

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. T17-0008
17102500050**

ALYSSA R. ALVAREZ

DECISION

PER CURIAM: Before this Panel on August 30, 2017—Magistrate Abbate (Chair), Chief Magistrate Guglietta, and Magistrate DiSandro sitting—is Alyssa Alvarez’s (Appellant) appeal from a decision of Judge Lillian M. Almeida (Trial Judge) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-22-30, “Text messaging while operating a motor vehicle.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On January 5, 2015, Officer Kyle Batista (Officer Batista) of the Bristol Police Department conducted a motor vehicle stop of Appellant’s vehicle after observing Appellant using a mobile device while driving. (Tr. at 3-4.) As a result, Officer Batista issued Appellant a summons for the aforementioned violation. *Id.* at 5; *see also* Summons No. 17102500050. The Appellant contested the charged violation, and the matter proceeded to trial on February 13, 2017.

At trial, Officer Batista testified that on January 5, 2015, he observed Appellant driving on Metacom Avenue in Bristol, Rhode Island at 9:05 p.m. (Tr. at 3.) He described the area as

“very well illuminated” despite the late hour. *Id.* at 8. He testified that he observed Appellant driving while using her mobile device; specifically, he stated that he “observed [Appellant] clearly manipulating a cell phone in her right hand,” and “that the cell phone screen was illuminated. . . .” *Id.* at 4. Officer Batista further testified that “[t]he screen was facing [Appellant]. [Appellant] was holding it directly in front of her.” *Id.* at 11.

Having observed Appellant with the mobile device in her hand, Officer Batista conducted a motor vehicle stop of Appellant’s vehicle. *Id.* at 4-5. After he approached her vehicle and explained the reason for the stop, Appellant apologized and stated that she had been talking to a friend. *Id.* at 5. Officer Batista then issued Appellant a citation for violating § 31-22-30, “Text messaging while operating a motor vehicle.” *Id.* at 5.

The Appellant also testified at trial. *Id.* at 24. She stated that she was not sending, receiving, or reading text messages. *Id.* at 24-26. The Appellant claimed that she making a telephone call using her phone’s speakerphone function. *Id.*

After hearing each witness’s testimony, the Trial Judge sustained the violation stating:

“[Appellant] confirmed what I already know and we all know. You don’t need your hands to speak on a phone. And she confirmed that her phone has that possibility. Now, texting is something else. So what would a reasonable mind conclude, and it’s her second ticket and she had a suspended license. All right, so after listening to both sides and the testimony presented, the charge will be sustained on a second offense[.]” *Id.* at 30.

The Appellant subsequently filed this timely appeal of the Trial Judge’s decision. Forthwith is this Panel’s decision.

II

Standard of Review

Pursuant to § 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 Mut. 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.” *Id.* (citing *Envtl. Sci. 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.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues solely that the Trial Judge’s decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(5). Specifically, Appellant asserts that § 31-22-30 does not prohibit the use of a mobile device to make telephone calls using the speaker function.

The record in this matter is unclear as to whether the Trial Judge determined that Appellant was making a telephone call, or that Appellant was indeed texting. Chapter 41.1, title 31 governs hearings held at the Rhode Island Traffic Tribunal. Particularly relevant here, § 31-41.1-6(b) provides:

“After due consideration of the evidence and arguments, the judge or magistrate shall determine whether the charges have been established, *and appropriate findings of fact shall be made on the record*. If the charges are not established, an order dismissing the charges shall be entered. If a determination is made that a charge has been established or if an answer admitting the charge has been received, an appropriate order shall be entered in the records of the traffic tribunal.” (emphasis added).

As is the case with other non-jury trials throughout Rhode Island’s court system, the judges and magistrates of the Rhode Island Traffic Tribunal must “make specific findings of fact upon which [they] base[] [their] decision[s].” *White v. LeClerc*, 468 A.2d 289, 290 (R.I. 1983). “Even brief findings will suffice as long as they address and resolve the controlling factual and legal issues.” *Id.* (citing *J.W.A. Realty, Inc. v. City of Cranston*, 121 R.I. 374, 384, 399 A.2d 479, 484–85 (1979)).

Here, however, the Trial Judge did not articulate specific findings of fact as to the ultimate issue at trial—whether or not Appellant was texting, or making a phone call, at the time Officer Batista observed Appellant operating the vehicle. Without a clear and unambiguous answer to this question, this Panel cannot properly review the decision on appeal. *See White*, 468 A.2d at 290.

Section 31-41.1-8(f) authorizes this panel to remand an appropriate case to have the Trial Judge clarify the decision and set out specific findings of fact at trial. Accordingly, this Panel remands this case for the Trial Judge to make appropriate findings of fact on the record. *See* § 31-41.1-6(b).

IV

Conclusion

This Panel has reviewed the entire record before it and hereby remands this matter for further findings of fact consistent with the Decision of this Panel.

ENTERED:

Magistrate Joseph A. Abbate (Chair)

Magistrate Domenic A. DiSandro, III

DATE: _____

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.