

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

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:
:

v.

**C.A. No. T14-0037
07409111971**

ANDREW KRICHAK

DECISION

PER CURIAM: Before this Panel on July 30, 2014—Judge Almeida, (Chair, presiding) Chief Magistrate Guglietta, and Magistrate Goulart, sitting—is Andrew Krichak’s (Appellant) appeal from a decision of Magistrate Noonan (trial magistrate), sustaining the charged violation of G.L. 1956 § 31-51-2.2, “Stopping for school bus required.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On December 12, 2013, Officer John St. Jill of the Providence Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on May 20, 2014.

At trial, the Officer testified that on December 12, 2013, he responded to the Smart Bus Red Flex Company on Harris Avenue in Providence. (Tr. at 1.) At that time, the Officer viewed a video that showed Rhode Island registration 479 524 2000, a red Mitsubishi, pass a school bus with the stop sign extended and the red lights activated. Id. The Officer explained that he checked the registration plate with the Department Motor Vehicles (DMV) and the vehicle was a 2000 red Mitsubishi registered to Appellant. Id. Next, the Officer admitted the video of the instant violation as a full exhibit, and it was viewed by the Court. (Tr.at 2.)

Subsequently, Appellant testified that he was not the operator of the vehicle. Id. He stated that he owns two cars, and the red Mitsubishi is his daughter's vehicle. Id. The Appellant testified that his daughter was not driving the vehicle at the date and time in question. Id. Furthermore, Appellant asserted that he was unable to identify the first number on the registration plate featured in the video. Id. The Appellant stated that the red Mitsubishi in the video was similar to his vehicle, but he could not be sure it was his car given his inability to read one of the digits on the plate. Id.

Thereafter, the trial magistrate issued his decision sustaining the charged violation. In doing so, the trial magistrate noted that he found the Officer's testimony to be credible in its entirety and stated that he would accept that testimony in totality as his findings of fact. (Tr. at 3.) In addition, the trial magistrate highlighted that he found Appellant's testimony to be completely lacking credibility, including Appellant's testimony that he was not driving the car. Id. Aggrieved by the trial magistrate's decision to sustain the charged violation, Appellant timely filed the instant 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 [or magistrate'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 Ins. 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 Envtl. 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 that the trial magistrate's decision was an abuse of discretion and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant asserts that the trial magistrate erred by crediting the Officer's testimony over his own.

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 [magistrate] 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 Officer or Appellant, it would be impermissible to second-guess the trial magistrate’s “impressions as he . . . observe[d] [the Officer and Appellant] [,] 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.

After listening to the testimony, the trial magistrate determined that the Officer’s testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. See Tr. at 3. “[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [magistrate] concerning the weight of the evidence on questions of fact).” Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the trial magistrate credited the Officer’s testimony in totality and accepted it as his findings of fact. See Tr. at 3. Moreover, the trial magistrate found that Appellant’s testimony lacked any credibility. Id.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (The [appellate court] should give great deference to the [trial magistrate’s] findings and conclusions unless clearly wrong.).

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Judge Lillian M. Almeida (Chair)

Chief Magistrate William R. Guglietta

Magistrate Alan R. Goulart

DATE: _____