

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

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v.

**C.A. No. T16-0016  
16416500427**

**AMANDA CARIGNAN**

**DECISION**

**PER CURIAM:** Before this Panel on September 14, 2016—Magistrate Goulart (Chair), Magistrate Abbate, and Magistrate Noonan, sitting—is Amanda Carignan’s (Appellant) appeal from a decision of Judge Parker (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-20-12, “Stopping for school bus required—Penalty for violation.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On February 23, 2016, a vehicle passed a stopped school bus near 1218 Victory Highway in Mapleville, Rhode Island. (Tr. at 2.) The stop sign and flashing red lights affixed to the back and left side of the bus were engaged when the vehicle passed. *Id.* The operator of the school bus, Ms. Nancy Ms. Vermillion (“Ms. Vermillion,”) wrote down the passing vehicle’s Rhode Island license plate number, “517140,” and noted that she believed the vehicle was a blue Dodge van. *Id.* Ms. Vermillion then reported the incident to Burrillville Police Department. *Id.*

On March 2, 2016, the Burrillville police issued a citation to the registered owner of the vehicle matching that description, Appellant’s father, for a violation of § 31-20-12, “Stopping for a school bus required.” *Id.* at 2; *see also* Summons No. 16416500168. Thereafter, on May 4,

2016, a trial on the charged violation was held at the Rhode Island Traffic Tribunal. *Id.* At her father's trial, Appellant testified that even though her father owned the vehicle, she frequently drove the vehicle and had done so on February 23, 2016. *Id.* The presiding judge dismissed the charge against Appellant's father. *Id.* On May 5, 2016, Inspector Michael Bouchard ("Inspector Bouchard") from the Burrillville Police Department pursued a charge against Appellant—based on her sworn testimony given during her father's trial—by issuing Appellant a summons for violating § 31-20-12. *See* Summons No. 16416500427.

At Appellant's trial on June 30, 2016, Appellant testified that on February 23, 2016, she had parked her vehicle—a blue Dodge Durango bearing Rhode Island license plate "517140"—at a friend's house in Burrillville at noon, while she and her friend went to the Emerald Square Mall in another vehicle. *Id.* Appellant speculated that Ms. Vermillion did not see her vehicle pass the bus; rather, Ms. Vermillion saw Appellant's vehicle and wrote down the license plate number while the vehicle was parked in her friend's driveway. *Id.*

On cross-examination, Appellant was questioned about the testimony she gave at her father's trial. *Id.* at 3. At first, Appellant stated that she went to her father's trial but did not testify. *Id.* After hearing a recording of her testimony from that trial, Appellant admitted that she did testify but did not previously remember doing so. *Id.*

At the end of trial, the Trial Judge found Appellant guilty based upon Ms. Vermillion's testimony as well as Appellant's statements. *Id.* The Trial Judge fined Appellant \$500 for the violation. *Id.* Appellant filed a 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 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 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.

### **III**

#### **Analysis**

Before discussing the issues on appeal in this matter, this Panel pauses to note that the Rhode Island General Assembly enacted § 31-20-11 “to protect school children entering and exiting flashing school buses stopped on highways . . . .” *Paquin v. Tillinghast*, 517 A.2d 246, 248 (R.I. 1986). Passing school buses is a dangerous action that can cause serious injury to a child. Thus the General Assembly made this a serious traffic offense that can demand severe penalties in order to prevent potential accidents.

The Appellant asserts several arguments on appeal. Appellant argues that the Trial Judge’s decision was made in violation of constitutional and statutory provisions; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; made upon unlawful procedure; and affected by other error of law. Sec. 31-41.1-8(f). Specifically, Appellant contends that the Trial Judge (1) improperly credited Ms. Vermillion’s testimony over her own; (2) did not provide Appellant a fair hearing; and (3) relied upon an insufficient evidentiary basis to determine that Appellant committed the violation.

### **A**

#### **Witness Credibility**

First, Appellant argues that the Trial Judge erred by considering Ms. Vermillion’s testimony more credible than the testimony she provided. This argument is frequently made before a Traffic Tribunal Appeals Panel. *See, e.g., Town of Barrington v. Marcus Monroe, C.A.*

No. T13-0053 (2013) (indicating that the trial judge credited the police officer's testimony that he observed the appellant's vehicle proceed through a red light after the light had turned red); *State of Rhode Island v. Michael O'Brien*, C.A. No. T08-0135 (2008) (choosing to credit a state trooper's testimony that the appellant's vehicle did not safely move between lanes, over the testimony given by the appellant); *City of Cranston v. Krisel Baumet*, C.A. No. T08-0134 (2008) (crediting the police officer's testimony over the testimony of the appellant and an adult passenger present at the time the appellant committed the violation). In *Link*, the Rhode Island Supreme Court held 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. The members of an Appeals Panel do not have the same unique opportunity as a trial judge to observe a witness testify; therefore, a trial judge's firsthand knowledge regarding a witness's credibility cannot be second-guessed on appeal. *Baumet*, C.A. No. T08-0134 at 4 (citing *Envtl. Scientific Corp.*, 621 A.2d at 206).

In the instant matter, the Trial Judge found the testimony given by Ms. Vermillion, the school bus driver, to be credible. (Tr. at 3.) At trial, Ms. Vermillion testified that on the date in question, she observed a blue Dodge van bearing license plate number "517140" drive past the left side of the school bus she was operating. *Id.* at 2. She further testified that the vehicle passed the school bus while the bus had its flashing red lights and stop sign engaged. *Id.* Appellant testified that Ms. Vermillion could not have seen her vehicle, since she left the vehicle parked in her friend's driveway. *Id.* at 3. Appellant went on to testify that she believed Ms. Vermillion had written down her license plate number only after seeing the vehicle parked in the driveway. *Id.*

Furthermore, Appellant testified that she did not speak at her father's trial on May 5, 2016. *Id.* However, once confronted with a recording of her testimony from that trial, Appellant testified that she did speak, but she had not previously remembered doing so. *Id.* After hearing both witnesses testify, the Trial Judge stated that he found Appellant's testimony to be contradictory, and that he found Appellant guilty based on the more credible testimony given by Ms. Vermillion. *Id.*

After reviewing the record, the Trial properly took into consideration both sides testimony and determined that one has more credibility than the other. Therefore, this Panel finds that the Trial Judge's decision was not erroneous "in view of the reliable, probative, and substantial evidence . . . ." Sec. 31-41.1-8(f); *Link*, 633 A.2d at 1348. As previously mentioned, 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; *see also Env'tl. Scientific Corp.*, 621 A.2d at 206; *Baumet*, C.A. No. T08-0134 at 4. As a result, this Panel will not second-guess the Trial Judge's credibility determination on the basis that Appellant disagrees with the Trial Judge's decision to credit Ms. Vermillion's testimony.

## **B**

### **"Full and Fair Hearing"**

Next, during oral argument Appellant briefly argued that the Trial Judge prevented her from having a fair trial because he did not allow her to answer questions or make statements. The Sixth Amendment to the United States Constitution as incorporated through the Fourteenth Amendment as well as Article 1, Section 10 of the Rhode Island Constitution, guarantees a defendant's right to a fair trial. *State v. Whitaker*, 79 A.3d 795, 811 (R.I. 2013) (citing U.S. CONST. amend. VI; R.I. CONST. art. 1, § 10). The Appeals Panel of the Rhode Island Traffic

Tribunal has held that a “full and fair hearing” affords a defendant “an opportunity to be heard in a meaningful manner at a meaningful time.” *State of Rhode Island v. Aaron Desjarlais*, C.A. No. T08-0107 4 (2008) (quoting *Leone v. Town of New Shoreham*, 534 A.2d 871, 874 (R.I. 1987)). A “full and fair hearing” requires that a defendant be provided: (1) notice of the hearing and the alleged violation; (2) an opportunity to be heard by an impartial trial judge; (3) an opportunity to present evidence; (4) and the right to confront and cross-examine witnesses. *Id.* (quoting *State v. Pompey*, 934 A.2d 210, 214 (R.I. 2007)).

Here, Appellant received proper notice. *See id.* Inspector Bouchard provided Appellant with a summons, which indicated the date and time of the hearing and that Appellant was charged with violating § 31-20-12. *See* Summons No. 16416500427. Moreover, Appellant appeared at trial and there was no indication within the record that Appellant was unapprised of the charge against her. (Tr. at 1-3.)

At trial, Appellant was given an opportunity to appear before the Trial Judge and present evidence. *Id.* A defendant must have a “full opportunity to establish the best and fullest defense available to him [or her].” *State v. Lomba*, 37 A.3d 615, 621 (R.I. 2012). The ability of a defendant to “meaningfully cross-examine the state’s witnesses is ‘an essential element’” of the due process right to present a defense. *State v. Doctor*, 690 A.2d 321, 327 (R.I. 1997).

The record shows that the Trial Judge allowed Appellant to present a defense and cross-examine witnesses. (Tr. at 2-3.) The Trial Judge inquired about whether Appellant planned to present testimony from the friend that she claims went with her to the Emerald Square Mall that day. (Tr. at 2-3.) Appellant explained, however, that her “friend couldn’t make it she was stuck at work [].” *Id.* at 3. Appellant also had the opportunity to assert the defense that she believed Ms. Vermillion wrote down her license plate number after seeing her car parked in her friend’s

driveway. *Id.* Additionally, Appellant chose not to cross-examine Ms. Vermillion’s testimony. *Id.* In fact, Appellant stated that she “told the truth and [she had] nothing else to say.” *Id.* Furthermore, there is no merit to Appellant’s claim that the Trial Judge prevented her from answering questions or making statements as the record contains no evidence that the Trial Judge interrupted her during the trial. *Id.* at 1-3.

Based on the evidence contained within the record, this Panel finds that Appellant was given “an opportunity to be heard in a meaningful manner at a meaningful time.” *Aaron Desjarlais*, C.A. No. T08-0107 at 4 (quoting *Leone v. Town of New Shoreham*, 534 A.2d 871, 874 (R.I. 1987)). The Trial Judge’s actions during the hearing did not violate constitutional or statutory provisions, nor was the decision of the Trial Judge made upon unlawful procedure as Appellant was provided proper notice and given a meaningful opportunity to be heard. *Id.* (quoting *State v. Pompey*, 934 A.2d 210, 214 (R.I. 2007)); *see also Lomba*, 37 A.3d at 621.

## C

### **Identification of Appellant as Driver**

Appellant also asserts that the Trial Judge erred in determining that Appellant drove the vehicle that passed the school bus, because the evidence presented at trial did not meet the requisite standard of proof. *See* Traffic Trib. R. P. 17(a). More specifically, Appellant argues that Ms. Vermillion’s testimony—identifying Appellant as the driver of the vehicle that passed the school bus—did not amount to clear and convincing evidence of guilt.

Section 31-20-12(b) states:

“A peace officer may issue a summons based on the statement or testimony of a school bus driver or monitor or other private citizen provided that the statement or testimony provides the peace officer with sufficient probable cause that a violation under this section was committed. Any conviction under this section may be



punished in accordance with subsection (a) of this section.” Sec. 31-20-12.

Therefore, a trial judge must first determine whether a police officer had probable cause to write the summons. If the trial judge determines that the officer had probable cause, then the trial judge must find by clear and convincing evidence that the defendant committed the violation. *Id.*

First, the Trial Judge found that Inspector Bouchard had probable cause—based on Ms. Vermillion’s report—to issue a summons. *See* Tr. at 3. Probable cause is a “fluid concept” that requires that the court “carefully examine the totality of the circumstances in determining whether probable cause exists.” *State v. Burgess*, 138 A.3d 195, 199–200 (R.I. 2016) (citing *Illinois v. Gates*, 462 U.S. 213, 232 (1983)). Probable cause to issue a summons requires “reasonably trustworthy information that would cause a person of reasonable caution to believe that a [violation] has been committed and that the person under suspicion has committed it.” *Henshaw v. Doherty*, 881 A.2d 909, 915–16 (R.I. 2005) (quoting *Ensey v. Culhane*, 727 A.2d 687, 691 (R.I. 1999)).

Ms. Vermillion, a school bus driver, wrote down and reported that a blue Dodge van with Rhode Island license plate number “517140” passed the bus while it had its red lights flashing and its stop sign engaged. (Tr. at 1-2.) The Trial Judge’s decision stated that he found Inspector Bouchard’s issuance of the citation to be “supported by legally competent evidence.” *Link*, 633 A.2d at 1348 (citing *Envtl. Scientific Corp.*, 621 A.2d at 208. As mentioned, an Appeals Panel may not substitute its assessment of witness credibility. *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537).

Here, the Trial Judge was clear that he found Ms. Vermillion’s testimony more credible than Appellant’s testimony. (Tr. at 3.) For these reasons, the Trial Judge’s determination that Inspector Bouchard had probable cause to issue Appellant a citation for a violation of § 31-20-12

was proper. *See* § 31-20-12; *Link*, 633 A.2d at 1348; *Justin Zebrowski-Blackson*, C.A. No. T09-0107 at 4.

Second, after a court determines that there was probable cause to issue a summons, the prosecution must prove that the defendant committed the violation by “clear and convincing evidence.” *See* § 31-20-12(b); Traffic Trib. R. P. 17(a). At trial, “the burden of proof rests upon the party who asserts the affirmative of an issue, and this burden never shifts.” *State of Rhode Island v. Ralph Marden*, C.A. No. T08-0120, 4 (2008) (citing *General Acc. Ins. Co. of America v. American Nat. Fireproofing, Inc.*, 716 A.2d 751 (R.I. 1998)). “[T]o establish a fact or an element by clear and convincing evidence a party must . . . produce in the mind of the factfinder a firm belief or conviction that the allegations in question are true.” *Rhode Island Mobile Sportfishermen, Inc. v. Nope's Island Conservation Ass'n, Inc.*, 59 A.3d 112, 121 n.16 (R.I. 2013) (citing *Cahill v. Morrow*, 11 A.3d 82, 88 n. 7 (R.I. 2011) (quoting 29 Am.Jur.2d *Evidence* § 173 at 188–89 (2008))). In order for the prosecution to prove its case, there must be clear and convincing evidence that “[t]he driver of a vehicle” drove a car and passed a validly marked school bus that had stopped and had “operati[ng] flashing red lights.” Sec. 31-20-12.

In this case, Appellant argues that there is no evidence in the record showing that she was the driver of the vehicle. However, Appellant testified at her father’s trial that she was driving the vehicle that day, not her father. (Tr. at 3.) Appellant also stated that she was driving the blue Dodge Durango at her trial, on February 23, 2016. *Id.* She again confirmed the fact that she was in possession of the vehicle that day when she testified that she parked the vehicle in her friend’s driveway before going to the Emerald Square Mall. *Id.* Ms. Vermillion identified and simultaneously wrote down a description of Appellant’s vehicle and testified that the description

matched that of the vehicle that passed the school bus while its stop sign and flashing red lights were engaged. (Tr. at 2.)

It is clear that the testimony provided by both Appellant and Ms. Vermillion led the Trial Judge to conclude that Appellant was driving the vehicle when it passed the school bus. *Id. at 3*. Taken as a whole, the witnesses' testimony "produce[d] in the mind of the factfinder a firm belief" that Appellant drove the vehicle past a validly marked school bus with "operati[ng] flashing red lights." Sec. 31-20-12; *Rhode Island Mobile Sportfishermen, Inc.*, 59 A.3d at 121 n.16.

Accordingly, this Panel finds that the Trial Judge did not err in determining that Appellant committed the violation—passing a stopped school bus while it was operating its flashing red lights—based on the clear and convincing evidence presented at trial. Sec. 31-20-12(b). Thus the Trial Judge's decision was not clearly erroneous in view of the reliable, probative, and substantial evidence contained in the record.

## D

### Fine Imposed on Appellant

Although Appellant did not raise an issue regarding the \$500 fine imposed by the Trial Judge, this Panel elects to do so *sua sponte*. Section 31-20-12(a) establishes the penalty to be imposed upon a defendant that is found to have committed a violation of that statute: "A person convicted of a violation of this section shall be punished by a **fine not to exceed three hundred dollars** (\$300) and/or suspension of driving license for a period not to exceed thirty (30) days for the first offense." (Emphasis added.) In the instant matter, however, the Trial Judge imposed a \$500 fine for Appellant's violation of § 31-20-12. (Tr. at 3.)

Rule 20(f) of the Rhode Island Traffic Tribunal Rules of Procedure states:

“The court may, upon motion or on its own initiative, relieve a party or a party's legal representative from a judgment or order for the following reasons . . . Any other reason justifying relief from the operation of the judgment, or order, including that relief is warranted in the interests of justice.” Traffic Trib. R. P. 20(f).

Pursuant to Traffic Tribunal Rule of Procedure 20(f) and in the interest of fairness and justice, this Panel will modify the decision imposed by the Trial Judge, reducing the \$500 fine to a \$300 fine, in accordance with state law. *See* § 31-20-12(a); *see also Link*, 633 A.2d at 1348 (holding if a Trial Judge’s “decision is . . . affected by error of law, it may remand, reverse, or modify the decision.”); *City of Warwick v. Michael Palmisciano*, C.A. No. T08-0127, 4 (2008) (finding that Rule 20(f) of the Traffic Tribunal’s Rules of Procedure provided Appeals Panel or Trial Judge the ability to grant relief to achieve a fair and just outcome).

#### IV

#### 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 in violation of constitutional or statutory provisions, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, made upon unlawful procedure, or affected by other error of law. The substantial rights of Appellant have not been prejudiced. This Panel will, however, modify the fine imposed by the Trial Judge from \$500 to \$300 to adhere to the penalties prescribed under state law. Accordingly, Appellant’s appeal is denied, the charged violations are sustained, and the fine imposed is modified.

ENTERED:

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Magistrate Alan R. Goulart (Chair)

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Magistrate Joseph A. Abbate

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Magistrate William T. Noonan

DATE: \_\_\_\_\_