

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK

:

v.

:

C.A. No. T09-0103

:

JAMES MORGAN

:

DECISION

PER CURIAM: Before this Panel on January 20, 2010—Magistrate Disandro (Chair, presiding), Chief Magistrate Guglietta, and Judge Almeida, sitting—is James Morgan’s (Appellant) appeal from Magistrate Cruise’s decision, sustaining the charged violations of G.L. 1956 §§ 31-27-2.1, “Refusal to submit to a chemical test” and 31-15-11, “Laned Roadways.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

In the early morning hours of January 25, 2009, Officer Russell Brown (Officer Brown) of the Warwick Police Department observed the Appellant’s vehicle cross the yellow dividing line on West Shore Road in Warwick for approximately ten (10) yards. After witnessing Appellant fail all three of the field sobriety tests, the Officer charged him with the aforementioned violations of the motor vehicle code. The Appellant contested the charges and the matter proceeded to trial.

Officer Brown commenced his trial testimony by describing at length his professional training and experience with respect to DUI-related traffic stops and the administration of standardized field sobriety tests. He has been a patrolman with the West Warwick Police Department for almost two years, following his graduation from

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STATE OF RHODE ISLAND  
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the Rhode Island Municipal Police Academy in June 2007. (Tr. at 1-2). While at the Police Academy, Officer Brown completed a specialized two week training course dedicated to DUI infractions. (Tr. at 18). As part of his training, he learned to administer field sobriety tests, including the horizontal gaze nystagmus (HGN), the walk-and-turn, and the one-leg stand test. (Tr. at 3-5).

Directing the Court's attention to the date in question, Officer Brown testified that he was on uniformed patrol in a marked cruiser traveling east on West Shore Road in Warwick at approximately 12:30 A.M. At that time, he observed a vehicle cross the yellow lane dividing line and travel approximately ten (10) yards. (Tr. at 7). He noted that approximately half of the vehicle was crossed over the yellow line. (Tr. at 7). After the vehicle passed his police cruiser, Officer Brown executed a U-turn at Eaton Avenue and began following the subject vehicle. (Tr. at 7). While following the vehicle westbound on West Shore Road, the Officer observed as the car "swerve[d] right into the breakdown lane twice." (Tr. at 8). After observing said vehicle cross into the breakdown lane on two separate occasions, Officer Brown initiated a motor vehicle stop near the intersection of West Shore Road and Warwick Avenue. (Tr. at 8).

While still in his police unit, Officer Brown conducted a routine check of the license plate to determine whether there was any information about the vehicle or the driver that he should be aware of before approaching the car. (Tr. at 8). The check of the plates revealed that the owner of the vehicle had an outstanding court warrant. (Tr. at 8). After dispatch was properly apprised of the warrant, Officer Brown approached the vehicle to make contact and to determine who was the operator of the car. (Tr. at 9). The

Officer manually removed the driver's license from his wallet, and identified the operator of the vehicle as the Appellant. (Tr. at 10).

After manually removing the Appellant's license from his wallet, Officer Brown was able to identify Appellant and confirmed the outstanding warrant with dispatch. Officer Brown testified that as he approached the vehicle, he observed Appellant's "bloodshot watery eyes" and noticed that his speech was "slurred." (Tr. at 9). Further, the Officer detected a "strong odor of alcoholic beverage emanating from [the Appellant's] breath." (Tr. at 10). The Officer then asked Appellant where he had been and whether he had consumed any alcohol that evening (Tr. at 10). Appellant responded that he had been at a social gathering in Warwick and that he had consumed at least one beer. (Tr. at 11).

Next, the Officer asked Appellant to step out of his vehicle. The Officer placed him in handcuffs while the warrant was being processed back at the station. (Tr. at 11). Officer Brown eventually learned that the Appellant's supposed warrant was erroneously reported and was in fact a clerical error. (Tr. at 11). At this point, the Officer removed Appellant's handcuffs and asked him if he would submit to field sobriety tests (Tr. at 11).

Appellant willingly submitted to the HGN test, but evidence of the results of that test were not offered by the prosecution at trial. (Tr. at 11). Appellant then refused to take the walk-and-turn test but later agreed to both the walk-and-turn and the one-leg stand. (Tr. at 11). Officer Brown administered the tests in accordance with his professional training and experience, ultimately concluding that Appellant had failed both the walk-and-turn and the one-legged stand. The Officer testified that Appellant

demonstrated all eight “failing clues” during the walk-and turn test and three of the four “failing clues” for the one-legged stand. (Tr. at 11-14, 41).

Subsequently, Officer Brown arrested Appellant for suspicion of driving under the influence and placed him into the rear of his police cruiser. Once he secured the Appellant in his cruiser, the Officer read him the “Rights for Use at the Scene” card and then transferred Appellant to the Warwick Police Station. (Tr. at 14-15). At headquarters, Officer Brown apprised the Appellant of his “Rights for Use at the Station,” including Appellant’s right to use a telephone within one hour of arrest. (Tr. at 15).

During direct examination, the State asked Officer Brown if he gave the Appellant the opportunity to make a phone call. Officer Brown responded, “Yes... I then gave the [Appellant] a phone call . . . which he refused.” (Tr. at 15). Next, the Officer asked the Appellant to submit to a chemical test. The Appellant refused to submit to the chemical test and refused to sign the consent form. (Tr. at 15). During direct examination, Officer Brown testified that once back at the station, the Appellant was “crying” and “emotionally angry” towards both the jailor and the Officer. (Tr. at 16). After refusing to take the chemical test, the Appellant was escorted back to a holding room while the Officer completed the required paperwork. (Tr. at 16).

During cross-examination by counsel for the Appellant, Officer Brown admitted that his police report did not contain any reference to “slurred” speech, but he did testify that the Appellant evidenced “slurred” speech patterns in both his written affidavit and his OUI report. (Tr. at 38, 54). Further, counsel for the Appellant questioned Officer Brown about the alleged phone call. Counsel asked, “Did you . . . allow [Appellant] to

make a telephone call?” Officer Brown responded, “. . . [I] definitely stated that we had a phone in the other room for [Appellant] to use. After he objected, definitely again I asked him this is your time to make a phone call . . . use this opportunity . . . and again he refused.” (Tr. at 46).

The trial magistrate next heard testimony from the Appellant. The Appellant explained to the trial court that on the night in question, he was in Warwick attending a friend’s fiftieth (50<sup>th</sup>) birthday party at the American Legion Hall. (Dec. Tr. at 6). The Appellant testified at length to his alleged post-traumatic stress disorder (PTSD) stemming from a 1993 motor vehicle accident in which Appellant’s vehicle struck and killed a young girl in Coventry, Rhode Island. (Dec. Tr. at 5-6). Appellant testified that his PTSD caused him to “shut down” when Officer Brown asked him to perform the three field sobriety tests. Appellant contends that he failed the tests because he was “shaking so bad[ly].” (Dec. Tr. at 9). However, on the night in question during the administration of the tests, Appellant at no time indicated to Officer Brown that he suffered from post-traumatic stress disorder. (Dec. Tr. at 9).

The Appellant continued to testify that Officer Brown properly read the “Rights for Use at the Station” card and he admitted that he refused to sign the form. (Dec. Tr. at 10). Further, Appellant explained that he asked to have an independent chemical test performed by his own doctor because “[he] do[es]n’t trust the police.” (Dec. Tr. at 10). Additionally, Appellant asserted that he was not allowed to use a phone to contact either a doctor or a legal representative. (Dec. Tr. at 10). The trial magistrate was eventually satisfied that Appellant was offered the opportunity to make a confidential phone call which he refused. (Dec. Tr. at 19).

During cross-examination, Appellant admitted that he had been drinking on the night in question. (Dec. Tr. at 12.) Appellant also admitted that he did not at any time apprise Officer Brown of his alleged PTSD. (Dec. Tr. at 12.) Finally, Appellant conceded that when he was released from police custody, he did not proceed to a hospital to undergo an independent chemical test as he was advised to do pursuant to § 31-27-2.1. (Dec. Tr. at 13).

Following the trial, the court sustained the charged violations of §§ 31-27-2.1 and 31-15-11, finding that Officer Brown, at the time of the arrest, had reasonable grounds to investigate the Appellant based upon the Officer's observations of the Appellant's vehicle. (Dec. Tr. at 19). The trial magistrate was satisfied by clear and convincing evidence that Appellant was properly apprised of the rights and penalties of refusing to take a chemical test pursuant to § 31-27-3. The court also found that the Appellant was given an opportunity to make a confidential phone call to a doctor or lawyer of his choice. (Dec. Tr. at 19). Further, the trial magistrate found that Appellant refused to submit to a chemical test. (Dec. Tr. at 19). Finally, the trial magistrate found that Appellant's testimony regarding PTSD "has little bearing with the case before us." (Dec. Tr. at 19).

Ultimately, the trial magistrate sustained the charged violations of § 31-27-2.1 and § 31-15-11. It is from this decision that Appellant now appeals. Forthwith is the Panel's decision.

### 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 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.”

In reviewing a hearing judge'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 concerning the weight of the evidence on questions of fact.” Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mut. Ins. 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 decision is supported by legally competent evidence or is affected by an error of law.” Link, 633 A.2d at 1348 (citing Envtl 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 conclusions on appeal. See Janes, 586 A.2d at 537.

### Analysis

On appeal, Appellant argues that the trial magistrate's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial magistrate abused his discretion by choosing to credit the trial testimony of the Officer over the testimony of the Appellant. Appellant further argues that while he was not prejudiced by Officer Brown's failure to read the Appellant his Miranda rights at the time of his initial arrest for the suspected warrant, the Officer still should have read the Appellant his rights before proceeding to the field sobriety tests. Appellant argues that dismissal of the charged violations of § 31-27-2.1 and § 31-15-11 is the appropriate remedy where a trial magistrate abuses her discretion.

As set forth in Link, our Supreme Court has made clear that this Panel, "lacks the authority to assess witness credibility or to substitute its judgments for that of the hearing magistrate concerning the weight of the evidence on questions of fact." Link, 633 A.2d at 1348 (citing Liberty Mut. Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of either the Officer or the Appellant, it would be impermissible to impugn the trial magistrate's "impressions as he... observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and]... determine[ed]... what to accept and what to disregard [,]... what... [to] believe[] and disbelieve[]." Envtl. Scientific Corp., 621 A.2d at 206. Thus, we will confine our review of the record to its proper scope to determine whether the trial magistrate's decision is supported by legally competent evidence and unaffected by error of law.

Officer Brown testified at trial that he observed Appellant's vehicle cross the yellow lane divider such that both of the vehicle's left wheels were on the wrong side of the line for a distance of approximately ten (10) yards. Furthermore, as the Officer followed the Appellant's vehicle he watched as the car swerved into the breakdown lane on two occasions. (Tr. at 7-8.); see also State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996) (holding that a police officer who observed a motorist cross the center line on two separate occasions had reasonable grounds to suspect that the motorist was driving under the influence of alcohol or drugs).

Based on his observations, the Officer initiated a traffic stop and identified the Appellant as the vehicle's operator. See Jenkins, 673 A.2d at 1097 (R.I. 1996). Although Officer Brown did not read the Appellant his Miranda rights when he was first pulled over, the Panel finds this to be harmless error as the Appellant was not prejudiced. See United States v. Morrison, 449 U.S. 361, 365 (1981) (holding that certain violations of an arrestee's rights may be entirely disregarded as harmless error). Even if the Appellant's testimony regarding alcohol consumption is disregarded, Officer Brown still had reasonable grounds to suspect the Appellant was driving under the influence given the totality of the Officer's observations of the Appellant's driving and physical appearance. See id. Once Officer Brown learned that the Appellant did not have a warrant, he removed the Appellant's handcuffs and proceeded to investigate the Appellant for a potential DUI violation. After first refusing, the Appellant proceeded to take and fail both the one-leg stand and the walk-and-turn test. (Tr. at 12-14). The Officer read the Appellant his "Rights for Use at the Scene" pursuant to § 31-27-3 and then transferred the Appellant to police headquarters. While at the station, the officer apprised the

Appellant of his "Rights for Use at the Station" and provided the Appellant with an opportunity to make a phone call. The Appellant refused to make a call and refused to submit to a chemical test. (Tr. at 15). The members of this Panel conclude that the trial magistrate's decision to sustain the charged violations is supported by legally competent evidence and is unaffected by an 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 light of the reliable, probative, and substantial record evidence. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED: