STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Town of Middletown	:	
	:	
v.	:	**A.A. No. 13 - 026**
	:	
Thomas Oliver	:	
(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 & Recommendations of the Magistrate.

After a de novo review of the record, 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 appeals panel is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 13th day of March, 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

Town of Middletown	**:**	
	:	**A.A. No. 2013 – 026**
v.	**:**	**(C.A. No. M12-0011)**
	:	**(07-302-012536)**
Thomas Oliver	**:**	
(RITT Appeals Panel)	**:**	

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

Ippolito, M. In the instant complaint, the Town of Middletown urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it vacated a municipal court judge's verdict finding Mr. Thomas Oliver guilty of a moving violation: "Prima Facie Limits" (speeding), a violation of Gen. Laws 1956 § 31-14-2. Jurisdiction for this appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9 and the applicable standard of review is found in § 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. After a review of the entire record I find the decision of the appeals panel is neither clearly erroneous nor contrary to law; and so, I recommend that it be AFFIRMED.

I

FACTS AND TRAVEL OF THE CASE

On January 5, 2012, Officer Anthony Porrazzo of the Middletown Police Department cited Mr. Thomas Oliver for speeding, an event that was described thusly in the decision of the appeals panel:

> … Officer Porrazzo testified that on the night of the violation he was traveling northbound on West Main Road in Middletown. Officer Porrazzo observed a vehicle traveling at a high rate of speed southbound on West Main Road. The officer's radar unit determined that the vehicle was traveling forty-six (46) miles per hour (mph). (Tr. at 1.) The speed limit in the area was twenty-five (25) mph.
>
> Officer Porrazzo reversed his direction and pursued the vehicle. At the conclusion of the stop, the officer cited the operator — identified as the Appellant at trial — for speeding. Id. Officer Porrazzo also testified that his radar unit was properly calibrated before and after his shift, and that the officer was trained in the use and operation of radar units at the Rhode Island Municipal Police Academy. Id.[1]

In sum, Officer Porrazzo observed Mr. Oliver speeding in Middletown but cited him in Newport.

The matter was scheduled for trial before Judge Peter B. Regan of the Middletown Municipal Court on May 8, 2012. But before the trial began, Mr. Oliver moved to dismiss the citation on the theory that Officer Porrazzo had no authority to cite him in Newport. However, this motion was denied.[2]

---

1 Decision of Appeals Panel, December 18, 2012, at 1-2.

2 Decision of Appeals Panel, December 18, 2012, at 1.

The matter then proceeded to trial, at which the motorist expended much effort attempting to show that the officer's radar unit was prone to inaccuracy when exposed to various environmental vagaries.[3] Nevertheless, at the conclusion of the evidence, Mr. Oliver was found guilty of speeding.[4] He was fined $95.00, plus court costs.[5]

Mr. Oliver filed an immediate appeal which, on August 22, 2012, was heard by an RITT[6] appeals panel composed of: Magistrate Domenic DiSandro (Chair), Judge Albert Ciullo, and Magistrate William Noonan. In a decision dated December 18, 2012, the appeals panel reasoned that —

> … [the] General Assembly has only prescribed two circumstances when a police officer may leave his jurisdiction to pursue a suspect. These exceptions include the emergency police power, pursuant to G.L. 1956 § 45-42-1, and arrest after close pursuit by officers from cities or towns, pursuant to G.L. 1956 § 12-7-19. See State v. Ceraso, 812 A.2d 829, 833 (R.I. 2002)("There are two exceptions to the general rule that the authority of a local police department is limited to its own jurisdiction: first, when the police are in "hot pursuit" of a suspect, they may cross into another jurisdiction pursuant …."). Neither of these statutes are invoked

---

3 Decision of Appeals Panel, December 18, 2012, at 2; Trial Transcript, at 7-8.

4 Decision of Appeals Panel, December 18, 2012, at 2-3; Trial Transcript, at 7-8.

5 Trial Transcript, at 8. Speeding is a civil violation. Gen. Laws 1956 § 31-27-13.

6 Jurisdiction to hear and decide appeals from trials conducted by municipal courts in civil traffic offenses is vested in the Traffic Tribunal appeals panels by Gen. Laws 1956 § 8-18-9.

by the facts of this case.[7]

Thus, the appeals panel found that the officer had no authority to cite Mr. Oliver in Newport and that, consequently, the trial judge erred in denying his pre-trial motion to dismiss.[8] It therefore reversed his conviction for speeding.[9]

On January 31, 2013, the Town of Middletown filed a complaint for judicial review in the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9. On May 8, 2013, a conference was conducted with counsel for the Town and Mr. Oliver (pro-se), at the conclusion of which a briefing schedule was established. Helpful memoranda have been submitted by both parties.

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:

---

7 Decision of Appeals Panel, December 18, 2012, at 4-5.

8 Decision of Appeals Panel, December 18, 2012, at 4-6.

9 Decision of Appeals Panel, December 18, 2012, at 7.

> (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 subsection is very similar to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

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.' "[10] Thus, the Court will not substitute its judgment for that of the appeals panel as to the weight of the evidence on questions of fact.[11] Stated differently, the appeals panel's findings will be upheld even though a reasonable mind might have reached a contrary result.[12]

III
APPLICABLE LAW

In this case we are asked to determine whether a municipal police officer who saw a motorist speeding within his town had the right to issue a citation

---

[10] 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).

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

[12] Id., at 506-507, 246 A.2d at 215.

for that violation in the neighboring city into which the motorist had driven while slowing to a stop. After reviewing the entire record, I have determined that answering this question will require us to consult three areas of law.

We shall begin with an overview of the authority of police officers to act outside their municipalities when in close pursuit of a suspect. Next, we will examine the law of arrest because, as we shall see, the close pursuit law can only be invoked in situations where the officer is pursuing a person he or she intends to arrest. Finally, we will evaluate the Rhode Island law which empowers our municipalities to enter into agreements authorizing their police officers to act in each other's territory; we shall do this in order to consider later whether the provisions of an agreement executed by Middletown and Newport authorized Officer Porrazzo's actions.

A

THE CLOSE PURSUIT LAW[13]

Anyone seeking an overview of Rhode Island law regarding the authority of municipal police officers to act outside their city or town of

[13] All references throughout this opinion to the "close pursuit law" are a reference to Gen. Laws 1956 § 12-7-19, which addresses some of the circumstances in which a Rhode Island municipal police office may be authorized to act in another Rhode Island municipality. A different law, found in Chapter 12-8 of the General Laws, entitled the "Uniform Act on Close Pursuit," empowers officers from other states to make arrests in Rhode Island under certain circumstances.

employment would do well to begin with the following excerpt from our Supreme Court's decision in State v. Ceraso:[14]

> In the absence of a statutory or judicially recognized exception, the authority of a local police department is limited to its own jurisdiction. See Page v. Staples, 13 R.I. 306 (1881). There are two exceptions to the general rule. First, when the police are in "hot pursuit" of a suspect, they may cross into another jurisdiction pursuant to § 12-7-19. Second, in emergency situations, it may be necessary and appropriate for the police from one jurisdiction to exercise authority in another jurisdiction. See § 45-42-1; State v. Locke, 418 A.2d 843, 847 (R.I. 1980); Cioci v. Santos, 99 R.I. 308, 315, 207 A.2d 300, 304 (1965).[15]

From this quotation we may glean two central precepts regarding the territorial authority of police officers — first, absent a statutorily or judicially created exception, the rule in Rhode Island is now, as it has been for many years,[16] that municipal police officers have no authority to act outside their home jurisdictions;[17] second, that there were in 2002 (when Ceraso was decided[18])

---

14 812 A.2d 829 (R.I. 2002).

15 Ceraso, 812 A.2d at 833.

16 See Page v. Staples, 13 R.I. 306, 307-08 (1881). The Court in Page cites two such exceptions: [1] an officer with custody of a prisoner under a writ of habeas corpus may travel through other jurisdictions to get to the place where the writ is returnable, and [2] an officer whose prisoner has escaped may retake the prisoner in another jurisdiction if in "fresh pursuit." Id.

17 In Commonwealth v. Bartlett, 465 Mass. 112, 115, 987 N.E. 2d 1213, 1216 (2013), the Supreme Judicial Court of Massachusetts called this the rule at common law.

only two statutory exceptions to this rule: [1] a provision which allows, under certain circumstances, an officer to follow a motorist into another city or town in order to make an arrest[19] and [2] a statute which allows the police chief of one municipality to transfer one or more officers to assist in another municipality during the course of an emergency.[20] But since the Town has not argued that the emergency-transfer statute authorized Officer Porrazzo's citation of Mr. Oliver in Newport, it deserves no further comment here.

Instead, we may focus our attention on § 12-7-19, the close pursuit law, which may be stated in three parts — (1) a municipal officer who has acquired the right to arrest a suspect for violating the motor vehicle code in the officer's own municipality, and (2) who is in close pursuit of the suspect, (3) is empowered to make that arrest in another municipality into which the suspect has traveled.[21]

---

[18] In Ceraso, the Court noted, with apparent approval, the recent enactment of a law that would soon be providing a third legal basis for municipal officers to exercise authority extraterritorially — municipal agreements. Ceraso, 812 A.2d at 836 n. 3. Although this issue was not raised below, it has been raised before this Court and will be treated in Part VI of this opinion.

[19] Gen. Laws 1956 § 12-7-19.

[20] Gen. Laws 1956 § 45-42-1. The Supreme Court proceeded to evaluate the applicability of each provision, ultimately deciding that § 45-42-1 sanctioned the officer's arrest of Mr. Ceraso. Ceraso, 812 A.2d at 833-36.

[21] Gen. Laws 1956 § 12-7-19 provides —

And the centrality of the first element — that the officer pursuing the motorist must have gained the right to arrest the motorist before they exited the officer's "home" city or town — has been recognized by our Supreme Court, in State ex rel. Town of Middletown v. Kinder,[22] a case in which the Court considered the legality of an arrest for reckless driving made by a Middletown officer in Newport. After discussing the nature of the reckless driving charge, the Court applied § 12-7-19 thusly:

> ... we are satisfied that, based on the totality of the circumstances, the Middletown police officer had probable cause to arrest the defendant within the Town of Middletown and to charge him with reckless driving. Consequently, pursuant to § 12-7-19, the officer had authority to closely pursue the defendant into the City of Newport to make that same arrest. Accordingly, we grant the petition for certiorari ... (Emphasis added).[23]

And so, in order to resolve this case, we will have to decide whether Officer

---

> Any member of a duly organized municipal peace unit of another city or town of the state who enters any city or town in close pursuit and continues within any city or town in such close pursuit of a person in order to arrest him or her on the ground that he or she has violated the motor vehicle code in the other city or town shall have the same authority to arrest and hold in custody the person as members of a duly organized municipal peace unit of any city or town have to arrest and hold in custody a person on the ground that he or she has violated the motor vehicle code in any city or town.

[22] 769 A.2d 614 (R.I. 2001).

[23] Kinder, supra, 769 A.2d at 616.

Porrazzo observed circumstances and behavior sufficient to vest him with probable cause to arrest Mr. Oliver before they left Middletown. To prepare for this task, I will now present an overview of the law of arrest in Rhode Island.

B

THE LAW OF ARREST IN RHODE ISLAND

Curiously, although sections within the General Laws tell us how an arrest is made and under what circumstances an arrest is authorized, no provision contains a concise definition of the term "arrest." Similarly, although many case decisions teach us how to apply a four-part test for determining whether a particular individual is, in fact and law, "under arrest," neither can such a definition be found in any reported decision of our Supreme Court.[24]

Without local guidance, we are therefore free to make reference to the following common law definition drawn from Blackstone's Commentaries, which I present with its accompaniment —

> The apprehending or restraining of one's person, in order to be forthcoming to answer an alleged or suspected crime. To this arrest all persons whatsoever are, without distinction, equally liable to all criminal cases: but no man is to be arrested, unless charged with such a crime as will at least justify holding him to bail, when taken. (Emphasis added)[25]

---

[24] See State v. Jiminez, 33 A.3d 724 (R.I. 2002).

[25] 4 W. Blackstone, Commentaries, *286 (1769).

The definition in the first sentence is no surprise — arrest is an apprehension for the purpose of having the arrestee answer to a charge. But the latter sentence is also important to our present endeavors, since it contains two significant pronouncements — (1) arrest is exclusively reserved for criminal cases, and (2) one can only be arrested for a charge for which the arrestee may be admitted to bail. We shall have cause to revisit this comment, infra.

1

Statutory Provisions

We may start our enumeration with Gen. Laws 1956 § 12-7-7, entitled "Methods of arrest"[26] which states:

> An arrest is made by the restraint of the person to be arrested or by his or her submission of his or her person to the custody of the person making the arrest.

Arrests following this methodology are authorized by two statutes found in Chapter 12-7 of the General Laws, entitled "Arrest."

The first is Gen. Laws 1956 § 12-7-4, which grants officers who have reasonable grounds to believe that a person has committed (or is committing) a felony the authority to arrest that person without a warrant. Since there is no suggestion in this case that Mr. Oliver committed any felony of any kind, we

---

[26] It is found in the same chapter of the General Laws as the Close Pursuit Law — Chapter 12-7, entitled "Arrest."

must set this section aside.

The second provision we must review is Gen. Laws 1956 § 12-7-3, which allows officers to make arrests without warrants in misdemeanor cases, under certain conditions. It provides:

> A peace officer may, without a warrant, arrest a person if the officer has reasonable cause to believe that the person is committing or has committed a misdemeanor or a petty misdemeanor, and the officer has reasonable ground to believe that person cannot be arrested later or may cause injury to himself or herself or others or loss or damage to property unless immediately arrested.

As we can see, the statute, broadened in 1971, permits a warrantless arrest for a misdemeanor or a petty misdemeanor — but only if the officer has reason to believe either (1) the person could not be arrested later or (2) the person will cause personal injury or property damage.[27] Because Mr. Oliver was never

---

[27] The previous version of the law authorized a warrantless misdemeanor arrest in two different circumstances — first, under subsection 12-7-3(a), if the offense was committed in the presence of the officer, or second, under subsection (c), if the intended arrestee has fled the scene or is a nonresident not subject to a later arrest. See P.L. 1977, ch. 71, § 1 or State v. Berker, 120 R.I. 849, 853-54, 391 A.2d 107, 110 (1978).

It is said that the rule at common law was that a warrant was required except for a breach of the peace occurring in the presence of the arresting officer. 3 LaFave, Search and Seizure, (5th ed. 2012), § 5.1(b) at 17 citing, inter alia, Commonwealth v. Wright, 158 Mass. 149, 33 N.E. 82 (1893). But the U.S. Supreme Court, in Atwater, declined to find that this was the accepted common law rule, at least at the time of the framing of the Constitution; as a result, it refused to find the rule was implicitly

suspected of a misdemeanor (or a petty misdemeanor), § 12-7-3 must also be considered immaterial to our present case. Finally, we may note that there is no provision in Chapter 12-7 which authorizes officers to make arrests for criminal violations — or civil violations.

2

Case Law

We must also examine the question from a case law perspective, a more intricate inquiry. Although the making of an arrest was originally viewed as an issue within the exclusive province of the law of criminal procedure, such issues now seen to be subject to Fourth Amendment considerations.[28] And this linkage operates at a fundamental level. We can see this in a recent case which enumerates the factors by which we may determine whether a person is "under arrest" — State v. Jimenez (2011):[29]

> It is a fundamental principle that '[a] person is seized or under arrest for Fourth Amendment purposes if, in view of all the circumstances, a reasonable person would believe that he or she was not free to leave.' " State v. Vieira, 913 A.2d 1015, 1020 (R.I.2007) (quoting State v. Diaz, 654 A.2d 1195, 1204 (R.I.1995)).

---

incorporated into the protections of the Fourth Amendment. 3 LaFave, supra, § 5.1(b) at 28-29.

[28] The Fourth Amendment provides — "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated … ."

[29] 33 A.3d 724 (R.I. 2011).

> This Court has stated that the following four factors may be considered in making this determination: "(1) the extent to which the person's freedom [was] curtailed; (2) the degree of force employed by the police; (3) the belief of a reasonable, innocent person in identical circumstances; and (4) whether the person had the option of not accompanying the police." Id.; see also State v. Briggs, 756 A.2d 731, 737 (R.I.2000).[30]

Within this excerpt the most prominent feature is undoubtedly the four-part test for determining whether an individual is under arrest at a given moment; but we should not overlook the preliminary question which the Court posed — Was the person "seized" within the meaning of the Fourth Amendment?

What is a "seizure?" The Supreme Court of the United States has declared that "… a person is 'seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained."[31] The test employed to answer this question is whether, under the circumstances, "… a reasonable person would have believed that he was not free to leave."[32] The Fourth Amendment governs even brief seizures.[33]

---

30 Jimenez, 33 A.3d at 732.

31 United States v. Mendenhall, 446 U.S. 544, 553, 100 S.Ct. 1870, 1877 (1980).

32 Mendenhall, 446 U.S. at 554, 100 S.Ct. at 1877; Florida v. Royer, 460 U.S. 491, 501-02 (1983). The "reasonable person" test presupposes an innocent person. Florida v. Bostick, 501 U.S. 429 (1991).

33 Mendenhall, 446 U.S. at 551-52, 100 S.Ct. at 1875-76. Of course, if the officer's intrusion into the liberty of the citizen was the result of consent

But a finding of a Fourth Amendment "seizure" does not, per se, imply an arrest has been made. Professor Wayne LaFave, in his Fourth Amendment treatise, explains the relationship between the two questions — seizure and arrest — thusly:

> Assuming now that it is clear a Fourth Amendment seizure has occurred, it remains to be asked whether the seizure constitutes an "arrest." For many years courts (including the Supreme Court) acted as if no such distinct issues existed. As a consequence, even the mere stopping of a moving motor vehicle might be assumed to be an arrest; if probable cause could be established only by consideration of facts obtained subsequent to the stopping, the arrest would thus be deemed illegal. But at least since Terry v. Ohio, it has become clear that this approach is inappropriate and unnecessary … (footnotes omitted).[34]

In other words, prior to the publication of the Supreme Court's opinion in Terry v. Ohio,[35] it could have been assumed (and often was) that a Fourth Amendment "seizure" was synonymous with an "arrest," and therefore probable cause was necessary to justify all seizures.[36]

---

given voluntarily, then the Fourth Amendment is not impacted. See Mendenhall, 446 U.S. at 555-60, 100 S.Ct. at 1877-80 (1980); Cupp v. Murphy, 412 U.S. 291, 93 S.Ct. 2000 (1973). See also State v. Aponte, 800 A.2d 420 (R.I. 2002); State v. Kennedy, 569 A.2d 4 (R.I. 1990); State v. Frazier, 421 A.2d 546 (R.I. 1980); State v. Girard, 799 A.2d 238 (R.I. 2002).

[34] 3 LaFave, Search and Seizure, (5th ed. 2012), § 5.1(a) at 11.

[35] 392 U.S. 1, 88 S.Ct. 1868 (1968).

[36] See Henry v. United States, 361 U.S. 98, 103, 80 S.Ct. 168, 171 (1959)(In Henry the Supreme Court held the arrest occurred when the officers stopped the vehicle. Id. See also Terry, 392 U.S. at 35, 88 S.Ct. at 1887

But Terry altered the Fourth Amendment jurisprudential landscape substantially. Although the Court conceded that even a brief, investigatory car stop constituted a seizure of the person or persons within it,[37] it held that lesser restraints or intrusions would no longer require probable cause.[38] Henceforth, investigative stops (or "Terry-type stops," as they are sometimes called) will pass Fourth Amendment muster if the officer possessed "reasonable suspicion."[39] In the past forty-six years, the parameters of Terry-type stops have been revisited often. Our own Supreme Court commented, in State v. Taveras,[40] that it has restated the Terry-standard "[o]n numerous occasions."[41]

(Dissent of Mr. Justice Douglas).

37 Terry, 392 U.S. at 16-19, 88 S.Ct. at 1877-79; see also United States v. Whren, 517 U.S. 806, 809-10, 116 S.Ct. 1769, 1772-73 (1996)("Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of the [Fourth Amendment].")

38 Terry, 392 U.S. at 27, 88 S.Ct. at 1883.

39 In 2012, forty-four years after Terry was decided, the Rhode Island Supreme Court summarized its holding as follows — "Terry v. Ohio, 392 U.S. 1, 21, 30, 88 S. Ct. 1868, 20 L.Ed 2d 889 (1968) instructs that police officers may conduct an investigatory stop and frisk of a suspect provided that the officer has a reasonable suspicion based on specific and articulable facts that the person to be detained is engaged in criminal activity." State v. Taveras, 39 A.3d 638, 642 n.6 (R.I. 2012).

40 39 A.3d 638 (R.I. 2012).

41 Taveras, 39 A.3d at 647. In Taveras, the Court reminded us that the Terry-standard is applied by evaluating objective facts on the basis of the "totality of the circumstances." Id.

On the other hand, traffic stops — which have been equated with Terry stops[42] — are deemed categorically reasonable under the Fourth Amendment if the police officer has probable cause to believe the motorist has committed a traffic violation — even a civil traffic offense.[43]

C

THE AUTHORITY TO GRANT OFFICERS FROM ADJACENT MUNICIPALITIES THE POWER TO ACT IN NON-EMERGENCY SITUATIONS

Since 1971,[44] Rhode Island's police chiefs have been empowered to transfer their officers to another municipal force on an ad hoc basis in times of emergency.[45] Then, in 1974,[46] the legislature gave municipal officers the authority to enter another city or town if in close pursuit.[47] Finally, in 2002,[48] the General Assembly empowered our Rhode Island municipalities to execute agreements with adjacent cities and towns authorizing their officers to act in each other's

---

42 They have been equated as to their briefness, although conceptually they are distinguishable.

43 United States v. Whren, 517 U.S. 806, 809-10, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996). An interesting question which is as yet unresolved is whether a vehicle may be stopped if the officer has only "reasonable suspicion" of the commission of a traffic violation.

44 See P.L. 1971, ch. 284, §1.

45 See Gen. Laws 1956 § 45-42-1.

46 See P.L. 1974, ch. 191, §1.

47 See Gen. Laws 1956 § 12-7-19.

48 See P.L. 2002, ch. 142, §1.

towns.[49] Of particular note to the instant case is the fact that the statute places no limitations on the types of duties that can be handled by "guest" officers. Felonies, misdemeanors, civil traffic cases — indeed, any power possessed by the town's own officers can be accorded to officers from neighboring towns.

IV

ANALYSIS — THE TIMELINESS OF THE TOWN'S APPEAL

Mr. Oliver moves to dismiss the Town's complaint on the ground that its appeal was filed after the expiration of the 10-day appeal period established in Gen. Laws 1956 § 31-41.1-9(b) —

> (b) **Time limitations.** No appeal shall be reviewed if it is filed more than ten (10) ten days after notice was given of the

---

[49] The key provisions of the law are subsections (a) and (b).

> **45-42-2. Nonemergency police power.** — (a) Notwithstanding any law to the contrary, and consistent with the provisions of chapter 40.1 of this title entitled "Interlocal Contracting and Joint Enterprises", where the territories of one city or town lies adjacent to another city or town, the chiefs of police of the adjacent city or town may enter into an agreement, which is subject to approval by each city or town council by adoption of a resolution in support of it, by which the chief may request that the other city of town police force provide assistance in a nonemergency situation for all those police services prescribed by law within any portion of the jurisdiction of the city or town of the chief granting the authority.
>
> (b) The officers responding to the request and agreement shall have the same authority, powers, duties, privileges and immunities for jurisdictional purposes as a duly appointed police officer of the city or town making the request.
>
> (c) …

> determination appealed from. Notice shall be complete upon mailing.

But, notwithstanding the fact that the 10-day appeal period enumerated in subsection 9(b) would seem to have expired on December 28, 2012, long before the Town filed its appeal on January 31, 2013, the Town argues that its appeal was in fact timely. The Town asserts that it did not receive a copy of the decision until January 28, 2013. It supported this assertion by submitting a copy of the envelope in which the decision was delivered (showing a postmark of January 25, 2013) and an affidavit from its prosecution officer.

Now, for many years, in many cases, the District Court has held that we do not have jurisdiction to decide administrative appeals (or appeals of that nature) that are not filed timely, often citing Considine v. Rhode Island Department of Transportation (1989)[50] for this principle. But in 2013 the Supreme Court dramatically reshaped the law pertaining to this question.

In Rivera v. Employees' Retirement System of Rhode Island (2013),[51] the Supreme Court of Rhode Island declared that a trial court vested with subject-matter jurisdiction over administrative appeals does not lose it because a particular appeal is filed tardily; instead the issue presented is whether or not

---

[50] 564 A.2d 1343, 1344 (R.I. 1989).

[51] 70 A.3d 905 (R.I. 2013); see also McAninch v. State Department of Labor and Training, 64 A.3d 84 (R.I. 2013).

the Court "should have exercised that jurisdiction."[52] The Court explained that the trial court must consider whether the case should be heard by applying the doctrine of "equitable tolling."[53]

Applying the principles announced in Rivera to the instant case, I believe that the doctrine of equitable tolling should be invoked and the Town's appeal given full review. I state this above all because there is no indication in the file that a copy of the appeals panel's decision was sent to the Town when it was published. Moreover, I believe the Town has raised a serious issue, one that should be addressed by this Court, if legally possible.[54]

---

[52] Trainor v. Grieder, 23 A.3d 1171, 1174 (R.I. 2011) as quoted in Rivera, supra, 70 A.3d at 912.

[53] Rivera, supra, 70 A.3d at 912-13.

[54] I believe there is another procedural issue that could have been raised, but has not been, at least directly — Does the Town have standing to appeal? Can the Town be considered aggrieved by the appeals panel's decision when it did not participate in its proceedings? Appellee has not raised the issue, and I shall not do so sua sponte. (Mr. Oliver only raised the issue in the context of notice, arguing that the Town would have received notice if they had bothered to participate in the proceedings before the panel, which is , of course, true).

V

ANALYSIS — OFFICER PORRAZZO'S AUTHORITY TO CITE MR. OLIVER IN NEWPORT UNDER THE CLOSE PURSUIT LAW

A

OVERVIEW

The issue now to be addressed is straightforward — Does an officer of one municipal police department possess the authority to pursue a motorist into another municipality in order to cite the motorist for a civil traffic violation? The Town urges yes, Mr. Oliver no. And after considering their arguments and the rationale of the appeals panel, I have concluded that this question must be answered in the negative. I shall explain my reasoning after summarizing the appeals panel's rationale and the arguments in favor of such authority that were presented by the Town.

B

THE RATIONALE ADOPTED BY THE APPEALS PANEL

The appeals panel began its analysis of this issue by declaring that the basic rule in Rhode Island is that the authority of municipal police officers cannot be "readily extended"[55] beyond the geographic limits of the city or town they serve. The appeals panel then noted that, according to the teaching of the

---

[55] Decision of Appeals Panel, at 4 citing State ex rel. Town of Portsmouth v. Hagan, 819 A.2d 1256, 1258 (R.I. 2003).

Rhode Island Supreme Court in State v. Ceraso (2002),[56] there are only two statutory[57] exceptions to this rule — (1) where the officer is engaged in "hot" or "close" pursuit under § 12-7-19, and (2) when an emergency grant of authority has been extended to officers from another department by a police chief pursuant to § 45-42-1. But since the Town has not argued that § 45-42-1 provides a basis of authority for Officer Porrazzo's actions in its Memorandum, the argument is deemed waived and we need not discuss it.[58]

There being no dispute as to the relevant facts,[59] the appeals panel was able to rest its decision entirely on two legal premises — first, that the close

---

[56] 812 A.2d 829 (R.I. 2002).

[57] Other exceptions, irrelevant to our present inquiry, have been created by case decision. For instance, the Court has sanctioned the post-arrest transport of detainees — in order to gain access to a properly functioning breathalyzer machine, see Hagan, supra n. 45, at 1257-61 and State v. Locke, 418 A.2d 843 (R.I. 1980); to obtain medical treatment for the arrestee, see Cioci v. Santos, 99 R.I. 308, 315, 207 A.2d 300, 304 (1965).

[58] The Town was certainly wise to waive any argument under the so-called "emergency police power" enunciated in § 45-42-1. A plain reading of the statute reveals that it may only be invoked when one police department requests the aid of another. Although the Supreme Court in Ceraso indicated its willingness to eschew certain formalisms in the making of such a request, it has not dispensed with precondition of a request altogether. Ceraso, supra, 812 A.2d at 835-36. No such request was made in the instant matter; thus, § 45-42-1 cannot provide authority for Officer Porrazzo's stop of Mr. Oliver.

[59] Neither party disputes the appeals panel's findings that the Officer Porrazzo followed Mr. Oliver into Newport, where he stopped him, and there issued him a citation for speeding.

pursuit statute, § 12-7-19, grants municipal police officers the authority to follow motorists beyond the territorial limits of their own cities and towns for the purpose of making an arrest under the motor vehicle code; and second, the commission of a civil traffic violation, such as speeding, does not subject its perpetrator to arrest. The appeals panel put these two principles together and held that § 12-7-19 did not authorize Officer Porrazzo's incursion into Newport — and vacated Mr. Oliver's conviction for speeding.[60]

C

THE ARGUMENTS PRESENTED BY THE TOWN

Since the appeals panel's decision was issued, the Town — which did not participate in the proceedings before the Traffic Tribunal — has advanced a startling argument regarding the applicability of § 12-7-19.

In its Memorandum, the Town acknowledges that, facially, the authority granted to officers pursuant to § 12-7-19 is limited to an entry into another jurisdiction solely for the purpose of effecting an arrest for a criminal violation of the Motor Vehicle Code, and not, by implication, for the purpose of issuing a civil traffic citation.[61] But the Town says — "This is not necessarily correct."[62]

---

[60] Decision of Appeals Panel, at 6.

[61] Appellant's Memorandum, at 7-15, passim.

[62] Appellant's Memorandum, at 9.

To the contrary, the Town urges that the term "arrest" can (and should) be read more broadly, including within its reach lesser deprivations of liberty, including the making of traffic stops for the issuance of civil citations.

Let us see how the Town makes this case. It notes that the Motor Vehicle Code is composed of both criminal and civil offenses, many traffic offenses having been decriminalized in 1970.[63] And so, argues the Town, one can be "arrested" for a civil traffic violation committed in one town even if the motorist has traveled into another town.[64] The Town is therefore changing the longstanding definition of the term "arrest" — so that it designates not only a prototypical "custodial arrest,"[65] but a brief car stop made in order to charge a motorist with a civil violation.[66]

And, in addition to asserting the intrinsic merit of its position, the Town proffers a dozen[67] other grounds for the adoption of this expansive reading of § 12-7-19. I shall enumerate here only the most significant, grouping them

---

[63] See P.L. 1970, ch. 147, cited in Appellant's Memorandum, at 8-9. The Town notes that this was true when the close pursuit statute was enacted in 1974 by P.L. 1974, ch. 191. Appellant's Memorandum, at 8-9.

[64] Appellant's Memorandum, at 9-10.

[65] This tautology was first employed by the United States Supreme Court in United States v. Robinson, 414 U.S. 218, 235 (1973).

[66] Appellant's Memorandum, at 10.

[67] These items are presented in Appellant's Memorandum, at 10-15. They are not numbered and there is substantial overlap among them.

together as appropriate.

First, the Town presents cases it urges have precedential value — a Superior Court bench decision from January of 2011, intermediate appellate decisions from Pennsylvania, Connecticut, and Wisconsin, and one case from the Supreme Court of Vermont.[68] Second, the Town urges that the word "arrest" and the concept of arrest is known to the civil law as well as the criminal, and therefore the word "arrest" is ambiguous in § 12-7-19.[69] Third, invoking public safety considerations, the Town argues that if its interpretation is not adopted, horrific consequences will follow, with areas near municipal borders becoming unsafe; and, a ruling disallowing such stops would encourage speeders to flee at even faster speeds.[70]

D

ANALYSIS AND RESOLUTION OF THE ISSUE

To reiterate, the appeals panel held that § 12-7-19 could not be invoked to justify Officer Porrazzo's entry into Newport because he had no grounds to arrest Mr. Oliver; before this Court, the Town asserts that the officer's issuance

---

[68] Appellant's Memorandum, at 10-12.

[69] Appellant's Memorandum, at 12-13, citing 5 AM. JUR.2d Arrest §§ 52-68, Gen. Laws 1956 § 10-10-1 (re arrest at the commencement of a civil action), and Lama v. Biltmore Furniture Co., 100 R.I. 255, 214 A.2d 195 (1965).

[70] Appellant's Memorandum, at 11, 13-14.

of a speeding citation to Mr. Oliver satisfied § 12-7-19's "arrest" requirement. We proceed now to our resolution of this issue.

The potential impact of the Town's theory is breathtaking. It redefines a term — arrest — that is one of the cornerstone concepts of our system of criminal justice. Innumerable cases have been rendered defining the point in time when an officer acquires the right to arrest a citizen without a warrant, the point when an arrest is deemed effectuated, and the rights that attach to a person who is under arrest. And while some of these questions may be answered by reference to statutory law, many are of constitutional dimension. Many would have to be revisited if the Town's position were to be accepted.[71] Nevertheless, the novelty of an argument is not proof, per se, of its falsity.[72]

Now, in evaluating its argument, we will need to be clear about what the Town is saying and what it is not saying. The Town is not urging that Officer Porrazzo had the right to make a full "custodial arrest" of Mr. Oliver for speeding. Instead, it is saying that stopping a vehicle for the purpose of issuing the operator a citation is a type of arrest.

---

[71] Unless, of course, we maintain one definition of arrest for the close pursuit law and one for all other purposes.

[72] We bow here to the words of the Eighteenth Century philosopher Denis Diderot — "A thing is not proved just because no one has ever questioned it." James Geary, Geary's Guide to the World's Great Aphorists, 326 (2007).

1

Mr. Oliver Was Not Subjected to a Custodial Arrest and Officer Porrazzo Had No Right to Make a Custodial Arrest of Him for Speeding

Since the Town asserts Officer Porrazzo had the right to arrest Mr. Oliver, let us evaluate this statement, weighing it against the principles and definitions adhered to in Rhode Island for many years, using a traditional definition of arrest. In this section we will consider first, whether Mr. Oliver was arrested, and second, whether he could have been.

a

Stopping a vehicle does not constitute a (custodial) arrest

Let us begin by examining the question statutorily. Clearly, the test for an arrest outlined in § 12-7-7 was not satisfied — Mr. Oliver was never subjected to bodily restraint, never in the custody of Officer Porrazzo. So, the statutory definition of an arrest was not met.

Next, let us examine the question from a case law perspective. Applying the Fourth Amendment test stated in Jiminez, Mr. Oliver had every reason to believe he would be free to leave, albeit not until he received his citation. As to the other factors mentioned in Jimenez — his freedom was only briefly curtailed (for purposes of issuing the citation), no force was used, a reasonable person would not believe he or she was going to be arrested for speeding, and, he was

not taken anywhere.[73] So, we must conclude Mr. Oliver was not subjected to an arrest, as that term is traditionally employed.

b

Officer Porrazzo Had No Right to Arrest Mr. Oliver for Speeding

We continue now to consider the legal consequences that a traditional interpretation of the term "arrest" would have in this case. And having established that Officer Porrazzo did not make a custodial arrest of Mr. Oliver, we must now consider whether the officer had the right to make such an arrest. But to this question as well, the answer must be a resounding no.

As we have seen, Gen. Laws 1956 § 12-7-3 allows officers to make arrests without warrants in cases involving misdemeanors and petty misdemeanors.[74] Since there is no statute in Chapter 12-7 sanctioning the warrantless arrest of those who commit criminal violations or civil violations, we must conclude no such authority exists under Rhode Island law. And, applying the twin principles recited in Blackstone — one, the officer had no

---

[73] In State v. Darrah, 64 Ohio St. 22, 412 N.E.2d 1328 (1980), it was held that stopping a vehicle for the purpose of giving a citation is not an arrest. 3 LaFave, Search and Seizure, (5th ed. 2012), § 5.1 (a) at 15.

[74] In State v. Martini, 860 A.2d 689, 693-94 (R.I. 2004), the Supreme Court ruled, that the term "misdemeanor" in the law providing enhanced penalties for repeated domestic-violence offenders did not include within its ambit "petty misdemeanors."

right to arrest Mr. Oliver because he was not charged with a criminal offense, and two, he could not be arrested for speeding because it was not bailable, since one can only be held to bail on "criminal process."[75] In light of these principles, Officer Porrazzo had no right to arrest Mr. Oliver in Middletown; therefore, § 12-7-19 cannot justify his stop of Mr. Oliver in Newport.

Since an arrest must pass both statutory and constitutional muster, we need not address the latter issue. But, in order to provide the Court with the most complete findings possible, I shall do so nonetheless. And so we ask — Would Mr. Oliver's arrest for a civil traffic violation violate the Fourth Amendment to the United States Constitution? I do not believe we can answer this question definitively, since the United States Supreme Court has not ruled on this precise issue. Nonetheless, I think it is likely that the answer will be no, for reasons I shall now explain.

The closest the United States Supreme Court has come to reaching this issue was in the case of Atwater v. City of Lago Vista, (2001).[76] In Atwater, the Court decided that the Fourth Amendment did allow a Texas police officer to arrest a motorist for allowing her children to travel in the front seat of her

---

[75] See quotation from Blackstone, supra, and Gen. Laws 1956 § 12-13-1.

[76] 532 U.S. 318, 121 S.Ct. 1536 (2001).

pickup truck without the benefit of seatbelts, a misdemeanor under Texas law punishable only by a fine.[77] After engaging in a comprehensive historical review, the Court concluded that the common rule limiting warrantless arrests for misdemeanors to breaches of the peace committed in the presence of the arresting officer was not inviolate as of the time of America's independence, having been amended by statute;[78] therefore, it could not be deemed to have been incorporated into the Fourth Amendment at the time of its framing.[79] The Court also declined to establish a new rule barring arrests for criminal offenses not subjecting a perpetrator to imprisonment.[80] And so, it established a bright-line rule — "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."[81] And so, it appears one can be arrested only for criminal charges.

Of course, under Rhode Island law, a fine-only offense would be deemed a criminal violation, unless otherwise indicated. There are no cases addressing arrests for civil violations.

---

77 Atwater, 532 U.S. at 323-24, 121 S.Ct. at 1541.

78 Atwater, 532 U.S. at 326-36, 121 S.Ct. at 1543-47.

79 Atwater, 532 U.S. at 336-45, 121 S.Ct. at 1547-53.

80 Atwater, 532 U.S. at 345-354, 121 S.Ct. at 1553-1557.

81 Atwater, 532 U.S. at 354, 121 S.Ct. at 1557.

And after evaluating this question in the instant case, making reference to both the statutory definitions of arrest and the pertinent criminal and Fourth Amendment jurisprudence (both Rhode Island and federal), I have concluded Officer Porrazzo had no right to arrest (as the term arrest is traditionally used) Mr. Oliver while in Middletown; as a result, the Town's claim that § 12-7-19 sanctioned the officer's entry into Newport must be denied unless the term "arrest" can be radically redefined, which, as we shall see in the next section of this opinion, I cannot recommend.

2

Officer Porrazzo's Issuance of a Citation to Mr. Oliver Did Not Satisfy the Arrest Requirement

We now come to the crux of the Town's argument. The Town equates two procedures undertaken by Rhode Island law enforcement officers hundreds of times each day — making an arrest and issuing a traffic citation. The Town argues that when Officer Porrazzo cited Mr. Oliver for speeding he was arrested, at least as that term is used in § 12-7-3. For the reasons that follow, I believe this argument is without merit.

a

The Term "Arrest" Is Not "Ambiguous"

In order to justify the conflation of these two procedures, heretofore universally regarded in constitutional and statutory law as separate and distinct,

the Town argues that the word "arrest" is ambiguous. But, to the best of my research, the term "arrest" has never been regarded as ambiguous in Rhode Island case law. The test for determining whether an arrest has been made has been stated and restated by our Supreme Court.[82]

This year, our Supreme Court has reiterated the threshold issue it faces when reviewing a statute: Is it ambiguous? For, as our Supreme Court has stated — "… when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."[83] The meaning of arrest has been static for quite some time. And, there is no legitimate reason to expand it in this case.[84]

As we have seen, the Town has argued, from several viewpoints, that the

---

82 See Jimenez, supra at 12-13. For an earlier version of the same test, see State v. Bailey, 417 A.2d 915, 917-18 (R.I. 1980).

83 State v. Diamante, 83 A.3d 546, 548 (R.I. 2014) citing Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996), DeMarco v. Travelers Ins. Co., 26 A.3d 585, 616 (R.I. 2011), and Sidell v. Sidell, 18 A.3d 499, 504 (R.I. 2011).

84 In Diamante, the Court rejected an assertion of statutory ambiguity that has echoes in the Town's argument in the instant case. The proponent of an expungement urges there was an ambiguity between § 12-1-12 and § 12-1-12.1. To me it is reminiscent of the ambiguity the Town alleges in the instant case, to wit, that § 12-7-19 allows officers to arrest for all traffic offenses — most of which are civil.

But to me it seems to me that if the legislature wanted to allow motorists to be arrested for civil traffic offenses, they would not do it only in the close pursuit law, which has limited applicability, but generally.

term arrest is ambiguous. The final aspect of this claim that we will address is this — that arrest is an ambiguous term because there is something known as "civil arrest." I do not agree. Yes, there is a procedure known as "civil arrest." Currently, it is a highly disfavored process, seldom used. But whatever its status, it is entirely distinct from criminal arrest. And it is not uncommon for terms to be used differently in the several areas of the law. For instance, there is criminal assault and tortious assault. Neither concept is considered ambiguous because of the existence of the other; rather, we accept that these concepts have developed separately with the passage of time. Courts have no difficulty distinguishing between the two.

b

Adopting the Definition of Arrest the Town Puts Forward Would Defeat Its Argument

Assuming arguendo the term "arrest" can be made to wear this expanded definition in § 12-7-19, the Town's argument must nevertheless fail, for, if we try to carry it to its logical conclusion, doctrinal anarchy results. The Town asks that its startling re-interpretation of the term "arrest" be used only in § 12-7-19. It does not ask us to apply it in § 12-7-3, authorizing misdemeanor arrests, or in § 12-7-7, where arrests are defined, or in any other section of Chapter 12-7. And we certainly cannot do so in the jurisprudence issued by our

Supreme Court in cases such as Jiminez. And so, we are to have a broad definition of arrest in the close pursuit law, but nowhere else. This we cannot do without fogging up the law of arrest completely.

Clearly, the Town is trying to fit a square peg into a round hole; and maybe, if it bangs on it long enough and hard enough, it might seem to fit. But it will never be usable again, which is to say, the word "arrest" will thereafter be meaningless as a judicial concept. In short, the price for implementing Town's argument will be the clarity of Rhode Island's criminal jurisprudence. This is simply much too high a price to pay in order to assuage the Town's anxiety.

c

The Town's Ancillary Arguments Are Unpersuasive

i

The Sister State Precedents Are Not on Point

The Town cites four case decisions for our consideration. None are persuasive. All are inapposite. We shall now address each seriatim.

The first case cited by the Town is a 1989 decision rendered by the Vermont Supreme Court, State v. Griffin.[85] In Griffin a Waterbury police officer followed Mr. Griffin's vehicle, which had crossed the center line while in Waterbury, as it travelled into Duxbury, where he observed it cut into the

[85] 565 A.2d 1340 (Vt. 1989).

oncoming lane and continue weaving, all the while proceeding well below the posted speed limit.[86] On the basis of Vermont's statutory definition of "fresh pursuit"[87] — which, under specified conditions, permits stops of both those subject to arrest and those that "might be" — the Court held that probable cause was not required when the pursuit begins, only suspicion;[88] therefore, the stop was upheld.[89] Since our close pursuit law includes no such language, the decision in Griffin must be viewed as inapposite.

The second case presented for our consideration is Commonwealth v. McGrady.[90] Briefly, the officer, while on patrol in the town of Emsworth, observed a vehicle traveling slower than normal cross the center line; unable to

---

86 Griffin, supra, 565 A.2d at 1340-41.

87 Griffin, supra, 565 A.2d at 1341 quoting 23 V.S.A. 4(12).

88 Griffin, supra, 565 A.2d at 1341 at 1341. Since the Court did not use the phrase "reasonable suspicion," I believe we must treat the decision as being decided under state grounds. If it had, the Court would have been seen to have invoked the standard enunciated in Terry v. Ohio, 392 U.S. 1 (1968).

At that point, the Vermont would have found itself in the midst of an issue that is still being wrestled with nationally — i.e., whether state close pursuit laws can be invoked if the officer lacks probable cause, but possesses reasonable suspicion. See 4 LaFave, Search and Seizure, (5th ed. 2012), § 9.3(a) at 474-78.

89 Griffin, supra, 565 A.2d at 1341 at 1342.

90 454 Pa. Super. 444, 685 A.2d 1008 (1996). The case came to a three-judge panel of the Pennsylvania Superior Court on an appeal from the granting of a motion to suppress which the trial court based on a violation of the Pennsylvania Municipal Police Jurisdiction Act. 42 Pa. C.S. §§ 8951-8954.

stop the vehicle due to road conditions, the officer followed the vehicle into the municipalities of Ben Avon and Avalon, where he stopped the car, and noticed that the car smelled of alcohol, the operator's eyes were bloodshot, and his speech was slurred.[91] The motorist, Mr. McGrady, was charged with drunk driving and careless driving.[92] The pertinent section of the Pennsylvania Act allows an officer "to enforce the laws of the Commonwealth" outside "his primary jurisdiction" regarding "any offense which was committed … within his primary jurisdiction."[93] The panel held that since the officer could have stopped Mr. McGrady in Emsworth to issue a citation to him there, he could follow him to Avalon.[94] Accordingly, the Court reversed the suppression order and remanded the matter for trial.[95] But the case is inapposite, since the Pennsylvania statute allowed for pursuit for any breach of law, not just an arrestable offense, as does § 12-7-19.

The third case cited to this Court by the Town is a 1989 decision of the Wisconsin Court of Appeals, City of Brookfield v. Collar.[96] On August 2, 1986,

---

91 McGrady, 454 Pa. Super. at 446, 685 A.2d at 1009.

92 McGrady, 454 Pa. Super. at 446, 685 A.2d at 1008.

93 McGrady, 454 Pa. Super. at 447, 685 A.2d at 1009.

94 McGrady, 454 Pa. Super. at 450, 685 A.2d at 1010-11.

95 McGrady, 454 Pa. Super. at 450-51, 685 A.2d at 1011.

96 436 N.W.2d 911 (Wis. App. 1989).

a Brookfield police officer saw a vehicle with expired plates pass her position at an excessive speed.[97] She pursued the vehicle for a mile in Brookfield, where it was weaving within its lane and crossing the centerline.[98] Both vehicles crossed into the village of Elm Grove, where the officer effected a car stop; the officer conducted field sobriety tests, after which she arrested the motorist.[99]

At trial, the defendant moved to suppress all evidence garnered after the arrest on the ground that the officer was not authorized — by Wisconsin's fresh pursuit law — to arrest Ms. Collar in Elm Grove; however, the motion was denied.[100] The Court quoted the fresh pursuit law as allowing officers to arrest persons outside their jurisdiction under certain circumstances:

> [A]ny peace officer may, when in fresh pursuit, follow anywhere in the state and arrest any person for the violation of any law or ordinance the officer is authorized to enforce.[101]

And it also quoted another section of law as providing that police officers may arrest any person for any violation of either state or municipal law.[102] Thus, the Wisconsin law, like the Pennsylvania law, is broader than Rhode Island's.

---

97 Collar, supra, 436 N.W.2d at 912.

98 Id.

99 Id.

100 Collar, supra, 436 N.W.2d at 912-13.

101 Collar, supra, 436 N.W.2d at 913 citing sec. 175.40(2), Stats.

102 Collar, supra, 436 N.W.2d at 913 citing sec. 62.09(13), Stats.

But the defendant's objection to the stop was not based on the officer's right to arrest for such an offense; instead, it was that the officer did not act without delay. The Court considered the question and held that any delay was justified by safety considerations.[103] As a result, Ms. Collar's conviction was affirmed.[104] Thus, the Collar case must be deemed entirely inapposite since it was decided on an immaterial issue.

The final sister-state case cited by the Town is State v. Kowal,[105] a 1993 case from the Appellate Court of Connecticut, in which the motorist, while in the town of Derby, was observed crossing the double-center line and then took an "abrupt" right turn across two lines of traffic, where he entered the on-ramp to a highway in an erratic manner.[106] Derby officers followed him onto a highway and stopped the vehicle when he exited in the town of Shelton.[107] After further investigation, he was arrested for drunk driving.[108]

Mr. Kowal appealed from the judgment of conviction, arguing that the officers violated the Connecticut close pursuit law because when they crossed

---

103 Collar, supra, 436 N.W.2d at 913.

104 Id.

105 31 Conn. App. 669 (1993).

106 31 Conn. App. at 671.

107 31 Conn. App. at 671.

108 Id.

into Shelton the officers had only "reasonable suspicion" that the defendant was operating under the influence, not probable cause.[109] The Court, however, rejected this claim of error, finding that the Connecticut pursuit law may be invoked if the officers establish reasonable suspicion that an offense has been committed while in their home municipality (as distinguished from probable cause).[110] Then, the Court found the officers' actions did constitute immediate pursuit.[111] Since this issue is not before the Court in the instant case, the Kowal decision is entirely irrelevant to the question before the Court.

In sum, the four sister-state decisions presented by the Town are all inapposite and, in my estimation, hold no persuasive value for the instant case.

ii

The Rhode Island Precedent Is Unpersuasive

Finally, we come to the Rhode Island precedent cited by the Town — State v. Bucci, which has been presented in the form of a transcript of a bench decision rendered by a Justice of the Superior Court.

---

109 31 Conn. App. at 672.

110 31 Conn. App. at 672-73. This issue is not litigated in the instant case since the officer had probable cause to stop Mr. Oliver in Newport, albeit for a civil violation; the question being litigated is whether the statute allows officers to make such stops outside the officer's home jurisdiction. This issue addressed in Kowal in nonetheless an interesting one, which has not yet decided in Rhode Island.

111 31 Conn. App. at 673-4.

First, I must concede that the case — State v. Bucci, supra at 13, — is factually similar to the instant case. In Bucci, a Middletown officer using a radar unit clocked the motorist, Ms. Laurie Bucci, traveling southbound on West Main Road at a speed of forty-four miles per hour, in excess of the posted speed limit.[112] In response to his signals, Ms. Bucci stopped — but only after she crossed into the City of Newport.[113] When he approached the motorist, the officer detected the prototypical indicia of alcohol.[114] After Ms. Bucci failed certain field sobriety tests, she was arrested.[115] And after she failed a breathalyzer test, she was charged with drunk driving.[116]

In Bucci, the Superior Court considered a motion to dismiss filed by the motorist, on the ground that the officer had no right to arrest her in Newport.[117] But, after reciting the positions of the parties,[118] the Court denied the motion, reasoning that [1] speeding was an arrestable offense[119] and [2], since the initial stop was legal, the officer was then empowered to arrest Ms.

---

112 Bucci Transcript, at 1.

113 Bucci Transcript, at 2.

114 Id.

115 Id.

116 Id.

117 Bucci Transcript, at 2-4.

118 Bucci Transcript, at 2-6.

119 Bucci Transcript, at 6.

Bucci for drunk driving in light of his observations.[120]

Also, one of the lynchpins of the decision in Bucci is that the Fourth Amendment applies to the stop.[121] That is true, but it does not make the stop an arrest.[122] As I do not agree that speeding is an arrestable offense, as explained at length supra in Part V-D-1-b of this opinion, I must reject the precedential value of this case. The Court never analyzed the matter under § 12-7-3, as is required by our Supreme Court. It may also be significant that the Court noted that the indicia of drunkenness began in Middletown, seeming to imply it was treating it as a continuing matter (like a Terry stop). In sum, I do not believe I can follow the lead of the Superior Court decision in Bucci.

---

120 Bucci Transcript, at 6-7. Although the Town does not cite the Bucci case on this point, we may note that the motion justice also concluded that the Middletown–Newport mutual aid agreement also sanctioned the motorist's arrest, declaring that the close pursuit statute allows an officer from one municipality to enter another to complete an arrest. Bucci Transcript, at 7-8. As I shall explain infra, I believe the agreement is clear — it permits officers from another town to arrest a motorist for an offense committed in the other town. See discussion, infra at 49-50. For this reason, if we assume the officer's stop of Ms. Bucci was proper, I believe there is no question that he could then make an arrest of her in Newport, because he had probable cause that she drove while intoxicated in Newport.

121 The Court cited, quite correctly, Brendlin v. California, 551 U.S. 249, 127 S.Ct. 2400 (2007), Florida v. Bostwick, 501 U.S. 429, 111 S.Ct. 2382 (1991), and Brower v. County of Inyo, 489 U.S. 593 (1989) for the proposition that the occupants of a vehicle are seized for Fourth Amendment purposes when a vehicle is stopped.

122 See Part III-B-2, at 14-17.

iii

The Policy Arguments

The Town urges that, if the municipal police are not allowed to pursue motorists into adjoining towns to issue citations law enforcement will be hobbled. But in my view, if the decision of the appeals panel is affirmed, Officer Porrazzo and his colleagues will not be powerless to act if traffic violators in one municipality attempt to scurry into a neighboring jurisdiction to avoid a traffic citation. Instead, such motorists will likely face a rather dramatic response.

In the Motor Vehicle Code there is a criminal offense known as Eluding a Police Officer (Gen. Laws 1956 § 31-27-4) which can be invoked whenever a motorist intentionally fails to stop in a reasonable amount of time or distance. It would authorize the officer to follow the perpetrator under the close pursuit into another jurisdiction since it is an arrestable offense.[123] Only a few arrests would be sufficient to convince motorists not to flee from a civil citation to generate a criminal arrest.

The General Assembly has moved deliberately in expanding the powers of municipal officers to act across jurisdictional boundaries. Therefore, an

[123] Moreover, the charge would continue into the second municipality.

equally sound reading of § 12-7-19 is that our legislature intended to limit the authority to only more serious violations of law, and not lesser ones. This too, I believe, is a reasonable interpretation of the language of the close pursuit law. And so, in the absence of a clear intention to the contrary, we must apply the plain meaning of § 12-7-19. Doing so, we must conclude that the close pursuit law does not authorize a municipal police officer to follow a motorist into an adjoining municipality for the purpose of issuing a traffic citation.

VI

ANALYSIS — THE NEWPORT-MIDDLETOWN MUTUAL AID AGREEMENT DOES NOT SANCTION THE STOP

The Town has raised an additional issue on appeal — that Officer Porrazzo's actions were authorized by a Mutual Aid Agreement entered into by the Town of Middletown and the City of Newport. Such Agreements are authorized by Gen. Laws 1956 § 45-42-2. We shall now consider the merits of this argument — procedurally and substantively.

A

PROCEDURAL ISSUES — STANDING

The Town urges that a Mutual Aid Agreement entered into by Newport and Middletown on October 20, 2006 authorized Officer Porrazzo to cite Mr. Oliver in Newport. But the Mutual Aid Agreement (MAA) and the argument

based on it were not raised before the appeals panel.[124] It is a fundamental principle of litigation of every sort that issues not raised below cannot be raised on appeal. After all, how can the appeals panel have erred by not ruling on an issue not brought before them? Therefore, this issue cannot properly be considered. Nevertheless, as is my custom, in order to serve this Court fully, I shall address the other procedural and substantive issues relating to the memorandum of understanding.

B

JUDICIAL NOTICE

Another hurdle the Town must clear is evidentiary. It did not enter the Mutual Aid Agreement into evidence at the trial. Of course, it argues that Mr. Oliver attached it to his motion and memorandum. But, it was never entered into the trial record — never identified, never authenticated, never entered as an exhibit. And the Town knows that, under Gen. Laws 1956 § 31-41.1-9, its appeal comes to this Court for a limited review. Generally speaking, we cannot expand the record presented to us by the RITT.

And so, the Town advances an argument that it hopes will allow it to bypass these troublesome issues — judicial notice. It urges this Court to take

[124] As mentioned above, the Town did not participate before the appeals panel.

judicial notice of the Mutual Aid Agreement, reminding the Court that, as provided in Rhode Island Rule of Evidence 201(f), [j]udicial notice may be taken at any stage of the proceeding." And so, it argues this Court may take judicial notice of the MAA in the course of considering his appeal.

On the other hand, there is authority which expresses concern that taking judicial notice in circumstances such as these is fundamentally unfair, since it has the effect of excusing omissions in the record below. On this issue we may review two Rhode Island Supreme Court cases that address the issue of taking judicial notice of municipal ordinances and regulations: Lincoln v. Cournoyer[125] (1962) and Hooper v. Goldstein[126] (1968).

The Supreme Court promulgated the general rule, against courts taking judicial notice of municipal ordinances in Town of Lincoln v. Cournoyer, supra, which began as a Superior Court action brought by the town solicitor to enforce a zoning ordinance barring the use of land to store junk vehicles and the like.[127] A decree was entered enjoining Mr. Cournoyer from using the land in this manner and requiring him to remove the items;[128] he was brought before

---

125 95 R.I. 280, 186 A.2d 728 (1962).

126 104 R.I. 32, 241 A.2d 809 (1968).

127 Cournoyer, supra, 95 R.I. at 281, 186 A.2d at 728.

128 Cournoyer, supra, 95 R.I. at 281, 186 A.2d at 729.

the Court on several occasions to enforce the decree until, ultimately, sanctions were imposed.[129] He appealed from this order of sanctions and moved to dismiss the case — arguing, inter alia, that the zoning ordinance he was found to have violated had been repealed and superseded.[130] The Supreme Court rejected this argument, finding there was no mention of a new ordinance in the record[131] and the Court could not take judicial notice of a municipal ordinance.[132]

In Hooper, the Court heard an appeal[133] from a Providence public safety hearing board[134] decision discharging a police officer for violating five of the Department's regulations.[135] Before the Supreme Court, the officer argued that the finding against him should be set aside because the regulations in question had not been entered into the hearing record.[136] However, the Supreme Court

---

129 Cournoyer, supra, 95 R.I. at 282-83, 186 A.2d at 729-30.

130 Cournoyer, supra, 95 R.I. at 283-84, 186 A.2d at 729-30.

131 Cournoyer, supra, 95 R.I. at 284, 186 A.2d at 730.

132 Id.

133 The appeal came by way of writ of certiorari. Hooper, supra, 104 R.I. at 34, 241 A.2d at 810.

134 The panel which decided the officer's fate was apparently established ad hoc. Hooper, supra, 104 R.I. at 35, 241 A.2d at 811.

135 Hooper, supra, 104 R.I. at 36, 241 A.2d at 811.

136 Id.

affirmed his discharge.

In doing so, the Court recognized two exceptions to the general rule that municipal ordinances must be proved in a state court of general jurisdiction, and held that [1] a municipal court may take judicial notice of a municipal ordinance and [2] a municipal agency hearing board may take judicial notice of that agency's rules and regulations.[137] The Court found that in each situation the laws (or rules) were promulgated by the same authority which established the Court (or hearing board), just as the state's courts are established by the same sovereign power that enacts its public laws.[138] Accordingly, the Supreme Court took judicial notice of the rules the officer was accused of violating.[139]

Now, it is true that the practice of taking judicial notice on appeal has been criticized as corrosive to the principle that issues not properly raised before the fact-finder cannot be considered on appeal — especially when the case before the Court is an administrative appeal (in which the Court is strictly confined to the record) or when taking judicial notice would allow a party to assert an additional basis of error.[140] The instant case shares these attributes.[141]

---

137 Hooper, supra, 104 R.I. at 36-37, 241 A.2d at 811-12.

138 Hooper, supra, 104 R.I. at 37, 241 A.2d at 812.

139 Hooper, supra, 104 R.I. at 37-38, 241 A.2d at 812.

140 State Department of Corrections v. Rhode Island State Labor Relations

Nevertheless, I believe I must find that the Court can take judicial notice of the memorandum of understanding, just as the municipal court could have done. Although the Hooper case is more than forty years old, and was decided long before our Rules of Evidence were promulgated, it has not been overruled. However doubtful is its long-term vitality, it is remarkably on point,[142] concerning, as it did, an action in the nature of an administrative appeal. It therefore constitutes binding precedent to which we must adhere. And so, for purposes of this opinion (proceeding as I am on this issue — de bene esse), I shall take judicial notice of the Newport-Middletown agreement.

Board, 2006 WL 1628615 at *6-8. (R.I. Super.)(Darigan, J.). I was very much enlightened about the competing forces that come into play on this question by this decision, which resolved an appeal from a Labor Board decision finding the State guilty of an unfair labor practice (ULP); the State asked the Court to take judicial notice of the pertinent collective bargaining agreement (CBA) — so it could argue that the CBA gave the State certain rights, which would vitiate the finding of a ULP. Id., at *1, 6. After a thorough discussion of the law in this area, the Court declined to do so. Id., at *6-8.

141 First, the Town cannot rely on the MAA absent the taking of judicial notice. Second, although the instant case began in the Middletown Municipal Court, and then went on to the RITT appeals panel, our review is performed in a manner akin to that provided in the State Administrative Procedures Act (APA) Gen. Laws 1956 § 42-35-15(g).

142 The sole difference is that Hooper considered departmental rules and the instant case considers a Memorandum of Understanding between two municipalities, which, has the effect of a rule which governs police authority in Newport and Middletown. Since such agreements are authorized by state law the compacts would seem to have superior status.

B

MATERIALITY

But although the Agreement is now before us, I believe it avails the Town not at all. The Town relies on paragraph IV–B of the Memorandum of Understanding, which states —

> Whenever an on duty law enforcement officer from one jurisdiction views or otherwise has probable cause to believe that a serious traffic offense, including DWI violations has occurred within the jurisdiction of the other agency the law enforcement officer may stop, arrest, or cite the suspected violator according to law.

In my considered view, this provision is immaterial to the issue before us.

Paragraph IV–B gives an officer from one municipality the right to take action — including citing a motorist for a serious traffic offense — whenever the officer sees such an offense being committed in the other municipality. So, under this provision, if Officer Porrazzo saw a serious traffic offense being committed in Newport, he could take action — by arrest or by citation.[143]

But that is not what happened here. Officer Porrazzo observed Mr. Oliver commit a traffic offense in Middletown, not in Newport. The officer did not testify that he was still speeding as he entered Newport. Therefore, ¶ IV-B is irrelevant; it granted the officer no authority to stop and cite Mr. Oliver in

[143] Of course, any citation given by the Officer Porrazzo pursuant to the MAA would have been heard in Newport's municipal court, not Middletown's.

Newport for an offense committed in Middletown.

C
FURTHER POLICY CONSIDERATIONS

In addition to the policy analysis rendered supra, I would add at this juncture that affirming the appeals panel in this case could not possibly have the disastrous results the Town anticipates because the Town and the City of Newport can, if they wish, expand their Mutual Aid Agreement to include the circumstances seen in the instant case.

VII
CONCLUSION

Upon careful review of the evidence of record, 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 on the whole record. Id.

Accordingly, I recommend that the decision of the appeals panel be AFFIRMED.

/s/
Joseph P. Ippolito
Magistrate

March 13, 2014