858 (R.I. 1998); the inability of the motorist to maintain balance, id., State v. Perry, 731 A.2d 720 (R.I. 1999); a car accident to which the officer reported to the scene, and the motorist has left the scene, Perry, 731 A.2d at 720; the description of the "hit and run" driver and his or her vehicle matches one given to the police, id.

In the case at bar, Officer Salvatore certainly had reasonable suspicion to believe that Appellant had operated the motor vehicle involved in the collision which had taken place within a short time prior to the officer's encounter with Appellant in the parking lot of Mr. Biggs Saloon. Here, the detailed physical description given to Officer Salvatore by dispatch gave clear indication that Appellant had been operating her motor vehicle within a matter of a few minutes prior to her encounter with Officer Salvatore, as the description of Appellant proved accurate. Officer Salvatore responded to the dispatch within 45 seconds of receiving it, and there was no one else in the vicinity matching the description. Once Officer Salvatore encountered Appellant in the parking lot of Mr. Biggs Saloon, it became clear that Appellant was under the influence of intoxicating liquor: Appellant's breath and person emanated a strong odor of alcohol, her speech was heavily slurred, her eyes were watery and bloodshot, she appeared unsteady on her feet, and admitted to having consumed "a few drinks." Consequently, this Panel is satisfied that the trial judge had reliable, probative, and substantial evidence upon which to

determine that Appellant had operated her motor vehicle in the parking lot of Town Fair while under the influence of alcohol.

Further, the record reflects that Officer Salvadore's arrest of Appellant was based on probable cause to believe that Appellant had committed a "hit and run accident" in the parking lot of Town Fair. "The existence of probable cause to arrest without a warrant depends on whether, under the totality of the circumstances, the arresting officer possesses sufficient trustworthy facts and information to warrant a prudent officer in believing that the suspect has committed or was committing an offense." State v. Guzman, 752 A.2d 1, 4 (R.I. 2000). Our Supreme Court has said that "the mosaic of facts and circumstances [available to the arresting officer] must be viewed cumulatively as through the eyes of a reasonable and cautious police officer on the scene, guided by his or her experience and training." In re Armand, 454 A.2d 1216, 1218 (R.I. 1983) (internal quotations omitted).

Based on the totality of the circumstances, it is clear that Officer Salvadore had sufficiently trustworthy information to believe that Appellant had committed a crime in the parking lot of Town Fair. Our cases make clear that "[p]robable cause . . . need not be based upon direct personal observations of the arresting officer. The determination may be grounded upon hearsay information relayed to the arresting officer, as long as there exists a substantial basis for relying on the information." State v. Castro, 891 A.2d 848, 853 (R.I. 2006) (citing State v. Burns, 431 A.2d 1199, 1204 (R.I. 1981)). Therefore, the trial judge's finding that Officer Salvadore had probable cause to arrest Appellant because he relied on the information received by dispatch and confirmed by the "show-up" conducted in the Town Fair parking lot was not affected by error of law.

Once Mr. Basilio and Mr. Grimes positively identified Appellant as the driver of the “hit and run” vehicle, the “facts and circumstances known to [Officer Salvadore] [were] sufficient to cause a person of reasonable caution to believe that a crime ha[d] been committed [in the parking lot of Town Fair] and [Appellant] ha[d] committed [it].” Perry, 731 A.2d at 723. The Appellant misreads our case law when she argues that Officer Salvadore needed to be certain that Appellant and the “hit and run” driver were one and the same. It is well-settled that when determining whether probable cause existed to arrest a suspect, the court necessarily “deal[s] with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” State v. Belcourt, 425 A.2d 1224, 1226 (R.I. 1981). Acting as a reasonably prudent man would have acted under the circumstances, Officer Salvadore believed that it was more probable than not that Appellant collided with a vehicle in the Town Fair parking lot and left the scene. As the arrest of Appellant was lawful, the Breathalyzer refusal that followed it need not be suppressed as a “fruit of the poisonous tree.” See Castro, 891 A.2d at 855.

### **Conclusion**

Having reviewed the entire record, this Panel concludes that the trial judge’s decision to sustain the charged violation of § 31-26-4 is affected by error of law and warrants reversal. With respect to this charge, Appellant’s appeal is granted and the charge dismissed. However, this Panel is satisfied that the trial judge’s decision to sustain the charged violation of § 31-27-2.1 is not affected by error of law. As there is reliable, probative, and substantial record evidence to sustain this charge, this Panel

concludes that substantial rights of Appellant have not been prejudiced. Accordingly, the decision of the trial judge with respect to the refusal charge is sustained, and the Appellant's appeal is dismissed.

ENTERED: