

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF EAST PROVIDENCE

v.

PAULO SILVA

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C.A. No. M10-0049

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on October 13, 2010—Magistrate Cruise (Chair, presiding) and Judge Almeida, and Magistrate Goulart, sitting—is Jason Smith’s (Appellant) appeal from a decision of Judge Farley sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On April 10, 2010 Sergeant Andrews (Sgt. Andrews) of the East Providence Police Department, observed Appellant’s vehicle traveling on South Broadway in East Providence, Rhode Island. (Tr. at 1.) At Appellant’s trial, Sgt. Andrews testified—and provided the radar receipt—that Appellant’s vehicle was traveling 50 miles per hour, some 25 miles per hour over the posted speed limit. Id. Later at trial, Appellant admitted that he was traveling over the posted speed limit. (Tr. at 2.) At the conclusion of the testimony, the trial judge sustained the charged violation. Id. Aggrieved by this decision, Appellant 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 argues that the trial judge’s decision is characterized by abuse of discretion. Specifically, Appellant contends that because at some earlier time, another speeding ticket issued to him had been dismissed for lack of evidence, this citation should also have been dismissed. We disagree.

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 Sgt. Andrews it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [Sgt. Andrews] [,] listened to [his] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206.

As Appellant has made no further argument before this panel, and confining our review of the record evidence to its proper scope, the members of this Panel are satisfied that the trial judge’s decision is not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial record evidence. The trial judge, weighing the

testimony presented, came to the conclusion that Appellant did in fact violate the posted speed limit. Thus, this Panel is satisfied that the trial judge's decision is not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial record evidence.

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