

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

CHRISTOPHER MORISSETTE  
and related cases<sup>1</sup>

C.A. No. T07-0041

09 OCT 16 PM 4:14  
STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

<sup>1</sup>Erick Gonsalves, C.A. No. T07-0042; Abel Pedroso, C.A. No. T07-0043; Gail Campbell, C.A. No. T07-0044; Brian Noonan, C.A. No. T07-0046; Mark McClure, C.A. No. T07-0047; Stephen Moore, C.A. No. T07-0048; Eddie Kelly, C.A. No. T07-0049; Richard Ellis, C.A. No. T07-0051; Jillian Thurston, C.A. No. T07-0053; Jason Haley, C.A. No. T07-0054; James Toppa, C.A. No. T07-0055; Edward Palumbo, C.A. No. T07-0056; C. Balasubramanian, C.A. No. T07-0057; Charles Miller, C.A. No. T07-0058; Paul Filippo, C.A. No. T07-0059; Shawn Bazinet, C.A. No. T07-0065; Britt Columbo, C.A. No. T07-0066; Douglas Pascue, C.A. No. T07-0068; Daniel Leonard, C.A. No. T07-0073; Maria Rego, C.A. No. T07-0074; Christopher Swann, C.A. No. T07-0075; Sarah Jette, C.A. No. T07-0076; Hovanes Nshanian, C.A. No. T07-0077; Daniel Forlasto, C.A. No. T07-0080; Daniel Movsesian, C.A. No. T07-0081; Leslie Pratt, C.A. No. T07-0082; Melissa Mancini, C.A. No. T07-0085; Bryan Muniz, C.A. No. T07-0084; Michael Dusza, C.A. No. T07-0096; Richard McGuire, C.A. No. T07-0097; Alicia St. Jean, C.A. No. T07-0098; Richard Nahas, C.A. No. T07-0099; Richard Porter, T07-0101; Peter Lyons, T07-0102; Kristen Roy, C.A. No. T07-0104; Robert Golde, C.A. No. T07-0105; Joseph Verri, C.A. No. T07-0106; Jeremy Benevides, C.A. No. T07-0107; Heather Sosnicki, C.A. No. T07-0108; Mary-Ann Gadbois, C.A. No. T07-0124; Nathan Camara, C.A. No. T07-0125; John Ellis, C.A. No. T07-0126; Diana Afonso, C.A. No. T07-0127; Pamela McKeen, C.A. No. T07-0129; Kevin Silva, C.A. No. T07-0131; James Greenbaugh, C.A. No. T07-0132; Leslie Haley, C.A. No. T07-0133; Christian Neamtu, C.A. T07-0134; Regina Gadoury, C.A. No. T07-0135; Antonio Ramirez-Diaz, C.A. No. T07-0136; Patrick McConaghy, C.A. T07-0137; Robert Conway, C.A. No. T07-0138; Lee DiGiovanni, C.A. No. T07-0139; Steven Melo, C.A. No. T07-0140, appeared before Parker, J, Chair, DiSandro, M and Ciullo J. Per stipulation of the parties, the following cases, Eric Ahlberg, C.A. No. T07-0027 and Robert MacDonald, C.A. No. T06-0175, have been stayed pending the outcome of the Supreme Court's decision in Such vs. State of Rhode Island, No. 2006-5840, January 18, 2007, Fortunato, J., in which Ahlberg and MacDonald are intervening parties. On August 1, 2007, Ciullo, J, Chair, DiSandro, M, and Noonan, M; granted the request of William Keating, C.A. No. T07-0062, to be included in the instant decision.

On April 11, 2007, Roger Norrgard, C.A. No. T07-0064, appeared before Ciullo, J, Chair, DiSandro, M and Noonan, M.

On May 30, 2007, Robert Brisson, C.A. No. T07-0119, appeared before Noonan, M, Chair, Parker, J and Almeida, J.

On July 11, 2007, Jose Brum, C.A. No. T07-0103, appeared before DiSandro, M, Chair, Parker, J and Almeida, J.

On August 29, 2007, the following parties appeared before Noonan, M, Chair, DiSandro, M and Ciullo, J: Edward Petrucci, C.A. No. T07-0154; Richard Crowell, C.A. No. T07-0155; Nicole Cianci, C.A. No. T07-0163; Leah Coffey, C.A. No. T07-0164; Justin Poland, C.A. No. T07-0165; Nancy Terry, C.A. No. T07-0166; Allie Quattrocchi, C.A. No. T07-0167; Joanne Santopietro, C.A. No. T07-0067; John Littlefield, C.A. No. T07-0079; Matthew Sheriden, C.A. No. T07-0022.

On October 3, 2007, the following parties appeared before Parker, J, Chair, DiSandro, M and Noonan, M: Frank Lombardo, C.A. No. T07-0176; Nicholas Giacobbi, C.A. No. T07-0178; Carlos Chicas, C.A. No. T07-0179; Angel Danzot, C.A. No. T07-0182; John Padien, C.A. No. T07-0214.

On September 12, 2007, Daniel McGovern, C.A. No. T07-146 appeared before DiSandro, M, Chair, Parker, J, and Noonan, M.

On October 10, 2007, Heidi Hogan, C.A. No. T07-0180, appeared before Parker, J, Chair, Noonan, M and DiSandro, M.

## DECISION

**PER CURIAM:** Before this Panel on June 13, 2007, Judge Parker (Chair), Judge Ciullo, and Magistrate DiSandro sitting, is the State's appeal from Judge Almeida's decision, dismissing a violation of G.L. 1956 § 31-27-2.1, "Refusal to Submit to a Chemical Test" (hereinafter "refusal statute"). Appellee was represented by counsel.<sup>2</sup> Counsel for the State was present before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

## FACTS AND TRAVEL

The motorist, Christopher Morissette, was arrested by a Richmond police officer on December 8, 2006, on suspicion of driving while under the influence of alcohol. Morissette was brought to the police station and asked to submit to a chemical test. After the arresting officer advised Morissette his rights for use at station, including the penalties for a refusal, Morissette refused to submit to a chemical test and was cited for violating section 31-27-2.1. In each of the cases listed in this consolidated appeal the Appellee was charged with violating section 31-27-2.1. Morissette and each Appellee in this consolidated appeal filed a pre-trial motion to dismiss on the basis they were not properly apprised of the correct penalties prior to their election to refuse the chemical breath test. In each case, excepting those referenced below, Judge Almeida granted the pre-trial motion to dismiss. The State filed an appeal of that decision.

With respect to the following cases: Edward Palumbo, C.A. No. T07-0056; C. Balasubramanian, C.A. No. T07-0057; Robert MacDonald, C.A. No. T06-0175; William Keating, C.A. No. T07-0062; Roger Norrgard, C.A. No. T07-0064; Daniel McGovern, C.A. No. T07-0146; John Padien, C.A. No. T07-0214; Michael O'Leary, C.A. No. T07-0120; Sharon

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<sup>2</sup> In each of the cases listed in this consolidated appeal, each Appellee was represented by counsel, with one exception, Antonio Ramirez-Diaz, T07-0136, who appeared pro se.

With respect to the following cases: Edward Palumbo, C.A. No. T07-0056; C. Balasubramanian, C.A. No. T07-0057; Robert MacDonald, C.A. No. T06-0175; William Keating, C.A. No. T07-0062; Roger Norrgard, C.A. No. T07-0064; Daniel McGovern, C.A. No. T07-0146; John Padien, C.A. No. T07-0214; Michael O'Leary, C.A. No. T07-0120; Sharon Corcoran, C.A. No. T07-0174; Jennifer Conti, C.A. No. T07-0200; Sarah Renzi, C.A. T07-0125; Donald Greenslit, C.A. No. T07-0219, Roscuse Muse, C.A. No. T07-0226, Robert Brisson, C.A. No. T07-0119, and Jose Brum, C.A. No. T07-103, the trial judge sustained the violations and imposed the enhanced sanctions as specified in P.L. 2006. Ch. 232. In those cases, the motorists filed timely appeals challenging the enhanced penalties imposed by the trial judge. With respect to Edward Palumbo, C.A. No. T07-0056 the trial judge sustained the violations, imposed the minimum monetary sanctions as specified in P.L. 2006. Ch.232, but limited the period of license suspension to a three month period. In this case, the State has filed a timely appeal, challenged imposition of the three month period of license suspension only, and sought to have the enhanced suspension period of six month imposed.

On appeal, the central issue is whether the Appellees were informed of the correct penalties for a violation of the refusal statute. Because the issue is limited in scope and is not dependent on the factual circumstances of each case, this Panel rules in this decision with respect to all of the cases which were heard before the Appeals Panel on June 13, 2006 and subsequent dates, and all other above-entitled cases which present the same issues of law.

The trial judge dismissed each of these cases by pre-trial motion on the premise that a basic requirement of section 31-27-2.1 was not satisfied: "that the person had been informed of the penalties incurred as a result of noncompliance with this section." Judge Almeida found that

the Appellees had been improperly advised of the length of license suspension they would receive if they refused to take the chemical test.

This Panel listened to the arguments presented by the Appellees and the State at a hearing on June 13, 2007 and subsequent hearing dates. At the conclusion of the hearings, this Panel reserved judgment and took the matter under advisement. Forthwith is this Panel's decision.

### STANDARD OF REVIEW

Pursuant to G.L. 1956 § 31-41.8-8(f), the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

However, "[t]he appeals panel lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). The Panel may only reverse a decision of a hearing judge or magistrate if it "determines that the decision is 'clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record' or is affected by 'error

of law[.]” Link, 633 A.2d at 1348 (quoting Sections 31-43-4(6)(d) and (e)) (citing Section 31-43-4(6)) (further citations omitted).

## ANALYSIS

### A

#### Statutory Interpretation of G.L. 1956 § 31-27-2.1

Appellees argue that they were not informed of the proper penalties for refusing to submit to a chemical test. They aptly note that before the court may find a motorist guilty under the refusal statute, the prosecution is required to prove that the motorist was informed of the penalties for refusing to submit to a chemical test. Section 31-27-2.1(c) states in pertinent part as follows:

If a 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. (Emphasis added.)

Pointing to the recent legislative history of section 31-27-2.1, as well as a recent Superior Court decision regarding said issue, Appellees contend that they were apprised of penalties from a repealed version of section 31-27-2.1, and not those penalties which have been in effect since July 1, 2006.

This Panel notes the recent legislative history of the refusal statute as follows. On June 28, 2006, the refusal statute was amended by P.L. 2006, Ch. 232 to reflect an enhanced penalty scheme for refusals, which includes lengthier license suspension periods and criminal penalties for multiple offenses.<sup>3</sup> For instance, a first time adjudicated offense warrants a six (6) to twelve (12) month license suspension period, and a second adjudicated offense becomes a criminal misdemeanor which provides for up to six (6) months of incarceration. The former section 31-27-2.1—which we will refer to as the “pre-June 28<sup>th</sup> refusal statute”—was strictly a civil statute, that mandated only a three (3) to six (6) month license suspension period for a first time adjudicated offense.

Several days later, on June 30, 2006, the state’s appropriations bill, P.L. 2006, Ch. 246 was signed into law. Article X of the bill contained a monetary penalty to the refusal statute, a two-hundred dollar (\$200) assessment fee to the Department of Health (“DOH”) to support its chemical testing programs.<sup>4</sup> The Article X amendment created the instant controversy as the drafters added the \$200 assessment provision into the text of the prior version of 31-27-2.1, although the statute was amended on June 28<sup>th</sup> to reflect an enhanced penalty scheme.

Subsequent to these amendments, each police department in the state was given a revised copy of the Rights for Use at the Station and Rights for Use at the Scene form to reflect the penalty provision from the June 28<sup>th</sup> amendments, as well as the \$200 DOH fee. See supra at 9. These rights forms are read by a law enforcement officer to a motorist who is asked to submit to a chemical test. Based on the information contained in the rights forms, including the penalties

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<sup>3</sup> P.L. 2006, ch. 232, § 1 (eff. June 28, 2006), passed in the Senate on June 23, 2006, passed in the House on June 24, 2006, and was signed into law by the Governor on June 28, 2006. P.L. 2006, ch. 235, § 1 (eff. June 28, 2006), passed in the House on June 23, 2006, passed in the Senate on June 24, 2006, and was signed into law by the Governor on June 28, 2006.

<sup>4</sup> P.L. 2006, ch. 246, Art. X, § 1 (eff. July 1, 2006), passed in the House on June 19, 2006, passed in the Senate on June 23, 2006, and was signed into law by the governor on June 30, 2006.

for refusing, the motorist must decide whether or not to submit to a chemical test. In the instant appeal, the Appellees argue that the rights forms were incorrect.

For support, Appellees cite to the recent Superior Court decision, Such v. State of Rhode Island, C.A. No. 2006-5840 (January 18, 2007), in which several motorists who were charged with violations of the refusal statute brought a declaratory judgment action in Superior Court. The motorists argued that the Article X provision of the Budget Bill passed on June 30<sup>th</sup> repealed by implication the revised penalty scheme, which took effect on June 28<sup>th</sup>. As a result, they maintained, they were read the incorrect penalties in violation of the refusal statute. Justice Stephen Fortunato granted the plaintiffs' motion for summary judgment finding as follows:

- (1) That Article X of P.L. 2006, ch. 24 that amended § 31-27-2.1 of the Gen. Laws of R.I., that was passed by the Legislature and signed into law by the Governor on June 30, 2006, repealed by implication P.L. 2006, ch. 232 . . . .
- (2) That Art. X of P.L. 2006, ch. 246 that was signed into law on June 30, 2006 and became effective on July 1, 2006 is the controlling statute.

Such, C.A. No. 2006-5840 (Order). Justice Fortunato's decision was timely appealed to the Rhode Island Supreme Court, which issued a stay of the decision.

In the instant proceeding, the motorists sought a stay of this Panel's decision pending the appeal before the Supreme Court. In the alternative, they asked the Panel to follow Justice Fortunato's interpretation and uphold Justice Almeida's decision and find that the motorists were read the incorrect penalties as a result of the repeal by implication.

In opposition, the State, which is awaiting the upcoming appeal of the Such decision, contends that Justice Fortunato and Justice Almeida's decisions were in error. The State made a number of arguments to suggest that no repeal by implication occurred and that the statutes are easily harmonized. To start, the State notes that the fundamental canons of statutory construction

favor harmonization of statutes and disfavor repeal by implication. To find the statute repealed by implication, the State argues, would lead to an “absurd result,” which all courts should avoid. Moreover, the State points out that chronologically, the General Assembly passed the Budget Bill before the refusal statute, although the Governor signed into law the refusal statute before the budget bill. Thus, no repeal by implication could have been intended by action on the floor of the General Assembly. To find a repeal, the State maintains, requires a disregard of the House rules.

The State reasons that the version of section 31-27-2.1 that was enacted on June 28<sup>th</sup> reflects the appropriate penalty scheme, whereas, the July 1<sup>st</sup> amendment merely imposed an additional fine under the statute. Moreover, the State points to a compiler’s note by the law revision office, which states that the amendments are not in conflict with one another. Although the State recognizes that the law revision director has no authority to alter the substantive law in a compiler’s note, the State presupposes that it is indicative of the legislative intent to incorporate the \$200 DOH assessment fee as an additional penalty to the June 28<sup>th</sup> penalties.

This Panel notes that it has previously ruled on this issue. In Little Compton v. Voelker, T06-0131 (RITT 2006), the Panel, comprised of Magistrate Noonan, Judge Ciullo, and Magistrate DiSandro, stated, “[t]his Panel reads both sections [the Refusal Act and the Budget Act] together, concluding that the June 28<sup>th</sup> amendments, as well as the June 30<sup>th</sup> impositions of the \$200 DOH fee are valid.” Although the central issue in Voelker was reversed on appeal, the District Court reinforced the Panel’s interpretation of the refusal statute. The Appeals Panel recently restated its position that no repeal by implication occurred in City of Warwick v. Jacklyn Ross, C.A. No. T07-0040 (March 28, 2007) and Town of Warren v. Christopher

Heywood, C.A. No. 07-0070.<sup>5</sup> In so deciding, the Panel followed the plethora of cases from our Supreme Court which state that “repeals by implication are not favored.” Lynore Horn v. Southern Union Co. et al., No. 2006-217-M.P., slip op. at 7 (R.I., filed June 27, 2007) (quoting Providence Electric Co. v. Donatelli Building Co., 116 R.I. 340, 344, 356 A.2d 483, 486 (1976); see also Shelter Harbor Fire District v. Vacca, 835 A.2d 446, 449 (R.I. 2003) (Court held that “[i]t is also true that repeals by implication are not favored and courts should attempt to construe two statutes that are in apparent conflict so that, if at all reasonably possible, both statutes may stand and be operative.”); Town of Johnston v. Santilli, 892 A.2d 136 n.16 (R.I. 2006) (J. Robinson dissenting).

As the State suggests, the rules of statutory construction will allow for only one interpretation—that is the harmonization of the amendments to the refusal statute. The Panel finds overwhelming evidence of the General Assembly’s intent to enhance the penalty scheme for motorists who refuse to submit to a chemical test. Likewise, there was no issue when the Law Revisions Office compiled the statute.<sup>6</sup> The recently codified section 31-27-2.1(b) lists the proper penalties for a first time offense as follows:

- (1) Impose for the first violation a fine in the amount of two hundred dollars (\$200) to five hundred dollars (\$500) and shall order the person to perform ten (10) to sixty (60) hours of public community restitution. **The person’s driving**

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<sup>5</sup> In both the Ross and Heywood decisions, the Appeals Panel was comprised of Magistrate DiSandro, Magistrate Noonan, and Judge Almeida. However, Judge Almeida dissented in both decisions, pronouncing instead that she would follow the reasoning in Such v. State of Rhode Island.

<sup>6</sup> The Compiler’s Notes to section 31-27-2.1 state as follows:

P.L. 2006, ch. 232, § 1, and P.L. 2006, ch. 235, § 1, enacted identical amendments to this section.

This section was amended by three acts (P.L. 2006, ch. 232, § 1; P.L. 2006, ch. 235 § 1; P.L. 2006, ch. 246, art. 10, § 1) passed by the 2006 General Assembly. Since the changes made by the acts are not in conflict with each other, this section is set out as amended by all three acts.

license in this state shall be suspended for a period of six (6) months to one year. The traffic tribunal judge shall require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for the individual.

(5) . . . a highway safety assessment of five hundred dollars (\$500) shall be paid by any person found in violation of this section . . . .

(6) . . . a two hundred dollar (\$200) assessment shall be paid by any person found in violation of this section to support the department of health's chemical testing programs outlined in § 31-27-2 (4) . . . . (Emphasis added.)

The June 28<sup>th</sup> amendments and the July 1<sup>st</sup> amendment can be read in harmony together to reflect the appropriate penalty scheme, which is the penalty scheme that was read to the motorists by the police officers from the Rights for Use at the Scene and Rights for Use at the Station Forms. Therefore, this Panel rejects Appellees' argument that the June 28<sup>th</sup> amendments were repealed by implication on July 1<sup>st</sup>, or that the penalties that they were read by the officer were erroneous.

## B

### The \$200.00 Department of health Issue

It is well known that after the June 30<sup>th</sup> appropriations bill was signed into law, some of the police stations in the state continued to use rights at station forms which failed to include the newly added \$200.00 fee appropriated for the Department of Health. In a number of cases, the trial judge dismissed the refusal charge when the motorist was informed of all the penalties (pursuant to the June 28<sup>th</sup> amendments) except the \$200.00 Department of Health assessment fee. A Prior Appeals Panel affirmed the decision of the trial judge, finding that the trial judge lacked the statutory authority to impose some, but not all of the mandated sanctions under section 31-27-2.1 See Town of Little Compton v. Voelker (T-06-0131).

Within this consolidated appeal, there are several Appellees who contend they were not informed of the \$200.00 Department of Health assessment fee as well. Here, the trial judge applied the decision of the appeals panel and dismissed the refusal charge when the motorist was not informed of all the penalties for non-compliance with the refusal statute. Since that decision, however, the Chief Judge of the District Court has reversed Voelker and related cases by interpreting Levesque v. R.I. Department of Transportation, 626 A.2d 1286 (R.I. 1993) to find that the motorist in that line of cases, if adjudicated guilty of the offense, should be subject to all the penalties to which they were informed, except the \$200.00 assessment fee, which may not be imposed. Accordingly, the Panel adopts the reasoning of the District Court decision to dismiss any and all of the cases in which the \$200.00 assessment fee was at issue.

### CONCLUSION

Upon review of the entire record and the oral arguments presented, this Panel finds Judge Almeida's decisions in granting the pre-trial motions to dismiss finding each Appellee was not properly apprised of the correct penalties prior to their election to refuse the chemical breath test was both clearly erroneous and in excess of her statutory authority. Accordingly, in those cases where State has appealed Judge Almeida's dismissal, this Panel grants the State's appeal, reinstates the charges against the Appellees, and remands those cases to the trial calendar for hearings. In those cases where the motorist has appealed the trial judge's imposition of the enhanced sanctions as contained in P.L. 2006. Ch. 232, this Panel finds the trial judge's decision was not clearly erroneous or in excess of their statutory authority. Substantial rights of Appellees have not been prejudiced and those appeals are hereby denied with instruction that all sanctions

imposed by the trial judge are ordered to remain in effect. As to those cases where State has appealed contesting only the period of license suspension imposed by Judge Almeida, States appeal is hereby granted, and the sanctions imposed by Judge Almeida are hereby amended to include the enhanced penalty of a six month suspension of license. All other sanctions as imposed by Judge Almeida in those cases are to remain in effect.

ENTERED: