STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF PROVIDENCE	**:**	
	:	
v.	**:**	**C.A. No. T14-0035**
	:	**07409115086**
CHELO J. ESPAILLAT	**:**	

DECISION

PER CURIAM: Before this Panel on September 17, 2014—Chief Magistrate Guglietta (Chair), Judge Almeida, and Magistrate Abbate, sitting—is Chelo J. Espaillat'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." The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On February 6, 2014, Officer John Sigillo of the Providence Police Department (Officer), charged the Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on May 6, 2014.

At trial, the Officer testified that he was called to the office of the Red Flex Student Guardian Smart Bus (Red Flex), on Harris Avenue in Providence. (Tr. at 1.) While at Red Flex, the Officer watched a video that had been recorded automatically by a camera attached to a Red Flex school bus. Id. The video, dated January 29, 2014, depicted a silver Toyota SUV pass the school bus while the bus's stop sign and lights were activated. The silver Toyota displayed Rhode Island Registration AQ718. Id. The Officer contacted the Rhode Island Department of Motor Vehicles (DMV) to identify the owner of the Toyota. Id. The DMV informed the Officer

that the Appellant owned the Toyota. Id. The Officer issued the Appellant a summons by mail for violating § 31-51-2.2, "Stopping for school bus required." Id.

After testifying, the Officer directed the Trial Magistrate's attention to the video. Id. The Officer explained, "[t]his is the video . . . [t]he stop sign was activated and the pedestrian crosses the street, and this is [Appellant's] vehicle." Id. When the video ended, Appellant testified in his own defense. Id. at 2.

The Appellant testified that he was "surprised" by the summons. Id. He continued, "comparing the address [on the summons], it does not coincide with the address [in the video]." Id. The Trial Magistrate responded, "[w]e just watched the video of one of the most blatant violations I have ever seen." Id. The Appellant rejected the Trial Magistrate's statement and continued to argue that the location of the violation listed on the summons is not the same location depicted in the video. Id. Specifically, Appellant argued that that there was a traffic light in the video, and that there is no traffic light at the intersection named on the ticket. Id. The Trial Magistrate replied, "the purpose of the papers [the Officer] sent [Appellant] is to give him notice of what he is being charged with . . . [a]nd now [the Officer] just showed [Appellant] a video which clearly unambiguously shows that he drove right pass [sic] the stop sign." Id. at 3. Appellant defended his passing the school bus, arguing "[i]t's been turned into a common practice for bus driver's to put their red lights on and they [waive] the drivers [by]. In this case, the light is green . . . and [bus drivers] are supposed to put [the stop sign] when the light is red." Id.

After hearing the testimony presented, the Trial Magistrate recapped the offense depicted in the video. The Trial Magistrate stated, "[the] record reflects the fact that the video shows the deployment of a stop sign, a pedestrian walking across the crosswalk, this vehicle taking a left

hand turn in full view of the stop sign and making no effort whatsoever to stop or slow down and proceeding to pass the stop sign." Id. The Trial Magistrate determined, "the address [of the offense] is no concern to this court." Id. Thereafter, the Trial Magistrate adopted the testimony of the Officer as his findings of fact and explained that the testimony of the Officer as well as the "indisputable evidence presented by the video" support the charge of § 31-51-2.2.

Accordingly, the Trial Magistrate sustained the violation, and imposed a sentence of five hundred dollars ($500.00). Aggrieved by the Trial Magistrate's decision, 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 Magistrate's decision was an abuse of discretion and affected by an error of law. Specifically, Appellant contends that the Trial Magistrate failed to consider the discrepancy between the address listed on the summons and the location depicted in the video. Appellant maintains that this inconsistency, combined with the bus driver's wrongful stop at an intersection, are factors that required dismissal of the charged violation.

Alleged Error in Summons

Appellant maintains that an inconsistency exists between the address listed on the summons and the location depicted in the video. Appellant submits that he was prejudiced by this discrepancy. We disagree.

Rule 3 of the Rhode Island Traffic Tribunal Rules of Procedure sets forth, in pertinent part:

> "[a] summons which provides the defendant and the court with adequate notice of the violation being charged shall be sufficient if the violation is charged by using the name given to the violation by statute. The summons shall state for each count the official or customary citation of any statute that the defendant is alleged to have violated. An error or omission in the summons shall not be grounds for a reduction in the fine owed, for dismissal of the charged violation(s), or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice." See Traffic. Trib. R. P. 3(d).

Accordingly, the purpose of a summons is to give the defendant "adequate notice" of the charged violation and shall be sufficient unless an error or omission in the summons misleads the defendant to his or her prejudice. Id.; see also Rosen v. Rosen, 122 R.I. 6, 9, 404 A.2d 472, 474 (1979) (finding that the purpose of a summons is to give a defendant "fair and adequate notice of the commencement of the action against him"); State v. Berberian, 100 R.I. 413, 415, 216 A.2d 507, 509 (1966) (examining "whether the complaint is sufficient to inform defendant of the offense with which he is therein charged").

To determine whether Appellant suffered any prejudice as a result of the alleged error in the summons, this Panel must examine the summons. See State v. Donato, 414 A.2d 797, 803 (R.I. 1980) ("[t]o determine whether defendant suffered any prejudice or surprise as a result of the error [in the indictment], [this court] must examine the indictment"). We look to the procedural requirements of a summons.

A summons "shall consist of a listing of the civil violations alleged by the issuing officer and a requirement that the defendant appear in court on the date and time and at the place indicated thereon." See Traffic Trib. R. P. 3(a). The summons at hand plainly identifies § 31-51-2.2, "Stopping for school bus required" as the charged violation. Thereafter, the summons indicates that Appellant must appear in court on March 11, 2014 at 9:00 a.m. Accordingly, the summons provided Appellant with adequate notice of the violation being charged as well as

adequate notice of the date on which Appellant should appear. Based on the presence of these factors, we cannot say that Appellant was justified in feeling "surprised," nor can we say that Appellant suffered any prejudice as a result of the inconsistency. See Tr. at 2; see also Donato, 414 A.2d at 803.

The alleged variance between the summons and the evidence presented at trial is immaterial in regards to notice because the Appellant was informed definitely as to the charge against him. See State v. Markarian, 551 A.2d 1178, 1182 (R.I. 1988) (stating "[t]he general rule that allegations and proof must correspond is based on the rationale that the defendant must be informed definitely as to the charges against him . . ."); see also Berger v. United States, 295 U.S. 78, 83 (1935) (finding that a variance should not be regarded as "material" if the indictment and proof substantially correspond, or if the defendant could not have been misled at trial). Therefore, because the variance was not material, Appellant's contention that the variance entitled him to a dismissal of the charged violation is without merit.

In resting our decision upon the foregoing analysis, we do not ignore the Trial Magistrate's determination that "the address is no concern" and that the Appellant was not "prejudice[d] in any way." (Tr. at 3.) We see no reason to disturb that conclusion. See Janes, 586 A.2d at 537 ("[an appellate court] must sustain the judgment of the [trial court] . . . unless it finds that the decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record").

Statutory Interpretation

Appellant contends that the school bus driver wrongfully stopped at an intersection in violation of § 31-20-10.3(a), thereby mitigating his unlawful passing of the bus. Appellant maintains that construing §§ 31-20-10.3 and 31-51-2.2 together creates an ambiguity, and as

such, provides Appellant with a defense to the charge of § 31-51-2.2. This is the first occasion on which this Panel need address the particular interplay between §§ 31-20-10.3 and 31-51-2.2. We start, therefore, by construing each statute.

Section 31-20-10.3(a) prohibits a school bus from discharging or picking up passengers "at any intersection where a traffic control device . . . controls the movement of the bus." See § 31-20-10.3(a). Section 31-51-2.2 requires that "[a]ny vehicle . . . 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 . . . [and] shall not proceed until the bus resumes motion or until the flashing lights are no longer actuated."

Ambiguity exists "when a word or phrase in a statute is susceptible of more than one reasonable meaning." State v. Hazard, 68 A.3d 479, 485 (R.I. 2013). When a statute "expresses a clear and unambiguous meaning, the task of interpretation is at an end and this [Panel] will apply the plain and ordinary meaning of the words set forth in the statute." State v. Bryant, 670 A.2d 776, 779 (R.I. 1996). However, "we must not construe [the] statute in a way that would result in absurdities or would defeat the underlying purpose of the enactment." Commercial Union Ins. Co. v. Pelchat, 727 A.2d 676, 681 (R.I. 1999). Thus, "[i]f a mechanical application of a statutory definition produces an absurd result or defeats legislative intent, this [Panel] will look beyond mere semantics and give effect to the purpose of the act." Id. (internal citation omitted).

On its face, neither §§ 31-20-10.3 nor 31-51-2.2 is ambiguous. That is, neither statute contains a word or phrase that is susceptible of more than one reasonable meaning. See Hazard, 68 A.2d at 485. Clearly, § 31-51-2.2 requires motorists to stop for a school bus when the bus's stop sign is deployed, and separately, § 31-20-10.3(a) prohibits school bus drivers from stopping at intersections. It is only when reading § 31-20-10.3 alongside §31-51-2.2, in the limited

context presented to this Panel, that the potential for ambiguity arises. See Horn v. S. Union Co., 927 A.2d 292, 294 n.5 (R.I. 2007) (stating that statutes relating to the same subject should be read in relation to each other).

Despite the potential for ambiguity, we believe that reading § 31-20-10.3 in conjunction with § 31-51-2.2 does not create the uncertainty on which Appellant seeks to rely. Perhaps that is because we follow the rule of statutory construction that provides that "statutes relating to the same or similar subject matter should be construed such that they will harmonize with each other and be consistent with their general objective scope." State v. Ahmadjian, 438 A.2d 1070, 1081 (R.I. 1981). This rule of construction applies "even though the statutes in question [may] contain no reference to each other and are passed at different times." Id. (citing Pickering v. American Employers Insurance Co., 109 R.I. 143, 148, 282 A.2d 584, 587 (1971)); Folan v. State of Rhode Island / D.C.Y.F., 723 A.2d 287, 290-91 (R.I. 1999) (finding that when dealing with multiple statutes relating to the same subject, the statutes will be construed so that they will harmonize and be consistent with their general purpose and scope).

We do not hesitate to conclude that §§ 31-20-10.3 and 31-51-2.2 relate to the same subject matter. See Folan, 723 A.2d at 290-91. Additionally, we think it is clear that both statutes operate to protect school children riding school buses. See Paquin v. Tillinghast, 517 A.2d 246, 248 (R.I. 1986) (finding that the similar statutes of §§ 31-20-11, 31-20-12, and 31-20-13 were "enacted to protect schoolchildren entering and exiting flashing school buses").[1] Therefore, because §§ 31-20-10.3 and 31-51-2.2 relate to the same subject matter, statutory

[1] Paquin does not consider the legislative intent or purpose of either §§ 31-51-2.2 or 31-20-10.3. However, § 31-51-2.2 is almost identical to § 31-20-12. The difference is § 31-51-2.2 supplements § 31-20-12 by allowing for a traffic summons to be issued based solely on evidence from a school bus video. See §§ 31-20-12; 31-51-2.2.

construction dictates that the statutes should be construed in harmony to give effect to their general purpose of protecting school children.

Construing §§ 31-51-2.2 and 31-20-10.3(a) together, in order to effectuate the legislative intent of protecting school children, follows the path set forth by our Supreme Court in Paquin. In Paquin, the Court was faced with three separate statutes concerning the transportation of children in school buses. The Court read the three statutes together, and in doing so, determined it was "obvious that [the statutes] were enacted to protect schoolchildren . . . not to protect adult motorists in vehicles . . . ." See Paquin, 517 A.2d at 248. Following this reasoning, we think it unlikely that the Legislature intended for one statute to act as a defense, or a mitigating factor, to another where the ultimate goal of both statutes is the protection of children. In effect, if we were to interpret § 31-20-10.3 as a defense for motorists, the underlying purpose of the enactment would certainly be defeated. See Commercial Union Ins. Co. v. Pelchat, 727 A.2d 676, 681 (R.I. 1999) ("we must not construe [the] statute in a way that would result in absurdities or would defeat the underlying purpose of the enactment"); cf. People v. Matysik, 845 N.E. 2d 906, 909 (I.L. 2006) (finding a motorist in violation of the statute requiring drivers to stop for a school bus even though the school bus was in violation of a separate statute prohibiting a school bus from straddling the intersection).

We decline to depart from the clear legislative intent underpinning both §§ 31-51-2.2 and 31-20-10.3(a): the protection of school children riding school buses. Accordingly, even when a bus stops in violation of § 31-20-10.3(a), a motorist cannot ignore the mandates of § 31-51-2.2. To hold otherwise would allow motorists to disregard a school bus's stop sign, pass the school bus, and potentially endanger children exiting or entering the bus. Such a construction would create an absurd result and directly contravene the legislative intent of § 31-51-2.2.

Our conclusion is consistent with the findings made by the Trial Magistrate. The Trial Magistrate stated, "[the] record reflects the fact that the video shows the deployment of a stop sign, a pedestrian walking across the crosswalk, [Appellant's] vehicle taking a left hand turn in full view of the stop sign and making no effort whatsoever to stop or slow down and proceeding to pass the stop sign." (Tr. at 3.) We adopt the Trial Magistrate's findings, and emphasize that § 31-20-10.3(a) does not provide a defense to § 31-51-2.2.

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 not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

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Chief Magistrate William R. Guglietta (Chair)

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Judge Lillian M. Almeida

_____
Magistrate Joseph A. Abbate

DATE: _____