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

State of Rhode Island	:	
	:	
v.	:	**A.A. No. 16 - 102**
	:	
James Harrington	:	
(RITT Appeals 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 and 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 and Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the instant matter is REMANDED to the Appeals Panel for further proceedings consistent with the attached opinion.

Entered as an Order of this Court at Providence on this 17th day of January, 2018.

By Order:

___/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

____/s/_____
Jeanne E. LaFazia
Chief Judge

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

State of Rhode Island	:	
	:	
v.	:	**A.A. No. 2016-102**
	:	**(T15-0040)**
James Harrington	:	**(15-502-502655)**
(RITT Appeals Panel)	:	

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

Ippolito, M. In this case Mr. James Harrington (hereinafter "Mr. Harrington" or "Appellant") urges that an appeals panel of the Rhode Island Traffic Tribunal erred when it affirmed his conviction for Refusal to Submit to a Chemical Test, a violation of Gen. Laws 1956 § 31-27-2.1. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9; the applicable standard of review is found in Gen. Laws 1956 § 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-

8-8.1.

For the reasons I will explain in this opinion, I have concluded that the decision rendered by the appeals panel affirming Mr. Harrington's conviction for refusal to submit to a chemical test was flawed in one respect — *i.e.,* its failure to address an argument of possible merit. I shall therefore recommend to the Court that the instant matter be REMANDED to the appeals panel for further consideration of one issue.

I
Facts and Travel of the Case

The facts of the incident which led to the charge of refusal to submit to a chemical test being lodged against Mr. Harrington are fully and fairly stated in the decision of the appeals panel.

A
The Investigation and the Arrest

On August 20, 2015, at approximately 8:20 p.m., Sergeant Joel Mulligan of the North Kingstown Police Department was on patrol when he saw a car traveling east on Frenchtown Road which crossed the fog line.[1] And so, Sgt. Mulligan effected a traffic stop and approached the

[1] Decision of Appeals Panel, at 2 (*citing* Trial Transcript I, at 13-14). Note – the transcript of the first day of trial, October 9, 2015, shall be cited as Trial Transcript

vehicle.[2] He identified the driver (as the Appellant) and told him of the reason for the stop.[3] While doing so, he smelled an odor of alcohol emanating from the motorist.[4] When asked, Mr. Harrington told the officer that he had had "a couple of beers."[5] At this juncture, Sgt. Mulligan called for a subordinate, Officer George Tansey, to take over the investigation.[6] When he arrived, a few minutes after the call, Sgt. Mulligan briefed him on his observations and his suspicion that Mr. Harrington was operating under the influence of alcohol.[7]

Officer Tansey resumed the investigation by approaching Mr. Harrington.[8] When he did, he noticed that Mr. Harrington "had bloodshot, watery eyes, slurred, mumbled speech, and the scent of alcohol on his

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I; the transcript of the second day of trial, October 21, 2015, shall be cited as Trial Transcript II.

[2] Decision of Appeals Panel, at 2 (*citing* Trial Transcript I, at 14).

[3] Decision of Appeals Panel, at 2 (*citing* Trial Transcript I, at 15).

[4] Decision of Appeals Panel, at 2 (*citing* Trial Transcript I, at 15).

[5] Decision of Appeals Panel, at 2 (*citing* Trial Transcript I, at 15).

[6] Decision of Appeals Panel, at 2 (*citing* Trial Transcript I, at 15). The sergeant explained that, as the shift supervisor, he did not want to become engrossed in the investigation. *Id*.

[7] Decision of Appeals Panel, at 2 (*citing* Trial Transcript I, at 16).

[8] Decision of Appeals Panel, at 4 (*citing* Trial Transcript I, at 36).

breath."[9] In response to questions posed by the officer, Mr. Harrington said that he was coming from McShane's in Providence, where he had consumed a few beers.[10]

At this juncture, Officer Tansey asked Appellant to exit his vehicle.[11] As he did so, Mr. Harrington used the car door as a brace; he also used the side of the car as he moved to the rear of the vehicle.[12] At this point, Officer Tansey sought to administer certain field sobriety tests.[13] He did conduct the horizontal gaze nystagmus (HGN) test, but Mr. Harrington declined to perform the walk-and-turn and one-legged stand tests, stating that he would not be able to perform them due to a knee brace he wore.[14] He also refused to submit to a preliminary breath test.[15]

Officer Tansey then informed Mr. Harrington that he was being arrested for suspicion of drunk driving.[16] He was read the "Rights for Use

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9 *Id.*

10 Decision of Appeals Panel, at 4 (*citing* Trial Transcript I, at 38).

11 Decision of Appeals Panel, at 4 (*citing* Trial Transcript I, at 38).

12 Decision of Appeals Panel, at 4 (*citing* Trial Transcript I, at 39).

13 Decision of Appeals Panel, at 4 (*citing* Trial Transcript I, at 40).

14 *Id.*

15 *Id.*

16 *Id.*

at the Scene" and transported to the barracks, where he was given his "Rights for Use at Station."[17] When asked, Mr. Harrington refused to submit to a breathalyzer test.[18]

B

The Trial

At his RITT arraignment on August 28, 2015, Mr. Harrington entered a plea of not guilty to the refusal charge.[19] His trial was conducted on October 9, 2015 and October 21, 2015.[20]

The State's first witness was Sgt. Mulligan of the North Kingstown Police Department.[21] On direct examination, the sergeant gave testimony consistent with the pertinent portions of the narrative presented *ante*.[22] Mr. Harrington's cross-examination focused on the *locus* of the offense — specifically, whether the events described *ante* occurred

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17 Decision of Appeals Panel, at 4-5 (*citing* Trial Transcript I, at 53).

18 Decision of Appeals Panel, at 5 (*citing* Trial Transcript I, at 53).

19 *See* Docket Sheet, Summons No. 15-502-502655, in the electronic record at 274. The Tribunal's authority to issue preliminary suspensions in refusal cases may be found in Gen. Laws 1956 § 31-27-2.1(b).

20 Decision of Appeals Panel, at 1 and 5.

21 *Id.,* at 1 (*citing* Trial Transcript I, at 11).

22 *Id.,* at 1-3 (*citing* Trial Transcript I, at 11-16). In truth, the Sergeant began by describing his experience with the Department, both generally and specifically regarding drunk-driving investigations. *Id.,* at 1 (*citing* Trial Transcript I, at 11-12).

in North Kingstown or in the neighboring town of East Greenwich.[23] The sergeant was clear and certain in his testimony that both the fog-line violation and the stop took place in North Kingstown.[24]

The State's second witness, Officer Tansey, began his testimony by setting out his professional education and his experience, particularly in the area of drunk-driving enforcement.[25] He then testified, on direct examination, in accordance with the narrative presented *ante*.[26] During his testimony, both the "Rights for Use at the Scene" and the "Rights for Use at the Station/Hospital" forms used to advise Mr. Harrington of his rights were received into evidence as full exhibits.[27]

The defense case was presented on October 21, 2015.[28]

Mr. Harrington's first witness was Mr. William J. Smith, who picked him up at the police station. He testified that Mr. Harrington's eyes were neither bloodshot nor watery and his speech was not slurred.[29]

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[23] *Id.,* at 2-3 (*citing* Trial Transcript I, at 18-21).

[24] *Id.,* at 2 (*citing and quoting* Trial Transcript I, at 20).

[25] Decision of Appeals Panel, at 3 (*citing* Trial Transcript I, at 31-34).

[26] Decision of Appeals Panel, at 3-5 (*citing* Trial Transcript I, at 31-53).

[27] Decision of Appeals Panel, at 4-5 (*citing* Trial Transcript I, at 53).

[28] *Id.,* at 5-6 (*citing* Trial Transcript II, *passim*).

[29] *Id.,* at 5 (*citing* Trial Transcript II, at 4).

On cross-examination, he admitted that he was not with Mr. Harrington when he was stopped by the police.[30]

The second witness presented by the defense was Mrs. Debra Harrington, the Appellant's spouse.[31] She also testified that her husband's eyes were not bloodshot and not watery on the night in question.[32] But, she conceded on cross-examination that she was not with her husband when he was stopped by the police, arrested by the police, and questioned by the police at the station.[33]

Finally, Mr. Harrington testified. He indicated that when he turned onto Frenchtown Road from Route 2 he crossed two lanes of travel to avoid potholes.[34] He added that while traveling on Frenchtown Road he was distracted because the car behind him was slowing down and speeding up.[35] And it was at this point that he was pulled over by the police officer.[36]

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[30] *Id.,* at 5 (*citing* Trial Transcript II, at 5).

[31] *Id.,* at 5 (*citing* Trial Transcript II, at 5).

[32] *Id.,* at 5 (*citing* Trial Transcript II, at 6).

[33] Decision of Appeals Panel, at 5 (*citing* Trial Transcript II, at 7).

[34] *Id.,* at 5-6 (*citing* Trial Transcript II, at 11).

[35] *Id.,* at 6 (*citing* Trial Transcript II, at 14).

[36] *Id.,* at 6 (*citing* Trial Transcript II, at 14).

Appellant also stated that, when speaking to the officer, he admitted to having three beers earlier in the evening.[37] He also informed the officer that he was unable to do any testing because he had "bad legs."[38] Mr. Harrington testified he passed the eye test, but declined to do the breathalyzer test because he did not know if the machine was sterile.[39] Lastly, he declined to do the blood test due to privacy concerns.[40]

On cross-examination, Mr. Harrington admitted that he was stopped by the officer on August 20, 2015, that he had been drinking earlier that night, and that he refused the preliminary breath test.[41] However, he could not recall whether he had been asked to submit to a chemical test.[42]

With the testimony closed, the trial magistrate proceeded to render his decision on the refusal charge.[43] The appeals panel

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37 *Id.*

38 *Id.,* at 6 (*citing* Trial Transcript II, at 15).

39 *Id.*

40 *Id.* In his testimony, Mr. Harrington expressed an additional concern regarding the blood test — namely, that because it would involve "invading" his body, it also posed infection concerns. Trial Transcript II, at 15.

41 Decision of Appeals Panel, at 6 (*citing* Trial Transcript II, at 18-19).

42 Decision of Appeals Panel, at 6 (*citing* Trial Transcript II, at 19-20).

43 This seems an opportune point at which to reveal that, in addition to the

summarized his ruling thusly:

> The Trial Magistrate explained that he was satisfied, by the evidence presented and the testimony of Officer Tansey, that Appellant had refused the chemical test. [Trial Transcript II, at 30]. The trial magistrate found the testimony of Officer Tansey and the Sergeant to be credible. *Id*., at 31. Specifically, the Trial Magistrate stated that "[t]hey were absolutely credible witnesses worthy of my belief." *Id*. As such, the Trial Magistrate was satisfied that Officer Tansey had reasonable grounds to believe that Appellant was operating a motor vehicle while under the influence of alcohol. *Id*. Therefore, the Trial Magistrate sustained the charge of 31-27-2.1. *Id*.[44]

Having sustained the charge, the trial magistrate imposed the minimum sanctions for a first offense refusal: a $200 fine; 10 hours of community service; a 6-month license suspension retroactive to the original date of suspension (August 28, 2015); the $500 highway assessment fee; a $200 Health Department fee; and costs.[45]

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refusal charge, Mr. Harrington was also charged with two lesser charges: (1) a laned-roadway violation and (2) refusal to submit to a preliminary breath test. Both were dismissed by the trial magistrate when he rendered his decision. Trial Transcript II, at 28-30.

[44] Decision of Appeals Panel, at 7 (citation inserted).

[45] Trial Transcript II, at 35.

C
The Initial Appeal

From this conviction Mr. Harrington filed an appeal, which was heard on April 20, 2016 by an appeals panel composed of Chief Magistrate Guglietta (Chair), Administrative Magistrate DiSandro, and Judge Parker.[46] Among the many arguments Mr. Harrington presented in his appeal,[47] the panel identified several issues which merited discussion.

First, the panel reviewed Mr. Harrington's claim that the testimony given by Officer Tansey and Sgt. Mulligan was not credible — particularly the Sergeant's testimony that the moving violation and the stop occurred in North Kingstown.[48] The panel responded to this claim by recalling that, under the applicable standard of review, it "… 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."[49] Accordingly, the panel deferred to the trial

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[46] Decision of Appeals Panel, at 1.

[47] The panel enumerated the twenty assertions of error which Mr. Harrington presented to them in writing on the day his appeal was heard. Decision of Appeals Panel, at 8-9, n.1.

[48] Decision of Appeals Panel, at 9-10.

[49] Decision of Appeals Panel, at 9 (*citing Link v. State,* 633 A.2d 145, 1348 (R.I.

magistrate's strong findings that the North Kingstown officers were credible witnesses.[50]

Second, the appeals panel evaluated the merits of Mr. Harrington's assertion that the trial magistrate erred in sustaining the refusal charge.[51] In this effort, it summarized the evidence which tended to show that Officer Tansey possessed reasonable grounds to believe that Appellant had been operating under the influence prior to asking him to submit to a chemical test — Sgt. Mulligan's testimony that he observed a fog-line violation,[52] the odor of alcohol emanating from Mr. Harrington's person when the sergeant approached him,[53] the Appellant's admission to the sergeant that he had been drinking,[54] Officer Tansey's testimony that he observed Mr. Harrington to have bloodshot and watery eyes and slurred and mumbled speech,[55] and finally, Officer Tansey's testimony that Mr. Harrington had to brace himself as he exited his vehicle and as

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1993)(*citing Liberty Mutual Insurance Co. v. Janes,* 586 A.2d 536, 537 (R.I. 1991)).

50 Decision of Appeals Panel, at 10 (*citing Link, ante,* 633 A.2d at 1348).

51 Decision of Appeals Panel, at 10-11.

52 Decision of Appeals Panel, at 11.

53 Decision of Appeals Panel, at 11 (*citing* Trial Transcript I, at 14-15).

54 Decision of Appeals Panel, at 11 (*citing* Trial Transcript I, at 15).

55 Decision of Appeals Panel, at 11 (*citing* Trial Transcript I, at 36).

he walked to the rear of his car.[56] The panel concluded that this testimony was sufficient to provide Officer Tansey with reasonable grounds to request Mr. Harrington to submit to a breathalyzer test.[57]

In the *third* part of the Analysis portion of its decision the appeals panel considered Mr. Harrington's argument that the trial magistrate strayed from a position of strict neutrality in the case by questioning witnesses.[58] The panel began this discussion by noting that the Supreme Court of Rhode Island has permitted questioning from the bench if, in the estimation of the judicial officer, the questioning will reveal the truth and clarify matters that might otherwise be confusing.[59] The panel then held that the trial magistrate's questioning of Sgt. Mulligan about the location of the violation (and the stop) fell within the ambit of this rule and did not vitiate the trial magistrate's neutrality.[60]

Based on the foregoing, the appeals panel affirmed the trial magistrate's verdict in its written decision of August 30, 2016.

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[56] Decision of Appeals Panel, at 11 (*citing* Trial Transcript I, at 39).

[57] Decision of Appeals Panel, at 11.

[58] Decision of Appeals Panel, at 12-13.

[59] Decision of Appeals Panel, at 12 (*citing State v. Nelson,* 982 A.2d 602, 617 (R.I.2009) *and State v. Evans,* 618 A.2d 1283, 1284 (R.I.1993)).

[60] Decision of Appeals Panel, at 12-13.

II

Standard of Review

On September 12, 2016, Mr. Harrington filed an appeal of this decision in the Sixth Division District Court. At the request of Appellant Harrington, arguments were heard before the undersigned, in open court, on May 10, 2017; both parties have submitted memoranda which relate their respective viewpoints.

The standard of review which must be employed in this case is enumerated in Gen. Laws 1956 § 31-41.1.-9(d), which states 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 prejudiced because the appeals panel's findings, inferences, conclusions or decisions are:
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> (1) In violation of constitutional or statutory provisions;
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> (2) In excess of the statutory authority of the appeals panel;
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> (3) Made upon unlawful procedure;
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> (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 provision is a mirror-image of the standard of review found in Gen. Laws 1956 § 42-35-15(g) — a provision of the Rhode Island Administrative Procedures Act (APA). Accordingly, we are able to rely on cases interpreting the APA standard as guideposts in this 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.'" *Guarino v. Department of Social Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980)(*citing* Gen. Laws 1956 § 42-35-15(g)(5)). *See also Link v. State,* 633 A.2d 1345, 1348 (R.I. 1993). And our Supreme Court has reminded us that, when handling refusal cases, reviewing courts lack "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, id* (*citing Liberty Mutual Ins. Co. v. Janes,* 586 A.2d 536, 537 (R.I. 1991)). This Court's review "… is confined to a reading of the record to determine whether the judge's decision is supported by legally competent

evidence or is affected by an error of law." *Id.* (*citing Environmental Sci. Corp. v. Durfee,* 621 A.2d 200, 208 (R.I. 1993)).

III
Applicable Law
A
The Refusal Statute

The civil charge of "refusal to submit to a chemical test," is set forth in subsection 31-27-2.1(c) of the General Laws.[61] It has its origins in the implied-consent law — which provides that, by operating motor vehicles in Rhode Island, motorists promise to submit to a chemical test designed to measure their blood-alcohol content, whenever a police officer

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[61] Subsection 31-27-2.1(c) provides:

> … If the 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 judge shall sustain the violation. The judge shall then impose the penalties set forth in subsection (b) of this section.

has reasonable grounds to believe they have driven while under the influence of liquor. *State v. Pacheco,* 161 A.3d 1166, 1172 (R.I.2017).[62] And motorists who renege on that promise may be charged with the civil offense of refusal and suffer the suspension of their operator's licenses, among other penalties.[63] Thus, at its essence, a refusal charge is an offense against our state's regulatory scheme for identifying drunk and unsafe drivers on our highways.

The charge of refusal contains four statutory elements. Gen. Laws 1956 § 31-27-2.1(c), *ante,* at 15, n.61. They are: *one,* that the officer had *reasonable grounds* (which is equivalent to the *reasonable-suspicion* standard) to believe that the motorist had driven while intoxicated;[64] *two,* that the motorist, having been placed in custody, refused to submit to a

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[62] The implied-consent law is stated in § 31-27-2.1(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. …

[63] In *State v. Locke,* 418 A.2d 843 (R.I.1980), our Supreme Court called such suspensions "critical to attainment of the goal of making the highways safe by removing drivers who are under the influence." *Locke,* 418 A.2d at 850 (*citing People v. Brown,* 174 Colo. 513, 523, 485 P.2d 500, 505 (1971)).

[64] "Reasonable-suspicion" is the standard utilized in Fourth Amendment jurisprudence as the standard for making an investigatory stop. *State v. Jenkins,* 673 A.2d 1094, 1097 (R.I.1996) (*citing Terry v. Ohio,* 392 U.S. 1 (1968)).

chemical test; *three,* that the motorist was advised of his right to an independent test under § 31-27-3. *State v. Quattrucci,* 39 A.3d 1036, 1041-42 n.13 (R.I.2012)(declaring that the State must not only prove that the arrestee was *informed* of his right to an independent test, but also that the arrestee "was afforded that opportunity."); *and four,* that the motorist was advised of the penalties that are incurred for a refusal.

The State must also prove that the initial stop was legal (*i.e.,* supported by reasonable suspicion). *State v. Bruno,* 709 A.2d 1048, 1050 (R.I.1998); *Jenkins,* 673 A.2d at 1097. The prosecution must also show that the motorist was notified of his or her right to make a phone call for the purposes of securing bail, as provided in Gen. Laws 1956 § 12-7-20. *Quattrucci,* 39 A.3d at 1040-42.

But, the State need not show that the motorist was operating under the influence. *Bruno,* 709 A.2d at 1050; *State v. Hart,* 694 A.2d 681, 682 (R.I.1997). Neither must the State establish that the officer had probable cause to arrest for such a charge. *Jenkins, ante,* 673 A.2d at 1097 (addressing the Appellant's collateral estoppel claim, Supreme Court finds the District Court's determination of no probable cause "unrelated to and irrelevant in the [refusal] trial ...."); *and see Pacheco,* 161 A.3d at 1174

(*citing Jenkins* approvingly on point described in this note and declaring that evidence obtained post-arrest is admissible in support of officer's possession of reasonable belief that defendant operated under the influence, if obtained prior to the officer's request that detainee submit to a chemical test).

B

The Extra-Territorial Authority of Municipal Police Officers

In this appeal — as he did before the Traffic Tribunal — Mr. Harrington has argued that he must be acquitted of the refusal charge because neither the alleged fog-line violation, which formed the basis for the stop, nor the stop itself, took place in North Kingstown; he therefore urges that the North Kingstown officers acted without authority in stopping and citing him. In light of this argument, it is appropriate that we should set forth the pertinent Rhode Island statutes — and the cases interpreting them.

We must start from the premise that a Rhode Island municipal police officer has no extra-territorial authority. As our Supreme Court stated in *State v. Ceraso* —

> In the absence of a statutory or judicially recognized exception, the authority of a local police

> department is limited to its own jurisdiction. *See Page v. Staples,* 13 R.I. 306 (1881).

Ceraso, 812 A.2d 829, 833 (R.I. 2002). And, when the cited case, *Page,* was decided in 1881, the list of exceptions to this rule was brief.[65] Since then, however, the General Assembly has expanded municipal officers' extraterritorial authority, though largely in a way which respects the authority of local police officials.

For instance, in 1971, the General Assembly enacted Gen. Laws 1956 § 45-42-1, which granted Rhode Island's police chiefs the authority to transfer their officers to another municipality on an *ad hoc* basis in times of emergency. *See* P.L. 1971, ch. 284, § 1. Then, in 2002, in the newly created Gen. Laws 1956 § 45-42-2, the General Assembly empowered Rhode Island's municipalities to enter into compacts with adjacent cities and towns pursuant to which their officers may act in the other's towns. *See* P.L. 2002, ch. 142, § 1. Clearly, under both provisions, local control was preserved.

The third provision which has expanded municipal officers'

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[65] *Page,* 13 R.I. at 307-08. The Court in *Page* cites two such exceptions to the rule then recognized: [1] an officer with custody of a prisoner under a writ of habeas corpus may travel through other jurisdictions to get to the place where the writ is returnable, and [2] an officer whose prisoner has escaped may retake the prisoner in another jurisdiction if in "fresh pursuit." *Id.*

extraterritorial authority is Gen. Laws 1956 § 12-7-19. *See* P.L. 1974, ch. 191, § 1. While the authority granted in this provision is not dependent on the consent of the police department of the municipality being entered, the power granted here is not unbridled. It was[66] accorded only to municipal officers who are close pursuit of an individual whom they already have the right to arrest. *See State ex rel. Town of Middletown v. Kinder,* 769 A.2d 614, 616 (R.I. 2001)(Court approves pursuit by Middletown officer into Newport based on probable cause to arrest suspect for reckless driving).

This Court has applied § 12-7-19 faithfully; accordingly, we have found that stops for civil traffic violations do not justify an officer's incursion into a neighboring city or town, since one cannot be arrested for them. *See Town of Middletown v. Thomas Oliver,* A.A. No. 13-026, at 21-43 (Dist.Ct.03/13/14)(finding that § 12-7-9 did not authorize a Middletown officer to cite a motorist in Newport for a civil traffic violation that was

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[66] I employ the past tense here advisedly. Section 12-7-19 was amended in 2016 to authorize close pursuit in situations where the officer making the incursion only has the right to make a stop. This change would seem to imply that all stops, including those for mere civil traffic violations, are now sufficient to justify close pursuit into a neighboring municipality, even though they are non-arrestable. *See* P.L. 2016, ch. 474. But this amendment does not apply to the case at bar, which was charged and tried before the effective date of this amendment.

allegedly committed in Middletown, because the commission of that offense did not render the motorist subject to arrest). *Accord, Christopher Cartwright v. State ex rel. Town of Lincoln,* A.A. 13-200, at 14-23 (Dist.Ct. 08/19/2014)(Conviction for school bus violation reversed where the testimony reveals (indisputably) that the violation and stop occurred in Pawtucket).

IV
Analysis
A
Issues Addressed by the Appeals Panel

The appeals panel addressed three issues raised by Mr. Harrington and, as to each, did so in a manner which was not clearly erroneous nor contrary to law.

1
Issues of Proof and Credibility

The legal principles espoused by the appeals panel regarding issues of credibility are undoubtedly accurate — the appeals panel (and this Court) must accept credibility determinations made by the trial judge or magistrate unless they are determined to be clearly erroneous.[67] The

[67] Decision of Appeals Panel, at 9-10 (*citing Link,* 633 A.2d at 1348).

trial magistrate was within his sound discretion to find the officers' testimony about the location of the fog-line violation and the stop to be credible.[68] Thus, the panel did not err in rejecting this assertion of error.

2

Sufficiency of Findings

So too, the appeals panel's ruling that the evidence of record was sufficient to justify the trial magistrate's finding that Officer Tansey had reasonable grounds to conclude that Mr. Harrington had been driving under the influence is beyond plausible challenge. The testimony regarding the indicia of operation under the influence (*i.e.,* the fog-line violation, the observations as to his eyes and his speech, his difficulty in walking without the aid of the vehicle[69]) clearly satisfied the standard set in § 31-27-2.1 and in the prior cases of our Supreme Court applying that statute. *E.g., Jenkins,* 673 A.2d at 1097; *State v. Perry,* 731 A.2d 720 (R.I. 2000). Therefore, the appeals panel did not err in finding that the trial magistrate's verdict was not clearly erroneous.

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[68] *Id.*

[69] As to this last point, it is worth reiterating that although Mr. Harrington would have us attribute his difficulty walking to his preexisting conditions, these observations remain indicia of intoxication. *See Bruno,* ante, 709 A.2d at 1050.

3
Issues of Impartiality

We now turn to the last of the issues addressed by the appeals panel — Appellant's allegations that the trial magistrate vitiated his neutrality by questioning a witness. In my view, a fair reading of the record demonstrates that the trial magistrate was simply trying to pinpoint the locus of the violation. Given that Mr. Harrington has highlighted this issue — at trial and on appeal — it seems he should have been pleased that the trial magistrate pursued this issue. And so, the appeals panel's rejection of this claim of error did not constitute error.

B
Issue Not Addressed by the Panel:
The Court's Unwillingness to Examine Mr. Harrington's Map

Of course, Mr. Harrington raised other issues before the panel beyond the ones discussed *ante*. The appeals panel acknowledged this, and listed the full twenty issues he identified.[70] Of these, several relate to determinations of credibility and allegations of favoritism, akin to those discussed in part IV-A, *ante*. But, there is one issue raised by Appellant

[70] *See* Decision of Appeals Panel, at 8-9, n.1.

which was not addressed by the appeals panel which, in my view, deserved attention: whether the trial magistrate erred by declining to review a map of the area in which the stop occurred.

Throughout the trial (in statements to the Court, in questioning witnesses, and in his own testimony), Mr. Harrington argued that the point on Frenchtown Road where he crossed the fog-line was in East Greenwich, not North Kingstown;[71] consequently, he urged that the stop and the citation were illegal, because the North Kingstown officers had no authority to stop him for a civil violation committed in East Greenwich. And, if Mr. Harrington's assertion as to the locus of this case is indeed true, his argument would have merit, since, as we saw *ante* in part III-B of this opinion, municipal police officers only have authority (1) to cite drivers for civil traffic offenses committed in their town of appointment, and (2) to issue such citations in their town of appointment.[72]

In order to convince the trial magistrate of the correctness of his position, Mr. Harrington tried to show the Court a map of the area. But

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[71] As related *ante,* Sergeant Mulligan had adamantly espoused a contrary view during his testimony.

[72] As revealed *ante,* § 12-7-19 was amended in 2016 to allow pursuit into an adjoining town to stop a vehicle from any infraction of the motor vehicle code, including civil violations. *See* discussion *ante* at 20, n.66.

the trial magistrate, without explanation, would not receive it.[73] One could fairly argue that the map was the linchpin in Mr. Harrington's defense on this element.[74] Without it, there was no substance to his argument.

Before the appeals panel, Mr. Harrington raised the trial magistrate's unwillingness to examine the map as his twelfth assertion of error, which stated:

> … (12) Judge wouldn't look at map for town and county lines, insisting that Frenchtown Road was all in North Kingstown. Map clearly shows that most of Frenchtown Road is, in fact, in East Greenwich; …[75]

Thus, in ¶ 12, Mr. Harrington not only questioned the trial magistrate's *substantive* finding (*i.e.,* that the offense occurred in North Kingstown), he also mounted a challenge on an *evidentiary* issue (*i.e.,* that the trial magistrate improperly declined to receive and review his map).

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[73] *See* Trial Transcript II, at 14.

[74] From a reading of the record, it seems the map was the only proof Mr. Harrington had on the issue, other than his own testimony; and so, it would undergird whatever else he might present on this issue.

[75] *See* Decision of Appeals Panel, at 9, n.1, ¶ 12. And this argument has been renewed before this Court. *See* Appellant's Memorandum, November 14, 2016, at 1, ¶ 12.

Now, as far as I can detect, the map was not marked as an exhibit; neither is it contained in the electronic record of this case. As a result, we cannot discover the map's provenance. We do not know whether it came from a governmental source or was privately published. As a result, we cannot evaluate its reliability. Most of all, we cannot tell if its reception by the Court would have been helpful to Mr. Harrington in defending this charge.[76] Accordingly, it is not possible for this Court to address the merits of the territorial authority issue.

But we can address the evidentiary issue. There can be no question that the issue had been raised before the panel. Mr. Harrington had clearly raised it. And the appeals panel clearly recognized the

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[76] Our inability to definitively fix the exact location of the stop is attributable not only to the absence from the record of the map, but because the testimony of the witnesses was vague. Beyond the basic fact that the fog-line violation occurred on Frenchtown Road, east of the intersection with Route 2, Sergeant Mulligan gave us only two additional points of reference: (1) Mr. Harrington's vehicle was stopped within a hundred feet of the Frenchtown Plaza (Stop and Shop), and (2) the violation was committed within a half-mile west of that spot. *See* Trial Transcript I, at 27-28. (Note – Sergeant Mulligan did agree that the intersection of Route 2 and Frenchtown Road is in East Greenwich. *See* Trial Transcript I, at 27-28.). Consequently, even if I were to make reference to a map of that area of unchallenged quality, we could not *definitively* determine, as we did in *Cartwright*, *ante*, whether the offense was committed in North Kingstown or East Greenwich. And so, the record presented to this Court (and to the appeals panel) is simply insufficient to address the substantive issue. Moreover, finding the exact location of the violation is a factual determination which this Court is not empowered to undertake *ab initio*.

materiality of the issue, since it addressed it in its first (credibility) and third (impartiality) analyses. We are further hampered by the fact that the panel did not state the reason why it concluded this argument did not merit a response.

As a result, I have concluded that the instant matter must be remanded so that the appeals panel can address this issue. In so recommending I am not suggesting what the outcome of such an analysis should be. The panel may well be satisfied that Mr. Harrington's proffer of the map before the trial magistrate was in some way defective procedurally (*e.g.,* that he did not *preserve* the issue). Or, it may conclude that the issue was not raised in a proper manner before it on appeal. In the alternative, the appeals panel may remand the case to the trial magistrate for further factual findings on the issue of the location to be made.

V
CONCLUSION

Upon careful review of the evidence presented and the pertinent law, I recommend that this Court find that the appeals panel erred by failing to address an issue of potential merit.

Accordingly, I recommend that the instant case be remanded to the appeals panel of the Rhode Island Traffic Tribunal for further proceedings consistent with this opinion.

/s/
Joseph P. Ippolito
MAGISTRATE

JANUARY 17, 2018