STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION

Marsha Rooney	:	
	:	
v.	:	A.A. No. 2011 - 043
State of Rhode Island	:	
(RITT Appellate Panel)	:	

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto.

It is, therefore, ORDERED, ADJUDGED AND DECREED,

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the appellate panel of the Traffic Tribunal is AFFIRMED.

Entered as an Order of this Court at Providence on this 23rd day of December, 2011.

By Order:

___/s/_____
Melvin Enright
Acting Chief Clerk

Enter:

____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION

Marsha Rooney	:	
	:	
v.	:	**A.A. No. 2011-00043**
	:	**(T11-0009)**
State of Rhode Island	:	**(10-503-500234)**
(RITT Appellate Panel)	:	

F I N D I N G S A N D R E C O M M E N D A T I O N S

Ippolito, M. In this case, Ms. Marsha J. Rooney urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred in affirming a trial magistrate's decision finding her guilty of refusal to submit to a chemical test, a civil violation under Gen. Laws 1956 § 31-27-2.1. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9; the applicable standard of review may be found in Gen. Laws 1956 § 31-41.1-9(d).

In her appeal, Ms. Rooney presents two related reasons why the decision of the panel should be set aside. First, she alleges that the appeals panel erred in

affirming the trial magistrate's decision to sustain the refusal charge despite his failure to make specific findings on the elements of (1) reasonable grounds to believe the motorist was operating under the influence and (2) refusal.[1] Brief of Appellant, at 1. Second, Ms. Rooney contends that the officer who arrested her did not have reasonable grounds to believe she was operating under the influence in this case. Brief of Appellant, at 2. After a review of the entire record, and for the reasons stated below, I have concluded that the decision of the panel in this case is supported by reliable, probative and substantial evidence of record and was not clearly erroneous; I therefore recommend that the decision below be affirmed.

I. FACTS & TRAVEL OF THE CASE

The facts underlying Ms. Rooney's refusal charge are fully and fairly stated (with appropriate citations to the trial transcript) in the decision of the panel. See Decision of RITT Panel, April 19, 2011, at 1-4; they may be summarized as follows.

On December 22, 2010 at approximately 9:53 p.m., Patrolman Jerome Gillen, a five-year veteran of the South Kingstown Police Department, who has made 20-plus alcohol-related car stops, was traveling in his cruiser on Main Street in downtown Wakefield when he observed a vehicle in a private parking lot, which was traveling too fast to stop before entering the roadway. (Trial Tr. at 7, 12-13). The

[1] Here the term "refusal" is used narrowly, in reference to proof that a motorist affirmatively declined to take a test, not the charge of "refusal to submit to a chemical test" taken as a whole.

vehicle exited the parking lot without stopping, and Patrolman Gillen had to slam on his brakes to avoid a collision. (Trial Tr. at 13). The officer then initiated a traffic stop, to which the motorist, Ms. Rooney, responded appropriately and pulled over. (Trial Tr. at 13, 39-41).

Patrolman Gillen approached the driver's side window of the motorist's car and it took the driver "a few seconds" to realize he was standing there. (Trial Tr. at 15). Then, the operator accidentally lowered her rear window before lowering the driver's side window so she could communicate with Patrolman Gillen. (Trial Tr. at 15). Patrolman Gillen asked the driver for her license, registration, and proof of insurance, and she was able to produce the requested documents with no difficulty. (Trial Tr. at 15). However, as he began to question the operator — whom he identified as the defendant, Ms. Rooney — Patrolman Gillen noticed a strong odor of alcohol present in the vehicle and the odor grew stronger as he continued speaking with her. (Trial Tr. at 15-18). Ms. Rooney's speech was "a little mumbled," but Patrolman Gillen was able to understand her. (Trial Tr. at 18). Ms. Rooney's eyes also appeared "glossy" — which the officer testified was equivalent to the term "watery" — but not bloodshot. (Trial Tr. at 38, 43, 51). Ms. Rooney appeared evasive to the officer as she responded to his questions. (Trial Tr. at 43).

Patrolman Gillen asked her where she was traveling to, and Ms. Rooney responded that she was going to the store and that she had come from her home. (Trial Tr. at 15-16). Patrolman Gillen responded by pointing out to her that she had

just pulled out of the parking lot of a business. (Trial Tr. at 16). Patrolman Gillen inquired as to whether Ms. Rooney had been drinking, and she responded that she drank a glass of wine with dinner. (Trial Tr. at 16). At this point, Patrolman Gillen asked her to get out of the car so he could perform a field sobriety test. (Trial Tr. at 19).

By that time, the weather had degraded and snow was beginning to accumulate. (Trial Tr. at 19). The officer attempted to find a location that was not covered in snow and slush to perform the field sobriety tests, and he found a location that was wet with no snow accumulation. (Trial Tr. at 19). Patrolman Gillen did not observe anything unusual as Ms. Rooney exited her vehicle and walked to the rear of the car to begin the field sobriety test. (Trial Tr. at 38, 43).

The officer began the field sobriety test by administering the Horizontal Gaze Nystagmus test, during which he noted a lack of smooth pursuit in both eyes and distinct and sustained nystagmus in both eyes at maximum deviation. (Trial Tr. at 19). Patrolman Gillen then administered the walk and turn test, which Ms. Rooney failed. (Trial Tr. at 19). Patrolman Gillen then attempted to administer the one-leg stand test and Ms. Rooney stated that she did not want to take the test and he placed her under arrest. (Trial Tr. at 23-24).

Patrolman Gillen placed Ms. Rooney in his patrol car and informed her of her "rights for use at the scene," and she acknowledged that she understood them. (Trial Tr. at 24-25). He then transported Ms. Rooney to the South Kingstown Police

Department headquarters where he informed her of her "rights for use at the station," and she acknowledged that she understood them. (Trial Tr. at 27-28). Ms. Rooney exercised her right to a confidential phone call and signed a form indicating that she had refused to take a chemical test. (Trial Tr. at 28-29). Patrolman Gillen then released Ms. Rooney after processing her and issuing the citations at issue in this case. (Trial Tr. at 29). Ms. Rooney was charged with refusal to submit to a chemical test and entering from a private road or driveway without yielding.

Ms. Rooney was arraigned on January 10, 2011. Her trial was conducted on February 15, 2011 by the Honorable William T. Noonan, Magistrate of the Traffic Tribunal. (Trial Tr. at 1, 69). At her trial, only one witness testified — Patrolman Gillen — who testified consistent with the foregoing narrative. (Trial Tr. passim).

Magistrate Noonan found, inter alia, that:

1. Ms. Rooney violated Gen. Laws 1956 § 31-17-5 by exiting a parking lot without yielding to oncoming traffic. (Trial Tr. at 63).
2. That the elements of Gen. Laws 1956 § 31-27-2.1 had been met and the refusal charge should be sustained. (Trial Tr. at 64-68).

As a result, Ms. Rooney was found guilty of entering a roadway from a private road without yielding to oncoming traffic and refusal. Ms. Rooney's sentence included a six month license suspension.

Ms. Rooney then appealed her refusal conviction to the RITT appeals panel.

The matter was heard by an appellate panel comprised of Magistrate Domenic Disandro (Chair), Judge Lillian Almeida, and Judge Edward Parker on March 16, 2011. Before the panel, Ms. Rooney asserted the trial magistrate committed reversible error because the facts in the record did not support the conclusion that Patrolman Gillen had reasonable grounds to believe she was driving under the influence. Ms. Rooney further argued the trial magistrate's decision should be overturned because he did not make a specific finding that she refused a chemical test. The panel rejected Ms. Rooney's assertions of error.

First, the appellate panel decided that "there was ample evidence before the trial magistrate to conclude that reasonable grounds existed for [Patrolman Gillen] to believe that Appellant was operating under the influence." Decision of Panel, at 6. Specifically, the panel noted that Ms. Rooney had operated her vehicle erratically by failing to yield to Patrolman Gillen's police cruiser; that Patrolman Gillen had noted alcohol emanating from her breath multiple times; that the officer noticed Ms. Rooney's eyes were glossy; and that Ms. Rooney told him she had consumed alcohol. Decision of Panel, at 7. The panel also considered the fact that Ms. Rooney failed the "walk and turn" test. Decision of Panel, at 7.

Regarding Ms. Rooney's second contention, the panel found that although the trial magistrate did not directly state his finding as to refusal, there was "'legally competent evidence and reasonable inferences that may be drawn therefrom to support the [trial magistrate's determination]." Decision of Panel, at 7. The panel

specifically noted that the trial magistrate, in articulating his findings of fact, stated that he found Patrolman Gillen's testimony credible. The panel reviewed Patrolman Gillen's testimony and concluded that it proved Ms. Rooney had been read her rights and that she had signed a form indicating she was refusing to take the chemical test. Decision of Panel, at 7-8. The panel concluded that the trial magistrate's findings on this issue were "'sufficient to support [his] legal conclusions * * *." Decision of Panel, at 8.

On April 25, 2011, Ms. Rooney filed an appeal in the Sixth Division District Court. Memoranda have been received from Appellant Rooney and the Appellee State of Rhode Island.

II. STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in Gen. Laws 1956 § 31-41.1-9(d), which provides as follows:

> (d). Standard of review. The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the appeals panel's findings, inferences, conclusions or decisions are:
> (1). In violation of constitutional or statutory provisions;
> (2). In excess of the statutory authority of the appeals panel;
> (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.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g)., the State Administrative Procedures Act ("APA"). Accordingly, I shall rely on cases interpreting the APA as guideposts in the review process.

Under the APA standard, the District Court "* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.'" [2] The Court will not substitute its judgment for that of the agency (here, the panel). as to the weight of the evidence on questions of fact.[3] Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.[4]

III. APPLICABLE LAW

This case involves a charge of refusal to submit to a chemical test under Gen. Laws 1956 § 31-27-2.1. The civil offense of refusal is predicated on the implied consent law, which is stated in subsection 31-27-2.1(a):

> (a) Any 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. No more than two (2) complete tests, one for the presence of intoxicating liquor and

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[2] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1968) citing Gen. Laws 1956 § 42-35-15(g)(5).

[3] Cahoone v. Board of Review of the Dept. of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

[4] Cahoone v. Board of Review of the Dept. of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

> one for the presence of toluene or any controlled substance, as defined in § 21-28-1.02(7), shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have 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. * * * Gen. Laws 1956 § 31-27-2.1(a).

The four elements of a charge of refusal which must be proven at trial before the Traffic Tribunal are stated later in the statute:

> * * * If the traffic tribunal 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 traffic tribunal judge shall sustain the violation. The traffic tribunal judge shall then impose the penalties set forth in subsection (b) of this section * * *.
> Gen. Laws 1956 § 31-27-2.1(c).

The Rhode Island Supreme Court has interpreted the phrase "reasonable grounds" in the statute as equivalent standard to "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). On most occasions an alcohol-related traffic offense (i.e., driving under the influence or refusal) results after a motorist has been stopped for violation of a lesser

(non-alcoholic related) traffic offense.[5] Such stops have been found to comport with the mandate of the Fourth Amendment that searches and seizures be reasonable. See Whren v. United States, 517 U.S. 808, 810 (1996)(cited in State v. Bjerke, 697 A.2d 1060, 1072 [1997]).

After a stop, the procedures necessary to sustain a refusal charge (usually beginning with the administration of field sobriety tests). may be commenced when an officer has reasonable suspicion to believe that a person has been driving under the influence. State v. Bjerke, 697 A.2d 1060 (1997); State v. Perry, 731 A.2d 720 (1999). At the same time, the officer's acquisition of reasonable suspicion that a motorist was operating under the influence becomes the first element of a refusal charge. See Gen. Laws 1956 § 31-27-2.1(c). Thus, the Court has pronounced that in alcohol cases, reasonable suspicion is the standard, which if present, empowers the arresting/charging officer to take two crucial actions in alcohol cases: (1) the initial stop and (2) the request of the motorist to take a chemical test. The Court confirmed that the reasonable suspicion test carries this dual role in State v. Perry, 731 A.2d 720, 723 (1999).

IV. ISSUE

The issue before the Court is whether the decision of the appeals panel was supported by reliable probative and substantial evidence in the record or whether or

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[5] See Gen. Laws 1956 § 31-27-12 (requiring officer who observes traffic violation to issue summons). In Rhode Island, most minor traffic offenses are civil violations. See Gen. Laws 1956 § 31-27-13(a).

not it was clearly erroneous or affected by error of law. More precisely, did Patrolman Gillen have reasonable grounds to believe Ms. Rooney was operating under the influence and did the trial magistrate commit a fatal error of law by not making a specific finding on this issue? Ms. Rooney's appeal also raises the question of whether the trial magistrate committed reversible error by not making a specific finding that Ms. Rooney refused a chemical test.

V. ANALYSIS

A. DID THE PANEL COMMIT CLEAR ERROR IN AFFIRMING THE TRIAL MAGISTRATE'S DECISION TO SUSTAIN APPELLANT'S REFUSAL CHARGE WITHOUT MAKING A SPECIFIC FACTUAL FINDING REGARDING THE ELEMENTS OF (1) REASONABLE GROUNDS AND (2) REFUSAL?

The first of the two issues we must address is whether the RITT appeals panel erred in affirming the trial magistrate despite his failure to make specific findings regarding the elements of (1) reasonable grounds and (2) refusal. While certain statements he made during his oral decision indicate he concluded all elements of the charge had been satisfied, there is certainly no question the trial magistrate failed to make explicit findings on two essential elements. On appeal, the RITT appellate panel took the view that the trial magistrate's findings were sufficient, so it did not remand the case for more explicit findings to be made; the panel, however, did make its own findings as to the evidence of record on these two issues. This is the posture of the case as it comes before this Court.

Accordingly, I believe this issue resolves into two questions that must be answered; they are: (a) Were the findings of the trial magistrate, admittedly inexplicit on two elements, legally insufficient? And, if so, (b) Do the panel's findings cure the trial magistrate's omissions? After due consideration, I have concluded the answer to the first question is no and the answer to the second question is yes.

1. The Trial Magistrate's Findings Were Legally Insufficient Because He Failed to Address All Elements of the Offense.

The initial question that must be addressed in order to resolve appellant's first assertion of error is whether the trial magistrate's findings were legally sufficient for, if they were, the panel committed no error by sustaining them. In my view the standard for the making of findings by an RITT judge or magistrate is that which is established in subsection (b) of Gen. Laws 1956 § 31-41.1-6, denominated "Hearings," which indicates that — "After due consideration of the evidence and arguments, the judge or magistrate shall determine whether the charges have been established, and appropriate findings of fact shall be made on the record. Thus, I believe the findings made by the trial magistrate in this case did not meet the standard set by § 31-41.1-6.

In its memorandum opposing Ms. Rooney's appeal, the State urges that — because a refusal charge is civil in nature — guidance may be taken from Rule 52(a) of the Superior Court Rules of Civil Procedure and the cases interpreting it. See Brief of Appellee, at 6. Rule 52(a) requires a court sitting without a jury to "find the facts

specially and state separately its conclusions of law thereon * * *." However, a trial justice is not required to engage in extensive analysis in order to comply with this requirement. Nardone v. Ritacco, 936 A.2d 200, 206 (R.I. 2007). Non-compliance with Rule 52(a) will only justify a reversal or a remand if the record does not "yield a full understanding and resolution of the controlling and essential factual and legal issues." Rowell v. Kaplan, 103 R.I. 60, 70, 235 A.2d 91, 97 (R.I. 1967). A trial justice's findings need only be "sufficient to indicate the factual basis for the ultimate conclusion." Id.

Moreover, the general rule for fact-finding in the administrative context is virtually identical to the one established under Rule 52(a). In Kurzon v. United States Postal Service,[6] the First Circuit Court of Appeals noted that while a court "'ought not have to speculate as to the basis for an administrative agency's conclusion,' we will accept 'less than ideal clarity' in administrative findings, 'if the agency's path may reasonably be discerned * * *." The agency must provide a reviewing court with an articulated basis for its decision. Della Valle v. U.S., 626 F. Supp. 388, 395 (D. R.I. 1986).

And it is certainly true, as the state argues, that the trial magistrate made extensive factual findings regarding the incident. However, he neglected to make findings on two key legal questions before him — two elements of the offense. As a result, notwithstanding the foregoing authorities — which I believe inapposite, I

[6] 539 A.2d 788, 792-93 (1st Cir. 1976).

conclude that Ms. Rooney is correct in her argument that the trial magistrate committed an error of law by not specifically finding the State had established reasonable grounds by clear and convincing evidence or that she had refused a chemical test.

2. The Appellate Panel Was Within Its Authority to Make Findings On Issues Not Addressed By the Trial Magistrate.

Having found that the trial magistrate's findings were legally inadequate, we must now determine whether the appellate panel cured this error by making its own findings. After reviewing the statute governing procedures to be utilized by the appellate panel in conducting its reviews, I conclude that it did.

Subsection (f), entitled "Standard of Review," of Gen. Laws 1956 § 31-41.1-8, denominated "Appellate Review," states as follows:

> The appeals panel shall not substitute its judgment for that of the trial 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 substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions or decisions are:
> (1) In violations of constitutional or statutory provisions;
> (2) * * *;
> (3) Made upon unlawful procedure;
> (4) * * *;
> (5) * * *;
> (6) * * *;

(Emphasis added). While subsection (f) requires the panel to defer to factual findings made by the trial magistrate, it does seem — by sanctioning the modification of the

decision below — to allow the panel to insinuate itself into the decision-making process, at least in some situations. Where, as here, a trial magistrate has failed to make legal determinations — which, by definition, constitutes an unlawful procedure and legal error — I believe the panel has the authority to fill such a void.

Viewing the matter more broadly and less legalistically, I believe we must acknowledge the appellate panel's decision as being the RITT's last word on this case. It is the decision of the panel that this Court reviews pursuant to Gen. Laws § 1956 § 31-41.1-9. The panel's decision is the focus of our attention, not the trial decision.[7] To the panel's decision this Court must give great deference on factual matters. I therefore conclude it would be natural for the RITT appellate panel to be able to exercise corrective authority by revising or modifying a trial magistrate's decision.

[7] It may also be noted that, under the federal Administrative Procedures Act, reviewing courts owe deference to the agency making a final decision and not the administrative law judge (ALJ) that made the initial determination. RICHARD J. PIERCE, JR., ADMINISTRATIVE LAW TREATISE 989 (5TH ED. 2006). The ALJ's findings are merely a part of the record that a reviewing court must consider when deciding whether the agency's findings are supported by substantial evidence. Universal Camera Corp. v. NLRB, 340 U.S. 474, 493 (1951); see also id. The federal rules provide that the agency is the ultimate finder of fact even when the credibility of a witness is at issue. See, e.g., Hernandez v. National Transportation Safety Board, 15 F.3d 157, 158 (10th Cir. 1994). When reviewing an ALJ's initial decision a federal agency "has all the powers which it would have in making its initial decision." 5 U.S.C. § 557.

3. **The Panel's Findings on Reasonable Grounds and Refusal Are Supported by Substantial Evidence.**

(a) Reasonable Grounds.

Having found the RITT panel may remedy a defective trial decision — by filling in gaps in legal findings — we turn to the decision rendered by the RITT panel in the case at bar. We shall now review its findings on the issues of "reasonable grounds" and "refusal" seriatim to see if they are sound.

The Panel found that the evidence before Magistrate Noonan was sufficient to justify a conclusion that Patrolman Gillen had reasonable grounds to believe Ms. Rooney was operating under the influence. Decision of Panel, at 6. The Panel made the following findings of law and fact:

> Our review of the record indicates that there was ample evidence before the trial magistrate to conclude that reasonable grounds existed for the law enforcement officer to believe Appellant was operating under the influence. Officer Gillen testified that Appellant operated her vehicle 'erratically,' in darting out in front of his police cruiser on a snowy night in late December. Also, on more than one occasion, Officer Gillen noted that he detected alcohol emanating from Appellant's breath. He also recalled that Appellant's eyes were glossy in appearance and that Appellant had informed him that she had, in fact, consumed alcohol that evening. Lastly, although Appellant refused to complete a test known to law enforcement as the "walk and turn test,"[8] Officer Gillen testifies that she failed a field sobriety test known to law enforcement as the "one legged stand test." Based upon that uncontested testimony, and the trial magistrate's determination that

[8] It appears the panel has the test results reversed. According to the trial magistrate's finding, she failed the walk and turn test and refused to perform the one-legged stand (Trial Tr. at 65), which comports with Patrolman Gillen's testimony. (Trial Tr. At 21-23).

> Officer Gillen was a highly credible witness, this Panel finds that the trial magistrate's findings were clearly erroneous.
> Decision of Panel, at 6-7 (footnote added).

The Panel then held that the trial magistrate's findings were not clearly erroneous based on his conclusion that Patrolman Gillen was a highly credible witness, and the actual testimony of the patrolman. Id.

I find that the Panel's conclusion that the evidence of record demonstrated Patrolman Gillen had reasonable grounds to believe Ms. Rooney was operating under the influence is supported by substantial evidence and not clearly erroneous. Our Supreme Court has said that a motorist having bloodshot eyes and emitting the odor of alcohol is acceptable evidence of reasonable grounds to believe she is operating under the influence. State v. Bjerke, 697 A.2d 1060, 1072 (R.I. 1997). Erratic driving, slurred speech, and admitting alcohol consumption to a police officer are also relevant factors in the reasonable grounds calculus. State v. Bruno, 709 A.2d 1048, 1049-50 (R.I. 1998). Additionally, a motorist stumbling or otherwise having trouble standing is a relevant factor. State v. Perry, 731 A.2d 720, 721-23 (R.I. 1999). The record before the Panel contained evidence of all of these factors. Accordingly, the panel's findings are well-supported by the record.[9]

[9] In light of these facts on the record, Magistrate Noonan stated that he believed it would have been a dereliction of Patrolman Gillen's duties as a police officer not to arrest Ms. Rooney for operating under the influence. (Trial Tr. at 67). The magistrate added that he accepted the patrolman's testimony regarding his observations as credible. (Trial Tr. at 67).

(b) Refusal

Regarding the issue of whether Ms. Rooney refused a chemical test, the Panel stated "[d]espite no language on point, this Panel finds 'legally competent evidence and reasonable inferences that may be drawn therefrom to support the [trial magistrate's determination]." Decision of Panel, at 7 (citations omitted). Because the trial magistrate found Ms. Rooney was arrested and read her rights for use at the station, the panel felt the trial magistrate implicitly found a refusal. Decision of Panel, at 7.

The record before the Panel establishes that Patrolman Gillen brought Ms. Rooney to the South Kingstown Police Headquarters where he informed her of her rights for use at the station and that she utilized her right to a confidential phone call. (Trial Tr. at 28-29). The officer also testified that Ms. Rooney signed a line on the form indicating that she had refused to take the chemical test. (Trial Tr. at 29). The substantial evidence in the record before the Panel supports the conclusion that Ms. Rooney refused the test and that the trial magistrate accepted the testimony on this issue as credible, and I will not disturb the Panel's sound judgment. The panel further noted that the trial magistrate had properly assessed the veracity of Patrolman Gillen's testimony and he sufficiently discussed his findings and theory of the case on the record. Decision of Panel, at 7. The panel then concluded that the trial

magistrate's findings were sufficient to support his legal conclusions.[10] Decision of Panel, at 7-8. I believe this finding made by the panel is well-supported in the record.

In conclusion, we may note that although the trial magistrate made no explicit findings on the element of refusal, he admonished Ms. Rooney for failing to take a chemical test, stating:

> If you find yourself in the position of operating a vehicle, having consumed some alcohol, having had an officer stop you and generate a concern about your ability to safely operate a vehicle in your condition, and the field sobriety tests that are conducted are not going as you would like because you are nervous or because the conditions under which they are administered; there is a remedy. There is a very specific remedy and a very effective remedy, and that remedy is to do what you promised to do when you got your license, which was to submit to a chemical test, and that would remove any doubt in this officer's mind. (Trial Tr. at 66).

I agree with the State's contention that, although not a specific finding of fact, this excerpt from the magistrate's oral decision lends support to the notion that he considered the issue of refusal and concluded that Ms. Rooney refused the test. See Brief of Appellee, at 5.

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[10] The panel referred to Notarantonio v. Notarantonio, 941 A.2d 138, 148 (R.I. 2008). in support of its conclusion. In that case, the Rhode Island Supreme Court said: "[a] trial justice need not 'categorically accept or reject each piece of evidence in his decision for this Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to support his rulings.'" Id. at 147.

B. DID PATROLMAN GILLEN HAVE REASONABLE GROUNDS TO BELIEVE MS. ROONEY WAS OPERATING UNDER THE INFLUENCE IN THIS CASE?

Although we have disposed of the Appellant's contentions regarding defects in the trial magistrate's decision, the question of whether Patrolman Gillen had reasonable grounds to believe Ms. Rooney was operating under influence remains. After a review of the record, I find that the patrolman had reasonable grounds to believe Appellant was operating under the influence. To properly assess this issue we must return to the findings of the trial magistrate.[11]

1. Findings of the Trial Magistrate and the Appeals Panel on the Element of Reasonable Grounds.

The trial magistrate noted that reasonable suspicion for the initial traffic stop was present in this case when Patrolman Gillen observed Ms. Rooney exit a private parking lot without yielding to oncoming traffic, which could be considered erratic driving. (Trial Tr. at 63). He then noted that when the officer approached Ms. Rooney's vehicle it took her an excessively long time to notice he was standing there and that she initially put down the wrong window. (Trial Tr. at 64). Furthermore, Ms. Rooney was evasive in answering the officer's questions and her speech was mumbled; the officer noticed a strong odor of alcohol emanating from Ms. Rooney's breath that got stronger as he continued speaking with her; the patrolman noticed that Ms. Rooney's eyes were glossy; and Ms. Rooney admitted to consuming alcohol.

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[11] The trial magistrate's discussion of the evidence supporting a finding of reasonable grounds has already been reviewed. However, in the interest of clarity and thoroughness I will reiterate the key facts in the next section.

(Trial Tr. at 64). The magistrate also considered the fact that Ms. Rooney failed the walk and turn test and that she refused to perform the one legged stand. (Trial Tr. at 65).

The appeals panel relied on the same facts, stating,

> Officer Gillen testified that Appellant operated her vehicle 'erratically,' in darting out in front of his police cruiser on a snowy night in late December. Also, on more than one occasion, Officer Gillen noted that he detected alcohol emanating from Appellant's breath. He also recalled that Appellant's eyes were glossy in appearance and that Appellant had informed him that she had, in fact, consumed alcohol that evening. Lastly, although Appellant refused to complete the [one legged stand test], Officer Gillen testifies that she failed a field sobriety test known to law enforcement as the [walk and turn test].
> Decision of Panel, at 6-7.

It is apparent from the trial magistrate and the panel's discussion of the facts that although Patrolman Gillen did not suspect Ms. Rooney was driving under the influence when she failed to yield to his cruiser, the magistrate and the panel viewed this as erratic driving.

2. Did the State Establish Reasonable Grounds by Clear and Convincing Evidence?

After reviewing the evidence in this case, I am more than satisfied that the State cleared the hurdle of establishing reasonable grounds by clear and convincing evidence.

There are several cases from the Rhode Island Supreme Court discussing the evidence required to establish reasonable grounds in a drunk driving case. However, I will begin by discussing State v. Bjerke, supra. In that case, the Court said,

> The defendant's commission of a criminal misdemeanor alone gave the officer probable cause to stop and detain him, and then 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 (Emphasis added).

Bjerke establishes that a motorist emitting the odor of alcohol and having bloodshot eyes is acceptable evidence of reasonable grounds.

In State v. Bruno, 709 A.2d 1048, 1049-50 (R.I. 1998)., the Court held that a police officer had reasonable grounds to believe a motorist was driving under the influence when the officer observed the motorist vomit on the side of the road and then drive erratically – swerving lane to lane and accelerating to over eighty miles per hour. Furthermore, after stopping the driver, the officer in Bruno observed vomit on the interior of the vehicle and detected a strong odor of alcohol. Id. at 1049. The motorist's speech was also slurred and the driver admitted that he had consumed alcohol. Id. Thus, we can discern from Bruno that erratic driving, an odor of alcohol, slurred speech, and admitting that one has consumed alcohol are all relevant to establishing reasonable grounds.

In State v. Perry, supra, the motorist left the scene of an accident and a police officer acting on information from another driver went to the motorist's home. Perry, 731 A.2d at 721. Once at the motorist's home, the officer observed front end damage to the driver's vehicle and, upon making contact with the driver, observed a strong odor of alcohol on his breath and that his eyes were bloodshot. Id. The motorist was

stumbling and had so much trouble standing that the officer did not conduct any field sobriety tests. Id. On these facts, the Court held that the evidence was sufficient to show the officer had reasonable grounds. Id. at 723.

In the end, the State presented seven indicia that Ms. Rooney had operated under the influence: (1) Ms. Rooney operated her vehicle in an erratic manner by failing to yield to oncoming traffic while exiting a parking lot; (2) Ms. Rooney appeared confused upon making initial contact with the officer – it took her a long time to notice he was outside her car and she lowered the wrong window; (3) she was evasive in answering the officer's questions and her speech appeared mumbled; (4) the officer noticed a strong odor of alcohol emanating from Ms. Rooney's breath and vehicle; (5) her eyes appeared glossy; (6) Ms. Rooney admitted that she had consumed alcohol; and (7) she failed the walk and turn test – she stumbled and had to use a nearby wall to stabilize herself.

I believe these facts were sufficient – when measured against the standards established in the Supreme Court decisions discussed above – to allow this Court to find that the trial magistrate and the appellate panel were not clearly erroneous in finding that Patrolman Gillen had reasonable grounds to believe Ms. Rooney was driving under the influence and that this conclusion is supported by substantial evidence.

CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appellate panel was made upon lawful procedure and was not affected by error of law. Gen. Laws 1956 § 31-41.1-9. Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Gen. Laws 1956 § 31-41.1-9.

Accordingly, I recommend that the decision that the Traffic Tribunal appellate panel issued in this matter be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

December 23, 2011