

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.**

**DISTRICT COURT
SIXTH DIVISION**

Domenick Connors	:	
	:	
v.	:	A.A. No. 6AA-2018-142
	:	(C.A. No. T18-0005)
State of Rhode Island,	:	(17001530437)
(RITT Appeals Panel)	:	

JUDGMENT

This cause came before Smith, J. on Administrative Appeal, and upon review of the record and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Rhode Island Traffic Tribunal Appeals Panel is affirmed.

Dated at Providence, Rhode Island, this 6th day of May, 2019.

Enter:

By Order:

_____/s/_____

_____/s/_____

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DECISION

Smith, J. In this case, Mr. Domenick Connors (hereinafter “Mr. Connors” or “Appellant”) urges that the Appeals Panel (“Panel”) of the Rhode Island Traffic Tribunal (“RITT”) erred when it affirmed an RITT Trial Magistrate’s verdict adjudicating him guilty of a moving violation: “Prima Facie Limits” (*i.e.*, speeding) in violation of G.L. 1956 § 31-14-2. Jurisdiction for the instant appeal is vested in the District Court by G.L. 1956 § 31-41.1-9 with the applicable standard of review found in subsection 31-41.1-9(d).

For the reasons stated herein, the decision of the Appeals Panel is AFFIRMED.

FACTS AND TRAVEL

On November 2, 2017 at approximately 1:56 in the morning, Trooper Sean Crowley of the Rhode Island State Police, Lincoln Barracks, was on a fixed radar post on Route 95. (*Trial Transcript*, at 3). While on duty observing the northbound traffic in the City of Cranston, he observed a green Honda Accord bearing Rhode Island license plate

number 493118. (*Trial Transcript*, at 3). Trooper Crowley observed the vehicle located in the center lane traveling at a rate of speed greater than the flow of traffic. *Id.* The cruiser's dashboard mounted radar unit captured the vehicle at a speed of 99 miles per hour. (*Trial Transcript*, at 7). The speed limit on that stretch of highway is noted to be 55 miles per hour. Trooper Crowley eventually effectuated a traffic stop and issued the driver, Mr. Connors, a speeding ticket in violation of G.L. 1956 § 31-14-2. *Id.*

Mr. Connors was arraigned at the Rhode Island Traffic Tribunal on November 29, 2017 and counsel subsequently entered his appearance. A "Motion for Discovery" was timely filed with the court on November 30, 2017. After not receiving the requested information, a "Motion to Compel Discovery" was filed on December 7, 2017 and subsequently granted on January 29, 2018.¹ Counsel for Mr. Connors received a fax from the State Police suggesting the only discovery in their possession in relation to this case was a copy of the citation. (*Trial Transcript*, at 8). Ultimately, the case proceeded to trial and was heard by Chief Magistrate DiSandro, III ("Trial Magistrate") on April 2, 2018.

During the trial, Trooper Crowley testified to his fixed radar post location. (*Trial Transcript*, at 3). Appellant, through his counsel, objected to this line of questioning. *Id.* Citing a discovery violation, Appellant argued that he had previously requested this information through discovery and it was never provided. *Id.* at 3, 8. Furthermore, Appellant argued that, he had filed a Motion to Compel which was granted by the court prior to the trial. *Id.*, at 3. After hearing that an order had been granted and the information

¹ While not relevant to the decision, it should be noted for purposes of the timeline that the order granting the "Motion to Compel Discovery" was not signed until February 19, 2018.

was not provided, the Trial Magistrate offered Appellant a “leave of court” before continuing with the trial. *Id.* at 6. Counsel decided against the “leave of court” and instead opted to continue the trial. *Id.* at 7.

Trooper Crowley was permitted to continue his testimony and went on to state that not only had the dashboard mounted radar unit in his cruiser been tested and calibrated before and after his shift, but that he had been trained in this protocol through the Rhode Island State Police Academy. (*Trial Transcript*, at 7 and 8). Again counsel for the Appellant objected to the introduction of this evidence. *Id.* at 8. This objection was rooted in the same framework as the previous objection regarding the fixed post location. Counsel suggested to the Trial Magistrate that certain discovery regarding calibration procedures and manuals had been requested and those records had not been provided. *Id.* An oral Motion to Dismiss was made and was subsequently denied by the Trial Magistrate. *Id.*

Mr. Connors took the stand as the only other witness. *Id.* at 10. His testimony primarily focused on the reason he was in the car. He testified that on November 7, 2017 he was driving to the hospital via Route 95 for a family emergency. *Id.* at 10, 11. At no time during his testimony did he admit or deny that he was driving at the rate of speed testified to by Trooper Crowley.

After all testimony was concluded Chief Magistrate DiSandro, III sustained the charged violation. Thereafter, the Trial Magistrate’s decision was timely appealed. (*Decision of Panel*, at 2).

On June 6, 2018, a Panel comprised of Magistrate Abbate (Chair), Magistrate Noonan, and Judge Almeida heard the Appellant's appeal. (*Decision of Panel*, at 2). In that appeal Appellant argued that the Trial Magistrate erred in sustaining the citation. The first and main argument focused on appeal was the State Police's failure to comply with discovery and the ultimate remedy provided by the court. *Id.* The second less articulated argument was the lack of ruling and/or unwillingness of the Trial Magistrate to adopt an emergency exception. *Id.* at 3.

Ultimately, in a written decision filed on August 6, 2018 denying Appellant's appeal, the Panel concluded that the Trial Magistrate's decision was not "affected by error of law, "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record," or was "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." (*Decision of Panel*, at 10 (citing G.L. 31-41.1-8(f)).

STANDARD OF REVIEW

The standard of review which this Court must employ in this case is enumerated in G.L. 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 prejudiced 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 the 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.

The standard of review is analogous to the standard of review to be applied pursuant to the provisions of the Rhode Island Administrative Procedures Act found in G.L. 1956 § 42-35-15(g). Under the Administrative Procedures Act 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. Department of Social Welfare*, 122 R.I. 583, 584, 410 A.2d 425 (R.I. 1980). Further, the Court will not substitute its judgment for that of the Panel as to the weight of the evidence on questions of fact. *Cahoone v. Board of Review of the Department of Employment Security*, 104 R.I. 503, 246 A.2d 213 (R.I. 1968). This means that even if reasonable minds could have come to different or contrary results, the Panel's findings will be upheld. *Id.* at 506-507.

APPLICABLE LAW

In the instant matter the Appellant was charged with violating G.L. 1956 § 31-14-2, which reads:

31-14-2 Prima facie limits. Where no special hazard exist that requires lower speed from compliance with G.L. 1956 § 31-14-1, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in the title shall be lawful, but any speed in excess of the limits specified in this section or established as authorized in this

title shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful...

ANALYSIS

On appeal, Appellant argues that the Panel's decision to affirm the Trial Magistrate's ruling was "affected by error of law," "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record," and "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." See G.L. 1956 § 31-41.1-9(d). Appellant asserts two points of error, (1) that the Motion to Dismiss wasn't granted and (2) that the remedy provided by the Trial Magistrate in the wake of discovery not being timely provided was inappropriate.²

Simply stated, this case is about discovery, any violations and the proper remedy. It is undisputed that the Appellant requested discovery and that what was provided was not satisfactory to Mr. Connors. (*Appellee Memorandum*, at 6). It is also not contested that Appellant properly filed a "Motion to Compel Discovery" which was granted, and an order ultimately entered. *Id.* The State concedes in Appellee's Memorandum, that the State Police did not comply with the discovery Order prior to trial. *Id.* Therefore we need not discuss these procedural process steps in detail.

What is left to discuss is if the proper remedy was afforded to Mr. Connors. In order to determine that, the discovery rules of the Traffic Tribunal must be examined. Rule 11 of the Rhode Island Traffic Tribunal Rules of Procedure govern discovery motions. It reads:

² The Appellant did not raise the emergency exception in his post-panel brief for this appeal, therefore it is not addressed.

Traffic Tribunal Rules of Procedure 11(b). Upon motion of the defendant, the court may order the attorney for the state or prosecuting officer to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies, or portions thereof which are within the possession, custody or control of the state. . . upon a showing of materiality to the preparation of the defendant's defense and that the request is reasonable.

The record is clear that Appellant followed this procedure and was granted material regarding documents relating to radar equipment, location and calibration procedures and manuals. It is also clear from the trial record that none of that information was provided nor did the Trooper have that information with him on the stand. (*Trial Transcript*, at 5).

So next we look at the remedy for non-compliance with a discovery request, when orders were signed, and materials were not provided. Rule 11(f)(2) of the Rhode Island Traffic Tribunal Rule of Procedures speaks directly towards failing to comply. It states:

Traffic Tribunal Rules of Procedure 11(f)(2). If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with this rule, the court may on motion order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

It is clear from Rule 11(f)(2) that when discovery is not complied with, the Trial Magistrate has the authority and discretion to impose one or more of three options: (1) to grant a continuance, (2) to prohibit the party from introducing in evidence anything not disclosed, or (3) catch-all, enter such order as the court sees fit under the circumstances.

This discretion gives the Trial Magistrate wide latitude on the appropriate measure to apply based on all of the circumstances.

In this case, Appellant timely raised its objection during the testimony. The Trial Magistrate further inquired about the missing material from not only counsel but also the Trooper. (*Trial Transcript*, at 6,9). After making the appropriate inquiry into any information that was not provided, and verifying that an order had been entered, the Trial Magistrate had to make a decision on what the appropriate remedy would entail. In this specific matter, he chose to grant counsel a “leave of court,” meaning a continuance. (*Trial Transcript*, at 6). This is one of the enumerated options available under Rule 11(f)(2).

After being presented with this option, it was defense counsel, who rejected that remedy and asked to continue with the trial (*Trial Transcript*, at 7). It was the choice of the Appellant to forgo a continuance and continue with the testimony of Trooper Crowley.³ Rule 11(f)(2) does not allow for counsel to choose which remedy they would prefer, instead it is left to the sole discretion of the Trial Magistrate. When Appellant chose not to accept the option provided by the Trial Magistrate, he waived his remedy. This strategic decision does not give rise to contesting the rejected remedy provided by the Trial Magistrate at a later date. Certainly had the remedy been accepted, and it was insufficient to right the wrong of the failure to comply, Appellant would have been in a stronger position to suggest a different remedy was warranted. Without Appellant accepting the offered remedy, the Court is left to speculate if that remedy would have

³ The record is void as to the how long the leave the court would have been.

cured the failure to comply.

Likewise, Appellant's motion to dismiss, based on the failure to comply with a court order, is guided by the same rules as previously discussed. The only difference in argument, is that Appellant requested a specific remedy, a dismissal. (*Trial Transcript*, at 8). That remedy was denied by the Trial Magistrate. *Id.*

Appellant argues this case should be treated in the same course as *City of Warwick v. Cianci*, A.A. No. 09-202 (2009). In *Cianci*, the Trial Magistrate denied defense counsel's request for a dismissal after a 19-month delay in providing videotapes. *Id.* Those tapes were ultimately provided the day of trial at the conclusion of the state's case. *Id.* After the Appeals Panel affirmed the Trial Magistrate's ruling, the case was appealed and ultimately reversed. The decision to reverse was based on the court finding a persistent, continuous and intentional delay in providing evidence. *Id.*

This Court finds the current case distinguishable from *Cianci*. Although in both cases a motion to compel was filed, granted and ignored, *Cianci's* decision teetered on a persistent refusal to comply with discovery and bad faith upon the Warwick Police Department. *Id.* Here no such record exists. On the contrary, the Appellant was able to obtain the information from the State Police through an open records request. (*Appellant Memorandum, Exhibit D*).⁴ While Appellant did not receive the requested material prior to trial, nothing in the record suggests that the State Police intentionally or purposefully refused to comply. Unlike in *Cianci*, where the motion to compel contained a deadline for production of the videotape, there was no such date set in this case. While neither

⁴ This information was obtained after the conclusion of the hearing.

counsel, nor the court should have to set a deadline once an order is signed; when it is set, the non-compliance then becomes more purposeful. Because the record does not support an intentional and/or purposeful failure to comply, this Court cannot find that the Appeal Panel's decision to affirm the Trial Magistrate was in error.

CONCLUSION

After careful review of the entire record and the applicable law, the Court hereby finds that the decision of the Appeals Panel was made upon lawful procedure, was not in violation of constitutional provisions nor was it affected by error of law. *See* G.L. 1956 § 31-41.1-9(d). Said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record nor was the ruling arbitrary or capricious. *Id.* The Appeals Panel afforded Appellant his full procedural rights at the hearing. Accordingly, the decision rendered by the Appeals Panel is **AFFIRMED**.