

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

:

v.

:

**C.A. No. T18-0017**

:

**17001533983**

:

**IRWIN JACOBOWITZ**

:

**DECISION**

**PER CURIAM:** Before this Panel on January 30, 2018—Chief Magistrate DiSandro (Chair), Associate Judge Almeida, and Magistrate Noonan, sitting—is Irwin Jacobowitz’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 § 31-3-1, “Operation of unregistered vehicle,” and G.L. 1956 § 31-38-3, “Violation of inspection laws.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On December 16, 2017, Officer Antonio Miguel (Officer Miguel) of the Rhode Island State Police conducted a traffic stop of Appellant’s vehicle on New London Turnpike in West Greenwich while on routine patrol. (Tr. at 1, September 18, 2018.) Subsequently, Officer Miguel issued Appellant a citation for operating an unregistered and uninspected vehicle. *See* Summons No. 17001533983.

At trial on September 18, 2018, Officer Miguel testified that he observed a Ford Taurus traveling west near Arnold Road with only one registration plate displayed. (Tr. at 1, September 18, 2018.) Therefore, Officer Miguel conducted a traffic stop of Appellant’s vehicle, and

advised Appellant of the reason for the stop. *Id.* When Officer Miguel checked the vehicle's registration, he learned that "the vehicles [sic] commercial registration was suspended[,]” and that the registration plate did not belong to the car that Appellant was driving. *Id.* Appellant informed Officer Miguel that "he was using the registration plates on the Ford Taurus [until] he can obtain the money to register and insure the vehicle[.]” *Id.* Subsequently, Officer Miguel issued Appellant citations for operating an unregistered vehicle and for violation of inspection laws. *Id.* at 2; *see* §§ 31-3-1 and 31-38-3.<sup>1</sup>

Appellant testified that the car "wouldn't pass inspection[,]” so he could not register the car. *Id.* at 3. Furthermore, Appellant averred that he "only had the car two days [and] the law says [I]'m allowed to have the car for two day[s] and get it registered[.]” *Id.* However, when the Trial Judge asked if Appellant had a notarized bill of sale to demonstrate that he bought the car two days prior to the stop, Appellant stated that he did not have one. *Id.* Instead, Appellant explained that he "junked" the car because it would not pass inspection, and proffered a receipt for "junking the car.” *Id.*

Thereafter, the Trial Judge stated his findings of fact on the record. *Id.* at 4. The Trial Judge found Officer Miguel's testimony credible and determined that Appellant operated a vehicle that "had plates on it belonging to another vehicle and there was no[] inspection sticker" on the vehicle. *Id.* As such, the Trial Judge found Appellant guilty of both charges. *Id.* Appellant timely appealed the Trial Judge's decision sustaining both violations. Forthwith is this Panel's decision.

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<sup>1</sup> Officer Miguel also issued Appellant citations for § 31-47-9, "Operating a motor vehicle without evidence of insurance," and § 31-3-18, "Display of plates." *See* Summons No. 17001533983; Summons No. 17001533982. However, both charges were dismissed on August 8, 2018.

## 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 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 contends 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).<sup>2</sup> Pursuant to § 31-3-1, “[i]t is a civil violation for any person to operate, or for an owner knowingly to permit to be operated, upon any highway any vehicle of a type required to be registered under this chapter which is not registered and for which the appropriate fee has not been paid or not registered as required in any other state.”

Similarly, § 31-38-3 requires, *inter alia*:

“(c) Any vehicle which is found to be in such unsafe condition as to the brakes, steering, or other equipment as to be hazardous to permit it to be sold or driven from the place of inspection, *then the vehicle shall not be permitted to be operated under its own power.* The registration shall be immediately suspended by the department of revenue and the plates and certificates immediately returned to the department of revenue.

“(d) In the event repair or adjustment of any vehicle or its equipment is found necessary upon inspection, the seller at retail or owner of the vehicle may obtain the repair or adjustment at any place he or she may choose, but in every event an approval shall be obtained, otherwise *the vehicle shall not be operated upon the highways of this state.*”

Sec. 31-38-3(c)-(d) (emphases added). Therefore, any vehicle operated on public roads must be registered with the Department of Motor Vehicles and pass a motor vehicle inspection. *See* §§ 31-3-1 and 31-38-3. Furthermore, if upon inspection the vehicle is in such disrepair that it is too

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<sup>2</sup> Appellant also contends in his Notice of Appeal that the Trial Judge denied him an opportunity to present witnesses at trial on September 18, 2018. Appellant’s Notice of Appeal, at 2. However, nowhere in the record does Appellant attempt to present witnesses or ask the Trial Judge if he may present witnesses.

hazardous to be driven from the inspection site, “[t]he registration shall be immediately suspended . . .” Sec. 31-38-3(c).

Based upon a review of the record, there is no question that Appellant operated an unregistered and uninspected motor vehicle; and further, that Appellant knew the vehicle to be unregistered and uninspected at the time of the stop. (Tr. at 3, September 18, 2018); *see also Albanese v. Providence Police Department*, 711 A.2d 651 (R.I. 1998). First, Officer Miguel testified that he checked Appellant’s registration, which revealed that the registration belonged to a different vehicle. *Id.* at 1. Second, the Appellant stated numerous times throughout trial that the vehicle was neither inspected nor registered at the time of the stop. *Id.* at 4. Indeed, Appellant persistently asserted that the vehicle could not be registered because it would not pass an inspection, which is why he did not keep the vehicle. *Id.*

Moreover, 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 Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). It is well-settled that this Panel cannot review witness credibility determinations, since only a trial judge “has had an opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record.” *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (quoting *State v. Van Dongen*, 132 A.3d 1070, 1076 (R.I. 2016)).

At trial, the Trial Judge found Officer Miguel’s testimony to be credible, and said testimony was further corroborated by Appellant’s testimony admitting that the vehicle was neither registered nor inspected. (Tr. at 1-3, September 18, 2018.) As credibility determinations are the inherent responsibility of the fact-finder—in this case, the Trial Judge—this Panel will

not question the Trial Judge's assessment of the weight of the evidence or his determination of witness credibility. *Link*, 633 A.2d at 1348. Thus the Trial Judge's decision is neither affected by error of law nor clearly erroneous. *See* § 31-41.1-8(f)(4)-(5).

**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:

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Chief Magistrate Domenic A. DiSandro, III (Chair)

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Associate Judge Lillian M. Almeida

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Magistrate William T. Noonan

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