STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Sterling Freeman	:	
	:	
v.	:	**A.A. No. 13 - 147**
	:	
State of Rhode Island	:	
(RITT Appeals Panel)	:	

O R D E R

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

After a de novo review of the record, the Court finds that the Findings and 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 and Recommendations of the Magistrate are adopted by reference as the decision of the Court and the decision of the Appeals Panel is AFFIRMED.

Entered as an Order of this Court at Providence on this 7th day of May, 2014.

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

Sterling Freeman	:	
	:	**A.A. No. 2013 – 147**
v.	:	**(C.A. No. T13-015)**
	:	**(12-001-540125)**
State of Rhode Island	:	
(RITT Appeals Panel)	:	

F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this appeal, Mr. Sterling Freeman urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed Judge Parker's verdict adjudicating him guilty of a moving violation: "Interval Between Vehicles" (Following Too Close) 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 Gen. Laws 1956 § 8-8-8.1.

On December 2, 2013, a briefing schedule was issued by the Court;

subsequently, on March 10, 2014, the State has submitted its memorandum for our review; appellant has rested on the Memorandum he submitted to the appeals panel, which is perfectly acceptable. And, after a review of the entire record I find that — for the reasons explained below — the decision of the appeals panel should be affirmed.

I

FACTS & TRAVEL OF THE CASE

The facts of the incident in which Mr. Freeman was cited for the moving violation enumerated above are succinctly stated in the decision of the appeals panel:

> … Trooper Reilly stated that he was on a fixed traffic post directly behind the Rhode Island State Police Lincoln Woods Barracks on Route 146 watching southbound traffic. Trooper Reilly observed two vehicles traveling at seventy miles per hour in the high speed lane. (Tr. At 2.) The second vehicle, which was operated by the Appellant, was a car length to a car length and one-half away from the vehicle in front of him. Id.
>
> Trooper Reilly exited his location, followed the vehicles, and stopped the Appellant southbound of Route 146. Id. Trooper Reilly identified the Appellant as the operator of the vehicle that was driving closely behind the speeding vehicle. Id. Trooper Reilly informed the Appellant that he was speeding, but Appellant did not receive a speeding ticket. Trooper Reilly then issued Appellant a summons for following too closely. (Tr. At 5.)

Decision of Panel, August 20, 2013, at 1-2. Claimant was cited for following too closely and entered a plea of not guilty at his arraignment on October 17,

2012; the matter proceeded to trial before Judge Edward Parker on February 20, 2013.

At trial Officer Reilly gave testimony in narrative form as to the facts of the traffic stop, consistent with the foregoing narrative. See Trial Transcript, at 1-2. Next, Mr. Freeman testified in his own defense, and denied he was speeding. Trial Transcript, at 3-6. Specifically, he stated that the operator of the car in front of him — a Volkswagen — "jump[ed] on his brakes" when he saw the trooper. Trial Transcript, at 4. As a result, Mr. Freeman had to apply his brakes. Id. He then described how the officer stopped him and gave him a ticket for following too closely. Trial Transcript, at 5. He said there was no accident, no skid marks, nothing to the incident. Id. His defense, at the heart of the matter, was that the officer could not see the first car slow down. Id. Appellant conceded that in that situation "it is obviously going to look like I am driving too close." Id.

After the Appellant concluded his narrative testimony, the Judge posed a question to Officer Reilly — "… how long did you observe this driving?" Trial Transcript, at 6. To which the officer responded — "There is really no way to say because there's woods there." Trial Transcript, at 7. Then he elaborated — "You have the driveways facing out this way, Your Honor. The cars are coming

from my left. Probably a tenth to two tenths of a mile. They had come to my left, by the driveway they were still one right after another." Id.

At the conclusion of the evidence, the trial judge found that the trooper had proven the citation to the standard of clear and convincing evidence. Trial Transcript, at 9. Mr. Freeman was fined $85.00 on the speeding charge. See Traffic Summons Judgement Card, dated 2/20/2012.

Aggrieved by this decision, Mr. Freeman filed a timely appeal. On May 29, 2013, his appeal was heard by an RITT appellate panel composed of: Judge Lillian Almeida (Chair), Chief Magistrate William Guglietta, and Magistrate Alan Goulart. In a decision dated August 20, 2013, the appeals panel affirmed the decision of the trial judge. The appeals panel affirmed Mr. Freeman's conviction for following too close. On September 3, 2013, Mr. Freeman 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 of review is a duplicate of that found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act ("APA"). Accordingly, we are able to rely on cases interpreting the APA standard as guideposts in this process. 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] And our Supreme Court has noted that in refusal cases reviewing courts lack "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."[2] This Court's

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[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). See also Link v. State, 633 A.2d 1345, 1348 (R.I. 1993)

[2] 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).

review, like the Traffic Tribunal appeals panel, "is confined to a reading of the record to determine whether the judge's decision is supported by legally competent evidence or is affected by an error of law."[3]

III
APPLICABLE LAW

In the instant matter the Appellant was charged with violating section 31-15-12 of the General Laws which states in pertinent part:

> **31-14-2 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.

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 following too closely in violation of Gen. Laws 1956 § 31-15-12?

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[3] Link, 633 A.2d at 1348 citing Environmental Scientific Corporation v. Durfee, 621 A.2d 200, 208 (R.I. 1993).

V
ANALYSIS

On appeal, this Court considers whether the appeals panel erred when it found that Mr. Freeman's conviction was not clearly erroneous in light of the reliable, probative, and substantial evidence of record.

The trial judge found Trooper Reilly's testimony to be "credible" — satisfying the state's burden proof of clear and convincing evidence. Decision of Appeals Panel, at 4 citing Trial Transcript, at 9. In upholding Mr. Freeman's adjudication on this violation offense the appeals panel found the trooper's testimony constituted legally competent evidence. Decision of Appeals Panel, at 4-5. The appeals panel further noted that it was not authorized to "second-guess" the trial judge's factual findings. Decision of Appeals Panel, at 4 citing Environmental Scientific, 621 A.2d at 206.

In this appeal Mr. Freeman urges, as he did before the appeals panel, that the trial judge erred by finding the trooper's testimony persuasive. See Appellant's Memorandum, at 3. He particularly argues that the issuance of the citation was not justified because the trooper did not have a sufficient opportunity to observe his driving (due to obstructions to his view). Appellant's Memorandum, at 2. And by simple arithmetic he shows convincingly that, at least in terms of distance, that the trooper's opportunity to observe his vehicle

was probably shorter than the trooper guessed. But Appellant cites no case — and I am aware of none — that establishes a bright-line rule regarding the minimum length for which an officer must observe a vehicle (by time or distance) as a prerequisite to citing a motorist for following too close under section 31-15-12. Therefore, these issues must be decided on a case-by-case basis with the trial judge determining whether the officer has a sufficient opportunity to observe.

As the State points out, Judge Parker found that the elements of the statute were met in this case. Mr. Freeman's vehicle was following the car in front more closely than was "reasonable and prudent" and did not leave enough space so a passing car could enter safely. State's Memorandum, at 3 citing Trial Transcript, at 2, 3.

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 4-6. 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 Judge Parker's adjudication of Mr. Freeman 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, 633 A.2d at 1348 (opining, that the District Court's 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 Reilly'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 appeals panel's affirmance of Judge Parker's decision finding Mr. Freeman guilty on the charge of following too closely.

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

May 7, 2014