

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF WEST WARWICK

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v.

C.A. No. T13-0046  
13204500930

NEIL MEDEIROS

**DECISION**

**PER CURIAM:** Before this Panel on August 28, 2013—Magistrate DiSandro (Chair, presiding), Magistrate Noonan, and Magistrate Abbate, sitting—is Neil Medeiros’ (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On May 9, 2013, a police officer of the West Warwick Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on June 20, 2013.

At trial, the Officer testified that shortly before the stop, he was at a fixed traffic post at 300 Wakefield Street in the town of West Warwick. (Tr. at 2.) Thereafter, the Officer stated that he observed a Mitsubishi traveling towards him at a high rate of speed and then aimed his radar unit at the vehicle. Id. The handheld radar unit determined that Appellant’s motor vehicle was traveling thirty-eight (38) miles per hour (mph) in a twenty-five (25) mph area. Id. The Officer noted that the handheld radar unit was calibrated before and after his shift on the day of the stop

and the Officer had received training in the use of radar units at the Rhode Island Municipal Police Academy. Id.

After completion of the Officer's testimony, the Appellant then testified on his own behalf, stating, "I'd like to say that I was not speeding and he didn't even know how fast I was going because he wrote me two tickets himself, he didn't know how fast I was going." (Tr. at 4.) In response to the Appellant's testimony, Magistrate Goulart asked the Officer, "... did you initially write [Appellant] a ticket showing him some consideration and then based on his lack of cooperation you wrote it for the full amount of the speed?" (Tr. at 5.) The Officer responded to Magistrate Goulart's inquiry in the affirmative. Id.

After both parties were given an opportunity to present evidence, the trial magistrate determined that the Officer was a credible witness. The trial magistrate accepted the Officer's testimony that his radar unit was properly calibrated. (Tr. at 2.) At the close of his bench decision, the trial magistrate sustained the violation. Id. Aggrieved by the trial magistrate's decision, the Appellant timely filed this appeal.

### **Standard of Review**

Pursuant to G.L. 1956 § 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 Mutual Insurance 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." Link, 633 A.2d at 1348 (citing Environmental Scientific 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." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

### **Analysis**

On appeal, Appellant disputes violation of the traffic code. The Appellant insists that the Officer lacked credibility and lied under oath. Appellant requests this Panel to review and reverse the decision of the trial magistrate.

In Link, our Supreme Court made clear that this Panel "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.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Officer or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony, the trial judge determined that the Officer’s testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. “[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact.” Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the trial magistrate credited the Officer’s testimony that handheld radar unit determined that Appellant’s motor vehicle was traveling thirty-eight (38) miles per hour (mph) in a twenty-five (25) mph area and that the unit was calibrated before and after his shift on the day of the stop. Id. In addition, he explained that in situations where a defendant is uncooperative, it is not unusual for police officers to use their discretion when issuing a citation. See Tr. at 6. The trial magistrate went on to state to Appellant

[you had] nobody to blame but yourself Mr. Medeiros for getting that speeding ticket to thirteen (13) miles per hour over the speed limit. And the fact, by the way Mr. Medeiros, that he was initially giving you a break on the speed is totally contradictory to your claim that somehow [the Officer] and some other Officer were less than professional with you.  
(Tr. at 6.)

The trial magistrate concluded by averring that he “disregarded [Appellant’s] testimony.” Id. Furthermore, the trial magistrate stated that he “accept[ed] the testimony of [the] Officer.” Id. In conclusion, the trial magistrate was “satisfied by clear and convincing evidence that the town ha[d] met its burden of proof in the case.” Id. Accordingly the trial magistrate found the Appellant guilty.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (The [appellate court] should give great deference to the [trial magistrate’s] findings and conclusions unless clearly wrong.).

### **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 supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violation sustained.

ENTERED:

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Magistrate Domenic A. DiSandro, III (Chair)

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Magistrate William T. Noonan

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Magistrate Joseph A. Abbate

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