

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

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:
:

v.

**C.A. No. T13-0009
07409096468**

BIANCA MADONNA

DECISION

PER CURIAM: Before this Panel on March 20, 2013—Magistrate Goulart (Chair, presiding), Judge Almeida, and Magistrate Noonan sitting—is Bianca Madonna’s (Appellant) appeal from a decision of Judge Parker (trial judge), sustaining the charged violation of G.L. 1956 § 31-51-2.2, “Stopping for school bus required – penalty for violation.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On November 21, 2012, Appellant was issued a traffic summons for the aforementioned traffic violation. Appellant was driving on Broadway in Providence from her place of employment. A camera attached to a school bus videotaped the Appellant pass a school bus, while the bus’s stop sign and lights were activated. Appellant contested the charges, and the matter proceeded to trial. The trial judge sustained the charged violation, and Appellant filed this appeal.

At trial, Officer Thomas Connetta (Officer Connetta) of the Providence Police Department testified that on November 27, 2012, he responded to Smartbus Live at 49 Pavilion Avenue. (Tr. at 5.) At the location, Officer Connetta watched a video of the Appellant’s vehicle driving down Broadway on November 21, 2012. Id. Officer Connetta testified that the school

bus stopped and put out the stop sign while on Broadway. Id. While stopped, he observed Appellant's vehicle pass the school bus. Id.

At trial, Appellant contested the Officer's account of the events, specifically testifying that the stop lights were not activated. (Tr. at 22.) Appellant went on to testify that she was ". . . within the [bus] . . ." when the stop sign extended outwards. Id. She testified that she stopped as soon as she was able to do so. Id.

After the Appellant's testimony was given, the trial judge viewed the video of Appellant's vehicle. (Tr. at 25.) Appellant also admitted a photograph into evidence demonstrating that Appellant stopped towards the front of the bus, but not past the bus. (Tr. at 7, 25.)

At the close of evidence, the trial judge sustained the violation, finding that Appellant passed the bus when the stop sign was activated. (Tr. at 27.) Thereafter, the trial judge imposed the sentence. 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 trial judge's ruling is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant contends that the evidence produced at trial does not show that Appellant failed to stop for the school bus before reaching the bus, as required by the statute.

This Panel is mindful that "[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 v. State, 633 A.2d at 1348). It is well-settled that credibility

determinations are within the province of the hearing judge. Link, 633 A.2d at 1348. Consequently, this Panel will not substitute its own judgment for that of the trial judge. § 31-41.1.8 (f).

Section 31-51-2.2 requires that a driver stops for a school bus “. . . before reaching the bus.” Section (a) of § 31-51-2.2 provides in relevant part:

Any vehicle being operated upon a street, highway, private way or private or public parking area upon meeting or overtaking from any direction any school bus on which there is in operation flashing red lights, shall stop before reaching the bus. The vehicle shall not proceed until the bus resumes motion or until the flashing lights are no longer actuated. An owner and/or operator of a motor vehicle operated in violation of this section based on evidence obtained from a live digital video school bus violation detection monitoring system shall, upon conviction of a violation of this section, be punished by a civil fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) and/or suspension of his or her driving license for a period not to exceed thirty (30) days. (Emphasis added.)

Therefore, § 31-51-2.2 provides that a vehicle is required to stop before the vehicle reaches the bus when the school bus has activated its flashing red lights.

In this instance, the trial judge found that “. . . the stop sign was out, one vehicle passed the bus prior to Miss Madonna passing it; and it appears plainly to me from viewing the evidence that, that she committed a violation of statute [sic].” (Tr. at 27.) However, the statute requires that the vehicle stop before reaching the bus. The record fails to include any facts which support the conclusion that Appellant failed to stop before reaching the bus. While the record does support the judge’s determination that Appellant failed to stop her vehicle at the stop sign, the record fails to support a finding that the lights were in operation at the time the Appellant began to pass the bus. Accordingly, this Panel is not satisfied that the hearing justice’s decision is supported by 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 clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Judge Lillian M. Almeida

Magistrate William T. Noonan

DATE: _____