STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T15-0043**
	:	**15302501311**
DANIEL NEVITT	**:**	

DECISION

PER CURIAM: Before this Panel on February 24, 2016—Magistrate Abbate (Chair), Chief Magistrate Guglietta, and Administrative Magistrate DiSandro III, sitting—is Daniel Nevitt's (Appellant) appeal from a decision of Magistrate Goulart (Trial Magistrate), sustaining the charged violations of G.L. 1956 § 31-27-2.1, "Refusal to Submit to Chemical Test" and § 31-26-5, "Duty in Accident Resulting in Damage to Highway Fixtures." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On June 14, 2015, Officer Jacqueline Casaceli of the Middletown Police Department (Officer Casaceli) charged the Appellant with the aforementioned violations of the motor vehicle code. In addition, Appellant was charged with violating § 31-14-1, "Reasonable and Prudent Speeds." Appellant contested the charges, and the matter proceeded to trial on November 3, 2015.

At trial, Officer Casaceli began by describing her duties as a patrol officer, a position that she had held for approximately a year and one half. (11/03/15, Tr. at 5.) Officer Casaceli detailed the training she had received during the process of becoming a patrol officer, specifically in relation to driving under the influence (DUI) investigations. Id. at 5-6. Officer

Casaceli explained that she was taught to conduct Standard Field Sobriety Tests (SFST) and had personally conducted over fifty SFSTs during the course of her employment. Id. at 8-9.

After detailing her training, Officer Casaceli recalled the events of June 14, 2015. Id. at 9. Officer Casaceli testified that at approximately 2:18 a.m., she was on patrol when she was dispatched to the Rite-Aid in Middletown for a report of property damage. Id. Upon arrival, Officer Casaceli spoke with two witnesses who informed her that a silver Chevrolet Trailblazer had been traveling north on West Main Road, struck a telephone pole, and then continued driving toward Rockwood Road. Id. at 12, 16. The witnesses stated that as the Chevrolet drove away from the telephone pole, they could hear a female yelling. Id. The witnesses indicated that this incident occurred approximately forty minutes before they called the police. Id. Officer Casaceli estimated that it took her about one to two minutes to arrive at the scene once the incident was reported. Id.

Officer Casaceli testified that after speaking with the witnesses, she examined the telephone pole and immediate area. Id. at 15. She recalled damage to the pole, and debris around the pole, and observed that the guard wire was taken out of the ground, consistent with a motor vehicle accident. Id. at 15-16. Officer Casaceli contacted dispatch, informed dispatch that she was looking for a silver Chevrolet Trailblazer with front end damage, and then searched the surrounding area. Id. Officer Casaceli stated that she proceeded toward Rockwood Road, the direction in which the witnesses observed the Chevrolet drive after striking the telephone pole. Id. at 16. She observed a silver Chevrolet Trailblazer parked in the parking lot of 23 Rockwood Road. Id. Officer Casaceli contacted dispatch, ran the license plate of the Chevrolet, and identified the owner of the Chevrolet as the Appellant. Id.

Officer Casaceli recalled that at this point, Officer Ponte arrived at 23 Rockwood Road. Id. at 19. Officer Ponte went to the front door of the residence in order to make contact with any individuals inside. Id. Officer Casaceli testified that she "went around to the rear of the residence . . . and saw a person walking around upstairs." Id. She shined her flashlight in the window and asked the man to come downstairs and speak with her. Id. Officer Casaceli explained that she wanted to make contact with the man to "check . . . if the person that got into the accident had any injuries or anything or needed medical attention." Id. at 20. The man, later identified as the Appellant, went downstairs and spoke with Officer Casaceli. Id. Officer Casaceli inquired about the damage to Appellant's vehicle, and Appellant responded that he "had struck a pole." Id. Upon further questioning, Appellant informed Officer Casaceli that before striking the pole, he was "at Brewski's" and had "consumed three alcoholic beverages." Id. Appellant added that he had "sped through a yellow light . . . [and] took the turn too wide, struck a pole near D'Angelo's, then continued driving until he got to his house." Id. at 22. Officer Casaceli clarified that the "pole near D'Angelo's" was the same telephone pole she had previously testified about—the pole that had debris surrounding it consistent with a motor vehicle accident. Id. at 23. Officer Casaceli asked Appellant if he had consumed any alcoholic beverages since arriving home. Id. at 24. Appellant replied that he had not consumed any alcohol since he had arrived home and parked his car. Id.

While speaking with the Appellant, Officer Casaceli noticed that Appellant "had a strong odor of alcoholic beverage emitting from his breath. [Appellant] had a slurred speech and his eyes were moderately bloodshot and glossy, and he was swaying from side to side, and when he was walking toward [Officer Casaceli], he walked with an unsteady gait." Id. at 25. Based on her observations, Officer Casaceli drew the conclusion that Appellant was under the influence of

alcohol. Id. Consequently, Officer Casaceli asked the Appellant to perform the horizontal gaze nystagmus test, the walk and turn test, and the one-leg stand test. Id. at 25-32. Appellant failed two out of the three SFSTs and displayed signs of intoxication in all three tests. Id. Appellant agreed to submit to a portable breathalyzer test. Id. at 32-33. Thereafter, he was arrested for driving under the influence of alcohol. Id. at 33-34. Officer Casaceli read Appellant his "rights for use at the scene" and transported Appellant to the Middletown Police station. Id. at 36-37.

Once at the station, Appellant was read his "rights for use at the station" and was asked to submit to a chemical test. Id. at 38-39. Appellant refused to take the chemical test and signed the refusal form accordingly. Id. at 39-40. Officer Casaceli recalled that the Appellant was "very apologetic" and again "stated that he had consumed three alcoholic beverages before operating his motor vehicle and striking the pole." Id. at 40. Prior to concluding her testimony, Officer Casaceli reiterated that she came to the conclusion that Appellant was intoxicated and had been driving under the influence because of "the way [Appellant] was acting . . . the smell of an alcoholic beverage on his breath, him admitting to having consumed alcohol before driving, swaying and walking with an unsteady gait, and then also the standard field sobriety tests." Id. at 44.

Counsel for the Appellant began cross-examination by inquiring into the purpose of SFSTs. Id. at 45. Officer Casaceli explained that the purpose of the tests is to "determine whether or not someone is under the influence of intoxicating liquor . . . ." Id. Officer Casaceli acknowledged that Appellant passed one of the SFSTs that she had conducted. Id. at 46-48. Counsel then focused his attention on the lack of evidence demonstrating that Appellant had operated his vehicle prior to being arrested. Id. at 49. Counsel asked Officer Casaceli, "[t]ell us your firsthand knowledge that supports the statement ['Appellant drove approximately forty

minutes prior to when the police received a call for service']." Id. Officer Casaceli agreed that she had no firsthand knowledge of operation; however, she explained that she formed an opinion that Appellant had operated his vehicle based on the witness statements and Appellant's personal statement that he had operated his vehicle after consuming alcohol. Id. at 51. Counsel pointed out that it is not illegal to drink and drive in Rhode Island; it is only illegal if the degree of consumption renders the individual incapable of safely operating a vehicle. Id. Counsel then asked Officer Casaceli whether she had touched the hood of the Chevrolet to determine recent operation or whether she checked underneath the Chevrolet for dripping fluids. Id. at 60. Officer Casaceli stated that she could not recall whether she touched the hood of the Chevrolet, and could not remember if there were fluids dripping; however, she did recall finding damage to the Chevrolet, including: "heavy front end damage to the passenger side, along with a shattered passenger side window and damage to the passenger side mirror." Id. at 61. This concluded cross-examination.

Counsel for the Appellant called one witness, Sharon Nevitt, sister of the Appellant. Ms. Nevitt testified that on June 14, 2015, she was at her home when she received a call from Appellant. (11/03/15, Part II, Tr. at 4.) Appellant informed Ms. Nevitt that he had been involved in a car accident and "was very upset." Id. at 5. After receiving the call, Ms. Nevitt put her young child in the car, and drove to Appellant's residence. Id. at 4. Upon arrival, Ms. Nevitt hugged Appellant and sat with him on his car to "smoke a cigarette or three." Id. at 5. Ms. Nevitt stayed with Appellant for "about twenty minutes, half hour." Id. at 6. Ms. Nevitt testified that Appellant was upset and crying but did not display any telltale signs of intoxication. Id. at 7. Ms. Nevitt told Appellant to "go upstairs, have a couple of drinks, you know, relax." Id. at 8. On cross-examination, Ms. Nevitt stated that Appellant had told her the accident occurred "in the

D'Angelo's parking lot" as he was driving home from "a bar across the street, Brewski's." Id. at 9.

After Ms. Nevitt's testimony, counsel for the Appellant gave a brief closing argument, stating "the officer needs to have reasonable grounds to believe that [Appellant] was driving while under the influence . . . there is [sic] not any grounds to support that he was driving while under the influence." Id. at 11. In its closing argument, the State countered, "there's [sic] ample grounds for the Officer to have requested the field sobriety tests." Id. The State expounded, "[t]he [Appellant] admitted he had been drinking, not only that, but [Officer Casaceli] smelled alcohol on his breath, [and] noticed [Appellant] swaying . . . ." Id. at 12. The trial was continued until November 12, 2015 for a decision.

On November 12, 2015, prior to issuing a decision, the Trial Magistrate summarized the testimony of the two respective witnesses. (11/12/15, Tr. at 3.) The Trial Magistrate credited the testimony of Officer Casaceli, stating,

> "[s]he located the Trailblazer . . . [h]er obligation, she felt, was to determine whether the person involved in the accident was injured . . . [s]he asked the [Appellant] what had happened. He acknowledged that he had been driving the vehicle. He had struck the pole. He had had three alcoholic beverages at Brewski's, and that he had left in the motor vehicle, which had sustained damage. He admitted to driving the motor vehicle. He acknowledged that he had been involved in the accident . . . [h]e had a strong odor of alcohol coming from him. His speech was slurred. He was swaying and unsteady on his feet and he had bloodshot eyes. There is no doubt in my mind at that point that the officer had reasonable grounds to believe that [Appellant] was under the influence of alcohol." Id. at 3-7.

The Trial Magistrate then addressed the charge of "Reasonable and Prudent Speeds," § 31-14-1. The Trial Magistrate indicated that pursuant to State v. Campbell, 97 R.I. 111, 196 A.2d 131 (1963), there has to be "an accompanying speeding violation or accompanying facts

which would lead the fact-finder to believe that the [Appellant] was not maintaining proper speed under the conditions." Id. at 9. The Trial Magistrate determined that in Appellant's case, there was not an accompanying speeding violation or facts which led him to believe that Appellant was not maintaining proper speed under the conditions. As such, the Trial Magistrate determined there was insufficient evidence to sustain the charge of § 31-14-1, and found Appellant to be not guilty. Id. at 10.

In respect to the charge of "Duty in Accident Resulting in Damage to Highway Fixtures," § 31-26-5, the Trial Magistrate stated, "[Appellant] admitted it. The facts support it. The investigation supports it. [Appellant] left the scene. He did not fulfill his requirements consistent with § 31-26-5." Id. As such, the Trial Magistrate determined that Appellant was guilty of violating § 31-26-5. Id. at 11.

Last, the Trial Magistrate addressed the refusal charge, § 31-27-2.1. The Trial Magistrate determined that the State had provided sufficient evidence to establish that the Appellant had refused the breathalyzer test. Id. The Trial Magistrate examined whether Officer Casaceli was reasonable in concluding that at the time of the request to submit to a chemical test, the Appellant was in the same or similar condition as when he was operating the motor vehicle. Id. at 14. After reviewing the evidence, the Trial Magistrate determined that Officer Casaceli was reasonable in concluding that Appellant was in the same or similar condition when he operated his motor vehicle approximately forty minutes prior. Id. at 15. The Trial Magistrate stated:

> "[t]he time frame isn't of such a degree that would have lead me to believe that [Officer Casaceli] was unreasonable when she came to that determination. Essentially, what I'm saying is that I'm satisfied, based on clear and convincing evidence at this point, that the State has met its burden of proving the refusal charge by clear and convincing evidence." Id.

Accordingly, the Trial Magistrate sustained the charged violation, § 31-27-2.1. Id. The Trial Magistrate imposed a license suspension of fifteen months and denied the Appellant's request for a stay pending appeal.[1] Id. at 19. Aggrieved by the Trial Magistrate's decision, Appellant timely filed this appeal.

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:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the judge…;
> (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 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

[1] Since trial, the Trial Magistrate has issued a stay of Appellant's license suspension, pending this Panel's decision.

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 to sustain the charged violations, §§ 31-27-2.1 and 31-26-5, was affected by error of law and was not supported by reliable, probative, and substantial evidence on the record. Specifically, Appellant maintains: (1) that there is no timeline or evidence establishing that Appellant operated his vehicle; (2) that he had a reasonable expectation of privacy in his home which was violated when Officer Casaceli demanded that he exit his home and speak with her without first obtaining a warrant; and (3) that the Trial Magistrate erred in relying on the statements of two witnesses who did not testify at trial.

Permissible Inference and Timing

Appellant contends that the Trial Magistrate erred in sustaining the charged violations because there is no evidence that Appellant had operated his vehicle prior to being arrested. Appellant maintains that there is no coordination of timing, and therefore, no evidence establishing that Appellant was, in fact, the driver of the Chevrolet at the time of the accident.

We had occasion, recently, in the case of State v. Bryan Menge, T15-0036 (2016), to examine this same question: whether a refusal charge can be sustained when the arresting officer

did not see the arrestee operate the vehicle. In that case, we held that a refusal charge can be sustained where the arresting officer had reasonable suspicion to believe that the arrestee operated his or her motor vehicle under the influence of alcohol, regardless of whether the officer observed the arrestee operate the vehicle. Id. at 11.

Our Supreme Court has stated that operation of a motor vehicle can be found by an inference properly drawn based on a police officer's observations. See State v. Perry, 731 A.2d 720 (R.I. 2000) (finding that although the arresting officer did not see the defendant operate his motor vehicle, the officer had reasonable suspicion to believe that defendant had operated the vehicle while under influence of intoxicating liquor, and thus, the officer was authorized to direct defendant to submit to a breathalyzer test).

We find Perry to be consistent with this case, and therefore persuasive. An examination of the facts in the instant case and a reading of Perry clearly disclose that the circumstances surrounding the arrests are similar. In Perry, the defendant, Perry, struck another vehicle and then left the scene of the accident. See Perry, 731 A.2d at 722. The driver of the vehicle that was hit called the police and gave a description of Perry's vehicle. The police officer soon found a vehicle that matched the description given by the caller parked in the driveway of a residence about one-quarter mile from the scene of the accident. Id. The officer noted that the vehicle had front-end damage. Id.

The officer then inquired at the residence for Perry, the owner of the vehicle. Id. During the officer's conversation with Perry, the officer noted that Perry had bloodshot eyes, a strong smell of odor on his breath, and was stumbling. Id. Perry was arrested and taken to the police station where he refused the breathalyzer test. Id. At trial, the trial judge sustained the charged violation of refusal to submit to a chemical test, pursuant to § 31-27-2.1. On appeal, our

Supreme Court determined that the trial judge properly drew the inference that the officer had formed a reasonable suspicion that Perry had operated the automobile which had been in the collision. Id. at 723. Specifically, the Court stated, "the facts given to the officer by the [caller] as well as the statement made to the officer by Perry at his home gave clear indication that Perry had been operating his motor vehicle within a matter of a few minutes prior to his encounter with [the officer]." Id.

We conduct a similar review of the record to determine whether the Trial Magistrate properly drew the inference that Officer Casaceli had formed a reasonable suspicion that Appellant had operated the Chevrolet under the influence of alcohol. The record reflects that witnesses called the police and reported that a "silver Chevrolet Trailblazer struck a guard wire and a telephone pole on West Main Road and then drove toward Rockwood Road." (11/03/15, Tr. at 14-16.) Officer Casaceli observed a vehicle matching that description parked at a residence on Rockwood Road. Id. at 16. The vehicle had "heavy front end damage to the passenger side, along with a shattered passenger side window and damage to the passenger side mirror." Id. at 61. Officer Casaceli made contact with the owner of the vehicle, the Appellant. Id. at 21. Appellant informed Officer Casaceli that he "had consumed three alcoholic beverages . . . had sped through a yellow light . . . took the turn too wide, struck a pole . . . then continued driving until he got to his house." Id. at 22. Officer Casaceli noted that Appellant "had a strong odor of an alcoholic beverage emitting from his breath. He had slurred speech, and his eyes were moderately bloodshot and glossy, and he was swaying from side to side." Id. at 25. Appellant then failed two out of the three SFSTs and displayed signs of intoxication in all three tests. Id. at 25-32. Based on her training and experience, Officer Casaceli believed Appellant was under the influence of alcohol. Id. at 25. Appellant admitted that he had not consumed any

alcoholic beverages since arriving home. Id. at 24. Based on this statement, Officer Casaceli came to the conclusion that Appellant had operated his vehicle under the influence of alcohol. Id. at 25.

The Trial Magistrate determined that Officer Casaceli was reasonable in believing that Appellant had operated his vehicle under the influence of alcohol. We are of the opinion that the record in this case supports the Trial Magistrate's conclusion. Certainly the statements made by Appellant to Officer Casaceli at his home gave clear indication that Appellant had been operating his motor vehicle prior to encountering Officer Casaceli. See Perry, 731 A.2d at 723.

In regards to the timing issue, the Trial Magistrate determined that forty minutes "isn't of such a degree that would have led me to believe that the officer was unreasonable when she came to the determination [that Appellant was intoxicated while driving]." (11/12/15, Tr. at 15.) We agree. Forty minutes is not such an extensive length of time that would deem Officer Casaceli's suspicion to be unreasonable. See State v. Lusi, 625 A.2d 1350, 1355 (R.I. 1993) ("issue of what constitutes a 'reasonable period of time' is a question for the trier of fact in light of the facts and circumstances surrounding each case").

The Warrant Requirement

Appellant argues that his Fourth Amendment right to a reasonable expectation of privacy in his home was violated when Officer Casaceli demanded that he exit his home and speak with her. Appellant maintains that Officer Casaceli should have obtained a warrant prior to entering onto the premises.

It is a "basic principle of Fourth Amendment law" that searches and seizures inside a home without a warrant are presumptively unreasonable. See Payton v. New York, 445 U.S. 573, 586 (1980) (stating "at the very core of the Fourth Amendment stands the right of a man to

retreat into his own home and there be free from unreasonable governmental intrusion") (internal citation omitted). It is equally accepted that searches and seizures carried out on a suspect's premises without a warrant are per se unreasonable unless police can show that the search falls within one of the carefully designed set of exceptions based on the presence of "exigent circumstances." Id. at 586-590; see also Oliver v. U.S., 466 U.S. 170, 180 (1984) (stating "the curtilage is the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life,' and therefore has been considered part of home itself for Fourth Amendment purposes") (internal citation omitted).

In certain cases, "the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search [of the home or curtilage] is objectively reasonable under the Fourth Amendment." State v. Goulet, 21 A.3d 302, 313 (R.I. 2011) (citing Mincey v. Arizona, 437 U.S. 385 (1978)). One such exigent circumstance permitting a warrantless search of the curtilage of a home is the emergency doctrine exception. See Goulet, 21 A.2d at 311 (holding that a police officer's warrantless search of the curtilage of defendant's home was permissible under the emergency doctrine exception to the warrant requirement). This doctrine requires that the officer "have an objective, reasonable belief that his or her swift and immediate action is required to avert a crisis." State v. Gonsalves, 553 A.2d 1073, 1075 (R.I. 1989) (emphasis added).

Our Supreme Court has consistently upheld warrantless police intrusions of the home and curtilage when the police reasonably believed assistance was required to avert a crisis. See Goulet, 21 A.3d at 313; see also Duquette v. Godbout, 471 A.2d 1359 (R.I. 1984). In Duquette, police responded to a report from a caller who believed that a child may be in peril inside an apartment. Duquette, 471 A.2d at 1361. The police forced open the door of the apartment and

checked each room of the apartment for the minor child. Id. No one was present and no evidence of criminal conduct was found. Id. In relying on the emergency exception, the Court determined that the warrantless entry by police was justified because the police had a reasonable belief that their assistance was necessary to avert a crisis. Id. at 1362 (citing State v. Leandry, 151 N.J.Super. 92, 376 A.2d 574 (1977) (officers' entry in belief that a wounded person was within premises justified trespass)). The Court noted that the purpose of the search—to prevent harm to the child—would have been frustrated if the officers had been required to obtain a warrant. Id. at 1363. Similarly, in Goulet, officers responded to a 9-1-1 call that someone was shooting at a dog. Goulet, 21 A.3d at 313. Upon responding to the location of the call, the officers conducted a cursory walk around the defendant's property. Id. During the walk, the officers discovered incriminating evidence, including a firearm. Id. At a suppression hearing, the Court determined that the officers invaded the curtilage of the defendant's home by walking around the property. Id. However, the Court found that "the police had an interest in preserving the life of the animal or anyone else who happened to be present on the premises." Id. Therefore, an initial sweep of the property to determine whether there was an injured animal, or person in need of immediate care or protection from threat of harm, was held to be justified because of the exigent circumstances. Id.

This precedent guides our review. This Panel agrees with the Appellant that he had a reasonable expectation of privacy in his home and the immediate area surrounding his home. We further concede that Officer Casaceli invaded the curtilage of Appellant's home when she "went around to the rear of the residence . . . saw a person walking around upstairs . . . shined her flashlight in the window and asked the man to come downstairs and speak with her." (11/03/15, Tr. at 19.) However, the record reflects that Officer Casaceli believed that her invasion of the

premises was required to avert a crisis—that crisis being the potential medical emergency of the Appellant. See id. at 20 (Officer Casaceli testifying that she felt obligated to "check . . . if the person that got into the accident had any injuries or anything or needed medical attention"). The only question we must address is whether Officer Casaceli's belief was objectively reasonable and justified her search of the premises without a warrant.

This Panel is mindful that "police are in the emergency service business and they usually have little or no time to leisurely consider their options or engage in protracted evaluation." See State v. Portes, 840 A.2d 1131, 1137 (R.I. 2004) (permitting the warrantless entry and search of a residence where the officer had reasonable belief that a life may have been in peril). In our opinion, based on the record in this case, it would have been unreasonable for Officer Casaceli to simply walk away and not investigate a situation involving someone who may have been injured, especially because there was a 9-1-1 call. See id. at 1136 (stating "the police would have been derelict in their duty" had they not entered the premises to conduct a cursory sweep).

Indeed, "a 9-1-1 call is one of the most universally recognized means through which the police learn that someone is in a dangerous situation and needs immediate help." Id. Here, the 9-1-1 callers indicated that as the Chevrolet drove away from the telephone pole, they could hear a female yelling. (11/03/15, Tr. at 12.) Officer Casaceli searched the reported area and "observed the guard wire was taken out of the ground and there was debris around the pole, consistent with a motor vehicle accident." Id. at 15-16. Based on the accumulation of these facts, the Trial Magistrate determined that it was reasonable for Officer Casaceli to think that someone may be injured. (11/12/15, Tr. at 5) (stating "[Officer Casaceli's] obligation, she felt, was to determine whether the person involved in that accident was injured. And she essentially was checking on the well-being of that person"). We agree.

Furthermore, the record is devoid of suggestion that Officer Casaceli had any motive other than to respond to a possible medical emergency. Although Officer Casaceli's contact with Appellant subsequently proved fruitful for evidence of DUI, there is no indication that Officer Casaceli entered the premises with any prior knowledge that Appellant had been operating his vehicle under the influence of alcohol. See Duquette, 471 A.2d at 1362 (stating "[a] less stringent standard [of reasonable belief] . . . is permissible in an emergency situation since the motivation for the intrusion is to preserve life and property rather than to search for evidence to be used in a criminal investigation"); see also Portes, 840 A.2d at 1137 ("[a]lthough the [warrantless] entry subsequently proved fruitful for evidence of cocaine, there is no indication that the police entered the apartment with any prior knowledge of drug or other criminal activity at that location").

Finally, even assuming that the emergency exception is inapplicable in this case, the incriminating statements, elicited as a result of the warrantless entry onto the property, were voluntarily made by the Appellant after he consented to Officer Casaceli's continued presence on his property. Consent is one of the "specifically established exceptions to the requirement of a warrant." State v. Linde, 876 A.2d 1115, 1125 (R.I. 2005); see also State v. Barkmeyer, 949 A.2d 984, 996 (R.I. 2008) (the Fourth Amendment prohibition against the warrantless entry into a person's home does not apply "to situations in which voluntary consent has been obtained. . ."). When seeking to justify a search or seizure on consent grounds, the State must prove that the consent was freely and voluntarily given. See State v. Gonzalez, 2016 WL 1211410 (R.I. 2016).

Here, the record reflects that Officer Casaceli asked Appellant to come outside his home. (11/03/15, Tr. at 19) (emphasis added). Officer Casaceli did not demand that Appellant exit his home, nor did Officer Casaceli intimidate the Appellant in any way. Appellant voluntarily exited

his home and then willingly spoke with Officer Casaceli. Id. Appellant was compliant and answered Officer Casaceli's questions freely. Id. at 22; see also Jimenez, 33 A.3d at 733 (defendant was found to have voluntarily made incriminating statements where the record showed that defendant "spoke calmly to [the police officer], voluntarily answering his questions without [the police officer] raising his voice or exerting any force over [the] defendant").

Appellant submits that Officer Casaceli never explicitly told him that he did not have to exit his home and speak with her. We find this argument unpersuasive. Nothing in the record suggests that the Appellant was compelled to leave his house and speak with Officer Casaceli. Likewise, the record is devoid of any facts suggesting that Appellant had any objective reason to believe that he was not free to end the conversation with Officer Casaceli and return to the security of his home. See State v. Kryla, 742 A.2d 1178, 1182 (R.I. 1999) (citing United States v. Mendenhall, 446 U.S. 544, 555 (1980) (stating "[o]ur conclusion that no seizure occurred is not affected by the fact that [the defendant] was not expressly told by the [officers] that [he] was free to decline to cooperate with their inquiry, for the voluntariness of [his] responses does not depend upon [his] having been so informed")). Accordingly, we find that Appellant consented to Officer Casaceli's continued presence on his property and, in addition, voluntarily responded to Officer Casaceli's questioning.

Certainly, any incriminating statements obtained as a result of an illegal search are "fruit of the poisonous tree" and inadmissible in a subsequent trial. See State v. Harrison, 66 A.3d 432, 444 (R.I. 2013) (citing Wong Sun v. United States, 371 U.S. 471, 485 (1963) ("verbal evidence which derives so immediately from an unlawful entry . . . is no less the 'fruit' of official illegality than the more common tangible fruits of the unwarranted intrusion")); see also State v. Maloof, 114 R.I. 380, 386, 333 A.2d 676, 679 (1975) ("[o]ral evidence as well as physical

evidence could be the subject of a search and seizure which, in turn, had to satisfy the requirements of the [F]ourth [A]mendment"). However, the proverbial "fruit" at hand—the Appellant's incriminating statements to Officer Casaceli—were made under valid and lawful circumstances. Consequently, we do not believe the Appellant's Fourth Amendment argument violates any state or federal constitutional provisions.

Witness Statements

Appellant maintains that the Trial Magistrate erred in relying on the statements of two witnesses who did not testify at trial. We reject this contention because, in our opinion, the Trial Magistrate did not rely on the witness statements in making his ultimate decision. Rather, the Trial Magistrate relied on the Appellant's own statements, the observations made by Officer Casaceli, and the exhibits submitted by the State establishing that Appellant refused the chemical test. (11/12/15, Tr. at 10-11.)

Even assuming the Trial Magistrate did rely on the witness statements in making his decision, this reliance was proper because the statements were properly admitted. (11/03/15, Tr. at 10-13) (Counsel for the Appellant objecting to the witness statements on the basis of "totem pole hearsay"). The record reflects that the witness statements were not offered for the truth of the matter asserted.[2] See State v. Grayhurst, 852 A.2d 491, 504-05 (R.I. 2004) (holding that an out-of-court statement was not hearsay because it was not offered to prove the truth of the matter asserted). Rather, the statements were offered to explain how Officer Casaceli became involved in the investigation. See State v. Oliveira, 127 A.3d 65 (R.I. 2015) (finding that a detective's testimony, explaining how he became involved in the case, was not offered to prove the truth of

[2] See Fed. R. Evid. 801(c) ("[h]earsay means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement").

the matter asserted and, thus, was not hearsay); see also State v. Crow, 871 A.2d 930 (R.I. 2005) (finding that testimony of police detective concerning conversation he had with another detective was admissible to demonstrate how the police detective had become involved in continuing investigation; testimony was not offered to prove truth of matter asserted).

Furthermore, "the determination of whether a statement qualifies for admission under an exception to the hearsay rule is a matter within the sound discretion of the trial justice, [an appellate court must] affirm such a determination unless clearly erroneous." Oliveira, 127 A.3d at 82; see also Fed. R. Evid. 801(c), supra note 2. At trial, the Trial Magistrate determined the witness statements were "not being offered for the truth, but just to suggest . . . [w]hy Officer Casaceli may have gone to a particular location to interact with Mr. Nevitt." (11/03/15, Tr. at 10-11.) We do not hesitate to affirm this determination.

For the foregoing reasons, this Panel is satisfied that the Trial Magistrate's decision sustaining the charged violations, §§ 31-27-2.1 and 31-26-5, was supported by legally competent evidence and not affected by error of law. See Link, 633 A.2d at 1348 (internal citation omitted) (stating "[t]he 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").

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find that the Trial Magistrate's decision is supported by reliable, probative, and substantial evidence on the whole record, and is not in violation of constitutional provisions. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Magistrate Joseph A. Abbate (Chair)

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Chief Magistrate William R. Guglietta

_____

Administrative Magistrate Domenic A. DiSandro III

DATE: _____