

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

v.

GERALD DESIR

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C.A. No. T09-0057

09 OCT 19 AM 8:55

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on July 15, 2009—Judge Ciullo (Chair, presiding) and Judge Parker and Magistrate DiSandro sitting—is Gerald Desir’s (Appellant) appeal from a decision of Magistrate Cruise, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to devices”<sup>1</sup> The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On February 14, 2009, Officer Chris Kennedy (Officer Kennedy) of the Providence Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Officer Kennedy testified that on the date in question, at approximately 11:45 p.m., he was monitoring the traffic control device located at the intersection of Cranston Street and Dexter Street. (Tr. at 3.) At this time, Officer Kennedy observed a vehicle operated by Appellant “go around several vehicles and proceed through the light as it [turned] red.” (Tr. at 4.) When the trial magistrate asked Officer Kennedy whether Appellant was “the first car at the light,” Officer Kennedy responded that Appellant

<sup>1</sup> The Appellant was also charged with violating G.L. 1956 § 31-24-7, “Tail lamps required.” However, this violation was dismissed at trial and is not presently before this Panel on appeal.

“went [by] a couple of vehicles . . . he went on the right side and he proceeded” through the intersection. Id. Upon making these observations, Officer Kennedy activated his cruiser’s emergency lights, proceeded through the intersection, and initiated a traffic stop of Appellant’s vehicle in the vicinity of Westminster Street. Id. Before concluding his trial testimony, Officer Kennedy indicated that his cruiser was “one car behind [Appellant]” at the time he made these observations of Appellant’s driving. Id.

The Court next heard testimony from Appellant. The Appellant testified that the traffic control device applicable to his vehicle had “been broken for about two weeks . . . [and] the light wasn’t working.” (Tr. at 5.) According to Appellant, the green traffic control signal would remain illuminated “less than two seconds [before] it [would] turn back to red.” Id. Due to this alleged malfunctioning of the traffic control device, Appellant “passed the cars [waiting at the intersection], . . . look[ed] left and right, no car was coming, and . . . went through the light.” (Tr. at 5-6.) When Appellant had completed his testimony, Officer Kennedy added that “the [red] light was taking a long time. But I can also testify that it was turning green.” (Tr. at 6-7.)

Following the trial, the trial magistrate sustained the charged violation of § 31-13-4. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

#### **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 prejudiced 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 argues that the trial magistrate's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial magistrate abused his discretion by choosing to discount the trial testimony of Officer Kennedy and Appellant that the traffic control device at the intersection of Cranston Street and Dexter Street was not functioning properly on the date in question. It is Appellant's position that he cannot be charged with failing to "obey the instructions of [the] official traffic control device applicable to him," Section 31-13-4, because there is un-contradicted testimony in the record that that device was not indicating the appropriate "instructions" to on-coming motorists.

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

Confining our review of the record evidence to its proper scope, the members of this Panel are satisfied that the trial magistrate's decision is not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial record evidence. The

trial magistrate found, based on the “credible testimony of [Officer Kennedy],” that Appellant “passed several cars to get through the light” because “the light was not turning [green] . . . [and] was slow[.]” (Tr. at 7.) The trial magistrate also chose to credit the testimony of Appellant that “he did pass [the other] cars [at the intersection], but looked left and right before proceeding through the . . . cross street.” Id. While the trial magistrate credited Appellant’s testimony that the traffic control device applicable to his vehicle “had been broken for a while,” he was nevertheless satisfied that the signal “eventually did turn green.” Id. Also, there is no indication in the record developed at trial that Appellant had been “otherwise directed by a traffic or police officer” to proceed through the intersection on the red traffic signal, Section 31-13-4. Thus, this Panel is satisfied that the trial magistrate’s decision is not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial record evidence.

**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 is not characterized by abuse of discretion, affected by error of law, or clearly erroneous in view of the reliable, probative, and substantial record evidence. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

A handwritten signature in blue ink, consisting of a stylized, cursive letter 'L' followed by a horizontal line.