

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. T19-0008
19404500248**

GEORGE DELANY

DECISION

PER CURIAM: Before this Panel on June 12, 2019—Administrative Magistrate Abbate (Chair), Associate Judge Almeida, and Magistrate DiChiro, sitting—is George Delany’s (Appellant) appeal from a decision of Associate Judge Edward C. Parker (Trial Judge) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-51-2.2, “Stopping for school bus required—digital video.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On January 17, 2019, a digital video recording captured a red Volvo pass a stopped school bus on Greenwood Avenue in East Providence. (Tr. at 2.) Upon observing the video recording, Officer Andy Benoit (Officer Benoit) of the East Providence Police Department determined that a violation of § 31-51-2.2 had occurred. *Id.* Officer Benoit identified Appellant as the registered owner of the vehicle, and issued Appellant a summons for failing to stop for a school bus. *Id.*; *see* Summons No. 19404500248.

The Appellant contested the charged violation, and the matter proceeded to trial on March 28, 2019. Officer Benoit testified first at trial, stating that on January 24, 2019, he was

assigned to watch the school bus violation videos for Red Flex Company. (Tr. at 1.) Officer Benoit explained that Red Flex Company equips school buses throughout the city with video cameras. *Id.* On January 17, 2019, the video camera attached to school bus 29 recorded a red Volvo bearing a Massachusetts registration “traveling west on Greenwood Avenue.” *Id.* at 1-2. Officer Benoit testified that from the video recording, he observed the red Volvo pass the stopped school bus while the school bus’s red lights were flashing and its stop sign was extended. *Id.* at 2. Consequently, Officer Benoit issued a citation to Appellant, the vehicle’s registered owner, and mailed the citation to Appellant’s address. *Id.*

During trial, the Trial Judge viewed the video recording in question. *Id.* While the Court played the video recording, Officer Benoit described the events happening in the video. *Id.* At the start of the video, Officer Benoit pointed out, “You’ll see at the top right hand corner the amber lights on the bus are activated.” *Id.* In addition, Officer Benoit explained, “The bus comes to a stop and you see that the red lights are on, activated, the bus has stopped[.]” *Id.*

Appellant then testified on his behalf at trial. *Id.* at 2. First, Appellant began his testimony stating, “I don’t deny that I passed the bus just as the video shows, although I have no recollection of the actual event in my memory[.]” *Id.* However, Appellant then testified as to the events preceding his vehicle’s passing the stopped school. *Id.* Appellant explained that his vehicle had just pulled out of the Seven Stars bakery parking lot, which is located near “the back side of the bus.” *Id.* Thereafter, Appellant argued that he “had virtually no time to respond” from the time that the school bus’s lights were activated to the time that his vehicle passed the stopped school bus. *Id.* at 3.

In response, the Trial Judge stated to Appellant, “There’s no question that you went through the sign with red lights[.]” to which the Appellant replied, “Yeah.” *Id.* Accordingly, the

Trial Judge determined that “any other testimony is going to be superfluous.” *Id.* Based upon his viewing of the video recording and Officer Benoit’s testimony, the Trial Judge sustained the charged violation. *Id.* The Appellant subsequently filed a timely appeal of the Trial Judge’s ruling. 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 Insurance Company 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 *Environmental Science Corporation 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 that the Trial Judge's decision is "[a]ffected by [] error of law" and "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" Sec. 31-41.1-8(f)(4)-(5). Specifically, Appellant maintains (1) that there is insufficient evidence to sustain the charged violation, and (2) that he did not have enough time to stop for the school bus.

The prosecution must prove any violation in the Rhode Island Traffic Tribunal by clear and convincing evidence. Traffic Trib. R. P. 17(a). Evidence is "clear and convincing" where the fact finder "believe[s] that the truth of the facts asserted by the proponent is highly probable." *State v. Fuller-Balletta*, 996 A.2d 133, 142 (R.I. 2010) (quoting *Parker v. Parker*, 103 R.I. 435, 238 A.2d 57, 60-61 (1968)). A trial judge's factual findings "concerning whether this clear and convincing evidence burden has been satisfied are entitled to great weight." *In re Emilee K.*, 153 A.3d 487, 497 (R.I. 2017) (quoting *In re Veronica T.*, 700 A.2d 1366, 1368 (R.I. 1997)). Therefore, these findings will not be disturbed on appeal "unless they are clearly wrong or unless the trial justice misconceived or overlooked material evidence." *Id.*

Here, the record contains sufficient evidence to support the Trial Judge's decision that Appellant's vehicle failed to stop for the school bus after the flashing red lights were activated.

Section 31-51-2.2 provides, in relevant part:

“Any vehicle being operated upon a street, highway, private way or private or public parking area 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. The vehicle shall not proceed until the bus resumes motion or until the flashing lights are no longer actuated.”

Sec. 31-51-2.2(a). Therefore, a motorist is guilty of violating § 31-51-2.2 when the evidence presented at trial establishes that the school bus's flashing red lights were activated and that the driver failed to stop before reaching the school bus. *Id.*; see also *Iselin v. Ret. Bd. of Emps' Ret. Sys. of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) (“when the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings”).

In the instant matter, Officer Benoit's testimony that Appellant's vehicle passed the school bus in violation of the statute is corroborated both by the Appellant's admission and by the video recording that clearly depicts Appellant violating the statute. See Tr. at 2-3; sec. 31-51-2.2(a). For instance, Officer Benoit stated at trial, “The vehicle was observed going through the stopped school bus past the sign and the red lights flashing.” (Tr. at 3.) Appellant even testified, “I don't deny that I passed the bus just as the video shows . . .” *Id.* The video clearly demonstrates that the school bus's amber lights and then flashing red lights were activated *well before* Appellant's vehicle reached the school bus. *Id.* at 2.

Furthermore, Appellant's argument that he did not have enough time to stop for the school bus is not only unsupported by the evidence, but irrelevant. Whether a motorist has a reasonable amount of time to stop for a school bus is not an element of § 31-51-2.2. In enacting

legislation rendering it a civil violation for vehicles to pass stopped school buses, the Legislature determined to “to protect schoolchildren entering and exiting flashing school buses.” *See Paquin v. Tillinghast*, 517 A.2d 246, 248 (R.I. 1986).¹ Regardless of the surrounding circumstances, a motorist cannot ignore the mandates of § 31-51-2.2. To hold otherwise would produce the absurd result of allowing motorists to disregard a school bus’s flashing red lights, pass the school bus, and potentially endanger children exiting or entering the bus simply because they “didn’t see” the stop sign or lights.²

Based upon a review of the record, this Panel is satisfied that the Trial Judge’s factual findings are not “clearly wrong” as there is ample evidence demonstrating that Appellant violated § 31-51-2.2. Accordingly, this Panel finds that the Trial Judge’s decision is neither affected by error of law nor clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(4)-(5).

¹ *Paquin* considers the legislative intent and purpose of §§ 31-20-11, 31-20-12, and 31-20-13, not § 31-51-2.2. However, § 31-51-2.2 is almost identical to § 31-20-12. The difference between the two statutes is that § 31-51-2.2 allows for a traffic summons to be issued based solely on evidence from a school bus video recording. *See* §§ 31-20-12; 31-51-2.2.

² This Panel also notes that school buses do not abruptly stop in the road with no warning. The amber lights activated before the red lights serve as a warning to motorists that the school bus will be stopping to pick up or let off children. Here, the evidence demonstrates that the amber lights flashed prior to the bus stopping, and even the Trial Judge remarked to Appellant, “When you see a school bus you should be aware there could be a problem.” (Tr. at 3.)

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 neither affected by error of law nor clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(4)-(5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Administrative Magistrate Joseph A. Abbate (Chair)

Associate Judge Lillian M. Almeida

Magistrate Michael DiChiro

DATE: _____