

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF NEWPORT**

v.

**HESHMATOLLAH ASHTARI**

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**C.A. No. M15-0043  
15303500404**

**DECISION**

**PER CURIAM:** Before this Panel on February 24, 2016—Magistrate Abbate (Chair), Administrative Magistrate DiSandro III, and Chief Magistrate Guglietta, sitting—is Heshmatollah Ashtari’s (Appellant) appeal from a decision of Newport Municipal Court Judge Jackson (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to Devices.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On October 30, 2015, Officer Jack Billings of the Newport Police Department (Officer), charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on December 14, 2015.

At trial, the Officer testified that at approximately 7:00 p.m., he was on patrol in the area of Memorial Boulevard and Bellevue Avenue when he observed a red pickup truck positioned directly in front of him. (Tr. at 7.) The Officer recalled that he was directly behind the red pickup truck, traveling southbound on Bellevue Avenue approaching the intersection of Memorial Boulevard. Id. The pickup truck had its left turn signal on, as if to turn left onto Memorial Boulevard. Id. at 9. As the Officer and the pickup approached the intersection, a “fire

apparatus” drove up Memorial Boulevard. Id. at 8. The Officer stated that the siren coming from the fire apparatus was audible and traffic started to slow in order to clear the intersection. Id. at 8. The Officer “assumed the operator [of the pickup truck] had heard the siren as well because he then moved in behind [a] vehicle which was . . . stopped at the light.” Id. at 9. The fire apparatus passed through the intersection and turned north onto Bellevue Avenue. Id. at 9-10. As the fire apparatus passed through the intersection, the Officer observed “the [left turn] light go red.” Id. at 10. The Officer watched as the pickup truck moved into the left turn lane and then effectuated a left turn onto Memorial Boulevard. Id. The Officer reiterated that the pickup truck took the left turn onto Memorial Boulevard when the light was red. Id. The Officer stated that he immediately followed the pickup truck through the intersection and activated his siren and lights in order to conduct a traffic stop. Id.

The Officer testified that he initiated the stop and made contact with the driver of the pickup, whom he identified as Appellant. Id. at 11. Appellant’s wife was a passenger in the pickup. Id. The Officer indicated that the Appellant had run a red light and the Appellant told the Officer that he “was wrong.” Id. The Appellant maintained that the light was green. Id. The Officer testified that “after a period of time going back and forth,” he issued the Appellant a citation. Id. The Officer added that the lights for that intersection are staggered and that they appeared to be working correctly on October 30, 2015. Id.

At the conclusion of the Officer’s testimony, Appellant testified in his defense. Id. at 13. Appellant testified that he was driving from Bellevue Avenue towards Memorial Boulevard and had his left turn signal flashing. Id. at 14. He stated that he “turned left when the light was still green” and approximately thirty (30) to forty (40) seconds later, the Officer stopped him. Id. The Appellant stated “[the Officer] was mad. He was very angry. And I don’t know if he was

drunk or he was under the influence of drugs.” Id. The Appellant added “I have never . . . ran a traffic light.” Id. at 15.

After hearing the testimony presented, the Trial Judge found the Officer to be credible. Id. at 18. Specifically, the Trial Judge stated: “the testimony of the Officer I found to be credible and it was very detailed . . . based on the evidence that’s been given to me today, I find the officer’s accounting of what transpired to be accurate.” Id. Accordingly, the Trial Judge sustained the violation, “Obedience to Traffic Control Devices,” § 31-13-4. Id. Aggrieved by the Trial Judge’s decision, 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 Ins. 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 Envtl. 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 was in violation of constitutional and statutory provisions and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant contends that the Newport Municipal Court did not have subject matter jurisdiction over the case because the City of Newport failed to establish that the charged traffic infraction occurred within Newport, Rhode Island. The Appellant adds that the record is devoid of any evidence that at the time of the violation, Appellant was within the territorial limits of the City of Newport and that the Trial Judge erred by failing to make a finding regarding subject matter jurisdiction.

Subject matter jurisdiction is the very essence of the court's power to hear and decide a case. See Long v. Dell, Inc., 984 A.2d 1074, 1079 (R.I. 2009) (citing Black's Law Dictionary 931 (9th ed. 2009)) (defining subject matter jurisdiction as “[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons

or the status of things”). A challenge to subject-matter jurisdiction “may not be waived by any party and may be raised at any time in the proceedings.” Boyer v. Bedrosian, 57 A.3d 259, 270 (R.I. 2012).

Here, the “nature of the case” is a violation of the motor vehicle code, specifically § 31-13-4, “Obedience to Devices.” Rhode Island General Law § 8-18-3 confers concurrent jurisdiction “over the adjudication of matters relating to violations enumerated in [§ 8-18-3]” to the Rhode Island Traffic Tribunal and the municipal courts of each city/town. See § 8-18-3. Section 31-13-4, “Obedience to Devices,” is one such enumerated violation. Therefore, violations of § 31-13-4 may properly be heard by a judge or magistrate of either a municipal court or the Rhode Island Traffic Tribunal.

Accordingly, because the language of the statute is clear, this Panel finds that the “Obedience to Devices” violation was appropriately brought in the Newport Municipal Court, which was vested with subject-matter jurisdiction under § 8-18-3. Moreover, Appellant’s argument—that the issue at hand was not properly before the Newport Municipal Court because the City of Newport failed to establish that the charged traffic infraction occurred within the territorial limits of Newport—is one of venue and not jurisdiction.

A claim of improper venue sets forth, in essence, that the action was brought in the “wrong county.” See Berberian v. Town of Westerly, 119 R.I. 593, 596, 381 A.2d 1039, 1041 (1978) (stating a trial justice “in his discretion, [may] transfer civil actions to the proper county when such actions are brought in the “wrong county”). A party is deemed to have waived the defense of improper venue unless he or she has raised such defense by motion or by answer. See Mateer v. Mateer, 105 R.I. 735, 742, 254 A.2d 417, 421 (1969) (stating “[b]y not raising the issue of venue prior to the trial the parties waived that issue”); see also Traffic Trib. R. P. 24(c)

(stating “[a] written motion . . . shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court”).

Our Supreme Court addressed this exact venue claim in State v. Brown, 97 R.I. 95, 196 A.2d 138 (1963). In Brown, the defendant contended that venue was not proper in Kent County Superior Court because the state produced no evidence to establish that the motor vehicle offense occurred within the territorial limits of Kent County. Id. at 99, 196 A.2d at 141. On appeal, the Supreme Court conceded that the state “must establish the place at which the offense charged was committed in order to establish the venue.” Id. The Court determined, however, that “this may be done by circumstantial as well as direct evidence, and, not being an element of the offense, it need not be proved beyond a reasonable doubt.” Id. (citing State v. Kozukonis, 71 R.I. 456, 46 A.2d 865 (1946)). The Court then looked to the record to consider whether the circumstantial evidence presented at trial sufficiently established venue. The Court stated “[t]here is in the record here evidence that the arresting officer was a member of the Warwick police department, patrolling his post in that city, when the arrest was made. From such evidence the trial justice, in our opinion, properly inferred that the venue was correctly laid [in the county of Kent].” Id.

We turn then to the record before us in order to conduct a parallel review of the testimony presented at Appellant’s trial. The record reveals that the Officer was a member of the Newport Police Department and he was on patrol as an officer for the City of Newport on October 30, 2015. (Tr. at 5-6.) The record also establishes that the Officer pulled over Appellant’s vehicle on Memorial Boulevard, right after the Bellevue Avenue intersection, and “near Lila Delman, in that area.” Id. at 9-10. We would err in concluding that venue was not proper in the Newport

Municipal Court, as the circumstantial evidence in the record leads us to the inference that the Appellant committed a traffic infraction in the City of Newport. Therefore, we follow our Supreme Court in Brown in concluding that the Trial Judge properly inferred that the venue was sufficiently laid. See Brown, 97 R.I. at 99, 196 A.2d at 141 (circumstantial evidence in prosecution for motor vehicle offense was sufficient to properly infer that venue had been correctly laid).

Notwithstanding the foregoing analysis, Appellant did not raise a claim of improper venue by motion, nor did Appellant raise the issue at trial. Appellant has raised the defense of improper venue for the first time, on appeal, and has cloaked the venue claim in the garb of a subject matter jurisdiction argument. This Panel finds Appellant's claim to be untimely and without merit. See Mateer, 105 R.I. at 742, 254 A.2d at 421 (stating "[b]y not raising the issue of venue prior to the trial the parties waived that issue"). Accordingly, we are satisfied that the Trial Judge did not abuse his discretion and his decision to sustain the charged violation was 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 was supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the Trial Judge's decision was not clearly erroneous and not otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Magistrate Joseph A. Abbate (Chair)

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Chief Magistrate William R. Guglietta

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Administrative Magistrate Domenic A. DiSandro, III

DATE: \_\_\_\_\_