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

Brian Bishop	:	
	:	
v.	:	**A.A. No. 2024 - 008**
	:	
State of Rhode Island	:	
(RITT Appeals Panel)	:	

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto.

It is, therefore, ORDERED, ADJUDGED AND DECREED,

that the Findings and Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Appeals Panel is AFFIRMED.

Entered as an Order of this Court at Providence on this 22nd day of April, 2025.

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

By Order

/s/
Jamie Hainsworth
Clerk

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

Brian Bishop	:	
	:	
v.	:	**A.A. No. 2024-008**
	:	**(T22-026)**
State of Rhode Island	:	**(22-001-515122)**
(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 the early morning of May 6, 2022, Trooper Michael Goduto of the Division of State Police cited Mr. Brian Bishop for three civil traffic violations — (1) Speeding, under G.L. 1956 § 31-15-11, (2) Laned Roadway Violation under G.L. 1956 § 31-15-11, and (3) Refusal to Submit to a Chemical Test under G.L. 1956 § 31-27-2.1. On three dates in September of 2022, the case proceeded to trial before a Magistrate of the Traffic Tribunal, who acquitted Mr. Bishop on the Speeding and Laned Roadway violations, but sustained the refusal charge. After his initial appeal to the Appeals Panel of the Tribunal failed to gain him relief from this adjudication, Appellant has sought further review in this Court, which is vested with jurisdiction to hear and decide appeals from decisions of the

Appeals Panel by G.L. 1956 § 31-41.1-9.

Before this Court, Mr. Bishop argues that the Decision of the Appeals Panel is infirm because it (1) failed to recognize that the Trial Magistrate erred in finding that the Trooper did not tell him that his reading on the preliminary breath test (PBT) machine was "double" the legal limit, (2) affirmed the Panel's erroneous legal conclusion that law enforcement officers may use "trickery" to induce a motorist to violate the law, and (3), failed to overrule the Trial Magistrate's erroneous finding that the Trooper possessed reasonable grounds to ask Mr. Bishop to submit to a chemical test. *See Appellant's Mem. of Law,* at 12-15, as to his first argument, *id.* at 15-17, as to his second, and *id*. at 17-18, as to his third. Appellant Bishop also urges that the evidence presented at his trial was insufficient to show that he had moved from one lane of travel to another in an unsafe manner. *Id.* at 22-25.

This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. Applying the standard of review found in G.L. 1956 § 31-41.1-9(d), I have concluded that Mr. Bishop's conviction is supported by competent evidence of record and is not inconsistent with the applicable law. I must therefore recommend that the decision rendered by the Appeals Panel in Mr. Bishop's case be AFFIRMED.

I

Facts and Travel of the Case

A

The Incident

The facts of the incident which led to the charge of refusal to submit to a chemical test being lodged against Mr. Bishop are fully and fairly stated in the decision of the Appeals Panel.[1]

On the morning of May 6, 2022, Trooper Goduto was operating his marked police vehicle on Route 95 in Cranston when he observed a vehicle travelling at a much higher rate of speed than the nearby cars; in fact, the Trooper obtained a radar speed of 95 miles per hour on the vehicle. *Dec. of Appeals Panel,* at 2 (citing *Trial Tr.* at 14).[2] In addition, the vehicle was drifting across the lanes of travel. *Id.* (citing *Trial Tr.* at 14). As a result, the Trooper stopped the vehicle. *Id.* (citing *Trial Tr.* at 15).

When the Trooper approached the vehicle, he identified the motorist from his Rhode Island drivers' license. *Id.* (citing *Trial Tr.* at 15). In addition:

> … he noticed Appellant had bloodshot, watery eyes, some

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[1] The Decision of the Appeals Panel may be found in the electronic record attached to this case, at 14. Henceforth, citations to the electronic record shall be styled as *ER* at [page number].

[2] Mr. Bishop's trial was conducted on four days. Testimony was taken on September 9, 2022, September 22, 2022, and September 30, 2022; the Trial Magistrate rendered his decision on October 17, 2022. The transcript of these proceedings are numbered consecutively, and do not recommence for each trial date. Unfortunately, the transcript, as presented in the electronic record, is out of order. To explain, the title page of the transcript may be found on *ER* at 50, followed by pages 102-173, then pages 56-101, pages 34-55, and finally, pages 2-33.

> slurred speech, and he detected "just a faint odor of alcohol at that time." Trooper Goduto said that Appellant told him he was heading home from a Cinco de Mayo party in Providence. Appellant admitted to Trooper Goduto that "he had three beers, specifically, IPAs."
>
> Trooper Goduto asked Appellant if he knew how fast he was traveling to which Appellant replied that he did not because "the vehicle he was driving was having some electronic issues with [the] dashboard, and it wasn't giving him [a] speed. There [were] no lights activated on the dashboard." (citations omitted)

Dec. of Appeals Panel, at 2 (citing *Trial Tr.* at 16). Based on this colloquy, and the observations he had made, the Trooper asked Appellant Bishop to consent to perform standardized field sobriety tests (SFSTs) — which he did. *Id.* (citing *Trial Tr.* at 18). But, he performed poorly. *Id.* at 2-3 (citing *Trial Tr.* at 29).

As a result, Appellant was placed into custody because, in the Officer's estimation, he was under the influence of alcohol and would not be able to safely operate his motor vehicle. *Id.* at 3 (citing *Trial Tr.* at 29). The Trooper then asked Mr. Bishop to submit to a preliminary breath test (PBT). *Id.* at 3 (citing *Trial Tr.* at 29). Again he consented — and blew a reading of .107. According to Trooper Goduto, he did not inform Mr. Bishop of his PBT test result. *Id.* at 3 (citing *Trial Tr.* at 29-30). Mr. Bishop was read the Rights for Use at the Scene and transported to the Lincoln Woods Barracks, where he was read his rights and the penalties for refusing from the Implied Consent form; he was given the opportunity to make a confidential phone call, and he refused to submit to a chemical test. *Id.* at 3 (citing *Trial Tr.* at 32). Mr. Bishop then signed the form

indicating that he understood his right and refused to submit to the test. *Dec. of Appeals Panel,* at 3 (citing *Trial Tr.* at 33).

Trooper Goduto then charged Appellant with speeding, lane-roadway violation, and refusal to submit to a chemical test. *Dec. of Appeals Panel,* at 3.

Mr. Bishop entered pleas of not guilty at his arraignment on May 18, 2022. *See Traffic Tribunal Judgment Form, ER* at 282. At that time a preliminary suspension of his license was ordered. *Id*.[3] The matter was reassigned for trial. *Dec. of Appeals Panel,* at 1.

B

The Trial

1

The Testimony of Trooper Goduto

The first witness at the trial was Trooper Goduto, whose testimony on direct examination, given on September 9, 2022, was consistent with the narrative set forth *ante*. *Trial Tr.* at 5.[4] When the trial resumed on September 22, 2022, Mr. Bishop's counsel began his cross-examination of the Trooper. *Trial Tr.* at 45 *et seq.* (*ER* at 183 *et seq.*).

On cross, the Trooper reiterated that Mr. Bishop was travelling in excess of ninety miles per hour. *Id.* at 45. He also indicated that while driving

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[3] Mr. Bishop was granted limited privileges to drive during his suspension pursuant to the hardship license provisions found in G.L. 1956 § 31-27-2.8(b)(7).

[4] We should add at this point that the prosecutor succeeded in having the various forms referenced during the Trooper's testimony received into evidence as full exhibits. *Trial Tr.* at 33-38; and *see* exhibits contained in the electronic record, *ER* at 290, 296, and 297.

without one's lights being turned on could be a sign of impairment, Mr. Bishop did have his lights on. *Id.* at 45-46. Similarly, Mr. Bishop did not stop in the middle of the roadway, but in the breakdown lane. *Id.* at 46.

Trooper Goduto restated that the motorist's eyes were "bloodshot and watery," though he conceded that they could have been red for medical reasons unrelated to the consumption of alcohol. *Trial Tr.* at 47-48. He also stated that the odor of alcohol being emitted by Mr. Bishop was "slight" and not "overwhelming," and not inconsistent with the consumption of three IPAs, as the motorist had admitted. *Id.* at 48. The Trooper agreed that Mr. Bishop did not fumble for his registration and proof of insurance when asked to produce them. *Id.* at 50.[5] Nor did he use the car for balance when he stepped out of the vehicle. *Id.*

The Trooper also conceded that, when he was stopped, Mr. Bishop was travelling in the "right" direction to proceed to his home in Exeter. *Id.* at 51. And the Trooper admitted that, after Mr. Bishop stated that he had drunk three IPAs, he did not ascertain the time frame in which they had been consumed. *Id.* at 51-54. Neither did the Trooper inquire whether the motorist had eaten any food during the time he was drinking. *Id.* at 54. In addition, the Officer agreed that, in general, persons who are younger than 65, which was Mr. Bishop's age, tend

[5] The witness did not recall whether Mr. Bishop fumbled for his license. *Trial Tr.* at 49.

to do better on the field sobriety tests. *Trial Tr.* at 55.

Trooper Goduto stated that Mr. Bishop was very cooperative during the events that transpired after the stop of his vehicle. *Id.* at 56. In fact, he agreed to submit to the portable beath test, and performed it correctly. *Id.* at 57-58. The Trooper also asserted that he did not give Mr. Bishop the specific results of his PBT test. *Id.* at 59. And he indicated that he did not recall whether he told Mr. Bishop that he was double the legal limit on the PBT. *Id.*

The Officer also confirmed that Mr. Bishop told him that his speedometer was broken; in fact, the Trooper saw that the entire dashboard was blacked out. *Id.* at 61-62. And, after an attempt to view a video of the booking was frustrated by technical difficulties, the Trial Magistrate permitted the defense to call a witness out-of-order. *Id.* at 64-65.

2

The Testimony of John Kupa, Esq.

At this juncture, the defense presented the testimony of Attorney John Kupa, who had (at the time of the trial) practiced law in Rhode Island for thirty-four years. *Id.* at 65-66. The Appeals Panel summarized his testimony thusly:

> Attorney Kupa said he received a phone call in the early morning from Appellant. … During that phone call, Attorney Kupa said Appellant "had been picked up for [a] DUI" and "was calling [him] for advice as to whether or not he should take an additional breathalyzer [at] the station." … Attorney Kupa said Appellant informed him that he "had blown double" on the PBT. … Based on that information, Attorney Kupa advised Appellant to refuse the chemical test. … Attorney Kupa said it was not for several days after

> Appellant's arrest that he was informed Appellant blew .107, which is not double the legal limit of .08. Attorney Kupa said that if he had known that Appellant blew a .107, not double, he would have advised Appellant to take the chemical test. …

Dec. of Appeals Panel, at 4; *ER* at 17 (citing *Trial Tr.* at 69-71) (internal citations omitted).

3

The Testimony of Trooper Goduto (Continued)

At this point the cross-examination of Trooper Goduto resumed. *Trial Tr*. at 82; *ER* at 149. The Trooper testified that the Motorist was not slurring his words when speaking to him at the station. *Trial Tr*. at 83; *ER* at 150. And he was not stumbling when he walked to the area where he made the phone call, though he did lean on the table when making the call. *Trial Tr*. at 84-86; *ER* at 151-53.

On redirect, the Trooper explained that he formed reasonable grounds (to believe that Mr. Bishop was driving under the influence) based on the manner in which the vehicle was operated, the Trooper's interaction with him, the odor on his breath, his bloodshot watery eyes, and his overall demeanor. *Trial Tr*. at 88; *ER* at 155. And, on recross, the Trooper conceded that he does not know what advice was given to Mr. Bishop during his confidential phone call. *Trial Tr*. at 92; *ER* at 159.

4

The Testimony of Mr. Bishop

When the Court reconvened on September 30, 2022, the Defense called Mr. Bishop as its second witness. *Trial Tr.* at 98; *ER* at 165. Regarding the early morning hours of May 6, 2022, Mr. Bishop stated that he was coming from a club called "The Parlor" on North Main Street in Providence, where he had presented a Tex-Mex band. *Trial Tr.* at 100-01; *ER* at 167-68.

Mr. Bishop testified that he had consumed three beers and pizza during the course of the evening. *Trial Tr.* at 102-03; *ER* at 51-52. He stated that when he left around midnight, to travel to his home in Exeter, he did not feel impaired or buzzed. *Trial Tr.* at 103-04; *ER* at 52-53. He did not know how fast he was going because the speedometer in his vehicle drops out from time to time. *Trial Tr.* at 104-05; *ER* at 53-54. In this regard he added that there were few cars on the road, and he did not recall passing anyone. *Trial Tr.* at 110; *ER* at 59.

Then, Mr. Bishop's attention was drawn to that portion of the Trooper's testimony in which he alleged that the Motorist had changed lanes; the witness responded thusly:

> I believe what he said that the tire, the right-hand tire may have engaged or come just over a lane line, and the left-hand tire might have done the same following me over the course of a half a mile, I believe is what he said. And that — here I will say that it's difficult for me to recall. When I was stopped, he told me I was stopped for speeding, and didn't mention that. It might at that time have tried more specifically to recall my experience, you know, not to protest if I thought — to protest if I thought that was an exaggerated

> characterization of the driving. I don't believe he said that I changed lanes, that I swerved repeatedly or abruptly or anything of that sort.

Trial Tr. at 110-11; *ER* at 59-60. Mr. Bishop denied that he changed lanes abruptly or swerved repeatedly. *Trial Tr.* at 110-11; *ER* at 59-60.

Mr. Bishop testified that he had no physical conditions that impaired his ability to take the field sobriety tests, and he told that to the Trooper. *Trial Tr.* at 112-13; *ER* at 61-62. But he did not tell the Trooper that he was physically tired, since he had been on his feet all day. *Trial Tr.* at 113; *ER* at 62.

Appellant next discussed the PBT test he took. *Trial Tr.* at 114; *ER* at 63. He stated:

> Appellant testified that he also agreed to take the PBT. … Appellant admitted that Trooper Goduto did not tell him a specific numeric result from the PBT, but "the officer had told me if it was [ ] at or below the limit, that I'd be back in my car and on the way home. So [,] I could infer that it was over the limit, but I didn't know the number." … Appellant then said that on the drive to the Barracks, he asked Trooper Goduto "[h]ow close was I?" … Appellant said Trooper Goduto replied, "double." …

Dec. of Appeals Panel, at 6; *ER* at 19 (citing *Trial Tr.* at 114-120; *ER* at 63-69) (internal citations omitted). Mr. Bishop inferred that "double" meant twice the legal limit. *Trial Tr.* at 120; *ER* at 69. And when he told this to Attorney Kupa (during his confidential telephone call), he was advised by counsel to refuse to submit to the breathalyzer — which he did. *Trial Tr.* at 127; *ER* at 76.

On cross-examination, Mr. Bishop confirmed certain facts for the

prosecutor — he admitted that he had three beers on the evening in question (*Trial Tr.* at 131-32; *ER* at 80-81), that he submitted to the preliminary breath test (*Trial Tr.* at 132; *ER* at 81), that he was read his rights for use at the scene and those for use at the station (*Trial Tr.* at 133; *ER* at 82), and that he understood the implied consent notice and the penalties that would result from a refusal (*Trial Tr.* at 134; *ER* at 83). Finally, the Court heard final argument from Counsel for Mr. Bishop (*Trial Tr.* at 135-42; *ER* at 84-91) and the Attorney for the State (*Trial Tr.* at 142-46; *ER* at 91-95).

5

The Bench Decision

When the trial resumed on October 17, 2022, the Trial Magistrate gave an oral bench decision in the matter. *Trial Tr.* at 150-67; *ER* at 99-116. For reasons we need not dwell upon, the Trial Magistrate found the Motorist not guilty of speeding and the laned-roadway violation. *Trial Tr.* at 167; *ER* at 116. Regarding the refusal charge, the Trial Magistrate rehearsed the testimony of the Trooper in detail. *Trial Tr.* at 152-57; *ER* at 101-06. After doing so, he declared that he found Trooper Goduto's testimony to be "credible and convincing." *Trial Tr.* at 157; *ER* at 106. Indeed, the Magistrate incorporated (by reference) the officer's testimony into his findings of fact. *Trial Tr.* at 157; *ER* at 106.

The Trial Magistrate also found Attorney Kupa's testimony — in which he related that Mr. Bishop told him that he blew double the legal limit on the

PBT — to be entirely credible. *Trial Tr.* at 157-58; *ER* at 106-07.

Finally, the Magistrate summarized the testimony of Mr. Bishop. *Trial Tr.* at 158-60; *ER* at 107-09. He began by noting that, during his testimony, Mr. Bishop admitted that he had three beers during the period from 6:00 p.m. to 10:00 p.m. *Trial Tr.* at 158; *ER* at 107. Next, the Trial Magistrate credited the Defendant's testimony that his speedometer was not working properly on the evening in question. *Id.* And then, the Magistrate noted that Mr. Bishop testified that he did not believe his vehicle was swerving, as Trooper Goduto described. *Trial Tr.* at 159; *ER* at 108. Next, he recalled that, Mr. Bishop testified that on the way to the police station, the Trooper told him that he blew a "double" reading on the PBT. *Id.* Finally, regarding the facts elicited at trial, the Trial Magistrate noted that Mr. Bishop admitted that the Trooper informed him of his Rights for Use at the Scene and the rights contained on the Implied Consent Form. *Id.*

Turning to the principles of law pertinent to the case, the Magistrate began by observing that the prosecution must prove every element of the civil violation of refusal to submit to a chemical test to the standard of clear and convincing evidence. *Trial Tr.* at 160; *ER* at 109. He noted that Rhode Island is an implied-consent state, so that every motorist must submit to a chemical test if the officer has reasonable grounds to believe that person was operating under the influence of liquor or drugs. *Trial Tr.* at 160-61; *ER* at 109-10.

The Trial Magistrate then made specific findings of fact.

> I found that Trooper Goduto's testimony was credible, and I incorporate it as my findings of fact. With respect to the four required elements of 31-27-2.1, I find that clearly Mr. Bishop refused the chemical test when asked to do so by Trooper Goduto, so I find that has been proven by clear and convincing evidence that in fact Mr. Bishop refused to take the chemical test. I find that Mr. Bishop was informed of his rights in accordance with Rhode Island General Law 31-27-3 while under arrest.
>
> As evidenced by Trooper Goduto's testimony and the State's exhibits, the rights for use at the scene and implied concept form, and the affidavit, I find that Mr. Bishop was informed of his rights, and this was proven by clear and convincing evidence as well. I also find that Mr. Bishop was informed of the penalties incurred as a result of refusing the chemical test requested by the State Police, and this was also proven by clear and convincing evidence.

Trial Tr. at 161; *ER* at 110. Next, the Trial Magistrate declared that the case "comes down" to whether the Trooper had reasonable grounds to believe that Mr. Bishop was operating his vehicle under the influence. *Trial Tr.* at 161-62; *ER* at 110-11. He then enumerated the following circumstances supporting such a finding: (1) the vehicle was traveling 92 miles per hour in a 55-miles-per-hour zone; (2) the vehicle failed to maintain its lane of travel; (3) and when the vehicle was stopped, the Trooper noted that the operator had bloodshot eyes, slurred speech, and the faint odor of alcohol emanating from his person; (4) Mr. Bishop admitted to imbibing three beers at a party in Providence; and (5) the Trooper observed that when Mr. Bishop exited the vehicle, he was unsteady on his feet and swaying. *Trial Tr.* at 162;

ER at 111. These items, the Trial Magistrate found, supported a finding of reasonable grounds to the standard of clear and convincing evidence. *Trial Tr.* at 162; *ER* at 111.

The next issue the Trial Magistrate faced — which he called the "key" issue — was whether Mr. Bishop was told his PBT results by the Trooper. *Trial Tr.* at 163; *ER* at 112. The Magistrate found the Trooper's testimony on this point to be "completely credible" — including his statement that "he never tells a motorist when he's investigating for impairment the results of the PBT" and his testimony that he believes that he did not tell Mr. Bishop the results of his PBT. *Id.* Consequently, the Trial Magistrate declined to decide whether it would have been a violation of due process if the Trooper *had* told Mr. Bishop that he had tested double the legal limit. *Trial Tr.* at 164-65; *ER* at 113-14.

Based on the foregoing, comprehensive, analysis, the Trial Magistrate found Mr. Bishop guilty on the charge of refusal to submit to a chemical test and imposed minimum sanctions. *Trial Tr.* at 166, 171-72; *ER* at 115, 120-21. On the other two charges (speeding and laned roadway violations), Mr. Bishop was found not guilty. *Trial Tr.* at 167; *ER* at 116.

C

The Decision of the Appeals Panel

Appellant filed a timely appeal, and seven weeks later, on July 26, 2023, oral arguments in the case were heard by an Appeals Panel composed of Administrative Magistrate Abbate (Chair), Magistrate Kruse Weller, and Magistrate Abilheira. *Dec. of Appeals Panel,* at 1; *ER* at 14. In its decision, which was issued on December 18, 2023, the Panel addressed Mr. Bishop's main arguments: (a) that the stop was not legal because Trooper Goduto did not possess reasonable suspicion to believe he had committed the traffic offenses of speeding and laned roadway violation; (b) the officer did not possess reasonable suspicion to believe that Mr. Bishop had been driving under the influence and therefore had no right to ask him to submit to a chemical test. *Id*. at 11-15; *ER* at 25-28. The Panel also addressed Mr. Bishop's argument that the Trial Magistrate incorrectly determined the credibility of the witnesses in the case. *Dec. of Appeals Panel,* at 15; *ER* at 28.

1

The Legality of the Initial Stop

The Appeals Panel began its discussion of the first issue by presenting its view of the pertinent legal landscape:

> When initiating a traffic stop, an officer needs only reasonable suspicion to conduct the stop itself. *State v. Keohane*, 814 A.2d 327, 330 (R.I. 2003). Reasonable suspicion exists when "the detaining authority can 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *[State v.] Bjerke*,

> 697 A.2d [1069,] 1071 [(R.I. 1997)] (quoting *Terry v. Ohio,* 392 U.S. 1, 21 (1968)). The United States Supreme Court has made clear that the decision to stop a vehicle is considered reasonable when the police have probable cause to believe that a traffic violation has occurred. *See Whren [v. United States]*, 517 U.S. [808,] 806 [(1996)].
>
> In order to conduct a traffic stop that comports with the Fourth Amendment, Trooper Goduto was required to have specific and articulable facts amounting to reasonable suspicion that a traffic violation had occurred. *See Terry*, 392 U.S. at 21. Trooper Goduto testified that he observed Appellant's vehicle traveling at a much higher rate of speed than the other vehicles on the road and obtained a radar speed of 92 miles per hour in a posted 55 miles per hour zone. (09/09/2023 Tr. 14:15-23.) Trooper Goduto said in addition to the high rate of speed, he noticed the vehicle drift from the right third lane of travel into the fourth lane and then overcorrect and drift into the second lane of travel with its driver's side tires crossing the traffic lanes. *Id*. at 14:23-15:2. These observations provided Trooper Goduto with "specific and articulable facts, [] taken together with rational inferences[,]" to justify a stop of Appellant's vehicle. *See Bjerke*, 697 A.2d at 1071; *Keohane*, 814 A.2d at 330. As such, the Trial Magistrate's finding that Trooper Goduto met the requisite standard to conduct a traffic stop was supported by the record evidence. *See Bjerke*, 697 A.2d at 1071.

Dec. of Appeals Panel, at 12-13; *ER* at 25-26.

The Panel then rejected Appellant's argument that because he was not convicted of the speeding and laned-roadway violations, the Trial Magistrate was required to find that the stop was unwarranted, and that, consequently, the refusal charge should have been dismissed; it did so because the stop was governed by the reasonable-suspicion standard, not the clear-and-convincing-evidence standard required to prove the charges. *Dec. of Appeals Panel,* at 13; *ER* at 26 (citing *Keohane*, 814 A.2d at 330, *State v. Roussell,* 770 A.2d 858, 860 (R.I.

2001), and its own decision in *State v. San Martino,* C.A. No. T22-00006 (R.I. Traffic Trib. 03/23/2022)).

Perhaps surprisingly, it is under this heading that the Panel chose to address Appellant's argument that his decision to decline the breathalyzer was unfairly tainted because the Trooper deceived him as to the reading he blew on the PBT. *Dec. of Appeals Panel,* at 13-14; *ER* at 26-27. The Panel found the argument meritless as a matter of law, declaring that,

> It is irrelevant whether the Trooper told Appellant the PBT result was .107 or .002; the police are not required to disclose the Defendants the results of the PBT nor do they have the obligation to provide an accurate reading result to the motorist. *See Lewis v. United States,* 385 U.S. 206, 210 (1966) (law enforcement's use of deception is not unconstitutional per se); *See also McConkie v. Nichols,* 392 F.Supp.2d 1(2005) (evidence that detective may have misled defendant to induce confession did not shock the conscience); *see also Frazier v. Cupp,* 394 U.S. 731 (1969) (holding that police misrepresenting the statements of an accomplice was insufficient to make an otherwise voluntary confession inadmissible).

Id. The Panel did not comment upon the Trial Judge's *factual* finding that the Trooper did not furnish a PBT reading to Mr. Bishop. *Id.*

2

Whether the Trooper Had Reasonable Grounds to Believe Appellant Was Operating Under the Influence

The Panel next discussed Appellant's assertion that the Trooper did not show that he had reasonable grounds to request that he submit to a chemical test. *Dec. of Appeals Panel,* at 14-15; *ER* at 27-28. It did so concisely. Citing *State v. Perry,* 731 A.2d 720, 723 (R.I. 1999) and *Bjerke*, 697 A.2d at 1072, the Panel

declared that the Trooper's observations of Mr. Bishop before and after the stop was made were sufficient to provide him with "the requisite level of suspicion, or reasonable grounds, to believe Appellant had been operating under the influence of alcohol …." *Dec. of Appeals Panel,* at 14-15; *ER* at 27-28.

3

The Trial Magistrate's Credibility Determinations

Finally, the Panel addressed Appellant's challenges to the Trial Magistrate's credibility determinations. It noted that under the pertinent Rhode Island precedents, such as *Link v. State,* 633 A.2d 1345, 1348 (R.I. 1993) and *Marran v. State,* 672 A.2d 875, 876 (R.I. 1996), the Panel must affirm a trial magistrate's decision regarding the weight to be given to the evidence before the court as long as it is supported by legally competent evidence. *Dec. of Appeals Panel,* at 15; *ER* at 28. It added that it would be impermissible for the Panel to second-guess the Trial Magistrate's impressions of the evidence since he was able to assess the witness's demeanor, which it does not have the opportunity to do. *Id.* (citing *A. Salvati Masonry Inc. v. Andreozzi,* 151 A.3d 745, 749 (R.I. 2017)). Accordingly, the Panel declined to "… disturb the Trial Magistrate's credibility determinations or his assessment of the weight of the evidence in this case." *Dec. of Appeals Panel,* at 15; *ER* at 28 (citing *Link*, 633 A.2d at 1348).

II
Positions of the Parties
A
Appellant Bishop

After presenting an extensive narrative of the facts and travel of the instant case, Mr. Bishop offers three arguments in support of his appeal.

First, he urges that the Panel erred when it declined to review (and find error in) the factual findings of the Trial Magistrate. *Appellant's Brief,* at 12-15. As the legal predicate to this argument, Appellant asserts that an appellate court may disturb a trial judge's findings only if "the trial judge clearly erred in his credibility findings or overlooked or misconceived relevant and material evidence." *Id*. at 12 (citing *State v. Tabora,* 198 A.3d 516, 520 (R.I. 2019)).

Specifically, Mr. Bishop argues that the Trial Magistrate misconstrued the Trooper's testimony; he urges that the Trooper did not testify that he did not *recall* telling Mr. Bishop that he blew double on the PBT, as the Trial Magistrate found (citing *Tr*. at 157); instead, he testified that he did not remember if any such conversation occurred and, if it did, its substance. *Appellant's Brief,* at 13. And later in his testimony, the witness did not deny that such a conversation may have occurred. *Id*. Appellant also argues that the Trooper's testimony that he never tells motorists' their PBT results was not inconsistent with saying he blew double the legal limit, since that is not an exact reading. *Appellant's Brief,* at 14.

And lastly on this point, Appellant asserts that deceiving the operator as to the results of a PBT test may constitute a basis for dismissal. *Appellant's Brief,* at 15 (citing *Brown v. Rhode Island Dep't of Transportation,* 638 A.2d 1052 (R.I. 1994) and *Levesque Rhode Island Dep't of Transportation,* 626 A.2d 1286 (R.I. 1993)).

Second, Mr. Bishop urges that the Appeals Panel erred when it held that an officer may use trickery to coax a defendant into violating the law. *Appellant's Brief,* at 15-16 (citing *Bumper v. North Carolina,* 391 U.S. 543 (1968) and *United States v. Montes-Reyes,* 547 F.Supp.2d 281, 287-89 (S.D.N.Y. 2006)). He distinguishes, as inapposite, the cases cited by the Panel, *McConkie v. Nichols,* 392 F.Supp.2d 1 (2005) and *Frazier v. Cupp,* 394 U.S. 731 (1969).

Finally, Appellant argues that his alleged speeding and failure to keep within a lane of travel could not be considered in evaluating whether the Trooper had reasonable grounds to believe that he was operating under the influence because he was acquitted of those charges. *Appellant's Brief,* at 17-18. And he insists that, absent that driving information, the Trooper did not have reasonable grounds to believe he was operating under the influence; therefore, the Trooper had no right to ask him to submit to a chemical test. *Id.*

B

Appellee — the State

In its Memorandum of Law, the State responds to each of Appellant's arguments.

First, the State argues that the Trooper's testimony — that he never tells motorists the results of PBT tests — was credible and unequivocal; according to the Trooper, he never tells motorists their PBT readings. *State's Memorandum,* at 4. Accordingly, it asserts that the Trial Magistrate had a proper basis upon which to reject Mr. Bishop's version of the conversation. *Id*. at 5. It declares that Attorney Kupa's testimony does not support the proposition that the Trooper told Mr. Bishop that his PBT reading was twice the legal limit, only that Mr. Bishop told Mr. Kupa that he said that. *Id*. at 4-5.

Second, the State argues that, as a factual matter, the Trooper never told Mr. Bishop he blew "double" the legal limit. *Id*. at 5. The State then argues that the cases cited by Appellant, *Brown* and *Levesque*, are inapposite, since they concerned inaccuracies on the implied-consent form utilized in drunk-driving cases regarding the penalties which will be incurred on a charge of refusal to submit to a chemical test. *Id*. at 5-6. And, in those cases, the refusal charges were not dismissed, but the pertinent penalties were diminished or stricken. *Id*. at 6.

Third, the State responds to Appellant's argument, that he was "tricked" into refusing the breathalyzer test, in two ways. *Id*. at 6-7. First, the State reiterates that the Trooper's testimony denying he commented on the PBT result was true. *Id*. Alternatively, the State recalls that Mr. Bishop quoted the Trooper as saying that if he was under the legal limit on the PBT, he would be released. Therefore, when he was not released, he could properly conclude he had

blown over the legal limit — which he had. *State's Mem.* at 7. Therefore, he was in no way misled. *Id.* Before concluding on this issue, the State alleges that the decision of the Appeals Panel was not incorrect when it noted that the use of deception by law enforcement is not, *per se*, forbidden. *Id.* Nor, the State argues, does a motorist have a right to be (accurately) informed of his or her PBT result. *Id.*

Finally, the State asserts that the officer did have reasonable grounds to believe Appellant was operating under the influence; thus, he possessed the authority to request that Mr. Bishop submit to a chemical test. *State's Mem.* at 7-8. In making this argument, the State reiterates that the same reasonable-suspicion standard that is used to authorize the stop permits the Trooper to consider the bad-driving reflected in the speeding and laned-roadway violations on the issue of reasonable grounds of intoxication. *Id.* at 8.

III
Standard of Review

The standard of review which must be employed in this case is enumerated in G.L. 1956 § 31-41.1-9(d), which states as follows:

> (d) *Standard of review*. The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been 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 is a mirror-image of the standard of review found in G.L. 1956 § 42-35-15(g) — a provision of the Rhode Island Administrative Procedures Act (APA). Accordingly, we are able to rely on cases interpreting the APA standard as guideposts in this process. Under the APA standard, the District Court " … may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.'" *Guarino v. 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).

And our Supreme Court has also reminded us that, when handling refusal cases, reviewing courts lack "the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." *Link, supra,* 633 A.2d at 1348 (*citing Liberty Mutual Insurance Co. v. Janes,* 586 A.2d 536, 537 (R.I. 1991)). This Court's review "… is confined to a reading of the record to determine whether the judge's decision is supported by legally competent evidence or is affected by an error of law." *Id.* at 1348 (*citing Environmental Scientific Corp. v. Durfee,* 621 A.2d 200, 208 (R.I. 1993)).

IV
Applicable Law
A
The Refusal Statute

The instant case involves the application of the substantive law of the charge of refusal to submit to a chemical test. Accordingly, a few comments are appropriate here.

The civil charge of "refusal to submit to a chemical test," is set forth in § 31-27-2.1(d) of the General Laws.[6] It has its origins in the implied-consent law — which provides that, by operating motor vehicles in Rhode Island, motorists promise to submit to a chemical test designed to measure their blood-alcohol content, whenever a police officer has reasonable grounds to believe they have driven while under the influence of liquor. *State v. Pacheco,* 161 A.3d 1166, 1175 (R.I. 2017). And motorists who renege on that promise may be charged with the civil offense of refusal and suffer the suspension of their operator's licenses, among other penalties. Thus, at its essence, a refusal charge is an offense against

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

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

our state's regulatory scheme for identifying drunk and unsafe drivers on our highways.

The charge of refusal contains four statutory elements. They are: *one,* that the officer had reasonable grounds to believe that the motorist had driven while intoxicated;[7] *two,* that the motorist, having been placed in custody, refused to submit to a chemical test; *three,* that the motorist was advised of his rights to an independent test; *and four,* that the motorist was advised of the penalties that are incurred for a refusal. G.L. 1956 § 31-27-2.1(d), *supra* at 24, n.6. The State must also prove that the initial stop was legal. *State v. Bruno,* 709 A.2d 1048, 1050 (R.I. 1998) *and State v. Jenkins,* 673 A.2d 1094, 1097 (R.I.1996). *See also Pacheco, supra,* 161 A.3d at 1175-76. And, it must also show that the motorist was notified of his or her right to make a phone call for the purposes of securing bail as provided in G.L. 1956 § 12-7-20. But the State need not show that the motorist was operating under the influence. *State v. Bruno, supra*, 709 A.2d at 1050; *State v. Hart,* 694 A.2d 681, 682 (R.I.1997). Neither must the prosecution show that the officer had probable cause to arrest for such a charge.[8]

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[7] "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, supra*).

[8] *Jenkins, supra,* 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, supra*, 161 A.3d at 1174 (declaring that evidence obtained post-arrest is admissible in support of the officer's possession of a reasonable belief that defendant operated under the influence, if obtained prior to the officer's request that detainee submit to a chemical test).

V

Analysis

We shall now consider Mr. Bishop's three assertions of error *seriatim*.

A

The Trial Magistrate's Factual Conclusions

In arguing that the Trial Magistrate's factual findings were flawed, Appellant relies on the standard of review for the factual findings of a trial judge enunciated in *State v. Tabora, supra,* 198 A.3d at 520. Without doubt, Appellant cites that standard correctly. However, *Tabora* is entirely inapplicable to the case at bar.

That case concerned the review of the findings which a trial judge made in a criminal case while considering a motion for new trial. *Tabora,* 198 A.3d at 519-20. In the instant case we consider an appeal from a ruling made by an appeals panel of the Traffic Tribunal pursuant to § 31-41.1-9(d), which is the same standard of review utilized in administrative appeals, as set forth in G.L. 1956 § 42-35-15(g).[9] Under this standard, factual findings made by magistrates (or hearing officers in administrative cases) must be upheld if they are supported by legally competent evidence of record. *See Link and Marran, supra* at 18. There can be no doubt that the Trooper's testimony constituted competent evidence

[9] And this same standard is used by the appeals panel when it performs its first-level review of the decisions of trial magistrates pursuant to G.L. 1956 § 31-41.1-8(f).

upon which the Trial Magistrate had the right to rely, if he so chose. As a result, this Court, like the Panel, is required to affirm the Trial Magistrate's factual findings.

B

The Allegations of Trickery

As outlined above, Appellant's second claim of error concerns his allegation that when Trooper Goduto told him he had blown "double" the legal limit on the PBT he was, in effect, tricked into refusing to take the breathalyzer. *Appellant's Brief,* at 15-17. As stated *supra*, the Appeals Panel rejected this argument on the ground that the police are not required to disclose the results of PBT tests. *Dec. of Appeals Panel,* at 13-14; *ER* at 26-27 (quoted *supra* at 17).[10]

In the Brief filed with this Court, Mr. Bishop argues that this trickery vitiates his subsequent consent to the breathalyzer test. *Appellant's Brief,* at 16. He declares that law enforcement may not engage in trickery to coax a defendant into violating the law. *Id*. at 15-16. And he urges that the cases cited by the Panel are inapposite. *Appellant's Brief,* at 17. And, quite frankly, none is completely on point.

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[10] Neither the Panel nor the State has cited any case law supporting the position that the law enforcement has no duty to reveal to a motorist-detainee the results of a PBT test. The brief research undertaken by this Court has revealed but one case in which the issue was litigated, *Hager v. Iowa Department of Transportation,* 687 N.W.2d 106, 109-10 (Iowa 2004). In *Hager*, Court of Appeals of Iowa decided that motorists possess no such right. *Id.*

For example, *Lewis v. United States, supra,* concerned the consensual entry into Mr. Lewis's home by an undercover officer for the purpose of purchasing narcotics. *Lewis*, 385 U.S. at 210. The High Court found no Fourth Amendment violation notwithstanding the deception the officer employed — that is, pretending to be a drug-seeking customer — because it found no privacy concerns when the home is being used to transact an unlawful business and permitting entrance to those seeking to purchase this contraband. *Lewis*, 385 U.S. at 211.

The other Supreme Court case cited by the Panel, *Frazier v. Cupp, supra,* is also not on all fours with the instant case. In *Frazier*, a confession prompted when a law enforcement officer falsely told an arrestee that his codefendant had confessed, then continued after the arrestee commented that he thought he should get a lawyer. *Frazier*, 394 U.S. at 737-38. The Court first declined to suppress the confession under the right-to-counsel analysis mandated by the Sixth Amendment and *Escobedo v. Illinois,* 378 U.S. 478 (1964). *Frazier*, 394 U.S. at 738-39. And, on a question more relevant to the instant case, the Court, in a concise analysis, refused to find that the confession was involuntary, *based upon the officer's misrepresentation as to the codefendant's statement*, employing a totality-of-the-circumstances methodology. *Frazier*, 394 U.S. at 739.

But the United States Supreme Court case cited by Appellant, *Bumper v. California, supra*, is also distinguishable from the instant case. In *Bumper*, law

enforcement officers gained entry to the home of the defendant's grandmother by telling her, falsely, that they had a search warrant. *Bumper*, 391 U.S. at 546. And so, she allowed them in, whereupon they found a rifle allegedly utilized in the commission of the charged offense, rape. *Id*. at 546-47. The Supreme Court found that the lie about the existence of a warrant constituted "coercion – albeit colorably lawful coercion." *Id*. at 550. Then it added the peroration — "[w]here there is coercion there cannot be consent." *Id*.

So, what principle can we divine from these several cases? One candidate is the axiom quoted by the State in its memorandum: law enforcement's use of deception is not unconstitutional *per se*. *State's Mem*. at 7 (quoting *Dec. of Appeals Panel,* at 14, in its concise explanation of the *Lewis* decision). Of course, while indisputable, this declaration is of limited utility, for it does not tell us how to distinguish between those forms of police deception that are, and those that are not, illegal.

How then, can we proceed? What lessons can we draw from the cited cases? Let us begin at a superficial level — two of the cases concern Fourth Amendment issues of search and seizure. In one, *Lewis*, the officer gained entry to the home by misrepresenting himself to be a purchaser of narcotics — a factual matter. In the second, *Bumper*, the officer gained entry by lying about his legal authority to enter the dwelling — a legal matter. The former lie was deemed constitutionally acceptable, the latter was not.

In *Frazier*, the other U.S. Supreme Court case cited by the Panel, a Fifth Amendment issue was presented when a confession was obtained when the officer falsely told the arrestee that his codefendant had confessed. *Frazier*, 394 U.S. at 737. This action was deemed not to make that confession involuntary. *Frazier*, 394 U.S. at 739. Whether or not the codefendant had confessed was undoubtedly a factual matter.

And so, the crude rule to be drawn from the three cases cited by the parties seems to be that if the officer deceived the arrestee about a factual matter, there is no constitutional violation, but if the misinformation relates to a legal issue, there is.[11]

In the instant case, Trooper Goduto is accused of lying to Mr. Bishop about his PBT reading, a factual matter. And so, based on a review of the cases cited by the parties, this Court must conclude that, even if we assume *arguendo* that Trooper Goduto misled Mr. Bishop as to the results of his PBT test, his

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[11] The Rhode Island cases cited by Appellant, *Levesque Rhode Island Dep't of Transportation,* 626 A.2d 1286 (R.I. 1993) and *Brown v. Rhode Island Dep't of Transportation,* 638 A.2d 1052 (R.I. 1994), fall within this pattern. They both concerned situations in which the officer gave incorrect information to the motorist regarding the sanctions that would be incurred for refusal — *issues of law*. Specifically, the officers in each case failed to notify the motorists that, in addition to other penalties being imposed, their motor vehicle registrations would be suspended. *Levesque*, 626 A.2d at 1288; *Brown*, 638 A.2d at 1054. Proof that the motorist was told of the penalties for refusal is an element to be proven under § 31-27-2.1(d).

Secondly, it is probably worth noting that the Supreme Court decided, in *Levesque* and *Brown*, that the remedy for the officer's omission would be that the registration suspensions would be vacated; the case was not dismissed. *Levesque*, 626 A.2d at 1291; *Brown*, 638 A.2d at 1288.

refusal to submit to the chemical test may not be regarded as unreasonable or involuntary.

C

The Lack of Legal Grounds to Request a Chemical Test

As stated above, the Panel affirmed the Trial Magistrate's finding that Trooper Goduto had the legal authority to request Mr. Bishop to submit to a chemical test, based on the observations he made during the stop and our Supreme Court's rulings in *State v. Perry* and *State v. Bjerke*. *Dec. of Appeals Panel,* at 14-15; *ER* at 28-28.

In his Brief, Appellant argues that the Trial Magistrate should not have included the speeding and the laned-roadway violations in its reasonable grounds analysis because he was found not guilty on those counts. *Appellant's Brief,* at 17-18. He also argues that there was not sufficient evidence to find that he had slurred speech. *Id*. at 18. Consequently, he urges that there were not reasonable grounds upon which to request that he submit to a chemical test. *Id*.

The State urges that the Trooper's observations regarding Mr. Bishop's alleged speeding and his laned-roadway violation could be considered as part of the Trial Magistrate's analysis of whether the Trooper had reasonable-grounds to request that he to submit to a chemical test, given that the charges must be proven to the standard of clear-and-convincing-evidence and standard for making the request is reasonable grounds, which equates to the reasonable-suspicion

standard. *State's Mem.* at 7-8. *See Jenkins*, 673 A.2d at 1097. This Court concurs. And so, when those observations are combined with the Trooper's post-stop observations regarding Appellant's bloodshot eyes, slurred speech, the faint odor of alcohol emanating from his person, his difficulty in exiting his vehicle, and, finally, his admission to imbibing several drinks (as found in *Trial Tr.* at 162; *ER* at 111), constitute reasonable grounds upon which the Trooper could conclude that Mr. Bishop was operating his motor vehicle while under the influence of alcohol. *See Jenkins*, *supra*, 673 A.2d at 1097; *Bruno, supra*, 709 A.2d at 1050; *Perry, supra,* 731 A.2d at 723.

VI
Conclusion

Upon careful review of the evidence presented and the pertinent law, I recommend that this Court find that the decision rendered by the Appeals Panel ought to be affirmed. First, the Panel's adjudication was supported by competent evidence and not legally erroneous insofar as it affirmed the Trial Magistrate's decision that the initial stop of Mr. Bishop's vehicle was supported by reasonable suspicion. So too, the Panel's decision was also supported by competent evidence of record and the applicable law when it upheld the Trial Magistrate's ruling that the Officer had reasonable grounds to request Mr. Bishop to submit to a chemical test under § 31-27-2.1.

Accordingly, I recommend that the decision that the Traffic Tribunal Appeals Panel issued in this matter be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE

APRIL 22, 2025