STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF RICHMOND	:	
	:	
v.	:	**C.A. No. T13-0021**
	:	**12505500692**
BRUCE BARTELS	:	

DECISION

PER CURIAM: Before this Panel on April 24, 2013—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Magistrate DiSandro, sitting—is Bruce Bartels's (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violations of G.L. 1956 § 31-27-2.1, "Refusal to submit to a chemical test," and § 31-22-21.1, "Presence of alcoholic beverages while operating or riding in a motor vehicle." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On December 21, 2012, Corporal William P. Litterio (Corporal Litterio) of the Richmond Police Department charged Appellant with the aforementioned violations of the motor vehicle code. Appellant contested the charges, and the matter proceeded to trial on March 11, 2013.

Corporal Litterio began his testimony by describing his professional training and experience as a supervising officer at the Richmond Police Department. (Tr. at 3-5.) Corporal Litterio then testified that on the evening of the arrest, after observing a man standing outside a vehicle and rummaging through the trunk, he entered the parking lot of the Westerly Community Credit Union on Route 138 in the Town of Richmond. (Tr. at 8.) Corporal Litterio noted that the vehicle had a flat tire. (Tr. at 10.)

Corporal Litterio approached the man and asked him "what was going on." (Tr. at 9.) Corporal Litterio testified that the Appellant replied, but his speech was mumbled. (Tr. at 9.) At this point, Corporal Litterio detected "a small odor of alcohol emanating from his breath" and also observed that the Appellant was unsteady on his feet and had severely bloodshot watery eyes. (Tr. at 10.) Corporal Litterio asked the Appellant how he arrived at the parking lot, to which Appellant responded, "I was driving." (Tr. at 11.) Corporal Litterio then asked the Appellant how he got the flat tire, and Appellant responded that he did not, then stated "but I'm here now." Id.

The State proved and Appellant stipulated that the Appellant was administered three Standardized Field Sobriety tests. (Tr. at 14-15.) Appellant failed all three tests, as he showed signs of impairment. Id. Corporal Litterio testified that he then placed the Appellant in handcuffs and put him in the back of the police cruiser. (Tr. at 16.) Corporal Litterio then read Appellant his "Rights for Use at the Scene." (Tr. at 17.) Corporal Litterio also testified, after rereading his original police report, that Appellant had stated that he did have "a few beers." (Tr. at 18.)

Corporal Litterio further testified that after the Appellant was placed under arrest, he and another officer who had arrived on the scene, Officer Andrew Briody, obtained Appellant's keys, unlocked Appellant's vehicle, and proceeded to conduct a search of the vehicle. (Tr. at 18, 33.) The officers discovered an open 12 ounce Bud Light beer wedged in between the console and the passenger seat and a small bag of marijuana in the front pocket of a backpack located on the floor of the vehicle. (Tr. at 20.) After the search, Appellant was transported back to the police station where he was read his "Rights for Use at the Station." (Tr. at 20-21.) At the police

station, Appellant declined the opportunity to make a confidential phone call and refused to submit to a chemical test. (Tr. at 21.)

After the State presented its case, Appellant entered into evidence a videotape from the Credit Union's parking lot. (Tr. at 40.) The videotape does not indicate the amount of time that passed from when the Appellant pulled into the parking lot and when Corporal Litterio arrived. (Tr. at 41.) Furthermore, the videotape is in black and white, thus making it difficult to distinguish the make and model of the vehicles in the parking lot.[1] (Tr. at 58.)

At the close of evidence, Appellant argued that the charged violations should be dismissed. (Tr. at 52.) Appellant further argued that the State failed to provide sufficient evidence to prove that Corporal Litterio had reasonable suspicion to believe the Appellant had operated the motor vehicle while under the influence of alcohol. (Tr. at 53-56.) Additionally, the Appellant also argued that Corporal Litterio's statements that Appellant told him he had driven to the bank were hearsay and do not fall with a hearsay exception. (Tr. at 74.)

The trial magistrate, however, found that—based on Corporal Litterio's investigations at the scene and Appellant's statements at the scene—Corporal Litterio did have reasonable grounds to believe the Appellant had been operating a motor vehicle while under the influence. (Tr. at 72-73.) As such, the trial magistrate sustained the violations of § 31-27-2.1 and § 31-22-21.1 (Tr. at 74.) 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:

[1] In rendering his decision, the trial magistrate had determined that the videotape did not hold any evidentiary weight. (Tr. at 68.)

> 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 Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial magistrate's decision is affected by reversible error. In particular, Appellant argues that the officer did not have reasonable grounds to believe that Appellant operated his motor vehicle under the influence of alcohol. Appellant also contends that the judge's allowance of hearsay evidence during the officer's testimony constituted unlawful procedure.

A. Reasonable Suspicion

The Appellant first argues that Corporal Litterio did not have reasonable grounds to believe that Appellant operated his vehicle while under the influence of alcohol. Appellant contends that the State failed to prove a vital element of the charge: that the Appellant was actually operating the vehicle, given that Appellant was approached by the officer while Appellant was outside his vehicle and not sitting behind the steering wheel of the vehicle.

Section 31-27-2.1 requires that a law enforcement officer making [a] sworn report have reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor. (Emphasis added.) 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 (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 markings on Appellant's tire which indicated that the vehicle had been recently operated, as well as Appellant's appearance and actions, constituted reasonable grounds for Corporal Litterio to believe that Appellant had driven his vehicle to the parking lot under the influence of alcohol. (Tr. at 70-71.); see 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)) (holding when reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to . . . substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact[.]"). The trial magistrate found that proof of actual operation is not a necessary element of § 31-27-2.1. (Tr. at 70.); See State v. Perry, 731 A.2d 720, 723 (R.I. 1999) (holding that the officer had reasonable suspicion to believe that defendant had operated his vehicle while under influence of intoxicating liquor even though arresting officer did not see defendant operate his motor vehicle).[2] Additionally, the trial magistrate noted that Corporal Litterio was trained in DUI investigation and was familiar with the characteristics of intoxication, indicating Corporal Litterio's ability to properly identify Appellant as intoxicated. (Tr. at 64.); see Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)) (citing Liberty Mutual

[2] The Supreme Court distinguished State v. Capuano, 591 A.2d 35 (R.I. 1991), from the facts of Perry by explaining that the defendant in Capuano was charged criminally for operating his vehicle while intoxicated, whereas the defendant in Perry was faced with a civil charge of operating his vehicle while intoxicated. Perry, 731 A.2d at 723. The nature of the criminal charge heightens the burden of proof to beyond a reasonable doubt, while the civil burden of proof remains lower requiring only "reasonable suspicion." Id.

Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991) (holding the appellate Panel "lacks the power to assess witness credibility . . . .").

Furthermore, the fact that the car was in the parking lot with Appellant at the trunk of the vehicle showing signs of intoxication supports the inference that Appellant had driven to the parking lot while under the influence of alcohol. See Lusi, 625 A.2d at 1356 (in answering the question whether an inference may be drawn that a blood-alcohol concentration (BAC) was as great at the time of the testing as the time of actual driving, the Court upheld the use of inferences in factfinding where there exists a rational connection between the inference made and the facts presented). This inference is especially warranted in this case in the absence of any possible rebutting evidence. It is also important to note that the trial judge took into consideration the fact that Appellant admitted he was traveling from Foxwoods and that there were no establishments within a half a mile of the parking lot where Appellant could have consumed alcohol after the vehicle was parked. (Tr. at 70-71.); see Link, 633 A.2d at 1348 (holding that the appeals panel must give great deference to the hearing judge's weight of the evidence on questions of fact when reviewing the hearing judge's decision). Therefore, the trial magistrate's decision was based on the totality of the circumstances, and was not affected by error of law or erroneous in view of the reliable, probative, and substantial evidence on the record.

B. Hearsay

The Appellant next argues that the judge's allowance of hearsay evidence during the officer's testimony constituted unlawful procedure. In particular, Appellant points to the officer's testimony stating that the Appellant told the officer that Appellant had driven to the bank.

Appellant asserts that without this hearsay statement, the Town would fail to prove that Appellant was operating his vehicle that evening.

Rhode Island Traffic Tribunal Rule 15(b) provides that "[a]ll evidence shall be admitted which is admissible under the statutes of this state, or under the rules of evidence applied in the courts of this state." Traffic Trib. R.P. 15. Thus, the "normal rules of evidence" are applicable to cases that involve violations of our traffic code. Rule 801(c) of the Rhode Island Rules of Evidence defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

In this case, the declarant, the Appellant, made the statement out-of-court; thus, his statements made to the officer at the scene of the accident stating that he, Appellant, drove to the parking lot, are hearsay. The substance of the Appellant's statement was offered to prove that the Appellant did, in fact, operate the vehicle. However, Rule 801(d)(2)(A) provides that "[a] statement is not hearsay if: . . . [t]he statement offered against a party and is (A) the party's own statement." Here, the Appellant's statement to the officer falls within Rule 801(d)(2)(A) because it was his own statement and offered against him at trial. Accordingly, as the testimony in question is being offered against a party, the Appellant, and is the party's own statement, it is admissible as an admission against a party opponent. State v. Chum, 54 A.3d 455, 463 (R.I. 2012) (stating that a party's own statement offered against him is not hearsay).

Conclusion

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

ENTERED:

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Judge Lillian M. Almeida (Chair)

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Chief Magistrate William R. Guglietta

_____
Magistrate Domenic A. DiSandro, III

DATE: _____