

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

DISTRICT COURT

Town of Lincoln :
 :
v. : **A.A. No. 13 - 038**
 :
Salim Ayas :
(RITT Appellate Panel) :

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings & 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 & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the Appellate Panel of the Traffic Tribunal is **AFFIRMED.**

Entered as an Order of this Court on this 25th day of November, 2013.

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**

Town of Lincoln	:	
	:	A.A. No. 2013 – 038
v.	:	(C.A. No. T12-0042)
	:	(07-406-007677)
Salim Ayas	:	
(RITT Appellate Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Mr. Salim Ayas urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed Judge Ciullo’s verdict adjudicating him guilty of a moving violation: “Prima Facie Limits” (i.e., speeding) in violation of Gen. Laws 1956 § 31-14-2. 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 General Laws 1956 § 8-8-8.1. After a review of the entire record I

find that — for the reasons explained below — the decision of the panel is not clearly erroneous and should be affirmed.

I

FACTS & TRAVEL OF THE CASE

The facts of the incident in which Mr. Ayas was cited for the moving violation enumerated above are sufficiently stated in the decision of the panel.

The core of the incident is described as follows:

On February 22, 2012, an officer of the Lincoln 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 April 23, 2012.

Shortly before the stop, the Officer was on a fixed traffic post on Route 146 North. (Tr. at 1.) The handheld radar unit determined that Appellant's vehicle was traveling eighty-four (84) miles per hour (mph) in a fifty-five (55) 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. (Tr. at 1-2.) The Officer also stated that “traffic was very light that morning” (Tr. at 2.)

Appellant then testified on his own behalf, stating that there was “no way” he was going the recorded speed and that the Officer was not looking in Appellant's direction. (Tr. at 4.) Appellant went on to testify that there was another car traveling beside him that the Officer failed to pull over. (Tr. at 4.) Appellant concluded by asking the court to either dismiss the charge or to lower the officer's findings. (Tr. at 5.)

After both parties were given an opportunity to present evidence, the trial magistrate determined that the Officer was a credible witness. The trial judge accepted the Officer's testimony that his radar unit was properly calibrated. (Tr. at 5.) At the close

of his bench decision, the trial judge sustained the violation. Id. Aggrieved by the trial judge's decision, the Appellant timely filed this appeal.

Decision of Panel, January 22, 2013, at 1-2. Claimant was cited for speeding and entered a plea of not guilty at his arraignment on March 19, 2013; however, he did not appear for trial on April 23, 2012, a default judgment entered against him. However, on May 25, 2012 his motion to vacate the default was granted. After he was re-arraigned on June 4, 2012 the matter proceeded to trial before Judge Albert Ciullo on June 25, 2012.

At the trial the officer testified as to the underlying facts of the traffic stop, his narrative-form testimony being supplemented by questions posed by the Court. Trial Transcript, at 1-2. Mr. Ayas then conducted, pro-se, a cross-examination of the officer, the questions interspersed with statements. Trial Transcript, at 3-5. The thrust of his questions (and statements) was that he was not going as fast as the speed the officer alleged — 84 miles per hour.

At the conclusion of the evidence, the trial judge found that the officer had proven the speeding citation. Trial Transcript, at 15. He fined Mr. Ayas \$385.00. Id.

Aggrieved by this decision, Mr. Ayas filed an immediate appeal. On October 17, 2012 his appeal was heard by an RITT appellate panel composed

of: Judge Lillian Almeida (Chair), Judge Edward Parker, and Magistrate William Noonan. In a decision dated January 22, 2013, the appeals panel affirmed the decision of the trial judge. Noting the statutory limitations on the scope of its review, the appeals panel found that the trial judge acted within his authority in finding the testimony of the officer to be credible. Decision of Appellate Panel, January 22, 2013, at 3-4. It therefore affirmed the appellant's conviction for speeding. Decision of Appellate Panel, January 22, 2013, at 4.

On February 26, 2013, Mr. Ayas filed a claim for judicial review by the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9. By order dated March 15, 2013, the Court established a briefing schedule. However, since neither party has submitted a memorandum for the Court's review within the allotted period, I have proceeded to submit these "Findings and Recommendations" without further delay.

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 panel as to the weight of the evidence on questions of fact.² Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.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 Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

³ Id., at 506-507, 246 A.2d at 215.

III

APPLICABLE LAW

In the instant matter the Appellant was charged with violating section 31-14-2 of the Rhode Island 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

ISSUE

The issue before the Court is whether the decision of the appeals panel was clearly erroneous in light of the reliable, probative, and substantial evidence in the record. More precisely, did the panel properly affirm Mr. Ayas's conviction for speeding in violation of Gen. Laws 1956 § 31-14-2?

V

ANALYSIS

In his seven-page, handwritten, Notice of Appeal, filed at the Traffic Tribunal on February 26, 2013, Mr. Ayas argues, as he did before the appellate panel, that the trial judge erred in crediting the testimony of the officer. Notice

of Appeal, passim. Specifically, he asserted that the judge did not consider the “reasonable doubt” that the officer was aiming (and therefore clocking) another car. Notice of Appeal, at 3. He also alleged — in that same document — that the officer was not facing his direction of travel and that neither he nor another officer standing next to him pointed a radar device at his vehicle. Notice of Appeal, at 4-5. In sum, he calls the officer’s account “wrong and unfounded.” Notice of Appeal, at 6. Thus, his arguments for reversal are all factual.

However, when reviewing the factual determinations of the appellate 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 Ciullo’s adjudication of Mr. Ayas was not “clearly erroneous” — a limited review of a limited review. See Gen. Laws 1956 § 31-41.1-8(f) and Gen. Laws 1956 § 31-41.1-9(d), quoted supra in “Part II – Standard of Review,” supra, pages 4-5. See 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’ role was to review the trial record to determine if the decision was supported by competent evidence).

The facts found by the panel, quoted supra at 2-3, are fully supported in

the record certified by the RITT to the District Court. And so, because the officer's testimony was sufficient, if believed, to satisfy the prosecution's burden of proof, I find no reason to set aside the decision of the appellate panel.

VI

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

November 25, 2013