

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

EMIL CARSETTI

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**C.A. No. T16-0032
16205500458**

DECISION

PER CURIAM: Before this Panel on January 18, 2017—Magistrate Abbate (Chair), Magistrate Kruse Weller, and Judge Almeida, sitting—is Emil Carsetti’s (Appellant) appeal from a decision of Magistrate DiSandro, III (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits” (Speeding). The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On November 29, 2016, the Trial Magistrate conducted a trial of Appellant’s alleged violation of § 31-14-2, “Prima facie limits,” for speeding between one and ten miles over the speed limit. (Tr. at 1.) Captain Craig Barone (Captain Barone) of the West Greenwich Police Department issued Appellant a citation for the violation, on September 29, 2016. *Id.* at 3.

At trial, Captain Barone testified that on November 29, 2016, he was driving in a clearly marked police cruiser on Route 3 during a routine patrol. *Id.* While driving, he witnessed a car one-quarter of a mile away moving at “a high rate of speed.” *Id.* He activated the onboard radar moving unit in his cruiser and determined that the car was moving at sixty-four miles per hour in a forty-five miles per hour zone. *Id.* at 4. Officer Barone noted that there were no other vehicles

in the area at the time. *Id.* at 5. Captain Barone then conducted a vehicle stop without incident and identified Appellant as the operator of the vehicle. *Id.* at 3. Captain Barone then issued Appellant a citation for speeding between one and ten miles over the posted speed limit and failing to have an inspection sticker. *Id.* at 4. He also testified that his radar was in perfect working order and that he “checked for accuracy before and after [his] patrol shift.” *Id.*

During cross-examination, Appellant questioned Captain Barone about whether he had a laptop in his vehicle and if he knew how to use the device. *Id.* at 6. Captain Barone confirmed that he did. *Id.* Next, Appellant asked whether the “Fusion” network on the laptop showed any indication that Appellant was driving the vehicle before he was stopped. *Id.* at 7. The Appellant pursued a line of questioning intending to show that “every time [Appellant] [is] in the area, there’s a red flag that pops up on that laptop,” adding that “if that laptop was on, you would have known that Emil Carsetti [Appellant] was coming up on it.” *Id.* at 8. The Appellant furthered his theory by stating that police cruiser laptops sound a beep whenever he is in the vicinity. *Id.* Captain Barone testified there were no devices on Appellant’s person or vehicle that indicate his presence to nearby police officers. *Id.* at 9. The Appellant then stated: “That is not true at all. When they come by me, this is what they do. They look all the time. It beeps. There’s three red flags that come up.” *Id.*

At that point, the Trial Magistrate asked Appellant whether he “maintain[ed] that [he] [was] not speeding at the time?” *Id.* at 10. The Appellant replied: “No, I was coming down a hill, Judge.” *Id.* The Appellant added that “[y]ou come down that hill . . . you have to put your brakes on that’s how steep the hill was.” *Id.* at 11.

The Appellant continued his cross-examination of Captain Barone, asking if he was parked when he observed Appellant driving. *Id.* at 11. Captain Barone denied being parked

before conducting the stop of Appellant's vehicle and testified that he completed a u-turn to complete the traffic stop. *Id.* at 18. The Appellant rebutted this claim, stating that Captain Barone "was at the bottom of the hill with his lights off with the car parked right here. I came down, went right by him, and went up the hill. Then he put his lights on and come [sic] after me. Don't tell me you wasn't [sic] parked. You was [sic] parked." *Id.* at 13. The Appellant went on to argue that he was entrapped by Captain Barone. *Id.* at 14.

The Trial Magistrate then attempted to once again clarify whether Appellant "maintain[ed] that at no time when [he] w[as] going down the hill w[as] he speeding?" *Id.* at 15. The Appellant answered: "No, I didn't say that, Judge." *Id.* The Appellant again stated "I was coming down a hill[]" and that "everybody coming down that hill is going ten miles over where they are" *Id.* at 16. The Trial Magistrate then responded, "Mr. Carsetti, even if I accept your statement, you did under oath tell me that, yeah, I'm not surprised if I was doing ten over." *Id.* at 20.

At the conclusion of trial, the Trial Magistrate found Captain Barone's testimony to be credible and sustained the violation. *Id.* The charge of driving without an inspection sticker was dismissed. The Appellant filed a timely appeal. Forthwith is this Panel's decision.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

"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 remand the case for further proceedings or

reverse or 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;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(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.”

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that the Trial Magistrate made his decision “in violation of constitutional . . . provisions.” Sec. 31-41.1-8(f)(1). Appellant also argues that the Trial

Magistrate’s decision was “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record” and “[a]rbitrary or capricious or characterized by abuse of discretion.” Sec. 31-41.1-8(f)(5, 6). Specifically, Appellant asserts: (1) the Trial Magistrate forced him to testify during his trial; (2) he was not afforded an opportunity to obtain counsel; and (3) he was not permitted to introduce evidence during oral argument on this appeal. This panel will address each argument *in seriatim*.

A

Compelled Testimony

First, Appellant contends that the Trial Magistrate’s decision was made in violation of statutory and constitutional provisions because the Trial Magistrate compelled Appellant to testify at trial. The Rhode Island Supreme Court has stated that “[t]he Fifth Amendment privilege against self-incrimination ‘may properly be invoked in a civil proceeding regardless of whether there is a pending criminal matter arising out of the same set of factual circumstances.’” *In re Rosalie H.*, 889 A.2d 199, 206 (R.I. 2006) (quoting *Tona, Inc. v. Evans*, 590 A.2d 873, 875 (R.I. 1991)). However, the protection afforded by the Fifth Amendment “must be confined to instances where the witness has reasonable cause to apprehend danger from a direct answer.” *Hoffman v. United States*, 341 U.S. 479, 486 (1951) (citing *Mason v. United States*, 1917, 244 U.S. 362, 365 (1917)).

During his cross-examination of Captain Barone, Appellant presented the proposition that Captain Barone initiated the traffic stop of Appellant’s vehicle because of an alert—transmitted through Appellant’s person—that appears on the computer systems used in police cruisers when Appellant is approaching. (Tr. at 9-10.) After hearing Appellant’s theory, the Trial Magistrate, in an apparent attempt to clarify Appellant’s implied admission of speeding, asked Appellant if

he still maintained that he was not speeding; to which Appellant replied, “[n]o. I was coming down a hill, Judge.” *Id.* at 10. The Appellant went on to claim that because Captain Barone’s knew Appellant was approaching, he parked his cruiser at the bottom of the hill so that he could stop Appellant’s vehicle. *Id.* at 14 (“That’s why I keep saying I was [being] tracked. It’s like they were waiting for me to come down that hill.”) Again, after Appellant implied that the reason for the stop was not because of a speeding violation, the Trial Magistrate asked, “[b]ut you maintain that at no time when you were going down the hill were you speeding?” *Id.* at 15. The Appellant responded, “[n]o, I didn’t say that, Judge.”¹ *Id.*

This Panel need not consider whether Appellant’s Fifth Amendment right against self-incrimination was violated by the Trial Magistrate as the United States Supreme Court has stated that a person may exercise their Fifth Amendment right in any situation “where the answers might incriminate him in future criminal proceedings.” *Allen v. Illinois*, 478 U.S. 364, 368 (1986) (quoting *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984)). The Appellant’s trial involved a speeding violation, which is a civil offense that cannot foreseeably result in a future criminal proceeding. *See* § 8-8.2-1(a); *Allen*, 478 U.S. at 368. Moreover, Appellant did not argue or provide any evidence suggesting that he feared criminal prosecution resulting from his testimony during trial. *See Hoffman*, 341 U.S. at 486.

¹ At the beginning of Appellant’s trial, the Trial Magistrate instructed Appellant that “the way this works is that the officer that issued you the ticket will testify first and then you have the right to ask him any questions or clarification and then you have the right to present your side of the story.” (Tr. at 3.) During Appellant’s cross-examination of Captain Barone, the Trial Magistrate interrupted Appellant to ensure that he limited himself to only asking questions on cross-examination. *Id.* at 6. The Trial Magistrate also interjected to clarify Appellant’s questions to Captain Barone several times. *Id.* at 9. During these interactions, it is clear that the Trial Magistrate was attempting to maintain proper trial procedure and prevent Appellant from eliciting irrelevant testimony. *Id.* at 10; *see also, Riccardi v. Rivers*, 688 A.2d 302, 304 (R.I. 1997) (explaining “the trial justice is responsible at all times for maintaining appropriate decorum in his or her courtroom”).

After a thorough review of the record, it is evident that the Trial Magistrate inquired as to whether Appellant maintained that he was not speeding in order to clarify Appellant's contradictory statements. (Tr. at 10, 15.) Initially, Appellant plead not guilty to the charged speeding violation; however, Appellant indicated during trial that he believed he was stopped for a reason unrelated to speed and that he did not maintain that he was not speeding as he was travelling down the hill. *Id.* Based on Appellant's apparent contradictions within the record, this Panel finds that the Trial Magistrate's questions were intended to clarify the issues at trial. *See* Tr. at 9. Therefore, the Trial Magistrate's did not compel incriminating testimony from Appellant. *See Hoffman*, 341 U.S. at 486. Accordingly, the Trial Magistrate's decision did not violate any constitutional or statutory provisions. Sec. 31-41.1-8(f)(1).

B

Right to an Attorney at Rhode Island Traffic Tribunal Trial

Next, Appellant briefly argued that he did not have legal counsel during his trial. Rhode Island Traffic Tribunal Rules of Procedure 6(a) states: "Because a defendant is before the court for a civil violation(s), the defendant is not entitled to appointed counsel but has the option to retain private counsel." Traffic Trib. R. P. 6(a). As mentioned, a speeding violation under § 31-14-2 is not a criminal offense, but a civil violation. Traffic Trib. R. P. 6(a). Our Supreme Court has stated that in the civil context, no party has "a constitutional right to counsel." *Bryant v. Wall*, 896 A.2d 704, 708 (R.I. 2006) (citing *Murray v. Giarratano*, 492 U.S. 1, 8 (1989)) (citations omitted). Accordingly, Appellant was not entitled to legal counsel at trial; therefore, his argument is without merit. *See* Traffic Trib. R. P. 6(a); *Bryant*, 896 A.2d at 708. As a result, this Panel finds that the Trial Magistrate's decision was not "in violation of constitutional or statutory provisions" or procedure. Sec. 31-41.1-8(f)(1).

C

Presenting New Evidence to an Appeals Panel

Finally, Appellant attempted to present new evidence during his appeal pertaining to the facts of his violation. Our Supreme Court has held that reviews by an Appeals Panel are “confined to a reading of the record.” *Link*, 633 A.2d at 1348. Rhode Island law requires that an Appeals Panel “not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact.” Sec. 31-41.1-8(f). An appellant may not introduce new evidence during an appeal if doing so would require that the Appeals Panel reconsider questions of fact. *See id.*

During oral argument, Appellant attempted to introduce evidence that was not in the record for this Panel’s consideration. The restrictions on adjudicating new evidence prevent this Panel from considering evidence not contained within the record. *Id.*

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate’s decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The Trial Magistrate’s decision was not made “[i]n violation of constitutional or statutory provisions,” nor was it “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violations are sustained.

ENTERED:

Magistrate Joseph A. Abbate (Chair)

Magistrate Erika Kruse Weller

Associate Judge Lillian M. Almeida

DATE: _____