STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Kenton Smith	:	
	:	
v.	:	**A.A. No. 2018 – 126**
	:	
State of Rhode Island	:	
(RITT Appeals Panel)	:	

O R D E R

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

Entered as an Order of this Court at Providence on this 25th day of March, 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

Kenton Smith	:	
	:	**A.A. No. 2018 – 126**
v.	:	**(C.A. No. M17-0006)**
	:	**(16-407-502498)**
State of Rhode Island	:	
(RITT Appeals Panel)	:	

F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this proceeding, Mr. Kenton Smith 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 a moving violation: "Prima Facie Limits" (*i.e.,* speeding) in violation of G.L. 1956 § 31-14-2. Jurisdiction for the instant appeal is vested in the District Court by G.L. 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 G.L. 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 neither clearly erroneous nor contrary to law — and should therefore be AFFIRMED; I so recommend.

I

Facts and Travel of the Case

A

The Citation and the Trial

The facts of the incident in which Mr. Smith was cited for speeding by Officer Rowe of the North Providence Police Department on November 8, 2016 are sufficiently stated in the decision of the panel. The core of the incident is described as follows:

> …
> Officer Rowe testified that on November 8, 2016, he was stationed at a fixed traffic post located "in the parking lot of Sheers Styles, the hair style place right on the [P]rovidence line on Charles Street." [*Trial Transcript*,] at 4. Officer Rowe explained that while he was parked at that location, he "was operating a radar [unit]" to obtain the moving speed of passing vehicles. *Id*. During that time, Officer Rowe observed a black Lexus traveling at a registered radar unit speed of thirty-five miles per hour, which he obtained using the radar unit. *Id*. at 3. Officer Rowe stated that the area in which the vehicle was travelling was a posted twenty-five miles per hour zone. *Id*. After obtaining the vehicle's speed, he conducted a motor vehicle stop and subsequently issued Appellant a citation for violating § 31-14-2. *Id*. at 5-6. Officer Rowe noted that during his interaction with Appellant, Appellant was irate and exited his vehicle twice, despite Officer Rowe's instructions to remain inside the vehicle. *Id*. at 6, 12.

Decision of Panel, April 12, 2018, at 1-2.

Appellant was cited for speeding and entered a plea of not guilty at his arraignment on December 19, 2016. The matter proceeded to trial before Judge Valentino Lombardi of the North Providence Municipal Court on

February 13, 2017.

At trial, the officer testified as to the salient facts of the traffic stop in a manner consistent with the foregoing narrative. But much of the officer's testimony was taken up with setting out his credentials and with explaining how the radar unit works:

> Officer Rowe went on to testify about his training and experience using a radar unit, stating that he had "been certified in radar use at the Rhode Island Police Academy." *Id.* at 4. He indicated that the radar unit had been calibrated and tested for accuracy that day. *Id.* at 4, 9. Officer Rowe presented the radar unit's certification as evidence, which the Trial Judge admitted. *Id.* at 5. Moreover, Officer Rowe added that he had personally tested the radar unit that day and attested to the fact that the radar unit was in "good working order." *Id.*

Decision of Panel, at 2. On cross-examination, Mr. Smith questioned Officer Rowe about the location of the stop, which was listed on the summons as 20 Hurdis Street. *Id.* (citing *Trial Transcript,* at 8). Officer Rowe confirmed this to be the location of the stop. *Id.* (citing *Trial Transcript,* at 8-9). Mr. Smith also inquired about the reliability of the radar unit. *Id.* (citing *Trial Transcript,* at 10). The officer responded that an error was possible but that the reading (of 35 miles per hour) was consistent with his own estimation of Mr. Smith's speed. *Id.* He added that the unit had been calibrated within the last six months and that it had shown no signs of failure or inaccuracy. *Id.* at 2-3 (citing *Trial Transcript,* at 11).

Mr. Smith also testified. *Decision of Panel,* at 3 (citing *Trial*

Transcript, at 18). When he testified that, when he was stopped, he pulled into a parking lot on Josephine Street, *not* Hurdis Street, Officer Rowe admitted his error. *Id*. Appellant also denied he had been irate during the incident. *Decision of Panel,* at 3 (citing *Trial Transcript,* at 19).

The Court then rendered its decision, finding Mr. Smith guilty on the speeding citation. *Decision of Panel,* at 3 (citing *Trial Transcript,* at 27). Doing so, the Court found that there was no evidence that the radar unit was not working correctly. *Id*. A fine of $96.00 (plus costs) was imposed. *Trial Transcript,* at 27 and Judgment Card, in *Electronic Record*, at 80.

B

Proceedings before the Appeals Panel

Aggrieved by this decision, Mr. Smith filed an immediate appeal. On May 31, 2017 his appeal was heard by an RITT appeals panel composed of Magistrates Goulart (Chair), Abbate, and Kruse Weller. Mr. Smith did not appear before the panel and so the members decided to issue a written decision without oral argument. And, in a decision dated April 12, 2018, the appeals panel rejected both of Mr. Smith's arguments — (1) that the radar unit used by the officer could have malfunctioned when it calculated the speed of Appellant's vehicle (*Decision of Appeals Panel,* at 5-6) and (2) that the procedures used at trial violated his right to due process (*Id*. at 7-8).[1] We

[1] In his absence, the appeals panel apparently drew these issues from

shall address these issues *seriatim*.

1

The Speeding Charge — The Reliability of the Radar Unit

The appeals panel began its analysis of Mr. Smith's arguments regarding the reliability of the radar unit used by Officer Rowe by noting that our Supreme Court, in *State v. Sprague,* 113 R.I. 351, 322 A.2d 36 (R.I.1974), declared that radar-generated speed readings are admissible if the prosecution (a) shows that "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method" and (b) presents "testimony setting forth [the Officer's] training and experience in the use of a radar unit." *Decision of Appeals Panel,* April 12, 2018, at 5 (quoting *Sprague,* 113 R.I. at 357, 322 A.2d at 39-40). The appeals panel then summarized the pertinent portion of Officer Rowe's testimony:

> At trial, Officer Rowe testified to the "operational efficiency" of the radar unit that he used to determine the speed of Appellant's vehicle. (Tr. at 4-5.) Officer Rowe stated that the radar unit was calibrated within the past six months, and a radar certification sheet was submitted as evidence. *Id.* at 4-5. Officer Rowe also stated that he personally tested the radar unit for accuracy "at the beginning of [his] traffic post" on November 8, 2016. *Id.* at 11. Moreover, Officer Rowe testified about his training and experience operating a radar unit, stating that he had "been certified in radar use at the Rhode Island Police Academy." *Id.* at 4. In his decision, the Trial Judge accepted Officer Rowe's testimony as his findings of fact.

---

arguments Mr. Smith made during his trial, as well as his Notice of Appeal. *See Electronic Record,* at 75.

Id. at 27.

Decision of Appeals Panel, at 5-6. The panel noted that it was not permitted to substitute its judgment for that of the trial judge on questions of fact, particularly because its members do not have the opportunity to observe the live testimony of the witness. *Decision of Appeals Panel,* at 6 (quoting *Link [v. State],* 633 A.2d [1345], 1348 [(R.I. 1993)] (citing *[Liberty Mutual Ins. Co. v.] Janes,* 586 A.2d [536,] 537 [(R.I. 1991))] *and A. Salvati Masonry Inc. v. Andreozzi,* 151 A.3d 745, 749 (R.I. 2017)). The panel therefore found that it had no basis upon which to disturb the trial judge's finding that Officer Rowe's testimony satisfied both prongs of the *Sprague* test. *Decision of Appeals Panel,* at 6. And so, it found that Mr. Smith's conviction on the speeding charge was supported by competent evidence of record. *Id*. (quoting *Link,* 633 A.2d at 1348 (citing *Environmental Scientific Corp. v. Durfee,* 621 A.2d 200, 208 (R.I.1993))).

2

Appellant's Due Process Claim

Mr. Smith's due process claim rested on the fact, *admitted* by the officer at trial, that the citation he was given misstated the location of the stop. *Decision of Appeals Panel,* at 7. The trial judge sustained the violation, notwithstanding this error, because it found the error to concern "a nonmaterial fact." *Id.* (citing *Trial Transcript,* at 7).

The appeals panel began its discussion of this question by noting

that Rule 3(d) of the Traffic Tribunal Rules of Procedure declares that:

> [a] summons which provides the defendant and the court with adequate notice of the violation being charged shall be sufficient if the violation is charged by using the name given to the violation by statute.

And Rule 3(d) further provides that:

> [a]n error or omission in the summons shall not be grounds … for dismissal of the charged violation(s), or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice."

The appeals panel observed that the trial judge decided that the error (on the summons) did not mislead Mr. Smith to his prejudice. *Decision of Appeals Panel,* at 8 (citing *Trial Transcript,* at 27). The panel then concluded that this ruling did not constitute (legal) error. *Id*. It therefore found that Mr. Smith's due process rights were not prejudiced by the inaccuracy on the summons. *Id*.

C

Proceedings before the District Court

On July 10, 2018, Mr. Smith filed a claim for judicial review by the Sixth Division District Court pursuant to G.L. 1956 § 31-41.1-9. The Court set a briefing schedule. Concise, but helpful memoranda have been received from both parties. We shall summarize the arguments made in each memorandum *post*.

II

STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in G.L. 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 G.L. 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.' " *Guarino v. Department of Social Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980) (citing G.L. 1956 § 42-35-15(g)(5)).Thus, the Court will not substitute its judgment for that of the

panel 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 panel will be upheld even though a reasonable mind might have reached a contrary result. *Id*. at 506-507, 246 A.2d at 215.

However, when reviewing the factual determinations of the appeals panel, this Court's role is limited; indeed, it is *doubly* limited — our duty in this case is to decide whether the panel was "clearly erroneous" when it found Judge Lombardi's adjudication of Mr. Smith was not "clearly erroneous" — a limited review of a limited review. *See* G.L. 1956 § 31-41.1-8(f) *and* G.L. 1956 § 31-41.1-9(d) (quoted *ante* at 8). *Also Link v. State,* 633 A.2d 1345, 1348 (R.I. 1993) (opining, construing prior law, which was also "substantively identical" to the APA procedure, that the District Court's role was to review the trial record to determine if the decision was supported by competent evidence).

III
APPLICABLE LAW

In the instant matter the Appellant was charged with violating section 31-14-2 of the General Laws which states in pertinent part:

> **31-14-2 Prima facie limits.** — Where no special hazard exists that requires lower speed for compliance with § 31-14-1, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this title shall be lawful, but any speed in excess of the limits specified in this section or established as authorized in this title shall be prima facie evidence that

> the speed is not reasonable or prudent and that it is unlawful …

IV
ANALYSIS
A
Positions of the Parties
1
Mr. Smith

In his two-page Memorandum of Law, Mr. Smith touches briefly on a number of points: *first,* that he missed the appeals panel hearing in November of 2016 because he was delayed for about twenty minutes by an accident on the highway (*Appellant's Memorandum,* at 1); *second,* that, while he was awaiting the decision of the appeals panel, he checked with the Clerk's Office of the Traffic Tribunal's several times, learning that no decision had yet been issued — in sum, he believed the delay he endured waiting for the decision was unfair (*Id.*); *third,* that he received the decision in June (of 2018) because it had been sent to an old address and so he lost his appeal time (*Id.*); *fourth,* on the merits of the case, he said his speed may have fluctuated to no more than five miles (per hour) over the speed limit (*Id.* at 2); *fifth,* there were discrepancies on the ticket (*Id.*); *sixth,* he was traveling the same speed he usually does (*Id.*); *seventh,* that he could not have been going more than ten miles per hour over the speed limit because the traffic cameras do not record speeders doing less than 10 mph over the limit; *and eighth*, that

his license was suspended because the judgment was sent to the wrong address and he wished the reinstatement fee to be waived (*Id.*).

2

The Town's Response

The Town's Memorandum in Response, also two pages in length, was in fact shorter than Appellant's. After summing up the situation, the Town urged:

> Quite succinctly, this Court should deny the pending appeal to this District Court because there have been no legal reasons given to substantiate Defendant's appeal (and no legal arguments to which the Town can reply). Again, this appears to simply be a plea for mercy without any distinguishable reason for the Court to grant such mercy. As such, this Court should deny the instant appeal and sustain the charge.

Town's Memorandum of Law, at 2.

B

Discussion

At the outset, it must be noted that Appellant, in the Memorandum he submitted to this Court, did not focus on the issues decided by the appeals panel; instead, he presents an aggregation of complaints, most of which were not evaluated by the record appeals panel below.[2]

---

[2] Note that I did not assert that his assertions were false, just that they were not discussed during the proceedings at the Traffic Tribunal.

For instance, Mr. Smith avers that he was delayed by a traffic jam on the day of his appeals panel hearing. However, for that claim we only have Mr. Smith's

It is notable that Mr. Smith concedes in his memorandum that he could have been driving up to five miles per hour over the speed limit. That admission is sufficient, *per se,* to overrule any and all factual issues Appellant has raised.

I further find that the appeals panel properly applied the law pertinent to the resolution of this case, particularly the *Sprague* case (as to the speeding issue) and Rule 3(d) (regarding the error on the summons). As to the latter issue, the panel correctly found that prejudice must be shown for an error in the citation to justify dismissal. And, to my reading of the transcript which is contained in the record, none was even alleged by Mr. Smith.[3]

---

statement. If he had brought a motion for a rehearing (before the appeals panel), he could have submitted an affidavit in support of his motion (or been sworn-in to testify as to the truth of this assertion at the hearing on the motion); this would have prompted the hearing judge/magistrate to make a finding as to the truth of the statement. We don't have that here.

[3] It is also probably worth noting that the instant appeal was filed approximately 90 days after the panel's opinion was issued on April 12, 2018 — about 60 days *after the appeal period expired.* However, we need not reach that issue, since, for the reasons I have already identified, Mr. Smith's appeal must be found wanting in legal merit.

V
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appeals panel was made upon lawful procedure and was not affected by error of law. G.L. 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

March 25, 2019