

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T12-0048  
12001521306

LINDA PERROTTI

12 DEC 18 AM 10: 22

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on September 5, 2012—Judge Ciullo (Chair, presiding), Administrative Magistrate Cruise, and, Magistrate Noonan sitting—is Linda Perrotti’s (Appellant) appeal from a decision of Judge Almeida (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On May 5, 2012, Trooper Robert Twitchel (Trooper Twitchel) of the Rhode Island State Police charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on May 16, 2012.

At trial, Trooper Twitchel stated he and Trooper McCarthy were at a fixed radar post on the morning of May 5, 2012. (Tr. at 4.) The troopers were posted on Route 295 south at Route 6 in Johnston when Trooper McCarthy observed a green Chrysler “. . . traveling faster than the normal flow of traffic . . .” southbound on Route 295. (Tr. at 4-5.) Trooper McCarthy was able to obtain the vehicle’s speed using a laser unit. (Tr. at 4.) The trooper’s laser unit determined that the green Chrysler was traveling eighty-eight (88) miles per hour (mph) in a sixty-five (65)

mile per hour (mph) area. (Tr. at 11, 13.) However, as the vehicle approached closer to the troopers, the vehicle slowed down to seventy-five (75) mph and was later issued a citation for the slower speed. (Tr. at 13.) At trial, Trooper McCarthy testified that the laser system was calibrated prior to its use, and the he was trained in the use of laser units at the Rhode Island State Policy Academy. (Tr. at 11.)

After obtaining this reading, Trooper McCarthy relayed the reading of the vehicle's speed to Trooper Twitchel, and Trooper Twitchel waved the car down. (Tr. at 12.) Trooper Twitchel identified the operator of the vehicle as the Appellant and cited her for speeding. (Tr. 12.)

On cross examination, Appellee questioned Trooper McCarthy regarding his personal knowledge of the speeding violation. (Tr. at 13.) At this point, Trooper McCarthy noted that he did not have personal knowledge of the speeding violation, but he was the one who signed the summons. (Tr. at 14.)

After hearing both sides, the trial judge sustained the charged violation. (Tr. at 21.) The trial judge based her decision on a Supreme Court case, State v. Sprague, and other analogous appellate decisions. 322 A.2d 36 (R.I. 1974). Appellant timely 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 contends that the aforementioned charge is not enforceable because the Officers did not adhere to Rhode Island Traffic Tribunal Rule 3, titled "the summons." Specifically, Appellant argues that the summons had to be signed by the same officer who observed the traffic violation in order for the summons to be valid, and the charge enforceable.

Appellant stresses the fact that Rule 3 says, “[t]he summons shall be signed by the officer . . .” and does not state “an officer.” Traffic Trib. R.P. 3 (emphasis added).

The Rules of Procedure of the Traffic Tribunal make clear that “[a]n 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.” See id. Accordingly, in the instant matter, the fact that the trooper who signed the summons was not the same trooper who witnessed the traffic violation did not constitute grounds for dismissal. There was no showing whatsoever on behalf of the Appellant that the fact that a different trooper signed the summons, rather than the trooper who witnessed the violation, misled her to her prejudice. See id. Trooper Twitchel specifically testified that “...Trooper McCarthy advised [Trooper Twitchel] he obtained the...speed of the vehicle using his “radar” gun and [Trooper Twitchel] had waived the vehicle over.” (Tr. at 12.) We must also stress the fact that both of the troopers testified at trial to the facts leading to the issuance of the summons. Therefore, the prejudice that the rule seeks to protect is not present in the case at bar. As such, we will not allow the Appellant to evade a charge for a violation that was clearly observed and testified to in court by the trooper just because that same trooper did not sign the summons.

For the aforementioned reasons, the Appellant was not prejudiced by the simple signage technicality, and the trial judge did not err when she ruled that the summons was valid. Based on the testimony provided by the two officers to the trial judge, the Rhode Island Traffic Tribunal Rules of Procedure, and our precedent, the members of this Panel find that the trial judge’s decision was not in violation of constitutional or statutory provisions.

### 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 was not in violation of constitutional or statutory provisions. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.