

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF WOONSOCKET**

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v.

**C.A. No. T12-0075  
12412504116**

**R. MICHELLE PIERRE**

**DECISION**

**PER CURIAM:** Before this Panel on November 28, 2012—Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Judge Almeida sitting—is R. Michelle Pierre’s (Appellant) appeal from a decision of Magistrate Noonan, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On September 20, 2012, Officer Sean Rochette (Officer Rochette) of the Woonsocket Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on November 7, 2012.

At trial, Officer Rochette testified that on the morning of the violation, he had a clear and unobstructed view of a vehicle traveling at a high rate speed outbound on Diamond Hill Road. (Tr. at 3.) The officer’s radar unit determined that the vehicle was traveling sixty-six (66) miles per hour (mph).<sup>1</sup> Id. The speed limit in the area was thirty-five (35) mph. Id. Officer Rochette

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<sup>1</sup> The officer cited Appellant for only fifty (50) miles per hour. (Tr. at 3.)

initiated a traffic stop, and cited the operator—identified as the Appellant at trial—for speeding. Id.

Appellant then presented her case in chief. Appellant asked the officer a number of questions including whether his radar gun was calibrated. (Tr. at 10.) Officer Rochette answered affirmatively and then described the two types of calibration methods he performed that day. Id. In her line of questioning, Appellant revealed that there was a discrepancy with the date on which the citation was given. (Tr. at 11-12.) The date on the citation differed from the date the citation was actually issued. (Tr. at 11-13.)

At trial, Appellant continued questioning the officer. The trial judge proceeded by asking the officer about the nature and extent of his training in the use of the radar gun. (Tr. at 17.) Officer Rochette testified that he was trained in the use and operation of radar units at the Rhode Island Municipal Police Academy. (Tr. at 18.)

Appellant attempted to admit into evidence a video showing the distance between the two traffic lights at the intersection. After Appellant's cellular phone took a substantial amount of time to load, the judge suggested that Appellant move forward with her questioning, and the officer agreed to stipulate that there were two lights at the intersection. (Tr. at 16.)

After both parties were given an opportunity to present evidence, the trial judge determined that the officer was a credible witness. Thereafter, the trial judge issued his decision sustaining the charged violation. (Tr. at 20.) The trial judge noted that the Appellant, herself, elicited from the officer, testimony that he calibrated the radar gun after the officer, himself, failed to provide such evidence in his own testimony. Id. After hearing the testimony, the trial judge imposed sentence. Appellant timely filed this appeal.

### **Standard of Review**

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it 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 judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (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.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." 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)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in

which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

### **Analysis**

On appeal, Appellant contends that the trial judge’s decision to sustain the violation was against the evidence presented and affected by error of law. Specifically, Appellant argues that she was not able to present her video recording from her cellular phone at trial. Appellant also contends that there was neither a certificate of calibration nor any other evidence establishing calibration introduced at trial. Appellant further claims that the discrepancy with the date on the citation showed that the officer was not able to accurately record the essential information on the citation. Therefore, Appellant’s speed clocked on the officer’s radar gun should be presumed inaccurate. Finally, Appellant argues that there was no evidence introduced at trial to support the actual speed of the vehicle.

In Link, our Supreme Court made clear that this 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.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Officer or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206.

Here, Appellant argues that the evidence elicited at trial was insufficient to sustain the violation. Appellant contends that there were a number of pertinent elements missing at trial. However, Appellant's arguments relate to questions of fact that were heard and weighed by the trial judge at Appellant's trial. Environmental Scientific Corp., 621 A.2d at 208 ([The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). After listening to the testimony, the trial judge determined that the Officer's testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. The trial judge clearly stated to the defendant "... I don't believe you. I believe the Officer." (Tr. at 20.) In his decision, the trial judge found it significant that the Officer was "... on a fixed post using radar, which [had] been calibrated . . . ." Id.

After hearing all of the evidence, the judge concluded that all of the elements of the violation were met and the judge went on to state that "I'm not troubled by the discrepancy in dates." Id. The judge went on to point out that the discrepancy was a mere mistake made by the officer which did not discredit his testimony. (Tr. at 20.) It is important to note that the Rules of Procedure of the Traffic Tribunal make clear that "[a]n error or an omission in the summons shall not be grounds for dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice."<sup>2</sup> Thus, the trial judge's decision was not made upon unlawful procedure or an abuse of discretion.

The judge concluded by imposing the fine "... based on the proof of [the] case by clear and convincing evidence." Id. This Panel's review is limited to determining whether the trial

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<sup>2</sup> Traffic Trib. R.P. 3(d)

judge made an error in law or misapplied the evidence. See Link, 633 A.2d at 1348 (our Supreme Court held that this Panel’s review is limited in scope).

Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge’s decision was not against the evidence presented and affected by error of law. The trial judge’s decision to sustain the charged violation is supported by legally competent evidence—the testimony of the officer—which the trial judge chose to credit over the Appellant’s.

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge’s decision was not against the evidence presented and affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violation sustained.

ENTERED:

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Magistrate Alan R. Goulart (Chair)

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Chief Magistrate William R. Guglietta

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Judge Lillian M. Almeida

DATE: \_\_\_\_\_