

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

ANDREW NOLAN PROCTOR

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**C.A. No. M20-0005
045.0001828091**

DECISION

PER CURIAM: Before this Panel on November 25, 2020—Magistrate Kruse Weller (Chair), Judge Parker, and Magistrate DiChiro, sitting—is Andrew Proctor’s (Appellant) appeal from a decision of Judge Gannon (Trial Judge) of the Pawtucket Municipal Court, sustaining a school zone speed enforcement violation of G.L. 1956 § 31-41.3-10 entitled “Driver/Registered Owner Liability.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On November 27, 2019 Officer Thomas Hayes (Officer Hayes) of the Pawtucket Police Department reviewed video footage from Sensys Gatso of a vehicle that appeared to be in violation of the posted speed limit. (Tr. 4). Officer Hayes identified the driver of the vehicle and issued the above-mentioned violation. *See* Summons 045.0001828091.

The Appellant contested the charged violation and the case proceeded to trial on September 13, 2020. At trial, Officer Hayes testified that he has worked for the city of Pawtucket for nineteen (19) years and he is currently assigned to traffic division, primarily reviewing the school zone traffic enforcement. (Tr. 2). Officer Hayes testified as to the process in which he receives

information from Sensys Gatso. *Id.* He explained that “he downloads a batch of violations, some from Sensys Gatso, reviews the video footage to make sure a violation has occurred and checks that the violation was within the correct times and location. *Id.* He further testified that he compares the information to the DMV records and at that point, he accepts the violation. *Id.*

Moreover, Officer Hayes testified that when he reviewed the video footage, he observed a motor vehicle speeding forty-six miles per hour in a twenty miles per hour zone, traveling southbound on Newport Avenue in front of Goff Middle School on November 27, 2019 at 5:41pm. *Id.* at 3. Officer Hayes identified the vehicle registration owner as the Appellant and mailed a copy of the violation to the Appellant. *Id.* at 4.

Robert Ortega also testified at trial. Mr. Ortega has worked for Sensys Gatso for twelve years and is currently an engineering manager. *Id.* at 9. He manages a team of engineers that ensures the cameras are operating and properly maintained. *Id.* at 10. Mr. Ortega testified that Sensys Gatso provides the camera equipment and software for speeding violations for the City of Pawtucket. *Id.*

Mr. Ortega further testified that on November 27, 2019, the camera located Southbound on Newport Avenue at Goff Middle School was properly functioning. *Id.* at 11. He explained the camera has a radar device that continuously monitors the roadway. *Id.* at 12. The machines are calibrated by the factory when they are produced and every year after that, a third party calibrates the units to make sure they are operating properly. *Id.* at 13. Mr. Ortega also presented a certificate of calibration for the camera located in front of Goff Middle School by matching the serial number from the Summons to the certificate. *Id.* at 14. Mr. Ortega testified that particular camera was calibrated on April 15, 2019 and expired on April 14, 2020. *Id.* at 15.

At the close of the testimony, the Trial Judge found that there was clear and convincing evidence that a violation occurred. *Id.* at 22. The Trial Judge explained that based on Officer Hayes' testimony, he determined a violation occurred. *Id.* at 21. Moreover, the Trial Judge found that this particular camera was properly calibrated and functioning based on Mr. Ortega's testimony. The Trial Judge found the Appellant guilty and sustained the charged violation. The Appellant subsequently filed this timely appeal.

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 prejudiced 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 to sustain the charged violation was “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” Sec. 31-41.1-8(f)(5). Specifically, Appellant contends the Trial Judge applied the wrong legal standard and that the Trial Judge made an error of law in refusing to watch the citation video and admit documents regarding the accuracy and reliability of the speed cameras as exhibits to the court. *See* Appellant’s Notice of Appeal.

Specifically, the Appellant argues that the Trial Judge’s reasoning for not admitting the documents that reference a different speed camera in Pawtucket was clear error. *Id.* Pursuant to Rhode Island Rules of Evidence Rule 402, “all relevant evidence is admissible, except as otherwise provided . . . evidence which is not relevant is not admissible.” The Trial Judge made a determination that these documents regarding the accuracy and reliability of other cameras was not relevant to the determination of whether this camera was functioning properly on the date and time of this violation. It is well settled that irrelevant evidence is inadmissible and the Trial Judge made a determination to exclude the evidence.

Moreover, on appeal the Trial Judge's factual findings are treated with deference and are not to be disturbed by the Appeals Panel, unless the Trial Judge "overlooked or misconceived relevant and material evidence or was otherwise clearly wrong." *Brown v. Jordan*, 723 A.2d 799, 800 (R.I. 1998) (internal citations omitted). Here, the record reveals that there was clear and convincing evidence that a violation occurred. The Trial Judge found that under the statute, there was sufficient evidence to prove the violation. (Tr. 22). Officer Hayes properly issued the violation to the Appellant after he reviewed the footage, the data information and signed the summons which is required by statute. *Id.* at 21. The Trial Judge further found the camera was functioning properly. *Id.* at 22. Mr. Ortega properly testified as to the calibration of the specific camera and provided a certificate that the calibration did not expire until April 14, 2020. *Id.* at 15. Mr. Ortega also testified that on November 27, 2019, this particular camera was properly functioning. *Id.* at 12.

As 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[,]" it will not disturb the Trial Judge's determinations regarding the veracity of the witness' testimony. *See Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537); *A. Salvati Masonry Inc.*, 151 A.3d at 749 (quoting *Van Dongen*, 132 A.3d at 1076). Consequently, this Panel is satisfied that the Trial Judge's decision was not clearly erroneous in light of the evidence presented.

The Appellant also contends that the Trial Judge committed a clear error of law by applying the "clear and convincing standard" instead of the legal standard "innocent until proven guilty." However, the Appellant is mistaken as the Trial Judge did apply the correct standard. Pursuant to Rhode Island Traffic Tribunal Rule of Procedure 17(a), the prosecution need not prove guilt beyond a reasonable doubt but need only prove the violation by "clear and convincing evidence." The record reflects that the Trial Judge correctly stated, "this is a civil matter it's not a criminal

matter and I have to find by clear and convincing evidence whether . . . this violation was properly issued.” (Tr. 22). As such, the Trial Judge did not commit an error of law by applying the clear and convincing standard.

V

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 not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Sec. 31-41.1-8(f)(5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Erika Kruse Weller (Chair)

Judge Edward C. Parker

Magistrate Michael DiChiro, Jr.

DATE: _____

