STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

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

Richard W. Audette	:	
	:	
v.	:	**A.A. No. 2015 - 038**
	:	
Town of Middletown	:	
(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, the Court finds that the Findings and 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 REVERSED and the matter REMANDED for further proceedings.

Entered as an Order of this Court at Providence on this 25th day of November, 2015.

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

Richard W. Audette	:	
	:	**A.A. No. 2015 – 038**
v.	:	**(C.A. No. T14-036)**
	:	**(14-001-510257)**
State of Rhode Island	:	**(14-001-510258)**
(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 this appeal, Mr. Richard W. Audette urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a trial magistrate's default judgment adjudicating him guilty of the following civil traffic violations: "No Safety belt use-Operator" in violation of Gen. Laws 1956 § 31-22-22(g); "Place where parking or stopping Prohibited" in violation of Gen. Laws 1956 § 31-21-4; and "Entering intersection" in violation of Gen. Laws 1956 § 31-15-12.1.[1] Jurisdiction for the instant appeal is vested in the

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[1] Mr. Audette was originally charged with two additional traffic violations: "No license on person," in violation of Gen. Laws 1956 § 31-10-1, and

District Court by Gen. Laws 1956 § 31-41.1-9 and the applicable standard of review is found in subsection 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. A briefing schedule was issued by the Court, in response to which both the Appellant and the Attorney General have submitted memoranda for our consideration. After a review of the entire record I find that — for the reasons explained below — the decision of the appeals panel should be set aside and the matter remanded for further proceedings.

I
FACTS AND TRAVEL OF THE CASE

Because default judgments were entered at Mr. Audette's arraignment, few of the facts of the case are revealed in the record. Indeed, we can only state that, on March 26, 2014, on Route 138 in Jamestown, a member of the Division of State Police cited Mr. Audette for all the civil violations enumerated ante. For the same reason, the travel of the case is similarly abbreviated.

Mr. Audette, as directed on the citations he received, appeared at the

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"Operating a Motor Vehicle without Evidence of Insurance" in violation of Gen. Laws 1956 § 31-47-9. But his convictions on these counts were vacated by the appeals panel. See Decision of Appeals Panel, at 8. Since the State has not filed a cross-appeal regarding the dismissal of these charges, I shall not address them here.

Traffic Tribunal for arraignment on May 14, 2014. The charges were read to Mr. Audette and the presiding magistrate asked him how he pled — guilty or not guilty? This triggered the following colloquy, which lies at the center of this case:

RICHARD AUDETTE:	Judge, at this time I have invoked subject matter jurisdiction – – subject matter jurisdiction.
JUDGE ABBATE:	Do you have a motion – –
RICHARD AUDETTE:	No, judge.
JUDGE ABBATE:	– – before the Court?
RICHARD AUDETTE:	No, you don't have jurisdiction at all.
JUDGE ABBATE:	Do you have a motion?
RICHARD AUDETTE:	Oh, yes, I will – – well – –
JUDGE ABBATE:	That I do not have subject matter jurisdiction, is that your motion?
RICHARD AUDETTE:	That is correct. It's based on – –
JUDGE ABBATE:	Denied. Next.
RICHARD AUDETTE:	I cannot proceed then, Judge.
JUDGE ABBATE:	You cannot proceed?
RICHARD AUDETTE:	I'm only the beneficiary. I'm not the trustee.
JUDGE ABBATE:	If you cannot proceed, you're defaulted on all matters.
RICHARD AUDETTE:	We – – we have an estoppel by res judicata.
JUDGE ABBATE:	You're defaulted on all matters, if you cannot proceed.
RICHARD AUDETTE:	I'm not the trustee, Judge.

JUDGE ABBATE:	Okay. And your name?
RICHARD AUDETTE:	Richard W. Audette, Superior Beneficiary of the Clay B. Martell Charitable Remainder Trust. I do have the trust documents for you. I also have the statutory laws. I'm represented by the Attorney General's Office, Peter Kilmartin. Would you like the documents and the statutes, Judge?
JUDGE ABBATE:	Have they been noticed for the hearing?
RICHARD AUDETTE:	They have not, Judge.
JUDGE ABBATE:	Okay. Motion is denied. No license on person, defaulted on that, if you can't proceed.
RICHARD AUDETTE:	The license on person, Judge, is an estoppel by res judicata by Judge Hastings. She dismissed the – –[2]

The magistrate then proceeded to default Mr. Audette and impose sentence on each charge.[3]

Aggrieved by this decision, Mr. Audette filed a timely appeal, which, on July 23, 2014, was heard by an RITT appeals panel composed of: Magistrate William Noonan (Chair), Administrative Magistrate R. David Cruise, and Magistrate Domenic DiSandro. In a decision dated March 30, 2015, the appeals panel rejected each of Mr. Audette's arguments and affirmed the decision of the

[2] See Arraignment Transcript, at 2-4.

[3] See Arraignment Transcript, at 4-5.

magistrate.

On April 17, 2015, Mr. Audette filed a further appeal to the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9.

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 prejudiced because the appeals panel's findings, inferences, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the appeals panel;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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

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.' "[4] 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.[5] And so, except in the case where the panel's decision is affected by error of law, the decision of the panel must be affirmed as long as it is supported by legally competent evidence.[6]

III
ANALYSIS
A
Decision of the Appeals Panel

In affirming the magistrate's decision, the appeals panel made three main points, which we shall now present seriatim.

1
RITT Jurisdiction

The appeals panel first addressed Mr. Audette's argument that the Traffic Tribunal was without subject-matter jurisdiction to adjudicate his case. The

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[4] 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)).

[5] See 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)(decision rendered during previous incarnation of the appeals panel during the existence of Administrative Adjudication Division[AAD])).

[6] Link, 633 A.2d at 1348 (citing Environmental Scientific Corporation v. Durfee, 621 A.2d 200, 208 (R.I. 1993).

panel began by quoting Gen. Laws § 8-8.2-2, which grants the RITT jurisdiction over each of the charges specified in the citations issued to Mr. Audette.[7] Indeed, one of the offenses — "No license on person" — is in the exclusive jurisdiction of the Tribunal.[8] Moreover, the panel noted that Mr. Audette was cited in his capacity as the operator of the motor vehicle, not in his capacity as the beneficiary of the trust (which owns the vehicle).[9] As a result, the appeals panel found that his representations regarding the trust were irrelevant and immaterial.[10]

2
Default Judgment

The appeals panel next addressed Mr. Audette's argument that Rule 7 of the Traffic Tribunal Rules of Procedure required the magistrate to enter a plea of not guilty when he refused to respond to the charges in the citations.[11] The

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[7] See Decision of Appeals Panel, at 4.

[8] See Decision of Appeals Panel, at 4-5 (citing Gen. Laws § 8-18-10).

[9] See Decision of Appeals Panel, at 5. And see Summons Nos. 14-001-510257 and 14-001-510258, upon which Appellant is listed as the "Operator" but not the "Owner."

[10] See Decision of Appeals Panel, at 5 (citing Rhode Island Rules of Evidence 401 and 402).

[11] See Decision of Appeals Panel, at 5. The pertinent provision is Rule 7(a), which provides —

Rule 7. Pleas. (a) Defendant May Plead "Guilty" or "Not Guilty."

panel acknowledged that Rule 7 contains such a mandate,[12] but also cited Rule 6's requirement that "all defendants shall appear before a judge or magistrate of the court for arraignment on the date and time and at the place indicated on the summons."[13] The panel cited Rule 17 of the Traffic Tribunal Rules for the principle that a default judgment may enter against a defendant who fails to appear for arraignment (or trial).[14]

The appeals panel focused on the fact that the defendant stated repeatedly that he was appearing solely as the beneficiary of the trust — and not in his personal capacity, as the operator of the vehicle.[15] The appeals panel then

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> The court may refuse to accept a plea of guilty and shall not accept such plea without first addressing the defendant personally and determining that the plea has been made voluntarily and with understanding of the nature of the charge and the judgment to be imposed. If a defendant refuses to plead or if the court refuses to accept a plea of guilty, the court shall enter a plea of not guilty and the case be placed on the trial calendar. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea. Pleas shall be in the form prescribed by this Rule. (Emphasis added).

12 See Decision of Appeals Panel, at 6 (citing RITT Rule of Procedure 7).

13 See Decision of Appeals Panel, at 6, quoting RITT Rule of Procedure 6(a).

14 See Decision of Appeals Panel, at 6, quoting Rule 17, which provides in section (c), entitled "Default judgments," that "[a] default judgment may enter against the defendant upon the defendant's failure to appear at a trial and/or arraignment."

15 See Decision of Appeals Panel, at 6.

concluded that Rule 7's directive (to enter a not guilty plea) did not apply, since "[Mr. Audette] knowingly chose not to meaningfully participate in the arraignment by refusing to appear."[16]

3

The Interests of Justice

The appeals panel next considered whether reversal was required in the interests of justice.[17] It began by noting that the right to a fair trial, at which the defendant may present a defense, before an impartial tribunal, is fundamental.[18] It cited two cases for the proposition that due process requires the opportunity to be heard "at a meaningful time and in a meaningful manner."[19] Next, the panel declared that it was in the "difficult position" of having to choose between two precepts — first, Mr. Audette's failure to comply with the Rule 6 mandate that he appear and second, his right, under Rule 2 of the Traffic Tribunal Rules, to a "just determination" of his traffic violations.[20] But the panel

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[16] See Decision of Appeals Panel, at 6.

[17] See Decision of Appeals Panel, at 6-7.

[18] See Decision of Appeals Panel, at 6-7 (citing Berick v. Curran, 179 A. 708, 711 (R.I. 1935) and Davis v. Wood, 414 A.2d 190, 192 (R.I. 1982)).

[19] See Decision of Appeals Panel, at 7 (citing Millett v. Hoisting Engineers' Licensing Division of the Dept. of Labor, 119 R.I. 285, 296, 377 A.2d 229, 235-36 (1977) and Gimmicks, Inc. v. Dettore, 612 A.2d 655, 660 (R.I. 1992)).

[20] See Decision of Appeals Panel, at 7.

avoided resolving this conundrum; instead, it tendered a salve to Mr. Audette: it dismissed the "No license on person" and "No evidence of insurance" charges.[21] The remaining adjudications were affirmed by the appeals panel.[22]

B

Position of the Parties

1

Mr. Audette's Position

In the Memorandum filed in support of his appeal, Mr. Audette presents two arguments. The first is that the magistrate violated his right to due process by entering default judgments against him.[23] The second is that the Traffic Tribunal did not have subject-matter jurisdiction over him.[24] We shall present these in turn.

a

Due Process Claim

In his first argument, Mr. Audette urges that the default judgment entered against him violated his right to due process.[25] He cites the United States

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[21] See Decision of Appeals Panel, at 7.

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

[23] See Appellant's Memorandum of Law, at 2.

[24] See Appellant's Memorandum of Law, at 3.

[25] See Appellant's Memorandum of Law, at 2.

Supreme Court's decision in Mathews v. Eldridge[26] for a three-prong test which is to be used when determining whether a procedure violates due process. Under this test, we must evaluate [1] the private interest that is affected, [2] the risk of a deprivation of that interest, and [3] the Government's interest in maintaining the policy.[27] Appellant also cites a case decided by our Supreme Court earlier this year, In re McKenna, in support of this principle.[28] In concluding this argument, Mr. Audette urges that the risk of an unjust outcome was raised by the fact that he never had a trial, was never given a chance to produce evidence.[29] Finally, he call the appeals panel's finding that he never appeared a "creative argument" or "legal fiction," which "should not outweigh an individual's right to due process."[30]

b

Subject Matter Jurisdiction

Mr. Audette also renews his claim that the Traffic Tribunal was without

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26 Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893 (1976).

27 See Appellant's Memorandum of Law, at 2 (citing Mathews, 424 U.S. at 335).

28 See Appellant's Memorandum of Law, at 2 (citing In re McKenna, 110 A.3d 1125 (R.I. 2015)).

29 See Appellant's Memorandum of Law, at 2.

30 See Appellant's Memorandum of Law, at 2.

subject-matter jurisdiction to decide his case.[31]

Attempting to justify his raising of the issue, Mr. Audette calls it an "indispensable" issue that may be raised at any stage of the proceeding.[32] He also resuscitates his argument that a statute required that the Attorney General must be notified of these citations, even though the trust had not been charged with any civil violations.[33]

c
"Other" Arguments

Under the heading "Argument," Mr. Audette also points out that he submitted evidence to the appeals panel showing that: (1) he had purchased an E-Z Pass transponder and (2) that he was exempt from the statute requiring the use of seat belts.[34]

2
The State's Position

In its memorandum, the State contends that the magistrate did not commit error by entering default judgments against Appellant because, at the arraignment, Mr. Audette adamantly maintained that he was appearing solely as

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[31] See Appellant's Memorandum of Law, at 3.

[32] See Appellant's Memorandum of Law, at 3.

[33] See Appellant's Memorandum of Law, at 3 (citing Gen. Laws 1956 § 18-9-5).

[34] See Appellant's Memorandum of Law, at 3-4.

the beneficiary of the trust; and, perforce, the appeals panel committed no error when it affirmed this action.

The State urges that the instant case "will turn on what it means 'to appear' in court."[35] To answer this question, the State begins by quoting a number of statements from diverse authorities which (according to the State) suggest that "appearing" in court implies more than mere physical presence.[36]

The State then reminds us that the appeals panel found that Mr. Audette "appeared at his arraignment in his capacity as the beneficiary of the Trust — not as an individually licensed motorist, Richard W. Audette."[37] And the State adds that Mr. Audette "steadfastly" refused to proceed, "squandering" his opportunity to be heard — after being expressly warned by the magistrate that he would be defaulted.[38]

At this point in its memorandum, the State argues that there is no

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35 See Appellee's Memorandum of Law, at 1.

36 See Appellee's Memorandum of Law, at 1-2, quoting Black's Law Dictionary, at 118 (10th ed. 2014) and 4 AM. JUR. 2d Appearance, § 1 at 620.

37 See Appellee's Memorandum of Law, at 2, quoting Decision of Appeals Panel, at 6 (referencing the Arraignment Transcript, at 2).

38 See Appellee's Memorandum of Law, at 2-3 (citing Decision of Appeals Panel, at 1-2 referencing the Arraignment Transcript, at 3).

evidence of bias or other indisposition on the part of the arraigning magistrate.[39] The State also submits that the level of due process required for the adjudication of civil traffic violations would not be equivalent to that appropriate for criminal offenses, but somewhat lesser.[40] Nevertheless, the State urges that Mr. Audette was afforded due process in the form of notice and the opportunity to be heard — and, what is more, he has never claimed otherwise.[41] The State distinguishes two Rhode Island Supreme Court cases cited by Appellant addressing due process, Davis v. Wood[42] and In re McKenna,[43] as being inapposite.[44]

C
Discussion and Resolution

In this case, we are presented with a very fundamental question of traffic jurisprudence — what should a jurist in a traffic case do when a defendant

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[39] See Appellee's Memorandum of Law, at 2-3.

[40] See Appellee's Memorandum of Law, at 4.

[41] See Appellee's Memorandum of Law, at 4.

[42] See Appellee's Memorandum of Law, at 2 (citing Davis v. Wood, 444 A.2d 190 (R.I. 1982)).

[43] See Appellee's Memorandum of Law, at 3 (citing In re McKenna, 110 A.3d 1126 (R.I. 2015)).

[44] See Appellee's Memorandum of Law, at 2-4, distinguishing Davis because (in the instant case) there was no evidence of bias, and McKenna because Mr. Audette was given notice of and the opportunity for an appropriate hearing.

refuses to (or fails to) enter a plea at his or her arraignment?[45]

But before we do so, we must establish exactly what transpired at the first appearance conducted in this matter. In my view, these are the three key facts — (1) Mr. Audette asserted that the Tribunal was without subject-matter jurisdiction[46] over him because he was appearing only as the beneficiary of the trust that owned the vehicle he was driving; (2) the magistrate treated this as a motion to dismiss, which was denied; and (3) when the Appellant persisted in claiming lack of jurisdiction (and refused to enter a plea), the magistrate defaulted him on all counts.[47]

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45 I say "traffic" jurisprudence and not "Traffic Tribunal" jurisprudence because the same procedures utilized at the Tribunal are used by the municipal courts when hearing traffic cases. See Gen. Laws 1956 § 8-18-4(b).

46 Mr. Audette did not claim that the court lacked personal jurisdiction over him. In State v. Garvin, 945 A.2d 821 (R.I. 2008), our Supreme Court, while rejecting constitutional challenge to the State law limiting the operation of motor vehicles on highways to licensed drivers, also rejected Defendant's claim that the Superior Court was without jurisdiction to try him on the charge. Garvin, 945 A.2d at 823-24. Framing the question as an issue of jurisdiction was labelled a "misnomer" by the Court. Id., at 823.

47 In my view, this scenario has to be seen in the context of the proceedings of the Traffic Tribunal. The traffic offenses it adjudicates, though penal, are civil in nature. As a result, it has not the authority to compel the attendance of defendants through the issuance of bench warrants. Its only remedy when a defendant fails to appear for arraignment, or any other event, is to enter a default judgment. And this is what was done here.

1

Jurisdiction of the Traffic Tribunal Over the Charged Offenses

Before considering Mr. Audette's specific argument — that he was immune from this citation based on his status as a trust beneficiary — it is fitting that we should pause, if only briefly, to respond to his declaration that the Tribunal did not have subject-matter jurisdiction over him personally. First, the Tribunal was established by the legislature in 1999 to hear and decide civil traffic violations.[48] Second, under the "State and Municipal Court Compact," found in Chapter 18 of Title 8 of the General Laws, the Rhode Island Traffic Tribunal and the several municipal courts have concurrent jurisdiction over many of the civil traffic violations that have been enacted by the General Assembly;[49] the Traffic Tribunal has exclusive jurisdiction over others.[50] It may suffice to say here that the Tribunal had jurisdiction over all the offenses contained in the instant citations.

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48 See P.L. 1999, ch. 218, art. 4, § 1, codified as Chapter 8.2 of Title 8 of the General Laws, especially § 8-8.2-1(a) — "There is hereby established a traffic tribunal which shall be charged with the administration and adjudication of traffic violations within its jurisdiction… ."

49 See Gen. Laws 1956 § 8-18-3(a). The three charges that are the subject of the instant appeal are enumerated in this section, they were heard at the Traffic Tribunal because they were issued by a member of the Division of State Police. See Gen. Laws 1956 § 8-18-3(b)(1).

50 See Gen. Laws 1956 § 8-18-10.

Having established that the Tribunal is vested with subject-matter jurisdiction over the offenses charged, we now can address the other possible meanings of Mr. Audette's assertion that the Tribunal did not have subject-matter jurisdiction over him personally.

2
Mr. Audette's Claim of Non-Responsibility

The next theory we can plausibly discern from Mr. Audette's comments is not really a denial of jurisdiction, but simply a claim of innocence — that the Trust, as owner of the vehicle, was responsible to defend any traffic violations that were committed in the vehicle — not the operator, Mr. Audette.[51]

But the ownership of the vehicle was entirely immaterial to the charges for which Mr. Audette was cited.[52] The notion that vehicle owners bear sole penal responsibility to defend all violations that may be committed by those

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[51] Since there is no indication Mr. Audette has any legal training, we should perhaps take his particular reference to subject-matter jurisdiction with a grain of salt. Perhaps it is a misnomer, like the defendant's denial of jurisdiction in Garvin, ante at 15, n.46.

[52] Two points: first, the issue of ownership could plausibly be pertinent to the driving without insurance charge, but since that Mr. Audette was acquitted on that charge by the appeals panel, the issue is now moot; and second, although there are several provisions of the traffic code that provide for owner liability, none were invoked here. Cf. Gen. Laws 1956 §§ 31-21-16, 31-33-6, 31-51-5, and 41-41.2-6.

operating their vehicles is belied by the statutes creating each of the charges lodged against him, which are directed to the operators of vehicles.[53]

3
Personal Jurisdiction

We can also regard — although the connection is more tenuous — Mr. Audette's reference to a lack of subject-matter jurisdiction over him "personally" as a reference to "personal jurisdiction." While the issue of personal jurisdiction is most often raised in private civil litigation (by residents of another state) it can be raised as well in a criminal (or penal) setting. But the issue is rather limited. Indeed, as to criminal cases, the First Circuit Court of Appeals has said it was "well-settled" that the District Court "has personal jurisdiction over any party who appears before it …."[54] Mr. Audette appeared as

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[53] In this regard, we may examine the opening lines of the three statutes at issue here. See § 31-21-4 — "No person shall …"; § 31-22-22(g) — "Any person who is an operator of a motor vehicle shall …"; and § 31-15-12.1 — "The driver of a motor vehicle shall not …."

If Mr. Audette's argument were accepted, the rental-car and leased-car industries would likely face an existential crisis, if they were to become responsible to defend every traffic violation their customers received — and, if we take his rationale to the next level, every criminal charge.

[54] See United States v. Lussier, 929 F.2d 25, 26 (1st Cir.1990)(Appeal from District Court of the District of Rhode Island). See also 21 Am. Jur. 2d Criminal Law § 433 (citing Lussier and 21 Am. Jur. 2d Criminal Law § 440).

This rule is applied unreservedly. It applies even if the defendant was

commanded by the citations he received. His intentions as to the nature of his appearance — i.e., solely as a beneficiary — are immaterial; by doing so he gave the Traffic Tribunal personal jurisdiction over him.[55] He "appeared."

4
Propriety of the Default Judgments

Even after the magistrate had denied his Motion to Dismiss for lack of subject matter jurisdiction, Mr. Audette would not concede the point. He would not enter a plea. Because of this, the arraigning magistrate entered a default judgment as to each charge.[56]

Mr. Audette now argues that it was error for the magistrate to do so; and, that the following sentence of Rule 7 of the Traffic Tribunal Rules should have guided the magistrate's actions:

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brought into the court's jurisdiction illegally. See Ker v. Illinois, 119 U.S. 436, 444, 7 S.Ct. 225, 229-30 (1886)(Illinois defendant taken without authority in Lima, Peru) and Frisbie v. Collins, 342 U.S. 519, 522-23, 72 S.Ct. 509, 511-12 (1952)(Defendant arrested in Chicago by Michigan officers). Cf. United States v. Crews, 445 U.S. 463, 474-77, 100 S.Ct. 1244, 1251-53 (1980)(Opinion of Court questions whether Ker-Frisbie rule is absolute, but five justices, in concurring opinions, label rule settled).

55 Although surplusage, it is perhaps worth mentioning two additional factors showing Mr. Audette's connection with Rhode Island: first, he resides in Tiverton, and second, he was cited in Jamestown while driving on Route 138-East. See Summons No. 14-001-510258.

56 See Arraignment Transcript, at 4-5.

> … If a defendant refuses to plead or if the court refuses to accept a plea of guilty, the court shall enter a plea of not guilty and the case be placed on the trial calendar. …[57]

Therefore, by its terms, Rule 7 applies not only where the defendant fails to plead, but where the defendant refuses to plead. In my view, this term is significant — fairly encompassing within its ambit [1] silence, [2] an expressed refusal to state "guilty" or "not guilty," and [3] pursuit of an alternative line of thinking that the court may find immaterial. Therefore, by the plain language of the rule, Appellant should not have been defaulted; instead, a not guilty plea should have been entered and the matter reassigned for trial.

But, the State responds that this provision did not become operative at Mr. Audette's arraignment because he did not legally "appear."

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[57] This sentence of Rule 7 was taken, without appreciable modification, from Rule 11 of the District Court Rules of Criminal Procedure and Rule 11 of the Superior Court Rules of Criminal Procedure. Similar language is found in Rule 11(a)(4) of the Federal Rules of Criminal Procedure. According to both of the American legal encyclopedias, this is the general rule. See 21 Am. Jur. 2d Criminal Law § 560 and 22 C.J.S. Criminal Law § 485.

The rule has ancient roots in American jurisprudence. See United States v. Borger, 7 F. 193, 195-96 (C.C.S.D.N.Y. 1881)(citing United States v. Hare, 26 F. Cas. 148, 164 (C.C.D.Md. 1818)). The English rule, as enacted by statute in 1777, was to the contrary — i.e., standing mute was equivalent to conviction and the court could impose sentence. Hare, 26 F. at 156-57 (citing 12 Geo. III c. 20). And see Ruckle v. Warden, Maryland Penitentiary, 335 F.2d 336, 338 (4th Cir. 1964) cert den. 88 S.Ct. 330, declaring — "The effect of the refusal of a defendant to plead is too well known to require discussion. A not guilty plea is entered for him and the case proceeds."

5
The State's Theory: The Requirement of an Appearance

The state proposes that a traffic violation defendant must do more than physically appear, he must voluntarily submit to the jurisdiction of the court. In support of this proposition, it cites the American Jurisprudence legal encyclopedia for the principle that an appearance is the act by which a defendant in a civil case submits himself to the court's jurisdiction.[58] But if we elaborate upon the concept just a little bit, its irrelevance to the instant case may be easily discerned.

Historically, a limited or "special" appearance was allowed to give a party an avenue by which to assert that the court lacks personal jurisdiction over him, she, or it.[59] But the distinction between a special appearance and a general appearance has now been abolished in many states which have enacted rules or statutes similar to Rule 12(b) of the Federal Rules of Civil Procedure; under paragraph 12(b)(6), a motion to dismiss may be made without waiving personal

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58 See Appellee's Memorandum of Law, at 1-2 citing 4 Am. Jur. 2d Appearance, § 1 at 620. (Note – the language quoted by the State is somewhat different from that in the current on-line version of the article). See also 6 C.J.S. Appearances § 1, where we find curiously similar language.

59 See 4 Am. Jur. 2d Appearance, § 2. A "general" appearance was any appearance other than one declared to be a "special" appearance. Id.

jurisdiction.[60] But the invocation of the concept of the "appearance" is problematic for the State because Mr. Audette never expressly challenged the Tribunal's personal jurisdiction over him — only <u>subject-matter</u> jurisdiction, to which the niceties of "appearances" have no relation.

And so, at this juncture, the only issue that can be addressed by appearances is "submission" to the court. But why should that be of concern? Do we care whether the defendant subjectively accepts our jurisdiction, our authority, or our rulings?

In my view, the answer to this question must be no. We have no right to request submission or fealty. Mr. Audette was a resident of Rhode Island. There is no question that the Courts of this State had personal jurisdiction over him. The matter should have proceeded, whether he agreed, or not. Any other result empowers defendants to decide which cases the Tribunal can hear.

6
Summary

At this juncture, let us summarize our findings.

At his arraignment, during his brief colloquy with the presiding magistrate, Mr. Audette urged that the Traffic Tribunal did not have subject-

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[60] <u>See</u> R.I. Rule of Civil Procedure 12(b).

matter jurisdiction over him personally. And, as I said above, as I read his comments, there are three plausible ways to interpret this argument, but all are found wanting.

First, we can treat the comments facially, as an attack on the Tribunal's subject-matter jurisdiction. Doing so, we see that the Tribunal has been vested with the authority to hear and decide civil traffic violations.[61] Second, if we view his comments as an argument that the trust (as owner of the vehicle) must defend the citations, we must conclude that the command and the penalties of these violations are directed toward the operators of vehicles, not the owners.[62] And thirdly, if we view his argument as alleging the Tribunal lacks personal jurisdiction over him, this is also unsound. He is a Rhode Island resident, who was cited while operating on a Rhode Island roadway.[63] The magistrate was therefore correct to deny the motion to dismiss.

Next, we see that the plain and ordinary meaning of Rule 7 required the magistrate to enter a not guilty plea on Mr. Audette's behalf.[64] Finally, the State's

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[61] Ante, at 16-17.
[62] Ante, at 17-18.
[63] Ante, at 18-19.
[64] Ante, at 19-20.

insistence that the defendant must "appear" is without justification.[65]

V
CONCLUSION

In this case, I need not reach, and do not reach, Mr. Audette's claim that his constitutional right to due process was violated. In my view, the arraigning magistrate's entry of default judgments against Mr. Audette was contrary to the established procedure (Rule 7). The appeals panel's decision affirming the trial magistrate was, perforce, also contrary to law; and it prejudiced a substantial right of the appellant — i.e., his right to a trial. After careful review of the record certified to this Court by the Traffic Tribunal, I recommend that the decision of the appeals panel be set aside and the matter REMANDED for further proceedings consistent with this opinion.

/s/
Joseph P. Ippolito
MAGISTRATE

November 25, 2015

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[65] Ante, at 21-22.