

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PAWTUCKET

v.

ERICA LUKAS

:  
:  
:  
:  
:

C.A. No. M12-0017  
12408506083

13 JAN - 4 AM 10:57

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

**DECISION**

**PER CURIAM:** Before this Panel on November 14, 2012— Chief Magistrate Guglietta (Chair, presiding), Judge Ciullo, and Magistrate Goulart, sitting—is Erica Lukas’ (Appellant) appeal from a decision of the Municipal Court, sustaining the charged violation of G.L. 1956 § 31-20-9, “Obedience to stop sign.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On May 31, 2012, an officer from the Pawtucket Police Department (Officer) conducted a traffic stop at “the intersection of Dartmouth and Hillside.” (Tr. at 2.) Appellant was issued a citation for the aforementioned motor vehicle offense. Appellant contested the charge, and the matter proceeded to trial on September 21, 2012.

The trial commenced with the officer testifying that he “. . . was [at] a fixed traffic post . . . at Dartmouth and Hillside.” *Id.* The officer stated that he observed a car drive through a stop sign without making a full and complete stop before proceeding into the intersection. (Tr. at 3.) He then conducted a traffic stop of the vehicle. At trial, the officer testified that he had an unobstructed view of the cars that were driving by, the

road conditions were dry, and the visibility was clear. (Tr. at 3-4.) Thereafter, the Appellant testified that she came to a complete stop in front of the stop sign and then proceeded forward to make sure it was safe to proceed through the intersection. (Tr. at 12.)

At the close of evidence, the trial judge recounted the aforementioned facts in her decision. In rendering her decision, the trial judge determined that the Appellant did not, in fact, stop at the stop sign based on the officer's testimony. The trial judge found it significant that the officer could clearly see the stop sign from the point where he was stationed and the officer testified that he never saw the hood of the car stop at all. (Tr. at 21.) The judge found the officer credible and adopted the officer's testimony. In summation, the trial judge sustained the violation. (Tr. at 22.) Appellant timely filed this appeal.

### **Standard of Review**

Pursuant to § 8-18-9, "[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8." Section 31-41.1-8 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'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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

#### Analysis

On appeal, Appellant argues that the decision made by the trial judge was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In particular, Appellant contends that the officer did not have a clear and unobstructed view of the stop area because of a fence, a wall, and a large tree that were covering the stop area.

In Link, our Supreme Court made clear that 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 Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the witnesses, it would be impermissible to second-guess the trial judge’s “impressions as she . . . observe[d] [the witnesses.] [The trial judge] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,]. . . what . . . [to] believe[] and disbelieve[].” Environmental Scientific Corp., 621 A.2d at 206.

Here, Appellant argues that the evidence elicited at trial was insufficient to sustain the violation. Appellant contends that the officer could not see the stop area where the stop sign was located from his viewpoint. However, Appellant’s arguments relate to questions of fact that were heard and weighed by the trial judge at Appellant’s trial. In rendering her decision, the trial judge specifically found that all of the elements of the violation were met and the judge went on to state that “[the officer] couldn’t have been parked in a better position to observe that intersection.” (Tr. at 21.) This Panel’s review is limited to determining whether the trial judge made an error in law or misapplied the evidence. See Link, 633 A.2d at 1348 (our Supreme Court held that this Panel’s review is limited in scope). Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse her discretion. The trial judge’s decision to sustain the charged violation is supported by legally competent evidence—the testimony of the officer—which the trial judge chose to credit over the Appellant’s.

### 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 not erroneous in view of the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.