

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

**DISTRICT COURT  
SIXTH DIVISION**

**Wolfhard Anim** :  
 :  
v. : **A.A. No. 13 - 114**  
 :  
**State of Rhode Island** :  
**(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 at Providence on this 5<sup>th</sup> day of December, 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

Wolfhard Anim	:	
	:	A.A. No. 2013 – 114
v.	:	(C.A. No. T13-006)
	:	(12-001-544912)
State of Rhode Island	:	
(RITT Appellate Panel)	:	

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** In this appeal, Mr. Wolfhard Anim urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed Magistrate DiSandro’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.

Although, on July 2, 2013, a briefing schedule was issued by the Court, neither the Appellant nor the State has submitted a memorandum for our review.<sup>1</sup> Accordingly, I have proceeded to issue these “Findings and Recommendations” without further delay. And, after a review of the entire record I find that — for the reasons explained below — the decision of the panel is correct and should be affirmed.

## I

### **FACTS & TRAVEL OF THE CASE**

The facts of the incident in which Mr. Anim was cited for the moving violation enumerated above are succinctly described in the decision of the appellate panel:

On October 23, 2012, Trooper Brandon Palmer (“Trooper Palmer” or “Trooper”) of the State of Rhode Island Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on January 29, 2013.

Shortly before the stop, Trooper Palmer was at a fixed traffic post on Route 95 in the town of Richmond at the Baker Pines official turn-around. (Tr. at 1.) The Trooper's handheld radar unit determined that Appellant's vehicle was traveling eighty-three (83)

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<sup>1</sup> However, Appellant did submit an appeal notice on July 27, 2013 that enumerates some of his reasons for believing his conviction was improper.

miles per hour (mph) in a sixty-five (65) mph area. Id. The Trooper 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 1-3.)

Appellant then testified on his own behalf, stating that he was traveling southbound on I 95 in a safe manner at a reasonable speed. (Tr. at 9.) Appellant went on to testify that he moved into the far left lane of the highway after a vehicle in front of him continued to brake abruptly. (Tr. at 10.) As he entered into the left lane of travel, he noticed flashing lights from the vehicle of the Trooper, urging Appellant to pull over. Id. Appellant concluded the trial by testifying that upon being pulled over by the Trooper, Appellant told the Trooper that he was not speeding and then asked the Trooper not to issue the ticket. Id.

After both parties were given an opportunity to present evidence, the trial judge made extensive findings of fact. (Tr. at 11-14.) Ultimately, the trial judge determined that the Trooper was a credible witness. At the close of his bench decision, the trial judge sustained the violation. (Tr. at 14.) Aggrieved by the trial judge's decision, the Appellant timely filed this appeal.

Decision of Panel, June 13, 2013, at 1-2. Claimant was cited for speeding and entered a plea of not guilty at his arraignment on December 4, 2012; the matter proceeded to trial before Magistrate DiSandro on January 29, 2013.

At the trial the officer testified in narrative form as to the underlying facts of the traffic stop. See Trial Transcript, at 2. Mr. Anim then conducted, pro se, a lengthy cross-examination of the trooper, focusing on the manner of the calibration of the radar unit he used, the proper method of using a radar unit generally, and, finally, the circumstances surrounding his citation of Mr.

Anim. Trial Transcript, at 3-10. Next, Mr. Anim testified in his own defense, and denied he was speeding. Trial Transcript, at 10-12.

At the conclusion of the evidence, the trial judge found that the trooper had proven the speeding citation to the standard of clear and convincing evidence. Trial Transcript, at 12-15. Mr. Anim was fined \$95.00 on the speeding charge. Trial Transcript, at 15.

Aggrieved by this decision, Mr. Anim filed a timely appeal. On April 17, 2013, his appeal was heard by an RITT appellate panel composed of: Chief Magistrate William Guglietta (Chair), Judge Edward Parker, and Magistrate William Noonan. In a decision dated June 13, 2013, the appeals panel affirmed the decision of the trial judge. The appeals panel rejected each of his arguments and affirmed the appellant's conviction for speeding. On June 28, 2013, Mr. Anim filed a further appeal to the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9.

## 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.’”<sup>2</sup> Thus, the Court will not substitute its judgment for that of the panel as to the weight of the evidence on questions

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<sup>2</sup> Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws § 42-35-15(g)(5).

of fact.<sup>3</sup> Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.<sup>4</sup>

### 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 he 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 supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law. More precisely, was the appellant properly convicted of speeding in violation of Gen. Laws 1956 § 31-14-2?

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<sup>3</sup> Cahoone v. Board of Review of the Dept. of Emp. Security, 104 R.I. 503, 246 A.2d 213 (1968).

<sup>4</sup> Id., at 506-507, 246 A.2d at 215.

## V

### ANALYSIS

On appeal, this court considers whether the conviction appellant suffered was clearly erroneous in light of the probative, reliable and substantial evidence of record.

In upholding Mr. Anim's conviction on this charge the panel relied on the testimony of Trooper Palmer, who indicated that he had "training and experience in the use of the radar unit" and that the unit had been calibrated internally and externally prior to Mr. Anim being cited, which, it found, satisfied the standard for the admissibility of radar readings established in State v. Sprague, 113 R.I. 351, 357, 322 A.2d 36, 39-40 (1974). Decision of Appellate Panel, at 4. And, the panel approved of the trial magistrate's reliance on the testimony of the trooper that his radar unit had locked onto Mr. Anim's vehicle. Decision of Appellate Panel, at 4 citing Trial Transcript, at 13-14.

Of course, Appellant Anim also argues that the judge erred in finding the officer's testimony on calibration was persuasive. See Appeal Notice, June 27, 2013, at 1-2. At trial, he probed and attacked the credibility of the trooper from many directions. But, to be frank, many of the issues he raised on cross-examination of the trooper were either immaterial (like the trooper's failure to



show the radar gun to Mr. Anim when he stopped him), irrelevant (such as the trooper's inability to remember how many other cars were also on the road when Appellant was stopped) or based on speculation (exemplified by Mr. Anim's inquiry into the potential effect of leaves on the accuracy of a radar gun). Trial Tr. at 4-8.

And, when hearing appeals pursuant to § 31-41.1-9 (which is essentially the Administrative Procedures Act standard enumerated in Gen. Laws 1956 § 42-35-15(g)), this Court's role is limited. See "Standard of Review," supra, pages 4-5. Moreover, in reviewing cases from the RITT appellate panel, this court's role is doubly limited: for our task in this case is to decide whether the panel was "clearly erroneous" when it found Magistrate DiSandro's adjudication of Mr. Anim was not "clearly erroneous" — in other words, we perform a limited review of the panel's limited review. See Gen. Laws 1956 § 31-41.1-8(f) and Gen. Laws 1956 § 31-41.1-9(d). 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).

Whether it was highly persuasive or not, Trooper Palmer's testimony

was competent evidence upon which the trial magistrate had every right to rely. As a result, this Court has no basis upon which to set aside the appellate panel's affirmance of Magistrate DiSandro's decision finding Mr. Anim guilty on the charge of speeding.

## 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. Gen. Laws 1956 § 31-41.1-9.

Accordingly, I recommend that the decision of the appeals panel be AFFIRMED.

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph P. Ippolito  
MAGISTRATE

December 5, 2013