

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

**DISTRICT COURT  
SIXTH DIVISION**

**James Harrington**

:

v.

:

**A.A. No. 19 - 032**

:

**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 of the Appeals Panel is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 9<sup>th</sup> day of September, 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**

**James Harrington** :  
 :  
v. : **A.A. No. 2019-032**  
 : **(T15-0040)**  
**State of Rhode Island** : **(15-502-502655)**  
**(RITT Appeals Panel)** :

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** Mr. James Harrington (hereinafter “Mr. Harrington” or “Appellant”) returns to this Court to challenge, once again, his conviction for Refusal to Submit to a Chemical Test, a violation of G.L. 1956 § 31-27-2.1. Previously, we remanded the case to the Traffic Tribunal Appeals Panel in January of 2018 so that Mr. Harrington could be afforded the opportunity to more fully litigate the territorial-jurisdiction issue which he had raised; subsequently, additional testimony and evidence were taken by the (original) Trial Magistrate, who, at the close of the hearing, once again sustained the charge. Thereafter, his conviction was again affirmed by the Appeals Panel.

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 subsection 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.

Based upon my review of the record certified to this Court by the Traffic Tribunal, I have concluded that the decision rendered by the Appeals Panel in Mr. Harrington's case is neither clearly erroneous (in light of the reliable, probative, and substantial evidence of record), nor is it affected by error of law, nor is it made upon unlawful procedure, nor is it characterized by an abuse of discretion. I shall therefore recommend that the decision of the Appeals Panel be AFFIRMED.

## I

### **Facts and Travel of the Case**

The facts of the incident which led to the charge of refusal to submit to a chemical test being lodged against Mr. Harrington are fully and fairly stated in the original decision of the appeals panel (dated August 30, 2016) and our earlier Findings and Recommendations (dated January 17, 2018). Nevertheless, for convenience, I shall include a summary of the facts and travel of the case before the remand —

omitting, for the most part, the use of citations (which may be found in our earlier opinion).

## A

### **The Stop and the Charge**

On August 20, 2015, at approximately 8:20 p.m., Sergeant Joel Mulligan of the North Kingstown Police Department was on patrol when he saw a car traveling east on Frenchtown Road which crossed the fog line. Based on this observation, Sgt. Mulligan stopped the vehicle. When he spoke to the operator, later identified to be Mr. Harrington, he discerned an odor of alcohol emanating from him. When asked, Mr. Harrington admitted to having had “a couple of beers.” At this juncture, Sgt. Mulligan called for a subordinate, Officer George Tansey, to take over the investigation, which he did. Ultimately, Mr. Harrington was arrested for suspicion of drunk driving. He was read his “Rights for Use at the Scene” and transported to the barracks, where he was given his “Rights for Use at Station.” When asked, Mr. Harrington refused to submit to a breathalyzer test. As a result, he was cited for refusal to submit to a chemical test, in violation of § 31-27-2.1.

## B

### Initial Proceedings Before the Traffic Tribunal

At his RITT arraignment on August 28, 2015, Mr. Harrington entered a plea of not guilty to the refusal charge. At his trial, which was conducted on October 9, 2015 and October 21, 2015, Mr. Harrington contended, *inter alia*, that the point on Frenchtown Road where he crossed the fog-line was in East Greenwich, not North Kingstown; consequently, he urged that the stop and the citation were illegal, because the North Kingstown officer had no authority to stop him for a civil violation committed in East Greenwich. However, Sgt. Mulligan repeatedly disputed this assertion during his own testimony.

In order to convince the Trial Magistrate of the correctness of his position, Mr. Harrington tried to show the Court a map of the area. But the Trial Magistrate would not receive it.<sup>1</sup> And without it, there was no substance to his argument. Nevertheless, in his verdict, the Trial Magistrate found the officers to be credible and worthy of belief.

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<sup>1</sup> See *Trial Transcript* (October 21, 2015), at 14.

He therefore sustained the charge; and imposed the minimum sanctions for a first offense refusal.

## C

### **Initial Proceedings Before the Appeals Panel**

From this conviction Mr. Harrington filed an appeal, which was heard on April 20, 2016 by an Appeals Panel composed of Chief Magistrate Guglietta (Chair), Administrative Magistrate DiSandro, and Judge Parker. Among the many arguments Mr. Harrington presented in his appeal was his claim that the testimony given by Officer Tansey and Sgt. Mulligan was not credible — particularly with regard to the location of the moving violation and the stop. The Panel responded to this claim by recalling that, under the applicable standard of review, it “... 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.” *Decision of Appeals Panel*, August 30, 2016, at 9 (*citing Link v. State*, 633 A.2d 145, 1348 (R.I. 1993)(*citing Liberty Mutual Insurance Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). Accordingly, the Panel deferred to the Trial Magistrate’s strong findings that the North Kingstown officers were credible witnesses. Based on the

foregoing, the Appeals Panel affirmed the Trial Magistrate's verdict in its written decision of August 30, 2016.

## D

### Initial Proceedings Before this Court

Thereafter, Mr. Harrington appealed to the District Court. In our initial opinion (of January 17, 2018), we conceded that we, like the Appeals Panel, were not able to second-guess the Trial Magistrate on issues of credibility. However, we were concerned by the fact that the Appeals Panel had not addressed Mr. Harrington's claim that the Trial Magistrate erred by declining to review a map of the area in which the stop occurred.<sup>2</sup> This troubled us, because, if Mr. Harrington's assertion as to the location of the stop was true, his argument would potentially have merit, since, at the time of his citation,<sup>3</sup> municipal police officers only had the authority (1) to cite drivers for civil traffic offenses

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<sup>2</sup> Mr. Harrington's twelfth assignment of error was stated thusly:

... (12) Judge wouldn't look at map for town and county lines, insisting that Frenchtown Road was all in North Kingstown. Map clearly shows that most of Frenchtown Road is, in fact, in East Greenwich; ...

*See Decision of Appeals Panel* (August 30, 2016), at 9, n.1, ¶ 12.

<sup>3</sup> G.L. 1956 § 12-7-19 was amended in 2016 to allow pursuit into an adjoining town to stop a vehicle from any infraction of the motor vehicle code, including civil violations.

committed *in* their town of appointment, and (2) to issue such citations *within* their town of appointment.

As a result, we concluded that Mr. Harrington's case ought to be remanded to the Appeals Panel so that it could address this issue — either by making findings regarding why the proffer was ineffective or by remanding the case to the Trial Magistrate for further factual findings on the issue of the location to be made. The District Court adopted our recommendation and remanded the case to the Appeals Panel.

## **E**

### **Proceedings before the Traffic Tribunal upon Remand**

Upon remand, the Appeals Panel chose the latter course. By order dated September 21, 2018, the Appeals Panel referred the case back to the original Trial Magistrate, stating:

This Panel remands this matter to the Trial Magistrate, consistent with the January 17, 2018 Order, for further factual findings on the issue of the location of the violation and the stop to be made.

*Order*, September 21, 2018. And the Trial Magistrate followed this direction, convening a hearing on October 25, 2018. *See Trial*



*Transcript*, October 25, 2018, at 1 (found in Electronic Record (*ER*) attached to this case, at 21).

At the outset, the Trial Magistrate explained the purpose of the proceeding to Mr. Harrington. *Trial Transcript*, October 25, 2018, at 4-5. After some back and forth, the Court called a recess to allow Mr. Harrington to go to his car to retrieve any map he might have. *Id.* at 11.

Upon his return, Mr. Harrington presented to the Court a Map produced by the South County Tourism Council, which was marked Defendant's A for Identification. *Id.* at 12. But, the State objected to its reception as a full exhibit based on authentication grounds. *Id.* at 13. But, notwithstanding the State's objection, it was received as a full exhibit. *Id.* at 17.

Then, Mr. Harrington presented another map, which was marked Defendant's B for identification. *Id.* at 14. The State objected to its introduction on the same grounds. *Id.* When he examined it, the Trial Magistrate observed that Exhibit B had the following message written on it — "Our data has been edited to ensure accuracy. We cannot guarantee complete authenticity." *Id.* at 15. On this basis the Court indicated it could not consider this exhibit. *Id.* at 15, 17.

Finally, the Trial Magistrate began to make the findings which would form the basis of his ruling. He stated that the map in evidence, Exhibit A, showed nothing,

... other than where people from the South County Tourism Council believe boundaries to be and it doesn't really even provide me with information as it relates specifically to the facts of this case.

*See Trial Transcript*, October 25, 2018, at 20. The Court once again found, based upon specific elements of Sgt. Mulligan's testimony (which the Trial Magistrate cited), that the incident did indeed occur in North Kingstown. *Id.* at 21-22. And so, he reaffirmed his prior ruling, and reimposed his prior sentence. *Id.* at 22-23.

## **F**

### **Second Review by the Appeals Panel.**

From this reinstatement of his previous conviction, Mr. Harrington appealed once more. On February 27, 2019, it was heard by an Appeals Panel composed of Administrative Magistrate Abbate (Chair), Chief Magistrate DiSandro, and Judge Almeida. *Decision of Appeals Panel*, April 30, 2019, at 1. Their unanimous, written decision, affirming the Trial Magistrate's ruling, was issued on April 30, 2019.

After recounting the travel of the case and providing an account of the hearing conducted by the Trial Magistrate on October 25, 2018, the Panel addressed Mr. Harrington's argument that the map demonstrated that the violation occurred in East Greenwich rather than North Kingstown. It did so in two ways.

*First*, the Panel found that the Trial Magistrate did not err in refusing to admit the second map, which was marked Defendant's B for Identification, because it was neither relevant nor properly authenticated. *Decision of Appeals Panel*, April 30, 2019, at 5. The Panel began this discussion by providing the following general summary of the applicability of the relevancy requirement to Traffic Tribunal trials:

Pursuant to Rule 15 Of the Traffic Tribunal Rules of Procedure, the Rhode Island Rules of Evidence govern "all proceedings before the Traffic Tribunal." Traffic Trib. R. P. 15(b). Rhode Island Rule of Evidence 402 provides that "all relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the [C]onstitution of Rhode Island, by act of [C]ongress, by the [G]eneral [L]aws of Rhode Island, by these rules, or by other rules applicable in the courts of this state." R.I. R. Evid. 402 (emphasis added). Relevant evidence is defined as "evidence having any tendency to make any fact that is of consequence to the

determination of the action more probable or less probable than it would be without the evidence.” R.I. R. Evid. 401. It is well-settled that “the admissibility of evidence is within the sound discretion of the trial justice.” *State v. Grayhurst*, 652 A.2d 491, 504 (R.I. 2004). When reviewing a trial justice’s or magistrate’s evidentiary determination, “we will not conclude that a trial justice abused his or her discretion as long as some grounds to support the decision appear in the record.” *Id.* at 505 (quoting *State v. Pena-Rojas*, 822 A.2d 921, 924 (R.I. 2003)).

*Decision of Appeals Panel*, April 30, 2019, at 5. Applying these rules to the case at hand, the Panel concluded that “Appellant did not provide an adequate foundation demonstrating the authenticity of Map B[,]” in light of the language printed on it, which stated — “We cannot guarantee complete authenticity.” *Id.* (citing R.I. R. Evidence 901 and *O’Connor v. Newport Hospital*, 111 A.3d 317, 323 (R.I. 2015)).

The Panel also affirmed the Trial Judge’s decision to accord Defendant’s Exhibit A little weight, concluding that, although it was admitted as a full exhibit, an adequate foundation had not been shown as to its authenticity either. *Id.* at 5-6 (citing R.I. R. Evidence 901 and *O’Connor*, 111 A.3d at 323). Here the Panel cited *State v. Greene*, 60 A.2d 711 (R.I.1948), for the principle that:

... maps illustrating the scenes of the commission of a crime and the relative location of streets or objects, *if shown to be reasonably accurate*, are admissible in evidence in order to enable the [fact-finder] properly to understand and apply the evidence to the particular case.

*Decision of Appeals Panel*, April 30, 2019, at 6 (*citing Greene*, 60 A.2d at 715) (Emphasis by the Panel). But, according to the Panel, here there was nothing to bolster the map’s authenticity other than Mr. Harrington’s own testimony. *Id.* (*citing Greene, id. and State v. Phannavong*, 21 A.3d 321, 324 (R.I. 2011) (finding that trial justice did not err in excluding defendant’s map because the document “lack[ed] even minimal indicia of reliability” as it was bolstered only by “defendant’s opinion that the map is an accurate depiction.”)). Therefore, the Appeals Panel found that the Trial Magistrate’s decision on this evidentiary issue was neither arbitrary nor an abuse of discretion. *Id.* at 6.

Accordingly, the members of the Panel held that the Trial Magistrate’s rulings during the *post*-remand hearing did not constitute error under the standards set forth in G.L. 1956 § 31-41.1-8.

## II Standard of Review

The standard of review which must be employed in this case is enumerated in subsection 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. 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, id* (*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.” *Id.* (*citing Environmental Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I.1993)).

### III

#### Applicable Law

For purposes of this opinion we need not review the law of the charge of Refusal to Submit to a Chemical Test under § 31-27-2.1, as we did in our previous opinion. *See* Part III-A of our January 17, 2018 opinion, at 15-18.

We also need not revisit our discussion of the law concerning the extra-territorial authority of municipal police officers, except to reiterate that, at the time of this offense, municipal officers were not empowered to enter into another municipality in order to make a traffic stop. It is this principle which makes the location of Sgt. Mulligan's stop a material issue.<sup>4</sup> For a more extended discussion of this topic, see Part III-B of our January 17, 2018 opinion, at 18-21.

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<sup>4</sup> I employ the past tense here advisedly. Section 12-7-19 was amended in 2016 to authorize close pursuit in situations where the officer making the incursion only has the right to make a stop. This change would seem to imply that all stops, including those for mere civil traffic violations, are now sufficient to justify close pursuit into a neighboring municipality. *See* P.L. 2016, ch. 474. But this amendment does not apply to the case at bar, which was charged and tried before the effective date of this amendment.



#### IV Analysis

In my view, the analysis of the Appeals Panel with respect to the admissibility and probative value of the maps presented by Mr. Harrington in this case is unimpeachable: the exhibits presented by Mr. Harrington were deeply flawed. And so, the Panel's decision to affirm the Trial Magistrate's rulings was obviously correct.

But, as the judicial officer who recommended remand, I believe a few more comments are appropriate. We remanded this case to give Mr. Harrington the *opportunity* to flesh out his assertion that he was cited in East Greenwich for a civil traffic violation that occurred in East Greenwich by a North Kingstown officer. We did not, as we could not, direct an outcome.

However, it has now become obvious that Appellant was not prepared to take advantage of the opportunity afforded him at the post-remand hearing; in retrospect, it appears that he did not fully understand the issue before the Court. Quite simply, he was under the impression that the maps would speak for themselves; but they do not.

The process that needed to be undertaken by Appellant was not particularly onerous or complex; so, let us state it here as simply as we can: the *first* step is to introduce a map of the area, by showing relevance and authentication, under the principles and doctrines cited by the Appeals Panel. *Quoted ante*, at 10-12. This he endeavored to do. But there was a *second* step, equally indispensable: he needed to present testimony identifying where, on the map, the violation occurred. And when that was done, then the witness could say to the fact-finder (*i.e.*, the Trial Magistrate) — “Look! See how the spot that has been marked on the map (where the incident occurred) is on the East Greenwich side of the line.” Here, step two was never even attempted by Mr. Harrington.<sup>5</sup>

Therefore, even if both maps had been introduced, and even if both maps were of such a provenance and quality that their authenticity and accuracy were unassailable, Mr. Harrington could not

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<sup>5</sup> Of course, the Trial Magistrate fully recognized this fact, as the State has pointed out in its Memorandum. *See Appellee’s Brief*, at 6-7 (quoting *Trial Transcript*, October 25, 2018, at 20, for Trial Magistrate’s comment that Exhibit A (the map which was admitted as a full exhibit) “... doesn’t really even provide me information as it relates specifically to the facts of this case.”).



