

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

**DISTRICT COURT
SIXTH DIVISION**

Hardy Cherenfant :
:
v. :
:
State of Rhode Island :
(RITT Appeals Panel) :

A.A. No. 2023 - 025

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 and the memoranda of counsel, the Court finds that the Findings & 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 24th day of September, 2024.

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

By Order:

_____/s/_____

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

**DISTRICT COURT
SIXTH DIVISION**

Hardy Cherenfant	:	
	:	
v.	:	A.A. No. 2023-025
	:	(T22-0023)
State of Rhode Island	:	(22-001-528090)
(RITT Appeals Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Hardy Cherenfant urges this Court to vacate his adjudications on two civil traffic violations: (1) “Speeding 11+MPH in Excess of Speed Limit – First Offense” under G.L. 1956 § 31-14-2, and (2) “Interval Between Vehicles,” pursuant to G.L. 1956 § 31-15-12. The case proceeded to trial before a Magistrate of the Traffic Tribunal, who sustained both charges. Subsequently, the Appeals Panel of the Traffic Tribunal affirmed both his convictions.

This Court, which is vested with jurisdiction to hear and decide appeals from decisions of the Appeals Panel by G.L. 1956 § 31-41.1-9. This matter has been referred to me for the making of findings and recommendations

pursuant to G.L. 1956 § 8-8-8.1. Applying the standard of review is found in G.L. 1956 § 31-41.1-9(d), I have concluded that the evidence and testimony presented at his trial constituted competent evidence upon which the Trial Magistrate had a right to rely. I must therefore recommend that the decision rendered by the appeals panel in Mr. Calixte's case be AFFIRMED.

I

Facts and Travel of the Case

The above-captioned citation was issued by Trooper Antonio Miguel Jr. to Mr. Cherenfant on August 18, 2022 at approximately 9:14 p.m. in the City of Pawtucket, where the officer was on patrol. *See Dec. of Appeals Panel*, at 1 (citing *Trial Tr.* at 1).¹ The Officer's version of the initial incident, as it was revealed at trial, is fairly stated in the decision of the Appeals Panel:

... Trooper Miguel testified that on August at approximately 9:14 p.m. he was on patrol on Route 95 North near Exit 23 in Pawtucket when he observed a dark gray Tesla with a Massachusetts license plate traveling at a speed faster than the flow of traffic. (9/29/22 Tr. 1.) Trooper Miguel testified that he "had [his] radar set to the front radar position which was calibrated both internally and external[ly] and found to be in working order. The cruiser radar was calibrated using tuning forks." *Id.* Trooper Miguel testified that he completed training for use of radar through the Rhode Island Municipal Police Training Academy in 2016. *Id.* Trooper Miguel testified that his radar "conducts internal checks every 50 minutes which also displayed working conditions." *Id.* Trooper Miguel obtained a radar speed of "78 miles per hour in a 55 mile per hour zone." *Id.*

¹ These documents may be found in the Electronic Record (hereinafter, the *ER*) attached to this case, under the Docket Entry "4/11/2023 Administrative Appeal Filed." The Decision of the Appeals Panel may be found beginning on page 11; the Trial Transcript may be found beginning on page 20.

Trooper Miguel also observed the Tesla in the third lane of travel at an unsafe distance in relation to the vehicle in front of him. *Id.* He observed the motorist use the vehicle's high beams in an attempt to coax other vehicles to move to the right. *Id.* Trooper Miguel then conducted a motor vehicle stop, identified the operator by his Massachusetts license, and issued a citation for the aforementioned violations. *Id.*

Dec. of Appeals Panel, at 1-2 (footnote omitted). The Trooper further testified that, at the time of the stop, the traffic conditions were light and the visibility was clear. *Id.* at 2 (citing *Trial Tr.* at 2). He added that he obtained the reading and observed the violation from the third lane of travel, directly behind the defendant. *Id.* (citing *Trial Tr.* at 2).

Consequently, Trooper Miguel cited Mr. Cherenfant with the offenses enumerated above, plus a third charge — “Use of Multiple Beam Lamps,” in violation of G.L. 1956 § 31-24-23 — in *Summons* No. 22-001-528090; *ER* at 32-33. Appellant was arraigned on August 18, 2022 and a trial date of September 29, 2022 was set. *See Traffic Tribunal Judgment Form; ER* at 31.

Both Trooper Miguel and Mr. Cherenfant appeared for the scheduled trial. *See Trial Transcript; ER* at 20-22. After the witnesses were sworn, the Trial Magistrate called upon the Trooper to relate his version of events, which he did in a manner consistent with the foregoing narrative. *Trial Tr.* at 1. The Trial Magistrate then offered Mr. Cherenfant the opportunity to cross-examine the Trooper, and he elicited information about the amount of traffic and visibility condition mentioned *supra*. *Id.* at 1-2. And, when invited, Mr. Cherenfant testified concerning his recollection of the incident. *Id.* at 2.

According to the trial transcript Mr. Cherenfant presented with his appeal, he testified as follows:

So at the time I was traveling Northbound on 93, and previously I had been tailgated. And the Rhoda Island state, I'm not quite sure of the section, but there is a law which if I'm going to pass you, and there is a car in front of me you are not to speed up and while I was in the middle lane, the car had increased it's speed. And the car that was in the left lane in front of which I'm accused of tailgating it was yards ahead of me. And there is postage on the highway which states that you are to keep right and I was on the highway. Previously there was another car, it was a black Audi but that's not on the report that the car was chasing. And he indicated I could use my, he indicated with his high beams that I could merge, that was before I was pulled over and that car had been going the same speed I was at the [05:52 inaudible]. I was going the flow of traffic, and previously before that I had cars behind me. The only reason why I had increased the speed was to avoid collision with a car that was behind me.

Trial Tr. at 2.

At the conclusion of the testimony, the Trial Magistrate made findings of fact and announced his verdict on each of the charges. He dismissed the charge of "Use of Multiple Beam Lamps," finding it inapplicable to the conduct exhibited here. *Id.* at 3; *see also Judgment Form, ER* at 24. And, as summarized by the Panel, on the other two charges the Magistrate found:

The Trial Magistrate sustained the charged violation of § 31-15-12, "Interval Between Vehicles [Following Too Close]" finding Trooper Miguel's testimony credible and citing that there is sufficient evidence on the record to establish that that Appellant created danger to himself and the motorist in front of him by following the vehicle too closely. *Id.* [at 3]. Finally, the Trial Magistrate found Trooper Miguel's testimony credible regarding the charged violation of § 31-14-2, "Speeding 11+MPH in Excess of Posted Speed Limit – 1st Offense" citing Trooper Miguel's testimony that he used a radar calibration device, is trained in the use of radar

devices, and obtained a radar speed of 78 miles per hour in a 55 mile per hour zone. *Id.*

Dec. of Appeals Panel, at 3; *ER* at 13. He imposed fines of \$325.00 on the speeding count and \$85.00 on the charge of following too closely. *Trial Tr.* at 3; *ER* at 22.

Mr. Cherenfant filed a timely appeal and, on March 1, 2023, the matter was scheduled for oral argument before an Appeals Panel composed of Magistrate Kruse Weller (Chair), Chief Magistrate DiSandro, and Magistrate DiChiro. *Dec. of Appeals Panel*, at 1; *ER* at 11. Appellant Cherenfant failed to appear. *Id.*

In its Decision, which was issued on March 30, 2023, the Appeals Panel responded to Appellant's assertion, made in his "Notice of Appeal" (*ER* at 29), that there was a "lack of evidence" as to his guilt on the two remaining charges. *See* "Notice of Appeal," *ER* at 29. The Panel indicated that it "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." *Dec. of Appeals Panel*, at 5 (quoting *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))). Indeed, the Panel's role is "limited to a determination of whether the hearing justice's decision is supported by legally competent evidence." *Id.* at 5 (citing *Marran v. State*, 672 A.2d 875, 876 (R.I. 1996)). In essence, because the members of the Panel did not have the opportunity to observe the witnesses in the case, it would be improper for them to second-guess the impressions and credibility decisions of the Trial Magistrate, who did have the opportunity to do

so. *Dec. of Appeals Panel*, at 5 (quoting *Environmental Sciences Corp. v. Durfee*, 621 A.2d 200, 206 (R.I. 1993)).

Turning to the specifics of Mr. Cherenfant's case, the Panel noted the Trial Magistrate found the testimony of Trooper Miguel to be credible. *Id.* at 5 (citing *Trial Tr.* at 2-3). The Panel observed that the Trial Magistrate had made specific findings as to why the Trooper's testimony was credible on the issue of the speeding charge — because he used a radar calibration device, which he was trained to use at the Academy, and because he had obtained a reading of 78 miles per hour in a 55 mile per hour zone. *Id.* (citing *Trial Tr.* at 2).

Then, on the charge of following too closely, the Panel relied on the Trial Magistrate's finding of the Trooper's credibility and his specific finding that Mr. Cherenfant's actions created a danger to himself and the other motorist. *Id.* (citing *Trial Tr.* at 2).

II

Standard of Review

The standard of review which must be employed in this case is enumerated in G.L. 1956 § 31-41.1-9(d), which states 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 provision is a mirror-image of the standard of review found in G.L. 1956 § 42-35-15(g) — a provision of the Rhode Island Administrative Procedures Act (APA). Accordingly, we can rely on cases interpreting the APA standard as guiding lights in this process. 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.’” *Guarino v. Department of Social Welfare*, 122 R.I. 583, 584, 410 A.2d 425 (1980) (citing G.L. 1956 § 42-35-15(g) (5)). *See also Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993).

Our Supreme Court has reminded us that, when handling refusal cases, reviewing courts lack “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, ante*, 633 A.2d at 1348 (citing *Liberty Mutual Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). This Court’s review “... is confined to a reading of the record to determine whether the judge’s decision is supported by legally competent evidence or is affected by an error of law.” *Id.* at 1348 (citing *Environmental Sciences Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)).

III

Applicable Law

A

The Speeding Statute

In the instant matter the Appellant was charged with speeding under section 31-12-3 of the General Laws, which states, in its entirety:

31-14-2. Prima facie limits — (a) Where no special hazard exists that requires lower speed for compliance with § 31-14-1, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this title shall be lawful, but any speed in excess of the limits specified in this section or established as authorized in this title shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

(1) Twenty-five miles per hour (25 mph) in any business or residence district;

(2) Fifty miles per hour (50 mph) in other locations during the daytime;

(3) Forty-five miles per hour (45 mph) in such other locations during the nighttime;

(4) Twenty miles per hour (20 mph) in the area within three hundred feet (300') of any schoolhouse grounds' entrances and exits during the daytime during the days when schools shall be open.

(5) The provisions of subdivision (4) of this subsection shall not apply except when appropriate warning signs are posted in proximity with the boundaries of the area within three hundred feet (300') of the schoolhouse grounds, entrances, and exits.

(b) Daytime means from a half hour before sunrise to a half hour after sunset. Nighttime means at any other hour.

(c) The prima facie speed limits set forth in this section may be altered as authorized in §§ 31-14-4 — 31-14-8.

The enhanced penalties deriving from traveling more than eleven miles over the speed limit are found in G.L. 1956 § 31-41.1-4(a)(B).

B

The Interval Between Vehicles Statute

Appellant was also convicted of the traffic violation known colloquially as “following too closely,” under a traffic code provision requiring that motorists maintain a proper interval between vehicles. The statute reads as follows:

31-15-12. Interval between vehicles. — The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the highway, and shall, whenever traveling through a business or residential district, and whenever traffic permits, leave sufficient space so that an overtaking vehicle may enter and occupy the space without danger. This provision shall not apply to a caravan under police escort or a funeral procession. Violations of this section are subject to fines enumerated in § 31-41.1-4.

IV

Positions of the Parties

When invited to file a brief in this case, Mr. Cherenfant, on June 29, 2023, submitted a one-page writing, in letter format, in which he stated as follows:

To Whom This May Concern,

I am looking to use Rhode Island’s good driver statute. With no criminal or traffic disputes, I should have been issued a warning. I was engaging in defensive driving at the time of this traffic violation. I increased my speed to safely change lanes into the middle lane of traffic to avoid a rear collision with a car which I later learned was an unmarked police car that was behind me which I believed at the time was another car in traffic that was tailgating me. I was not going 70+ mph behind a vehicle because we would have collided. I’m looking to get my case dismissed and pay the fees associated with the Rhode Island good driver statue.

Best,

Hardy Cherenfant

*See Appellant's Memorandum.*² Obviously, much of Mr. Cherenfant's memorandum does not constitute a refutation of the proof presented him at trial.

In response, the Appellee-State also filed a Memorandum, also short, in which it makes three main points.³ *First*, it asserts that this appeal is not the appropriate forum in which to request a dismissal of a case pursuant G.L. 1956 § 31-41.1-7; rather, the statute requires a motorist to request a hearing at which such a request may be considered. *State's Mem.* at 2-3. *Second*, the State urges that Appellant's assertion that, in lieu of a citation, he should have been given a warning by the Trooper, is not justiciable by the Court — that is, the Court is not empowered to adjudicate whether a law enforcement officer should have exercised his prosecutorial discretion and forgone issuing a citation. *Id.* at 3. *And finally*, the State argues that it proved that Appellant had been speeding. *Id.* at 3-4 (citing *Trial Tr.* at 1). Moreover, the State insists that Mr. Cherenfant's testimony did not constitute a factual denial of the speeding charge, because he never told the Court how fast he was going when he sped up to pass. *Id.* at 4.

V

Analysis

Although, before this Court, Mr. Cherenfant seems to have abandoned any effort to defend the charges upon which he was tried and convicted, we

² This document may be found in the Electronic Record attached to this case, under the Docket Entry "06/29/2023 Appellant Brief Filed."

³ This document may be found in the Electronic Record attached to this case, under the Docket Entry "04/17/2024 Appellee Brief Filed."

should nevertheless note that the Trial Magistrate's verdicts were supported by competent evidence of record — particularly the testimony of Trooper Miguel, which the Trial Magistrate found to be credible. Neither has he alleged that the Trial Magistrate committed an error of law in his rulings on the case. Therefore, under *Link, supra, generally*, I must recommend that the decision of the Appeals Panel (affirming the decision of the Trial Magistrate) be affirmed.

Regarding the other grounds for appeal mentioned by Appellant Cherenfant, little need be said. This Court does not have jurisdiction to consider, for the first time on appeal, his request to utilize the Good Driving Record Statute, as I can find in the trial transcript no such application being made to the Trial Magistrate.⁴ And finally, this Court does not have the authority to second-guess the Trooper's disinclination to let this Motorist off with a warning, as he undoubtedly had the unbridled prosecutorial discretion to do — or to not do.

VI Conclusion

Upon careful review of the evidence, I recommend that this Court find that the decision of the appeals panel was made upon lawful procedure and was not affected by error of law. G.L. 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

⁴ In any event, the speeding citation, as charged and as adjudicated, was not eligible for dismissal under the Good Driving Record Statute since he was accused of operating more than fourteen miles per hour faster than the speed limit. See G.L. 1956 § 31-41.1-7(d)(5).

appeals panel be AFFIRMED.

/s/
Joseph P. Ippolito
MAGISTRATE
SEPTEMBER 24, 2024

