

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF MIDDLETOWN

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v.

C.A. No. T12-0070  
12302500514

JOSHUA KOLATOR

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
13 JAN 11 AM 8:21

DECISION

PER CURIAM: Before this Panel on December 5, 2012—Judge Ciullo (Chair, presiding), Administrative Magistrate Cruise, and Magistrate Noonan sitting—is Joshua Kolator’s (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violations of G.L. 1956 § 31-15-11, “Laned roadways,” and § 31-27-2.1, “Refusal to submit to a chemical test.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

This violation arose from an automobile and motorcycle accident that occurred at the corner of Newport Avenue and Aquidneck Avenue in Middletown. (Tr. at 7.) On April 27, 2012, the Appellant lost control of his motorcycle and crashed into a mini-van that was stopped at a yield sign. (Tr. at 7.) Officer Michael Maruska (Officer Maruska) of the Middletown Police Department responded to the scene of the accident around 4:15 p.m. (Tr. at 47-48.)

The other driver involved in this accident, Lauren Lennahan, was the first to testify at trial. She testified that she was stopped at a yield sign on Aquidneck Avenue and attempted to proceed onto Newport Avenue. (Tr. at 9.) At that point, she noticed the Appellant on his motorcycle traveling in her direction from the top of the hill. Id. She then noticed that the

motorcycle swerved onto a lawn and then stuck her vehicle on the driver's side door. (Tr. at 12.) Immediately after the accident, she noticed the Appellant had a blank stare and glassy eyes. (Tr. at 15.) After witnessing the Appellant get off the ground and attempt to mount his motorcycle, she called the police and remained in her vehicle. (Tr. at 16, 22.) She concluded her testimony by stating that Appellant was instantly handcuffed when the police arrived. (Tr. at 37.)

Officer Maruska began his trial testimony by describing his professional training and experience as a patrol officer with the Middletown Police Department. (Tr. at 44-45.) Officer Maruska then testified that upon arrival at the scene, he observed a mini-van in the middle of the roadway. (Tr. at 49.) He also observed the Appellant sitting on the grass with other people tending to Appellant due to the injuries he sustained. Id.

Officer Maruska further testified that Appellant was slurring his speech, had difficulty in organizing his sentences, had bloodshot eyes, and had a strong odor of alcohol coming from him. (Tr. at 52.) Appellant was then treated by the paramedics and placed on a stretcher for transportation to Newport Hospital for full medical attention. (Tr. at 60-61.) Officer Maruska proceeded by questioning the Appellant while they were in the back of the rescue. (Tr. at 62.) It was at this point when Appellant notified the officer that he had had two beers prior to the accident. Id. As they entered the back of the rescue, Officer Maruska also performed a field sobriety test. (Tr. at 63.) He then observed that the Appellant failed the test and had an odor of alcohol coming from his breath as well as bloodshot and watery eyes. (Tr. at 64-65.)

Soon after, Officer Maruska placed the Appellant into custody and read him his rights for use at scene. (Tr. at 65.) Once Appellant was transported to Newport Hospital, Officer Maruska read him his "Rights for Use at Hospital" and then offered the Appellant a confidential phone

call, which Appellant refused. (Tr. at 67-68.) The officer then offered Appellant a blood test which the Appellant refused to take. (Tr. at 69.)

At the close of evidence, the trial judge recounted the aforementioned facts in his decision. In rendering his decision, the trial judge determined that the evidence presented at trial was sufficient to sustain the charges against the Appellant. (Decision Tr. at 16-17.) The trial judge found it significant that the officer was trustworthy and Ms. Lennahan was mistaken in some of her testimony. (Decision Tr. at 9, 12.)

Following the trial, the trial judge sustained the charged violations of §§ 31-15-11 and 31-27-2.1. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. The Panel's decision is rendered below.

#### **Standard of Review**

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been 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 or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

### **Analysis**

On appeal, Appellant contends that the trial magistrate committed reversible error of law when he sustained the charged violations. Specifically, Appellant maintains that the Town failed to prove that Appellant was ever arrested. Appellant further argues that the State failed to prove its case by clear and convincing evidence. Lastly, Appellant claims that the officer did not have reasonable grounds to believe Appellant was operating a motor vehicle under the influence of alcohol.

#### **A. Proof of Arrest**

Appellant advances a number of theories regarding the time and place of his arrest. The Appellant first asserts that he was under arrest as soon as Officer Maruska arrived at the scene of the accident. He contends that, according to Lauren Lennahan's testimony, Appellant was

handcuffed immediately when the first Middletown Police Officer arrived on the scene. Appellant next argues that if he were not arrested at the scene, then he was surely under arrest when Officer Maruska accompanied in the ambulance to Newport Hospital. Finally, he maintains that if he was not under arrest in the ambulance, then he was placed under arrest at Newport Hospital, which was out of the Middletown Police officer's jurisdiction.

This Panel has consistently relied on the factors outlined in State v. Bailey, 417 A.2d 915 (R.I. 1980) to ascertain when an individual is under arrest. Under Bailey, our Court examines (1) the extent to which the person's freedom of movement has been curtailed and the degree of force used by the police; (2) the belief of a reasonably innocent person in these same circumstances; and (3) whether the person had the option of not going with the police. See id. at 915-18.

When Officer Maruska first arrived on scene at around 4:15 p.m., the Appellant was sitting on the grass with other people attending to the Appellant. During his time on the scene, Officer Maruska asked some preliminary investigative questions after observing Appellant's present state. He then observed Appellant's bloodshot eyes, the strong odor of alcohol emanating from him, and Appellant's difficulty in organizing his sentences. (Tr. at 52.) When the emergency medical personnel decided to transport the Appellant to Newport Hospital, Officer Maruska accompanied him to continue his fact-finding investigation. (Tr. at 60-61.) Soon after, Officer Maruska performed a field sobriety test and then placed Appellant into custody when Appellant failed the test. (Tr. at 63-65.); see Bailey, 417 at 915. The facts show that Officer Maruska placed the Appellant into custody and read him his rights for use at scene while in the rescue vehicle. (Tr. at 65.)

Moreover, the trial magistrate made a factual finding that a legally valid arrest was effectuated when the Appellant was in the ambulance and the ambulance was still in

Middletown. (Decision Tr. at 12.) In rendering his decision, the trial judge clearly stated: “Officer Maruska . . . then read Mr. Kolator his rights for use at the scene in the ambulance; that was while the ambulance was still in Middletown. He was placed into custody at that time.” *Id.* After the arrest, Officer Maruska read the Appellant his “Rights for Use at the Station/Hospital” card pursuant to § 31-27-3. Thus, this Panel is satisfied that the trial magistrate’s factual findings regarding Appellant’s time and manner of arrest are supported by credible and competent evidence and not characterized by abuse of discretion or error of law.

### **B. Clear and Convincing Evidence**

Appellant next contends that the Town failed to prove its case by clear and convincing evidence. Rule 17 of Traffic Tribunal Rules of Procedure reads, in relevant part: “[t]he burden of proof shall be on the prosecution to a standard of clear and convincing evidence.” Therefore, in order for the charges to be sustained, there must be clear and convincing evidence in the record that Appellant committed the traffic violations brought against him.

In *Link*, our Supreme Court made clear that 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*, 633 A.2d at 1348 (citing *Liberty Mutual Insurance Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of Officer Maruska, Ms. Lennahan, or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [Officer Maruska, Ms. Lennahan, and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” *Environmental Scientific Corp.*, 621 A.2d at 206.

After listening to the testimony, the trial judge determined that Officer Maruska's testimony was not only credible, but the testimony was also sufficient to sustain the charged violations. It is clear to this Panel that the trial judge gave proper consideration to the evidence and testimony presented by the Appellant. The trial judge evaluated Appellant's testimony and the evidence presented and was satisfied by clear and convincing evidence that the Appellant did, in fact, violate §§ 31-15-11 and 31-27-2.1. In so determining, the trial judge spent considerable time recounting the testimony of Officer Maruska. (Tr. at 6-11.) In addition to being a credible witness, the trial judge agreed with Officer Maruska's testimony and determined that ". . . [Appellant] was only arrested once he was in the rescue." (Tr. at 11.) In his decision, the trial judge also found that ". . . Ms. Lennahan was just absolutely mistaken when she indicated that it was her belief that the Defendant was placed into custody immediately upon the arrival of the police." (Tr. at 9.) The trial judge determined that the Appellant was not arrested right when the police arrived. *Id.* The judge concluded by stating that "[c]ertainly, by the testimony of Officer Maruska, as well as the exhibits which have been introduced, I'm certainly satisfied by clear and convincing evidence that he refused to submit to a chemical test . . . I'm certainly satisfied, based on all the testimony, that the officer had reasonable grounds to believe that Mr. Kolator was under the influence at that point." (Tr. at 11-12.); See Envtl. Scientific Corp., 621 at 206. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not commit reversible error of law, and his decision to sustain the charged violation is supported by legally competent evidence.

### **C. Reasonable Grounds**

Appellant further argues that Officer Maruska lacked reasonable grounds to believe that Appellant had operated a motor vehicle under the influence of alcohol. Appellant contends that

the officer did not personally see the Appellant operate a motor vehicle, and therefore, Officer Maruska did not have reasonable grounds to believe that Appellant had been operating the vehicle under the influence of alcohol.

Law enforcement officers must possess reasonable grounds to suspect that an individual has been driving under the influence of alcohol. Section 31-27-2.1 requires that the police officer have a reasonable suspicion that a person operating a vehicle is intoxicated. 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). “[R]easonable 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 also State v. Bjerke, 697 A.2d 1069, 1071 (R.I. 1997) (upholding the reasonable suspicion standard in the context of a refusal to submit to a chemical test). Furthermore, the court must take into account the totality of the circumstances to determine whether an officer’s suspicions are reasonable. Id. (citing United States v. Cortez, 449 U.S. 411, 417 (1981)). Indeed, in determining reasonable suspicion, 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). Such inferences have been described by the Supreme Court as a “staple of our adversary system of factfinding.” County Court of Ulster County v. Allen, 442 U.S. 140, 1156 (1979). Nevertheless, such inferences are not mandatory and can be rebutted by competent evidence. Lusi, 625 A.2d at 1356.

In sustaining the violation, the trial magistrate held that the officer’s observation of Appellant’s motorcycle lying on the ground, Appellants slurred speech, bloodshot eyes, and the strong odor of alcohol coming from him constituted reasonable grounds for Officer Maruska to believe that Appellant had driven his vehicle under the influence of alcohol. (Decision Tr. at 6-

7.); See Jenkins, 673 A.2d 1097. Additionally, the testimony given by Ms. Lennahan which indicated that Appellant was operating his motorcycle is competent evidence to conclude that Appellant was, in fact, operating a motor vehicle that evening. Lusi, 625 at 1356. Lastly, the trial magistrate noted that Officer Maruska was trained in DUI investigation and familiar with the characteristics of intoxication, indicating Officer Maruska's ability to properly identify Appellant as intoxicated. (Decision Tr. at 5-6.) Therefore, Officer Maruska did have reasonable grounds to believe that Appellant had operated a motor vehicle under the influence of alcohol.

This Panel finds the trial magistrate's findings were not affected by error of law. The trial magistrate's decision—taking into account the totality of the circumstances—was supported by Officer Maruska's testimony and the exhibits entered into evidence at trial.

Therefore, the magistrate's decision was supported by the reliable, probative, and substantial evidence of record.

### Conclusion

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