

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

**DISTRICT COURT
SIXTH DIVISION**

Jennifer Gross

:

v.

:

A.A. No. 14 - 0093

:

**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

Jennifer Gross	:	
	:	A.A. No. 2014 – 093
v.	:	(C.A. No. T13-077)
	:	(132-505-500379)
Town of Richmond	:	
(RITT Appeals Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Ms. Jennifer Gross urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed Magistrate Abbate’s verdict adjudicating her guilty of three moving violations — “Obedience to stop sign,” in violation of Gen. Laws 1956 § 31-20-9; “Places where overtaking prohibited,” in violation of Gen. Laws 1956 § 31-15-7; “Clearance for overtaking,” in violation of Gen. Laws 1956 § 31-15-6. 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.

A briefing schedule was issued by the Court; subsequently, on August 12, 2014, the Appellant submitted her memorandum for our review; the Town of Richmond's Memorandum of Law was received by the Court on September 4, 2014. And, after a review of the entire record I find that — for the reasons explained below — the decision of the appeals panel should be affirmed.

I

FACTS & TRAVEL OF THE CASE

The facts of the incident in which Ms. Gross was cited for the moving violations enumerated above by Sergeant Michael Lewing of the Richmond Police Department are succinctly stated in the decision of the appeals panel:

... the Officer testified that on September 25, 2013, he was traveling westbound on Route 138 and approaching the intersection with Route 122 when he observed Appellant's motor vehicle proceed onto Route 138 and accelerate to a high rate of speed. (Tr. at 2.) Thereafter, the Sergeant testified that he observed Appellant's vehicle fail to stop at the stop sign at the intersection of Route 138 and Route 122. Id. Afterwards, the Sergeant indicated that he observed Appellant's vehicle accelerate to a high speed and pass a vehicle in a no passing zone. Id. In addition, the Sergeant noted that there was clearly not enough room for Appellant to safely pass the other vehicle. Id. The Sergeant went on to describe that Appellant's actions caused a vehicle traveling eastbound to slam on its breaks and pull into the breakdown lane. Id. Moreover, the Sergeant explained that the vehicle that was being overtaken by Appellant's vehicle had to move into the breakdown lane to give way to Appellant's vehicle. Id.

Furthermore, the trial magistrate inquired whether the Sergeant was able to clearly see the stop sign and the trial

magistrate also requested that the Sergeant expand on what he observed. (Tr. at 2.) In response, the Sergeant testified that the intersection of Route 138 and Route 122 is in front of the Richmond Elementary school. Id. Moreover, the Sergeant explained that he had a clear and unobstructed view of Appellant fail to stop at Route 122, at the stop sign, before proceeding onto Route 138. (Tr. at 3.)

Decision of Panel, June 3, 2014, at 1-2.

Claimant was cited for the three charges listed above and entered pleas of not guilty at her arraignment on October 22, 2013; the matter proceeded to trial before Magistrate Joseph Abbate on November 12, 2013. Sergeant Lewing testified consistently with the narrative presented above. On cross-examination, he indicated that the place designated on the citation, the intersection of Meadowbrook Road and Kingstown Road, referred to the place where she was stopped, not the site where the offenses were committed. Decision of Appeals Panel, at 2-3 citing Trial Transcript, at 5.

Appellant testified and introduced photographs of the roadway and landmarks upon it. Decision of Appeals Panel, at 3 citing Trial Transcript, at 7 and Defendant's Exhibits A, B, C, and D.

At the conclusion of the evidence, the trial magistrate found that the officer had proven the charges to the standard of clear and convincing evidence. Decision of Appeals Panel, at 3 citing Trial Transcript, at 7-8. Ms.

Gross was fined \$85.00 on each charge (and \$35.00 court costs) Decision of Appeals Panel, at 3 citing Trial Transcript, at 8. See also Traffic Summons Judgment Card (November 12, 2013).

Aggrieved by this decision, Ms. Gross filed a timely appeal. On February 26, 2014, her appeal was heard by an RITT appellate panel composed of: Chief Magistrate William Guglietta (Chair), Judge Edward Parker, and Magistrate Dominic DiSandro. In a decision dated June 3, 2014, the appeals panel affirmed the verdicts of the trial judge. On June 26, 2014, Ms. Gross filed a further appeal to the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9.

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.’ ”¹ 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.² 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.³

¹ 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).

² 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]).

³ Link, 633 A.2d at 1348 citing Environmental Scientific Corporation v. Durfee, 621 A.2d 200, 208 (R.I. 1993).

III ANALYSIS

On appeal, this Court considers whether the appeals panel erred when it found that Ms. Gross's convictions were not clearly erroneous in light of the reliable, probative, and substantial evidence of record.

The trial magistrate found Sergeant Lewing's testimony to be "credible" — satisfying the state's burden proof of clear and convincing evidence. Decision of Appeals Panel, at 3 citing Trial Transcript, at 7-8. The appeals panel further noted that it was not able to "assess the credibility of witnesses and may not substitute our judgment for that of the trial [magistrate] concerning the weight of the evidence on questions of fact." Decision of Appeals Panel, at 5 citing Environmental Scientific, 621 A.2d at 208.

In this appeal Ms. Gross urges, as she did before the appeals panel, that the trial judge erred by finding the officer's testimony persuasive. See Appellant's Memorandum, at 3. She also argues that she is a good driver with a very good driving record. Appellant's Memorandum, at 3-4. While she agreed she may not have stopped for the requisite length of time, she was adamant regarding her innocence of the passing violations. Appellant's Memorandum, at 3-4.

And — as the Town states in its Memorandum — when hearing appeals

pursuant to § 31-41.1-9 (which is essentially the Administrative Procedures Act standard enumerated in Gen. Laws 1956 § 42-35-15(g)), this Court's role is limited. See "Standard of Review," ante, at 4-5. Moreover, in reviewing cases from the RITT appellate panel, this Court's role is doubly limited: for our task in this case is to decide whether the panel was "clearly erroneous" when it found Magistrate Abbate's adjudication of Ms. Gross was not "clearly erroneous" — in other words, we perform a limited review of the panel's limited review. See Gen. Laws 1956 § 31-41.1-8(f) and Gen. Laws 1956 § 31-41.1-9(d). See also Link, 633 A.2d at 1348 (opining that the District Court's role was to review the trial record to determine if the decision was supported by competent evidence). Whether it was highly persuasive or not, Sergeant Lewing's testimony was competent evidence upon which the trial magistrate had every right to rely. As a result, this Court has no basis upon which to set aside the appeals panel's affirmance of Magistrate Abbate's decision finding Ms. Gross guilty on the charges specified in the instant citation.

IV
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