

**STATE OF RHODE ISLAND**

**KENT, SC.**

**SUPERIOR COURT**

**STATE OF RHODE ISLAND**

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**vs.**

**Case No.: K2-2020-0033A**

**BARBARA TROJAN**

**STATE'S MEMORANDUM ON SENTENCING**

Now comes the State of Rhode Island, by and through its attorneys, Peter F. Neronha, Attorney General, and John E. Corrigan, Assistant Attorney General, and hereby submits this Memorandum on sentencing. A sentencing hearing is presently scheduled for Monday, September 27, 2021, in Kent County Superior Court.

**CHARGING AND SENTENCING PARAMETERS**

Barbara Trojan (or "Defendant") has entered pleas of nolo contendere to Count #1: Driving Under the Influence of Liquor and/or Drugs with Death Resulting (victim, Patricia Daniels<sup>1</sup>); Count #2: Driving so as to Endanger with Physical Injury Resulting (victim, Bruce Bartels), and Count #4: Driving so as to Endanger with Physical Injury Resulting (victim, Heather Lee). Count #3 was dismissed pursuant to Rule 48(a) in consideration for Defendant's pleas.

As a result of the negotiated pleas in this case, the Defendant is now subject to the following sentencing: As to Count #1: a minimum of four (4) years to serve and a maximum of nine (9) years to serve at the Adult Correctional Institutions; as to Counts #2 and #4: a minimum of two (2) years and a maximum of four (4) years to serve in home confinement (such term of home confinement to be consecutive to the term to be given for Count #1). The final sentence for DUI/Death Resulting shall be followed by a five (5) year suspended sentence with probation.

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<sup>1</sup> The obituary of Patricia ("Patty") Daniels is appended to this filing as Exhibit No. 1.

The Defendant is to suffer a five (5) year revocation of her driver's license, a \$5,000 fine and to complete alcohol treatment.

### **SUMMARY OF FACTS**

This factual summary is drawn from the Criminal Information and its exhibits in this case. Barbara Trojan and John Bruskie, spouses,<sup>2</sup> were regulars at the American Legion Post 15 in East Greenwich. They were frequent attendees of the Friday night poker league games. Bruskie would play poker while Defendant sat at the bar. On the night of September 6, 2019, Barbara Trojan was at the Post and seated at the bar from approximately 6:30 p.m. to midnight, while Bruskie was involved in poker games. Video surveillance of the Defendant obtained by the East Greenwich Police recorded her consuming ten (10) beers and a portion of one (1) mixed drink during that time period. The video also discloses signs of impairment in the Defendant such as stumbling to the bathroom, swaying back and forth, and using the chair and the wall to keep her balance. Immediately before midnight, as she is going to leave, the Defendant is seen trying to put on her coat with difficulty and sways into a chair as she tries to put it on. Bruskie had to help her put on her coat. Witness Richard Montini, a part-time worker and present at the Post at the time of Trojan's departure, noted that Trojan seemed "tipsy" to him. He spoke to Bruskie, saying that he would feel better if Trojan and Bruskie left together. To a bar patron, Trojan seemed more "animated" than in past encounters, dancing with a couple at the end of the bar seated next to her. To the bartender, Bruskie said that Defendant was going home with him. That is not what happened. Instead, the Defendant drove her car, and Bruskie left after her.

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<sup>2</sup> Barbara Trojan and John Bruskie are sometimes referred to as married in the case materials by witnesses to the salient events of the case, and there are occasions where their relationship is described as not legally married but in a relationship analogous to husband and wife.

According to a statement Bruskie gave to the East Greenwich Police, he passed Trojan and made it home to find that Trojan was not there, so he went back looking for her.

The same night, a wedding was being held at the Valley Country Club in West Warwick. The decedent in this case, Patricia (“Patty”) Daniels, was there along with Heather Lee, Bruce Bartels and Donna Daniels. The celebration began to wrap up at approximately 11:30 p.m. on September 6, 2021. The four of them departed in Lee’s 2004 Infiniti SUV, with Donna Daniels driving. Patricia and her boyfriend Bruce Bartels were seated in the rear of the vehicle. Heather Lee was in the front passenger seat. According to Heather Lee, there was nothing unusual about the ride home—just driving along, talking and having a good time; the radio was not on. That changed on Frenchtown Road. As they passed the Park and Ride, Donna Daniels exclaimed, “Oh my God, they’re gonna hit us.” A 2007 Volkswagen passenger car, driven by Barbara Trojan had crossed the double yellow line and headed diagonally at the Infiniti. There was an impact, and as a result the SUV rolled over.



*Infiniti SUV on its side at final rest on Frenchtown Road*

The four occupants were trapped inside, and rescue personnel needed to cut the roof off of the vehicle in order to extricate them. In the crash, Patricia Daniels suffered fatal blunt force

injuries, succumbing to those injuries and being pronounced dead on September 11, 2019 (she had been kept alive from September 8, 2019, in order that she could serve as an organ donor). Bruce Bartels, indicated on scene as unresponsive and in critical condition, suffered head injuries including a multifocal traumatic subarachnoid hemorrhage and a subdural hematoma on the right side with a subtle midline shift of the brain. He spent four days at Rhode Island Hospital, after which he was discharged to home with the requirement for assistance with navigating stairs and outpatient physical therapy. Heather Lee sustained cuts, bruising and glass in her feet. A witness on the roadway that night related seeing Trojan's vehicle cross three lanes of travel before hitting the victim vehicle, and he saw no indication of braking by the Trojan vehicle.

Collision reconstruction work performed by the Rhode Island State Police established that the Infiniti victim vehicle, driven by Donna Daniels and occupied by Patricia Daniels, Heather Lee, and Bruce Bartels, was traveling eastbound on Frenchtown Road. The Defendant was operating her Volkswagen westbound on Frenchtown Road. Defendant left her lane of travel and drove into the oncoming lane.



*Diagram showing Defendant's gray car striking the Victims' black SUV*

The operator of the victim vehicle tried to get out of the way, veering to the right. The Defendant, however, crashed into the Infiniti with her front left wheel making contact with the rear left wheel of the victim vehicle—occurring at a location 890 feet east of Davisville Road. The Infiniti rotated in a counter-clockwise manner approximately 270 degrees. When the vehicle was skidding perpendicular to its direction of travel, it “tripped” and rolled over (a “three-quarter roll”) and came to rest on its left side in the first lane of travel in the eastbound side of Frenchtown Road. After impact with the Infiniti, Trojan’s car continued to travel the wrong way across the eastbound lanes of Frenchtown Road and came to final rest after hitting a guardrail with its front bumper.

Following the collision, Trojan was taken by ambulance to Kent County Memorial Hospital. Blood was drawn from Trojan by hospital personnel. This blood was seized by way of search warrant and subjected to forensic analysis at the Rhode Island Department of Health. The analysis found 225 milligrams of ethanol per 100 cubic centimeters of whole blood from a specimen drawn at 1:24 a.m. on September 7, 2019. Stated differently, Trojan had a **.225** blood alcohol level less than an hour and a half after the collision, more than two and three-quarters times the per se legal limit of .08.

#### **MAXIMUM STATUTORY PENALTY**

The maximum statutory penalty for the most serious count to which the defendant pled (Driving Under the Influence of Liquor or Drugs, Resulting in Death) is fifteen (15) years imprisonment in the state prison, in any unit of the Adult Correctional Institutions, a fine of ten thousand dollars (\$10,000), and a mandatory revocation of an operator’s license for five (5) years. For the counts of Driving so as to Endanger, Resulting in Physical Injury, the maximum penalty is two (2) years of imprisonment and one (1) year suspension of license.

## BENCHMARKS

The only charge to which defendant has pled which has its own sentencing benchmark is Driving Under the Influence of Liquor or Drugs, Resulting in Death. Superior Court Sentencing Benchmark No. 25 indicates three (3) to ten (10) years to serve. The Introductory Notes to the 1998 Benchmark Revisions indicate that the wide range given in the benchmark “reflects current sentencing practices and allows for maximum discretion considering all relevant facts and circumstances while recognizing the graveness of this offense.” Driving to Endanger with Physical Injury Resulting does not have a sentencing benchmark.

## CRIMINAL HISTORY OF THE DEFENDANT

Barbara Trojan does not have a criminal history in the State of Rhode Island or in any other state or territory to the State’s knowledge.

## SENTENCING FACTORS

The Rhode Island Supreme Court well-described the task of sentencing in *State v. Crescenzo*, 332 A.2d 421, 433 (R.I. 1975), when it stated that “[a] judge has no more difficult duty nor awesome responsibility than the pronouncement of sentence in a criminal case.” To guide trial justices in carrying out this responsibility, the Court in *State v. Tiernan*, 645 A.2d 482, 484 (R.I. 1994), identified the following factors as sentencing considerations:

- (1) the severity of the crime,
- (2) the defendant’s personal, educational and employment background,
- (3) the potential for rehabilitation,
- (4) the element of social deterrence,
- (5) the appropriateness of the punishment.<sup>3</sup>

The State will address each of the *Tiernan* factors in turn.

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<sup>3</sup> See also: *State v. Upham*, 439 A.2d 912, 913 (R.I. 1982), *State v. Ouimette*, 479 A.2d 702, 705 (R.I. 1984), *State v. Bertoldi*, 495 A.2d 247, 253 (R.I. 1985), *State v. Giorgi*, 397 A.2d 898 (R.I. 1979), *State v. Crescenzo*, 332 A.2d 420 (R.I. 1975). The Court went on to point out that most of these factors are multidimensional and require the trial justice to reflect upon a variety of subsidiary factors. *Tiernan* at 485.

### SEVERITY OF THE CRIME

The severity of the top count in this case, driving under the influence of liquor or drugs, resulting in death, is evident in the very definition of the offense. While all such cases are preventable, the background of this case shows just how preventable it was. The Defendant sat in a public drinking establishment, the American Legion Post, for nearly six hours and consumed ten (10) beers and part of one mixed drink. She drank enough to register a .225 blood alcohol level. There were people who saw Defendant's condition before she departed and who expressed concern over her condition. Her husband assured one person that Trojan would be going with him. She had alternate means of departing the Post that night, but she did not avail herself of another mode of transportation. Instead, she took her own car. After about five minutes and two-and-a-half miles of travel, she drove across several lanes on Frenchtown Road and into oncoming traffic. This was no mere roadway mishap by someone who had an extra glass of wine at dinner. Rather, it was to all appearances under the evidence available to the State a car ride doomed from its inception, without excuse or compunction.

The General Assembly, i.e., the democratically elected representatives of the people of the State of Rhode Island, have expressed how seriously an impaired-driving death should be viewed by virtue of the operative text used in the statute to express the authorized sentencing: "Every person convicted of a first violation shall be punished by imprisonment in the state prison for not less than five (5) years and for not more than fifteen (15) years . . ." <sup>4</sup> The General Assembly believed that it was necessary to use both the word imprisonment and prison in the same sentence, a rarity in statutory texts.

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<sup>4</sup> R.I.G.L. § 31-27-2.2(b)(1)(i)

## **PERSONAL, EDUCATIONAL AND EMPLOYMENT BACKGROUND**

The Presentence Report for Barbara Trojan contains a fair amount of information about her background. From it, we learn that the 62-year-old Defendant had a self-described “common law” marriage to her first husband from age 15 to 32. She comes from a middle class background and dropped out of school in the tenth grade and eventually earned her G.E.D. She had employment in a jewelry factory, then later at Bostich and in the Education Department of the University of Rhode Island. She has children and spent time as a stay-at-home mother. The Defendant has also served as a bus driver for the YMCA. She reports that her present husband also has health issues of concern.

The Defendant was involved in a motor vehicle accident in the 1984 era, suffering a coma and undergoing several operations. It caused her mobility problems. She self-reported marijuana and other drug experimentation. She describes her alcohol use in terms of being a social drinker. In the present day, she indicates that she has multiple medical issues such as COPD, arthritis and seizures.

The Defendant, in her talks with Probation for the Presentence Report, put forward some notions that are troubling to the State regarding the offense in question. She claims that she has no memory of being at the bar or driving the night of the fatal collision. She attempts to attribute the causation of the collision to a seizure but acknowledges that her doctor would not put such a notion in writing. She questions her blood alcohol level from the night of the incident, and she claims that the police edited the surveillance video from the American Legion Post where she sat and drank before driving. It should be noted that, given her blood alcohol level, even if she did suffer a seizure, the law makes no allowance: “. . . [I]f a person suffered a sudden heart attack

while driving in a legally intoxicated state which resulted in a fatal collision, the operator would be criminally liable.” *State v. Benoit*, 650 A.2d 1230, 1233 (R.I. 1994).

### **POTENTIAL FOR REHABILITATION**

Nobody can predict the future, and nobody can assure the actions of another person. In Trojan’s case, her Presentence Report contains a brief series of drug tests that show she was not using alcohol or other drugs at the time of the tests, but that was at an early stage in the case after her arrest. It appears that the COVID-19 pandemic may have interrupted more regular and complete drug testing during the pendency of this case. Nevertheless, the Defendant, in her interview for the Presentence Report, has not accepted full responsibility for her crime. It is true that she expresses some sympathy for the family of Patricia Daniels and what has occurred, but that is a far cry from acknowledging her primary role in causing Patty’s death. If there is any remorse, how can it be evaluated as sincere if she refuses to take the full measure of responsibility?

To cast blame in the direction of a medical condition, to question her blood alcohol level, and to accuse the police of editing surveillance video is not to take responsibility. Rather, it is to deny the very nature of the offense in question. Our state does not have a crime of “driving with a medical condition with death resulting.” She is trying to deny the role played by her excessive drinking and driving in the death of Patty Daniels and the injury of Bruce Bartels and Heather Lee. While the Defendant may have led a seemingly law-abiding life, she is before the Court because she planted herself at a bar for five-and-a-half hours, consumed alcohol and drove. She now faces sentencing offering tepid remorse and only token contrition. As it stands the potential for rehabilitation factor weighs against her.

### ELEMENT OF SOCIAL DETERRENCE

The State views social deterrence from the sentencing in this case to be particularly important. Apart from restraining behavior, the law also serves a teaching function, and part of that function is fulfilled in a public appreciation of the punishment given out for the crime. Courts both within our state and in other jurisdictions have taken occasion to note the particular problem of impaired-driving vehicular homicides and the “carnage” on the roadways in general.

Our Supreme Court has captured well the essence of the problem of drunk driving and the purpose of laws designed to combat it: “. . . to reduce the carnage occurring on our highways attributable to persons who imbibe alcohol and then drive.” *State v. Bruskie*, 536 A.2d 522, 524 (R.I. 1988). The *Bruskie* case has special poignancy in this situation, as this Defendant’s domestic companion is that Mr. Bruskie. Our neighboring state, Connecticut, has spoken in an equally serious tone: “The continuing death, devastation and misery inflicted by intoxicated drivers, and the ever increasing emotional and financial costs of their behavior, which society must bear, have been well documented.” *State v. Stevens*, 608 A.2d 1203, 1210 (Conn. App. Ct. 1992). Outside of New England, the death on our highways had been commented upon as well: “These courts have recognized that drunk drivers have cut a wide swath of death and destruction nationwide.” *State v. Burns*, 213 Mont. 372, 377, 691 P.2d 817, 820 (1984). “The situation underlying this case—that of the drunk driver—occurs with tragic frequency on our Nation’s highways. The carnage caused by drunk drivers is well documented and needs no detailed recitation here. This Court, although not having the daily contact with the problem that the state courts have, has repeatedly lamented this tragedy.” *South Dakota v. Neville*, 459 U.S. 553, 558 (1983). “The slaughter on the highways of this Nation exceeds the death toll of all our wars. The country is fragmented about the current conflict in Southeast Asia, but I detect little genuine

public concern about what takes place in our very midst and on our daily travel routes.” *Perez v. Campbell*, 402 U.S. 637, 657 (1971) (Blackmun, J., concurring). “In making comparisons, it must be kept in mind that nearly everyone is exposed to motor-vehicle accidents but relatively few are exposed to war deaths.” *Id.* at 672. While the “slaughter on our highways” remains high, obviously not all instances are related to impaired driving, as some are merely accidental and do not rise to the level of criminality. For those criminal cases, as here, deterrence calls for harsh punishment.

### **APPROPRIATENESS OF THE PUNISHMENT**

While there is a sentencing benchmark for the driving under the influence of liquor or drugs, resulting in death, count of the criminal information, as set forth above, there is no benchmark for the driving to endanger, resulting in physical injury, counts. Based on the plea negotiations in this case, the Defendant faces a maximum theoretical term to serve of 13 years (nine years at the ACI followed by four years in home confinement). Given all of the facts and circumstances in this case, it is the State’s opinion that the sentencing in this case must serve to convince the defendant and the public that her conduct and this fatal and injurious result will not be tolerated in a well-ordered society. Therefore, the State will recommend that this Court impose sentencing in the upper range of the negotiated sentence range. While the Defendant may have shown a modicum of remorse, that showing is overshadowed by notes of doubt about her own culpability in this crime. At this late date, post plea, she continues to look for other causes of the fatal collision besides her choice to drink to excess and get behind the wheel of a vehicle. Even if there were other contributory conditions in this case, the obdurate fact remains that she drove a motor vehicle with an excessively high blood alcohol level. Any other contributory cause cannot mitigate or overcome the criminal responsibility of this Defendant.

Furthermore, seeking to cast blame in other directions means that this Defendant is not prepared to admit to herself or the world that she, through her choices and actions, caused the death of Patricia Daniels and injured Bruce Bartels and Heather Lee.

### CONCLUSION

After weighing all of the relevant sentencing factors, and taking into account the particular facts and circumstances of this case—especially the Defendant’s attempt to deflect primary blame, the State recommends that the Court impose the following sentences: As to Count #1—nine (9) years to serve at the Adult Correctional Institutions, a \$5,000 fine (which is the minimum mandatory), a five year license revocation (to begin upon release from the ACI), and successful completion of an alcohol and drug treatment program, and the sentence should be followed by five years of a suspended sentence and five years of probation; as to Count #3: two years of home confinement, to run consecutively to Count #1; as to Count #4: two years of home confinement, to run consecutively to Count #3. The State has invited the surviving victims in the case and the family of Patricia Daniels to be present and to address the Court if they so choose at the sentencing hearing on September 27, 2021. Victim Heather Lee has written a statement that has been included in the Presentence Report package. The State will forward letters from other victims and family members to the Court upon receipt.

Respectfully submitted,

**STATE OF RHODE ISLAND**

By Its Attorneys,

**PETER F. NERONHA  
ATTORNEY GENERAL**

*/s/ John E. Corrigan* \_\_\_\_\_  
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**CERTIFICATION**

I, the undersigned, hereby certify that a copy of the foregoing document was electronically filed through the Superior Court electronic filing service, on this 13<sup>th</sup> day of September, 2021, and served electronically to Robert Testa, Esq., counsel for defendant Barbara Trojan.

*/s/ John E. Corrigan* \_\_\_\_\_

# State's Exhibit #1: Obituary

Patricia A. Daniels

November 11, 1972 - September 08, 2019



Patricia Daniels, 46,

Known as Patty (Bubba) was the daughter of Roseann Daniels and the late Richard Daniels. She leaves behind her three sisters Marie Vallese, Donna Daniels, and Roseann Daniels as well as brothers, John Studley and the late Richard Daniels Jr. Patty also leaves behind boyfriend Bruce Bartels.

She was born in New Haven Connecticut, but resided in Mount View, North Kingstown. She was a devoted bartender at the Endzone in East Greenwich.

Patty did not have any children of her own, but anyone who knew her knew her nieces and nephews were her whole world. She was a very outgoing person, who was incredibly well known. She was the life of the party wherever she was. She was the kind of person who would walk into the room and everyone would say, "Bubba is here!" She was someone who really understood the gift of giving, always having little trinkets and presents for pretty much anyone. She truly was one of the most incredible human beings. She will be missed by so many.

Calling hours will be Wednesday, September 18<sup>th</sup> from 5:00pm to 8:00pm at the Hill Funeral Home, 822 Main St., East Greenwich.