

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

**DISTRICT COURT
SIXTH DIVISION**

Dominiqua Newkirk :
 :
v. : **A.A. No. 2016-100**
 :
State of Rhode Island, :
(RITT Appeals Panel) :

JUDGMENT

This cause came before Isherwood, 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 24th day of January, 2019.

Enter:

By Order:

_____/s/
Stephen M. Isherwood
Associate Judge

_____/s/

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

**DISTRICT COURT
SIXTH DIVISION**

Dominiqua Newkirk :
 :
v. : **A.A. No. 2016-100**
 :
State of Rhode Island, :
(RITT Appeals Panel) :

DECISION

Isherwood, J. In this case Ms. Dominiqua Newkirk (hereinafter “Ms. Newkirk” or “Appellant”) urges that an appeals panel (Panel) of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed an RITT trial magistrate’s (Magistrate) verdict adjudicating her guilty of two civil traffic violations: “Conditions Requiring Reduced Speed” Gen. Laws 1956 § 31-14-3 and “Operating Without Insurance” § 31-47-9. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9; the applicable standard of review is found in Gen. Laws 1956 § 31-41.1-9(d).

For the reasons I will explain in this opinion, I have concluded that the decision rendered by the Panel is not clearly erroneous and is hereby affirmed.

I
FACTS AND TRAVEL OF THE CASE

On January 23, 2015, the Providence Police responded to a motor vehicle accident at the intersection of Admiral Street and River Avenue. Decision of Panel, October 21, 2015 at 1 citing Trial Transcript at 2. Upon arrival, Officer Cleary observed substantial damage to the two vehicles involved and identified the operators of the vehicles; the officer observed damage to Ms. Newkirk's vehicle in its front end and in the area of the front driver's tire area. Decision of Panel at 1citing Trial Transcript at 2. The second vehicle had damage on the passenger's center side. Decision of Panel at 1citing Trial Transcript at 2. At trial, the officer testified that he was an accident reconstructionist. Decision of Panel at 2 citing Trial Transcript at 3. He testified (on cross-examination) that he did not conduct an actual reconstruction of the accident in order to determine speed. Decision of Panel at 2 citing Trial Transcript at 3. However, the officer indicated that the physical construction is not necessary in a situation with no fatality or serious bodily injury. Decision of Panel at 2 citing Trial Transcript at 3. In responding to the accident, the officer investigated the area, examined the surrounding environment and damage to the vehicles. Decision of Panel at 2 citing Trial Transcript at 3.

The officer stated that based on the crosswalks, the major intersection, the speed limit, the lack of hills in the area and the damage to the vehicles, he was able to conclude that the Appellant was speeding. Decision of Panel at 2 citing Trial Transcript at 3.

The officer issued Ms. Newkirk citations for § 31-14-2, "Prima Facia Limits," § 31-14-3,

“Conditions Requiring Reduced Speed” and § 31-47-9, “Operating Without Insurance.”

Decision of Panel at 2 citing Trial Transcript at 3.

On cross-examination, the officer admitted that he did not have any actual knowledge of the Appellant’s speed but that he had estimated it based upon his visual inspection of the damage to the vehicles. Decision of Panel at 2 citing Trial Transcript at 4. At some point, the officer clarified his testimony that despite not having any actual knowledge of the Appellant’s speed, his education in accident reconstruction led him to estimate the Appellant was traveling at least thirty-five miles per hour in a twenty-five miles per hour zone. Decision of Panel at 3 citing Trial Transcript at 8.

The Appellant testified in her defense that she was traveling straight through the green light at the intersection when the other driver turned right in front of her. Decision of Panel at 2-3citing Trial Transcript at 14-15. She testified that she attempted to swerve and that she hit her breaks (sic). Decision of Panel at 4 citing Trial Transcript at 15-16. She also testified that she is familiar with that intersection because she travels on that road daily, is certain that traffic traveling in the opposite direction did not have a green arrow, and insisted that she never saw the other vehicle stopped waiting to make a left turn. Decision of Panel at 2-3 citing Trial Transcript at 16-17.

At the conclusion of the trial, the Magistrate (as the finder of fact) found the officer to be credible and adopted his testimony with regard to the citation for § 31-14-3, “Conditions Requiring Reduced Speed”. Decision of Panel at 4 citing Trial Transcript at

17 & 18. In spite of the officer's testimony, however, the Magistrate determined there was not clear and convincing evidence with regard to the actual speed of the Appellant's vehicle and the citation for § 31-14-2, "Prima Facia Limits," was dismissed. Decision of Panel at 4 citing Trial Transcript at 17.

Finally, the citation § 31-47-9, "Operating Without Insurance" was addressed by the Magistrate and the Panel. Decision of Panel at 4 citing Trial Transcript at 17. The Magistrate noted that the Appellant had previously been suspended for operating without insurance and that this "was surely Appellant's second offense and could possibly be a third offense. Decision of Panel at 4 citing Trial Transcript at 18. However, the Magistrate imposed first offense sanctions. Decision of Panel at 4 citing Trial Transcript at 18. The Appellant filed a timely appeal of the Magistrate's decision, sustaining the charged violations for § 31-14-3 and § 31-47-9. Decision of Panel at 4.

On October 21, 2015 the Panel heard Appellant's appeal from the Magistrate's finding whereby he sustained the afore-mentioned citations. The Appellant and her attorney appeared. Decision of Panel at 1.

The Appellant argued on appeal to the Panel that the Magistrate erred in sustaining the citations because the matter was lacking evidence. Decision of Panel at 6. Because the Magistrate did not find clear and convincing evidence to sustain the citation for § 31-14-2, "Prima Facia Limits" (speeding), the Appellant suggested that there cannot then be a finding to have sustained § 31-14-3, "Conditions Requiring Reduced Speed." Decision

of Panel at 6.

The second argument of the Appellant in regard to § 31-47-9, “Operating Without Insurance” asserts the Magistrate erred by not reciting Appellant’s prior insurance violations on the record. Decision of Panel at 6.

II STANDARD OF REVIEW

The standard of review which this Court must employ in this case 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 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 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 of review is a mirror-image of that found in Gen. Laws 1956 § 42-35-15(g) — the State Administrative Procedures Act (“APA”). Accordingly, we are able to 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. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 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, ante, 633 A.2d at 1348 citing Liberty Mutual Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991). This Court’s review, like that of the RITT appeals panel, “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 v. State, 633 A.2d 1345, 1348 (R.I. 1993) citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993).

III ANALYSIS

The Panel undertook an exhaustive review of the evidence upon which the Magistrate relied during the trial when he sustained the citations for § 31-14-3, “Conditions Requiring Reduced Speed” and § 31-47-9, “Operating Without Insurance” even though the Magistrate dismissed the citation for § 31-14-2, “Prima Facia Limits” (speeding). The Appellant argued that since there was a finding that the evidence for the speeding citation did not satisfy the burden of clear and convincing evidence, the Magistrate cannot subsequently find that the prosecution met its required burden for the citation for § 31-14-3, “Conditions Requiring Reduced Speed.” Decision of Panel at 6.

This Court's review of decision of the Panel are narrowly defined § 31-41.1-9(d). We cannot afford the Appellant herein a new trial; nor may we enlarge the record which has been certified to us. Although we review questions of law, de novo, we are bound to accept the trial judge's factual determinations if they are supported by competent evidence of the record.

In its Decision, the Panel examines the interrelation and interpretation of the three statutes Gen. Laws 1956 § 31-14-1 and §§ 31-14-2 and 31-14-3. Our Supreme Court has mandated that § 31-14-1 must be read in conjunction with §§ 31-14-2 and 31-14-3. Decision of Panel at 7 referring to *State v. Campbell*, 97 R.I. 111, 196 A.2d 131(1963). The Panel explores whether the applicable case law or the statutory language itself cause the Panel to find that the Magistrate committed error. Decision of Panel at 7 - 10. The Panel reiterated that the evidence heard by the Magistrate supported his decision. Decision of Panel at 10. The Panel then found, that,

“Based upon the record, we defer to the trial Magistrate's decision and conclude that the decision is supported by legally competent evidence and not affected by error of law.”
Decision of Panel at 10.

The second argument espoused by the Appellant is that the Magistrate erred by not reciting the Appellant's prior driving record when imposing a penalty after sustaining the citation for § 31-47-9, “Operating Without Insurance.” Decision of Panel at 11. Appellant (through counsel) admitted at the hearing on May 26, 2015 that she did not

have active insurance on January 23, 2015. Trial Transcript at 12. However, on appeal to the Panel Appellant asserts that the Magistrate erred when he imposed first offense sanctions for such violation after the Magistrate determined that there were previous suspensions. Decision of Panel at 12. Therefore, the Appellant argued on appeal that although she was responsible for the violation, the judge committed error by exercising his discretion and imposing a lighter penalty. .” Decision of Panel at 12. This court is satisfied that the Panel’s review of the Magistrate’s ruling on the violation of “Operating without Insurance” was not erroneous, and was supported by legally competent evidence.

This Court has no basis upon which to set aside the Appellant’s convictions based upon the insufficiency of evidence.

IV CONCLUSION

Upon careful review of the evidence, I find that the decision of the Appeals 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. Id.

Accordingly, the decision rendered by the appeals panel in this case is
AFFIRMED.