

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT
SIXTH DIVISION

JORGE VARGAS

VS.

A.A. NO. 03-135

CITY OF WOONSOCKET

JUDGMENT

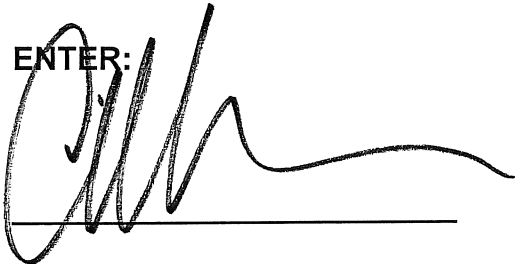
This cause came before DeRobbio, C.J. on an appeal from the Rhode Island Traffic Tribunal Appeals Panel, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Traffic Tribunal Appeals Panel is hereby reversed. The matter is remanded to the Municipal Court of Woonsocket for a new trial, at which time there shall be a complete record of the proceedings, including motions and arguments thereon.

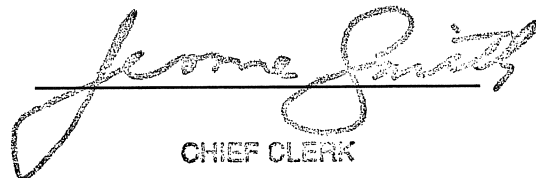
Dated at Providence, Rhode Island, this 22nd day of June, 2004.

ENTER:



A handwritten signature in black ink, appearing to be 'J. DeRobbio', written over a horizontal line.

BY ORDER:



A handwritten signature in black ink, appearing to be 'James J. DeRobbio', written over a horizontal line.

CHIEF CLERK

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT
SIXTH DIVISION

JORGE VARGAS

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V.

A.A. 03-135

CITY OF WOONSOCKET

DECISION

DEROBBIO, C. J. This matter is before the Court on the complaint of Jorge Vargas filed pursuant to Rhode Island General Laws § 31-41.1-9, seeking judicial review of a final decision rendered by the respondent, Appellate Panel of the Rhode Island Traffic Tribunal, which upheld the Decision of the Municipal Court Judge Lloyd Robert Gariepy.

The Trial Judge found the appellant guilty of Section 31-15-11, laned roadway violation, and a penalty was imposed.

The Traffic Tribunal Appeals Panel determined that the decision of the Municipal Court Judge was a proper determination of the facts and a proper application of the law.

Thereafter, Jorge Vargas filed a complaint for judicial review in the Rhode Island District Court.

The standard of review is provided by Rhode Island General Laws 31-41.1-9(d):

- (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 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 proceeding 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.

On questions of fact, 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 Rhode Island General Laws Section 42-35-15(g)(5). The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. Cahoone v. Board of

Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

The Court, after a review of the entire record, finds the following.

That the standard of review of the appeals panel is controlled by section 31-41.1-8 which provides:

- (f) **Standard of review.** The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:
- (1) In violation of constitutional or statutory provisions; in excess of the statutory authority of the judge or magistrate;
 - (2) Made upon unlawful procedure;
 - (3) Affected by other error of law;
 - (4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The standard of review that the District Court must apply to the findings, conclusions of law and decision of the Appeals Panel of the Traffic Tribunal are the same standards that the Appeals Panel must apply to the Trial Judge's/Magistrate's findings, conclusions of law and decision.

The Appeals Panel has made determinations based on the record and arguments presented to them.

On reviewing the entire record, the Court must determine if the Appeals Panel's decision was improper in view of the evidence and record it reviews.

The Court reviewed the entire record of the Trial Judge and the Appeals Panel.

The appellant before this Court argues that the recording of the proceeding before the Municipal Court was incomplete, and argues as follows:

“As the Appellate Panel notes, Mr. Vargas pressed before other argument a motion to dismiss based upon the incomplete record. In essence, the recording done at the municipal level is indeed incomplete. There were motions made before the trial itself and there was also a motion to dismiss made at the conclusion of the city’s base. These were not recorded. The fact is, the Appellate Panel could not determine whether or not argument was made or the issue of Lieutenant Picard’s right to issue a citation was presented to the trial judge for decision. There is absolutely no records of the motions made before trial or the motion to dismiss itself. If one listens to the tape, the recorder stopped the tape when the motion to dismiss began and only began recording again at the conclusion of the prosecutor’s argument. The arguments made were not recorded for the record. For that reason as Mr. Vargas argued below, the transcript is fatally flawed. Although appellant now argues from memory alone, it is his recollection that the right of Lieutenant Picard to issue the citation was raised particularly at the conclusion of the city’s case. The city did not record the arguments. The Appellate Division themselves concede that it was improper to have a citation issue by a police officer who was not a witness or present at the scene. The Appellate Panel’s decision in that regard is based solely upon the appellant’s failure to raise that issue. Given the defective nature of the recording, which excluded in essence all argument of counsel both pre and post trial, the Appellate Panel had no basis upon which to rule that the argument was not made. The decision of the Appellate Panel should be reversed for that reason.”

The State of Rhode Island and the municipal courts of the various cities and towns have entered into a compact pursuant to Title 8 – Chapter 18 of the Rhode Island General Laws which provides as follows:

8-18-1. Legislative findings – It is hereby found and declared as follows:

(1) The general assembly has authorized the establishment of municipal courts, pursuant to title 45, in order to promote the

health and safety of the residents of each city or town and to insure compliance with any and all local ordinances.

(2) In furtherance of this finding there is hereby created a compact between the state courts and agencies and the local municipal courts to establish and define jurisdictional responsibility for law enforcement powers within the state.

A review of the record demonstrates that the arguments on motions were not recorded.

Section 8-18-4(e) provides:

“(e) All courts shall be courts of record, shall tape record all sessions, maintain dockets, and adjudicate all violations on the summonses.”

The record is incomplete and limits this Court in making a proper decision based upon the findings, reasons for such findings and the proper application of the law that governs.

It is uncontradicted that the record does not contain arguments made on motions to dismiss prior to and during trial.

Accordingly, based upon the foregoing, the decision of the Traffic Tribunal Appeals Panel is hereby reversed. The matter is remanded to the Municipal Court of Woonsocket for a new trial, at which time there shall be a complete record of the proceedings, including motions and arguments thereon.