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

Wayne Everett	:	
	:	
v.	:	**A.A. No. 2018 – 108**
	:	
Town of South Kingstown	:	
(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, the Court finds that the Findings and 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 decision rendered by the Appeals Panel in this case is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 27th day of February, 2019.

By Order:

/s/
Stephen C. Waluk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

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

Wayne Everett	:	
	:	**A.A. No. 2018 – 108**
v.	:	**(C.A. No. T17-005)**
	:	**(16-503-501586)**
Town of South Kingstown	:	
(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 appeal, Mr. Wayne Everett[1] urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a trial magistrate's verdict adjudicating him guilty of two civil violations, "No seat belt — Operator" in violation of G.L. 1956 § 31-22-22(g) and "License to be carried on person" in violation of G.L. 1956 § 31-20-27. Jurisdiction for the instant appeal is vested in the District Court by G.L. 1956 § 31-41.1-9 and the applicable standard of review is found in

[1] In various pleadings the Appellant refers to himself as "Quenikom Pau Muckquashim ex rel. wayne:everett." However, because all proceedings below are under the name "Wayne Everett," I shall refer to him in that manner. In doing so, I intend no disrespect and I make no finding as to his legal name.

subsection 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1.

Before this Court, Mr. Everett has advanced, *inter alia,* two novel arguments: *first,* that the entire structure of Rhode Island's state government is invalid; and *second,* that he personally is immune from prosecution for violating the provisions of the state's traffic laws. But after a review of the entire record and the arguments made by both parties, I have concluded that all of Mr. Everett's assertions of error are unfounded. I therefore recommend that the decision rendered by the appeals panel in this case should be AFFIRMED.

I
Facts and Travel of the Case
A
The Stop

The following synopsis of the events leading to the issuance of the instant citation will suffice for the purposes of this opinion —

On November 26, 2016 at approximately 8:45 a.m., Officer Norman Jeff Sugrue of the South Kingstown Police Department observed Mr. Everett driving southbound on Route 108 without wearing a seatbelt; and so, he initiated a stop of his vehicle. *Decision of Appeals Panel,* at 2

(citing *Trial Transcript,* at 6). When he approached the vehicle, the motorist presented him with (what he described as) "tribal identification" but would not provide any state-issued identification or give him another legally recognized name. *Id.* Nevertheless, the officer was able to identify the motorist, and learned that, while he possessed a valid license, his registration was suspended. *Id.* at 7. Accordingly, he cited Appellant for three offenses, the two enumerated *ante* and a third charge, Operating a Vehicle with a Suspended Registration in violation of G.L. 1956 § 31-8-2.

B

The Trial

Mr. Everett entered a plea of not guilty to all three charges at his arraignment on January 9, 2017 and the matter was reassigned for trial to February 13, 2017, when it would be heard with a Motion to Dismiss he had filed. *See* Docket Entry for Appellant's Arraignment on page 79 of the Electronic Record.

When Mr. Everett's trial began, the Court first addressed the pending Motion to Dismiss and indicated it would be heard with the trial. *See Trial Transcript,* at 4. However, when the trial magistrate attempted to administer the testimonial oath to the officer and Appellant, Mr. Everett refused. *Id.* at 5-6. Patrolman Sugrue did take the oath and testified under questioning by the Court in conformity with the narrative presented *ante.*

But Mr. Everett was not permitted to testify since he had refused to be sworn in. *Trial Transcript,* at 7-8. As a result, the Court explained, his defense rested on the Motion to Dismiss. *Id.* at 8. The Court found that all three counts had been proven; however, since Appellant's registration had been reinstated, Count Two was dismissed without a fine. *Id.* at 8-9.

C

Proceedings Before the Appeals Panel

Mr. Everett filed a timely appeal and, on May 31, 2017, the matter was heard by a Traffic Tribunal appeals panel composed of Magistrates Goulart (Chair), Abbate, and Kruse Weller. *Decision of Appeals Panel,* at 1. In its written decision, issued on June 6, 2018, the panel stated that three issues had been raised by Mr. Everett: (1) that the officer had no authority to issue a citation to him, (2) that the Traffic Tribunal had no authority to adjudicate that summons, and (3) that it was unconstitutional to require him to show a state-issued driver's license. *Id.* at 4 (citing 31-41.1-8(f)(1)–(3)). The panel addressed each claim in turn.

1

Subject Matter Jurisdiction

Under this heading, the panel addressed Mr. Everett's challenge to its authority, or its subject-matter jurisdiction, which, in the conception of the panel, included his argument that the Traffic Tribunal was without

authority to adjudicate his case and his assertion that he was not subject to the state's traffic laws due to his status as a member of a Native American tribe.

The appeals panel began its analysis at the most conceptual level, by stating that the Rhode Island Constitution grants the General Assembly the authority to establish courts inferior to the Supreme Court, which shall possess such jurisdiction as may be prescribed in law. *Decision of Appeals Panel,* at 6 (citing R.I. CONSTIT., art. 10, §§ 1, 2). This power is construed broadly. *Id.* (quoting *State v. Byrnes,* 456 A.2d 742, 744 (R.I. 1983); *and* citing *State v. Robinson,* 972 A.2d 150, 157 (R.I.2009) (citing *State v. Almonte,* 644 A.2d 295, 300 (R.I. 1994))).

Turning to the case before it, the panel stated that the General Assembly created the Traffic Tribunal and established its jurisdiction when it enacted G.L. 1956 § 8-8.2-2. *Decision of Appeals Panel,* at 6-7. Moreover, the Tribunal has exclusive jurisdiction over citations issued by officers in municipalities which have not established a municipal court. *Id.* at 7 (citing G.L. 1956 § 8-18-3). Applying the foregoing tenets of Rhode Island law, the appeals panel concluded that it had jurisdiction to adjudicate violations of §§ 31-10-27 and 31-22-22(g). *Decision of Appeals Panel,* at 7.

Under this same heading the appeals panel next turned to Mr. Everett's argument that, as a citizen of the Usquepaug Nehantick-Nahaganset Tribe, he was not subject to Rhode Island's traffic laws. *Id.* On this point, the panel related that the United States Supreme Court had espoused the principle that Native Americans, when going beyond tribal property, are subject to non-discriminatory state laws. *Decision of Appeals Panel,* at 8 (citing *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 148-49 (1973) (citing *Puyallup Tribe v. Department of Game,* 391 U.S. 392, 398 (1968)). The panel found, based on the record before it, that Mr. Everett was not on "tribal" lands but was, to the contrary, on a public highway when he allegedly committed the traffic offenses for which he was cited, which are applicable to all citizens of the State. *Decision of Appeals Panel,* at 8. Therefore, his status defense was rejected. *Id.*

2

Personal Jurisdiction

Under the heading "Personal Jurisdiction" the appeals panel first addressed Mr. Everett's argument that § 31-10-27 is invalid because the State cannot require that licenses be carried by operators. *Decision of Appeals Panel,* at 9. The panel rejected his argument, which was grounded on a rather mature decision of the Virginia Supreme Court, *Thompson v. Smith,* 155 Va. 367, 377, 154 S.E. 579, 583 (1930). *Id.* Instead, the panel

relied on Rhode Island Supreme Court precedents which have held that "the right to use the public highways for travel by motor vehicles is one which properly can be regulated by the legislature in the valid exercise of the police power of the state." *Id.* (citing *State v. Garvin,* 945 A.2d 821, 823 (R.I.2003) (quoting *Berberian v. Lussier,* 87 R.I. 226, 231-32, 139 A.2d 869, 872 (1958))). Regarding the validity of § 31-10-27 in particular, the Court cited *State v. Campbell,* 95 R.I. 370, 373, 187 A.2d 543, 546 (1963) for the proposition that requiring a license to be carried is a valid exercise of the police power. *Id*. In addition, the panel cited *Garvin, ante,* for the principle that requiring operators to be licensed bears a "rational relationship" to the goal of highway safety. *Decision of Appeals Panel,* at 9-10 (citing *Garvin,* 945 A.2d at 824 (citing *Riley v. R.I. Department of Environmental Management,* 942A.2d 198, 206 (R.I.2008))). Concluding this discussion, the appeals panel found that the seat-belt violation, under § 31-22-22(g), also satisfied the rational relationship test. *Id.* at 10. Accordingly, the appeals panel rejected Mr. Everett's argument that the Traffic Tribunal did not have personal jurisdiction over him in this case. *Id.*

For these reasons, the panel affirmed the appellant's convictions for a seat-belt violation and failing to carry an operators' license.

D

Proceedings Before the District Court

On June 15, 2018, Mr. Everett filed a further appeal to the Sixth Division District Court, pursuant to G.L. 1956 § 31-41.1-9. A briefing schedule was set on August 17, 2018; since then, memoranda have been received from Appellant Everett and the Appellee Town of South Kingstown.

1

Appellant's Initial Memorandum

In his original memorandum, filed on August 21, 2018, Mr. Everett presents three arguments —

The first is that the Tribunal did not possess subject-matter jurisdiction over him because he enjoys "Foreign National aboriginal Inhabitant and Tribal Citizen status." *Appellant's Memorandum,* at 2-3. He urges that when the trial magistrate heard Officer Sugrue's testimony that Mr. Everett "presented a tribal identification,"

> the Court should have immediately acknowledged and respected the aboriginal jurisdiction of the Appellant at the time of the interaction, as the Appellant is a Tribal Citizen of the Usquepaug Nehantick Nahaganset Tribe and an "Indian Not Taxed" by law, not subject to any State or local jurisdiction per Article I, Section II Clause III and Article I Section VII Clause III of the US Constitution.

Appellant's Memorandum, at 3. Appellant argues that the appeals panel's finding that he is subject to the laws of this State while operating a motor vehicle on state roadways is a mere "unsubstantiated claim." *Id.* (citing *Decision of Appeals Panel,* at 8). He also deems the panel's finding that he was not on tribal land when he was stopped on Route 108 to be unsubstantiated. He bases this comment on the United States Supreme Court's decision in *Carcieri v. Salazar,* which held, according to Mr. Everett, that the State of Rhode Island (nor the United States government) has never possessed lawful authority over the lands *commonly referred to* as the State of Rhode Island. *Appellant's Memorandum,* at 3 (citing *Carcieri*, 555 U.S. 379 (2009). Summing up this first argument, Appellant urges that he was not within the jurisdiction of the Traffic Tribunal, that the State has no subject-matter jurisdiction over him, that the State *acknowledged* his status as a "Foreign National aboriginal inhabitant and Tribal Citizen Status and standing," and that the State has not shown any authority to the land upon which this event occurred, which has been taken into Trust by the Usquepaug Nehantick Nahaganset Tribal Trust and Nation. *Id.* (citing South Kingstown Registry of Deeds Doc No. 34 Filing Number Bk L1597 Pg 264).

In his second argument Mr. Everett opines that the appeals

panel's reliance on the *Garvin* case is unsound because the State has acknowledged his tribal citizen status. *Id.* As a result, the Tribunal should have recognized that it had no jurisdiction over him, under the United States Constitution, since the Usquepaug Nehantick Nahaganset Tribe "is a private foreign American Aborigine Tribal Trust and Nation, chartered in accordance with the provisions of the international Hague Trust Treaty, and possessing superior Aboriginal jurisdiction over the State of Rhode Island while in its ancestral lands." *Appellant's Memorandum,* at 3-4.

Finally, Appellant urges this Court to invoke its equity jurisdiction to do justice in this case. *Appellant's Memorandum,* at 4.

2

The Appellee-Town's Memorandum

In its Memorandum, the Town of South Kingstown also makes three points.

In its first argument, the Town asserts that the trial magistrate's verdict on the seatbelt violation was not affected by error of law. *Appellee's Memorandum of Law,* at 3. The Town reminds us that § 31-22-22 is made applicable to any "person." *Id.* And, a person is defined, for purposes of Title 31, as "every individual, firm, partnership, or association." *Id.* (citing G.L. 1956 § 31-1-17 and *State v. Robinson, ante,* 972 A.2d at 156). The Town submits that the Officer's testimony that the operator was not

wearing a seat belt and his further statement that when he approached the vehicle was still not wearing a seat belt was, in the absence of contradictory evidence, sufficient to sustain the violation. *Id.*

The Town's second argument is similar to the first, except that it addresses the charge of failing to have a license on one's person. This charge is of similar breadth, applying to "every licensee," and requires licensees to display their licenses upon the request of an officer and to otherwise identify themselves by writing out their names *Appellee's Memorandum of Law,* at 4 (quoting § 31-10-27). Here, the Town recalls that the Officer testified that Appellant refused to respond to the officer's request for state-issued identification. *Id.* (quoting *Trial Transcript,* at 7).

Finally, the Town responded succinctly to Mr. Everett's jurisdictional assertions. *Id.* The Town argued that, under Title 31, the charges against Mr. Everett apply to every person operating on state highways. *Id.* Finally, the Town urges that Appellant's racial or ethnic identity is immaterial to the instant case, because everyone must abide by them. *Appellee's Memorandum of Law,* at 4-5.

3

Appellant's Reply Memorandum

For the most part, Appellant's Reply Memorandum was a restatement of his earlier submission.

Under the first argument, Mr. Everett again asserts that the Tribunal was without jurisdiction. *Appellant's Reply Memorandum,* at 3-4. Closely read, this argument makes it clear that he is not only questioning the jurisdiction of the Court over him, but that he is also challenging the legality of the entire government of Rhode Island, which he regards as an unlawful usurper of aboriginal lands. *Id.* He urges that the appeals panel failed to justify its jurisdiction over his case, as it had a duty to do. *Id.*

Under the second heading of his Reply Memorandum, Mr. Everett restates his belief that he personally was not subject to the Court's jurisdiction. *Appellant's Reply Memorandum,* at 4-6. To this end he cites case law which recognizes that Native American Tribes enjoy sovereign immunity. *Id.* at 4 (citing *Kiowa Tribe of Oklahoma v. Manufacturing Technologies,* 523 U.S. 751 (1998). Appellant then draws our attention to 18 U.S.C. § 1162, which permits states to assume criminal jurisdiction on Native American lands under certain conditions pursuant to an established process. *Id.* at 4-5. He asserts that Rhode Island has not

entered into this process. *Id*. at 5. Appellant Everett reiterates his belief that the officer's testimony that he presented tribal identification was sufficient to substantiate his claim of Native American status and membership in the tribe he names. *Id*. at 5-6. Accordingly, he asserts, his status should have been recognized by the Traffic Tribunal. *Id.* at 6.

Under the third heading of his Reply Memorandum, Appellant argues that the Town's discussion of §§ 31-22-22 and 31-10-27 are immaterial because the Town did not prove jurisdiction. *Id*. He asserts that the officer violated his rights under color of law. *Id*.

II
STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in G.L. 1956 § 31-41.1.-9(d), which provides 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 prejudicial because the appeals panel's findings, inferences, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the appeals panel;
> (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.

This standard is akin to the standard of review found in G.L.1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

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. Dep't of Social Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980) (citing Gen. Laws 1956 § 42-35-15(g)(5)). Thus, the Court will not substitute its judgment for that of the appeals panel as to the weight of the evidence on questions of fact. *See 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) (decision rendered during existence of Administrative Adjudication Division[AAD]). And so, except in the case where the panel's decision is affected by error of law, the decision of the panel must be affirmed as long as it is supported by legally competent evidence. *Link,* 633 A.2d at 1348 (citing *Environ. Scientific Corp. v. Durfee,* 621 A.2d 200, 208 (R.I. 1993)).

III
APPLICABLE LAW

In the instant matter the Appellant was charged with two charges. The first is the seat belt violation, arising under § 31-22-22(g) of the General Laws which states in pertinent part:

> **31-22-22 Safety belt use – child restraint.** — (a) …
> **…**
> (g)(1) Any person who is an operator of a motor vehicle shall be properly wearing a safety belt and/or shoulder harness system as defined by Federal Motor Safety Standard 208 while the vehicle is in operation on any of the roadways, streets, or highways of this state.
> (2) The provisions of this subsection shall apply only to those motor vehicles required by federal law to have safety belts. …

The charge is a civil violation. *See* G.L. 1956 § 31-27-13. The second is:

> **31-10-27. License to be carried and exhibited on demand** — (a) Every licensee shall have his or her operator's or chauffeur's license in his or her immediate possession at all times when operating a motor vehicle and shall display the license upon the demand of any peace office or inspector of the division of motor vehicles and shall, upon request by any proper officer, write his or her name in the presence of that officer for the purpose of being identified. However, no person charged with violating this section shall be convicted if he or she produces in court or the office of the arresting officer an operator's or chauffeur's license previously issued to him or her and valid at the time of his or her arrest. **…**

This is also a civil violation, as provided in § 31-27-13.

IV
Analysis

Mr. Everett urges that the officials of the State generally and the Traffic Tribunal in particular had no right to cite him or adjudicate his case because the State and its Courts have no subject-matter and personal jurisdiction over him. And so, we will address these claims before we consider his more unorthodox arguments.

A
The State's Authority to Enact Traffic Safety Laws
1
Generally

In the United States, the authority to create penalties for proscribed conduct is known as the "police power," 16A AM. JUR. 2d, *Constitutional Law,* § 313 *et seq*. (1998). The "police power" is said to be not amenable to a precise definition, but it is said to encompass a sovereign's right to legislate, to promote "the peace, security, safety, morals, health, and general welfare of the community[.]" *Id.,* §§ 315-16 at 251-52. And, in *National Federation of Independent Business v. Sebelius,* 567 U.S. 519, 536 (2012), Chief Justice Roberts referred to it as the "general power of governing," which is vested in the state legislatures, but not in the Congress, whose power is (in theory) limited. 21 AM.JUR. 2d, *Criminal*

Law, § 12 at 124 (2008). As a result, the United States Supreme Court has declared that the states hold the "primary authority for defining and enforcing criminal law." *United States v. Lopez,* 514 U.S. 549, 561 (1995) (citing *Brecht v. Abrahamson,* 507 U.S. 619, 635, (1993) (quoting *Engle v. Isaac,* 456 U.S. 107, 128, (1982))).

The Rhode Island Supreme Court has repeatedly and expressly acknowledged that our legislature is cloaked with the police power, particularly on issues relating to highway safety. Let us present a few examples —

First, in *Berberian v. Lussier*, 87 R.I. 226, 139 A.2d 869 (1958), the Supreme Court considered the denial of a bill in equity which sought to enjoin the registrar of motor vehicles from suspending the petitioner's operator's license based on non-compliance with the financial responsibility statutes. *Berberian*, 87 R.I. at 229. The Court began by overruling a 1926 case which held that a license to drive was neither a contract nor a property right; the Court ruled that, whatever its status, it was not a privilege that could be terminated arbitrarily. *Berberian*, 87 R.I. at 231. The Court then turned to the constitutionality of the financial responsibility laws; it began by declaring —

> Whatever may be its nature, the right to use the public highways for travel by motor vehicles is one which

> properly can be regulated by the legislature in the valid exercise of the police power of the state. …

Berberian, 87 R.I. at 231-32. It then stated that the "… [police] power is inherent in sovereignty and permits the enactment of laws, within constitutional limits, to promote the general welfare of the citizens." *Berberian*, 87 R.I. at 232. Finding that the purpose of the financial responsibility laws was to protect the motoring public from financially irresponsible persons involved in accidents, the Court found the statute not violative of due process. *Id.*

Twenty-two years later, in *State v. Locke*, 418 A.2d 843 (R.I. 1980), our Supreme Court held that the statute that criminalizes drunk driving is also a valid exercise of the police power, since it outlaws conduct that "affects the lives, conduct, and general welfare of the people of the state." *Locke*, 418 A.2d at 849 (*citing People v. Brown,* 174 Colo. 513, 522-23, 485 P.2d 500, 505 (1971)). The goal of the legislation is to reduce the mayhem perpetrated on our highways by "drivers who in drinking become a menace to themselves and to the public." *Locke*, 418 A.2d at 850 (citing *Campbell v. Superior Court,* 106 Ariz. 542, 546, 479 P.2d 685, 689 (1971)). In sum, like the charge of reckless driving, it proscribes dangerous conduct on the highways.

Third, we may consider our Supreme Court's more recent opinion

in *State v. Garvin,* 945 A.2d 821 (R.I. 2008), in which the Court considered, and made short work of, Mr. Grant Garvin's argument that he was not subject to the law which requires drivers to have licenses because he was a "sovereign state citizen." *Garvin*, 945 A.2d at 822-23. First, it invoked the principle that the right to drive on the public highways is not a *fundamental* right. *Garvin*, 945 A.2d 823 (*citing Allard v. Department of Transportation,* 609 A.2d 930, 937 (R.I. 1992)). Then, citing *Berberian*, the Court stated that it had long recognized that "… the right to use the public highways for travel by motor vehicles is one which properly can be regulated by the [L]egislature in the valid exercise of the police power." *Garvin*, 945 A.2d 823-24 (citing *Berberian*, 87 R.I. at 232-32).

The Court rejected as "without merit" Mr. Garvin's notion that, because he was a sovereign state citizen, any infringement on his right to travel must be subjected to a "strict scrutiny" analysis. *Garvin*, 945 A.2d 824. Instead, it announced that it would apply the "rational relationship" test. *Garvin,* 945 A.2d 824 (citing *Rhode Island Department of Environmental Management,* 941 A.2d 198, 206 (R.I. 2008)). Applying this test, the Court found that the state law prohibiting unlicensed drivers from operating on Rhode Island's highways was rationally related to the legitimate state interest of maintaining safety on our highways. *Garvin,*

945 A.2d 824.

2

The Instant Charges

Applying this test to the statute requiring the use of seat belts, § 31-22-22, requires no profound analysis. The legislature is apparently satisfied that their use can reduce the number of fatalities on Rhode Island's highways. The benefits to the public safety of seat belt use are patent and indisputable. Courts from many of our sister states have upheld such statutes as a constitutional exercise of their state's inherent police power. *Chase v. State,* 243 P.3d 1014, 1016 (Alaska, 2010); *State v. Folda,* 885 P.2d 426, 427-28 (Mont. 1994); *People v. Kohrig,* 498 N.E.2d 1158, 1164-66 (Ill.1986); *State v. Hartog,* 440 N.W.2d 852, 856-60 (Iowa, 1989). Moreover, the propriety of such statutes is not diminished by the fact that the operators/defendants themselves are the primary beneficiary of seat belt mandates. *See State ex rel. Colvin v. Lombardi,* 104 R.I. 28, 30-31 (1968) (On certified question from a District Court judge, the Supreme Court decides that law requiring operators of motorcycles to wear helmets is proper exercise of the legislature's power to protect public health, safety, and morals even if its sole purpose was to protect operators themselves, given public interest in such persons becoming public charges). Therefore,

§ 31-22-22 must be viewed as rationally connected to the goal of highway safety and generally promoting the public welfare; it is therefore a constitutional use of the police power.

The second charge in the case at bar requires even less analysis, since our Supreme Court has already determined that the statute bears a reasonable relationship to the public welfare or safety and that it constitutes a valid exercise of the police power. *See State v. Campbell,* 95 R.I. 370, 373-74, 187 A.2d 543, 545-46 (1963). Nothing more need be said.

B

The Traffic Tribunal's Authority to Try the Instant Case

The analysis of the appeals panel on the issue of its jurisdiction over the instant citation is undoubtedly correct. The Rhode Island Constitution does grant the General Assembly the authority to establish courts inferior to the Supreme Court, which shall possess such jurisdiction as may be prescribed in law. *See* R.I. CONSTIT., art. 10, §§ 1, 2; *Robinson, ante,* 972 A.2d at 157 (citing *Almonte, ante,* 644 A.2d at 300). This power is construed broadly. *Robinson, id.* (quoting *Byrnes, ante,* 456 A.2d at 744).

Given that they are "violations of state statutes relating to motor vehicles, littering and traffic offenses," the Traffic Tribunal is authorized to hear and decide both charges, as provided in G.L. 1956 § 8-8.2-2(a). Both

fall within the concurrent jurisdiction of the Tribunal and the municipal courts, as provided in the "State and Municipal Court Compact," found in Chapter 18 of Title 8 of the General Laws. G.L. 1956 § 8-18-3(a). But, since South Kingstown has not established a municipal court, the Traffic Tribunal is the proper venue for both charges. *See* § 8-18-3(b)(2) *and* Chapter 45-2 (codifying statutes creating municipal courts are codified).

C

The Legality of Rhode Island's Government

1

The Issue

We now come to the heart of Mr. Everett's appeal, his argument that Rhode Island's State Government has no right to prosecute him for these traffic violations because of his special status as a "Foreign National," who is a "Tribal Citizen of the Usquepaug Nehantick Nahaganset Tribe." *See Appellant's Memorandum of Law,* August 21, 2018, at 3. In addition, he argues even more sweepingly that that the entire governmental structure which is in place in Rhode Island is illegal and that all the lands upon which the State of Rhode Island sits are still owned by aboriginal peoples.

If true, Mr. Everett's argument suggests that everything that has been done by this government for almost nine score years — such as the

formation of regiments which were sent to serve with the Union Army in the Civil War, the enactment of laws, the incarceration of persons convicted of crimes, the levying and collection of taxes, the acquisition of property by eminent domain, the adjudication of civil and criminal matters by trial (the list could go on endlessly) — were done without authority by an illegal government. And so, we must ask a question which, thanks to the relative political stability of this nation for over two centuries, has seldom been asked in America — Does our state government have fundamental political legitimacy?

In my estimation, we may look to two sources to obtain an answer to this question: (1) the constitutional history of Rhode Island and (2) the U.S. Supreme Court decision which considered the validity of a state government, *Luther v. Borden,* 48 U.S. 1, 35 (1849). As it happens, these two sources are intertwined.

2

Rhode Island's Early Constitutional History and the "Dorr War"[2]

The European colonists who followed Roger Williams into Providence in 1636 initially governed themselves without a formal rule of

[2] The historical narrative which follows was drawn primarily from William G. McLoughlin, *Rhode Island: A History* (1978), particularly Chapter 4, regarding the political implications of 19th century industrialization in Rhode Island, entitled "Industrialization and Social Conflict," at 114 *et seq.*

government, until, in 1663, they received the Royal Charter of King Charles II. The Charter remained the fundamental law of Rhode Island for many years; not only throughout the remainder of the colonial period, but for more than a half-century after the adoption of the United States Constitution; indeed, Rhode Island was the only one of the original states which did not immediately adopt a new constitution after independence was declared. Instead, the Charter remained our foundational legal instrument until 1843, when a constitution was finally adopted. *See Narragansett Indian Tribe v. State,* 667 A.2d 280 (R.I. 1995); *City of Pawtucket v. Sundlun,* 662 A.2d 40, 44 (R.I. 1995).

But, the Charter departed only in the aftermath of insurrection, a remarkable event known as "the Dorr War," brought about by political and socio-economic factors more than legal ones, which caused there to be, for a time, two competing governments in Rhode Island. And so, before we discuss the Dorr War itself and the case it gave rise to, *Luther v. Borden,* some historical background is appropriate.

As the 18th century gave way to the 19th, Rhode Island, long a maritime power, became increasingly industrialized, due to the establishment of textile mills, which drew workers to the City of Providence and other budding mill towns. The mills flourished, and by the

1830's they had exhausted the available supply of native workers; as a result, foreign-born workers were needed to sustain their growth. *McLoughlin,* at 114-21.[3]

As the decade of the 1840's began, dissatisfaction with Rhode Island's Charter government was growing steadily, largely because it left the issue of suffrage to the General Assembly, which had limited the right to vote to freeholders, which disenfranchised many of the mill workers. Efforts to persuade the legislature to extend the franchise produced no results. And so, as the 1840's opened, only one-third of the State's white male inhabitants were able to vote. *McLoughlin,* at 127-128. The political influence of the residents of the City of Providence was further marginalized by the fact that representation in the General Assembly was not awarded based on population; for instance, Providence had only four representatives in the legislature out of seventy-two, while Newport had six. *McLoughlin,* at 126-27.

As a result of these sentiments, the Rhode Island Suffrage

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[3] The 1830's were the decade which saw the greatest growth in the textile industry; the number of textile workers grew from 9,071 in 1832 to 15,700 in 1860, a time when textile workers constituted one-third of the state's workforce (and, if the State's jewelry/metals manufacturers were counted, a full one-half of the state's workers were engaged in these industries. Between 1820 and 1860, the state's population increased by 154%; that of Providence, by 1,004%. *McLoughlin,* at 123-25.

Association was created in 1840. It grew rapidly, and was able, in 1841, to compel the General Assembly to call a constitutional convention. However, when only freeholders were permitted to vote for its delegates, the Association concluded that the Convention would be fruitless; and so, they decided to call their own convention, whose delegates would be elected by all adult, white, male citizens. *McLoughlin,* at 130-31.

The delegates to the "People's Convention," as it was dubbed, were elected at voluntary meetings. The delegates met and framed a constitution which gave the vote to every white male citizen twenty-one years old who met certain residency requirements. Of course, the officials of the Charter government considered it and its work-product to be utterly illegal. *McLoughlin,* at 130-32.

Simultaneously, the delegates to the authorized convention, called the "Landholders Convention," also met and drafted a new constitution, which we may call the "Landholder's Constitution." Under its provisions, the suffrage would be similarly extended, although the residency requirement was longer. But, while both constitutions expanded the representation for the urban communities, neither constitution would have reapportioned the legislature to the extent required by demographics; and neither extended the vote to black citizens. *Ibid.*

In December of 1841, an election to ratify the People's Convention was conducted by the Suffrage Association, and 13,944 white male citizens voted for it, a number which its backers claimed constituted a majority of that group. But the officials of the Charter government would not acknowledge the People's Constitution. Indeed, a few months later, in March, they conducted a ratification vote for the Landholders' Constitution, which failed to win adoption. *McLoughlin,* at 132-33.

Unbowed, the Charter government fought back. It requested and received a ruling from the Rhode Island Supreme Court rejecting the validity of the People's Constitution, and passed a law declaring that overt acts against the Charter government would be punishable as treason. Undeterred, the insurgents held elections and in May of 1842, in Providence, swore-in a new legislature and general officers, including Mr. Thomas W. Dorr as governor. And the Charter government did likewise, installing, in Newport, a new legislature and a slate of general officers, headed by Mr. Samuel King — giving Rhode Island two sets of officials. *McLoughlin,* at 133-34.

Governor King ordered the arrest of Governor Dorr, but he escaped to Washington, where he unsuccessfully sought the assistance of President Tyler. The Charter government General Assembly passed

resolutions declaring martial law and requesting federal troops; however, President Tyler declined to send aid immediately. On May 17, 1842, the Dorrites attacked the Providence arsenal; but the attack failed, and Dorr fled. He returned to Rhode Island on June 25th and gathered his forces in Chepachet, but later disbanded them when the state militia approached. With this, the Dorr War essentially ended, leaving the Charter government free to continue exercising its historical authority. *McLoughlin,* at 134-35.

However, these events motivated those in the Charter government to accede to some measure of reform. In January of 1842 the General Assembly called an additional, third, constitutional convention, which did meet and frame a Constitution for Rhode Island, which, after ratification by the people in November of 1842, went into operation in May of 1843. That Constitution expanded the suffrage. As amended, that is the Constitution under which we live today. *McLoughlin,* at 135-36.

3

Luther v. Borden

Inevitably, the end of hostilities did not mean the end of litigation. After Thomas Dorr returned to Rhode Island in October of 1843, he stood trial for treason before Rhode Island's Supreme Judicial Court and was convicted. He was sentenced to life imprisonment but was released after one year. *McLoughlin,* at 136. His defense, that his actions

were authorized by the democratically-expressed will of the people, was rejected by the Court. But this case was not appealed.

Instead, a civil case became the surrogate vehicle by which the Dorrites would have the opportunity to seek validation for their actions — an appeal from the Circuit Court of the United States for the District of Rhode Island (sitting as a trial court) regarding an action for trespass which had been brought, in October of 1842, by Mr. Martin Luther, a supporter of the Dorrite government, against Mr. Luther Borden and others, persons in the service of the Charter government, for breaking into Mr. Luther's home in order to arrest him, on June 29, 1842 (during the period when martial law had been declared). The case was tried in the November, 1843 term of the Court.

At the trial, Mr. Luther asserted that the Charter government was displaced when the Dorr government was formed in May of 1842, even though it never was able to exercise any authority, because it had been ratified by a large majority of the male people of the State, which plaintiffs offered to prove by the production of the original ballots. *Luther*, 48 U.S. at 38. However, the evidence was not admitted by the Court. *Id*. To the contrary, the Court instructed the jury that, at the time when the trespass was alleged to have been committed, the Charter government remained in

full force and effect. *Luther*, 48 U.S. at 38.

On appeal, the Supreme Court identified the propriety of this ruling as being the key issue in the case. *Ibid.* Understanding the ramifications of its resolution of this question — particularly if it decided that the Charter government had been displaced, thus rendering all its actions void — the Court concluded it should begin its analysis by examining its jurisdiction to address the question. *Luther*, 48 U.S. at 39.

The Court declared that the question before it "has not heretofore been recognized as a judicial one in any of the state courts." *Ibid.* Universally, when the other states enacted new constitutions, it was the political departments which determined whether the new constitution had been ratified. *Id.* The Court noted that when other persons were prosecuted for their actions in support of the Dorrite government, they posited the ratification of the People's Constitution as a defense, but such evidence was rejected. *Id.* The Rhode Island Courts had held that the judicial department was bound to take note of the decision on this issue which was made by the political branches of government. *Luther*, 48 U.S. at 39. And, no such change had been recognized by Rhode Island's state courts. *Id.*

At this point, the Supreme Court noted the quandary which

facing such a question presented for state court judges —

> Judicial power presupposes an established government capable of enacting laws and enforcing their execution, and of appointing judges to expound and administer them. The acceptance of the judicial office is a recognition of the authority of the government from which it is derived. And if the authority of that government is annulled and overthrown, the power of its courts and other officers is annulled with it. And if a State court should enter upon the inquiry proposed in this case, and should come to the conclusion that the government under which it acted had been put aside and displaced by an opposing government, it would cease to be a court, and be incapable of pronouncing a judicial decision upon the question it undertook to try. If it decides at all as a court, it necessarily affirms the existence and authority of the government under which it is exercising judicial power.

Luther, 48 U.S. at 40. But the Supreme Court observed that the trial of Mr. Dorr occurred *after* the Constitution of 1843 had taken effect, by judges holding authority under that constitution — a document whose validity was admitted by all parties and accepted by rulings of the Rhode Island judiciary. *Ibid.* It also noted that federal courts are bound to follow state court rulings on the validity of state laws and constitutions. *Id.*

The Court then declared that the establishment of voter qualifications was a decision for the political branches of government to decide, not the judiciary (unless, of course, a statutory or constitutional provision governing the question had been enacted). *Luther,* 48 U.S. at 41.

Regarding Mr. Luther's assertion that a majority of the voters ratified the People's Constitution and that, therefore, its officials were the true lawful authority, the Court held that such a proposition was unprovable, since the Court could not order a census of Rhode Island's freeholders to ascertain how a majority of that group voted. *Id*. at 42. What is more, the question of whether a majority of freeholders voted in a certain way was a question of fact, which a jury must decide; which would leave open the possibility of inconsistent verdicts as to which was the lawful government during the period in question, that under the People's Constitution or that established under the Charter. *Id*.

Next, the High Court considered whether Article IV, § 4 of the U.S. Constitution, which guarantees that every state will have a republican form of government, would impact the question. The Court began its guarantee-clause analysis by observing that, in the first instance, whether a particular state government meets that mandate is a question which Congress must decide, as when a State's newly elected Senators and Representatives are accepted by each body. *Luther,* 48 U.S. at 42. The Court also noted that when a state has requested assistance under the domestic violence clause of the same section, it is the Congress which had the authority to determine what response should be made, a power it had

delegated by Act of Congress of February 28, 1795. *Luther,* 48 U.S. at 42-43. And, in cases where there are competing groups claiming lawful authority, the President must first determine the rightful claimant. *Luther,* 48 U.S. at 43. Here, although the President did not send in the militia, he did express his support for the Charter government, which caused the armed opposition to withdraw. *Id.* And so, the Court was required to defer to the decision of the President in this matter. *Luther,* 48 U.S. at 44. And so, the Court let stand the judgment of the Circuit Court. *Luther,* 48 U.S. at 46-47.

And so, to this day, *Luther* is regarded as the origin of the doctrine pursuant to which the courts refrain from deciding political questions under the guarantee clause. *See* Note, *Political Rights as Political Questions: The Paradox of Luther v. Borden,* 100 HARV. L. REV. 1125, 1128 (1987); Ari J. Savitzky, Note, *The Law of Democracy and the Two Luther v. Bordens: A Counterhistory,* 86 N.Y.U. L. REV. 2028, 2030 (2011).

4

Resolution: Application of the Political Question Doctrine

The Court before which this matter pends is the District Court of the State of Rhode Island, which came into being on September 15, 1969 pursuant to an Act of the General Assembly, a body which possesses the legislative authority of this State. P.L. 1969, ch. 239, § 4. The General Assembly and the other elements of government which have been created by (or under) the Constitution have exercised governmental authority continually since 1843.

In the intervening years, its Representatives and Senators have been seated in the U.S. Congress, the rulings of its Supreme Court have been reviewed by the U.S. Supreme Court without question of their authenticity or provenance, its Regiments have served with the Union Army during the Civil War, its National Guard units has been called to federal service in overseas conflicts, its agencies have received federal funding. Internally, the governments established under the Rhode Island Constitution have, exclusively, conducted elections for state and municipal office, collected taxes, made arrests for criminal offenses, and incarcerated those convicted of such offenses, built roads and bridges, regulated professions and trades, insured compliance with health and safety

standards for food preparation, assisted those who are hungry, ill, and homeless, and performed a myriad of other functions to serve the public welfare. The government under the Constitution of 1843 has exercised authority in Rhode Island for 175 years. As instructed by the U.S. Supreme Court in *Luther,* we are bound to take cognizance of that fact.

5

First Alternative Resolution: Failure of Proof

However, even if the question presented was one within our ken, we would be required to find a failure of proof on this point, for Mr. Everett has failed to meet his duty to properly raise the issue — his burden of production. He has referred in his submissions to the Usquepaug Nehantick Nahaganset Tribe, but, at trial, he presented no testimony or evidence regarding the existence of that organization or whether it has been recognized by the proper authority.[4]

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[4] Under art. I, § 8, cl. 3 of the United States Constitution, Congress has the power to regulate commerce with Indian Tribes. However, Congress has established the Bureau of Indian Affairs within the Department of the Interior to manage day-to-day interactions with Native American tribes. *See Seneca-Cayuga Tribe of Oklahoma v. State of Oklahoma ex rel. Thompson,* 874 F.2d 709, 712 (10th Cir.1989) *and* 25 U.S.C. § 2 (granting authority to Commissioner of Indian Affairs for "the management of all Indian affairs and of all matters arising out of Indian relations."). This includes the authority to grant recognition to tribes who seek it. *See James v. United States Department of Health and Human Services,* 824 F.2d 1132, 1136 (D.C.Cir.1987) (citing 25 C.F.R. § 83.2 *et seq.*); *and, for an example of such a finding, see Final*

Appellant reminds us that the officer testified that Mr. Everett showed him a tribal identification; but the officer's testimony cannot, as he urges, constitute an *acknowledgment* of the tribe's existence or authority binding on the judiciary. The officer did not even purport to make such a finding. And, in any event, a municipal police officer, while an agent of the State, has no such power to bind the State.[5] and, if was so empowered, any such state incursion into federal authority would undoubtedly be viewed as a nullity. In any event, Mr. Everett failed to properly raise and preserve the issue on the record.

Determination for Federal Acknowledgement of Narragansett Indian Tribe of Rhode Island, 48 F.R. 6177-05, 1983 W.L. 124535 (Feb. 10, 1983) (recognizing the Narragansett tribe). Any such determination made by the executive department is binding on the (federal) judiciary. *James,* 824 A.2d at 1137 (citing *United States v. Holliday,* 70 U.S. 407, 419 (1865)). Moreover, a decision made by the (federal) executive department to recognize an Indian tribe is binding upon the states as part of the supreme law of the land. *Seneca-Cayuga Tribe, id.* (citing U.S. CONSTIT., art. VI, cl.2 (supremacy clause)).

[5] In any event, as explained *ante*, at n.4, a state's authority to recognize a Native American tribe is likely nonexistent.

6

Second Alternative Resolution: Failure to Notify the Attorney General of a Constitutional Challenge

Under this heading, we have addressed, in a respectful manner, the implications of Mr. Everett's jurisdictional argument. We have described it, accurately I believe, as challenging the foundation of Rhode Island's state government — our Constitution; but he is also challenging the traffic laws found in Title 31 of the General Laws and the statutes establishing Rhode Island's inferior courts, including the Traffic Tribunal, which may be found in Title 8. This is significant, because, under Rhode Island law, when a party, in any case, challenges the constitutionality of a statute, that party must notify the Attorney General. G.L. 1956 § 9-30-11 provides, in pertinent part:

> … In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

See also Owner-Operators Independent Drivers Association v. State of Rhode Island, 541 A.2d 69, 71 (R.I.1988) (finding compliance with § 9-30-11 in state tax appeal brought pursuant to § 42-35-15). Our Supreme Court

has said that the mandates of the statute must be strictly followed and construed. *Brown v. Samiago,* 521 A.2d 119, 121 (R.I. 1987).

I have reviewed the electronic record of the case before the Traffic Tribunal and the case before this Court; in neither do I find a notation that the Department of the Attorney General has been served. Accordingly, all Mr. Everett's arguments which question the validity of Rhode Island statutes must be disregarded.

D

Jurisdictional Issue Based on Mr. Everett's Status as a Foreign National

Mr. Everett also argues that, as a member of his tribe the Tribunal had no jurisdiction over him, since the State has acknowledged his tribal citizen status; he also reminds us that Native American Tribes enjoy sovereign immunity and that Rhode Island has not assumed criminal jurisdiction over Native American lands, as is permitted under federal law. *See Appellant's Memorandum,* at 3; *Appellant's Reply Memorandum,* at 4 (citing 18 U.S.C. § 1162).

Notwithstanding his assertion to the contrary, our Supreme Court's decision in *Garvin, ante,* does control the outcome of his jurisdictional argument. The *Garvin* Court held that, notwithstanding the

motorist's claim that he was a "sovereign state citizen," he was nonetheless subject to traffic laws of the State when travelling on public highways. *Garvin,* 945 A.2d at 824.

And, as stated *ante* in our treatment of Appellant's first claim of error, Mr. Everett failed to satisfy his burden of production as to this issue. No documents demonstrating his status as a tribal citizen were introduced; there was no authenticating testimony. And so, this argument was properly rejected by the trial magistrate.

But, even if the issue had been properly preserved, it would have been, ultimately, to no avail. The appeals panel was correct when it observed that Native Americans are subject to state law when they leave tribal lands. Indeed the U.S. Supreme Court declared in 2001 that it was "well-established in our precedent that States have criminal jurisdiction over reservation Indians for crimes committed … off the reservation." *Nevada v. Hicks,* 533 U.S. 353, 362 (2001) (citing *Mescalero Apache Tribe,* 411 U.S. at 148-49); *Puyallup Tribe, ante,* 391 U.S. at 398. *See also* John W. Gillingham, *Pathfinder: Tribal, Federal, and State Court Subject Matter Jurisdictional Bounds: Suits Involving Native American Interests,* 18 AM. INDIAN L. REV. 73, 102 (1993).

Mr. Everett's citation of *Kiowa Tribe* is inappropriate. That case

concerned, not the immunity of an individual *member* of a tribe, but the sovereign immunity of a *tribe itself* — ruling that "an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe,* 523 U.S. at 754 (citing *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering,* 476 U.S. 877, 890 (1986); *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58 (1978); *United States v. United States Fidelity & Guaranty Co.,* 309 U.S. 506, 512 (1940)). Quite simply, the fact that *tribes* may enjoy sovereign immunity does not mean that *tribal members* do as well.

Appellant's reference to 18 U.S.C. § 1162 is similarly inapt. That statute gives states the authority to assume criminal jurisdiction on Native American lands under certain circumstances. Mr. Everett does not claim that this event occurred on Native American lands, except insofar as he urges that all the lands in (what we call) Rhode Island is still owned by aboriginal peoples; but this argument was addressed and rejected *ante.*

Finally, and as the Town argued in its Memorandum, the statutes creating both charges indicate by their terms that they apply in the broadest possible manner. Section 31-22-22(g) applies to "any" person operating a motor vehicle and § 31-10-27 applies to all "licensees." Appellant, therefore, falls within the ambit of coverage set forth in both

statutes.

E

Appellant's Invocation of this Court's Equity Jurisdiction

Finally, in his third argument, Mr. Everett asks that this case be transferred into strict equity jurisdiction. *Appellant's Memorandum,* at 4. This cannot be done. This case comes to us by way of the Rhode Island Administrative Procedures Act and the grounds for reversal are enumerated therein, as may be seen in Part II, *ante,* at 13-14. *See* § 42-35-15(g). Under the statute, the remedies available are limited to four: affirming the panel, reversing it, remanding the matter back to the panel, and modifying its judgment. Since, for the reasons stated *ante* I have concluded that affirmance is the proper outcome in this case, we need not speculate concerning whether this Court is cloaked with additional equity powers when handling appeals from the Tribunal.[6]

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[6] One may plausibly assert that when handling appeals from the Tribunal, this Court may well have expanded equity powers to the extent necessary to do justice, given that § 31-41.1-9(d) is a reflection of § 42-35-15(g), and the Supreme Court ruled, with regard to tax cases, in *Owner-Operators Independent Drivers Association v. State of Rhode Island,* 541 A.2d 69, 73-74 (R.I.1988) that the Court does have equity powers necessary to grant full relief. As yet, this issue remains undecided.

V
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appellate panel was made upon lawful procedure and was not affected by error of law. G.L. 1956 § 31-41.1-9. Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. *Id*. Accordingly, I recommend that the decision of the appeals panel be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

February 27, 2019