

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

Town of West Greenwich :  
 :  
 v. : A.A. No. 2010 – 0188  
 : (C.A. No. T10-0035)  
 John Kornlieff : (07-205-002159)

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Mr. John Kornlieff urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed Judge Almeida’s verdict adjudicating him guilty of two moving violations: (1) “Operating Left of Center” in violation of Gen. Laws 1956 § 31-15-8<sup>1</sup>, and (2) “Interval Between Vehicle” in violation of Gen. Laws 1956 § 31-15-12. 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

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<sup>1</sup> The Decision of the Panel lists the first charge as being a violation of § 31-15-3, “Passing of Vehicles Proceeding in Opposite Directions,” which is clearly incorrect. The left of center charge is clearly founded on § 31-15-8. It seems the officer made an error on the original summons issued to Mr. Kornlieff, and the panel repeated the error without comment. For reasons I will explain *infra* at fn. 5, I believe the erroneous citation does not require dismissal of the first count.

— the decision of the panel is correct and should be affirmed.

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

The facts of the incident in which Mr. Kornlieff was cited for the two moving violations enumerated above are fully and fairly stated (with appropriate citations to the trial transcript) in the decision of the panel. The core of the incident is described as follows:

On February 6, 2010, an Officer of the West Greenwich Police Department (Officer) received a call from the Coventry Police Department regarding a "neurotic operator traveling [Route] 102 South just entering" the Town of West Greenwich. (Tr. at 5.) The Officer was parked at the station when she received the phone call. The Officer and Sergeant Brown both got into their own police cruisers and drove to Route 102. The Officer testified that he was traveling southbound on Route 102 when he observed a vehicle "attempting to pass somebody, another vehicle[,] in a no passing zone double yellow by the truck stop." (Tr. at 5-6.)

At this point, the Officer continued to testify that he watched as "[t]he vehicle swerved back in and was riding the vehicle in front of him driving too closely." (Tr. at 6.) The Officer then activated his overhead lights and attempted to initiate a motor vehicle stop of Appellant's vehicle. According to the Officer, Appellant did not immediately pull to the side of the road. Id. Sergeant Brown then drove his cruiser to the side of Appellant's vehicle with his overhead lights activated, motioning for Appellant to move his vehicle to the side of the road. Once Appellant's vehicle stopped on the side of the road, the Officer and Sergeant Brown "blocked him in" with their police cruisers. (Tr. at 6.)

The Officer then approached Appellant's vehicle. He continued to explain that Appellant said he did not immediately move his vehicle to the side of the road because "his passenger . . . had stomach pains." (Tr. at 6.) The Officer called an ambulance. When the ambulance arrived on the scene, Appellant and his passenger refused treatment. According to the Officer, Appellant stated that his passenger did not want to pay for a rescue; instead, he wanted to bring her to the hospital himself.

Decision of Panel, September 13, 2010, at 1-2. Claimant was cited and entered pleas of not guilty on March 9, 2010; the matter proceeded to trial before Judge Lillian Almeida on May 18, 2010.

At the trial the officer testified to the above underlying facts of the traffic stop [Trial Transcript, at 5-6]. For the defense, Mr. Kornlieff testified [Trial Transcript, at 6-25] and denied each allegation; his passenger, Anne Marie Silveira, supported his testimony [Trial Transcript, at 25-31]. Following the trial, the trial judge sustained the violations and Mr. Kornlieff was fined \$85.00 on each charge.

Aggrieved by this decision, the appellant filed a timely appeal for a decision by the appeals panel. On July 14, 2010, the appeal was heard by an RITT panel comprised of: Magistrate William Noonan (Chair), Judge Edward Parker, and Judge Albert Ciullo. In a decision dated September 13, 2010, the appeals panel affirmed the decision of the trial judge. The appeals panel rejected each of his arguments and affirmed the appellant's convictions on each of the moving violations. On September 21, 2010, Mr. Kornlieff filed the instant complaint for judicial review in the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9 of the General Laws.

## 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 of fact.<sup>3</sup> Stated

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

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

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

### APPLICABLE LAW

In the instant matter the Appellant was charged with violating section 31-15-8 of the Rhode Island General Laws which states in pertinent part:

**31-15-8 Posting of no passing zones.** – The state traffic commission is authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of the zones. When the signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions given by them. Violations of this section are subject to fines enumerated in § 31-41.1-4.<sup>5</sup>

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

<sup>5</sup> As noted supra in footnote 1, the charge of Operating Left of Center was miscited in the summons and in the panel's decision; it is there cited as a violation of § 31-15-3, "Passing of Vehicles Proceeding in Opposite Directions," which is clearly incorrect. The left of center charge clearly emanates from section 31-15-8. It seems the officer made an error, which the panel accepted. I believe the error was non-prejudicial and that the erroneous citation does not require dismissal of the count.

I find no indication in my review of the trial transcript that Mr. Kornlieff was prejudiced by this apparent error. He knew he was charged with "Operating Left of Center and responded to that charge, specifically denying he drove over the "double line." Trial Transcript, at 7-8. Accordingly, his conviction need not be set aside on this ground. See Traffic Tribunal Rule of Procedure 3(d): A summons which provides the defendant and the court with adequate notice of the offense being charged shall be sufficient if the offense is charged by using the name given to the offense by statute. The summons shall state for each count the official or customary citation of any statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. An error or an omission in the summons shall not be grounds for dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice. (Emphasis added)

He was also with violating section 31-15-12:

**31-15-12 Interval between vehicles.** – The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the highway, and shall, whenever traveling through a business or residential district, and whenever traffic permits, leave sufficient space so that an overtaking vehicle may enter and occupy the space without danger. This provision shall not apply to a caravan under police escort or a funeral procession. Violations of this section are subject to fines enumerated in § 31-41.1-4.

### 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 violating Gen. Laws 1956 §§ 31-15-8 and 31-15-12?

### ANALYSIS

On appeal, this court considers whether the convictions appellant suffered were based on substantial evidence of record. In evaluating Mr. Kornlieff's conviction on this charge the panel relied on the testimony of the officer, who indicated he had eleven years' experience and stated testified that he observed a Thunderbird “ \* \* \*attempting to pass somebody, another vehicle in a no passing zone double yellow by the truck stop. The vehicle swerved back in and was riding the vehicle in front of him driving too closely. \* \* \* ” Trial Transcript, at 6, 22. In my opinion, this testimony was sufficient to support a conviction under §§ 31-15-12 and 31-15-8. Appellant also makes several other arguments in support of his appeal.

First, appellant asserts that this testimony was insufficient insofar as section 31-15-12 is concerned, urging that the officer's testimony did not include a specific opinion that the motorist failed to meet the "reasonable and prudent" standard. See Appellant's Memorandum, at 1-2. I believe it is not necessary for an officer to provide such an opinion and that the testimony quoted above was sufficient to permit the trial judge to draw that conclusion. In other words, the officer need not specifically state that the driving was "unreasonable."

Second, appellant also argues that the judge erred in finding the officer's testimony more credible than testimony he and his passenger provided. However, as stated above, in the review of the facts found below by the panel and the trial judge, this Court's role is limited. See "Standard of Review," supra, pages 4-5. Moreover, in reviewing RITT cases, this court's role is doubly limited: our duty in this case is to decide whether the panel was "clearly erroneous" when it found Judge Almeida's adjudication of Mr. Kornlieff 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). 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).

Third, appellant argues that the trial judge committed error when she admitted certain hearsay testimony. However, this issue was not preserved for review because

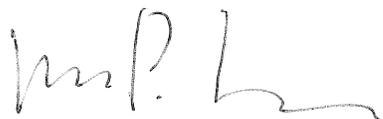
he did not object to during his trial.

Finally, I would also be remiss not to mention the appellant's pro-se posture at and his demeanor during the trial of this matter. From the outset of the trial appellant constantly interrupted and spoke out of turn. The trial judge showed great patience while presiding at this trial, which more than comported standards of justice and fairness.

### 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.



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Joseph P. Ippolito  
MAGISTRATE

January 11, 2011

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

DISTRICT COURT

**Town of West Greenwich**

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v.

**A.A. No. 10 - 188**

**John Kornlieff**

**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 and the memoranda of counsel, 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 11<sup>th</sup> day of January, 2011.

By Order:



Clerk

**Melvin J. Enright**  
**Acting Chief Clerk**

Enter:



Jeannette E. LaFazia  
Chief Judge