STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**

SIXTH DIVISION

Bruce Slater	**:**	
	:	
v.	**:**	**A.A. No. 2011 - 0166**
	:	**(C.A. No. T11-0037)**
State of Rhode Island	**:**	
(RITT Appellate 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 and the memoranda of counsel, 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 appellate panel of the Traffic Tribunal is AFFIRMED.

Entered as an Order of this Court at Providence on this 25th day of May, 2012.

By Order:

___/s/_____
Melvin Enright
Acting Chief Clerk

Enter:

___/s/_____
Jeanne E. LaFazia
Chief Judge

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

BRUCE SLATER	:	
	:	
V.	:	**A.A. NO. 2011 – 0166**
	:	**(C.A. NO. T11 – 0037)**
STATE OF RHODE ISLAND	:	
(RITT APPELLATE 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. Bruce Slater urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a trial magistrate's verdict adjudicating him guilty of two moving violations: "Laned Roadway" in violation of Gen. Laws 1956 § 31-15-11 and "Turn Signal Required" in violation of Gen. Laws 1956 § 31-16-5. Jurisdiction for the instant appeal is vested in the 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. After a review of the entire record I find that — for the reasons explained below — the decision of the panel is supported by reliable, probative, and substantial evidence of record and is

not clearly erroneous and should be affirmed; I so recommend.

FACTS & TRAVEL OF THE CASE

The testimony given at the trial held in this case on May 25, 2011 by a trooper[1] of the Division of State Police and by the appellant, Mr. Slater, was fairly stated in the decision of the panel:

> …
>
> At trial, a trooper (Trooper) from the Rhode Island State Police testified that on April 3, 2011 he was on routine patrol on Route 95 in Providence, heading north. The Trooper observed several cars racing in the area of the Thurbers Avenue exit on Route 95. (Tr. at 2-3.) The Trooper observed a green Acura, with Rhode Island Registration number 991-574, in the group of cars that appeared to be racing. (Tr. at 3) The Trooper testified that the Acura was, "weaving in and out of traffic, changing lanes unnecessarily as well as not using a turn signal." Id.
>
> According to the Trooper, it appeared one of the vehicles had spun out because there was a large plume of smoke on the roadway. Id. The Trooper then observed the Acura exit the highway in the vicinity of Point Street. Id. The Acura was stopped on Point Street by the Trooper. During the traffic stop, the Trooper noticed an after-market muffler on the Acura. Id.
>
> Upon approaching the Appellant, the Trooper testified that Appellant said he was out to dinner with his wife and he "decided to get into it" with the other cars. (Tr. at 4) At trial, the Trooper identified Appellant as the operator of the vehicle on that night. (Tr. at 3) …

Decision of Panel, November 4, 2011, at 1-2.

In response, Mr. Slater then testified:

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1 I intend no discourtesy by failing to name the trooper; to the best of my knowledge his name does not appear in the trial transcript.

> Appellant argued that the Trooper misidentified the Appellant as the operator the Trooper witnessed committing the moving violations. (Tr. at 5) Appellant contended that the Trooper's identification of a four-door green Acura[ ] absolved him of liability because Appellant operated a two-door green Acura that night. Id. Appellant offered to the Court pictures of his car as being a two-door; the trial magistrate took note of this distinction. (Tr. at 9.)
>
> Appellant then testified that he and his wife were driving down Broad Street, "where everyone was meeting up." (Tr. at 5) At this point, "everyone" was leaving to go racing, and the Appellant followed the cars because he had not seen racing in a while. Id. Appellant then testified that he got into the crowd of cars as they proceeded to Route 95. Id. Appellant's wife became nervous while driving, so the Appellant pulled over to the side of the highway and parked his vehicle. (Tr. at 6.) Appellant exited the highway heading towards a nightclub where he planned to go with his wife. Id. Appellant was then pulled over by the Trooper. Id.

Decision of Panel, at 2 (footnote omitted). The Trooper testified that he cited the appellant for the two violations cited above — Laned Roadway and Turn Signal Required — and a third violation, for an improper muffler. Decision of Panel, at 2.

Mr. Slater entered a not guilty plea at his arraignment on May 11, 2011; the matter proceeded to trial before Administrative Magistrate Cruise on May 25, 2011.

Following the trial — at which the trooper and the motorist were the sole witnesses — the trial magistrate sustained all three violations. On the Laned-Roadway violation — pursuant to the frequent offender statute — Mr. Slater was fined $500.00, ordered to attend driver retraining, and ordered to perform 60 hours of community service. (Tr. at 14.) He received a fine of $85.00 on each of the turn-signal and muffler violations.

Aggrieved by this decision, appellant Slater filed a timely appeal, seeking review by an RITT appellate panel. On September 21, 2011, the appeal was heard by a panel comprised of: Magistrate William Noonan (Chair), Judge Edward Parker, and Judge Albert Ciullo. In a decision dated November 4, 2011, the appeals panel affirmed the decision of the trial magistrate — except that it set aside the verdict on the muffler violation. On November 14, 2011, Mr. Slater filed the instant complaint for judicial review in the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9 of the General Laws.

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:
> (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.' "[2] Thus, the Court will not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.[3] Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.[4]

APPLICABLE LAW

In the instant matter the Appellant was charged with violating three sections of the traffic code. One charge was eliminated by the appellate panel. The following two charges remain: the first is presented in pertinent part; the second in its entirety:

> **31-15-11. Laned roadways. —** Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent with them shall apply:
>
> (1) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until

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2 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

3 Cahoone v. Board of Review of the Dept. of Emp. Security, 104 R.I. 503, 246 A.2d 213 (1968).

4 Id., at 506-507, 246 A.2d at 215.

> the driver has first ascertained that the movement can be made with safety.
> (2) …

and

> **31-16-5. Turn signal required. —** No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in §§ 31-16-2 and 31-16-3, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway, unless and until the movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner described in this chapter in the event any other traffic may be affected by the movement. Violations of this section are subject to fines enumerated in § 31-41.1-4.

ISSUE

The issue before the Court is whether the decision of the appeals panel was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law.

ANALYSIS

In the "Analysis" section of the decision it rendered in this case, the appellate panel placed great reliance on the Rhode Island Supreme Court's decision in Link v. State, 633 A.2d 1345 (R.I. 1993). In particular, the panel cited the Court's pronouncement that the appellate panel "lacks 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." Decision of Panel, at 5 citing Link, 633

A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). Accordingly, the panel indicated it would be impermissible for it to second-guess the trial magistrate's determinations of what testimony should be accepted and what ought to be disregarded." Decision of Panel, at 5 citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 206 (R.I. 1993). And, in this case it is particularly important that we acknowledge the limitations which have been placed upon the panel's review of the factual determinations of an RITT trial judge — because the arguments presented to this Court by the appellant in support of reversal are essentially factual.

In the Memorandum filed by Mr. Slater he urges that the testimony of the trooper was, on many occasions, equivocal — and, taken as a whole, did not satisfy the statutory standard of clear and convincing evidence. Quite accurately, he cites the testimony of the trooper wherein he employed the term "we" instead of "I" describing his observations on the highway on the evening in question. (See Trial Tr. at 3, lines 12, 14). He also points out — completely correctly — that the trooper used the terms "appeared" and "it looked like," as in — (a) the car "*appeared* to be weaving in and out of traffic" (Trial Tr. at 3, lines 7-8); (b) "it *appeared* that one of the vehicles had spun out." (Trial Tr. at 3, lines 13-14); and (c) "… it *looked like* one of the vehicles had spun out. (Trial Tr. at 3, line 11). See Appellant's Memorandum of Law, at 1. However, notwithstanding these equivocal statements, the trial magistrate credited

the testimony of the trooper and returned verdicts of guilty.

The trial magistrate found the trooper to be credible, commenting that he had "no reason to lie." (See Trial Transcript, at 14.) Evidently, he was not at all troubled by the trooper's use of imprecise terminology. Did the magistrate decide the trooper's vagueness was cured by his demeanor while testifying? Did the magistrate believe the officer's terminology reflected a manner of speaking and was not indicative of ambivalence? He did not say. In any event, the trial magistrate was entitled to rely on the trooper's rebuttal testimony that he had no doubt that he saw the vehicle driven by Mr. Slater commit laned roadway violations. (Trial Tr. at 8-9.)

On the other hand, the trial magistrate was not convinced by the defendant's testimony, which was more concerned with refuting the allegation that he was racing — and less directed to denying the charges that that he had been switching lanes without using his turn signal..

To reiterate, the panel review of a trial judge's verdict is limited. And, when reviewing RITT cases, this Court's role is doubly limited: our duty in this case is to decide whether the panel was "clearly erroneous" when it found Magistrate Cruise's adjudication of Mr. Slater was not "clearly erroneous" — in essence, we perform a limited review of a limited review. See Gen. Laws 1956 § 31-41.1-8(f) and Gen. Laws 1956 § 31-41.1-9(d). See also Link v. State, 633 A.2d 1345, 1348 (R.I. 1993)(opining, construing prior law — which was also "substantively identical" to the APA

procedure — that the District Court's role was to review the trial record to determine if the decision was supported by competent evidence). In my view, the panel's decision satisfied this standard.

CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appellate 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. Gen. Laws 1956 § 31-41.1-9.

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

/s/
Joseph P. Ippolito
MAGISTRATE

May 25, 2012