

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

Hamlet Lopez :
 :
v. : **A.A. No. 2018 - 171**
 :
State of Rhode Island :
(RITT Appeals Panel) :

ORDER

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 are 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 rendered by to the Appeals Panel in this case is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 29th day of April, 2019.

By Order:

/s/
Stephen C. Waluk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

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

Hamlet Lopez	:	
	:	
v.	:	A.A. No. 2018-171
	:	(M18-0009)
State of Rhode Island	:	(18-408-502693)
(RITT Appeals Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Hamlet Lopez urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed his conviction for a civil traffic violation — failing to obey a stop light. Jurisdiction for the instant appeal is vested in the District Court by G.L. 1956 § 31-41.1-9; the applicable standard of review is found in G.L. 1956 § 31-41.1-9(d). 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 I will explain in this opinion, I have concluded

that the Appeals Panel's decision affirming Appellant's conviction should be AFFIRMED. I so recommend.

I

Facts and Travel of the Case

We may glean from the electronic record attached to this case that, on March 20, 2018, Mr. Lopez was cited by a member of the Pawtucket Police Department for a violation of G.L. 1956 § 31-13-4, "Obedience to Traffic Devices — Traffic Light." *See* Summons No. 18-408-502693 (in Electronic Record (ER), at 29). Then, the matter proceeded to trial before a judge of the Pawtucket Municipal Court on April 16, 2018.

As the trial began, the citing officer, who is identified on the summons as Officer Day, testified as follows:

On March 20, 2018 at 23:36, I was travelling eastbound on Armistice Blvd in my marked patrol vehicle. As I approached the intersection of Armistice Blvd and North Bend St., I observed the traffic light facing me to be green. I proceeded to enter the intersection. I observed the defendant's vehicle travelling northbound. The vehicle proceeded to enter the intersection to turn right on Armistice Blvd. His vehicle entered the intersection and partially obstructed my lane of travel. I then stopped my vehicle and allowed him in front of me. He turned right on Armistice Blvd. I then initiated a traffic

stop.

Trial Transcript, at 1 (ER, at 15). After the officer clarified that the motorist was turning from North Bend onto Armistice, in the direction of Newport Avenue, *id.*, Mr. Lopez gave the Court his version of the incident:

I actually took a video. There's nothing that says you can't take a turn on red. There's like, I think, a church, I want to say, right there. When I was stopping, I was slowly moving forward. It was night time. I really couldn't see anything, but I usually stop, you know, you can make a right on red. I was looking for a sign but it did not say it. I was turning and I did see the officer. I have a thing, it can be anything, I'll see an officer I just stop, that's just me. So I stop, and then, you know, I was there for a while. He was there for a while, and that's when I made my right on red. That's what happened.

Trial Transcript, at 1 (ER, at 15). When asked if he came to a complete stop, he added:

Yes, I came to a complete stop, but I started moving forward once I stopped because I wanted to be cautious. Even if you stop, you can't turn like that. Then I proceeded slowly and slowly and I saw him, then I stopped because I saw him. That's what happened.

Id. And, given a final chance to respond, the officer stated:

From what I observed, I was travelling eastbound on Armistice Blvd. All I saw was him pull out into the

roadway without stopping. I'm not positive, but I believe there was another vehicle possibly to the left of him. I don't know if he stopped. All I saw was him pull out into the middle of the intersection.

Id. With this, the Judge proceeded to render his verdict. *Trial Transcript*, at 1-2 (ER, at 15-16). He found Mr. Lopez guilty and imposed a fine of \$ 121.00 (including costs). *Id.* at 2 (ER at 16); *see also* Judgment Card (ER at 28).

Mr. Lopez then filed an appeal from this Municipal Court judgment to the Rhode Island Traffic Tribunal. In his Notice of Appeal, he reasserted his innocence — arguing that he did stop at the light, but then stopped again to let the officer pass; he urges further that the officer conceded that he did not know if Mr. Lopez had stopped initially. *See* Notice of Appeal (ER at 25-26).

Once the procedural prerequisites had been satisfied, the matter was set for oral argument on October 17, 2018 at 2:00 p.m. A notice of this Court date was sent to Mr. Lopez, the Pawtucket Police Department, and the Pawtucket Municipal Court. *See* Notice of Court Date, September 24, 2018, ER at 11. However, when Mr. Lopez failed to appear on October 17, 2018, his appeal was summarily denied. *See*

Judgment, October 17, 2018, at 1 (ER at 10). An Order to that effect was entered by the appeals panel Chair, Magistrate Kruse Weller, on November 7, 2018. *See* Order (ER at 5-6). And so, the appeals panel never addressed Mr. Lopez's substantive arguments.

Mr. Lopez filed an appeal from this judgment on November 16, 2018. *See* Notice of Appeal (ER at 1). As grounds for his appeal, Mr. Lopez stated that he failed to appear at the appeal hearing because he never received the Tribunal letter of notification. *See* ER at 3.

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 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 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 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. 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 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 Mutual Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). This Court’s 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 *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)).

III Analysis

At the outset of our discussion we must clarify the issue which is before the Court. In general terms, it is whether the decision of the appeals panel met the standard of legality set forth in § 31-41.1-9(d) (set forth *ante* in Part II of this opinion, at 5). More precisely, the question is whether the panel acted properly in entering what may be regarded as a default judgment against Mr. Lopez, based on his failure to appear at his appeal hearing despite being sent notice. It appears that, based on the circumstances known to the panel, it did act properly.

Of course, Mr. Lopez, in his notice of appeal to this Court, denies that he received notice of the appeals panel hearing. But that statement is not part of the RITT record. It was not submitted under oath. Moreover, it has not been evaluated by the panel. In sum, Mr. Lopez has not (yet) created a record on this issue.¹ As a result, we have

¹ It would seem that Rule 20 of the Traffic Tribunal Rules of Procedure might provide a satisfactory vehicle pursuant to which Mr. Lopez might

no basis upon which to overturn the appeals panel's entry of a default judgment at this time.

IV

Conclusion

Upon careful review of the record and the positions of the parties, I conclude that the Decision issued by the appeals panel in this case was neither contrary to law nor predicated on an improper procedure. Accordingly, I recommend that this Court AFFIRM the decision rendered by the Appeals Panel.

/s/

Joseph P. Ippolito
Magistrate

April 29, 2019

seek a vacating of the panel's November 7, 2018 Order. At such a hearing, he could be sworn-in and make his representations (as to his lack of notice) under oath. And, to my reading of the rule, such a motion would still be timely for many days to come.

