

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF JOHNSTON

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v.

C.A. No. M12-0021  
12405503249

BRENDA MARCHETTI

**DECISION**

**PER CURIAM:** Before this Panel on April 24, 2013—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Magistrate DiSandro sitting—is Brenda Marchetti’s (Appellant) appeal from a decision of the Municipal Court, sustaining the charged violation of G.L. 1956 § 31-21-4, “Places where parking or stopping prohibited.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On August 16, 2012, an Officer of the Johnston Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on October 16, 2012.

The trial commenced with the Officer’s testimony that he received a call from Johnston Police Dispatch reporting parking violations on Sheridan Street, adjacent to 25 George Waterman Road in Johnston. (Tr. at 4.) Upon arrival, the Officer issued summons to the vehicles for parking violations. Id. The Town then admitted a photograph into evidence depicting Appellant’s vehicle parked on the date the summons was issued. (Tr. at 6, 8.) The Officer further testified that the vehicle parked on Sheridan Street was in violation of § 31-21-4 because it was parked eight feet from the stop sign when the statute prohibits vehicles from parking within thirty feet of a stop sign. (Tr. at 10.)

Appellant then testified on her own behalf stating, “I know there is a stop sign there but I am not that close to it.” (Tr. at 11.) Appellant went on to testify that she placed a stake in her flower bed to indicate where to park on Sheridan Street to ensure that she does not park too close to the stop sign. (Tr. at 13.) Appellant concluded the trial by testifying, “I don’t believe we deserve these tickets.” (Tr. at 16.)

After both parties were given an opportunity to present evidence, the trial judge ruled that the Officer was a credible witness. At the close of his bench decision, the trial judge sustained the violation. (Tr. at 20.) Aggrieved by the trial judge’s decision, the 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’s decision was erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant maintains that the decision made by the trial judge was against the evidence presented; and therefore, the trial judge’s decision must be vacated because the street where the violation occurred lacked signage to inform motorists that parking was prohibited.

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 the street lacked signage to inform motorists of the parking prohibition in that particular area. 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. After hearing all of the evidence, the judge concluded that all of the elements of the violation were met and the judge went on to state that ". . . summons 12405503249 is supported not only by officer's testimony but also by exhibit one which shows the truck parked within 5 feet of [sic] stop sign." (Tr. at 19.) The judge went on to state, "the statute prohibiting parking indicates that parking is prohibited within 30 feet upon approach to the stop sign or traffic signal located on the side of the roadway." Id. The trial judge's decision to sustain the charged violation is supported by legally competent evidence—the testimony of the officer and the photographs depicting the vehicle in violation of our traffic code.

**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 erroneous in view of the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Judge Lillian M. Almeida (Chair)

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Chief Magistrate William R. Guglietta

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Magistrate Domenic A. DiSandro, III

DATE: \_\_\_\_\_