STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Bruce Bartels	:	
	:	
v.	:	**A.A. No. 13 - 164**
	:	
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 as to the violation § 31-27-2.1 and REVERSED as to the violation of § 31-22-21.1.

Entered as an Order of this Court at Providence on this 15th day of April, 2014.

By Order:

___/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

____/s/_____
Jeanne E. LaFazia
Chief Judge

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

Bruce Bartels	:	
	:	
v.	:	**A.A. No. 2013-164**
	:	**(T13-0021)**
State of Rhode Island	:	**(12-505-500692)**
(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. On December 21, 2012, just before one o'clock in the morning, Corporal William P. Litterio of the Richmond Police Department was on patrol on Route 138 when he saw a vehicle in the parking lot of the Westerly Credit Union. He approached the vehicle, which had a flat tire, and then spoke to a man who was standing beside it. The officer, who had made many drunk-driving arrests, made certain observations about the man — he mumbled when he spoke, his breath carried the odor of alcohol, he was unsteady on his feet, and he had bloodshot, watery eyes. After the man admitted to having driven the vehicle, he was asked to take field sobriety tests, which he failed. Later, at the police station, he declined to provide a breath sample.

The motorist was Mr. Bruce Bartels, and he was charged with, and found

guilty of, two civil traffic violations — "Refusal to submit to a chemical test," defined in Gen. Laws 1956 § 31-27-2.1 and "Presence of alcoholic beverages while operating or riding in a motor vehicle," (or "open container") enumerated in Gen. Laws 1956 § 31-22-21.1. After his conviction, he sought review by an appeals panel of the RITT. Although he urged that the State had not proved that he had been driving, his conviction was affirmed.

The instant case constitutes Mr. Bartels' attempt to set aside the appeals panel's decision. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9; the applicable standard of review is found in Gen. Laws 1956 § 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons stated herein, I shall recommend to the Court that the decision of the appeals panel be AFFIRMED on the refusal and REVERSED on the open container charge.

I
FACTS AND TRAVEL OF THE CASE

At his arraignment before the Traffic Tribunal on January 8, 2013, Mr. Bartels entered not guilty pleas to both charges.[1] The case proceeded to trial on March 11, 2013 before Magistrate Alan Goulart. The first and only witness was

[1] See Docket Sheet entry, Summons No. 12-505-500692.

Corporal Litterio.[2] A synopsis of his testimony is given in the decision of the appeals panel. The following quotation begins at the point when Corporal Litterio[3] first saw the Appellant —

> … on the evening of the arrest, after observing a man standing outside a vehicle and rummaging through a trunk, [Corporal Litterio] entered the parking lot of the Westerly Community Credit Union on Route 138 in the Town of Richmond. (Tr. at 8.) Corporal Litterio noted that the vehicle had a flat tire. (Tr. at 10.)
>
> Corporal Litterio approached the man and asked him "what was going on." (Tr. at 9.) Corporal Litterio testified that the Appellant replied, but his speech was mumbled. (Tr. at 9) At this point, Corporal Litterio detected "a small odor of alcohol emanating from his breath" and also observed that the Appellant was unsteady on his feet and had severely bloodshot watery eyes. (Tr. at 10.) Corporal Litterio asked the Appellant how he arrived at the parking lot, to which Appellant responded, "I was driving." (Tr. at 11.) Corporal Litterio then asked the Appellant how he got the flat tire, and Appellant responded that he did not, then stated "but I'm here now." Id.
>
> The State proved and Appellant stipulated that the Appellant was administered three Standardized Field Sobriety tests. (Tr. at 14-15.) Appellant failed all three tests, as he showed signs of impairment. Id.[4]

According to the Corporal, after Mr. Bartels failed the field tests, he was placed under arrest and read the "Rights For Use at the Scene."[5] After Mr. Bartels was

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2 Trial Tr. at 3 et seq.

3 At the time of this incident Corporal Litterio was Richmond's third-shift supervisor. Trial Transcript at 3. In June of 2011 he became a DUI expert. Trial Transcript at 4. He told the trial magistrate he had made 250-300 DUI arrests personally. Trial Transcript at 7.

4 Decision of Appeals Panel, at 1-2.

5 Decision of Appeals Panel, at 2 citing Trial Transcript, at 16-17.

placed under arrest, an open beer can — with some liquid still in it — was found in-between the console and the passenger seat.[6] Also a small amount of marijuana was found in a backpack.[7] Corporal Litterio added, after his memory was refreshed by reading his police report, that Mr. Bartels admitted he'd had a few beers.[8] He further related that he saw a scuff mark on the rim of the flat tire.[9]

The cross-examination of the officer was also informative. The Corporal conceded that he did nothing in order to ascertain when the car was last driven — such as feeling the hood to see if the engine was warm.[10] However, he also testified that he did not recall seeing the vehicle in the bank lot when he passed by just before the start of his shift.[11] Corporal Litterio also related that the nearest drinking establishment [to the bank lot] would have been "Ernie T's," a half-mile away.[12] He related that Mr. Bartels told him that he was going to South Kingstown from Foxwoods when the flat occurred.[13] Finally, Officer Litterio admitted that he did not know when the contents of the beer can — found in the car — were

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6 Trial Tr. at 20, 36-37, 48.

7 Trial Tr. at 20.

8 Decision of Appeals Panel, at 2 citing Trial Transcript, at 18.

9 Trial Tr. at 24, 32.

10 Trial Tr. at 26.

11 Trial Tr. at 31-32.

12 Trial Tr. at 41.

13 Trial Tr. at 31-32.

consumed.[14]

We may now return to the narrative at the point when Mr. Bartels was transported to the Richmond Police Station. Once there, he was read his "Rights For Use at the Station," after which he declined to submit to a chemical test.[15] The State and defense then rested.[16] After closing arguments, the matter ended for the day. The next day, March 12, 2013, Magistrate Goulart rendered his decision.[17]

Magistrate Goulart began by undertaking a thorough review of the testimony given by Corporal Litterio, after which he indicated that — in his estimation — the "only real issue in dispute is whether there were reasonable grounds to believe that Mr. Bartels was operating that motor vehicle while under the influence."[18] He summed up the evidence relevant to this issue:

> So, what do we know? Well, we know that there was a vehicle in the parking lot at the Westerly Community Credit Union sometime after midnight. And we know that, at least according to Corporal Litterio — and I accept his testimony — that Mr. Bartels was at the trunk of the vehicle and there was a flat tire.
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> Essentially, it's my belief, and I think the facts support, that he was looking to change a tire and looking for whatever was necessary in order to change a tire, which had somehow become flat. There

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14 Trial Tr. at 27.

15 Decision of Appeals Panel, at 2-3 citing Trial Transcript, at 20-21.

16 Trial Tr. at 51.

17 See Trial Tr. at 63 et seq.

18 See Trial Tr. at 69. He emphasized that the State did not have to prove actual operation, only that the officer had "reasonable grounds" to believe the arrestee had been driving (under the influence). Trial Tr. at 70.

> was markings on the tire, which certainly suggested that the flat had occurred while the vehicle was being operated in some fashion.
>
> We know from Corporal Litterio that the defendant admitted he was coming from Foxwoods back to South Kingstown presumably up 138. We also know that the defendant was, in my mind, impaired, intoxicated, and was not in a position to be operating that motor vehicle.
>
> …
>
> Well, we also know that, according to the Corporal, there isn't another establishment within a half mile of that location whereby Mr. Bartels could have drank after the vehicle was parked and then come back to the vehicle. And I'm just not going to engage in that kind of legal fiction.
>
> It is my belief that the officer was reasonable when he came to the conclusion that this defendant was operating a motor vehicle while under the influence of alcohol.[19]

And then, after reviewing the four elements of a refusal case,[20] he found — to a standard of clear and convincing evidence — Mr. Bartels to be guilty of both the refusal to submit to a chemical test charge and the open-container charge.[21] Mr. Bartels appealed.

The matter was heard by an appeals panel composed of Judge Lillian Almeida (Chair), Chief Magistrate William Guglietta, and Magistrate Domenic

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[19] See Trial Tr. at 70-71.

[20] See Trial Tr. at 72. These are — (1) that the law enforcement officer making the sworn report had reasonable grounds to believe the defendant had operated a motor vehicle while under the influence, (2) that the motorist refused to take a chemical test, (3) that he was informed of his rights to an independent examination under Gen. Laws 1956 § 31-27-3, and (4) that he was informed of the penalties he would incur by refusing. Appellant has not questioned the proof on the latter three elements of the offense.

[21] Id.

DiSandro on April 24, 2013. In its September 10, 2013 decision, the appeals panel rejected Mr. Bartels' assertions of error.

First, the appeals panel decided that the trial magistrate's finding — that the officer had reasonable grounds to believe Mr. Bartels had been driving while under the influence of alcohol — was supported by the evidence of record.[22] It began by noting that the Supreme Court has held the "reasonable grounds" to be the equivalent of the term "reasonable-suspicion" known in our Fourth Amendment jurisprudence.[23] It further acknowledged that its review does not include making findings of credibility, the appeals panel determined that the verdict was supported by legally competent evidence and had been proven to a standard of clear and convincing evidence.[24] And so, it determined that — at the moment of arrest — Corporal Litterio did have reasonable grounds to believe Mr. Bartels had driven under the influence.[25] Accordingly, it affirmed his conviction for refusal to submit to a chemical test.[26]

Second, the appeals panel rejected the Appellant's assertion that the trial

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22 Decision of Appeals Panel, at 5-7; discussed infra at 16-18.

23 Decision of Appeals Panel, at 5 citing State v. Jenkins, 673 A.2d 1094 (R.I. 1996) and State v. Keohane, 814 A.2d 327 (R.I. 2003).

24 Decision of Appeals Panel, at 6 citing Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991).

25 Decision of Appeals Panel, at 7.

magistrate erred by admitting hearsay.[27]

Ten days later, on September 20, 2013, Mr. Bartels filed an appeal to the Sixth Division District Court. A conference was held before the undersigned on March 26, 2013 and a briefing schedule was set. Both parties have submitted memoranda which ably relate their respective viewpoints. I have found both to be most helpful in resolving the instant case.

II
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.

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[26] Decision of Appeals Panel, at 7, 9.

[27] Decision of Appeals Panel, at 7-8.

This standard of review is a duplicate of that found in Gen. Laws 1956 § 42-35-15(g), the State 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.' "[28] And our Supreme Court has noted that in 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."[29]

III
APPLICABLE LAW — THE REFUSAL STATUTE
A
Theory — Distinctions Between Refusal and DWI Charges.

Any discussion of the civil offense of refusal to submit to a chemical test must begin by distinguishing it from the criminal charge of drunk driving, for although factually related in many cases, they are conceptually discrete. Drunk driving is a criminal offense against the public health and welfare. Our Supreme Court declared in State v. Locke,[30] that the statute that criminalizes drunk driving

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[28] Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

[29] Link v. State, 633 A.2d 1345, 1348 (R.I. 1993).

[30] 418 A.2d 843, 849 (R.I. 1980).

is a valid exercise of the police power, the goal of which is to reduce the "carnage"[31] perpetrated on our highways by "drivers who in drinking become a menace to themselves and to the public."[32] In sum, like the charge of reckless driving, it proscribes dangerous conduct on the highways.

On the other hand, the civil charge of refusal[33] has its origins in the implied consent law — which provides that, by operating a motor vehicle in Rhode Island, a driver impliedly promises to submit to a chemical test designed to measure the amount of alcohol in his or her blood whenever a police officer has reasonable grounds to believe he or she has driven while under the influence of liquor.[34] And

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[31] Locke, 418 A.2d at 849-50 citing People v. Brown, 174 Colo. 513, 522-23, 485 P.2d 500, 505 (1971) and DiSalvo v. Williamson, 106 R.I. 303, 305-06, 259 A.2d 671, 673 (1963).

[32] Locke, 418 A.2d at 850 citing Campbell v. Superior Court, 106 Ariz. 542, 546, 479 P.2d 685, 689 (1971).

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

> … If the traffic tribunal judge finds after the hearing that: (1) the law enforcement officer making the sworn report had reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; (2) the person while under arrest refused to submit to the tests upon the request of a law enforcement officer; (3) the person had been informed of his or her rights in accordance with § 31-27-3; and (4) the person had been informed of the penalties incurred as a result of noncompliance with this section; the traffic tribunal judge shall sustain the violation. …

[34] The implied consent law is stated in the same statute as the charge of refusal —

a motorist who reneges on his or her implied statutory promise to take such a test may be charged with the civil offense of refusal.[35]

In Locke, supra, the Supreme Court called suspensions under our implied-consent law "a nonviolent method of extracting consent to the minimal intrusion necessary to obtain evidence of intoxication"[36] and "critical to attainment of the goal of making the highways safe by removing drivers who are under the influence."[37] And so, at its essence, a refusal charge is an offense against our State's scheme for identifying (and eliminating) drunk and unsafe drivers on our highways. In theory — though certainly not in fact — a refusal charge is akin to a

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§ 31-27-2.1 — in subsection (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 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 * * *.

We see that, by its terms, the law also applies to controlled substances and the chemical toluene but these aspects of the statute are immaterial in the instant case.

35 Indeed, the charge of refusal might have been more simply entitled — "Violation of the implied-consent law."

36 Locke, 418 A.2d at 850 citing DiSalvo, supra, 106 R.I. at 306, 259 A.2d 673.

37 Locke, 418 A.2d at 850 citing Brown, supra, 174 Colo. at 523, 485 P.2d at 505.

charge of failing to obtain a safety inspection for one's vehicle (which is a feature of the State's effort to identify and eliminate unsafe vehicles on our roads).

The validity of a refusal charge does not depend on subsequent proof of intoxication. Indeed, the defendant's actual intoxication vel non is immaterial in a refusal case. This was the teaching of State v. Bruno,[38] in which the trial judge acquitted Mr. Bruno because he presented a medical opinion that the behavior and personal attributes he exhibited during the car-stop were entirely attributable to a non-alcoholic cause.[39] Nevertheless, the Supreme Court reinstated the charge, holding that — so long as the State proves that the motorist provided an officer with indicia of intoxication sufficient to satisfy the reasonable-grounds standard — the Court must affirm the violation.[40]

B

Elements of the Offense of Refusal to Submit to a Chemical Test.

The four elements of a charge of refusal which must be proven at trial are enumerated in the statute. In plain language, they are — one, that the officer had reasonable grounds to believe that the motorist had driven while intoxicated; two, that the motorist, having been placed in custody, refused to submit to a chemical

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[38] 709 A.2d 1048 (R.I. 1998).

[39] Bruno, 709 A.2d at 1049. The alternate cause proffered was prescribed medication. Id.

[40] Bruno, 709 A.2d at 1049-50.

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.[41]

Since both of the arguments Appellant has presented in this appeal relate to the first element, it is upon this part of the law that we will concentrate our attention. Let us begin by setting out this element once again:

> … (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 …
> (Emphasis added)

The Appellant's first three arguments relate to the phrase "arrested person," the last to the phrase "reasonable grounds."

The language of the statute is unambiguous, except for the standard of evidence that must be present — "reasonable grounds." The "reasonable-grounds" standard could have been problematic, had not the Rhode Island Supreme Court declared it to be equivalent to the "reasonable-suspicion" standard, which is well-known in fourth amendment litigation."[42]

But while we know the standard of evidence to be utilized, its application will never be perfunctory, for there is no bright-line rule regarding

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[41] See 31-27-2.1(c), supra at 10 n. 33.

[42] State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996). It is the standard by which so-called "stop-and-frisks" are evaluated. See Terry v. Ohio, 392 U.S. 1 (1968).

the quality or quantity of the evidence that must be mustered to satisfy the reasonable-grounds test; instead, a judgment must be made in each case on the basis of the totality of the circumstances present therein. We are fortunate, therefore, to have at our disposal a number of cases decided by our Supreme Court which have performed this exercise. We shall review these cases now.

I believe we may profitably commence with State v. Bjerke.[43] In Bjerke the initial stop was justified on alternative grounds — the investigation of a criminal offense. Nevertheless, the Supreme Court paused to note the factors present in the case upon which reasonable grounds may be discerned:

> The defendant's commission of a criminal misdemeanor alone gave the officer probable cause to stop and detain him, and then from that point on, any evidence obtained pursuant to that lawful stop, such as the odor of alcohol, the slurred speech, and bloodshot eyes, would in effect be in plain view of the arresting officer and would support an arrest for suspicion of driving while under the influence. (Emphasis added).[44]

Accordingly, from Bjerke, we may draw that emitting the odor of alcohol, slurred speech and bloodshot eyes are accepted as indicia of intoxication.

Next, we may examine State v. Bruno, supra, in which multiple indicia of the consumption of alcohol were exhibited. Among these were swerving and speeding, evidence of vomit in the vehicle, the odor of alcohol, slurred speech,

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[43] 697 A.2d at 1069 (R.I. 1997).

[44] Bjerke, 697 A.2d at 1072.

and appearing confused.[45]

Finally, in evaluating the sufficiency of this finding of reasonable-suspicion we may consider State v. Perry.[46] On the issue of driving under the influence, the Court noted front-end damage to the car, the smell of alcohol, bloodshot eyes, and stumbling.[47] And although no field tests were administered, the Court ruled that reasonable grounds were present.[48]

IV
ISSUE

The issue before the Court is whether the decision of the appeals panel was clearly erroneous in light of the reliable, probative, and substantial evidence of record or whether it was affected by error of law. Or, did the appeals panel err when it upheld Mr. Bartels' conviction for refusal to submit to a chemical test?

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45 Bruno, 709 A.2d at 1049.

46 731 A.2d 720, 723 (R.I. 1999).

47 Perry, 731 A.2d at 722.

48 Perry, 731 A.2d at 722-23.

V

ANALYSIS

A

The Appeals Panel Did Not Err in Affirming the Trial Magistrate's Finding That Corporal Litterio Had Reasonable Grounds to Believe Mr. Bartels Had Been Driving Under the Influence

In this case the parties have joined issue on the question whether there was sufficient evidence to undergird the trial magistrate's finding that Corporal Litterio had "reasonable grounds" to believe that Mr. Bartels had been driving while under the influence. The appeals panel agreed that the information known by the officer met this standard. For the reasons that follow, I concur.

There is certainly no realistic question that the officer had reasonable grounds to believe that Mr. Bartels was intoxicated when he confronted him. The customary indicia of inebriation were certainly present. And Mr. Bartels did not argue otherwise. Indeed, he admitted he had been drinking.

And, as enumerated by the trial magistrate, the State presented three indications that Mr. Bartels had operated the vehicle in such a condition: (1) he admitted he had driven the car there, (2) he admitted he was coming from Foxwoods, and (3) there were markings on the tire which, in the opinion of Corporal Litterio, showed that the tire had gone flat while being driven. As to the second question, the corporal testified that the location where Mr. Bartels was stopped was not within a half-mile of a drinking establishment. While certainly

insufficient to prove[49] that Mr. Bartels had been driving (under the influence), this evidence was sufficient — when measured against the standards established in prior Rhode Island Supreme Court decisions, especially the Perry case — to allow this Court to find that the appeals panel's finding that Officer Litterio possessed "reasonable grounds" to believe Mr. Bartels had driven under the influence of liquor was not clearly erroneous and was supported by reliable, probative, and substantial evidence of record.

B

Hearsay

The appeals panel also addressed Mr. Bartels' argument that the trial magistrate erred when by allowing Corporal Litterio to testify regarding certain statements Appellant made during the incident. He urges that these statements were inadmissible hearsay. But, in my view, this assertion of error may be readily dispatched.

Trials at the traffic tribunal are governed by its Rules of Procedure. Rule 15 of that collection provides that trials follow the normal rules of evidence. See Traffic Trib. R. Proc. 15(b). As we can see, the rule invokes the Rhode Island

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[49] And I would so state to the clear-and-convincing-evidence standard. As in Bruno, where the Supreme Court found the defendant's persuasive evidence that he had not been intoxicated while driving was immaterial on the refusal charge, I believe here the prosecution's inability to prove that defendant was driving is likewise ultimately immaterial. It is sufficient that the officer had reasonable-suspicion that he was driving (under the influence), which triggered

Rules of Evidence. Rule 801(d)(2)(A) of those rules provides that the statement of a party-opponent is non-hearsay. Therefore, the trial magistrate committed no error in admitting the statements of Mr. Bartels repeated by Corporal Litterio.

C
The Open-Container Charge

For the reasons I shall now state, I believe the Appellant's conviction on the charge of "Presence of alcoholic beverages while operating or riding in a motor vehicle" [open container] should be set aside. Unlike the refusal charge, the resolution of this count turns on the ultimate truth of the Appellant's actions, or rather the proof (or lack) thereof, not the officer's suspicions — however reasonable they might be. In my view there was no evidence from which the fact-finder could determine whether the beer can was open while Mr. Bartels was driving from Foxwoods, as the officer essentially conceded.[50]

VI
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appeals panel was made upon lawful procedure and was not affected by error of law. Gen. Laws 1956 § 31-41.1-9. Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence

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his duty under the implied-consent law, a duty he left unfulfilled.

[50] Trial Tr. at 27.

on the whole record. Gen. Laws 1956 § 31-41.1-9. Accordingly, I recommend that the decision that the Traffic Tribunal appeals panel issued in this matter be AFFIRMED except that Mr. Bartels' conviction on the charge of "Presence of alcoholic beverages while operating or riding in a motor vehicle" should be REVERSED.

/s/
Joseph P. Ippolito
MAGISTRATE

APRIL 15, 2014