

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK

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:

v.

C.A. No. T09-0024

JASON HALEY

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

**DECISION**

**PER CURIAM:** Before this Panel on May 20, 2009—Magistrate DiSandro (Chair presiding) and Chief Magistrate Guglietta and Judge Ciullo sitting—is Jason Haley’s (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violation of G.L. 1956 § 31-27-2.1, “Refusal to submit to chemical test.”<sup>1</sup> The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On February 10, 2007, Sergeant Bradford Connor (Sergeant Connor) of the Warwick Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

The Court heard testimony from only one witness, Sergeant Connor. (Tr. at 7.) Sergeant Connor began his trial testimony by describing his professional training and experience conducting DUI-related traffic stops and administering standardized field sobriety tests. (Tr. at 8-12.)

<sup>1</sup> In addition to the charged violation of § 31-27-2.1, Appellant was charged with violating §§ 31-13-4, “Obedience to devices,” and 31-47-9, “Penalties – verification of proof of financial security.” However, these violations are not presently before this Panel on appeal.

Sergeant Connor then testified that at approximately 1:00 a.m. on the date in question, while observing traffic from a parking lot on Post Road, he observed a vehicle traveling westbound on Airport Road fail to stop at the red traffic control device applicable to it. (Tr. at 13.) As the suspect vehicle proceeded through the intersection of Airport Road and Post Road, Sergeant Connor observed it almost strike another vehicle traveling through the intersection from the opposite direction. (Tr. at 14.) According to Sergeant Connor, the operator of the suspect vehicle “overcorrected” in order to avoid an imminent collision, striking the curb in the process. (Tr. at 14.)

Sergeant Connor initiated a traffic stop of the vehicle and made contact with the operator, identified at trial as Appellant. (Tr. at 13) When Sergeant Connor requested Appellant produce his driver’s license, vehicle registration, and proof of insurance, he noted that Appellant “fumbled” with the documentation. (Tr. at 15.) Sergeant Connor also noted that Appellant’s eyes were bloodshot and that his speech was slurred. (Tr. at 16.) As they conversed, Sergeant Connor detected a “very strong” odor of an alcoholic beverage emanating from Appellant’s breath. (Tr. at 15-16.) When Sergeant Connor asked Appellant to exit the vehicle in order to perform standardized field sobriety tests, he observed that Appellant put his hands on the vehicle in order to maintain his balance. (Tr. at 16.) Sergeant Connor administered the field sobriety tests in accordance with his professional training, ultimately concluding that Appellant had failed two of the three tests as administered. (Tr. at 16-24.)

Sergeant Connor then testified that he placed Appellant under arrest, read him his “Rights for Use at Scene,” transported him to Warwick Police headquarters, read him his “Rights for Use at Station,” allowed him to make a confidential phone call to an attorney,

and stopped all questioning at that attorney's request. (Tr. at 25-28.) At that time, Appellant refused to submit to a chemical test and was charged with violating § 31-27-2.1. (Tr. at 28.)

On cross-examination by counsel for Appellant, Sergeant Connor testified that he had reasonable grounds to believe that Appellant had been driving while under the influence of alcohol based on the moving violations that he observed as well as the smell of alcohol on Appellant's breath, the condition of his eyes and balance, and his failure of two of the field sobriety tests. (Tr. at 41.) As Sergeant Connor explained, "[Appellant] had a strong odor of alcohol coming from him and he was nervous and fumbling . . . . [T]hat was my indicia that he was probably intoxicated." (Tr. at 45.) Sergeant Connor further explained that he "could tell [Appellant] had poor balance" as he walked from his vehicle to the curb and that Appellant "was swaying while he was doing the [field sobriety] tests." (Tr. at 47.) Further, Sergeant Connor testified that Appellant "had slurred speech." (Tr. at 75)

In rendering his decision from the bench, the trial magistrate stated that he was "satisfied that the State has proved by clear and convincing evidence that [Appellant], while under arrest, did refuse to take the [chemical] test. (Tr. at 99.) Additionally, the trial magistrate was "satisfied that [Appellant] was informed of his right to an independent examination by a physician of his choice [pursuant to § 31-27-3] . . . and there [was] more than enough testimony on the record to establish that [Appellant] understood that right and did not seek to exercise [it]." Id. Finally, the trial magistrate was "satisfied by clear and convincing evidence that [Appellant] was told of the penalties which would result if he failed to take the test . . . ." Id. Thus, the sole issue for

resolution by the trial magistrate was whether Sergeant Connor possessed reasonable grounds to believe that Appellant had been operating his vehicle while under the influence of alcohol. (Tr. at 100.)

Focusing on the reasonable grounds issue, the trial magistrate explained,

“The State is not required to prove that [Appellant] was actually under the influence of alcohol. In fact, I have some question myself as to whether he actually was intoxicated, but that is not the standard. The standard is whether the State can prove that this Officer had reasonable grounds to believe that he was under the influence of intoxicating liquor at the time he was operating a motor vehicle.” Id.

In determining that reasonable grounds existed, the trial magistrate went on to state that Sergeant Connor took “into account the running of the red light, [and] the over correction.” Id. Furthermore, the trial magistrate pointed to Sergeant Connor’s testimony that, “[Appellant] had bloodshot eyes.” Id. The trial magistrate summed up the reasonable grounds as follows: “[Appellant] had slurred speech. He had a strong odor of alcohol. He fumbled with his documents and exhibited some balance problems when getting out of the vehicle.” (Tr. at 100-101.)

Following the trial, the trial magistrate sustained the charged violation of § 31-27-2.1. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. This Panel’s decision is rendered below.

#### **Standard of Review**

Pursuant to G.L. 1956 § 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 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 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 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 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." Link, 633 A.2d at 1348 (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 clearly 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." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

### Analysis

On appeal, Appellant argues that the trial magistrate's decision is affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. Specifically, Appellant contends that the prosecution failed to prove to a standard of clear and convincing evidence that Sergeant Connor had reasonable grounds to believe that Appellant had operated his vehicle while under the influence of alcohol. The fact that the trial magistrate stated on the record that he "[had] some question as to whether [Appellant] was actually under the influence of alcohol [on the date in question," (Tr. at 100), is, Appellant asserts, indicative of the State's failure to meet its burden of proving that Sergeant Connor possessed reasonable grounds.

In order to sustain the charged violation of § 31-27-2.1, the trial magistrate was required to find, based on the clear and convincing evidence adduced by the State, that Sergeant Connor had reasonable grounds to believe that Appellant had been driving a motor vehicle while under the influence of intoxicating liquor. The State was not required to prove to a standard of clear and convincing evidence that Appellant was "drunk" at the time Sergeant Connor encountered him. The trial magistrate recognized this critical distinction on the record, explaining that "the State [was] not required to prove that [Appellant] was actually under the influence of alcohol. . . . [T]hat's not the standard." Id.

Reviewing the record in its entirety, the members of this Panel are satisfied that the trial magistrate's decision on the issue of reasonable grounds is supported by legally competent evidence and is not otherwise affected by error of law. Here, the record

reflects that Sergeant Connor had reasonable suspicion to initiate a traffic stop of Appellant's vehicle based on the erratic movements of Appellant's vehicle. See State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996); State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1998). Sergeant Connor observed Appellant enter the intersection of Airport Road and Post Road without stopping at the red traffic control device applicable to him, in the process narrowly avoiding a collision with another vehicle and striking a curb. (Tr. at 13-14.) Further, once Sergeant Connor made contact with Appellant on the side of the roadway, he observed that Appellant "seemed to be fumbling with his [license, vehicle registration, and insurance] paperwork, . . . that he had bloodshot eyes and . . . slurred speech, and . . . [that there was] a very strong odor of an alcoholic beverage [emanating] from him." (Tr. at 15-16.) When these personal observations are coupled with the fact that Appellant failed two of the three standardized field sobriety tests administered by Sergeant Connor, the "facts and circumstances known to [Sergeant Connor] [were] sufficient to cause a person of reasonable caution to believe that a crime"—namely, driving under the influence of liquor or drugs in contravention of § 31-27-2—"had been committed and [Appellant] ha[d] committed [it]." State v. Perry, 731 A.2d 720, 723 (R.I. 1999).

Based on the foregoing, Appellant's contention that Sergeant Connor did not possess reasonable grounds is unavailing, as our Supreme Court has indicated that "probable cause" and "reasonable grounds" are functionally equivalent. See Soares v. Ann & Hope of Rhode Island, Inc., 637 A.2d 339, 345 (R.I. 1994); Cruz v. Johnson, 823 A.2d 1157, 1161 n.2 (R.I. 2003). As the members of this Panel are satisfied that Sergeant Connor's arrest of Appellant was lawful and based upon probable cause, we are likewise

satisfied that Sergeant Connor had reasonable grounds to believe that Appellant had been operating his motor vehicle while under the influence of intoxicating liquor. Accordingly, the trial magistrate's decision to sustain the charged violation of § 31-27-2.1 was not affected by error of law.

### **Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision is not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial record evidence. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.