STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T12-0068**
	:	**07102015472; 07102015473**
CLAYTON HARDON	:	

DECISION

PER CURIAM: Before this Panel on January 9, 2013—Magistrate Noonan (Chair, presiding), Administrative Magistrate Cruise, and Associate Judge Parker sitting—is Clayton Hardon's (Appellant) appeal from a decision of Magistrate Goulart, the trial magistrate, sustaining the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On July 16, 2011, at 12:58 a.m., Officer Kitchen and Officer Lisi of the Bristol Police Department responded to several 911 calls concerning an accident on Woodlawn Avenue in Bristol. (Tr. 14, July 23, 2012.) Upon arriving at the scene, the Officers observed an overturned Bristol Fire Department special hazards truck, skid marks, and a number of trees that had been struck. (Tr. 15, July 23, 2012; Tr. 12, July 24, 2012.) Although they did not see any persons in the vehicle, they saw blood in the passenger compartment. (Tr. 18, July 23, 2012.)

Two hours later, the Appellant, Clayton Hardon—a fire truck operator for the Town of Bristol—was located exiting the woods and walking toward the scene of the accident. (Tr. 25, July 23, 2012; Tr. 57-58, July 24, 2012; Tr. 23, Sep. 24, 2012.) The Officers observed blood on the Defendant's face and clothes. (Tr. 27, July 23, 2012.) Officer Lisi testified that he spoke

with Mr. Hardon, who allegedly stated that he made a big mistake and his life was over. Id. The Officer also testified that he smelled alcohol on the Appellant's breath, observed the Appellant speaking in a slurred manner, and noted his bloodshot and watery eyes. (Tr. 11, 28-29, 43, July 23, 2012.) The Appellant admitted that he had had three alcoholic beverages, that he lost control of the truck, and that he walked into the woods and fell asleep. (Tr. 35, July 23, 2012.) He did not say when he had consumed those drinks.

At trial, both Officers testified that they were experienced officers who had worked for the Bristol Police Department for about five years. (Tr. 11, July 23, 2012; Tr. 4, July 24, 2012.) During this time, Officer Kitchen made forty to fifty DUI arrests, and Officer Lisi made twenty to thirty DUI arrests. (Tr. 12, July 23, 2012; Tr. 5, July 24, 2012.) Both Officers also received extensive training at the Municipal Police Academy regarding identifying impaired individuals. (Tr. 12-13, July 23, 2012; Tr. 6-8, July 24, 2012.)

After speaking with the Appellant, Officer Kitchen then read him his "Rights For Use At Scene," and the Appellant was transported to Rhode Island Hospital. (Tr. 26, July 24, 2012.) Officer Kitchen also read the Appellant his "Rights For Use At Station" in the ambulance. (Tr. 28, July 24, 2012.) After being attended to by medical personnel, the Appellant made a telephone call. (Tr. 30, July 24, 2012.) Officer Kitchen then re-read the station rights form. Id. The Appellant, however, refused to submit to a chemical test. (Tr. 31, July 24, 2012.)

Consequently, the Appellant was charged with violating six traffic violations, including refusing to submit to a chemical test, in violation of § 31-27-2.1.[1] On July 23, 2012, Magistrate Goulart found the Appellant guilty under the refusal statute at trial. (Tr. 16, Sept. 24, 2012.) In

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[1] The other violations included § 31-14-1, "Reasonable and prudent speeds"; § 31-14-3, "Conditions requiring reduced speeds"; § 31-15-1, "Right half of road"; and § 31-15-11, "Laned roadways"; and § 31-26-3, "Duty to give information and render aid." The trial magistrate found the Appellant guilty of violating the "Right half of road," "Laned roadways," and "Duty to give information and render aid" provisions. However, he found the Appellant not guilty of violating the "Reasonable and prudent speeds" and "Conditions requiring reduced speeds" provisions.

his decision, the Magistrate found the testimony of both Officers credible. (Tr. 9, Sept. 24, 2012.) He found by clear and convincing evidence that the Officers had reasonable grounds to believe that the Appellant operated the vehicle in question under the influence of alcohol, that he was informed of his right to be examined by a physician of his choice, that he was informed of the penalties that would result if he failed to take the chemical test, and that he, in fact, failed to take the test. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel.

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 prejudicial because the judge's findings, inferences, conclusions or decisions are:
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> (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 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 [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 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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

The sole issue on Appeal is whether or not the arresting Officers had reasonable grounds to believe that the Appellant operated a motor vehicle while driving under the influence of alcohol in violation of the refusal statute. The Appellant argues that the trial magistrate's decision was not supported by the reliable, probative, and substantial evidence on the whole record. Specifically, he claims that there is no clear and convincing evidence that he drove under the influence of alcohol. In support of his argument, the Appellant states that the police did not observe that the Appellant was intoxicated at the time of or at the scene of the accident. Rather, he maintains, the Officers observed signs of alcohol consumption two hours after they encountered the overturned truck. The Appellant further notes that the police did not ask him when or whether he consumed the alcohol or whether he had taken alcohol into the woods. He also argues that the police did not present evidence that they searched the woods for discarded alcoholic beverage containers. Therefore, according to the Appellant, the refusal violation should be reversed.

Section 31-27-2.1 requires that a law enforcement officer must have reasonable grounds to believe that the arrested person has been driving while under the influence of an intoxicating liquor. Our Supreme Court has stated that the reasonable grounds standard is the same as the reasonable suspicion standard. See State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996). In determining whether an officer has reasonable grounds, courts look to factors such as whether the officer detected an odor of alcohol on the defendant, whether the defendant had slurred speech, and whether the defendant drove erratically. See State v. Bruno, 709 A.2d 1048, 1049 (R.I. 1998); see also Nichols v. Backes, 461 N.W.2d 113, 114-115 (N.D. 1990); Ballard v. State, 595 P.2d 1302, 1306 (Utah 1979). No one factor is dispositive. See State v. Abdullah, 730 A.2d 1074, 1077 (R.I. 1999) (stating that "some of the factors that may contribute to a reasonable suspicion of criminal activity include the location in which the conduct occurred, the time at which the incident occurred, the suspicious conduct or unusual appearance of the suspect, and the personal knowledge and experience of the officer"); Bruno, 709 A.2d at 1050 (stating that one assertion by the driver—that his erratic driving was caused by medication—was not "dispositive of whether reasonable suspicion existed to support a finding of a violation of §31-27-2.1); State v. Cambio, C.A. No. T12-0034 (explaining that even if the "Appellant had not admitted to driving drunk, there were still other specific and articulable facts to believe that [the] Appellant had driven the car . . . while he was under the influence of alcohol").

Rather, "reasonable suspicion [is] based on articulable facts that the person is engaged in criminal activity." State v. Keohane, 814 A.2d 327, 330 (R.I. 2003); see State v. Bjerke, 697 A.2d 1069, 1071 (R.I. 1997). The fact finder may make permissive inferences when there exists "a rational connection between the fact proven and the inference to be drawn." State v. Lusi, 625

A.2d 1350, 1356 (R.I. 1993) (citing State v. Neary, 409 A.2d 551 (1979)). Such inferences, however, are not mandatory and may be rebutted by competent evidence. Id. at 1356.

In the present matter, there was sufficient evidence for the law enforcement Officers to have reasonably believed that the Appellant was under the influence of alcohol when he operated the truck. See Keohane, 814 A.2d at 330; Lusi, 625 A.2d at 1356. Not only did the Appellant admit that he had had three alcoholic beverages, but he also admitted that he lost control of the truck and that he walked into the woods and fell asleep. (Tr. 35, July 23, 2012.) The law enforcement Officers also observed that the Appellant had bloodshot eyes, an odor of alcohol on his breath, and slurred speech just two hours after receiving the dispatch regarding the overturned truck. (Tr. 28-29, 43, July 23, 2012.) Based on this testimony, the trial magistrate's making the reasonable inference that the Appellant could have been intoxicated when driving the truck was not affected by error of law. See Lusi, 625 A.2d at 1356.

The Appellant cites Ducharme v. Rhode Island Department of Transportation and Palmer v. Rhode Island Department of Transportation—two Rhode Island Traffic Tribunal cases—for the proposition that even if a defendant shows signs of intoxication in close proximity to the scene of an accident, that fact does not constitute reasonable grounds for believing that the defendant has violated § 31-27-2.1 absent some evidence that the accident was recent. See Palmer v. Rhode Island Dept. of Transp., A.A. 91-121 (R.I. Dist. 1991); Ducharme v. Rhode Island Dept. of Transp., A.A. 90-284 (R.I. Dist. 1990). Such reliance is misplaced. Our Supreme Court has stated that a driver may "be charged with DUI, felony or otherwise, and a conviction can rest on . . . the opinion of the experienced officer that the driver gave every appearance of intoxication." State v. DiStefano, 764 A.2d 1156, 1162-63 (R.I. 2000). The Court has never required that the evidence show that the accident was recent. Rather, the Court has

looked to numerous factors to determine whether the arresting officer had reasonable grounds that the Appellant drove under the influence. See State v. Holdsworth, 798 A.2d 917, 921 (R.I. 2002); State v. Abdullah, 730 A.2d at 1077.

In Palmer and Ducharme, unlike this case, no evidence was presented that established the time of the accident or how much time elapsed from the receipt of the call by the dispatcher and the arrival of the officer. Notably, in those cases, the Court stated that "[t]here was no other circumstantial evidence presented that reasonable inferences could be drawn to establish what time the accident occurred and who drove the vehicle . . . ." Palmer, A.A.91-121, at 2; Ducharme, A.A. 90-284, at 3. In contrast, the record in this case showed that the police were dispatched at 12:58 a.m. (Tr. 14, July 23, 2012.) Two hours later, they found the Appellant. (Tr. 57-58, July 24, 2012.) He admitted to driving the truck. (Tr. Tr. 35, July 23, 2012.) Moreover, both Officers testified that they had extensive training and experience regarding identifying intoxicated individuals. (Tr. 12-13, July 23, 2012; Tr. 5-8, July 24, 2012.) We agree with the trial magistrate that it is unlikely that an accident of this magnitude could occur and the fire truck would be overturned for hours before someone would call the police. See generally Bruno, 709 A.2d at 1049; Lusi, 625 A.2d at 1356. Therefore, the trial magistrate could have properly concluded that the accident occurred at around the time of dispatch.

Furthermore, although Ducharme and Palmer noted factors such as the warmth of the engine and the time of call of the dispatch that could be considered in determining whether the accident was recent, those factors are not dispositive. See Palmer, A.A. 91-121, at 2; Ducharme, A.A. 90-284, at 3. We agree with the trial magistrate that the Officers could have reasonably assumed that the Appellant was in the same, if not worse, condition at the time of the accident. See Keohane, 814 A.2d at 330; Bruno, 709 A.2d at 1050; Lusi, 625 A.2d at 1356. Reviewing the

record in its entirety, the members of this Panel are satisfied that the trial magistrate's decision was supported by reliable, probative and substantial evidence. See Link, 633 A.2d at 1348.

Conclusion

This Panel has carefully reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision was not erroneous in light of the reliable, probative, and substantial record evidence, or affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

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Magistrate William T. Noonan (Chair)

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Administrative Magistrate R. David Cruise

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Associate Judge Edward C. Parker

DATE: _____________