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

Richard DiPrete	:	
	:	
v.	:	**A.A. No. 10 - 0173**
	:	
State of Rhode Island	:	

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 & 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 & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the appellate panel of the Traffic Tribunal is REVERSED.

Entered as an Order of this Court on this 29th day of September, 2011.

By Order:

____/s/_____
Melvin Enright
Acting Chief Clerk

Enter:

___/s/_____
Jeanne E. LaFazia
Chief Judge

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

Richard DiPrete	:	
	:	
v.	:	**A.A. No. 2010-0173**
	:	**(T09-0072)**
State of Rhode Island	:	**(09-001-1512175)**
(RITT Appellate Panel)	:	

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

Ippolito, M. In this case Mr. Richard DiPrete urges that an appeals panel of the Rhode Island Traffic Tribunal erred when it affirmed a trial magistrate's decision finding him guilty of refusal to submit to a chemical test, a civil violation, under Gen. Laws 1956 § 31-27-2.1. Mr. DiPrete's principal argument before this Court is constitutional — that the State failed to satisfy the burden, imposed upon it by the Fourth Amendment, of proving that the initial stop of his vehicle by a state trooper was predicated on reasonable suspicion that he was involved in unlawful activity. Secondarily, he alleges that the trial magistrate exceeded proper bounds when he questioned the trooper — the state's sole witness.

This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. Jurisdiction for the instant

appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9; the applicable standard of review may be found in Gen. Laws 1956 § 31-41.1-9(d). After a review of the entire record, and for the reasons stated below, I have concluded that the decision of the panel regarding the Fourth Amendment issue is not supported by reliable, probative and substantial evidence of record and is clearly erroneous; I therefore recommend that the decision below be reversed.

FACTS & TRAVEL OF THE CASE

A. THE FACTS OF THE CASE.[1]

On April 14, 2009 at approximately 5:00 P.M., Trooper Derek Melfi — a 4½ year veteran of the Division of State Police with 50 DUI investigations and thousands of traffic stops — was on patrol when he received a radio dispatch indicating that a witness to a hit and run motor vehicle accident in Johnston was following the vehicle involved — whose operator was possibly intoxicated. (Trial Tr. I, at 13-14, 32, 34, 39). The trooper went into pursuit, guided by the dispatcher, who relayed the changing location of the vehicle. (Trial Tr. I, at 15). After about five minutes the trooper was able to intercept the target vehicle on Memorial Boulevard in Providence. (Trial Tr. I, at 16). Immediately, he turned on his overhead lights. (Trial Tr. I, at 17). He followed the vehicle when — without using its turn signals —

[1] The facts of the case were derived solely from the testimony of Trooper Derek Melfi. This summary is a somewhat briefer version of the narrative presented by the panel in its opinion. See Decision of Panel, at 1-4. Because of the narrowness of the issues in this case, I shall terminate the narration at the point of the stop.

it took a right turn onto Exchange Street and then another right onto Exchange Street,[2] and then — using his turn signal — took a left onto Dorrance Street (Trial Tr. I, at 18-20). When the car stopped at a red light on Dorrance Street, Trooper Melfi exited his cruiser and approached the vehicle on foot. (Trial Tr. I, at 18-19). He then observed the motorist, Mr. Richard DiPrete. (Trial Tr. I, at 20).

To that point, Trooper Melfi had not observed the motorist engage in any criminal activity or commit any traffic violations. (Trial Tr. I, at 34).[3] He had not even seen Mr. DiPrete exhibit any of the recognized indicia of driving under the influence which may constitute driving violations. (Trial Tr. I, at 32-34). The Trooper conceded that he stopped the vehicle based solely on what he had learned from the dispatcher. (Trial Tr. I, at 36, 41).

After further investigation by the trooper, Mr. DiPrete was charged with refusal to submit to a chemical test and two counts of turn signal violations.[4] Mr. DiPrete was arraigned on May 11, 2009. The trial began on June 17, 2009 before

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2 My review of a city map suggests this turn may have been onto Exchange *Terrace*.

3 As I shall relate momentarily, Trooper Melfi did cite Mr. DiPrete in summons number 09-001-512263 for two turn signal violations pursuant to Gen. Laws 1956 § 31-16-5. (Trial Tr. I, at 3). However, the trial magistrate found that the evidence demonstrated that Mr. DiPrete's turns were made with reasonable safety and did not adversely affect other motorists. (Trial Tr. I, at 56-60). As a result, verdicts of not guilty were entered on each. (Trial Tr. I, at 60).

4 Mr. DiPrete was also charged in the District Court with driving while under the influence and leaving the scene of an accident. On July 31, 2009 he entered a plea of nolo contendere to the drunk driving charge and received minimum sanctions. The leaving the scene charge was dismissed. See Complaint No. 61-09-05192.

Magistrate Alan Goulart. (Trial Tr. I, passim). Trooper Melfi testified consistently with the narrative previously related.

During the examination of Trooper Melfi, the defense stipulated to the second, third and fourth elements of a refusal case: that the defendant refused the breathalyzer, that he was notified of the consequences of a refusal, and that defendant was notified of his rights to an independent medical examination. (Trial Tr. I, at 25-30). As a result, the case was tried on one issue — the first element of a refusal case — which is whether Trooper Melfi had reasonable grounds to believe Mr. DiPrete had been operating under the influence when he requested he submit to a chemical test. (Trial Tr. I, at 27-28). And in fact, the focal point of the defense case was its claim that the Trooper did not have reasonable suspicion to stop defendant's vehicle. Id.

After redirect, the Court engaged in a short examination of the witness — during which Trooper Melfi testified that dispatch provided him with the make, model and license plate of the target vehicle. (Trial Tr. I, at 43). He also testified that when Mr. DiPrete took the right hand turn onto Exchange Street without signaling he did not affect traffic in the area. (Trial Tr. I, at 44-45).

At the conclusion of the evidence the Court heard oral argument from counsel. Then, the trial magistrate dismissed the two turn signal violations on summons number 09-001-512263, finding that Mr. DiPrete's actions did not affect traffic, proof of which is required by Gen. Laws 1956 § 31-16-5. (Trial Tr. I, at 60). The refusal case was adjourned until June 23, 2009, when the trial magistrate

rendered his decision. (Trial Tr. II, passim).

B. TRIAL FINDINGS.

Magistrate Goulart found that Trooper Melfi "… certainly did have reasonable suspicion based on specific and articulable facts to stop Mr. DiPrete's vehicle." Trial Tr. II, at 19. In his oral decision, the trial magistrate identified the specific factors upon which he relied in finding Trooper Melfi had reasonable suspicion to stop Mr. DiPrete's vehicle:

> … Reasonable suspicion means the determining authority can point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrants the intrusion. Certainly, the intrusion in this case was minimal, in that, we're talking about the stopping of a motor vehicle for a relatively short purpose. Solely for the purpose of determining whether the vehicle in this case was involved in the accident, which was alleged to have occurred in the Town of Johnston. As again, I indicated, the intrusion is minimal, and certainly, it's my belief that Trooper Melfi had an obligation to stop that vehicle and make a determination as to whether the vehicle that he was provided specific information about was the vehicle involved in the accident. Even if the vehicle had not been involved in the accident, I would also suggest that I would have been prepared to find that the vehicle was lawfully stopped. The information that was provided to Trooper Melfi was not anonymous.[5] In fact, it was from a source which – who identified himself or herself to the police, who was making observations as she was following the motorist, providing very specific detail as to the movements of the car, a description of the car, and a description of the license plate as well. This was not an anonymous tip. This was a tipster, quite frankly, who was and became known to the police, so while I understand there is a reference and somewhat analogous – the analogy can be made to Alabama versus White; this is not an Alabama versus White situation.

[5] This finding by the trial magistrate is not — from my review — supported in the record of the RITT proceedings. As a result, I shall proceed as if the tip was anonymous, as the RITT panel did.

> In Renn versus the United States,[6] the Court said, as a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. In my belief, the police had more than a sufficient probable cause to believe that a traffic violation had occurred. As we all know, probable cause can be based on hearsay evidence. Our court has said that repeatedly. Trooper Melfi was more than reasonable to base his decision on the information known to him at the time; certainly, which he was able to corroborate through his own observations. The corroboration being the location of Mr. DiPrete's car, the description of Mr. DiPrete's car, as well as the license plates of Mr. DiPrete's car, so I'm certainly satisfied after having reviewed the evidence that Trooper Melfi certainly did have reasonable suspicion based on specific and articulable facts to stop Mr. DiPrete's vehicle.

Trial Tr. II, at 17-19. Based on these findings [and the stipulation that had been entered] Magistrate Goulart found all four elements of a refusal charge had been proven to a standard of clear and convincing evidence. Trial Tr. II, at 19-20. As a result, Mr. DiPrete was found guilty of refusal and sentenced, including a six-month license suspension. Trial Tr. II, at 30. Mr. DiPrete then filed an appeal to the RITT appeals panel.

C. PROCEEDINGS BEFORE THE PANEL AND THE PANEL'S DECISION.

The matter was heard by an appellate panel comprised of Chief Magistrate William Guglietta (Chair), Judge Albert Ciullo, and Magistrate Domenic DiSandro on September 30, 2009. Before the panel, Mr. DiPrete asserted that the trial magistrate committed reversible error by failing to dismiss the refusal charge based on a lack of reasonable suspicion for the stop, plus a second issue — the trial

[6] This may be a reference to Whren v. United States, 517 U.S. 806 (1996).

magistrate's questioning of Trooper Melfi. In its August 31, 2010 decision, the panel rejected both of these assertions of error.

Preliminarily, the appellate panel decided that the trial magistrate did not violate Rule 614 by questioning Trooper Melfi. See Decision of Panel, at 6-8. Specifically, the panel found the magistrate's questions served only to clarify material previously elicited by the prosecution and did not engender any new information. See Decision of Panel, at 7-8. Regarding the Fourth Amendment question, the panel upheld the trial magistrate's finding that the trooper had reasonable suspicion to stop Mr. DiPrete's vehicle, finding it was supported by substantial evidence and not clearly erroneous. See Decision of Panel, at 8-12. In particular, the panel found reasonable suspicion based on certain enumerated factors. See Decision of Panel, at 18.

In affirming the trial magistrate's finding, the members of the panel also focused on the trooper's ability to verify the dispatcher's information. The panel also found that:

> Based on the detailed information provided by the informant, he established his reliability and furnished the police with a basis, support, and underlying reason for his belief. See Draper v. United States, 358 U.S. 307 (1959)(delineating the guidelines to determine when and under what circumstances advice from an unidentified informer may be "reasonably trustworthy"). Accordingly, the tip provided by the informant was more reliable than an anonymous tip. See Alabama v. White, 496 U.S. at 329-30 (stating that an anonymous tip containing a range of details and demonstrating inside information, sufficiently corroborated, can exhibit sufficient indicia of reliability based on the totality of the circumstances).

> Further, the description provided by the informant was corroborated by the Trooper. While Trooper Melfi neither made any independent observations of erratic driving, nor witnessed any traffic violations before he activated his emergency lights, he still had corroborated enough information to verify the tip. See In re John N., 463 A.2d 177 (where the officer was justified in stopping a vehicle by relying on departmental information and the officer's own personal observations). Specifically, Trooper Melfi was already investigating the hit and run that occurred in Johnston, and based on the information provided by the informant, the Trooper was attempting to stop the vehicle to investigate the crime. (June 17 Tr. at 41-42.) Additionally, Trooper Melfi was able to locate the Appellant's vehicle based on the information provided by the informant, including the location, make, model, and license plate number. See In re John N., 463 A.2d 174, 117 (R.1. 1983) (where corroborated and detailed information justifies an investigatory stop). Compare Bjerke, 697 A.2d at 1071-72 (where an anonymous caller did not support reasonable suspicion until independent evidence was corroborated). Accordingly, based on the sufficient evidence corroborating the informant's allegation of the Appellant's hit and run accident, intoxication, and specific and articulable facts to stop the Appellant, this Panel finds the trial court's decision is based on reliable, probative, and substantial record evidence.

See Decision of Panel, at 10-12. Thus, the panel found that the officer was able to corroborate the tip sufficiently to generate articulable facts constituting reasonable suspicion.

D. DISTRICT COURT APPEAL PROCEEDINGS.

On September 9, 2010, appellant filed an appeal in the Sixth Division District Court. Helpful memoranda have been received from learned counsel for Appellant DiPrete and the Appellee State of Rhode Island.

1. Summary of Appellant's Position.

In support of his assertion that Trooper Melfi did not have reasonable suspicion to stop his car, Mr. DiPrete points out that the Trooper did not observe

him exhibit any erratic driving nor did he commit any traffic violations or criminal offenses before he stopped him.[7] Appellant's Memorandum of Law, at 2-3. Mr. DiPrete places reliance on the Trooper's cross-examination testimony wherein he freely conceded that he acted based on "just what I heard from the dispatcher." Appellant's Memorandum of Law, at 10. Finally, his memorandum presents a series of cases he urges support his position.

2. Summary of the State's Position.

In its Memorandum the State asserts that whether the Trooper had reasonable suspicion, the standard for a lawful car stop (State's Memorandum of Law, at 5, citing State v. Bruno, 709 A.2d 1048 [R.I. 1998]), must be evaluated on the basis of the "totality of the circumstances" known to the officer (State's Memorandum of Law, at 6, citing State v. Casas, 900 A.2d 1120, 1131 [R.I. 2006] and United State v. Cortez, 449 U.S. 411, 417 [1981]). Applying this test, the State urged that the information received from the caller was cloaked with indicia of reliability and that the trooper corroborated the information. State's Memorandum of Law, at 6-7. Accordingly, the State urges that the decision of the panel should be affirmed.

[7] Appellant also indicates that Trooper Melfi had no discussions — by phone or otherwise — with the caller. While the caller is named in Appellant's Memorandum, his identity is not named in the record.

STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in Gen. Laws 1956 § 31-41.1.-9(d), which provides as follows:

> (d) Standard of review. The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the appeals panel's findings, inferences, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the appeals panel;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act ("APA"). Accordingly, I shall rely on cases interpreting the APA as guideposts in the review 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.' "[8] The Court will not substitute its judgment for that of the agency (here, the panel) as to the weight of the evidence on questions of fact.[9]

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[8] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980)(citing R.I. GEN. LAWS § 42-35-15(g)(5)).

[9] Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.[10]

APPLICABLE LAW

The "Applicable Law" section of this opinion will be atypical. Rather than providing an extensive discussion of § 31-27-2.1 and the cases construing it, we shall present a trimmed-down review of the law of refusals in favor of an extensive discussion of the applicable Fourth Amendment case law, commencing with an examination of the law of police stops generally, complemented by expositions of (1) the authority of officers to make stops based on facts known to fellow-officers and (2) the law regarding police stops based on anonymous tips. To the extent necessary, we shall explain how these doctrines originated in the law of arrests based on probable cause.

A. THE REFUSAL STATUTE

This case involves a charge of refusal to submit to a chemical test. See Gen. Laws 1956 § 31-27-2.1. The civil offense of refusal is predicated on the implied consent law, which is stated in subsection 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. No more than two (2) complete tests, one for the presence of intoxicating liquor and one for the presence of toluene or any controlled substance, as

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[10] Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968).

> defined in § 21-28-1.02(7), shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have 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. * * *

The four elements of a charge of refusal which must be proven at a trial before the Traffic Tribunal are stated later in the statute:

> … 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. …

Gen. Laws 1956 § 31-27-2.1(c).

Noting the presence in the statute of the phrase – "reasonable grounds" – the Rhode Island Supreme Court interpreted this standard to be the equivalent of "reasonable-suspicion." The Court stated simply, "* * * [I]t is clear that reasonable suspicion is the proper standard for evaluating the lawfulness of the stop." State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996) citing Terry v. Ohio, 392 U.S. 1 (1968). It is this standard which Mr. DiPrete urges was not satisfied when his vehicle was

stopped by Trooper Melfi.[11] This is the nexus of the law of refusal and the Fourth Amendment.

A review of Rhode Island Supreme Court refusal cases reveals a few in which the legality of the initial stop was considered, though none have reviewed a stop based on information received through police channels. In Jenkins, 673 A.2d at 1097, the stop was found to be authorized under the Terry standard of "reasonable suspicion" where the officer observed "erratic movements" being made by Ms. Jenkins' vehicle. Accord, State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1998).

When reviewing the history of the events that led to the prosecution of Mr. Robert Bjerke — particularly when reading that an anonymous report of a possibly intoxicated driver was received and an officer was dispatched to the scene — one anticipates that issues germane to the instant case may be decided. See State v. Bjerke, 697 A.2d 1060, 1070 (1997). However, at that point our hope for a potential guiding precedent evaporates. While en route, the officer learned that the vehicle's registration was suspended, giving him clear authority to stop the vehicle under Whren v. United States, supra at 12, fn. 8. Bjerke, 697 A.2d at 1072. The Court, therefore, never reached the sufficiency vel non of the anonymous tip.

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[11] On most occasions an alcohol-related traffic offense (i.e., driving under the influence or refusal) results after a motorist has been stopped for the violation of a lesser (non-alcoholic related) traffic offense. Such stops have been found to comport with the mandate of the fourth amendment that searches and seizures be reasonable. See Whren v. United States, 517 U.S. 806, 810 (1996)(cited in State v. Bjerke, 697 A.2d 1060, 1072 (1997)).

Finally, we may recount State v. Perry, 731 A.2d 720 (R.I. 1999), which also bears some superficial similarity to the instant case. In Perry, Central Falls Police Officer Joseph Greenless responded to an accident scene and obtained, from the driver of a damaged vehicle, the license plate of the car that had rear-ended him. Perry, 731 A.2d at 721. After running the plate he learned it was registered to Mr. Perry. Id. Proceeding to the defendant's address, he observed a vehicle with the plates described that had front-end damage. Id. Mr. Perry appeared and indirectly admitted involvement in the accident. Id. On these facts the Supreme Court upheld the trial judge's finding of reasonable suspicion. Perry, 731 A.2d at 723. However, as hinted above, although the Perry case involves a hit-and-run accident, it is legally distinguishable from the instant case because the officer received the information directly from the witness and not indirectly — i.e., through police channels.

In any event, having received little or no guidance from Rhode Island refusal cases, we must prepare to resolve this case by obtaining an understanding of underlying Fourth Amendment principles.

B. REASONABLE SUSPICION TO STOP A VEHICLE — GENERALLY.

The question of the legality of car stops is governed by the Fourth Amendment, which guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures … ."

U.S. Constitution, amend. IV.[12] The fundamental principle of the Fourth Amendment is that "for a seizure to be deemed reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause." United States v. Torres, 534 F.3d 207, 210 (3rd. Cir. 2008). But, warrants are not required for arrests in all circumstances. State v. Burns, 431 A.2d 1199, 1202-03 (R.I. 1981) citing United States v. Watson, 423 U.S. 411, 417 (1976). Nevertheless, when a warrantless arrest is made, the requirement of probable cause is said to be "absolute." Burns, 431 A.2d at 1203 citing Dunaway v. New York, 442 U.S. 200, 208 (1979).[13]

However, since 1968, a further exception to the warrant requirement [and the probable cause requirement] has been recognized by the United States Supreme Court. In Terry v. Ohio, 392 U.S. 1 (1968), the Court declared that certain temporary police detentions —known collectively ever since as "Terry" stops, including "car stops" and "stop and frisks" of pedestrians — have been deemed to be permitted by the Fourth Amendment so long as the officer making the stop has " … a reasonable,

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12 The Fourth Amendment is made applicable to the state through the Due Process Clause of the Fourteenth Amendment. State v. Castro, 891 A.2d 848, 853 (R.I. 2006) citing Mapp v. Ohio, 367 U.S. 643, 654-55 (1961).

13 The Rhode Island Supreme Court has stated that " … a police officer has probable cause to make an arrest when he personally knows or reliably has been informed of facts sufficient to justify the belief of a person of reasonable caution that a crime has been committed or is being committed by the person to be arrested." State v. Burns, 431 A.2d 1199, 1203 (R.I. 1981) citing Brinegar v. United States, 338 U.S. 160, 175-76 (1949). See also State v. Soroka, 112 R.I. 392, 395, 311 A.2d 45, 46 (1973).

articulable suspicion of an individual's involvement in some criminal activity." Terry v. Ohio, 392 U.S. 1, 21 (1968).[14] See also Whren v. United States, 517 U.S. 806, 809-10 (1996); State v. Casas, 900 A.2d 1120, 1131 (R.I. 2006); State v. Keohane, 814 A.2d 327, 330 (R.I. 2003); State v. Abdullah, 730 A.2d 1074, 1076 (R.I. 1999); Burns, supra, 431 A.2d at 1203. As stated above, in State v. Jenkins, supra, the Rhode Island Supreme Court embraced the reasonable suspicion for DUI car stops. If the officers who made the stop cannot show that their knowledge met the reasonable suspicion standard, evidence obtained pursuant to the investigatory stop must be suppressed as "fruit of the poisonous tree." Torres, 534 F.3d at 210 citing United States v. Brown, 448 F.3d 239, 244 (3rd Cir. 2006).

Because our "stop and frisk" case law began — relatively recently, in Terry — as an offshoot of arrest law, many of the procedures used to determine reasonable-suspicion mirror (or at least parallel) those protocols which, historically, have been used to determine probable cause. This may be seen in the three-stepped protocol that is used to determine probable cause or reasonable suspicion:

1. When considering whether the probable cause or the reasonable-suspicion standard has been met in a particular case, the Court must first determine the

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[14] In Terry, this rule was applied when police suspected the target was about to commit a crime. United States v. Hensley, 469 U.S. 221, 227 (1985) citing Terry. Subsequently, in Adams v. Williams, 407 U.S. 143, 145 (1972), the principle was extended to situations where the police suspected the target was committing the crime when stopped. Hensley, Id. Finally, the authority to make a temporary stop (aka a "Terry stop") was also recognized where the police believed the target had already committed an offense. United States v. Hensley, 469 U.S. 221, 229 (1985).

moment when the defendant was arrested or detained, for it is at that point that the officer must have had the requisite quantum of information. Torres, 534 F.3d at 210. See also State v. Firth, 418 A.2d 827, 829 (R.I. 1980) (probable cause) and State v. Doukales, 111 R.I. 443, 449, 303 A.2d 769, 772-73 (1973)(probable cause).

2. Then, when marshaling the facts being proffered in support of an assertion that an officer acted armed with reasonable-suspicion or probable cause, the Court may include hearsay for consideration, so long as there is a "substantial basis" for relying on such information. In re John N., 463 A.2d 174, 177 (R.I. 1983) citing State v. Burns, 431 A.2d 1199, 1204 (R.I. 1981).[15] To be admitted, it must also be found to be "reasonably trustworthy." In re John N., 463 A.2d 174, 177 (R.I. 1983)(reasonable suspicion) citing State v. Belcourt, 425 A.2d 1224, 1227 (R.I. 1981)(probable cause). See also Adams v. Williams, 407 U.S. at 147.

3. Finally, we come to the most difficult step of the process. A Court reviewing whether the reasonable suspicion standard was satisfied in a particular case must consider the totality of the circumstances, giving deference to the perceptions of experienced law enforcement officers. See United States v. Cortez, 449 U.S. 411, 417-18 (1981)(Temporary detention) and Illinois v. Gates, 462 U.S. 213 (1983)(Arrest). See also Andrade, 551 F.3d at 109 citing United States v. Ruidiaz, 529 F.3d 25, 29 (1st Cir. 2008). The Court then undertakes an inquiry that is highly "fact-sensitive" and variable — because "… suspicion sufficient to justify an

[15] The Court in Burns cited Aguilar v. Texas, 378 U.S. 108, 114 (1964).

investigatory stop may be rooted in any of a variety of permissible scenarios." Andrade, id., citing Ruidiaz, id. See also Abdullah, supra, 730 A.2d at 1077.[16] Two such scenarios are relevant to the instant case and merit special treatment here: (a) instances where reasonable suspicion is said to be premised on the knowledge of other officers and (b) cases where reasonable suspicion is based on information gained from anonymous informants.

C. REASONABLE SUSPICION BASED ON INFORMATION RECEIVED THROUGH POLICE CHANNELS.

Like "stop and frisk" law generally, the doctrine that an officer may make a stop on the basis of information gained through police channels[17] has its origins in the law of probable cause for arrest. Some of these cases, particularly those involving warrantless arrests based on the knowledge of various officers,

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16 Indeed, it may be based on non-criminal conduct, as the Rhode Island Supreme Court has explained:

> … a series of noncriminal acts will often serve as the foundation for reasonable suspicion. United States v. Sokolow, 490 U.S. 1, 9-10 (1989). "In making a determination of [reasonable suspicion] the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attached to particular types of noncriminal acts." Id. at 10 (quoting Illinois v. Gates, 462 U.S. 213, 243-44 n. 13 (1983)). Such "otherwise innocent acts, when observed as a whole by a trained and experienced law enforcement officer aware of other pertinent information, allow that officer to 'draw inferences and make deductions that might well elude an untrained person.' " State v. Ortiz, 609 A.2d 921, 927 (R.I. 1992) (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)). [parallel citations omitted].

Abdullah, 730 A.2d at 1077.

17 See generally 4 LaFave, Search and Seizure — A Treatise on the Fourth

can be exceedingly complex factually. Viewing the totality of the circumstances, the Court must evaluate what the officers knew regarding the probability that a crime was committed and that the suspect committed it. Issues of reasonable suspicion can likewise be complicated.

For purposes of understanding, we shall trace the evolution of this doctrine from (1) its origins regarding warranted arrests, next, (2) to warrantless arrests, and finally, (3) to Terry stops. Although the cases in this area are myriad, I shall focus only on cases decided by the U.S. Supreme Court and the Rhode Island Supreme Court.

1. Arrests Based on Reports of Warrants.

The seminal case in this area is Whiteley v. Warden, 401 U.S. 560 (1971). In Whiteley, the U.S. Supreme Court held that if members of one police department issue a bulletin indicating that a warrant has been issued for an individual, others in the law enforcement community may act in reliance upon it. Whiteley, 401 U.S. at 568. But, the Court made it clear that proof that the officer acted based on a report of a warrant does not per se prove Fourth Amendment compliance. The question of the ultimate legality of the arrest will not be resolved until the existence and sufficiency [in terms of probable cause] of the cited warrant is proven in Court. Justice Harlan explained the process:

> We do not, of course, question that the Laramie police were entitled to act on the strength of the radio bulletin. Certainly police officers called upon to aid other officers in executing arrest

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Amendment, § 9.5(i),(4th ed. 2004).

> warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulted from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.

Whiteley, 401 U.S. at 568 (Emphasis added). Thus, in cases where probable cause is based on a report of a warrant, the initial arrest is permitted, but the ultimate legality of the arrest can only be satisfied by proving at trial that a warrant had indeed been issued for the defendant and that it was supported by probable cause.

In Whiteley the Supreme Court examined the underlying warrant application and found it to be conclusory and lacking in facts which could support a finding of probable cause; the Court therefore found the arrest to be illegal. Whiteley, supra, 401 U.S. at 564-65, 568. Accordingly, when an officer executes a warrant on the basis of knowledge of fellow officers, Whiteley mandates a fourth step to the probable cause evaluation process, one in which the knowledge of non-arresting officers becomes the focus of the probable cause determination.

In the 1990's, the Rhode Island Supreme Court acknowledged Whiteley and incorporated its doctrine — which it termed "the fellow-officers rule" — into its jurisprudence in two decisions: State v. Taylor, 621 A.2d 1252 (R.I. 1993) and State v. Austin, 641 A.2d 56 (1994). The Taylor case involved a simple fact-pattern: Mr. Taylor was arrested pursuant to an arrest warrant and cocaine and other items were found in his jacket. Taylor, 621 A.2d at 1253. Based on this

discovery, a search warrant for his vehicle was obtained and a handgun was found. Id. At his trial on possession charges, the arrest warrant could not be located. Id. Quoting from a summary of Whiteley in a successor case, United States v. Hensley, 469 U.S. 221, 105 S. Ct. 675, 83 L.Ed.2d 604 (1985), Justice Murray explained that, in determining whether the legality of an arrest based on a communication from a colleague, the Court must focus on what the "communicating,"[18] not the "arresting," officer knew:

> In Whiteley and United States v. Hensley, 469 U.S. 221, 105 S. Ct. 675, 83 L.Ed.2d 604 (1985), the Supreme Court held that when an officer relies on a communication from a fellow officer in arresting an individual, the controlling question is whether the original, communicating officer had a valid warrant based upon probable cause to support the arrest. Hensley, 469 U.S. at 230-31, 105 S. Ct. at 681, 83 L.Ed2d at 613; Whiteley, 401 Y.S. at 568, 91 S.Ct. 1037, 28 L.Ed.2d at 313. In Hensley the Court wrote:
>
> > "Whiteley supports the proposition that, when evidence is uncovered during a search incident to an arrest in reliance on a flyer or bulletin, its admissibility turns on whether the officers who issued the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance." 469 U.S. at 231, 105 S.T at 681, 83 L.Ed2d at 613.

Taylor, supra, 621 A.2d at 1255. The following year, in Austin, supra, Justice Murray explained Whiteley and the fellow officers rule further, in even more concise and understandable terms:

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[18] We may note that Justice Murray employed the term "communicating officer" in lieu of Justice Harlan's term, "instigating officer." Her word — at least in the situation where the other officer is a dispatcher — is more apt.

> … a police officer is entitled to make a valid arrest on the basis of information obtained from another police officer; but in order to sustain the validity of the arrest in court, the warrant underlying the arrest must be proved to have been based on sufficient probable cause.

Austin, supra, 641 A.2d at 58 citing Taylor, supra, 621 A.2d at 1255. Applying these principles, the Court ruled the items seized should have been suppressed, because the validity of the warrant could not be proven (i.e., because it was missing and could not be produced by the State). Taylor, supra, 621 A.2d at 1257. Accordingly, Mr. Taylor's conviction was reversed. Id.

Similarly, the Austin case was remanded with instructions for the Court to examine the arrest warrant and undertake a Whiteley-Taylor analysis. Austin, supra, 641 A.2d at 58.

2. Departmental Knowledge Constituting Probable Cause to Make Warrantless Arrests.

The doctrine born in Whiteley — that an officer may act based on his own knowledge together with the knowledge of other officers — was extended to warrantless arrest cases — not by a particular U.S. Supreme Court case, but by the lower federal courts and the state courts. And, the extension of Whiteley to warrantless cases has long been recognized within Rhode Island's probable cause jurisprudence.

The first case I shall cite on this point is State v. Duffy, 112 R.I. 276, 308 A.2d 796 (1973). On January 7, 1970, Robert Duffy was arrested for suspicion of burglary by Lt. Lionel E. Hetu of the Division of State on the basis of a

Johnston Police radio call; his actions were approved by the Rhode Island Supreme Court:

> … we believe that information relayed to a police officer via police radio may provide probable cause to arrest. While it is true that Lieutenant Hetu did not have first-hand knowledge of what had transpired in Johnston, the existence of probable cause can be determined on the basis of the collective information available to the law enforcement organizations as a whole and not solely on that knowledge of the arresting officer. Mattern v. State, 500 P.2d 228 (Alaska 1972); State v. Cobuzzi, 161 Conn. 371, 288 A.2d 439 (1971).

State v. Duffy, 112 R.I. 276, 280, 308 A.2d 796, 799 (1973)(Emphasis added). Thus, the Rhode Island Supreme Court recognized that probable cause will be determined on the basis of the knowledge of all officers involved, not just the arresting officer. We can see that, from the outset, the requirement of validation was introduced into this sub-species of cases. Indeed, in Duffy, the Johnston Police officer testified as to the report of the house break he had caused to be broadcast. Duffy, 112 R.I. at 280, 308 A.2d at 799.

This principle was reiterated in State v. Smith, 121 R.I. 138, 396 A.2d 110 (1979). In Smith, the defendant, walked into the Providence Police Station of his own accord, to make a complaint of a theft, at which time he was arrested by an officer who had noticed that he matched a witness's description of the perpetrator of a pharmacy robbery the previous day. Smith, 121 R.I. at 139-40, 396 A.2d at 111-12. The defendant moved to suppress the results of the line-up which was later arranged, arguing that his arrest had been illegal, lacking in probable cause. Smith, 121 R.I. at 141, 396 A.2d at 112. Defendant appealed

from its denial. Writing for the Court, Justice (later Chief Justice) Weisberger concluded his explication of the concept of probable cause and how it is determined by adding — "An arresting officer in the field may rely on departmental knowledge which come through official channels. Duffy, supra." Smith, 121 R.I. at 141, 396 A.2d at 113 (Emphasis added). Validation was provided in Smith through the testimony of the citizen who provided the description of the robber. Reviewing the merits of the trial judge's ruling, the Court found he was correct to find probable cause. Smith, 121 R.I. at 142, 396 A.2d at 113. See also State v. Firth, 418 A.2d 827, 829 (R.I. 1980)(In Firth the police lieutenant who issued the pick-up order testified — explaining the basis of his suspicion; probable cause not found nonetheless).

3. Reasonable Suspicion For Stop Cases Provided Through Police Channels.

Ultimately, this doctrine was extended to Terry-stop cases in which the existence of reasonable-suspicion is the issue in United States v. Hensley, 469 U.S. 221 (1985). In Hensley the St. Bernard, Ohio Police Department issued a "wanted flyer" to police departments in the Cincinnati area for Appellee Hensley after an informant told an officer that he had participated in an armed robbery. Hensley, 469 U.S. at 223. With this flyer in mind, six days after its issuance, a Covington, Kentucky officer stopped Mr. Hensley while his dispatch was attempting to confirm the existence of a warrant. Hensley, 469 U.S. at 224. He ordered Hensley and his passenger out of the car. Ibid. Shortly thereafter, they

were arrested for the possession of weapons found. Hensley, 469 U.S. at 225. The District Court denied Hensley's Motion to Suppress but the Court of Appeals for the Sixth Circuit reversed. Id. The Supreme Court reversed, finding that the officers did have reasonable suspicion to stop the defendant. Hensley, 469 U.S. at 225-26.

Extrapolating from the particular facts in Hensley, Justice O'Connor explained that the constitutionality of a stop based on a flyer or bulletin turns on whether the officers issuing the bulletin themselves had reasonable suspicion to stop the target.

> Assuming the police make a Terry stop in objective reliance on a flyer or bulletin, we hold that the evidence uncovered in the course of the stop is admissible if the police who issued the flyer or bulletin possessed a reasonable suspicion justifying a stop, … , and if the stop that in fact occurred was not significantly more intrusive that would have been permitted the issuing department. [Citation omitted]

Hensley, 469 U.S. at 233. Thus, the Court specifically rejected the Circuit Court's rationale that the omission of such facts rendered the flyer defective. Hensley, 469 U.S. at 230-33. It is the reasonable suspicion of the issuing officer that counts and the officer stopping the defendant need not have been provided with articulable facts. Relying on Whiteley v. Warden, the Supreme Court found that a car stop made by members of one police department could lawfully be made based on articulable facts constituting reasonable suspicion possessed by members of a second department. Hensley, 469 U.S. at 230-33. Finally, it should be noted that validation was provided in Hensley through the testimony of the

officer who received the original informant's statement. Hensley, 469 U.S. at 233.[19]

The concept of "departmental knowledge" was recognized in the reasonable suspicion setting by the Rhode Island Supreme Court two years before Hensley in In re John N., 463 A.2d 174 (R.I. 1983). In John N., a police officer was informed at roll-call that the owner/operator of a certain motor vehicle was believed to be harboring a wanted man known to wear cowboy hats. John N., 463 A.2d at 175-76. Later, the car was stopped after being entered by three men, including one wearing a cowboy hat. John N., 463 A.2d at 176-77. The Court overruled the defendant's challenge to the stop on the basis that it was grounded on unsubstantiated hearsay, citing Burns, supra, for the proposition that hearsay may be used to determine probable cause and Duffy, supra, Smith, supra, and Firth supra, for the principle that officers may rely on collective information to form probable cause. Id. Accordingly, it sanctioned the use of "departmental information" to form reasonable-suspicion for the stop. Id.[20]

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[19] As one Court construing Hensley phrased the situation, when one officer makes a Terry stop based on the statements of another, the knowledge of the latter is legally imputed to the former. United States v. Torres, 534 F.3d 207, 210 (3rd. Cir. 2008).

[20] Finally, we must note that it is not clear from the opinion in John N. that evidence of validation was presented.

It must be remembered that the issue in John N. was the alleged existence of a warrant for the man wearing the cowboy hat. It is thus analogous to Whiteley v. Warden. Even without testimony, the status of the warrant may have been brought before the Court in a number of ways.

And, we must also bear in mind that John N. was decided two years

After approving the stop of the vehicle, the Supreme Court found the arrest of the juvenile John N., a passenger, to be illegal — as it was lacking in probable cause. John N., 463 A.2d at 178.

D. REASONABLE SUSPICION BASED ON INFORMATION RECEIVED FROM ANONYMOUS INFORMANTS.

Before entering into our analysis, we must view one more line of cases: those in which reasonable-suspicion was predicated upon anonymous informant information.[21] This is certainly a difficult area in which to apply constitutional principles — fact-intensive, to say the least. The following comments from Adams v. Williams may well serve to explain the Supreme Court's thinking in this area:

> … Informants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability. One simple rule will not cover every situation. Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. …

Adams v. Williams, 407 U.S. 143, 147 (1972). It is helpful, therefore, that the State and Mr. DiPrete agree on the controlling precedent in this area, and commend to our attention the Supreme Court's decision in Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), which the panel also relied upon. I also believe Alabama v. White is illuminating and must be analyzed at some length.

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before Hensley reiterated the need for validation of the instigating officer's knowledge as constituting reasonable suspicion.

[21] See generally 4 LaFave, Search and Seizure — A Treatise on the Fourth Amendment, § 9.5(h),(4th ed. 2004).

In White, Corporal Davis of the Montgomery Police Department received an anonymous phone call indicating that Ms. Vanessa White would be exiting a certain apartment at a certain time carrying an attaché case containing cocaine; she would then enter a certain vehicle and travel to Dobey's Motel. White, 496 U.S. at 327. The Corporal and his partner proceeded to the apartment and watched Ms. White exit the apartment and enter the vehicle, which was stopped when it approached the motel. Id. After obtaining Ms. White's consent to search, the officers found marijuana in the attaché and cocaine in her purse. Id.

After her Motion to Suppress was denied, Ms. White pled guilty — preserving the right to appeal from the denial of the Motion to Suppress. White, 496 U.S. at 327-28. The Alabama Court of Criminal Appeals reversed and the Alabama Supreme Court denied certiorari. White, 496 U.S. at 328. The United States Supreme Court reversed. Id.

Citing Illinois v. Gates, 462 U.S. 213 (1983), the Court indicated that "veracity," "reliability," and "basis of knowledge" are highly relevant factors in determining whether — under the "totality of the circumstances" — an informant's tip establishes probable cause or reasonable suspicion. White, 496 U.S. at 328-29.[22] While the Court indicated the tip in White did not provide much in the way of "basis

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[22] The Supreme Court noted that in Gates it had "abandoned the 'two-pronged test' of Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964) and Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969) in favor of a 'totality of the circumstances' approach in determining whether an informant's tip establishes probable cause." White, 496 U.S. at 328.

of knowledge" or "veracity," it did find the tip to constitute reasonable-suspicion based on the corroboration the tip received before Ms. White was stopped. White, 496 U.S. at 329-31. The Supreme Court of the United States accorded particular significance to the fact that the anonymous tip accurately predicted Ms. White's future conduct.

A second informant-information case decided by the United States Supreme Court — Florida v. J.L., 529 U.S. 266 (2000) — while not a car-stop case, is also informative and will help us establish parameters.

In J.L., the Court affirmed a Florida Supreme Court decision which had reinstated a trial judge's ruling suppressing evidence seized after an investigatory stop. Unlike the White case, Florida v. J.L. centered on the stop of a juvenile pedestrian. After an anonymous person reported to the Miami-Dade Police Department that a young black man standing at a certain bus stop wearing a plaid shirt was carrying a gun, officers responded and — based solely on the tip — frisked the defendant and seized a gun. J.L., 529 U.S. at 268. In a decision authored by Justice Ginsburg, the Court indicated that the indicia of reliability found in White, particularly the corroborative value of the informant's ability to predict Ms. White's movements, was not present in Florida v. J.L. The Court stressed that although the aspect of the tip that provided the identity of the target was corroborated, the information regarding the criminal activity was not. J.L., 529 U.S. at 272. Accordingly, the Court decided the tip in J.L. fell short of the standard pronounced

in White. J.L., 529 U.S. at 271. The Court declined to adopt a special rule for firearms cases. J.L., 529 U.S. at 272-73.

Given the task which lies before us, it is unfortunate that no additional anonymous tip cases have been decided by the Supreme Court, because it can be hard to establish the parameters of a doctrine from two cases.[23] We are left hungering for more guidance. It is especially regrettable that in one case — whose outcome might have been particularly illuminating, given that it concerned anonymous telephone tips regarding drunk driving — the Supreme Court declined

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[23] As a result of the overall lack of guidance, many courts have found license to fill in certain gray areas of the anonymous tip doctrine commenced in White and J.L. in certain comments made in the opinion of the court:

> The facts do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.

Florida v. J.L., 529 U.S. at 273-74 (Emphasis added). See also Justice Kennedy's concurring opinion in J.L., where he speculates that certain anonymous tips may have "features" — like predicting future conduct — that make such tips reliable. Florida v. J.L., 529 U.S. at 275. (Kennedy, J., concurring opinion). The underlined phrase was quoted in Chief Justice Roberts' opinion dissenting from the denial of certiorari in Virginia v. Harris, 130 S.Ct. 10, 11, 175 L.Ed. 2d 322, 323 (2009)(Mem). As we shall see in footnote 24, a number of state courts have found drunk driving tips to be outside the White – J.L. framework.

According to one commentator, the J.L. dicta has been used to deteriorate the holdings of White and J.L. in purported "emergency" situations. See Melanie D. Wilson, Since When Is Dicta Enough to Trump Fourth Amendment Rights? The Aftermath of Florida v. J.L., 31 OHIO N.L. REV 211, 225-28 (2005)(criticizing United States v. Holloway, 290 F.3d 1331 (11th Cir. 2002)).

to grant certiorari.[24]

Turning to local precedent, we see that the U.S. Supreme Court's holding in White was embraced by the Rhode Island Supreme Court in State v. Keohane, 814 A.2d 327, 329 (R.I. 2003). In Keohane, the Woonsocket Police received an anonymous tip that the defendant would be traveling to Providence to purchase heroin which he would then sell in Woonsocket. Keohane, 814 A.2d at 328. Mr. Keohane and his companion — a Mr. Manzano — were followed to Providence, where they met with several men on Bucklin Street, and stopped when they returned to Woonsocket. Keohane, 814 A.2d at 328. While no narcotics were found on their persons, Manzano told police where they could find drugs in the van, which they were. Keohane, 814 A.2d at 328. Relying on White, the Court — in a per curiam opinion — found the tip had been sufficiently corroborated to become reliable and that the reasonable suspicion standard had been satisfied. Keohane, 814 A.2d at 330-31.

Alongside Keohane we must contrast a subsequent case — State v. Casas, 900 A.2d 1120 (R.I. 2006), facially similar, in which the Supreme Court of Rhode

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[24] See Virginia v. Harris, 130 S. Ct. 10, 11-12 (2009)(Mem.)(State of Virginia sought certiorari from a decision of its Supreme Court requiring officers to make observations corroborating anonymous DUI tips; Roberts, C.J. and Scalia, J. file opinion dissenting from Court's denial of certiorari — criticizing what they call the "one free swerve" rule). In Harris, Chief Justice Roberts notes that a number of state supreme courts have upheld investigative stops of alleged drunk drivers even when the police officer did not observe any traffic violations before the stop. Harris, 130 S.Ct. at 11, n.2. It is clear that in the Chief Justice's view these cases were distinguishable from Alabama v. White and J.L. and constitute a separate rule for drunk driving cases.

Island had "concerns" regarding the sufficiency of the facts known to the officers and whether they constituted reasonable suspicion. Casas, 900 A.2d at 1132. Like Keohane, the case concerned an informant's tip and extensive movements by a suspected drug dealer. But in Casas, "… little, if any, informant information was confirmed before the stop." Casas, 900 A.2d at 1132. The Court called the justification for the stop "dubious." Casas, 900 A.2d at 1132. However instructive, the Court's comments must be considered mere dicta — because no items were seized as a result of the stop, the Court made no decision on the reasonable-suspicion issue. Casas, 900 A.2d at 1132.

I

DID THE PANEL ERR IN AFFIRMING THE TRIAL MAGISTRATE'S FINDING THAT THE TROOPER HAD LAWFUL GROUNDS TO STOP MR. DIPRETE'S VEHICLE?

Having reviewed (1) the facts and travel of the case, (2) the standard of review, (3) the law of refusal, (4) the underlying Fourth Amendment principles, including the law governing Terry stops generally, (5) the law of stops based on departmental information and (6) stops based on anonymous tips, we can now proceed to resolve the instant case. This extended exegesis of the applicable law was necessary because — in my view — the instant case can only be resolved by a full understanding of the applicable Fourth Amendment principles and case law. But, while the analysis necessary to decide this case may be complex, its essence can be boiled down to a familiar aphorism — "Every privilege carries a

corresponding duty."[25] As we have seen, in cases where an officer acts on the basis of departmental information — regarding the existence of a warrant, of probable cause, of reasonable suspicion — he or she is granted the authority to act forthwith, but the seizure must later be validated on the basis of the knowledge of the instigating (or "communicating") officer. This, the State completely failed to do — or attempt to do.

A.

To summarize, Mr. DiPrete urges that the State failed to prove that the stop of his vehicle by Trooper Melfi was permissible under the Fourth Amendment to the United States Constitution. Then, asserting that such proof is a prerequisite to proving the first element of the refusal charge — i.e., that Trooper Melfi had reasonable grounds to believe that he had been driving while under the influence of intoxicating liquor — Mr. DiPrete asserts that he should have therefore been acquitted. See Gen. Laws 1956 § 31-27-2.1(c)(1). The State does not gainsay that reasonable-suspicion for the stop is indeed a necessary component of the first

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[25] This epigram has had many incarnations and an internet search reveals many uses. It was ascribed to United States Ambassador to Mexico Fletcher in 1918. New York Times, September 25, 1918, page 6. Still in usage, it was employed in the First Report on Parliamentary Privilege, Chapter 4, Section 188 — "The privilege of freedom of speech in parliament places a corresponding duty on every member to use the freedom responsibly." Available at www.parliament.uk.

A slightly different epigram, perhaps an earlier incarnation, is — "No right without a duty." David Starr Jordan, The Call of The Nation — A Plea for Taking Politics Out of Politics, page 21, Boston, 1910, American Unitarian Association. Mr. Jordan, the President of Leland Stanford Junior University, ascribed this saying to the French epigram. "Pas de droit sans devoir."

element of a refusal charge. After reviewing the landscape of Fourth Amendment precedents at some length and breadth, we must now place the instant case upon it in order to see if it stands on solid legal ground. Specifically, we must determine whether the State met its burden of showing that the stop in the instant case was legally justified. After much deliberation, I have concluded the prosecution did not meet this burden.

To explain my conclusion, I shall proceed through the steps of the protocol outlined above.

1. When was the defendant seized for Fourth Amendment purposes? This is not in controversy. The officer stated that he stopped Mr. DiPrete's car on Dorrance Street as soon as he caught up with it. In any event, the Supreme Court has said that "… stopping an automobile and detaining its occupants constitute, a 'seizure' within the meaning of [the Fourth] Amendment, even though the purpose of the stop is limited and the resulting detention quite brief." See Berkemer v. McCarty, 468 U.S. 420, 436-37 (1984) quoting Delaware v. Prouse, 440 U.S. 648, 653 (1979)(parallel citations omitted).

2. Secondly, the facts known to Trooper Melfi at that time are well-defined: Trooper Melfi made it clear that he had personally observed no indicia of criminal conduct but acted solely on the basis of bare bones "departmental knowledge" — i.e., the information and instructions transmitted to him by the division's dispatcher, "a fellow officer" — that a witness to an accident had followed the driver of one of the cars and gave the make, model and plate number.

The trooper disavowed any notion that he had independently made observations that Mr. DiPrete had committed an offense, a traffic violation, or that he had displayed any indicia of driving under the influence. (Trial Tr. I, at 32-34, 36, 41).

3. On the basis of the departmental information he had received, Trooper Melfi was undoubtedly entitled to assume he possessed reasonable suspicion. As stated in a series of cases cited supra in the context of probable cause for arrest, the "… officer in the field may rely on departmental knowledge which comes through police channels." See Smith, 121 R.I. at 141, cited supra at page 19. See also State v. John N., cited supra at 20-21 (applying this principle to a reasonable suspicion analysis). In my view, Trooper Melfi acted properly. Indeed, had he not stopped Mr. DiPrete, he would have been derelict in his duty.

4. As stated above, Trooper Melfi acted solely in response to the dispatcher's instructions and information. But, in cases where the officer has acted on the basis of departmental knowledge, this does not end the inquiry into the existence of reasonable suspicion. As a result, we must now consider whether the stop of Mr. DiPrete, effectuated properly at the scene, was sufficiently validated at trial. In my view, it was not.

As we can see from the precedents discussed supra, an arrest made by an officer on the basis of departmental knowledge is validated in one of two ways: (a) when an arrest has been made pursuant to a warrant, its validity must be examined — including a determination of whether the facts contained in the application constituted probable cause; (b) when a warrantless arrest has been

made, it is the knowledge possessed by the officer (or officers, since this principle may operate collectively) who instigated the arrest, the "communicating" officer, that must be evaluated. If it is sufficient to constitute probable cause, that officer's knowledge is imputed to the arresting officer and the seizure is validated; if it is insufficient, the arrest must be deemed illegal. Car stops based on departmental knowledge are generally warrantless, and so follow the latter course. The prosecution must prove that the officer who instigated the stop possessed reasonable suspicion.

This, in my view, is the fundamental error committed by the trial magistrate and appellate panel in this case: each failed to recognize that the State had not even attempted to meet its duty to prove that the State Police dispatcher who instigated Trooper Melfi's stop of the DiPrete vehicle had reasonable suspicion. They treated the case before them as solely an inquiry into whether Trooper Melfi acted properly in stopping Mr. DiPrete's vehicle. It is clear — based on the information provided to him — that he did. But, more was required. The State never showed that the dispatcher had reasonable suspicion. Quite simply, the phone call was never proven — the State's burden remained unfulfilled.

Of course, whenever we invoke a rule which provides a defense in drunk driving cases, we must consider the policy implications. Given the carnage that still occurs on our highways, the Rhode Island Supreme Court has repeatedly eschewed technical defenses in this area. However, this is not such a defense.

Firstly, it is predicated on well-settled constitutional principles, not a hyper-technical reading of a recent statute. As we have seen, that this has been the required practice is clear from the precedents, both federal and state, in cases concerning probable cause in warranted and warrantless arrests and in cases considering whether reasonable suspicion to stop was proven. Invoking these principles, our Court dismissed the Taylor case long ago. Taylor, supra. Secondly, its invocation should not defeat the purpose of DUI statutes, since compliance is easily accomplished. If the dispatch officer is not available, a recording of the call could be entered into evidence — as has been seen in recent federal cases. E.g. United States v. Andrade, 551 F.3d 103 (1st Cir. 2008); United States v. Torres, 534 F.3d 207 (3rd Cir. 2008). And so, after applying Whiteley and the relevant Rhode Island cases, I find the State's duty to validate the stop of Mr. DiPrete was left undone, an error fatal to its case; likewise, the RITT appellate panel's failure to recognize this omission constituted reversible error.

Certainly, I could conclude at this juncture — recommending reversal. However, in the interests of providing the District Court with the fullest possible findings in this case, I shall assume arguendo that validation was not necessary and proceed to evaluate the evidence — which came entirely from the anonymous tip — known to the police to determine if it constituted reasonable suspicion. As has been stated repeatedly, the departmental knowledge relied

upon by Trooper Melfi was not from an unimpeachable source, but from an anonymous tip.[26]

B.

Proceeding arguendo beyond the state's procedural omission, we must examine the existence of reasonable suspicion on the merits. Doing so, we must confront the fact that the source of the information being relied upon was a simple anonymous tip — that the vehicle being followed had left the scene of an accident and the driver was "possibly" intoxicated. Assertions of reasonable suspicion based on anonymous tips require special analysis pursuant to the line of cases that commenced with Alabama v. White.[27]

As we saw in White, reliability is the core issue. The summary testimony of the Trooper regarding the phone call that dispatch received does not speak to the factors of "veracity" and "basis of knowledge" at all — and "reliability" is only touched upon vis à vis the issue of the identity of the car that was stopped, itself an innocent factor. In other words, nothing here was corroborated except the identity of the car that was stopped. The caller did not know where the subject car was going, but was following it. The trooper did not observe any damage to

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[26] Of course, as I have noted, one may interject at this juncture that it is not clear that the information was validated in John N. The opinion, while addressing the facts, was not clear on the testimony and exhibits which were presented before the Family Court. Nevertheless, while some might argue that John N. did not require validation, it is clear that Whiteley and its progeny — fully accepted in Rhode Island jurisprudence — certainly did.

appellant's vehicle before stopping it — which might have confirmed its being involved in an accident. Cf. Perry, supra, in which the officer was able to match-up damage.

To reiterate, in Alabama v. White the Court gave great weight to the predictive quality of the informer's tip. This same factor was found by the Rhode Island Supreme Court to be present in Keohane but absent in Casas; accordingly, the former was affirmed, the latter reversed. Here, the anonymous tip, as related on this record, had no predictive value.

On the other hand, many questions about the tip — and the tipster — were left unanswered, presumably because the dispatcher was not called as a witness. For instance: there is no indication in this record that the tipster gave his or her name to the dispatcher; neither is there an indication of the caller's gender; neither is there testimony describing whether the caller was able to communicate with dispatch easily, or whether there was a communication difficulty of some kind — electronic or language. There was no indication the tipster's identity appeared to dispatch in any sort of automatic caller identification system.

Moreover, although Trooper Melfi had been told the caller claimed to have seen the accident, there is nothing in the record to show that the caller explained the extent of his or her opportunity to observe the accident — i.e., whether he/she was near the accident when it happened, whether his/her view was obstructed, and

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[27] We must view the evidence of the tip as it was reported in the case, not as it might have been described by the dispatcher had he testified.

whether the caller had, in layman's terms, "a good look" at the incident. According to this record, the trooper did not know the nature of the accident — including details such as the nature of any damage to the vehicle which departed the scene.[28] Such information would have been highly desirable, enabling the trooper to confirm the vehicle's involvement in an accident before he stopped it. Also, the trooper apparently did not know the type of car the caller was driving. [Presumably, when the trooper located the DiPrete vehicle he would have been able to see the car following it]. Finally, there was no indication that dispatch received a second call from a different party, a circumstance that would have been highly corroborative of the reliability of the first call — especially if the second call was from the owner of the struck vehicle.

In sum, applying the teaching of Alabama v. White, Florida v. J.L., and State v. Keohane, I conclude the tip received by state police dispatch in this case — at least to the extent it was described at trial — does not even *approach* the Fourth Amendment standard of reliability. Accordingly, for this second ground, I believe it

[28] Although it was stated the vehicle being followed had left the scene of an accident, from Trooper Melfi's testimony we cannot discern whether the driver had allegedly violated Gen. Laws 1956 § 31-26-1 (Leaving the Scene—Personal Injury)(Felony), Gen. Laws 1956 § 31-26-2 (Leaving the Scene—Property Damage/ Attended Vehicle)(Misdemeanor), or Gen. Laws 1956 § 31-26-4 (Leaving the Scene—Property Damage/Unattended Vehicle)(Violation).

was not proven that the members of the state police collectively acted with the benefit of reasonable suspicion.[29]

II

IS THE PANEL'S DECISION FINDING NO ERROR IN THE TRIAL MAGISTRATE'S QUESTIONING OF THE STATE'S WITNESS CLEARLY ERRONEOUS?

The second issue raised by Mr. DiPrete is whether the trial magistrate committed error during his questioning of Trooper Melfi. The District Court considers the issue of whether the Traffic Tribunal utilized an unlawful procedure in this case pursuant to § 31-41.1-9(d)(3). While interrogation of a witness by a judge is permitted by Rule 614 of the Rules of Evidence, the Supreme Court has stated and reiterated the need for judges to exercise caution in questioning witnesses. State v. Nelson, 982 A.2d 602, 615 (R.I. 2009) citing State v. Amaral, 47 R.I. 245, 250, 132 A. 547, 550 (1926) and State v. Giordano, 440 A.2d 742, 745 (R.I. 1982). Since the adoption of Rule 614, the Court has recommended that judicial interrogation be

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[29] Finally, I have concluded it is not my role to anticipate that the Rhode Island Supreme Court would join the company of the state courts which have adopted a special rule lessening the standard by which anonymous tips shall be measured in drunk driving cases. Of course, in light of my comments under section I–A of this opinion, I certainly believe that even if our Court were to adopt such a rule, the outcome of the instant case would not be altered because the nature of the tip was not adequately proven.

To me, it is ponderous that state supreme courts have purported to lessen the protections afforded to defendants under Alabama v. White without the consent of the United States Supreme Court.

And finally, those anticipating the adoption of such a rule by [the Supreme Court of the United States should recall that the Court declined to create a special rule lessening the amount of facts necessary to provide reasonable suspicion in gun cases in J.L.

confined to the clarification of matters which the judge believes may be a cause of confusion to jurors. State v. Nelson, 982 A.2d 602, 615 (R.I. 2009) citing State v. Figueras, 644 A.2d 291, 293 (R.I. 1994).

I conclude therefore that the trial magistrate did not commit error by questioning Trooper Melfi. As a preliminary matter, no objection was made at or after the time of his questioning. And so, by application of the "raise or waive" rule, the issue was not preserved for appeal and no error can now be found. See State v. Nelson, 982 A.2d 602, 616(R.I. 2009). Nor do I believe the "plain error" rule applies in this case, as it does not focus on a fundamental constitutional right. See Rhode Island Depositors Economic Protection Corporation v. Riganese, 714 A.2d 1190, 1196-97 (R.I. 1998).

However, even if I were able to reach the substance of the issue, I would find no error was made. Quite simply, very little information was extracted from the witness by the magistrate. Indeed, a substantial portion of his questioning related to the turn signal charges that were dismissed. The only information pertinent to the refusal charge which was added — and it had been implied previously — was that the dispatcher conveyed the make, model, and license plate of the target vehicle to the trooper. However, the specifics of these details were never enumerated on the record. Therefore, I find no harm or prejudice inured to Mr. DiPrete from the trial magistrate's questioning of Trooper Melfi.

CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appellate panel on the Fourth Amendment issue was affected by error of law. Gen. Laws 1956 § 31-41.1-9. Furthermore, said decision is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Gen. Laws 1956 § 31-41.1-9.

Accordingly, I recommend that the decision that the Traffic Tribunal appellate panel issued in this matter be REVERSED.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

SEPTEMBER 29, 2011