STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T22-0006**
	:	**21406500478**
NICHOLAS A. SAN MARTINO	**:**	

DECISION

PER CURIAM: Before this Panel on March 23, 2022—Magistrate Noonan (Chair), Associate Judge Parker, and Magistrate Kruse Weller, sitting—is the appeal of Nicholas A. San Martino (Appellant) from a decision of Magistrate 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, 1st Violation" and G.L. 1956 § 31-27-2.3, "Refusal to Submit to Preliminary Breath Test[.]" Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On December 5, 2021, Officer Matthew Paradis (Officer Paradis) of the Lincoln Police Department charged Appellant with the aforementioned violations of the motor vehicle code. *See* Summons No. 21406500478. The matter proceeded to trial on February 3, 2022.

On February 3, 2022, the trial began with Officer Paradis's testimony regarding his background and experience as a police officer, in particular with "Driving Under the Influence" (DUI) stops. (Tr. at 4:18-8:16.) At the time of trial, Officer Paradis had been employed by the Lincoln Police Department for more than seven years. *Id.* at 4:23-24. Officer Paradis estimated

that during those seven years, he had performed approximately forty DUI investigations and more than one-hundred standardized field sobriety tests (SFSTs). *Id.* at 5:4-18; 8:14-16. Officer Paradis explained that he received formal training and certification to conduct SFSTs and DUI investigations at the Rhode Island Municipal Police Training Academy (Police Academy), as part of the class of 2014-2. *Id.* at 5:19-6:6:1. Officer Paradis also received certification as a drug recognition expert in July and August of 2019. *Id.* at 6:1-4. In addition, Officer Paradis testified that during his training and through his experience, he learned about the types of driving patterns that could signify that a motorist was impaired. *Id.* at 6:10-13. Officer Paradis explained, "[t]here's a variety of [the] kind of violations that would signify impairment, including failure to maintain lanes, difficulty maintaining speed, rapid speed, also very slow speed, as well." *Id.* at 6:16-19.

After detailing his training and experience in conducting DUI investigations and SFSTs, Officer Paradis recounted the events from the evening of December 5, 2021. *Id.* at 8:17-22:9. On the night of the incident, Officer Paradis was on duty in a marked police cruiser and stationed at a traffic post on Wilbur Road. *Id.* at 8:17-24. At approximately 12:00 a.m., Officer Paradis "observed a vehicle traveling [E]ast on Wilbur Road, passed [his] position in excess of the posted speed limit which [wa]s 25 miles an hour." *Id.* at 9:3-5. Officer Paradis testified that the mounted radar in his police cruiser confirmed that the vehicle was traveling at forty-three miles per hour. *Id.* at 9:3-7. After the vehicle passed Officer Paradis's cruiser, he followed the vehicle and conducted a motor vehicle stop in a safe space. *Id.* at 9:12-16.

Next at trial, Officer Paradis detailed his interaction with Appellant during the traffic stop. *Id.* at 9:17-15:16. Officer Paradis identified Appellant during the stop by his Rhode Island driver's license and also identified Appellant at trial as the operator of the motor vehicle in question. *Id.* at 8-16. Officer Paradis noted that at the time of the stop, he observed several indicators that

suggested Appellant may have been under the influence of alcohol. *Id.* at 9:19-24. Officer Paradis detailed, "I observed [Appellant] to have moderately bloodshot eyes. He also spoke with slightly slurred speech and [I] detected an odor of alcoholic beverage emanating from his breath." *Id.* at 11:9-13. During the stop, Appellant told Officer Paradis that he had not had anything to drink at any point that day. *Id.* at 11:14-18. Subsequently, Officer Paradis asked Appellant to submit to SFSTs and Appellant consented to perform the tests. *Id.* at 11:19-23.

Officer Paradis testified that prior to conducting the Horizontal Gaze Nystagmus Test (HGN test), he inquired as to whether Appellant had any injuries that would prevent Appellant from undertaking the SFSTs. *Id.* at 12:3-5. Appellant responded that he did not have any injuries, and Officer Paradis did not observe Appellant to have any injuries. *Id.* at 12:3-9. Officer Paradis testified that during the HGN test, he observed that Appellant swayed back and forth and had difficulty maintaining his balance, which indicated to Officer Paradis that Appellant may have been under the influence of some sort of substance. *Id.* at 14:4-8.

Next, Officer Paradis requested that Appellant submit to the Walk-and-Turn Test and the One-Leg Stand Test. *Id.* at 14:10-11, 14:24-15:2. Officer Paradis testified that Appellant appeared to understand the instructions of both the Walk-and-Turn Test and the One-Leg Stand Test. *Id.* at 14:1-18; 15:1-6. Officer Paradis explained that during the Walk-and-Turn Test, he observed six out of the eight possible clues of impairment that officers are trained to look for while a motorist is performing the test. *Id.* at 14:10-23. Officer Paradis explained that during the One-Leg Stand Test he observed three out of the four possible clues of impairment that officers are trained to look

for while a motorist is performing the test. *Id.* at 15:7-9. However, the Trial Magistrate later noted that these tests did not factor into the decision.[1] *Id.*

Due to his belief that Appellant was under the influence of alcohol or a drug that would make it unsafe for Appellant to operate a vehicle, Officer Paradis asked Appellant to submit to a Preliminary Breath Test (PBT). *Id.* at 15:11-22. Officer Paradis testified that in response to this request, Appellant repeatedly explained that he had not consumed any alcohol. *Id.* at 15:11-13. Officer Paradis explained to Appellant "that if he had no alcohol in his system, then the PBT would register all zeros so that he wouldn't have anything to worry about[.]" *Id.* at 15:11-16. However, Appellant ultimately refused to submit to the PBT. *Id.* at 15:16.

After Appellant refused to take the PBT, Officer Paradis arrested Appellant for suspicion of DUI and read him his "Rights for Use at the Scene." *Id.* at 15:22-16:6. Officer Paradis described his decision for making the arrest as follows: "Based on my training and experience and my investigations into DUIs, I determined that the operator was under the influence of alcohol and placed him under arrest for the suspicion of DUI." *Id.* at 15:22-16:2. Officer Paradis read Appellant his "Rights for Use at the Scene" from a copy of the rights that Officer Paradis keeps in his pocket. *Id.* at 15:22-16:9. Officer Paradis testified that he read the "Rights for Use at the Scene" in its entirety, and that Appellant appeared to understand the rights that were being read to him. *Id.* at 17:4-8. At trial, the State introduced into evidence a copy of the "Rights for Use at the Scene" without objection from Appellant's counsel. *Id.* at 16:10-18.

[1] The Trial Magistrate reasoned that there was not sufficient evidence in the record to explain the relevance of the clues of impairment. *Id.* at 37:2-19. Specifically, the Trial Magistrate said that the record was void of an explanation as to whether six out of eight or three out of four clues were sufficient to suggest that Appellant was impaired. *Id.*

Subsequently, Officer Paradis transported Appellant to the Lincoln Police Department, where Officer Paradis read Appellant his "Rights for Use at the Station" from an implied consent form and gave him a chance to look over the form before requesting that Appellant submit to a chemical test. *Id.* at 17:11-21. Officer Paradis testified that he read the implied consent form in its entirety and provided Appellant with the penalties for refusing this chemical test. *Id.* at 18:41-6. Officer Paradis also explained that Appellant was afforded the opportunity to make several confidential phone calls. *Id.* at 17:21-23. After Appellant had the opportunity to make confidential phone calls, Officer Paradis asked Appellant to take the breathalyzer test. *Id.* at 17:23-24. Appellant refused to submit to the chemical test. *Id.* at 17:23-24. Officer Paradis went through the refusal form with Appellant, and Appellant signed the form indicating that he was refusing the breathalyzer test. *Id.* at 18:16-18.

The State submitted the refusal form into evidence along with an affidavit prepared by Officer Paradis. *Id.* at 16:10-18, 18:19-24. Officer Paradis confirmed that the copy of the affidavit presented at trial was a fair and accurate representation of the affidavit he prepared on December 5, 2021, and that he signed the affidavit before a notary. *Id.* at 19:6-12. In connection with the incident, Officer Paradis explained that he prepared two citations: one containing a charge for traveling in excess of the posted speed limit and the other containing two charges, one for refusal to submit to a PBT and one for refusal to submit to a chemical test. *Id.* at 19:17-21.

Appellant declined the opportunity to cross-examine Officer Paradis but stated that he would present a motion. *Id.* at 21:18-23. Appellant's counsel argued that a legitimate basis must exist for reasonable suspicion. *Id.* at 23:21-22. Appellant's counsel further argued that in Appellant's case, there was not a legitimate basis for reasonable suspicion because "the only indicia of reasonable suspicion [wa]s the radar," but Officer Paradis did not testify to the

operational efficiency of the radar. *Id.* at 23:24-24:6. Appellant's counsel argued that because Officer Paradis did not testify as to the operational efficiency of the radar, "the stop [wa]s improper and everything after th[e] stop [wa]s improper." *Id.* at 24:8-9.

The Trial Magistrate disagreed with Appellant's counsel's argument, stating, "just because the underlying charge hasn't been proven by [t]he State, it doesn't mean that the case necessarily falls apart." *Id.* at 24:14-16. Appellant's counsel further argued that Appellant's case was unique because the underlying charge was for speeding, rather than a charge for something such as crossing a fog or dividing line. *Id.* at 25:19-23. Specifically, Appellant's counsel asserted that the difference is that speeding is detected by a radar, while the latter charges are detected by observation. *Id.* Appellant's counsel further argued that without the proof that the radar was calibrated, there was no way to sustain the underlying charge or any charge that followed. *Id.*

The State responded to Appellant's argument by arguing that it is possible to detect speeding through observation and that there was an observation of speeding in this case. *Id.* at 29:20-30:4. The State argued that an officer can observe someone driving quickly and estimate that the speed is greater than twenty-five miles per hour. *Id.* at 29:24-30:1. The State argued further that a speed of forty-three miles per hour is quite different from a speed of twenty-five miles per hour and that an officer can observe the difference without a radar. *Id.* at 29:24-30:2. Finally, the State argued that the traffic stop was still legitimate and that there was reasonable suspicion for the stop. *Id.* at 30:4-19.

The Trial Magistrate ultimately dismissed the speeding charge but sustained the refusal charges. *Id.* at 33:18. In relation to the speeding charge, the Trial Magistrate found that the State failed to sustain its burden of demonstrating the operational efficiency of the radar device and for that reason, the Trial Magistrate dismissed that charge. *Id.* at 33:8-18. However, the Trial

Magistrate found that there was enough evidence to demonstrate that Officer Paradis lawfully stopped Appellant for speeding. *Id.* at 33:24-24:8, 34:15-16. In relation to the refusal charges, the Trial Magistrate found that there was sufficient evidence for Officer Paradis to have believed that Appellant was operating a motor vehicle while under the influence. *Id.* at 34:16-23.

The Trial Magistrate imposed the minimum license suspension of thirty days followed by a six-month interlock period.[2] *Id.* at 37:3-7. The Trial Magistrate found Appellant had already served his initial thirty (30) day loss of license.[3] *Id.* at 38:4-22. 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, a Highway Safety Assessment fee, a Department of Health Assessment fee, ten (10) hours of community service, and participation in an Alcohol Education Program. *Id.* at 37:1-12. For the violation of Refusal to Submit to the PBT, the Trial Magistrate imposed an $85 fine. Appellant timely filed this appeal.

II

Standard of Review

Section 31-41.1-8 states that 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 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

[2] Appellant had previously been granted a conditional hardship license, subject to an ignition interlock, pursuant to G.L. 1956 § 31-27-2.8(b)(7). (Order, Dec. 20, 2021 (Noonan).)
[3] Appellant's license suspension began on February 12, 2021. *Id.* at 37:5. As such, Appellant had already served the suspension by the time trial occurred. *Id.* at 38:1-22.

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 Sections 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 and is clearly erroneous in light of the reliable, probative, and substantial record

evidence. *See* Notice of Appeal. Specifically, Appellant argues that the Trial Magistrate erred in finding that the State proved "reasonable suspicion" by clear and convincing evidence. *See id.*

A

Refusal to Submit to a Chemical Test

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(b)(1), there is an automatic suspension of the individual's driver's license. *Id.;* Sec. 31-27-2.1(b)(2). 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. *Link*, 633 A.2d at 1349. For the Court to sustain the license suspension, 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).

Officer Paradis confirmed that the copy of the affidavit presented at trial was a fair and accurate representation of the affidavit he prepared on December 5, 2021 and that he signed the affidavit before a notary. *Id.* at 19:6-12. Officer Paradis also testified that he read Appellant the "Rights for Use at the Scene" in its entirety and that Appellant appeared to understand the rights that were being read to him. *Id.* at 17:4-8. In addition, Appellant does not dispute that the refusal was knowing and voluntary. As such, this Panel needs only to determine whether there were reasonable grounds, or reasonable suspicion,[4] for Officer Paradis's belief that Appellant was intoxicated.

B

Reasonable Suspicion

On appeal, Appellant argues that the Trial Magistrate erred in sustaining the charged violations because Appellant alleges that Officer Paradis did not have reasonable suspicion either to conduct a motor vehicle stop or to request that Appellant submit to a chemical test. *See* Notice of Appeal. Appellant also argues that because the State could not sustain the initial speeding charge, the refusal charge must also be dismissed.

On many occasions, an alcohol-related traffic offense (i.e., driving under the influence or refusal) results after a motorist has been stopped for the violation of a lesser (non-alcohol related) traffic offense. Such stops have been found to comport with the Fourth Amendment requirement

[4] Our Supreme Court has interpreted the phrase "reasonable grounds" to be the equivalent of "reasonable suspicion." The Court stated simply, "[I]t is clear that reasonable suspicion is the proper standard for evaluating the lawfulness of the stop." *State v. Jenkins*, 673 A.2d 1094, 1097 (R.I. 1996).

that searches and seizures be reasonable. *See Whren v. United States*, 517 U.S. 808, 810 (1996); *see also State v. Bjerke*, 697 A.2d 1069, 1072 (R.I. 1997). Our Supreme Court has held that in connection with alcohol-related traffic offenses, reasonable suspicion plays a dual role as the standard that permits law enforcement officials to take two critical actions: (1) the initial stop and (2) the request of the motorist to submit to a chemical test. *State v. Perry*, 731 A.2d 720, 723 (1999). To sustain the refusal charge, the Trial Magistrate was required to find that Officer Paradis had reasonable suspicion both for making the initial stop and for requesting that the motorist submit to a chemical test.

1

The Initial Stop

Appellant contends that Officer Paradis did not have reasonable suspicion to conduct the initial traffic stop. *See* Notice of Appeal. When initiating a traffic stop, an officer needs only reasonable suspicion to conduct the stop itself. *State v. Keohane*, 814 A.2d 327, 330 (R.I. 2003). Reasonable suspicion exists when "the detaining authority can 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *Bjerke*, 697 A.2d at 1071 (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The United States Supreme Court has made clear that the decision to stop a vehicle is considered reasonable when the police have probable cause to believe that a traffic violation has occurred. *See Whren v. United States*, 517 U.S. 806 (1996).

In order to conduct a traffic stop that comports with the Fourth Amendment, Officer Paradis was required to have specific and articulable facts providing reasonable suspicion that a traffic violation had occurred. *See Terry*, 392 U.S. at 21. Officer Paradis testified that he "observed [Appellant's] vehicle traveling [E]ast on Wilbur Road, passed [his] position in excess of the posted

speed limit which [wa]s 25 miles an hour." (Tr. at 9:3-5.) Officer Paradis testified that the mounted radar in his police cruiser confirmed the vehicle was traveling at forty-three miles per hour. *Id.* at 9:3-7. Although Officer Paradis failed to testify at trial as to the calibration of the radar device, he nevertheless testified about his observation that the vehicle was traveling in excess of the speed limit. *See id.* at 9:3-5. As the State pointed out, it is entirely possible for an officer to observe that a vehicle is driving faster than the speed limit without a radar, especially when the vehicle is traveling at a rate of approximately forty-three miles per hour in a twenty-five mile per hour zone. *Id.* at 29:24-30:2. The observation of Appellant's vehicle traveling at a high rate of speed, combined with the radar reading, provided Officer Paradis with "specific and articulable facts, [] taken together with rational inferences[,]" to justify a stop of Appellant's vehicle for speeding. *See Bjerke*, 697 A.2d at 1071; *Keohane*, 814 A.2d at 330. As such, it is clear that the Trial Magistrate's finding that Officer Paradis met the requisite standard to conduct a traffic stop was not clearly erroneous based on the substantial record evidence. *See Bjerke*, 697 A.2d at 1071.

Appellant additionally argues that because the State could not prove the underlying speeding charge by clear and convincing evidence, the following 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) (denying a motion to suppress the fruits of a search because the officer acted reasonably in conducting a traffic stop). As such, the State was not required to sustain the alleged speeding violation that precipitated the initial stop in order to sustain the refusal charge. After determining that there was reasonable suspicion to conduct the initial stop, this Panel must next determine whether there was also reasonable

suspicion warranting a request of Appellant to submit to a chemical test. *See State v. Perry*, 731 A.2d 720, 723 (1999).

2

Request for Appellant to Submit to a Chemical Test

On Appeal, Appellant argues that the Trial Magistrate erred because Officer Paradis did not have reasonable suspicion that Appellant was operating a vehicle under the influence of alcohol in order to permit Officer Paradis's request for Appellant to submit to a chemical test. Appellant argues that his bloodshot eyes were the only indicia that he was possibly under the influence of alcohol. To determine whether the decision of the Trial Magistrate was erroneous, the Panel must consider whether Officer Paradis had reasonable grounds to believe that Appellant was operating his vehicle while under the influence of alcohol. *See State v. Jenkins*, 673 A.2d 1094, 1097 (R.I. 1996).

In Rhode Island, a police officer has reasonable grounds to suspect that an individual is operating a motor vehicle under the influence of alcohol when that individual exhibits tangible indicia of alcohol consumption through his or her speech, physical appearance, and performance on field sobriety tests. *See State v. Perry*, 731 A.2d 720, 723 (R.I. 1999) (holding probable cause exits where the facts and circumstances known to a police officer or of which he or she has reasonable trustworthy information are sufficient to cause a person of reasonable caution to believe that a crime has been committed). 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, *see State v. Pineda*, 712 A.2d 858, 859 (R.I. 1998); *Perry*, 731 A.2d at 721, and exhibition by the motorist of bloodshot eyes, *see Pineda*, 712 A.2d at 859; *see*

also United States v. Trullo, 809 F.2d 108, 111 (1 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.") Once Officer Paradis 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 (citing *State v. Aubin*, 622 A.2d 444 (R.I. 1993)).

In this case, many of these previously mentioned "post vehicle operation" clues led Officer Paradis to suspect Appellant had been driving under the influence. At trial, Officer Paradis explained, "I observed [Appellant] to have moderately bloodshot eyes. He also spoke with slightly slurred speech and [I] detected an odor of alcoholic beverage emanating from his breath." (Tr. at 11:9-13.) Officer Paradis also testified that during the HGN test, he observed that Appellant swayed back and forth and had difficulty maintaining his balance. *Id.* at 14:4-8. Officer Paradis also testified that Appellant exhibited clues of impairment during both the Walk-and-Turn Test and the One-Leg Stand Test.

Based on Officer Paradis's personal observations of the scene and Appellant's physical appearance, coupled with Officer Paradis's professional training with respect to the investigation of DUI-related traffic stops, the "facts and circumstances known to [Officer Paradis] . . . [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 Paradis had the requisite level of suspicion, or reasonable grounds, to believe Appellant had been operating his vehicle under the influence of alcohol.

As the members of this Panel did not have an opportunity to view the live trial testimony of either Officer Paradis or Appellant, it would be impermissible for the Panel to second-guess the Trial Magistrate's impressions as he was able to "appraise [the] witness['s] demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (internal quotations omitted). Therefore, this Panel will not disturb the Trial Magistrate's credibility determinations or his assessment of the weight of the evidence in this case. *See Link*, 633 A.2d at 1348. 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).

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 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:

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Magistrate William T. Noonan (Chair)

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Magistrate Erika Kruse Weller

_____
Associate Judge Edward C. Parker

DATE: _____