

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. T16-0034
14001510257**

RICHARD W. AUDETTE

DECISION

PER CURIAM: Before this Panel on February 8, 2017—Magistrate Goulart (Chair), Chief Magistrate Guglietta, and Judge Almeida, sitting—is Richard W. Audette’s (Appellant) appeal from a decision of Magistrate Noonan (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-21-4, “Places where parking or stopping prohibited.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On March 26, 2014, State Trooper Andrew Carter (Trooper Carter) responded to a report of a driver refusing to pay the toll at the Claiborne Pell Bridge (Newport Bridge) Jamestown toll plaza. (Tr. at 3.) After an investigation that identified Appellant as the operator of the reported vehicle, Trooper Carter charged Appellant with five violations: (1) driving without a license; (2) driving without wearing a seat belt; (3) parking or stopping where prohibited; (4) entering an intersection; and (5) operating without insurance. *Id.* at 2.

This case has a lengthy history. On May 14, 2014, Appellant appeared before the Rhode Island Traffic Tribunal for arraignment on the above violations. *See Richard W. Audette v. State*

of Rhode Island, A.A. No. 2015-038, 3 (R.I. Dist. Ct. 6th Div. 2015). At his arraignment, Appellant refused to enter a plea. *Id.* The magistrate presiding over the arraignment entered a default judgment against Appellant. *Id.* at 4. On July 23, 2014, Appellant appealed the magistrate's entry of default to the Rhode Island Traffic Tribunal Appeals Panel. *Id.* The Appeals Panel issued a decision on March 30, 2015, upholding the magistrate's entry of default judgment. *Id.*

Thereafter, Appellant appealed the Appeals Panel's decision to the Rhode Island District Court, Sixth Division, pursuant to § 31-41.1-9. *Id.* at 5. The District Court reversed the decision and remanded the case to the Rhode Island Traffic Tribunal for a trial. *Id.* at 1, 24; *see also* Traffic Trib. R. P. 7(a).

On December 13, 2016, a trial was held at the Rhode Island Traffic Tribunal on Appellant's charges of driving without wearing a seat belt, parking or stopping where prohibited, and entering an intersection.¹ (Tr. at 1.) At trial, Trooper Carter testified that on March 26, 2014, he responded "to the Jamestown toll plaza for a report of a motorist refusing to pay the toll fee." *Id.* at 3. Trooper Carter stated that upon arriving, he observed a black Chrysler van "parked blocking the third lane in the eastbound lane at the toll plaza." *Id.* at 3, 5. Trooper Carter testified that the toll booth attendant had asked Appellant to remain at the toll booth plaza after Appellant refused to sign the unpaid toll schedule form. *Id.* at 5.

Trooper Carter explained that he approached the vehicle and identified Appellant as its operator. *Id.* at 3. At that time, Appellant "stated that he refused to pay the four dollar toll fee or give any information to the members of the toll plaza." *Id.* Trooper Carter then "advised [Appellant] that he needed to complete the toll plaza[s] unpaid toll schedule form, and then he

¹ Appellant's charges of operating without a license and driving without insurance were dismissed. (Tr. at 2.)

could proceed.” *Id.* Trooper Carter also testified that while speaking with Appellant, he “observed [Appellant] not to be wearing his seat belt.” *Id.* at 4.

After the conclusion of Trooper Carter’s testimony, Appellant testified. Appellant asserted that he had bought an E-Z Pass transponder and deposited funds to be able to pay the toll. *Id.* at 17. However, when he approached the toll plaza from Jamestown, the E-Z Pass transponder did not work and he had no money to pay the toll. *Id.* at 13. The Appellant also testified that he could not wear a seat belt for medical reasons and introduced a doctor’s note as evidence.² *Id.*

At the end of trial, the Trial Magistrate stated his findings of fact on the record. *Id.* at 23. The Trial Magistrate credited Trooper Carter’s testimony and adopted the testimony as his findings of fact. *Id.* The Trial Magistrate added “that [Appellant’s] conduct amounted to a violation of 31-24-4, specifically subsection 13, which prohibits the blocking or stopping . . . [in] [p]laces where parking or stopping [is] prohibited . . . upon any bridge or other elevated structure upon a highway or within a highway tunnel.” *Id.* at 24. The Trial Magistrate dismissed the citation charging Appellant with violating § 31-22-22(g) for not wearing a safety belt based on the evidence Appellant presented showing that he was medically excused from wearing a safety belt. *Id.* The Trial Magistrate also dismissed the violation of § 31-10-27 for entering an intersection, finding that “there’s been no testimony that there was an intersection.” *Id.* Thereafter, Appellant filed a timely appeal. Forthwith is this Panel’s decision.

² Rhode Island law allows drivers with “written verification from a licensed physician,” written within the past year, to be excused from the seatbelt requirement. Sec. 31-22-22(i)(2).

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’s 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 a 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 Magistrate’s decision was “in violation of . . . statutory provisions” and “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Sec. 31-41.1-8(f). Specifically, Appellant argues that his conduct on March 26, 2017 was not prohibited by § 31-21-4. This Panel, therefore, must determine whether the Trial Magistrate properly applied the statute to the facts presented at trial.

Section 31-21-4, “Places where parking or stopping prohibited,” states:

“No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places . . . Upon any bridge or other elevated structure upon a highway or within a highway tunnel.” Sec. 31-21-4(a)(13).

In the instant matter, the statute under which Trooper Carter charged Appellant establishes seventeen places where a vehicle may not park or stop. Sec. 31-21-4(a); *see generally D'Amico v. Johnston Partners*, 866 A.2d 1222, 1224 (R.I. 2005) (citing *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)) (“It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.”). Specifically, Trooper Carter cited Appellant for violating the provision that prohibits parking “[u]pon any bridge or other elevated structure upon a highway or within a highway tunnel.” Sec. 31-21-4(a)(13).

At trial, Trooper Carter testified that Appellant “was parked blocking the third lane in the eastbound lane at the toll plaza” in Jamestown. (Tr. at 5.) The evidence contained within the record does not show that Appellant parked on the Newport Bridge. *Id.* at 3, 5. Instead, the record indicates that Appellant stopped at the toll plaza before proceeding onto the Newport Bridge. *Id.* at 3. Nowhere within the record is there evidence showing that Appellant’s vehicle ever travelled onto the Newport Bridge and stopped or parked thereupon. In addition, it is worth noting that Appellant was instructed by a toll plaza attendant to remain at the toll plaza until police arrived. *Id.* at 5.

Based on a plain reading of § 31-21-4(a)(13) and a review of the record, this Panel must conclude that there is insufficient evidence to support a *prima facie* case for the violation. As the statute does not include language prohibiting parking at a toll plaza and no evidence offered at trial suggests that Appellant was either parked on the Newport Bridge—or that the toll plaza is located on the Newport Bridge—the Trial Magistrate erred in finding that Appellant’s conduct was prohibited under § 31-21-4(a)(13) *See* § 31-21-4(a)(13); *D’Amico*, 866 A.2d at 1224 (citing *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)). In light of the evidence contained within the record, this Panel must conclude that the Trial Magistrate’s decision was “clearly erroneous in view of the reliable, probative, and substantial evidence” and that Appellant’s violation be dismissed.

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate’s decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and affected by error of law.

The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Chief Magistrate William R. Guglietta

Associate Judge Lillian M. Almeida

DATE: _____