

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

James Folan :
 :
v. : **A.A. No. 14 - 0021**
 :
City of East Providence :
(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, the Court finds that the Findings and 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 of the Appeals Panel is AFFIRMED.

Entered as an Order of this Court at Providence on this 25th day of February, 2015.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

James Folan	:	
	:	A.A. No. 2014 – 021
v.	:	(C.A. No. M13-0016)
	:	(13-404-500064)
City of East Providence	:	
(RITT Appellate Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Mr. James Folan urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a municipal court judge’s verdict adjudicating him guilty of an equipment violation: “Safety belt use” in violation of Gen. Laws 1956 § 31-22-22. 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 — for the reasons explained below — that the decision of the panel is not clearly erroneous and should be affirmed.

I

FACTS AND TRAVEL OF THE CASE

On January 5, 2013, Captain Kidman of the East Providence Police Department cited Mr. Folan for failing to comply with the statute that mandates the use of a seat belt a civil traffic violation. The proceedings of the trial, which was conducted on September 9, 2013, were described thusly in the appeals panel decision:

... At trial, the Captain testified that on January 5, 2013, he was posted in the area of Six Corner within the Copy World parking lot. (Tr. at 1). The Captain indicated that at that time, he was observing traffic traveling westbound on Taunton Avenue onto Waterman Avenue. Id. In addition, the Captain testified that he observed a blue Chevrolet approaching his location. Id. Thereafter, the Captain further described that he had a clear unobstructed view of the Appellant operating his vehicle with no seat belt. Id. Subsequently, the Appellant was issued a citation for the aforementioned violation. Id.

Next, the Appellant moved to dismiss the case on due process grounds. Id. Specifically, the Appellant stated that his due process rights had been violated because he had been inconvenienced by his court date being continued on four separate occasions. (Tr. at 1-2). Moreover, the Appellant questioned the Captain's memory of the instant matter and averred that he had been wearing his seat belt. (Tr. at 2.)

At the close of the evidence, the trial judge issued his decision sustaining the charged violation. (Tr. at 4-5.) The trial judge determined that the prosecution had proven each element of the charge. Id. Specifically, the trial judge noted that the Captain's testimony was credible and that the Captain had identified Appellant as the operator. Id.¹

¹ Decision of Panel, January 27, 2014, at 1-2.

Aggrieved by this decision, Mr. Folan filed an immediate appeal.² In his statement of his “Reasons For Appeal” he claimed prejudice in the fact that he was subjected to various procedural miscues (by both the East Providence Police and the East Providence Municipal Court) that required him to leave work early (unnecessarily) on multiple occasions.³

On December 18, 2013 Mr. Folan’s appeal was heard by an RITT appellate panel composed of: Magistrate Goulart (Chair), Magistrate DiSandro, and Magistrate Abbate. In a decision dated January 27, 2014, the appeals panel affirmed the decision of the trial judge, overruling his procedural claim and two factual claims presented at oral argument.⁴ It therefore affirmed the Appellant’s conviction for the seat-belt violation.⁵

On February 6, 2014, Mr. Folan filed a claim for judicial review by the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9. By order dated February 21, 2014, the Court established a briefing schedule. However, since neither party has submitted a memorandum for the Court’s review within the allotted period (and the many months thereafter), I have

² Decision of Panel, January 27, 2014, at 2.

³ Appellant’s Notice of Appeal, February 6, 2014, passim.

⁴ Decision of Panel, January 27, 2014, at 3-6.

⁵ Decision of Panel, January 27, 2014, at 6.

proceeded to submit these “Findings and Recommendations” without further delay.

II 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.’ ”⁶ Thus, the Court will not substitute its judgment for that of the appeals panel as to the weight of the evidence on questions of fact.⁷ And so, except in the case where the panel’s decision is affected by error of law, the decision of the panel must be affirmed as long as it is supported by legally competent evidence.⁸

III APPLICABLE LAW

In the instant matter the Appellant was charged with violating section 31-22-22(g) of the Rhode Island General Laws which states in pertinent part:

31-22-22 Safety belt use – child restraint. — (a) ...

...

(g)(1) Any person who is an operator of a motor vehicle shall be properly wearing a safety belt and/or shoulder harness system as defined by Federal Motor Safety Standard 208 while the vehicle is in operation on any of the roadways, streets, or highways of this state.

(2) The provisions of this subsection shall apply only to those motor vehicles required by federal law to have safety belts.

(h) ...

⁶ 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).

⁷ See Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) citing Liberty Mutual Insurance Company v. Janes, 586 A.2d 536, 537 (R.I. 1991)(decision rendered during previous incarnation of the appeals panel during existence of Administrative Adjudication Division[AAD]).

⁸ Link, 633 A.2d at 1348 citing Environmental Scientific Corporation v. Durfee, 621 A.2d 200, 208 (R.I. 1993).

IV ANALYSIS

In his two-page, handwritten, Notice of Appeal, filed at the Traffic Tribunal on February 6, 2014, Mr. Folan argues, as he did before the appellate panel, that he was prejudiced by repeated scheduling miscues made by the East Providence Police Department and the East Providence Municipal Court. See Notice of Appeal, passim. Specifically, he asserted that he was made to return to Court numerous times before finally being afforded his trial. Of course, we shall consider this procedural argument; but before doing so we shall consider two substantive issues raised by Mr. Folan at oral argument.

A The Credibility of the Police Officer

The first substantive question raised by Mr. Folan is the credibility of the police officer who cited him. Mr. Folan asserts that he was indeed wearing his seat belt and that the officer's memory was deficient; therefore, he asks this Court to find the seat belt violation was not proven to the standard of clear and convincing evidence and, on that basis, to reverse his conviction.

However, when reviewing the factual determinations of the appellate panel, this Court's role is limited; indeed, it is doubly limited — our duty in this case is to decide whether the appeals panel was “clearly erroneous” when it

found the municipal court’s adjudication of Mr. Folan was not “clearly erroneous” — a limited review of a limited review.⁹ The facts found by the panel, quoted ante at 2-3, are fully supported in the record certified by the RITT to the District Court. And so, because the officer’s testimony was sufficient, if believed, to satisfy the prosecution’s burden of proof, I find no reason to set aside the decision of the appeals panel on this point.

B

Limitations on Cross-Examination of the Police Officer

On appeal, Mr. Folan also urges that the trial judge erred by limiting his cross-examination of the officer. But the record shows that he was allowed to conduct cross-examination and he did not place on the record (by proffer) any additional questions that he wanted to pose, or any additional lines of questioning he wanted to pursue.¹⁰ Therefore, the appeals panel — invoking the “raise-or-waive” rule — determined that the issue was not properly preserved for appeal, and quite rightly declined to consider the issue.¹¹

⁹ See Gen. Laws 1956 § 31-41.1-8(f) and Gen. Laws 1956 § 31-41.1-9(d), quoted ante in “Part II – Standard of Review,” ante, at 4. See also Link v. State, 633 A.2d 1345, 1348 (R.I. 1993).

¹⁰ Trial Transcript, September 9, 2013, at 2-3.

¹¹ See Decision of Appeals Panel, at 5 citing State v. Donato, 592 A.2d 140, 141 (R.I. 1991) and State v. Forand, 958 A.2d 134, 141 (R.I. 1991).

C

The Unnecessary Delay Issue

We may now turn to the issue that Mr. Folan flagged in his original notice of appeal — the delay in his trial. And even though he appeared pro-se, I believe that Mr. Folan properly preserved this issue for appeal. And while he moved to dismiss the complaint on “due process” grounds, he clearly related his motion to the repeated instances of delay.¹²

The appeals panel found that these scheduling errors violated neither the Appellant’s right to due process nor his right to a speedy trial. As to the former, it certainly cannot be disputed that Mr. Folan was afforded the right to be heard at his trial.¹³ And the appeals panel correctly noted that the right to a speedy trial stated in the sixth amendment to the constitution applies only in criminal cases.¹⁴ On both these points the appeals panel’s decision is undoubtedly correct. However, I believe the panel (and the trial judge) should

¹² See Trial Transcript, at 1. As he explained it, he went to the court on the arraignment date specified on the summons, which was a Wednesday. Id. The janitor told him court was only held on Thursdays. Id., at 1-2. So, he came back the next day. Id., at 2. He was given a trial date, but when he appeared he learned it was the wrong date. Apparently, he was sent new court dates, but they were later revised by mail, causing his trial to be delayed eight months. Id., at 2.

¹³ See Decision of Appeals Panel, at 5.

¹⁴ Id.

have also addressed the Appellant's procedural complaint by another standard.

Rule 26(b) of the Traffic Tribunal Rules of Procedure provides —

(b) By the Court. If a defendant is subjected to unreasonable and prejudicial delay in bringing a summons to trial, a motion to dismiss may be heard and granted if it is found to be meritorious. The court on its initiative may dismiss the summons in the interests of justice.

And under the State and Municipal Court compact, Rhode Island's municipal courts are subject to the Traffic Tribunal rules when adjudicating traffic offenses.¹⁵ Therefore, the appeals panel should have considered Appellant's complaint by the standards enumerated in Rule 26(b). But it did not. We could remand the case for the appeals panel to consider the issue, but this is not necessary, for he has not shown prejudicial delay.

Mr. Folan came twice for his arraignment, and then twice for his trial. He certainly was inconvenienced — this is undeniable. But, he did not show prejudice within the case. At the oral argument before the appeals panel, he argued that he was prejudiced because the officer's testimony was affected by the passage of time. But there is nothing in the trial transcript to show that. The officer testified had a clear view of Mr. Folan as he passed by him — and

¹⁵ See Gen. Laws 1956 § 8-18-4(b) and § 31-41.1-6(a).

the trial judge fully credited his testimony.¹⁶

V
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. Id.

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

_____/s/_____
Joseph P. Ippolito
Magistrate

February 25, 2015

¹⁶ Trial Transcript, September 9, 2013, at 2-3.