

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.**

**DISTRICT COURT
SIXTH DIVISION**

Jorge Rivera

:

:

v.

:

A.A. No. 13 - 127

:

**State of Rhode Island
(RITT Appeals Panel)**

:

:

ORDER

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 25th day of March, 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**

Jorge Rivera	:	
	:	A.A. No. 2013 – 127
v.	:	(C.A. No. T12-082)
	:	(12-001-00537616)
State of Rhode Island	:	
(RITT Appeals Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Mr. Jorge Rivera urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a Traffic Tribunal judge’s verdict adjudicating him guilty of a moving violation: “No Seat Belt – Operator” in violation of Gen. Laws 1956 § 31-22-22(g). 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 § 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1.

On August 6, 2013 a briefing schedule was issued by the Court, in

response to which the Appellant filed a short statement of his position; as of the date of this opinion the State has failed to submit its memorandum. 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 AND TRAVEL OF THE CASE

The facts of the August 23, 2012 incident in which Mr. Rivera was cited for a seat belt violation are succinctly described in the decision of the appellate panel:

On the day Appellant was cited, the Appellant was traveling on Atwells Avenue in Providence. (Tr. at 3.) Shortly before the stop, the Trooper was on a fixed traffic post on Atwells Avenue at Valley Street in Providence. (Tr. at 2.) As the Appellant drove past the Trooper, the Trooper observed that Appellant was not wearing a seat belt. (Tr. at 3.) Specifically, the Trooper testified that she observed Appellant operate his motor vehicle without the seat belt across his chest. Id. The Trooper noticed the buckle to the seat belt was hanging from the pillar inside the vehicle. Id. Thereafter, the Trooper conducted a traffic stop and cited the Appellant for the aforementioned safety belt violation. Id.

Decision of Panel, July 16, 2013, at 1-2. After he was arraigned, the matter proceeded to trial before Judge Lillian Almeida of the Traffic Tribunal on December 3, 2012.

At the trial, Trooper Silvera testified as to the underlying facts of the traffic stop consistently with the narrative summary quoted above.

Mr. Rivera also testified. He stated —

... that he was wearing his seat belt, but did not have the shoulder strap across his chest because of his recent injury to his rotator cuff. (Tr. at 4-5.) Appellant further testified that he was unaware that he was obligated to file for an exemption with the Registry of Motor Vehicles in order to wear his seat belt across his lap instead of across his chest. (Tr. at 5-6.)

The trial judge, after hearing Mr. Rivera plead for leniency because he had recently acquired a new job, sustained the violation. (Tr. at 6-11); see also Judgment Form for Summons No. 12-001-00537616.

Aggrieved by this decision, Mr. Rivera filed a timely appeal. On January 30, 2013, his appeal was heard by an RITT appellate panel composed of: Magistrate Alan Goulart (Chair), Judge Edward Parker, and Magistrate Domenic DiSandro. In a decision dated July 16, 2013, the appeals panel affirmed the Appellant's conviction for Operating Without Use of a Seat Belt. On July 31, 2013, Mr. Medeiros 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 is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

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 Thus, the Court will not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.² Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.³

¹ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws § 42-35-15(g)(5).

² Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

³ Id., at 506-507, 246 A.2d at 215.

III
APPLICABLE LAW

In the instant matter the Appellant was charged with violating section 31-22-22(g) of the Rhode Island General Laws which states in pertinent part:

31-13-4 Safety belt use — Child restraint. —

...

(g)(1) Any person who is an operator of a motor vehicle shall be properly wearing a safety belt and/or shoulder harness system as defined by Federal Motor Vehicle Safety Standard 208 while the vehicle is in operation on any of the roadways, streets, or highways of this state.

(2) ...

(h) ...

(i) The provisions of subsections (b), (f) and (g) of this section shall not apply to a driver or passenger of:

(1) A passenger motor vehicle in which the driver or passenger possesses a written verification from a licensed physician that the driver or passenger is unable to wear a safety belt system for physical or medical reasons. The verification time period shall not exceed twelve (12) months at which time a new verification may be issued; ...

(j) ...

(k) Any person violating subsection (f) or (g) of this section shall be fined as provided in § 31-41.1-4. Any conviction for violating subsection (f) or (g) of this section shall not be recorded on that person's driving record within the rules and regulations governing chapter 41.1 of this title.

(Emphasis added).

The charge is a civil violation carrying a \$40.00 fine.⁴

⁴ See Gen. Laws 1956 § 31-27-13 and § 31-41.1-4(a).

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 a violation of the mandatory seat belt law in violation of Gen. Laws 1956 § 31-22-22?

V ANALYSIS

In upholding Mr. Rivera's conviction on this charge the appeals panel relied on the findings made by the trial judge based on the testimony of Trooper Silvera, who described the events in her testimony — particularly her testimony that when Appellant's vehicle moved passed her she noticed he was not wearing his safety belt. Trial Transcript, at 2-3. This testimony was sufficient, together with Appellant's admission that he was the driver, to sustain his adjudication on this civil violation.

Now, Appellant Rivera urged at trial that he should not be convicted because he was indeed wearing his safety belt, or at least the lap belt portion of it, but conceded he was not wearing the (upper) harness belt due to a shoulder injury. Let us credit this testimony fully. Under this version of events Mr.

Rivera is still guilty of the violation because he does not seem to have had a verification from a physician of his condition as provided in subsection § 31-22-22(i)(2).⁵

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

March 25, 2014

⁵ There are two items of interest which, from Mr. Rivera's viewpoint, can be seen as good news. First, as the trial judge stated, a seat belt violation is not considered a "moving violation." (Trial Tr., at 8). Second, under Gen. Laws 1956 § 31-22-22(k), safety belt adjudications do not appear on one's driving record. I have taken the liberty of confirming that this charge is not on his record.