STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T21-0027**
	:	**21412500401**
PAUL P. MONTEIRO	:	

DECISION

PER CURIAM: Before this Panel on February 23, 2022—Administrative Magistrate Abbate (Chair), Magistrate Noonan, and Magistrate Kruse Weller, sitting—is the appeal of Paul Pereira Monteiro (Appellant) from the November 23, 2021 decision of Magistrate DiChiro (Trial Magistrate), denying Appellant's motion to vacate and sustaining the charged violations of G.L. 1956 § 31-14-1, "Reasonable and Prudent Speeds" and G.L. 1956 § 31-15-13, "Crossing Center Section of Divided Highway[.]" Appellant appeared before this panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For the reasons set forth in this Decision, Appellant's appeal is denied.

I

Facts and Travel

On February 16, 2021, at approximately 1:48 p.m., Officer Christopher M. Bouvier (Officer Bouvier) of the Woonsocket Police Department charged Appellant with the following three violations of the motor vehicle code: (1) G.L. 1956 § 31-14-1, "Reasonable and Prudent Speeds[;]" (2) G.L. 1956 § 31-15-13, "Crossing Center Section of Divided Highway[;]" and (3) G.L. 1956 § 31-15-13, "Leaving Lane of Travel/ Right Half of Road[.]" *See* Summons No. 21412500401. The violations occurred at 792 Park Avenue in Woonsocket, Rhode Island. *See id.*

On March 4, 2021, at Appellant's first appearance, Appellant pled not guilty to all three violations. The matter proceeded to trial on April 28, 2021, wherein Appellant pled guilty to two of the three charged violations, namely G.L. 1956 § 31-14-1, "Reasonable and Prudent Speeds" and G.L. 1956 § 31-15-13, "Crossing Center Section of Divided Highway[.]" As part of a plea agreement, the Woonsocket Police Department dropped the third charge for a violation of G.L. 1956 § 31-15-13, "Leaving Lane of Travel/ Right Half of Road[.]" Appellant filed a motion to vacate his guilty plea. On October 26, 2021, Appellant's motion was dismissed through email. The next day, on October 27, 2021, Appellant motioned to vacate the decision again. A hearing on the motion was scheduled for November 10, 2021 but was continued to November 23, 2021.

On November 23, 2021, Appellant appeared before the Trial Magistrate for a hearing on the motion to vacate. Appellant first explained that he entered into a plea agreement, where one of Appellant's three violations was dropped in exchange for Appellant pleading guilty to the two aforementioned charges. (Tr. at 1-2.) Next, Appellant argued that he was not in the location where Officer Bouvier said Appellant had been at the time the violations occurred. *Id*. at 2. Instead, Appellant argued that at the time the charged violations occurred, he was at his workplace, located in Groton, Connecticut. *Id*. Appellant claimed that he obtained newly discovered evidence to support the argument he was at his workplace, stating "I forgot that I had [a] dash cam in my car, so I have video from that, as well as evidence from my employer that I was nowhere near that place at that time." *Id*.

The Trial Magistrate explained that he could not grant a motion to vacate unless there was newly discovered evidence that Appellant could not have discovered prior to trial. *Id*. at 3. The Trial Magistrate reasoned that if Appellant had been in a different location at the time of the violation, then Appellant would have been aware of that circumstance before the time of his April

28, 2021 trial. *Id*. Further, the Trial Magistrate noted that Appellant pled guilty at trial, rather than asserting the defense that he had been elsewhere at the time of the violations. *Id*. at 4. The Trial Magistrate stated that he was going to deny Appellant's Motion to Vacate because the Trial Magistrate did not believe Appellant presented any newly discovered evidence. *Id*. The Trial Magistrate explained that the evidence of Appellant's location is "evidence that could have, and should've been discovered at the time." *Id*. at 5.

Appellant next claimed that he was not aware of the date or time that he was charged with the violations and that he could not have known this information before April 28, 2021 trial. *Id.* at 6. Appellant stated, "on the 28th is when I found out the details of this case. I didn't find anything out before that." *Id*. at 8. The Trial Magistrate reminded Appellant that prior to trial, Appellant had appeared for his March 4, 2021 arraignment and pled not guilty to the charges. *Id*. at 8-9.

Appellant also argued that the court misled him and told him that he could not present the evidence at trial. *Id*. at 5. Subsequently, Appellant argued, "[t]he officer bullied me into taking the plea." *Id*. at 10. The Trial Magistrate did not believe Appellant's argument and found that Appellant knowingly and voluntarily accepted the plea agreement. *Id*.

Ultimately, the Trial Magistrate denied Appellant's Motion to Vacate. *Id*. at 11. The Trial Magistrate also chose not to suspend Appellant's license, despite that fact that Appellant was a Colin Foote candidate after these violations.[1] *Id*. at 4, 11. Appellant timely filed the present appeal.

[1] Section 31-27-24, commonly referred to as the Colin Foote Statute (Foote Act), states that "[e]very person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period" is subject to increased penalties. Sec. 31-27-24. Those penalties are (1) a fine up to one thousand dollars ($1,000); (2) a mandatory sixty hours of driver retraining; (3) a mandatory sixty hours of public community service; (4) and the operator's driver's license may be suspended up to one year or revoked for a period of up to two years. *See Id*.

II

Standard of Review

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 as follows, 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 prejudiced because the judge's findings, inferences, conclusions or decisions are:
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> "(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 '[c]learly 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 (quoting Section 31-43-4(6)(d) and (e)). "Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions" on appeal. *Id.*; *see Janes,* 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that by denying Appellant's Motion to Vacate, the Trial Magistrate violated his rights under Rule 20 of the Traffic Tribunal Rules of Procedure. *See* Notice of Appeal. Specifically, Appellant claims that there is newly discovered evidence to prove his innocence.

Rule 20 of the Traffic Tribunal's Rules of Procedure permits the court to relieve a party from a final judgment for a number of enumerated reasons, including newly discovered evidence. Traffic Trib. R.P. 20. Rule 20 mirrors Rule 60(b) of the Superior Court Rules of Civil Procedure, which permits a trial justice to relieve a party from judgment if the party has "newly discovered evidence which by due diligence could not have been discovered in time for a new trial . . . ." Super. R. Civ. P. 60(b)(2). Our Supreme Court has clarified that this Panel's review is limited to an examination of the decision to determine "the correctness of the order granting or denying the motion, not the correctness of the original judgment." *Greenfield Hill Investments, LLC v. Miller*, 934 A.2d 223, 224 (R.I. 2007) (citing *McBurney v. Roszkowski*, 875 A.2d 428, 435 (R.I. 2005)). Further, "[a] motion to vacate a judgment is left to the sound discretion of the trial judge and such a ruling will not be disturbed absent an abuse of discretion." *Malinou v. Seattle Savings Bank*, 970 A.2d 6, 10 (R.I. 2009) (citing *Medeiros v. Anthem Casualty Insurance Group*, 822 A.2d 175, 178 (R.I. 2003)). The party requesting a motion of this nature bears the burden of demonstrating that

the '"evidence was not discoverable at the time of the original hearing by the exercise of ordinary due diligence.'" *Malinou*, 970 A.2d 6, 10 (R.I. 2009) (quoting *Forcier v. Forcier*, 558 A.2d 212, 213 (R.I. 1989)). Here, in order to prevail on his Rule 20 motion, Appellant was required to prove to the satisfaction of the Trial Magistrate that the evidence demonstrating Appellant was working at the time of the violations was not discoverable at the time of the April 28, 2021 trial. *See id*.

At trial, Appellant claimed that the dash camera footage and work time stamps were newly discovered evidence, demonstrating that Appellant had not been at the location where the charged violations occurred at the relevant time. (Tr. at 2.) The Trial Magistrate found that Appellant failed to demonstrate that the cited evidence was not discoverable at the time of the trial. *Id*. at 10. The Trial Magistrate reasoned that if Appellant had been in a different location at the time of the violation, then Appellant would have been aware of that circumstance before the time of his April 28, 2021 trial. *Id*. at 3. This Panel agrees that Appellant should have known the information about his own whereabouts, or at minimum, could have discovered the circumstances "by the exercise of ordinary due diligence." *See Malinou v. Seattle Savings Bank*, 970 A.2d 6, 10 (R.I. 2009) (quoting *Forcier v. Forcier*, 558 A.2d 212, 213 (R.I. 1989)).

Although Appellant argued that he was not aware of the date or time that the violations occurred until trial, Appellant's argument is flawed. *See* Tr. at 8. At trial, Appellant stated, "on the 28th is when I found out the details of this case. I didn't find anything out before that." *Id.* However, as the Trial Magistrate stated, Appellant appeared for his March 4, 2021 arraignment and pled not guilty to the charges. *Id*. at 8-9. After receiving a summons, attending the March 4, 2021 arraignment, and negotiating a plea deal, this Panel is convinced that Appellant certainly should have been aware of the date he was charged with the violating the statutes. Additionally, Appellant argued that the court misled him and told him that he could not present the dash camera

footage and work time stamps at trial. *Id.* at 5. In order to have been misled about presenting this evidence, Appellant would have had possession of this evidence prior to trial. Therefore, not only was the evidence discoverable, but according to Appellant's argument, he had actually discovered the evidence. This Panel is satisfied that the Trial Magistrate did not err in finding that Appellant failed to meet his burden of demonstrating that the cited evidence was not discoverable at the time of the April 28, 2021 trial.

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 *Janes*, 586 A.2d at 537). As the members of this Panel did not have an opportunity to observe the live testimony of Appellant, it would be impermissible for the Panel to second-guess the Trial Magistrate's impression as he was able to "appraise [the] witness['s] demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (internal quotations omitted). To reiterate, "[t]he appeals panel is limited to a determination of whether the hearing justice's decision is supported by competent evidence." *Marran v. State*, 672 A.2d 875, 876 (R.I. 1996) (citing *Link*, 633 A.2d at 1348). Based upon Appellant's testimony and the evidence on the record, the Trial Magistrate's decision to deny the Motion to Vacate and sustain the violations is not erroneous or affected by error of law.

IV

Conclusion

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

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Administrative Magistrate Joseph A. Abbate (Chair)

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Magistrate William T. Noonan

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Magistrate Erika Kruse Weller

DATE: _____