

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WOONSOCKET

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v.

C.A. No. M11-0027

DEBORAH J. FREEMAN

DECISION

PER CURIAM: Before this Panel on May 9, 2012<sup>1</sup>—Magistrate Goulart (Chair, presiding), Judge Parker, and Judge Ciullo, sitting—is Deborah Freeman’s (Appellant) appeal from a decision of Judge Gariepy (trial judge), sustaining the charged violation of G.L. 1956 § 31-19-4, “Obedience to devices.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

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FILED  
STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL

Facts and Travel

On August 27, 2011, Officer Timothy Greene (Officer Greene) of the Woonsocket 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 7, 2011.

The aforementioned violation arose out of a motor vehicle accident, which the Appellant was involved with two other vehicles. The Appellant was the only motorist cited as a result of the accident. The accident occurred at the intersection of Diamond Hill Road and Wood Avenue in the City of Woonsocket.

Mr. Winters—one of the operators involved in the accident—was traveling eastbound on Diamond Hill Road. (Tr. at 11.) As he approached the intersection, Mr. Winters observed that

<sup>1</sup> Appellant originally appeared before this Panel on February 22, 2012. The matter was continued until May 9, 2012 so that Appellant could provide the members of this Panel with a more complete transcript because the audio tape could not be transcribed accurately due to its poor quality.

he had a green light to proceed through the intersection. After he entered the intersection, Mr. Winters' vehicle was struck on the passenger side by another vehicle being operated by the Appellant. Id. It was Mr. Winters' contention that because the Appellant was traveling northbound across Diamond Hill Road, the Appellant must have had a red light. Mr. Winters also stated that immediately after the collision he looked at the traffic light and saw that the traffic light was still green for cars traveling east and west. (Tr. at 12.) Thereafter, Mr. Winters observed the light properly cycle from yellow to red.

The collision was so severe that the Appellant's vehicle was pushed into the westbound lane on Diamond Hill Road. (Tr. at 11-12.) As a result, the Appellant's vehicle collided with a second vehicle being operated by Mr. Moniz. Mr. Moniz testified that he was stopped at the intersection of Diamond Hill Road and Wood Avenue. While stopped at the stop bar line, Mr. Moniz looked up at the light and saw that the light had turned green. (Tr. at 26.) Mr. Moniz then took his foot off the brake to proceed through the intersection. However, before Mr. Moniz could proceed, he was struck by Mr. Winters—who was traveling eastbound. Mr. Moniz could not offer any details prior to the accident because he was not focused on the intersection or the cars entering the intersection.

On the other hand, the Appellant testified that she—along with the other cars traveling north and south—had the green light to proceed through the intersection. (Tr. at 39.) Appellant contended that, while the light was not always green, it changed shortly before she approached the intersection. Id. Appellant also testified that she was traveling around twenty (20) mph, which was five (5) mph below the posted speed limit. As she traveled through the intersection, the Appellant noticed Mr. Winters' traveling at high rate of speed through the intersection. Appellant attempted to brake to avoid the collision, but could not stop in time.

At trial, Officer Greene testified that he spoke with all three operators that were involved in the accident. (Tr. at 5.) All three operators informed Officer Greene that they had the green light. During his investigation, Officer Greene observed the traffic control devices at the intersection to see if they were malfunctioning. After observing the devices, Officer Greene determined that they were in proper working order. (Tr. at 8.) At the end of his investigation, Officer Greene cited the Appellant for failing to adhere to the traffic device.

At the close of evidence, the trial judge recounted the aforementioned facts in his decision. In rendering his decision, the trial judge determined it was impossible that all three motorists did, in fact, have a green light based on Officer Greene's testimony. The trial judge found it significant that Mr. Moniz saw the light was green a moment before the accident occurred. From this testimony, the trial judge determined that the Appellant had—at a minimum—a yellow light, which was in direct contradiction of Appellant's testimony that the light was changing from red to green. Furthermore, the trial judge determined that Appellant's testimony regarding her speed was questionable because if she was traveling at her stated speed, then she could have stopped if the light was yellow. In summation, the trial judge sustained the violation. (Tr. at 47.) Appellant timely filed this appeal.

#### **Standard of Review**

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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 argues that the trial judge abused his discretion. Appellant argues that the trial judge's decision to sustain the violation is contrary to the evidence presented at trial.

Appellant also argues that the trial judge abused his discretion because he misconstrued and overlooked the testimony of Mr. Moniz. Specifically, Appellant contends that due to Mr. Moniz' position at the stop bar and then his attention being drawn to the light changing green can only mean that it was Mr. Winters who traveled through a red light and not Appellant. Put another way, Appellant contends that because Mr. Moniz was so far removed from the intersection and Mr. Moniz noticing the light changing must mean that Mr. Winters traveled through the red light.

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 witnesses, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [the witnesses.] [The trial judge] 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.

Here, Appellant argues that the evidence elicited at trial was insufficient to sustain the violation. Appellant contends that Mr. Moniz' testimony demonstrates that it was Mr. Winters than went through the red light and not the Appellant. However, Appellant's arguments relate to questions of fact that were heard and weighed by the trial judge at Appellant's trial. This Panel's review is limited to determining whether the trial judge made an error in law or misapplied the evidence. See Link, 633 A.2d at 1348 (our Supreme Court held that this Panel's review is limited in scope). Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion. The trial judge's decision to sustain the charged

violation is supported by legally competent evidence—the testimony of Mr. Winters and Mr. Moniz—which the trial judge chose to credit over the Appellant’s. Finally, this Panel notes that the abuse of discretion standard is the most deferential to trial court decisions and it is a difficult to standard for an appellant to overcome. See Amanda Peters, The Meaning, Meaasure, and Misuse of Standards of Review, 13 Lewis & Clark L. Rev. 233, 243 (2009); see also Arneson v. Arneson, 670 N.W.2d 904, 910 (An abuse of discretion is a “fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or unreasonable.”).

### 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 an abuse of discretion or affected by other error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.