

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PAWTUCKET

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v.

C.A. No. M09-0001

CHRISTINE NATION

DECISION

PER CURIAM: Before this Panel on July 1, 2009—Magistrate Cruise (Chair, presiding) and Judge Almeida and Magistrate DiSandro sitting—is Christine Nation’s (Appellant) appeal from a decision of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-20-9, “Obedience to stop signs.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On October 27, 2008, Sergeant Dennis Lefebvre (Sergeant Lefebvre) of the Pawtucket Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial in the Pawtucket Municipal Court, Sergeant Lefebvre testified that at approximately 2:20 p.m. on the date in question, he was monitoring a stop sign in the vicinity of Thurston Street and Knowles Street. (Tr. at 1.) At this time, he observed a black Honda exit Route 95 and come to a “rolling stop” at the stop sign. Id. Sergeant Lefebvre initiated a traffic stop of the vehicle and issued the operator—identified at trial as Appellant—a citation. Id.

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The Appellant then testified that she “stopped twice” at the stop sign: once immediately before reaching the stop sign and again when her vehicle reached the marked stop line. (Tr. at 2.) According to Appellant, she performed two complete stops and that these stops had been misconstrued by Sergeant Lefebvre as one continuous “rolling stop.” Id.

Clarifying his earlier trial testimony, Sergeant Lefebvre explained that there is a clearly marked stop line at the sign and that he had a clear and unobstructed view of the line from his location. Id. Sergeant Lefebvre added that Appellant’s vehicle did not stop at or before the stop line; rather, her vehicle came to a “rolling stop” (Tr. at 3.) However, Appellant countered that Sergeant Lefebvre did not have clear view of the stop sign and line because his view was obstructed by a building. (Tr. at 4.)

At the conclusion of the trial, the trial judge sustained the charged violation of § 31-20-9. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

#### **Standard of Review**

Pursuant to § 8-18-9, “[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8.” Section 31-41.1-8 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'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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

#### Analysis

On appeal, Appellant argues that the trial judge's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial judge abused his discretion by choosing to credit Sergeant Lefebvre's trial testimony that Appellant's

vehicle came to a “rolling stop” at the stop line, and by choosing to discount the testimony of Appellant that her vehicle came to a complete stop both before the stop sign and again at the posted stop line.<sup>1</sup>

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

Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge’s decision is supported by legally competent evidence and is not affected by error of law. After listening to the trial testimony of Sergeant Lefebvre and Appellant, the trial judge had heard two versions of the underlying events. In order to resolve this apparent conflict in the evidence, the trial judge—relying on his observations and impressions of the two witnesses—chose not to credit the testimony of Appellant. Instead, the trial judge chose to credit the testimony of Sergeant Lefebvre that

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<sup>1</sup> In support of her contention that the trial judge abused his discretion, Appellant attempted to introduce photographic evidence allegedly showing that Sergeant Lefebvre’s view of the stop sign was obstructed by a building. However, as the photographs were not part of the evidentiary record developed at Appellant’s trial in the Pawtucket Municipal Court, the members of this Panel cannot consider them on appeal. See Link, 633 A.2d at 1348 (“The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s decision is supported by legally competent evidence or is affected by an error of law.”) (Emphasis added.)

Appellant's vehicle failed to "stop at [the] clearly marked stop line . . . before entering the intersection" in the vicinity of Thurston Street and Knowles Street. Section 31-20-9. Accordingly, as the members of this Panel cannot substitute their judgment for that of the trial judge on questions of fact, we must accept his credibility determinations on appeal.

**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 is not characterized by abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

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