

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. T12-0082
12001537616**

JORGE RIVERA

DECISION

PER CURIAM: Before this Panel on January 30, 2013—Magistrate Goulart (Chair, presiding), Judge Parker, and Magistrate DiSandro sitting—is Jorge Rivera’s (Appellant) appeal from a decision of Judge Almeida, sustaining the charged violation of G.L. 1956 § 31-22-22(g), “Safety belt use - operator.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On August 8, 2012, a Trooper from the Rhode Island State Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on December 3, 2012.

On the day Appellant was cited, the Appellant was traveling on Atwells Avenue in Providence. (Tr. at 3.) Shortly before the stop, the Trooper was on a fixed traffic post on Atwells Avenue at Valley Street in Providence. (Tr. at 2.) As the Appellant drove past the Trooper, the Trooper observed that Appellant was not wearing a seat belt. (Tr. at 3.) Specifically, the Trooper testified that she observed Appellant operate his motor vehicle without the seat belt across his chest. Id. The Trooper noticed the buckle to the seat belt was hanging

from the pillar inside the vehicle. Id. Thereafter, the Trooper conducted a traffic stop and cited the Appellant for the aforementioned safety belt violation. Id.

Following the Trooper's testimony, Appellant testified that he was wearing his seat belt, but did not have the shoulder strap across his chest because of his recent injury to his rotator cuff. (Tr. at 4-5.) Appellant further testified that he was unaware that he was obligated to file for an exemption with the Registry of Motor Vehicles in order to wear his seat belt across his lap instead of across his chest. (Tr. at 5-6.)

After hearing both parties, the trial judge issued her decision sustaining the charged violation. (Tr. at 10-11.) The trial judge recounted the aforementioned facts in her decision. The trial judge stated that the Trooper's testimony was sufficient to sustain the charged violation. Appellant pled with the judge to dismiss the charge after he explained he would lose his job if the charge is on his record; however, the trial judge specifically rejected Appellant's plea. (Tr. at 10.) Aggrieved by the trial judge's decision, the Appellant timely filed an appeal.

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 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 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 contends that the trial judge's decision to sustain the violation was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant argues that the charge should be dismissed since the Trooper was not able to recall whether the Appellant's seat belt was buckled across Appellant's waist when the Trooper approached the Appellant's vehicle to complete the traffic stop.

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 the Officer or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [the Officer 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.

In a series of questions, the trial judge specifically inquired of the Trooper whether the Appellant was wearing his seat belt when the Trooper approached Appellant’s vehicle. (Tr. at 7.) In response, the Trooper stated, “I don’t recall, Your Honor. He might have put it on at the time, after he passed me. I don’t recall.” Id. However, this does not negate the Trooper’s prior testimony regarding the Trooper’s initial sighting of Appellant in his vehicle when she stated, “I observed a black Nissan Maxima bearing a Rhode Island registration 911466, travel past my location on Atwells Ave. with the operator not wearing his seat belt.” (Tr. at 2-3.) The fact that the Trooper could not remember whether the Appellant was wearing his seat belt when she approached his vehicle does not nullify her testimony regarding her initial viewing of Appellant in violation of the law. State v. O’Brien, 412 A.2d 231, 236 (R.I. 1980) (stating that when a person is positively identified by his or her accuser, a mere technicality is not prejudicial to defendant).

Moreover, Appellant admits that he was not wearing his seat belt in accordance with our traffic code. At trial, Appellant stated, “Your Honor, the day that the Trooper had pulled me over, she pulled me over and the first thing I told her was I am wearing my seat belt. It wasn’t the correct way.” (Tr. at 3.) Therefore, not only did the Trooper testify that Appellant was not

wearing his seat belt, but Appellant, himself, also admitted that he was not wearing his seat belt properly. Thus, the evidence presented at trial clearly showed that Appellant was in violation of the law.

After listening to the testimony, the trial judge determined that the Trooper's testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. "[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact." Environmental Scientific Corp., 621 A.2d at 208 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). In her decision, the trial judge found it significant that when the Appellant drove by the Trooper, ". . . [Trooper] didn't see the shoulder strap, the harness . . ." thereby concluding that Appellant failed to wear his ". . . seat belt at all or properly . . ." (Tr. at 10.) After the Appellant, responded with testimony regarding his shoulder injury, the trial judge went on to note that it was Appellant's obligation to ". . . go through the proper channels to get any exemption." (Tr. at 11.) The judge concluded that Appellant was clearly in violation of the law, as conceded by Appellant, and Appellant's shoulder injury did not excuse him from obeying our traffic code. Id. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse her discretion, and her decision to sustain the charged violation is supported by legally competent evidence.

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 clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Judge Edward C. Parker

Magistrate Domenic A. DiSandro III

DATE: _____