

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH KINGSTOWN :

:

v. :

:

MAURICE STEFANO :

:

C.A. No. M12-0010

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
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PER CURIAM: Before this Panel on June 27, 2012—Chief Magistrate Guglietta (Chair, presiding), Judge Ciullo, and Magistrate Noonan, sitting—is Maurice Stefano’s (Appellant) appeal from a decision of Judge White (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 11, 2011, Officer John Urban (Officer Urban) of the North Kingstown Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on April 25, 2012.

Shortly before the stop, Officer Urban was on a fixed traffic post on Indian Corner Road. (Tr. at 2.) Officer Urban then noticed Appellant’s vehicle approaching his location traveling at a high rate of speed. The radar unit in Officer Urban’s cruiser determined that Appellant’s vehicle was traveling fifty (50) miles per hour (mph) in a twenty-five (25) mph area. Id. Officer Urban noted that the radar 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 Training Academy. Id. Officer Urban also stated that he had a clear view of the Appellant’s vehicle and there were no other vehicles around him at the time.

On cross examination, Appellant questioned the officer as to whether he was on fixed traffic post or traveling on the Indian Corner Road; however, Officer Urban maintained that he was on a fixed traffic post. The officer then admitted that he could not see Appellant turn onto Indian Corner Road, but he did have a clear view once the Appellant was on the road. (Tr. at 5.)

After finishing his cross examination, the Appellant testified on his own behalf. Appellant again maintained that the officer was not on a fixed traffic post, but was instead traveling in the opposite direction as Officer Urban on Indian Corner Road. (Tr. at 6.) Appellant stated that he turned right onto Indian Corner Road and “gunned his accelerator to go on down.” Id. Appellant then stated that he was sure he “was going over twenty-five mile[s] per hour at that point.” Id. Appellant also stated that he did not knowingly exceed the speed limit because there was no signage indicating the speed limit. He then submitted photographs into evidence demonstrating the lack of a speed limit sign.

After hearing both sides, the trial judge issued his decision sustaining the charged violation. (Tr. at 11.) In sustaining the violation, the trial judge found it significant that Appellant admitted to exceeding the posted speed limit. The trial judge specifically rejected the Appellant’s argument that he was not guilty because he was unaware of the posted speed limit due to a lack of speed limit signs. The trial judge determined that a motorist is presumed to know the speed limit. Thereafter, the trial judge imposed sentence. Appellant timely filed this appeal.

#### **Standard of Review**

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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 contends that the trial judge's decision to sustain the violation was an abuse of discretion and in violation of statutory provisions. Specifically, Appellant argues that the trial judge erred in crediting the testimony of Officer Urban over Appellant as to whether the officer was on a fixed traffic post or traveling on Indian Corner Road. Appellant also contends that the trial judge erred because Appellant was unaware of the posted speed limit and there was no sign indicating the speed limit on the road.

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 Officer Urban or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [Officer Urban and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony, the trial judge determined that Officer Urban's testimony was not only credible, but the testimony was sufficient to sustain the charged violation. In his decision, the trial judge found it significant that Appellant admitted to speeding; thus, making Appellant's arguments regarding Officer Urban's positioning and the lack of signage of limited probative value. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion and his decision to sustain the charged violation is supported by legally competent evidence.

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision is in not violation of statutory provisions and not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.