STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T21-0011**
	:	**20203501257 & 20203501258**
CHRISTOPHER BOFFI	**:**	

DECISION

PER CURIAM: Before this Panel on October 27, 2021—Magistrate DiChiro (Chair), Chief Magistrate DiSandro, and Associate Judge Parker, sitting—is the appeal of Christopher Boffi (Appellant) from a decision of Magistrate Alan R. Goulart (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violations of G.L. 1956 § 31-27-2.1, "Refusal to Submit to Chemical Test" and G.L. 1956 § 31-22-21.1, "Operating a Vehicle With Unsealed Alcoholic Beverage - 1st Offense." Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On February 26, 2020, Officer Paris Norwood (Officer Norwood) of the Warwick Police Department charged Appellant with the aforementioned violations of the motor vehicle code. *See* Summons No. 20203501257; Summons No. 20203501258. Appellant contested the charged violations, and the matter proceeded to trial on April 16, 2021, April 23, 2021, and May 17, 2021.

A

April 16, 2021 Hearing

On April 16, 2021, the trial began with Officer Norwood's testimony regarding his background and experience as a police officer, in particular with "Driving Under the Influence" (DUI) stops. (04/16/21 Tr. at 15-18.) At the time of the accident, Officer Norwood was ranked as a patrolman and he had conducted five DUI stops while on duty. *Id.* at 15:5-9; 18:23-19:4. Officer Norwood testified that he received formal training at the Rhode Island Municipal Police Training Academy (Police Academy) from July through December 2019. *Id.* at 16:1-3. At the Police Academy, Officer Norwood received training in "different techniques in regard to safety, in regard to laws, enforcing laws, observations, DUI enforcement, SFSTs, [and] use of force training." *Id.* at 16:3-7. He also received training in how to identify individuals who are under the influence of alcohol. *Id.* at 17:2-14. The Police Academy also trained Officer Norwood on how to conduct standardized field sobriety tests (SFSTs) when he suspected an individual may be under the influence of alcohol. *Id.* at 16:11-22. Officer Norwood testified that he is required to take recertification for breathalyzers every year or bi-annually, and that he has never missed a recertification. *Id.* at 18:14-21.

After detailing his training and experience in conducting DUI investigations, Officer Norwood recalled the events from the evening of February 26, 2020. *Id.* at 29-76. On the night of the incident, Officer Norwood was on duty in the area of 1600 Post Road, Warwick, Rhode Island. *Id.* at 29:3-11. Officer Norwood was wearing his police uniform and patrolling in a marked police cruiser. *Id.* at 29:14-19. At approximately 7:02 p.m. that evening, Officer Norwood and other officers "responded to a motor vehicle accident in the area of 1600 Post Road[.]" *Id.* at 29:19-24. The accident occurred near Grid Iron Ale House & Grille (Grid Iron). *See id.* at 39:17-

20. The officers arrived on the scene to find a vehicle, which had collided with both another vehicle and a pole. *See* Crash Report No. 20-494-AC, 4. Officer Norwood explained that he was not the first officer on scene and that when he arrived, the male driver of one of the vehicles involved in the accident was already speaking to other officers. *Id.* at 30:16-20. In the courtroom, Officer Norwood identified Appellant as that male driver. *Id.* at 32:8-23.

Upon arriving at the scene, Officer Norwood approached the other officers and Appellant to speak with them about the accident. *Id.* at 31:7-10. Officer Norwood testified that "[e]ven prior to speaking to [Appellant], I detected a strong odor of alcoholic beverage emanating from his breath. And I observed his eyes to be bloodshot and watery." *Id.* at 31:10-13. Once he began speaking with Appellant, Officer Norwood "observe[d] [Appellant's] speech to be slurred and slow in nature." *Id.* at 31:16-17. Officer Norwood requested that the Appellant relocate with him to a safer location away from the road so that the two could speak about the accident. *Id.* at 31:18-22. Officer Norwood testified that Appellant appeared unsteady on his feet as they relocated, specifically stating "I did notice a slight sway as [Appellant] walked." *Id.* at 33:7-9.

After the Appellant and Officer Norwood relocated, Officer Norwood asked Appellant to explain the circumstances surrounding the collision. *Id.* at 35:10-15. Officer Norwood testified as to Appellant's response as follows:

> "He explained that he was going to work at Grid Iron, and in terms of what actually happened with the collision, it was very hard to understand what he was saying. It seemed illogical, and his sentences were segmented. He was stating that - - he repeatedly stated something in regards to a truck taking a left, blocking the entire road. I did not observe any truck on scene, and he wouldn't articulate further in regards to what direction he was traveling from, which direction he was turning onto, and how that obstructed the roadway leading to the accident. I inquired in regard to the other vehicle that the accident occurred with, to which he stated something along the lines of not seeing the vehicle altogether at the time of the accident." *Id.* at 35:15-36:7.

After Appellant's explanation of the accident, Officer Norwood remained unclear about what transpired and asked Appellant if he had been drinking. *Id.* at 36:12-20; 37:10-12. At first, Appellant told Officer Norwood that he had not been drinking that day. *Id.* at 37:21-23. After further questioning, Appellant revealed that he drank two glasses of wine at noon that day. *Id.* at 37:23-38:2. Officer Norwood told the court that after a series of field sobriety tests, Appellant's story changed from two glasses of wine to three glasses of wine. *Id.* at 38:2-5. When Officer Norwood asked Appellant for an honest response, Appellant altered his response again, at which time he stated that he drank five glasses of wine that day. *Id.* at 38:5-9. In preparation for conducting the SFST, Officer Norwood took Appellant to a lot across the street from Grid Iron "because it was flat, free of foreign debris, well lit." *Id.* at 39:17-20.

Officer Norwood testified that prior to conducting the Horizontal Gaze Nystagmus Test (HGN test), he inquired as to whether Appellant wore glasses. *Id.* at 40:16-19. Appellant responded that he did wear glasses but that they were not required for him to see. *Id.* at 40:19-20. Officer Norwood also asked whether Appellant had any head or eye injuries, to which Appellant responded that he had suffered a recent head injury. *Id.* at 41:1-3. Officer Norwood testified that during the HGN test, he confirmed that Appellant's pupils were equal in size and that, as a result, Officer Norwood believed that Appellant did not require medical examination. *See id.* at 47:5-7, 48:7-10.

Officer Norwood began conducting the walk and turn test, but they did not complete the test. *Id.* at 48:11-14. Officer Norwood explained that during the walk and turn test, Appellant "repeatedly was stumbling out of [the instructional stance], losing his balance, and then requested to re-enter the instructional . . . stance, prior to me going forward with the instructions. So at that

point we determined that he was unfit to carry out the test and we stopped." *Id.* at 49:4-10. Officer Norwood further stated

> "Due to [Appellant's] lack of balance, we deemed that there was - - there was no way that we believed that he would be able to continue - - to walk in a heel to toe position, as he was unable to maintain that without walking altogether, and without dividing his attention, just in the instructional stance. *Id.* at 49:14-20.

Officer Norwood testified that he and his fellow officers did not ask Appellant to complete the one-leg stand test. *Id.* at 52:4-10. Officer Norwood reasoned that "[d]ue to [Appellant's] inability, because of the balance issues, to complete the walk and turn test, we determined that he was unfit to do the walk - - one-leg stand test as well for safety reasons." *Id.* at 52:6-10. Officer Norwood further testified that he believed Appellant could not complete the test because he was intoxicated. *Id.* at 51:17-52:1.

Due to his belief that Appellant was intoxicated, Officer Norwood asked Appellant to submit to a Preliminary Breath Test (PBT). *Id.* at 52:11-13. Officer Norwood testified that he saw the results of the PBT, and that those results supported Officer Norwood's initial suspicion that Appellant was too intoxicated to operate a motor vehicle. *Id.* at 58:2-7, 60:9-19. Officer Norwood also said that even without the HGN and PBT tests, he would have still suspected that Appellant was intoxicated based on his initial observations. *Id.* at 61:20-62:4. Specifically, Officer Norwood based his opinion that Appellant was impaired on observations of "slurred speech, illogical statements, unclear in nature, the odor of alcohol, unsteady on his feet, bloodshot watery eyes[.]" *Id.* at 62:1-9.

At approximately 7:38 p.m., Officer Norwood and the other officers at the scene arrested Appellant and read him his "Rights for Use at the Scene." *Id.* at 62:20-24. Appellant indicated that he understood his rights. *Id.* at 66:8-11. Subsequently, Officer Norwood transported

Appellant to the Warwick Police Department, where Appellant was read his "Rights for Use at the Station." *Id.* at 67:7-22. Following his confidential phone call, Appellant indicated that he understood his rights by signing a copy of the rights. *Id.* at 69:1-3, 69:7-70:13. Officer Norwood asked Appellant whether he wanted to take or refuse the Breathalyzer test. *Id.* at 70:23-71:5. Appellant indicated that he refused to take the Breathalyzer test and filled out the refusal form accordingly. *Id.* at 71:4-12. The State submitted the refusal form into evidence along with an affidavit prepared by Officer Norwood. *Id.* at 73:2-4, 75:13-76:2. Officer Norwood testified that the copy of the affidavit was a fair and accurate representation of the affidavit he prepared on February 26, 2020 and that he signed the document before a notary. *Id.* at 75:13-76:2. The Trial Magistrate admitted the document for the limited purpose of the State proving that Officer Norwood completed an affidavit. *Id.* at 76:18-24.

At this point of the hearing, the Trial Magistrate left the bench for a short amount of time but left the recording device on. *Id.* at 78:17-19. When the Trial Magistrate returned, he inadvertently shut off the recording. *Id.* at 79. As a result of this technical error, the remaining portion of the April 16, 2021 hearing was not recorded, specifically the cross-examination of Officer Norwood and also the direct and cross-examination of one of the other officers at the scene, Officer Kevin Warren (Officer Warren). (04/23/2021 Tr. at 3:4-9)

Appellant later submitted the parties' supplementation for the missing audio. *See Christopher Boffi Transcript Supplement from Missing Audio*. Among other points, the parties stipulated that Officer Warren reported he found a red water bottle with liquid inside of it in the

Appellant's vehicle. *Id.* Officer Warren said that the liquid inside of the container smelled and looked like wine. *Id.* Officer Warren also referenced this water bottle in his police report. *Id.*

B

April 23, 2021 Hearing

At the start of the April 23, 2021 hearing, Appellant's counsel raised the issue that a portion of the previous hearing was not recorded. (04/23/2021 Tr. at 3:4-9). To supplement the missing portion of the hearing, the parties agreed to rely on the Trial Magistrate's notes from the portion of the hearing that was omitted. *See id.* at 5:2-9, 7:11-18. The Trial Magistrate also noted that the failure to record the end of the previous portion of the trial "only becomes an issue, if the non-prevailing party determines they wish to take an appeal." *Id.* at 6:19-22.

Subsequent to the discussion of the recording error, Appellant moved to dismiss the four violations against him, arguing that the State had not met its burden. *Id.* at 9:6-10. Specifically, Appellant's counsel argued that the State had not entered any of the SFSTs into evidence, no one tested the liquid in the containers that were found in Appellant's vehicle, and no one testified about either the lack of insurance or a turn signal being required. *Id.* at 12:5-15. The Trial Magistrate agreed with part of Appellant's argument and dismissed Counts I and III of Summons 20203501257, which dealt with charged violations under G.L. 1956 § 31-16-5, "Turn Signal Required," and G.L. 1956 § 31-47-9, "Operating Motor Vehicle Without Insurance - 1st Offense."[1] *Id.* at 21:1-2. After granting Appellant's oral motion to dismiss as to those two counts, the

[1] The Trial Magistrate dismissed Count 1 of Summons 257 because "there's been no evidence that Mr. Boffi was operating a motor vehicle, which was uninsured at the time of the crash" *Id.* at 20:13-18. Likewise, the Trial Magistrate asked whether there was any evidence in the record to support a turn signal violation, to which Attorney Kilpatrick responded that there was not. *Id.* at 14:13-18.

remaining counts were those charging violations of § 31-22-21.1, "Operating a Vehicle With Unsealed Alcoholic Beverage - 1st Offense" and § 31-27-2.1, "Refusal to Submit to Chemical Test." *Id.* at 21:1-4, 24:7-9.

The Trial Magistrate found that the state met its burden of proving the possession of alcohol violation by clear and convincing evidence, reasoning that Officer Warren's testimony that he found liquid in a sports bottle that smelled like wine was sufficient to support a finding of guilty. *Id.* at 23:2-23. The Trial Magistrate reasoned that no independent testing of the substance was necessary, stating "I don't think it would be unusual for most of us to say they know what wine smells like." *Id.* at 23:11-18. As a result of finding that the State met its burden, the Trial Magistrate stated he was satisfied the facts would support a finding of guilty as to the possession of an alcoholic beverage while operating a motor vehicle. *Id.* at 23:21-7.

Although the Trial Magistrate also found that the State had met its burden of proving the refusal by clear and convincing evidence, Appellant was still entitled to present his case. *Id.* at 22-28. In regards to the refusal violation, Appellant's counsel argued that Officer Norwood's testimony conflicted with his police report because in his report, he said that Appellant did not have equal pupil size, but in his testimony, he said that those notes were a mistake and that Appellant's pupils had been equal. *Id.* at 9:12-20. Appellant's counsel reiterated this argument later on in the trial:

> "Officer Paris Norwood[] testified that he did write in his report that Mr. Boffi did not have equal pupil size or resting nystagmus that would be indicative of a head injury. Yes Paris Norwood did state that he had made a mistake, but he also stated that his memory at the time he writes reports is a lot more reliable than a year later. So a year later, Officer Paris Norwood is saying, oh, I made a mistake. Well, they have the ability to edit that. They are reviewed by the supervisors and they go over those documents. That is what he believed at the time, and it being his first DUI, he didn't - - it's my

> inference that I would ask you to make, he didn't realize that is indicative of a head injury." *Id.* at 142:2-17.

In support for his case, Appellant called Dr. Francis Sparadeo (Dr. Sparadeo), a clinical neuro psychologist, to testify as an expert witness. *Id.* at 28:20-23, 31:19-22. Dr. Sparadeo testified about his vast experience dealing with concussions and provided general information about concussions. *Id.* at 31-41. Some of Dr. Sparedeo's testimony included information about the effects of multiple concussions. *Id.* at 43-45. Dr. Sparadeo explained on direct examination how a concussion creates a "chemical storm" in a person's brain and Dr. Sparadeo said that anything a concussed person says in the first two hours after a second concussion is typically unreliable. *Id.* at 41:2-8. Dr. Sparadeo also said on direct examination that, in his opinion, Appellant likely could not have willingly entered into any contract waiving his legal rights. *Id.* at 80:3-7.

On cross-examination, Dr. Sparadeo testified that the medical records indicated that Appellant did not strike his head during the February 26, 2020 car accident. *Id.* at 101:5-9. Dr. Sparadeo also testified that he was aware that Appellant had suffered a concussion three weeks prior to the February 26, 2020 accident, when Appellant fell and hit his head on a table. *Id.* at 98:22-99:4. Additionally, Dr. Sparadeo testified that it was possible that Appellant had not suffered a second concussion in the car accident but only suffered the first concussion, three weeks before the accident. *Id.* at 102:21-103:1-2. Lastly, Dr. Sparadeo revealed that he based all of his opinions on medical records that did not include the fact that Appellant had five glasses of wine that day. *Id.* at 118:20-24. The Trial Magistrate later noted that everything Dr. Sparadeo considered was self-reported by Appellant. *Id.* at 156:8-12.

After further discussion and arguments by the parties, the Trial Magistrate said that all the State had left to prove was that Appellant knowingly and voluntarily refused the chemical test. *Id.*

at 160:1-8. The State pointed out that Appellant did not seek medical attention for the first concussion, and that for the alleged second concussion, Appellant did not seek medical treatment until three days later, despite the fact that there were EMTs at the scene of the accident. *Id.* at 161:23-162:9. Further, the State argued "[Officer Norwood] did ask [Appellant] do you have any injuries that would impact your ability to do these tests. He said, I had a head injury, but it's not from tonight and then he agreed to continue to doing the test." *Id.* at 164:15-19. Lastly, the State argued that Dr. Sparadeo did not have a sufficient basis to form a reliable opinion in this case because he was not there at the scene on the evening in question. *Id.* at 161:7-13.

C

May 17, 2021 Hearing

At the start of the May 17, 2021 hearing, the Trial Magistrate summarized the previous proceedings for clarity purposes. *Id.* at 3:1-2. The Trial Magistrate reminded the parties that he had already determined that the State met its burden and essentially found that the Appellant was guilty once the State completed its case, so at that stage in the proceedings, Appellant had the opportunity to present evidence to raise doubt in the Trial Magistrate's decision. *Id.* at 3:6-17. During this summary, the Trial Magistrate also noted that the case was odd the because "[d]efense now would have to present evidence to establish a lack of ability on the part of [Appellant] to understand his rights and then waive his rights and refuse the test, that [Appellant], in and of himself, did not testify . . . but they tried to establish their defense through Dr. Francis Sparadeo." *Id.* at 4:1-11.

The Trial Magistrate ultimately found Appellant guilty of both remaining violations by clear and convincing evidence. *Id.* at 15:8-10. The Trial Magistrate found that Officer Norwood was credible and that his testimony was helpful. *Id.* at 16:10-11. In regard to Appellant's argument

about the discrepancies between Officer Norwood's testimony and the police report, the Trial Magistrate stated that it was clear to him that "there was a mistake in the way it was written." *Id.* at 13:22-23. The Trial Magistrate further explained "I think what he meant to say is he saw neither a problem with the pupil size, nor a problem indicat[ing] that there was resting nystagmus. That is what he . . . said he intended to write, and that is what I accept as the truth." *Id.* at 13:23-14:4. The Trial Magistrate also found Dr. Sparadeo's testimony to be equally credible to Officer Norwood's testimony. *Id.* at 16:11-12. However, the Trial Magistrate gave no weight to Dr. Sparadeo's testimony because he believed that the testimony was not supported by all of the evidence in the case, stating "there was cherry picking that went on as to what information would be shared with [Dr. Sparadeo], and . . . no information was shared with him as to exactly what [Appellant's] condition was on the evening[.]" *Id.* at 16:12-15

When sentencing Appellant, the Trial Magistrate considered the fact that Appellant had already served part of his sentence.[2] *Id.* at 18-20. The Trial Magistrate found Appellant had already served his initial sixty (60) day loss of license. *Id.* at 20:3. The Trial Magistrate sentenced Appellant to six more months on the interlock beginning once Appellant was reinstated. *Id.* at 20:5-6. Additionally, the Trial Magistrate imposed the following penalties for Refusal to Submit to Chemical Test: a $200 fine, $500 Highway Safety Assessment, $200 Department of Health Assessment, ten (10) hours of community service, and participation in substance abuse counseling. For the violation of Operating a Vehicle With Unsealed Alcoholic Beverage – 1st Offense, the Trial Magistrate imposed a $200 fine. Aggrieved by the Trial Magistrate's decision, Appellant timely filed this appeal.

[2] The maximum license suspension in the case was one year. (04/16/2021 Tr. at 5:1-4.) Appellant's license suspension began on March 6, 2020. *Id.* at 5:5-11. As such, the suspension period had already expired by the time trial occurred. *Id.* at 5:9-11.

II

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judicial officer of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides as follows, 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 '[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." *Link*, 633 A.2d at 1348 (quoting Section 31-43-4(6)(d) and (e)). "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 argues that the Trial Magistrate's decision is characterized by abuse of discretion, affected by error of law, and clearly erroneous in light of the reliable, probative, and substantial record evidence.[3] Specifically, Appellant argues that the Trial Magistrate erred in crediting the trial testimony of Officer Norwood and finding that the State met its burden of proving the charged violations by clear and convincing evidence. Appellant also took issue with a statement made by the Trial Magistrate about the Appellant's failure to testify and with the missing recording of the cross-examination of Officer Norwood.

A

Trial Magistrate's Credibility Determinations

Appellant asserts that the Trial Magistrate erred in crediting the trial testimony of Officer Norwood. In support for this argument, Appellant argues that Officer Norwood's testimony lacked

[3] Defendant specifically listed the reasons for his appeal as:

> "Error of Law, Abuse of Discretion, Consideration of Incorrect Facts, Disregarded Facts, Unlawful Procedure, Affected by Other Error of Law, Clearly Erroneous in View of the Reliable Probative Substantial Evidence on the Whole Record, Arbitrary and Capricious, and Characterized by Abuse of Discretion [*sic*], and Clearly Unwarranted Exercise of Discretion. Negative Inference taken for Defendant Not Testifying, Judge Misapplied The Law and Misapplied the Rules Regarding Expert Witnesses and Facts they Can Not Consider." Notice of Appeal.

credibility due to discrepancies between Officer Norwood's courtroom testimony and his February 26, 2020 police report. Specifically, Appellant's counsel argues, as he had at trial, that Officer Norwood's notes conflicted with his testimony because in his report, he wrote that Appellant did not have equal pupil size but in his testimony, he said that those notes were a mistake and that Appellant's pupils were equal. (04/23/2021 Tr. at 9:12-20.) As such, Appellant contends that there were oversights on the part of the Trial Magistrate, which amounted to clearly erroneous findings.

In *Link v. State*, cited *supra*, our Supreme Court made it clear that 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*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). 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). As the members of this Panel did not have an opportunity to view the live trial testimony of the witnesses, it would be impermissible to second guess the Trial Magistrate's impressions as he observed the witness, listened to his testimony, and determined what to accept and what to disregard. *Environmental Scientific Corp.*, 621 A.2d at 206.

The Trial Magistrate witnessed Officer Norwood's April 16, 2021 testimony and found that Officer Norwood's testimony was credible. (05/17/2021 Tr. at 16:10-11.) In regard to Appellant's argument about the discrepancies between Officer Norwood's testimony and the police report, the Trial Magistrate stated that it was clear to him that "there was a mistake in the way it was written." *Id.* at 13:22-23. The Trial Magistrate further explained "I think what he meant to say is he saw neither a problem with the pupil size, nor a problem indicat[ing] that there

was resting nystagmus. That is what he . . . said he intended to write, and that is what I accept as the truth." *Id.* at 13:23-14:4.

We decline to depart from the Trial Magistrate's judgment concerning the credibility of Officer Norwood. Therefore, we defer to the Trial Magistrate's findings in determining that Officer Norwood observed Appellant to have had equal pupil size and that Officer Norwood was a credible witness. *See Link*, 633 A.2d at 1348.

B

Sufficiency of Findings –Refusal to Submit to a Chemical Test

The Appellant claims that the Trial Magistrate erred by sustaining the charged violation, § 31-27-2.1. Refusal violations, which occur when an individual refuses to submit to a chemical test, are governed by § 31-27-2. 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." Sec. 31-27-2.1(a). As such, by operating a motor vehicle, Appellant impliedly consented to these chemical tests. *See id.*

Under § 31-27-2.1, the proceedings of refusal violations "can be divided into two distinct parts: prehearing procedure and hearing procedure." *Link*, 633 A.2d at 1349. A driver's refusal to submit to a chemical test initiates the prehearing procedure, which consists of law enforcement officers submitting a sworn report. *Id.* Provided that report fulfills the requirements set forth in § 31-27-2.1(a), there is an automatic suspension of the individual's driver's license. *Id.* The second procedural part is a Rhode Island Traffic Tribunal hearing to determine whether the automatic driver's license suspension should be sustained or dismissed. *Id.* For the Court to sustain the license suspension, § 31-27-2.1(b) requires four elements to 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(c).

Officer Norwood testified that the copy of the affidavit was a fair and accurate representation of the affidavit he prepared on February 26, 2020 and that he signed the document before a notary. *Id.* at 75:13-76:2. He also testified that Appellant was read his "Rights for Use at the Station." *Id.* at 67:7-22. As such, this Panel only needs to determine whether there were reasonable grounds for the officers' belief that Appellant was intoxicated and whether Appellant's refusal was knowing and voluntary.

1

Reasonable Grounds

In order to determine whether the decision of the Trial Magistrate was erroneous, the Panel must first consider whether Officer Norwood had reasonable grounds to believe that the Appellant was operating his vehicle while under the influence of alcohol. *See State v. Jenkins*, 673 A.2d 1094, 1097 (R.I. 1996).

The Supreme Court provides us with numerous examples of "post vehicle operation" clues that could lead an officer to reasonably suspect a motorist of driving under the influence. Some of these include: an admission by the motorist that he or she had been drinking, *see State v. Bruno*, 709 A.2d 1048, 1050 (R.I. 1998); detection by the officer of an odor of alcohol on the motorist's breath or person, *see State v. Pineda*, 712 A.2d 858, 859 (R.I. 1998); *State v. Perry*, 731 A.2d 720, 721 (R.I. 1999), exhibition by the motorist of bloodshot eyes, *see Pineda*, 712 A.2d at 859, observation of physical damage to the motorist's vehicle. *See Perry*, 731 A.3d at 721; *see also United States v. Trullo*, 809 F.2d 108, 111 (1st Cir. 1987) ("[T]he circumstances before the officer are not to be dissected and viewed singly; but rather they must be viewed as a whole.")

In this case, all of these previously mentioned "post vehicle operation" clues led Officer Norwood to suspect Appellant had been driving under the influence. Appellant admitted to Officer Norwood that he had been drinking that day, specifically that he drank five glasses of wine. (04/16/2021 Tr. at 38:5-9.) Officer Norwood testified that "[e]ven prior to speaking to [Appellant], I detected a strong odor of alcoholic beverage emanating from his breath. And I observed his eyes to be bloodshot and watery." *Id.* at 31:10-13. The Appellant also had a sports bottle in his car containing a liquid, which Officer Warren believed looked and smelled liked wine. *See Christopher Boffi Transcript Supplement from Missing Audio*. Additionally, the officers arrived on the scene to find a vehicle, which had collided with both another vehicle and a pole. *See* Crash

Report No. 20-494-AC 4. In addition to these factors, Officer Norwood also testified that Appellant appeared unsteady on his feet as they relocated, specifically stating, "I did notice a slight sway as he walked." *Id.* at 33:7-9.

Based on the officers' 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 Norwood] . . . [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 the police had the requisite level of suspicion, or reasonable grounds, to believe Appellant had been operating his vehicle under the influence of alcohol.

2

Knowing and Voluntary

Appellant also contends that the Trial Magistrate erred when he found that the State had proven that he had knowingly and voluntarily refused the chemical test. Appellant argues that because of his physical condition, he lacked the ability to knowingly and intelligently refuse a chemical test pursuant to statutory requirements. Appellant's counsel reiterated his arguments from trial that "there's no way that Christopher Boffi could knowingly and willingly enter in or waive his rights, due to the fact of not one but two concussions occurring" and that "the State can't meet, by clear and convincing evidence, that Mr. Boffi made a knowing and intelligent waiver of his rights[.]" (04/23/2021 Tr. at 141:15-18, 146:6-9.)

This Panel notes that the Trial Magistrate's finding as to the voluntariness of the refusal turned on a credibility determination. The Trial Magistrate considered the testimony of Officer Norwood and weighed his testimony against the expert opinion offered by Dr. Sparadeo. In

conducting this analysis, the Trial Magistrate found the testimony from Officer Norwood that Appellant was alert and responsive when he was informed of his rights and the penalties for refusal to have more weight than the opinion of Dr. Sparadeo, which the Trial Magistrate felt lacked foundation.

While the Trial Magistrate found the expert to be credible and even "impressive," the Trial Magistrate did not believe that Dr. Sparadeo had enough evidence to make a finding as to what Appellant's condition was on the evening of the accident. (05/17/2021 Tr. at 16:12-21.) Further, the Trial Magistrate reasoned:

> "While Dr. Sparadeo relied on medical records, which helped form his opinion, what was absent from his consideration were any observations of the Defendant made that evening at the time of the incident. Clearly, the Defense has cherry picked the information used to support its belief that Defendant did not have the capability to waive his rights and refuse the test. By not providing that information the Doctor did not have all of the information . . . especially those facts which may have lead him to a different conclusion. These things render the doctor's opinion . . . unsupported by the evidence. He did not consider the Defendant's statements, the police reports or other facts which would have tested his belief that the Defendant's response and decisions were unreliable." *Id.* at 11:3-23.

Other than continuing to rely on the expert testimony of Dr. Sparadeo, Appellant has not presented any new argument in support of his contention that the Trial Magistrate erred in determining Appellant's refusal of the breathalyzer test was not made knowingly or voluntarily. This is likely what the Trial Magistrate was referring to when he said the case was odd because "[d]efense now would have to present evidence to establish a lack of ability on the part of [Appellant] to understand his rights and then waive his rights and refuse the test, that [Appellant], in and of himself, did not testify . . . but they tried to establish their defense through Dr. Francis Sparadeo." *See id.* at 4:1-11. It is clear to this Panel that the Trial Magistrate was not insinuating

that Appellant had to testify but was merely pointing out that, without Dr. Sparadeo's testimony, there was no other evidence supporting Appellant's argument that he did not knowingly and voluntarily refuse the breathalyzer. Without any additional evidence, the Trial Magistrate was justified in his decision to sustain the charges.

As the members of this Panel did not have an opportunity to view the live trial testimony of Officer Norwood or Dr. Sparadeo, 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. Accordingly, based on a review of the record, this Panel is satisfied that, pursuant to § 31-41.1-8(f), the Trial Magistrate did not abuse his discretion or misconceive material evidence. Consequently, the Trial Magistrate's finding that the State established a knowing and voluntary refusal by clear and convincing evidence is supported by reliable, probative, substantial, and legally competent evidence of record and is not clearly erroneous. *Id.* (citing *Environmental Scientific Corp*, 621 A.2d at 208); *see also* § 31-41.1-8(f)(5).

C

Sufficiency of Findings – The Presence of Alcohol Charge

On appeal, the Appellant reiterates the arguments he made at trial. The Appellant argues that the Warwick Police Department's failure to test the contents of the seized container for its alcohol content deprives the court of clear and convincing evidence that the Appellant violated § 31-22-21.1. As the Appellant argued, absent a toxicology report of the container's contents,

there is inadequate proof that the container held an intoxicating beverage, as is contemplated in § 31-22-21.1.

This Panel is mindful that the Rhode Island Traffic Tribunal is a civil court and trials are governed by § 31-41.1-6. Section § 31-41.1-6 (a) provides that, "[t]he burden of proof shall be upon the state, and no charge may be established except by clear and convincing evidence." Therefore, the quantum of proof necessary to establish a charge at trial is less than the burden of proof required in a criminal trial, where a guilt must be proven beyond a reasonable doubt.

In the instant case, this Panel is satisfied that the State proved the contents of the seized container were an intoxicating beverage, as is contemplated by § 31-22-21.1. Officer Warren reported that he found a red water bottle with liquid inside of it in the Appellant's vehicle, and that the liquid inside of the container smelled and looked like wine. *See Christopher Boffi Transcript Supplement from Missing Audio*. As the Trial Magistrate pointed out, no independent testing of the substance was necessary because he did not think "it would be unusual for most of us to say they know what wine smells like." *Id.* at 23:11-18. Coupled with the fact that the Appellant told Officer Norwood that he had five glasses of wine that day, there was a reasonable basis for the Trial Magistrate to find Appellant guilty of violating § 31-22-21.1. *See id.* at 38:5-9. Accordingly, this Panel finds that the Trial Magistrate's decision was supported by the reliable, probative, and substantial evidence in the record. This Panel holds that the Trial Magistrate's decision was not affected by error of law and does not constitute an abuse of discretion.

D

The Recording Error

As mentioned by the Trial Magistrate, the failure to record the end of the previous portion of the trial "only becomes an issue, if the non-prevailing party determines they wish to take an

appeal." *Id.* at 6:19-22. Here, Appellant is the non-prevailing party and has determined to take an appeal. In the May 17, 2021 hearing, Appellant's counsel noted on the record that he and Appellant were "going to have an issue with respect to my cross-examination of the testimony of Officer Paris Norwood." (05/17/2021 Tr. at 15:19-22.) As such, the Panel will briefly consider the issue pertaining to the recording.

Although Traffic Tribunal Rule 21(e) requires that an appellant submit a "transcript necessary for the determination of the appeal," and Rule 21(h) provides that when there is no record available the parties can "agree by stipulation as to a statement of the proceedings." Here, the parties agreed by stipulation as to a statement of the proceedings, which Appellant submitted to this Panel on September 7, 2021. Additionally, most of the Trial Magistrate's decision was not based on statements made during the missing portion of the recording. As a result, the missing portion of the recording does not affect Appellant's due process in this case.

IV

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 was not in violation of constitutional or statutory provisions, affected by other error of law, or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the Trial Magistrate's determinations as to the charged violations are sustained.

ENTERED:

_____
Magistrate Michael DiChiro (Chair)

_____
Chief Magistrate Domenic A. DiSandro III

_____
Associate Judge Edward C. Parker

DATE: _____