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

Adedamola Odunlami	:	
	:	
v.	:	**A.A. No. 21 - 053**
	:	
State of Rhode Island	:	
(RITT Appeals Panel)	:	

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and they constitute an appropriate disposition of the facts and the law applicable thereto.

It is, therefore, ORDERED, ADJUDGED AND DECREED,

that the Findings and Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Appeals Panel is AFFIRMED.

Entered as an Order of this Court at Providence on this 28th day of April, 2022.

By Order:

/s/
Stephen C. Waluk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

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

Adedamola Odunlami	:	
	:	
v.	:	**A.A. No. 2021-053**
	:	**(T20-0012)**
State of Rhode Island	:	**(19-001-540187)**
(RITT Appeals Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. After he was cited by a member of the Division of State Police for violating G.L. 1956 § 31-14-2, entitled "Prima Facie Limits," Mr. Adedamola Odunlami was tried on that civil violation before a magistrate of the Rhode Island Traffic Tribunal — and was found guilty. Thereafter, his conviction was affirmed by an Appeals Panel of the Tribunal; he now comes to this Court, seeking further review.

Jurisdiction for the instant appeal is vested in the District Court by G.L. 1956 § 31-41.1-9; This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. For the reasons which shall be set forth in this opinion, I have concluded that the decision of the appeals panel ought to be AFFIRMED. I so recommend.

I

Facts and Travel of the Case

A

The Citation and Proceedings Before the Traffic Tribunal

On December 31, 2019, Sergeant John J. Gadrow of the Rhode Island State Police was traveling northbound on Route 95, near the intersection with Route 195, when his unmarked cruiser was passed by a black Dodge Challenger at a high rate of speed. *Dec. of Appeals Panel,* at 1 (citing *Trial Tr.* at 2).[1] Subsequently, he brought his vehicle behind the Dodge and obtained a moving radar speed of 88 miles per hour. *Id.* at 1-2 (citing *Trial Tr.* at 2). The Sergeant executed a motor vehicle stop of the Dodge; during that stop he identified the operator of the Dodge to be Appellant Odunlami. *Id.* at 2 (citing *Trial Tr.* at 2). Employing his discretion, the officer issued a citation to Mr. Odunlami for traveling 65 miles per hour in a 55 miles per hour zone. *Id. See also* Summons No. 19-001-540187, which may be found on page 55 of the electronic record (*ER*) attached to this case. After Appellant entered a plea of not guilty at his arraignment, the case proceeded to trial before a Magistrate of the Traffic Tribunal on November 24, 2020.

As that trial began, Sergeant Gadrow testified regarding his training in the use of radar and speeding-tracking devices. *Id.* (citing *Trial Tr.* at 1). He

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[1] Note — The Decision of the Appeals Panel begins on page 13 of the electronic record (*ER*) attached to this case; the Trial Transcript on page 21.

then turned his attention to the events which transpired at 11:43 on the evening of December 31, 2019. He testified consistently with the narrative previously described. *See Trial Tr.* at 2. And, before concluding his testimony, he stated that, on December 31, 2019, he internally and externally calibrated the radar unit used in this case; and found it to be in good working order. *Dec. of Appeals Panel,* at 2 (citing *Trial Tr.* at 2).

Mr. Odunlami then testified; he told the officer that he did not speed past the officer. *Id.* at 2 (citing *Trial Tr.* at 2). He said that he was traveling in the slow lane when he noticed a car following him. *Id.* (citing *Trial Tr.* at 2). And so, he sped up and moved to the fast lane in order to avoid an accident. *Id.*

After the close of the testimony, the Trial Magistrate rendered his verdict. He found the Sergeant to have been credible witness and adopted his testimony as findings of fact — specifically, that the officer was operating on Route 95 near Route I-195 when he observed a vehicle traveling at a high rate of speed and that, using a radar device which had been calibrated and in which he had been trained, obtained a reading of 88 miles per hour in a 55 miles per hour zone. *Id.* (citing *Trial Tr.* at 3). Based on these findings, the Trial Magistrate found that the citation had been proven to the standard of clear and convincing evidence; and so, Mr. Odunlami was found guilty of the charged violation. *Id.*

B

Proceedings Before the Traffic Tribunal Appeals Panel

Mr. Odunlami filed a timely notice of appeal, and the matter was heard by an Appeals Panel of the Traffic Tribunal composed of Magistrate Goulart (Chair), Judge Almeida, and Judge Parker on February 17, 2021. *Dec. of Appeals Panel,* at 1.

Before the Panel, Appellant argued, in the alternative, (A) that he was *not* speeding, but, if he was, (B) he was speeding because the Officer was tailgating him. *Dec. of Appeals Panel,* at 4.

The Appeals Panel began the "Analysis" portion of its opinion by declaring that —

> For a radar unit reading to be admissible at trial, the testifying officer must satisfy two preliminary requirements: "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method," and "testimony setting forth [the officer's] training and experience in the use of a radar unit." *State v. Sprague,* 113 R.I. 351, 355-57, 322 A.2d 36, 39-40 (1974), Moreover, "radar speed meter readings are admissible without a prior showing of the reliability of the [device] that was used to check the accuracy of the unit." *Id.* at 357, 40.

Dec. of Appeals Panel, at 4. The Panel then recounted Sergeant Gadrow's testimony regarding (1) his training in the use of a radar unit, (2) the operational efficiency of the particular radar unit that he used to obtain Mr. Odunlami's speed, and (3) that he had tested the device and found it to be in good working order. *Id.* (citing *Trial Tr.* at 1-2). And, after noting that he found

the Sergeant's testimony to be credible, the Trial Magistrate found that the radar gun used was calibrated before the stop and in good working order. *Dec. of Appeals Panel,* at 4 (citing *Trial Tr.* at 3). Based on these findings, the Panel upheld the Trial Magistrate's verdict. Id. at 5.[2]

C

Proceedings Before the District Court — Position of the Parties

On May 6, 2021, Mr. Odunlami filed an appeal of the Panel's decision in the Sixth Division District Court. The Court invited, and has received, memoranda from both parties relating their respective viewpoints. Both parties have filed brief memoranda.

To be specific, Appellant's Memorandum consists of two letters, a copy of the decision of the Appeals Panel, and a copy of the trial transcript. The brevity of the letters allows us to present both here in their entirety. In the first he stated:

> I am appealing the Appeals Division of the Rhode Island Traffic Tribunal decision for Summons # 19001540187 case number T20-0012.
>
> Appeal reason: The ticket was unwarranted due to the capricious behavior displayed by Trooper Sergeant Gadrow. Gadrow was tailgating me in an unsafe and aggressive manner, which led to the result of the Trooper instigating me to speed up in fear of my safety due to the high statistical death tolls and accidents during the process of bringing in the New Year. Furthermore the officer failed to indicate he was a

[2] The Appeals Panel also found that Mr. Odunlami's admission that he sped up for what he deemed safety purposes constituted a separate basis for an adjudication of guilt. *Dec. of Appeals Panel,* at 4-5.

> person of authority by not signaling his police "lights" after the 2nd lane-change.

Appellant's Memorandum, at 1-2. And, in the second —

> I am requesting a hearing on an appeal for summons number 19001540187.
>
> Reason for my appeal states as follows: The Panel's decision to rule in the troopers, Sergeant Gadrow, favor without any physical evidence provided. The officer stated he was trained to properly utilize his radar device in which the officer claims I was speeding.
>
> The Magistrates decided to rule in favor of the trooper due to the trooper statement which he stated he was trained to operate and calibrate the radar device. I am appealing the court's decision due to the referenced case, Sprague (1974). The Sprague case specifically mentions the radar device used in the 1970s was calibrated by a tuning fork. Sergeant Gadrow never referenced or verbally stated he used a tuning fork. I'm requesting for a review of the trooper calibration logs or any data from Sergeant Gadrow radar device.

Appellant's Memorandum, at 9-10.

Also concise, the State's Memorandum consists of one page of argument:

> In a reasoned and thoughtful opinion, an appeals panel of the Rhode Island Traffic Tribunal (RITT) affirmed the trial judge's decision that the State had met its burden to prove that the appellant (then the defendant) had violated RIGL 31-14-2. *See* C.A. No. T20-0012, 19001540187. The appellant seeks to overturn that decision by attempting to relitigate a factual argument that was rejected below—namely, that the reason Mr. Odunlami was speeding on December 31, 2019, was because the State Trooper conducting the stop, Trooper Gadrow, was tailgating him at the time. The RITT appeals panel rejected that argument based on the trial judge's findings that Trooper Gadrow credibly testified that he had been trained in the use of a radar unit; that the radar unit Trooper Gadrow used to determine the appellant's speed had

> been tested for operational efficiency within a reasonable time of the measurement at issue; and that Trooper Gadrow used that unit to obtain a moving radar speed of the appellant's vehicle of 88 miles per hour in a 55 mile-per-hour zone. Notably, both the trial judge and the appeals panel observed that Mr. Odunlami's position that he sped up for safety purposes amounted to additional evidence establishing the violation of RIGL § 31-14-2. Given that the appeals panel's decision is thus clearly supported by credible, probative evidence, and that the panel did not abuse its discretion in issuing the decision that it did, this Court should affirm the appeals panel's decision pursuant to RIGL § 31-41.1-9.

Appellee's Memorandum, at 1.

II

Standard of Review

The standard of review which must be employed in this case is enumerated in G.L. 1956 § 31-41.1-9(d), which states as follows:

> (d) *Standard of review*. The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the appeals panel's findings, inferences, conclusions or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
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> (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 provision is a mirror-image of the standard of review found in G.L. 1956 § 42-35-15(g) — a provision of the Rhode Island Administrative Procedures Act (APA). Accordingly, we can rely on cases interpreting the APA standard as guideposts in this process. Under the APA standard, the District Court "… may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.'" *Guarino v. Dep't of Soc. Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980) (citing G.L. 1956 § 42-35-15(g) (5)). *See also Link v. State,* 633 A.2d 1345, 1348 (R.I. 1993).And our Supreme Court has reminded us that, when handling refusal cases, reviewing courts lack "the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." *Link,* 633 A.2d at 1348 (citing *Liberty Mut. Ins. Co. v. Janes,* 586 A.2d 536, 537 (R.I. 1991)). Our review "… is confined to a reading of the record to determine whether the judge's decision is supported by legally competent evidence or is affected by an error of law." *Link,* 633 A.2d at 1348 (citing *Env't Sci. Corp. v. Durfee,* 621 A.2d 200, 208 (R.I. 1993)).

IV

Analysis

We shall now consider the merits of Mr. Odunlami's arguments. *First*, let us consider Appellant's assertion, made on page one of his Memorandum, that the ticket was unwarranted "due to the capricious behavior displayed by Trooper Sergeant Gadrow." Of course, in the first instance, this claim of error is factual —

that is, dependent on the Court accepting his version of events. But the Trial Magistrate *did not* credit his testimony; he believed the Officer's description of what occurred. Given that we are required to give great deference to the factual findings of the Trial Magistrate, this argument cannot avail Mr. Odulami.[3]

Second, Appellant accurately complains that he was convicted without any physical evidence being introduced. But many people are convicted of offenses without physical evidence, not solely in trials of civil violations, where the standard of proof is clear and convincing evidence, but in criminal cases, where the standard is proof beyond a reasonable doubt.[4] In any event, Mr. Odunlami has not stated clearly the legal theory or doctrine under which he believes that the introduction of physical evidence is a legal precondition to a conviction on this charge. *See Iselin, ante* n.3, 943 A.2d at 1052.

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[3] Even if the Trial Magistrate had found that Appellant's version of events was entirely true, it is not clear what legal theory Mr. Odunlami relies upon in making this argument, which is problematic for his ability to prevail. Indeed, our Supreme Court has declared that "[s]imply stating an issue for appellate review, without a meaningful discussion thereof or legal briefing of the issues, does not assist the Court in focusing on the legal questions raised, and therefore constitutes a waiver of that issue." *See Iselin v. Ret. Bd. of the Emps.' Ret. Sys. of Rhode Island,* 943 A.2d 1045, 1052 (R.I. 2008) (quoting *Wilkinson v. State Crime Lab. Comm'n,* 788 A.2d 1129, 1131 n. 1 (R.I. 2002)). Moreover, the Court is not permitted to devise legal arguments on behalf of an appellate litigant. *See Tworog v. Tworog,* 140 A.3d 159, 160 (R.I. 2016) (Mem.); *McMahon v. Deutsche Bank Nat. Trust Co.,* 131 A.3d 175, 176 (R.I. 2016) (Mem.).

[4] For the applicability of the clear and convincing evidence standard to civil traffic citations, *see* Traffic Trib. R.P. 17(a), G.L. 1956 § 8-18-4(b) *and* G.L. 1956 § 31-41.1-6. The clear and convincing evidence standard of proof is satisfied when the factfinder "… believe[s] that the truth of the facts asserted by the proponent is highly probable." *State v. Fuller-Balletta,* 996 A.2d 133, 142 (R.I. 2010) (quoting *Parker v. Parker,* 103 R.I. 435, 238 A.2d 57, 60-61 (1968)).

Mr. Odunlami's *final* claim of error is that Sergeant Gadrow never testified that he calibrated the radar device in question by means of a tuning fork, as was done in the case of *State v. Sprague,* 113 R.I. 351, 355-57, 322 A.2d 36, 39-40 (1974), which was cited by the Appeals Panel on page 4 of its Decision. Our response to this argument is simple: Mr. Odunlami never raised it before the Trial Magistrate or before the Appeals Panel; therefore, we are barred from considering it under the well-settled "raise or waive" rule. *See Iselin, ante* n.3, 943 A.2d at 1051) (citing *State v. Russell,* 890 A.2d 453, 462 (R.I. 2006)).

In sum, for the foregoing reasons, I have concluded that each of Mr. Odunlami's claims of error must be rejected.

VI
Conclusion

Upon careful review of the evidence, I recommend that this Court find that the decision of the appeals panel was not made upon error of law. G.L. 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. G.L. 1956 § 31-41.1-9. Accordingly, I recommend that the decision that the Traffic Tribunal appeals panel issued in this matter be AFFIRMED.

__/s/______________
Joseph P. Ippolito
MAGISTRATE
April 28, 2022