STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK	:	
	:	
v.	:	C.A. No. T09-0040
	:	
LESLIE HALEY	:	

DECISION

PER CURIAM: Before this Panel on June 3, 2009—Magistrate Noonan (Chair, presiding) and Judge Parker and Judge Almeida, sitting—is Leslie Haley's (Appellant) appeal from a decision of Magistrate DiSandro, sustaining the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test."[1] Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On April 22, 2007, Officer Theodore Bulis (Officer Bulis) 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.

At trial, Officer Bulis testified as to his professional training and experience conducting DUI-related traffic stops and administering standardized field sobriety tests. (Tr. at 19.) Officer Bulis then testified that on the date in question, at approximately 1:10 a.m., he was traveling eastbound on Main Avenue when he observed a vehicle cross the solid yellow dividing line and continue to drive, straddling the yellow line, until the roadway widened to three lanes at the intersection of Warwick Industrial Drive and Main

[1] The Appellant was also charged with violating G.L. 1956 §§ 31-15-1, "Right half of road," and 31-15-11, "Laned roadways." Although these violations are not presently before this Panel on appeal, they are relevant to the appellate arguments raised by Appellant.

Avenue. (Tr. at 20.) Upon arriving at the intersection, Officer Bulis observed the vehicle come to a complete stop approximately one car length beyond the designated white stop line. (Tr. at 25-26) Once the traffic control device applicable to the vehicle turned green, the vehicle continued eastbound on Main Avenue. (Tr. at 26) Officer Bulis continued to follow the vehicle and noticed it drift slowly from the left travel lane across the white lane divider line without signaling, eventually traveling completely in the right travel lane. (Tr. at 26-28.) Officer Bulis then observed it cross the solid white line dividing the travel lanes from the shoulder of the roadway. (Tr. at 24-27.) At this point, Officer Bulis initiated a traffic stop of the suspect vehicle. (Tr. at 28.)

Officer Bulis testified that, upon approaching the vehicle and requesting the operator's driver's license, he detected the strong odor of alcohol on her breath and observed that her eyes appeared watery and bloodshot. (Tr. at 30.) Officer Bulis then proceeded to identify the operator of the vehicle as Appellant. (Tr. at 29.) During his conversation with Appellant, she admitted that she "had [had] a couple of glasses of wine" before operating her vehicle. (Tr. at 30.) When Officer Bulis asked Appellant to exit the vehicle, he noticed that Appellant "was unsteady on her feet. She kept holding her hands out by her side to keep her balance." (Tr. at 32.) Upon Appellant's consent, Officer Bulis administered a series of standardized field sobriety tests; Appellant failed each of the tests administered by Officer Bulis. (Tr. 33-37.)

Officer Bulis placed Appellant under arrest for suspicion of driving under the influence of alcohol, placed her in the back of his cruiser and read her "Rights for Use at Scene." (Tr. at 38.) The Appellant then submitted to a preliminary chemical breath test administered by another officer, Sergeant Connor. (Tr. at 61.) Subsequently, Officer

Bulis transported Appellant to the headquarters of the Warwick Police Department, whereupon she was read her "Rights for Use at Station" and was allowed to make a confidential phone call. (Tr. at 40-41.) Appellant then refused to submit to a chemical test and signed the "Rights" form to indicate her refusal. (Tr. at 43.) When asked by counsel for the State whether he had prepared an "affidavit" in connection with his arrest of Appellant on suspicion of DUI, Officer Bulis answered in the affirmative. (Tr. at 44.) Officer Bulis made clear that the "affidavit" had been signed before a notary. Id.

The Court next heard testimony from Appellant. Appellant testified that she was unsure whether or not she wanted to submit to the preliminary breath test administered in the rear of Officer Bulis's cruiser. (Tr. at 66.) According to Appellant, she "wasn't really sure" if she should take the test but testified that she did so voluntarily after being fully informed of her right to refuse to take the test and the consequences for that refusal. Id.

In rendering his decision from the bench, the trial magistrate "[found] by clear and convincing evidence that reasonable suspicion existed to stop [Appellant's] vehicle based upon [Officer] Bulis's observation of it crossing the center double yellow line, staggering the white lines of the eastbound lanes of Main Avenue and eventually drifting to the right across the white fog line." (Dec. Tr. at 20.) The trial magistrate also found that probable cause and reasonable grounds existed to arrest Appellant for suspicion of driving under the influence of alcohol based upon the "totality of the circumstances" which included Appellant's "general physical characteristics of bloodshot watery eyes; a strong odor of alcohol; slurred speech; that she was unstable on her feet; her admission to

consuming wine prior to operating; and failed properly administered field sobriety tests." Id.

Accordingly, 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. Our 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. Appellant has advanced several arguments in support of her appeal, each of which will be addressed in seriatim.

First, Appellant argues that the trial magistrate erred in sustaining the refusal charge because there is no evidence in the record that Officer Bulis prepared a "sworn report" in connection with his arrest of Appellant on suspicion of DUI, as required by §31-27-2.1. Next, Appellant asserts that Officer Bulis advised her of the incorrect license reinstatement fee and this "misinformation" regarding the penalties for refusing to submit to a chemical test required dismissal of the refusal charge. As her third appellate argument, Appellant maintains that the State was collaterally estopped from proving that Appellant was the operator of the suspect vehicle on the date in question because there

was no in-court identification of Appellant during her separate trial on the related charged violations of §§ 31-15-1 and 31-15-11. Finally, Appellant argues that she did not "refuse" to submit to a chemical test upon the request of law enforcement because she consented to a preliminary chemical breath test at the scene of the traffic stop.

I

The Appellant's first argument is that the charged violation of § 31-27-2.1 cannot be sustained because there is no evidence in the record that Officer Bulis prepared a "sworn report" in connection with his arrest of Appellant on suspicion of DUI.

With respect to chemical test refusal cases, in Link v. State, 633 A.2d 1345, 1349 (R.I. 1993), our Supreme Court explained that such cases are divided into "two distinct parts." The first part is the "pre-hearing procedure initiated by an arrested driver's refusal to submit to a chemical test." Id. Section 31-27-2.1 provides for automatic suspension of the individual's driver's license under the following procedure:

> If a person having been placed under arrest refuses upon the request of a law enforcement officer to submit to the tests, . . . none shall be given, but a judge of the traffic tribunal . . . , upon receipt of a report of a law enforcement officer: that he or she had reasonable grounds to believe the arrested person had been driving a motor vehicle within this state under the influence of intoxicating liquor. . .; that the person had been informed of his or her rights in accordance with § 31-27-3; that the person had been informed of the penalties incurred as a result of noncompliance with this section; and that the person had refused to submit to the tests upon the request of a law enforcement officer; shall promptly order that the person's operator's license or privilege to operate a motor vehicle in this state be immediately suspended. (Emphasis added.)

The second part of the process provides for a hearing before the Traffic Tribunal to determine whether the refusal charge and suspension of the individual's license should be sustained or dismissed. Section 31-27-2.1 outlines this process as follows:

> If the judge finds after the hearing that: (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; the judge shall sustain the violation. (Emphasis added.)

Although the law enforcement officer's report plays a critical role in the adjudication of refusal charges, the role of the report is nonetheless limited. In Link, our Supreme Court indicated that once the report is submitted and the individual's driver's license has been automatically suspended, the "role of the sworn report ends. . . ." Link, 633 A.2d at 1349. Further, upon an appeal to this Panel to determine whether a refusal charge should be sustained or dismissed, the required findings "may be based on whatever evidence is adduced at the hearing and is not dependent upon the validity of the [officer's] sworn report." Id. Accordingly, the Link Court held that the State has an opportunity at such an appeal to "establish the facts necessary . . . to sustain [the defendant's] breathalyzer refusal charge notwithstanding the defect in [the officer's] sworn report. Id.

Here, Officer Bulis responded in the affirmative when asked whether he had prepared an "affidavit" in connection with his arrest of Appellant. (Tr. at 44.)

Additionally, he testified that this "affidavit" had been signed before a notary. Id. Despite this semantic discrepancy, this Panel is satisfied that Officer Bulis testified that a "sworn report" had, in fact, been prepared. As explained by our Court in Link, the charged violation of § 31-27-2.1 can be sustained because there was sworn testimony adduced at trial for the Court to consider and weigh. 633 A.2d at 1349. Officer Bulis' appearance and live trial testimony rendered any defect in the preparation of his report inconsequential.

More recently this Panel addressed the role of the sworn report in City of Newport v. Cohen, C.A. No. T09-0018 (filed May 19, 2009). In Cohen no evidence was produced at trial to show the law enforcement officer made a sworn report or whether it was properly sworn before a notary. The District Court, overturning a Traffic Tribunal Panel, held that there must be evidence presented that the element, "officer making the sworn report" must be proven or the conviction must be set aide. Cohen v. RITT, A.A. NO. 09-84 (filed November 19, 2009). In this case, there was direct evidence presented that the officer made the sworn report. Contrary to the facts found in Cohen, the present case makes clear that Officer Bulis testified that he prepared an "affidavit," which was properly signed before a notary. (Tr. at 44.) Therefore, upon reviewing the record in its entirety, this Panel is satisfied that the trial magistrate's decision to sustain the refusal charge based on Officer Bulis' testimony regarding a properly sworn "affidavit" is unaffected by error of law.

II

Next, Appellant maintains that the charged violation of § 31-27-2.1 cannot be sustained because she was not adequately advised of the penalties associated with

refusing to submit to a chemical test, specifically the fee associated with reinstatement of her operator's license following the entry of a preliminary license suspension.

In addressing this argument, the trial magistrate found that there was "no credible testimony from [Appellant] demonstrating prejudice" resulting from the mistake in advising her of the applicable license reinstatement fee. (Dec. Tr. at 24.) The trial magistrate, in his discretion, chose not to credit Appellant's testimony that her substantial rights were prejudiced by the failure of Officer Bulis to properly advise her of the license reinstatement fee. The members of this Panel "lack [] the authority to assess witness credibility or to substitute its judgment for that of the hearing [magistrate] concerning the weight of the evidence on questions of fact." Link, 633 A.2d at 1348. Thus this Panel cannot second guess the trial magistrate's judgment concerning the credibility of Appellant's testimony.

However, the Rhode Island Supreme Court has held that the language of § 31-27-2.1(a) does not limit a motorist's right to be informed of possible penalties only to those mentioned in its text. Levesque v. Rhode Island Department of Transportation, 626 A.2d 1286 (R.I. 1993); see also St. Pierre v. Fulflex, Inc., 493 A.2d 817, 818 (R.I. 1985). Although this Panel is mindful of Levesque, Officer Bulis testified that he read Appellant the "Rights for Use at Station" form, which Appellant subsequently signed to indicate her refusal to submit to a chemical test. Included on the "Rights" form was the warning that Appellant's driver's license would be suspended for a period of six months to one year if she refused to take the chemical test. Although the seventy-five dollar ($75.00) license reinstatement fee was not specifically enumerated within the "Rights" form, the penalty of license suspension was listed on the form as a warning to Appellant of the

consequences of her refusal. As such, the members of this Panel conclude that Appellant was properly informed of all penalties prior to her refusal to take the chemical test.

Pursuant to § 31-11-10, any individual whose license or privilege to drive a motor vehicle has been suspended as a result of violating § 31-27-2.1, or any motor vehicle offense, has the option of reinstating his or her license once the suspension period has lapsed and the cause for which it was suspended has been removed. The costs associated with reinstatement are minimal, and are required whenever someone wishes to reinstate, unless the person's license was suspended "on the basis of physical or mental fitness." No one is required to reinstate their license following a suspension, thus the costs associated with such a decision are optional for each individual.

This Panel in Town of Little Compton v. Voelker dealt with the Levesque distinction between mandatory and discretionary penalties, while resolving an issue of a deficiency in the "Rights for Use at Station" form. Town of Little Compton v. Voelker, C.A. No. T06-0131 (R.I. Traffic Trib.) (filed November 15, 2006). In Voelker, the "Rights" form read to appellees by law enforcement did not include a recently enacted penalty for refusing to submit to chemical testing. C.A. No. T06-0131 at 2. The form failed to include a two hundred dollar mandatory fee to support the Department of Health's chemical testing programs. In Voelker, the Panel concluded that because the two hundred dollar mandatory fee was missing from the "Rights" form, the appellees were not informed of the fine prior to refusing to submit to the chemical test. Thus the Panel in Voelker held that the failure to inform the appellees of the additional fee repudiated the validity of the motorists' refusal. Id. at 9.

Similarly to Voelker, the license reinstatement fee is mandatory when a motorist wishes to reinstate following a suspension of his or her operator's license. However, contrary to Voelker, the discretionary aspect of the reinstatement fee is that the motorist "may apply to be restored to his or her right to drive," but this is the motorist's choice and thus not a mandatory penalty imposed as a result of refusing to submit to the chemical test. See Section 31-11-10.[2] Our Supreme Court has held that "[t]here is . . . no fundamental constitutional right to drive on the highways; it is a right subject to reasonable control and regulation rationally related to legitimate state interest." State v. Locke, 418 A.2d 842, 850 (1980); see McGue v. Sillas, 82 Cal.App.3d 799, 805, 147 Cal.Rptr. 354, 357 (1978).

Additionally, unlike Voelker, this Panel is in agreement that the stated penalty within the "Rights" form, pertaining to the suspension of Appellant's license, was a sufficient warning that her license would be suspended upon her refusal. As a result, Appellant was properly notified that after her suspension period was complete—if she wished to get her license reinstated—she would have to pay the associated cost of reinstatement. The reinstatement cost is an ancillary cost incurred subsequent to the expiration of the term of revocation or suspension; it is not a direct penalty of refusing to submit to a chemical test. Thus the members of this Panel are satisfied that Appellant was properly informed by Officer Bulis of all potential penalties incurred as a result of her refusal to submit to the chemical test.

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[2] Section 31-11-10 titled "Reinstatement after revocation or suspension," states in pertinent part, "[a]fter the expiration of the term of the revocation or suspension he or she may apply to be restored to his or her right to drive, but the division of motor vehicles shall not grant the application unless and until it is satisfied after investigation of the driving ability of the person that it will be safe to license him or her to drive a motor vehicle on the public highways and it has received a reinstatement fee of seventy-five dollars ($75.00)."

III

Regarding her third argument, Appellant asserts that the prosecution should have been "collaterally estopped" from introducing evidence regarding her identity as the operator of the suspect vehicle, as the prosecution failed to offer such evidence at a prior proceeding involving the charged violations of §§ 31-15-1 and 31-15-11. According to Appellant, the failure of the trial magistrate to apply the doctrine of collateral estoppel to prevent the State from re-litigating the issue of Appellant's identity is affected by error of law. We disagree.

Under the doctrine of collateral estoppel, "an issue of ultimate fact that has been actually litigated and determined cannot be re-litigated between the same parties or their privies in future proceedings." Casco Indemnity Company v. O'Connor, 755 A.2d 779, 782 (R.I. 2000) (citations omitted). "In order for collateral estoppel to apply, three factors must be present: 'there must be an identity of issues; the prior proceeding must have resulted in a final judgment on the merits; and the party against whom collateral estoppel is sought must be the same as . . . in the prior proceeding." O'Connor, 755 A.2d at 782 (quoting State v. Chase, 588 A.2d 120, 122 (R.I. 1991)). This Panel is satisfied that the doctrine of collateral estoppel does not apply in the present case. Here, the trial magistrate properly explained that the prior trial, regarding the violations of §§ 31-15-1 and 31-15-11, involved a "separate ticket that required different allegations as to what's before the Court [now], and whether or not [Appellant] was successful or for what reasons he was not successful is not before th[is] Court . . ." (Tr. at 75.)

In the present case, Appellant is appealing the charged violation of 31-27-2.1. As such, the doctrine of collateral estoppel does not apply to the issue of Appellant's identity

because she was properly identified, during the trial, as the operator of the motor vehicle when she testified that she was the driver on the night in question. (Tr. at 69.) When Appellant voluntarily took the stand to testify in her own defense as to whether or not she wished to submit to the preliminary breath test, she voluntarily waived her right to argue the issue of her identity as the operator of the subject vehicle. (Tr. at 66.) "An implied waiver may arise where a person against whom the waiver is asserted has pursued such a course of conduct as to sufficiently evidence an intention to waive a right or where h[er] conduct is inconsistent with any other intention then to waive it." Kane v. American National Bank and Trust, Co., 21 Ill. App.3d 1046, 316 N.E.2d 177, 182 (1974). During the trial, Appellant was cross-examined by her own attorney regarding the facts surrounding her arrest and subsequent refusal to submit to a chemical test. (Tr. at 67-74.) Accordingly, the members of this Panel conclude that Appellant impliedly waived her right to argue that she was not the operator of the subject motor vehicle. Thus this Panel is satisfied that the failure of the trial magistrate to apply the doctrine of collateral estoppel was not affected by error of law.

IV

Finally, Appellant argues that the trial magistrate erred in sustaining the charged violation because she did not "refuse" to submit to a chemical test. According to Appellant, her decision to submit to a preliminary breath test at the scene of the traffic stop precluded the State from charging her with a refusal pursuant to § 31-27-2.1, notwithstanding the fact that she refused a chemical test of her breath at the headquarters of the Warwick Police Department.

Appellant's argument that she did not "refuse" is based on a fundamental misunderstanding of the sequence of events that transpires when a motorist is stopped on suspicion of operating her motor vehicle under the influence of intoxicating liquor. The statute governing the administration of preliminary chemical breath tests, § 31-27-2.3,[3] becomes operative when a law enforcement officer initiates an investigatory stop of a motor vehicle and, upon making contact with the operator, "has reason to believe that [the motorist] is driving or in actual physical control of [her] motor vehicle . . . while under the influence of alcohol . . . ." Section 31-27-2.3. When the officer forms this belief, he "may require the [motorist] to submit to a preliminary breath analysis for the purpose of determining the person's blood alcohol content." Id.

As § 31-27-2.3 makes clear, if the motorist consents to the breath analysis, the analysis is performed at the scene of the traffic stop "immediately upon the law enforcement officer's formulation of a reasonable belief that the person is driving or in actual control of a motor vehicle while under the influence of alcohol, or immediately upon the stop of the person, whichever is later in time." Id. It is true "[t]he result of a preliminary breath analysis may be used for the purpose of guiding the officer in deciding whether an arrest should be made[.]" § 31-27-2.3. The officer's determination that probable cause and reasonable grounds exist to place the motorist under arrest on

[3] Section 31-27-2.3 reads in pertinent part, "[w]hen a law enforcement officer has reason to believe that a person is driving or in actual physical control of any motor vehicle in this state while under the influence of alcohol, the law enforcement officer may require the person to submit to a preliminary breath analysis for the purpose of determining the person's blood alcohol content. The breath analysis must be administered immediately upon the law enforcement officer's formulation of a reasonable belief that the person is driving or in actual control of a motor vehicle while under the influence of alcohol, or immediately upon the stop of the person, whichever is later in time. The result of a preliminary chemical breath analysis may be used for the purpose of guiding the officer in deciding whether an arrest should be made. When a driver is arrested following a preliminary breath analysis, tests may be taken pursuant to § 31-27-2.1. The results of a preliminary breath test may not be used as evidence in any administrative or court proceeding involving driving while intoxicated or refusing to take a breathalyzer test, except as evidence of probable cause in making the initial arrest."

suspicion of DUI may occur before a preliminary chemical breath test is administered, based on the officer's personal observations of the motorist's physical appearance, demeanor, and performance on standardized field sobriety tests. Section 31-27-2.3 is plain and clear on its face that "[w]hen a driver is arrested following a preliminary breath analysis, tests may be taken pursuant to §31-27-2.1" and the test results may be used "as evidence of probable cause in making the initial arrest" in other court proceedings. The language of § 31-27-2.3 assumes that it will be read in conjunction with § 31-27-2.1.

However, the statute governing chemical test refusals, § 31-27-2.1, only becomes operative when a motorist —"having been placed under arrest"—refuses to submit to a subsequent chemical test of his or her breath, blood, and/or urine at the station. While Appellant contends that the decision of an individual to submit to preliminary breath test at the scene of a traffic stop precludes law enforcement from asking the individual, following a DUI arrest, to submit to a chemical test of his or her breath, blood, and/or urine at the station, this argument is contrary to the plain and clear language of the preliminary chemical breath test and chemical test statutes.

Furthermore, §§ 31-27-2.3 and 37-27-2.1 are separate statutes that should be read together, and not in conflict with one another. When interpreting statutory language, this Panel's role is "to determine and effectuate the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes." Theodore H. Such, Jr. et al. v. State of Rhode Island et al., 950 A.2d 1150; Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987). Furthermore, an equally well-settled principle states that "statutes relating to the same subject matter should be considered together so that they will harmonize with each other and be consistent" with their general scope. Such, Jr. et

al., 950 A.2d 1150; State ex rel. Webb v. Cianci, 591 A.2d 1193, 1203 (R.I. 1991); See also Horn v. Southern Union Co., 927 A.2d 292, 295 (R.I. 2007). "Such statutes are considered to be in pari materia, which stands for the simple proposition that 'statutes on the same subject are, when enacted by the same jurisdiction, to be read in relation to each other.'" Horn, 927 A.2d at 294 (quoting Reed Dickerson, *The Interpretation and Application of Statutes* 233 (1975)).

This Panel—when applying these principles to the case at bar—concludes that both pieces of legislation were "intended to have effect together," as evidenced by the language themselves the two statutes anticipate each other. Such, Jr. et al., 950 A.2d 1157. Additionally, §§ 31-27-2.3 and 31-27-2.1 have the same distinct legislative purpose of discouraging the operation of motor vehicles while under the influence of liquor or drugs. "Viewed in this light [both statutes] are not irreconcilably repugnant and they can easily be harmonized with each other." Id.[4]

The members of this Panel find that Appellant "refused" to submit to a chemical test at the headquarters of the Warwick Police Department, notwithstanding the fact that she consented to a preliminary chemical breath test at the scene. Thus, this Panel is satisfied that the trial magistrate's decision to sustain the refusal charge is unaffected by any error of law.

[4] This Panel acknowledges, and summarily rejects the analysis of State of R.I. v. Cote, based on the statutory language of §§ 31-27-2.1 and 31-27-2.3. State of Rhode Island v. Cote, No. N3-2008-0210A (filed January 27, 2009).

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.

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