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

Christopher Boffi	:	
	:	
v.	:	**A.A. No. 22-8**
	:	
State of Rhode Island,	:	
(RITT Appeals Panel)	:	

JUDGMENT

This cause came before O'Neill, J. on Administrative Appeal, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Appeal Panel is affirmed.

Dated at Providence, Rhode Island, this 20th day of June, 2024.

Enter: By Order:

_____/s/_____ _____/s/_____

STATE OF RHODE ISLAND **DISTRICT COURT**
PROVIDENCE, SC. **SIXTH DIVISION**

Christopher Boffi	:	
	:	
v.	:	**A.A. No. 2022-8**
	:	**Summons No. 20-203-501257**
State of Rhode Island,	:	**20-203-501258**
(RITT Appeals Panel)	:	

DECISION

O'Neill, J. In this case, Christopher Boffi filed an appeal of a decision of the Rhode Island Traffic Tribunal Appeals Panel which upheld a Trial Magistrate's decision that Mr. Boffi had violated the provisions of Rhode Island General Law §31-27-2.1 (Refusal to submit to a Chemical Test) as well as Rhode Island general law §31-22-21.1 (Prescence of Alcohol in a Motor Vehicle). Jurisdiction to hear and decide appeals from decisions made by the Traffic Tribunal Appeals Panel is vested in the District Court by G.L 1956 § 31-41.1-9. Employing the standard of review found in G.L 1956 § 31-41.1-9, I find that the decision of the Rhode Island Traffic Tribunal is supported by substantial evidence of record and was not affected by error of law; therefore the Panel's decision be AFFIRMED.

I
FACTS AND TRAVEL OF THE CASE

A
The Incident

Mr. Christopher Boffi "Appellant" was operating a motor vehicle in Warwick, R.I. on February 26, 2020 and he was involved in an accident in the area of 1600 Post Road in the City of Warwick. *Appeals Panel Decision* at pg. 2. Officer Paris Norwood testified that he responded to the scene of the accident and reported seeing an accident scene that involved two motor vehicles and a utility pole. *Id* at pg. 3. Officer Norwood further reported that he approached Appellant and detected a strong odor of alcoholic beverage emanating from his mouth, bloodshot watery eyes and slurred speech. *Id.* at pg 4. Officer Norwood asked to speak to Appellant further in a safer location away from the roadway and Officer Norwood further observed that Appellant appeared unsteady on his feet. *Id.* Officer Norwood asked Appellant about what happened leading up to the accident and during that conversation the Officer asked Appellant if he had consumed any alcohol recently, to which Appellant initially replied that he had not, but later as the conversation continued, Appellant did admit to consuming wine that day. *Id.* Officer Norwood asked Appellant if he would participate in a series of field sobriety tests, to which Appellant consented to. *Id.* After two tests were initiated a third test was not administered due to Officer Norwood determining that Appellant was not in a condition to perform any further field sobriety tests. *Id.* at pg. 5. After the conversations with Appellant and the Officer's observations of Appellant, Officer Norwood placed Appellant under arrest for suspicion of operating under the influence of an intoxicating liquor in violation of R.I.G.L §31-27-2. *Id.* at pgs. 5-6.

B
The Trial

A trial commenced in this case on April 16, 2021. On that date, the State offered Officer Norwood as a witness to the investigation that lead to the arrest of Appellant. *Appeals Panel Decision at pg. 2*. The officer was examined by the State and the officer testified about the interactions, observations and the field sobriety tests that were administered to Appellant. *Appeals Panel Decision at pgs. 2-6*. After the direct examination of Officer Norwood, the trial Magistrate took a recess in the proceedings and inadvertently left the recording on during that recess. *Id at 6*. When the Magistrate came back to resume the trial, the recording device he thought to be off was still recording and when he thought he was activating the recording, he was, in fact, shutting it off. Hence, the cross examination of Officer Norwood and the entire testimony of another Warwick police officer was not captured on a recording. *Id.* It appears that at the conclusion of testimony on April 16, 2021 the matter was scheduled to resume on April 23, 2021, *Id.*

On the next scheduled date, April 23, 2021, the trial was due to resume and before any testimony was taken, the Trial Magistrate addressed the issue raised by Appellant's counsel that the recording was shut off for the remainder of the proceedings on April 16, 2021. *Trial Transcript from April 23, 2021* at pgs. 1-8. The Magistrate pointed out the Traffic Tribunal rules of procedure and correctly stated that the fact that there was a lack of a recording that would only be addressed if one of the parties sought to appeal the final decision of the magistrate. *Trial Transcript from April 23, 2020* at pg. 7. After that discussion, the Magistrate heard from Appellant's counsel on a motion to dismiss the charges after the close of the State's case. *Trial Transcript from April 23, 2020* at pg. 9. The Trial Magistrate

granted Appellant's request to dismiss two of the four violations that were originally charged, and those were Turn Signal Required and Operating with No Proof of Insurance. *Trial Transcript from April 23, 2020* at pg. 20. The Trial Magistrate sustained the two other citations and those were the Refusal to Submit to a Chemical Test and the Prescence of Alcohol in a Motor Vehicle. *Trial Transcript from April 23, 2021* at pg. 23-24. Appellant then proceeded with his case and called a Doctor Sparadeo, an expert in the area of the determination and diagnosis of concussions. Dr. Sparadeo testified that in his opinion that Appellant may have been suffering the effects of a second concussion in a short period of time and that could render Appellant to fully understand and comprehend the rights which were read to him and that he could not have knowingly refused to submit to a chemical test. *Trial Transcript of April 23, 2021* at pg. 80. After all the evidence presented, the Trial Magistrate found that the State had met its burden, as he had done after the motion to dismiss and that there was not enough doubt raised by Appellant's presentation of Dr. Sparadeo and he sustained those two remaining citations. Appellant then filed an appeal of that decision to the Rhode Island Traffic Tribunal Appeals Panel.

C
The Decision of the Appeals Panel

Appellant filed a timely appeal of the final decision of the Trial Magistrate which was heard by the Traffic Court Appeals Panel on October 27, 2021.[1] The Panel addressed four issues that Appellant raised in his notice of appeal and memorandum. The four issues

[1] Decision of Appeals Panel at pg. 1.

discussed by the Panel were (1) The Trial Magistrate's Credibility Determination;[2] (2) the sufficiency of findings of the refusal to submit to the chemical test;[3] (3) the sufficiency of findings of the presence of alcohol citation;[4] and (4) the recording error that occurred during the trial.[5]

D
Trial Magistrate's Credibility Determinations

The Panel addressed Appellant's argument that the Trial Magistrate should not have relied on Officer Norwood's testimony because the in-court testimony differed from a report Officer Norwood wrote on the day of the arrest of Appellant. *Decision of Appeals Panel* at pgs. 13-14. Specifically, Appellant argued that Officer Norwood's testimony regarding the pupil size of Appellant. *Id* at 14. Officer Norwood testified that the pupils of Appellant were equal at the time of his discussions with Appellant at the time of the incident, however the officer wrote in his report after the arrest that appellant did not have equal pupil size. *Id.* The Panel relied heavily on *Link v. State (633 A. 2d 1345 (*R.I. *1993))* in its discussion regarding the in-court trial testimony. The Panel wrote that "…it would be impermissible to second guess the Trial Magistrate's impressions as he observed the witness, listened to his testimony and determined what to accept and what to disregard *Id.* citing *Environmental Scientific Corp. v. Durfee 621 A.2d 200*. The Panel went on to say that the Trial Magistrate

[2] Decision of Appeals Panel at pg. 13.

[3] Decision of Appeals Panel at pg. 15.

[4] Decision of Appeals Panel at pg. 20.

[5] Decision of Appeals Panel at pg. 21.

found Officer Norwood's testimony credible, and the Panel declined to depart from the Trial Magistrate's judgment concerning that credibility. *Id* at 14-15.

E
Sufficiency of Findings—Refusal to Submit to a Chemical Test

The Panel then addressed Appellant's argument that there was insufficient evidence to sustain the citation that Appellant refused to submit to a chemical test upon request of a law enforcement officer in violation of R.I.G.L § 31-27-2.1. The Panel discussed the two main areas that the Panel is asked to review on an appeal to them: whether there was reasonable grounds for the officer's belief that Appellant was intoxicated and whether Appellant's refusal was knowing and voluntary. *Decision of Appeals Panel* at 16. The Panel first discussed whether reasonable grounds existed for Officer Norwood to believe that Appellant was operating his vehicle while under the influence of alcohol. *Citing State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996).* The Panel cited Officer Norwood's testimony regarding his initial observations of Appellant; the admissions of alcohol consumption by Appellant and the officer's observations upon having an opportunity to speak with Appellant for some time at the scene of the accident. *Decision of Appeals Panel* at 17. The Panel ultimately found no issues with the Trial Magistrate's conclusions and "…that the police had the requisite level of suspicion, or reasonable grounds, to believe Appellant had been operating his vehicle under the influence of alcohol." *Id* at 18.

The Panel then focused on whether Appellant, upon the request of Officer Norwood made a knowing and voluntary refusal to submit to a chemical test. The Panel found that Officer Norwood's observations of Appellant and that the officer found Appellant to be alert and responsive in his discussion with the officer regarding his rights to submit to or

refuse a chemical test. *Decision of Appeals Panel* at 19. Appellant in his presentation of evidence had called Dr. Francis Sparadeo who testified regarding Appellant's recent diagnosis of having two concussions in the weeks leading up to the accident which lead to the charges being filed against Appellant. *Id* at pg. 18. The Panel discussed that the Trial Magistrate weighed the testimony of Officer Norwood against the testimony of Dr. Sparadeo and found that Officer Norwood's testimony regarding his interactions with Appellant on the evening in question outweighed Dr. Sparadeo's reliance on medical records provided to him that simply stated that Appellant had been diagnosed with possibly two concussions prior to the accident. *Id.* The Panel noted that the doctor did not make any observations of Appellant on the evening in question. *Id.* citing *Trial Transcript from May 17, 2021*, pg. 11; lines 3-23. The Panel refused to disturb the Trial Magistrate's findings and based upon its review of the record, the Panel found the Trial Magistrate did not abuse his discretion or misconceive material evidence. *Decision of Appeals Panel* at pg. 20.

F
Sufficiency of Findings—Presence of Alcohol

The Panel addressed Appellant's argument that the Trial Magistrate should not have sustained the citation issued to Appellant for a violation of R.I.G.L § 31-22-21.1 Prescence of Alcoholic Beverages While Operating or Riding in a Motor Vehicle. Appellant argues that there was no testing performed on the liquid substance located in the vehicle that was operated by Appellant, and that there was insufficient evidence to support that charge. *Decision of Appeals Panel* pgs. 20-21. The Panel referred to the testimony of a second officer who testified about the liquid found in Appellant's vehicle and his observations. *Decision of Appeals Panel* at p. 21. The Panel found no error with the Trial Magistrate's findings and that

no independent testing was necessary and that the testimony of Officer Warren was sufficient to sustain that citation. *Id.*

G
Recording Error

The Panel then addressed Appellant's argument that the fact that no audio recording existed for the entire cross examination of the state's leading witness and the entire testimony of the state's second witness. The Panel pointed to the Traffic Tribunal rules and the specific rule which addresses when no recording exists for a trial or hearing at the Traffic Tribunal. *Decision of Appeals Panel* at pg. 22. The Panel stated that that rule is specifically in effect to address situations like the one presented in this case. The Panel stated the procedure to follow in the event a recording is not available and the Panel ultimately decided that that procedure was followed in this case at the trial level and that Appellant's due process rights were not affected. *Id.*

The Appeals Panel denied Appellant's appeal and Appellant then appealed the matter to the District Court for its review.

II
STANDARD OF REVIEW

The standard of review which must be employed in this case is enumerated in R.I.G.L 1956 § 31-41.1-9(d) which states the following:

> (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 provision mirrors the standard of review found in R.I.G.L 1956 § 42-35-15(g) a provision contained in the Rhode Island Administrative Procedures Act (APA), Thus, district court judges are able to rely on cases interpreting the APA standard as guideposts in this process. Under the APA standard states the District Court "…may not substitute its judgment for that of the agency and must affirm the decision unless its findings are 'clearly erroneous.'"[6] And our Supreme Court has reminded us that, when addressing refusal to submit to chemical test 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."[7] 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."[8]

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[6] *Guarino v. Dep't of Social Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980) (*citing* G.L. 1956 § 42-35-15(g) (5)). *See also Link v. State,* 633 A.2d 1345, 1348 (R.I. 1993).

[7] *Link, ante,* 633 A.2d at 1348 (*citing Liberty Mut. Ins. Co. v. Janes,* 586 A.2d 536, 537 (R.I. 1991)).

[8] *Id.* at 1348 (*citing Env't Sci. Corp. v. Durfee,* 621 A.2d 200, 208 (R.I. 1993)).

III
APPLICABLE LAW AND RULES

A
The Refusal Statute

The civil charge of "refusal to submit to a chemical test," is set forth in § 31-27-2.1(c) of the General Laws.[9] By the granting of an operator's driver's license and 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 has reasonable grounds to believe they have driven while under the influence of liquor.[10] And motorists who choose to not submit to a chemical test when asked by law enforcement may be charged with the civil offense of refusal and suffer the suspension of their operator's licenses, among other

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[9] The charge of refusal to submit to a chemical test is stated in subsection 31-27-2.1(c):

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

[10] *State v. Pacheco,* 161 A.3d 1166, 1175 (R.I. 2017). The implied-consent law is stated in § 31-27-2.1(a):

> (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. …

penalties.[11] A refusal charge is a civil offense and more often than not, a motorist can be charged with the criminal allegation of driving under the influence of intoxicating liquor and/or drugs under R.I.G.L §31-27-2 which has a different standard altogether.

The charge of refusal contains four statutory elements. They are: (1) that the officer had reasonable grounds to believe that the motorist had driven while intoxicated;[12] (2) that the motorist, having been placed in custody, refused to submit to a chemical test; (3) that the motorist was advised of his rights to an independent test; (4) that the motorist was advised of the penalties that are incurred for a refusal.[13] The State must also prove that the initial stop was legal,[14] and that the motorist was notified of his or her right to make a phone call for the purposes of securing bail as provided in G.L. 1956 § 12-7-20.[15] But, the State need not show that the motorist was operating under the influence[16] — or that the officer had probable cause to arrest for such a charge.[17]

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[11] 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)).

[12] "Reasonable grounds" is the equivalent of "reasonable-suspicion" standard, which is well-known 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, ante*).

[13] G.L. 1956 § 31-27-2.1(c), *ante* at 33, n.130.

[14] *State v. Bruno, ante,* 709 A.2d at 1050 *and Jenkins, ante,* 673 A.2d at 1097. *See also Pacheco, ante,* 161 A.3d at 1175-76.

[15] *State v. Quattrucci,* 39 A.3d 1036, 1040-42 (R.I.2012).

[16] *State v. Bruno, ante,* 709 A.2d at 1050; *State v. Hart,* 694 A.2d 681, 682 (R.I.1997).

[17] *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 State v. Pacheco, ante,* 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

B
Traffic Tribunal Rulds

An important aspect of this appeal is the issue of the recording not being in operation during the cross examination of the lead witness for the State and the entire examination of another witness. This court, when analyzing whether it was reversible error that the recording was not in operation must rely on the rules set forth in the Rhode Island Traffic Tribunal, specifically Rule 21. For the purpose of this appeal, the rules have two pertinent parts that should be addressed, specifically subsections (e) and (h). Subsection (e) essentially states that an appeal of a proceeding before a Tribunal magistrate must include "..the transcript necessary for the determination of the appeal." *See Rhode Island Traffic Tribunal Rule 21(e).* In this case however, as previously discussed, the recording was inadvertently shut off so no complete transcript could be produced. The Traffic Tribunal, however, has a rule in place should such a situation present itself. *See Rhode Island Traffic Tribunal Rule 21(h).* Subsection (h) of that rule lays out the procedure that is to be followed when a recording is either unavailable or the recording is unable to be transcribed.[18]

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reasonable belief that defendant operated under the influence, if obtained prior to the officer's request that detainee submit to a chemical test).

[18] Rhode Island Traffic Tribunal Rules of Procedure, *Rule 21(h) Statement of Proceedings When No Recording or Recording Unable to be Transcribed.* If no recording of the proceedings at a hearing or trial was made, or if the recording or portions thereof are unable to be transcribed, the parties, may by agreement, prepare a statement of the proceedings from the best possible means, including by personal recollection of the hearing or trial. In no event shall an appeal be heard by the appeals panel without the presentation of a transcript of the testimony of the hearing or trial by the appellant or by the submission of a stipulated statement of the proceedings as required by

IV
ANALYSIS

There are four issues that Appellant raises that need to be reviewed in this present appeal. Three issues raised by Appellant address the sufficiency of the factual evidence as it relates to the evidence and testimony at trial regarding the two charges that were sustained by the trial magistrate. The fourth issue is a procedural one and it revolves around the inadvertent error of the recording not capturing a significant portion of the trial testimony. Upon review of all the transcripts and the arguments of both the State and Appellant, I find that the Appeals Panel decision was not clearly erroneous; was not affected by error of law nor was it arbitrary or capricious.

V
THE TRIAL ANALYSIS

There are essentially three areas that Appellant raises on appeal that focus on the actual trial conducted by a Magistrate of the Traffic Court. Those issues raised in his appeal to the Appeals Panel are: (1) the negative inference made by the Trial Magistrate regarding Appellant's choice not to testify at trial; (2) Appellant's position that that the Trial Magistrate ruled arbitrarily and capriciously during the trial regarding Appellant's presentation of evidence and; (3) that the Trial Magistrate made clearly erroneous rulings throughout the trial and in his decision.

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this section. If the parties are unable to agree by stipulation as to a statement of the proceedings, the matter shall be remanded to conduct a new proceeding.

A
Negative Inference of Appellant's Choice Not to Testify

Appellant argues that reversible error occurred during the Trial Magistrate's Decision in this matter when the Trial Magistrate made reference to the lack of testimony of Appellant at the time of trial. *Appellant's Memorandum of Law*, at pg. 29. It is clear from the trial transcripts that in his decision, the Trial Magistrate references that Appellant did not testify during Appellant's opportunity to present evidence in regard to the issue of whether or not Appellant knowingly refused to submit to a chemical test. *Trial Transcript*, May 17, 2021, at pg. 4. The Trial Magistrate was not commenting or making findings as a whole about Appellant not testifying at the trial, but rather, after denying a motion to dismiss by Appellant, Appellant was attempting to introduce evidence not from Appellant himself, but through another witness, only as to the issue as to whether the refusal to submit was voluntary. Appellant argues that this reference "…clearly and impermissibly tainted the entirety of the Trial Magistrate's findings and reasoning." *Id.* It is clear from reading the decision that this is not the case. This reference in the decision was in response to Appellant making the argument about voluntariness with an expert witness only after the conclusion of the State's case and as did the Appeals Panel, I find no error in the reference made by the Trial Magistrate.

B
Arbitrary and Capricious Rulings by the Trial Magistrate

Next, Appellant argues that the Trial Magistrate made rulings regarding defenses put forth by Appellant and limited the appeal rights of Appellant and those findings and rulings were made not based upon the facts or testimony he heard but rather were made arbitrarily

and had no basis in fact or law. *Appellant's Brief* at pg. 21. Its is extremely difficult to address all of Appellant's arguments because Appellant's brief in this area jumps back and forth between arguments that Appellant highlights in his request for reversal. I do believe that I am able to address his arguments in more of a summary fashion than going to each argument. Appellant, throughout his argument, repeatedly argues the lack of a record of Officer Norwood's cross examination or Officer Warren's complete testimony. I have addressed that issue on its own later in this decision, however Appellant appears to argue over and over again that there is no record of these witnesses' testimony or that the Rhode Island Traffic Tribunal failed to preserve the record. *Appellant's Brief* at pg. 22-23. And while all parties agree that the recording of those portions of the trial were inadvertently turned off, and then facts stipulated to, you cannot then argue that somehow the record was not properly preserved or that the testimony of those individuals does not exist. Appellant also argues that the Trial Magistrate cast aside Appellant's strict proof of defense as to the refusal charge. *Appellant's Brief* at pg. 24. Appellant argues that he had a valid defense to the refusal charge because he was physically unable to perform the test. *Id.* And that defense was put forth using the testimony of Dr. Sparadeo. However, it is not unlike the defense in an assault case of the charged party claiming self-defense. A defendant may rely on the self-defense claim as to why he/she assaulted another individual. Just because the defendant claims he/she has that defense, it does not automatically make the charge dismissed against the defendant. The defendant must put forth evidence of self-defense for the trier of fact to make a determination after hearing that evidence. In this case, the Trial Magistrate denied a motion to dismiss as to two of the citations issued to Appellant and at that stage of the

proceedings it was Appellant's opportunity to put forth evidence to convince the Trial Magistrate that there were valid defenses to the two sustained citations and to raise sufficient doubt in the mind of the Magistrate. The Trial Magistrate then heard the testimony of Dr. Sparadeo and found Dr. Sparadeo to be a credible witness and even found his testimony to be impressive. *Trial Transcript from May 17, 2021* at pg. 4. However, the Trial Magistrate found that Dr. Sparadeo's testimony was relying on medical records and reports but not on any observations of Appellant on the evening in question. *Trial Transcript from May 17, 2021* at pg. 11. Appellant argues that many of the rulings and findings of the Trial Magistrate simply ignored law, ignored testimony taken and that testimony of Dr. Sparadeo should, on its own, trump all other witness testimony or facts presented. I respectfully disagree.

C
Erroneous Rulings by the Trial Magistrate

Appellant then argues that the Trial Magistrate made more than one finding throughout this case that were sufficient to be deemed erroneous which would then sustain Appellant's appeal. Appellant's main argument as to the additional erroneous findings of the Trial Magistrate centers around the expert testimony of Dr. Sparadeo. Appellant argues that both the Trial magistrate and later the Appeals Panel disregarded Dr. Sparadeo's expert testimony. *Appellant's Brief* at pg. 36. The argument Appellant essentially makes is that because Dr. Sparadeo is an expert and testified in his expert capacity that all other evidence that contradicts Dr. Sparadeo should be ignored and that because no other expert testified, that which Dr. Sparadeo testified to goes above and beyond anyone else's testimony. And as such, now the Trial Magistrate's decisions and findings and later the Appeals Panel findings are clearly erroneous. *Id.* I have reviewed the trial transcript and Dr. Sparadeo clearly is

knowledgeable in the area of concussions yet had many answers to questions even posed on direct examination that simply cannot account for the condition that Appellant was in on the night in question. Some examples of this are when asked on his direct testimony regarding the levels of concussions, Dr. Sparadeo describes basically three levels of concussions and those are mild, moderate, and severe. *Trial Transcript from April 23, 2021* at pg. 38. When asked on direct examination whether the doctor could render an opinion as to what level of a concussion Appellant had after the accident which lead to this case the doctor responded: "I don't think I could rate the concussion at that acute stage." *Id* at pg. 76. Another question posed to Dr. Sparadeo regarding whether he could, to a reasonable degree of medical certainty, render an opinion as to whether Appellant could understand the rights regarding the choice to submit to a chemical test, the doctor answered: "Well, I don't know. I mean, I think—you know, I wasn't there, so I couldn't evaluate him, because I wasn't there." *Id* at pg. 73-74.

Appellant argues that the Trial Magistrate gave no weight to Dr. Sparadeo's testimony and that was clearly erroneous. It is clear from the transcript that the Trial Magistrate gave more than enough consideration to the testimony of Dr. Sparadeo. In fact, in the Trial Magistrate's decision rendered on May 17, 2021, the Trial Magistrate clearly went through the testimony of Dr. Sparadeo for what amounted to over ten pages of a transcript which was transcribed from that hearing date. *Trial Transcript from May 17, 2021* pgs. 1-11. Appellant's argument that the Magistrate and later the Appeals Panel gave zero consideration to Dr. Sparadeo's testimony is simply not accurate and lacks merit because consideration was absolutely given, it just was not the type of consideration that Appellant was seeking.

VI
THE LACK OF RECORDING OF TESTIMONY

Upon first review of this appeal, it was clear that a lack of a recording of the cross examination of the main witness in this case was going to be a significant area of concern on behalf of Appellant and quite frankly for any case that is appealed to the District Court. For any reviewing court, a lack of transcript is an immediate issue of concern on whether a proper review can take place. In this present case, the Rhode Island Traffic Tribunal rules of procedure have a rule in place to specifically protect an aggrieved party. Any party who wishes to appeal an adverse decision and an audio recording does not exist is referred to Traffic Tribunal Rule 21(h). That rule, as discussed above has a procedure to follow when an audio recording is unavailable. It is clear to this court, that that rule was followed in this case. Appellant argues that he was forced into agreeing to a stipulation of facts in the case in order to effectuate the appeal in the case. However, my review of the transcripts in this matter make it clear that Appellant's counsel at the time of the recognition of the lack of a recording acknowledged that the Trial Magistrate takes detailed notes during testimony. *Trial Transcript, April 23, 2021* at pg. 5. Clearly in the rule, if appellant did not agree with the facts as outlined by the Magistrate AND agreed to by stipulation by Appellant, there is a provision to protect a party and that is stated in Rule 21(h) which states "If the parties are unable to agree by stipulation as to a statement of the proceedings, the matter shall be remanded to conduct a new proceeding. *Rhode IslandI Traffic Tribunal Rules*, at pg. 13. It is clear to me that the procedure outlined in Rule 21(h) was followed and that the rights of Appellant were not violated in any way.

VII

CONCLUSION

After careful review of the evidence, transcripts and relevant law, I find that the decision of the Appeals Panel should be affirmed. The Panel's decision was supported by competent evidence and not legally erroneous. Upon review of all the transcripts and the arguments of both the State and Appellant, I find that the Appeals Panel decision was not clearly erroneous; was not affected by error of law nor was it arbitrary or capricious.

The Panel affirmed the Trial Magistrate's decision that the evidence supported sustaining the charges of refusal to submit to a chemical test under R.I.G.L § 31-27-2.1 and that Appellant did in fact have the presence of alcohol in his vehicle on the evening in question. In addition, the Panel's decision regarding how the Trail Magistrate followed the Traffic Tribunal rules of procedure, specifically Rule 21(h) when the recording of testimony was not available was also supported by competent evidence of record, namely the stipulation entered into by both parties.

Accordingly, the decision that the Traffic Tribunal Appeals Panel issued in this matter is AFFIRMED.