

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. T18-0019
18405502305**

MILAN MARE

DECISION

PER CURIAM: Before this Panel on November 21, 2018—Magistrate Kruse Weller (Chair), Magistrate Goulart, and Associate Judge Almeida, sitting—is Milan Mare’s (Appellant) appeal from a decision of 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 represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On June 4, 2018, a digital video recording captured a vehicle passing a stopped school bus on Hartford Avenue in Johnston. (Tr. at 3:3-7.) Sergeant Luke Lancellotti (Sergeant Lancellotti) of the Johnston Police Department reviewed the video recording and determined that a violation of § 31-51-2.2 had occurred. *Id.* at 3:7-10. Sergeant Lancellotti then mailed a citation and a signed affidavit to the registered owner of the vehicle—Appellant’s father—for the above-mentioned violation. *Id.* at 3:10-12; *see also* Summons No. 18405501929.

Thereafter, on July 5, 2018, Appellant appeared at the Rhode Island Traffic Tribunal for her father’s hearing and advised the presiding magistrate that she was driving the vehicle at the

time of the charged violation. *Id.* at 3:13-14. The Johnston Police Department subsequently terminated its prosecution of Appellant's father. On July 17, 2018, Appellant reported to police headquarters, and Sergeant Lancellotti issued Appellant a summons for violating § 31-50-2.2. *Id.* at 3:14-16; *see* Summons No. 18405502305.

At Appellant's trial on September 20, 2018, Sergeant Lancellotti testified that the Town of Johnston contracted with Redflex Systems to equip school buses in the district with video cameras in order to monitor traffic violations involving school buses. (Tr. at 2:21-24.) Upon reviewing the video recording, Sergeant Lancellotti found that a violation had occurred because the vehicle was required to stop for the school bus, but failed to do so. *Id.* at 3:10-13. Thereafter, Sergeant Lancellotti mailed the summons and a signed affidavit to Appellant's father. *Id.* In signing the affidavit, Sergeant Lancellotti certified that he, as a trained law enforcement officer, inspected the digital video recording and determined that a violation had occurred. *Id.* at 7:1-8. The affidavit is the only document that Sergeant Lancellotti attached to the summons. *Id.* at 4:1-12.

During the cross-examination of Officer Lancellotti, Appellant's counsel entered into evidence a copy of §§ 31-51-2 and 31-51-3. *Id.* at 4:13-15. Appellant's counsel asked Sergeant Lancellotti whether he also attached to the summons an additional affidavit signed by a person who witnessed the violation via live video. Sergeant Lancellotti stated that he only provided one affidavit because "[the statute] doesn't specify who [the witness] could be. . . . So I am the witness. I am the officer. I can act as both." *Id.* at 8:7-13.

After hearing all of the witness testimony, the Trial Judge rendered his decision. *Id.* at 10:4-7. Based upon Sergeant Lancellotti's testimony as well as on the exhibits introduced at trial, the Trial Judge sustained the charged violation. *Id.* at 10:16:18. In doing so, the Trial

Judge determined that “[Sergeant Lancellotti’s] viewing of the video was enough” to meet the notice requirements of § 31-51-3. *Id.* at 10:4-6. The Trial Judge imposed a \$500 fine against Appellant. *Id.* at 11:2-3. Thereafter, Appellant filed a timely appeal of the Trial Judge’s decision. Forthwith is this Panel’s decision.

II

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 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 asserts that the Trial Judge’s decision was made “[i]n violation of constitutional or statutory provisions;” “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record;” and “[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 31-41.1-8(f)(1), (5), and (6). Specifically, Appellant maintains that the Trial Judge erred in (1) sustaining the charged violation because the notice requirements of § 31-51-2 and were not met, and (2) imposing an “erroneous and excessive” fee.¹ *See* Appellant’s Notice of Appeal at 2.

Our Supreme Court has held that on appeal, “questions of statutory interpretation [are reviewed] de novo.” *Alessi v. Bowen Court Condo.*, 44 A.3d 736, 740 (R.I. 2012) (citing *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)). It is well-settled that “when the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give

¹ Appellant also asserts that the notice requirement of § 31-51-2 was not met. *See* Appellant’s Notice of Appeal at 2. However, § 31-51-2 imposes a requirement upon *school bus violation detection monitoring systems* to provide, *inter alia*, “a signed affidavit by a person who witnessed the violation via live video[.]” Sec. 31-51-2(a). Thus, this is not a notice requirement imposed on the officer issuing the citation. Instead, the issuing officer’s notice requirements are set forth in § 31-51-2.

the words of the statute their plain and ordinary meanings.” *Iselin v. Ret. Bd. of Emps’ Ret. Sys. of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). Alternatively, when the language of the statute is ambiguous, the Court “must examine [the] statute in its entirety and determine ‘the intent and purpose of the Legislature.’” *State v. Peterson*, 772 A.2d 259, 264 (R.I. 1998) (quoting *In re Advisory to the Governor*, 688 A.2d 1246, 1248 (R.I. 1996)).

Section 31-51-3(d) provides, in relevant part:

“(d) The summons shall contain all the information provided for on the uniform summons as referred to in § 31-41.1-1 of the general laws and the rules of procedure promulgated by the chief magistrate of the traffic tribunal as well as the date, time, and location of the violation. *In addition, the following information shall be attached to or accompany the summons:*

“

(2) A signed statement certified under the penalties of perjury by a trained law enforcement officer that, based on inspection of recorded images and video, the motor vehicle was being operated in violation of this chapter;

“

(5) A signed affidavit by a person who witnessed the motor vehicle being operated in violation of this chapter[.]” Sec. 31-51-3(d) (emphasis added).

The plain language of §§ 31-51-3(d)(2) and 31-51-3(d)(5) requires two separate signed documents attached to the summons: a signed statement by the law enforcement officer viewing the video and a signed affidavit by someone who witnessed the video. However, it is not clear whether the law enforcement officer is permitted to serve as both the law enforcement officer in § 31-51-3(d)(2) as well as the witness in § 31-51-3(d)(5).

However, this Panel need not address the issue at this juncture because the statute has nevertheless been violated. Here, Sergeant Lancellotti attached only one document to the

summons, which included a signed statement by Sergeant Lancellotti satisfying the requirement of § 31-51-3(d)(2). (Tr. at 8:7-13.) Sergeant Lancellotti did not attach a signed affidavit stating that he—or anyone else—witnessed the motor vehicle violation captured on the video recording in order to satisfy § 31-51-3(d)(5). *Id.* Whether Sergeant Lancellotti could serve as both the law enforcement officer of § 31-51-3(d)(2) as well as the witness in § 31-51-3(d)(5) is of no moment in the instant matter because he only provided one sworn statement while the statute requires a sworn statement and an affidavit. Thus, the notice requirement of § 31-51-3(d)(2) was satisfied, but that of § 31-51-3(d)(5) was not—irrespective of the witness’s identity.

Since there was only one affidavit included in the summons, the Trial Judge erred in finding that Sergeant Lancellotti’s “viewing the video is enough” to satisfy both requirements in its present form. (Tr. at 10:4-6.) Therefore, this Panel is satisfied 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; and arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *See* § 31-41.1-8(f).

Appellant also contends that the Trial Judge’s imposition of a \$500 fine is “erroneous and excessive.” *See* Appellant’s Notice of Appeal at 2. It should be noted that the Rhode Island General Assembly enacted school bus violation statutes “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 may demand severe penalties in order to prevent potential accidents.

Here, the Trial Judge’s fine of \$500 was well within his statutory authority. *See* § 31-51-2.2 (a violator of § 31-20-12 “shall, upon conviction of a violation of this section, be punished by a civil fine of *not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500). . .*”) (emphasis added). Based on the reasoning provided herein, however, this Panel need not address the issue further.

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel determine that the Trial Judge's decision was made in violation of constitutional statutory provisions; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *See* § 31-41.1-8(f)(1), (5), and (6). The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation of § 31-51-2.2 is dismissed.

ENTERED:

Magistrate Erika L. Kruse Weller (Chair)

Magistrate Alan R. Goulart

Associate Judge Lillian M. Almeida

DATE: _____