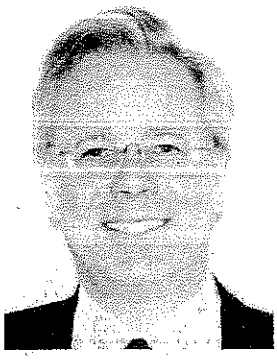
Seven Cases Every Rhode Island DUI Practitioner Should Know



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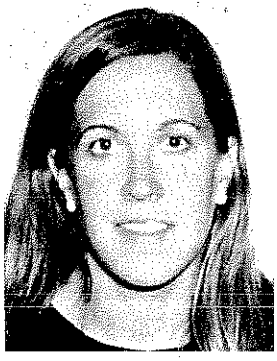

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The area of law involving the defense of clients accused of Driving Under the Influence (DUI) and Refusal to Submit to a Chemical Test in Rhode Island is constantly evolving. To assist you in preparing your next DUI or Refusal case for trial, case capsules of recent important decisions relative to DUIs and Refusals are provided to familiarize you with successful past arguments and areas of the law that may be ripe for challenge. We hope this article will aid you in utilizing these recent decisions effectively and assist you in providing a vigorous defense for your clients.

Case Capsules

Such v. State, 950 A.2d 1150 (2008)

The Rhode Island Supreme Court held that the Rhode Island General Assembly did intend the amendatory language in both the refusal bill and budget bill to be operative in the statute governing the civil offense of Refusal to Submit to a Chemical Test. The Court also noted that the rule of lenity only applies when the meaning of a criminal statute is ambiguous, and does not apply to criminal penalties in the refusal bill, which are clear and unambiguous.

State v. DeOlivera, 972 A.2d 653 (R.I 2009)

In order to admit Breathalyzer results, the suspect must have validly consented to the Breathalyzer. A suspect has the statutory right to refuse the Breathalyzer. However, the right to refuse the Breathalyzer can be waived, if the decision is made knowingly, intelligently, and voluntarily.

Here, even though the police did not state to the defendant that the victim had died as a result of the accident, the Court still found that the decision to waive the right to refuse the Breathalyzer was made knowingly, intelligently, and voluntarily. The Court held that when the record demonstrates that the defendant was made aware of his or her rights, a defendant does not need to be informed of all the information useful to making his or her decision.

Colorado v. Spring, 479 U.S. 564, 576-577 (1987).

Individuals charged with driving while intoxicated must be informed of their Miranda rights, the right to examination by a physician, the right to refuse the Breathalyzer, and the consequences of refusal.

State v. Robinson, 972 A.2d 150 (R.I. 2009)

After a Rhode Island Traffic Tribunal Appeals Panel affirmed the decisions to dismiss six defendants' charges of Refusal to Submit to a Chemical Test, the State appealed to the Sixth Division District Court. The defendants challenged the appeal, arguing the District Court lacked subject matter jurisdiction. The State claimed that several statutory provisions granted subject matter jurisdiction to the District Court to hear the appeals by the state.

The Rhode Island Supreme Court held that the District Court lacked subject matter jurisdiction to hear appeals by the State Traffic Tribunal Appeals Panel decisions. The State is not within the definition of a "person who is aggrieved" under R.I. Gen. Laws § 31-41.109(a). The State likewise had no right to appeal under procedural rules such as R.I. Gen. Laws § 31-41.1-9. **Addendum:**

The jurisdiction of the District Court to hear these appeals by the State was expanded by the General Assembly in R.I. Gen. Laws § 8-8.2-2(d). Currently, the State may appeal decisions by the Rhode Island Traffic Tribunal Appeals Panel to the District Court.

State v. Nelson, 982 A.2d 602 (R.I. 2009)

There are three major issues in this case. First, a trial justice was correct in finding that a remark made during *voir dire* by a prospective juror, a college professor, that three of her students had been killed by drunk drivers, was not enough for a mistrial. The remaining jurors knew that the defendant was charged with DUI. Furthermore, the comment did not imply guilt on the part of the defendant.

Second, despite information lacking in the chain of custody of the defendant's blood test results, the results can be admitted. Showing a continuous chain of custody operates as a guarantee of reliability, but is not necessary for the introduction of evidence, as long as it is probable that the evidence has not been

tampered with.

Finally, the Court considered the propriety of judicial interrogation.

State v. Carter, No. K309-0454A (R.I.Sup.Ct. 2010)

Refusal to Submit to a Chemical Test, second offense, is a criminal misdemeanor under R.I. Gen. Laws § 31-27-2.1(b)(2). A first offense refusal is a civil violation. Conviction predicated on a civil charge which does not have to be found beyond a reasonable doubt is not unconstitutional under the Sixth and Fourteenth Amendments of the United States Constitution and Article I, section 10 of the Rhode Island Constitution. The prior violation of the chemical test refusal statute is an element of the crime of second offense refusal. As an element of the crime, the first violation has to be found beyond a reasonable doubt.

Virginia v. Harris, 276 Va. 689, 668 S.E.2d 141 (2008), cert. denied, 130 S.Ct. 10 (2009)

Anonymous tips reporting drunk driving lack sufficient indicia of reliability to justify an investigatory stop, absent observations indicating criminal conduct – even when the tip included giving the name of the operator, a description of his clothes, the make of the vehicle, a partial license plate number, and the direction in which the vehicle was traveling. An anonymous tip alone is not enough to form a reasonable suspicion of criminal activity, absent verification. This will become known as the One Free Swerve case.

Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009)

Affidavits, including a state forensic analyst's laboratory report prepared for use in a criminal prosecution, fall within the "core class of testimonial statements," rendering the affiants witnesses subject to the defendant's right of confrontation under the Sixth Amendment as interpreted in **Crawford v. Washington**, 541 U.S. 36, 51 (2004). This means that the analyst who produces a report must be made available by the prosecution for cross-examination by the defendant.

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