

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

C.A. No. T08-0054

MONICA DAVIS

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on May 28, 2008, Judge Almeida (Chair), Judge Parker, and Judge Ciullo sitting, is Monica Davis’ (Appellant) appeal from Magistrate Noonan’s decision, sustaining the charged violation of G.L. 1956 § 31-16-2, “Manner of turning at intersection.”¹ The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 27, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by Trooper Daniel Hernandez (Trooper Hernandez) of the Rhode Island State Police. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Trooper Hernandez testified that on the date in question, he was on patrol on Old Louisquissett Pike in Lincoln. (Tr. at 1.) As Trooper Hernandez was traveling northbound, he observed a vehicle in the southbound travel lane at the intersection of Cobble Hill Road and Old Louisquissett Pike. Id. Trooper Hernandez testified that the vehicle “entered into the northbound lane and cut across into Cobble Hill Road . . . directly in front of [his] path.” Id. The Trooper further testified that the vehicle crossed

¹ The Appellant was also charged with violating § 31-16-2, “Left turns on two-way roadways.” However, this matter is not presently before this Panel on appeal.

over the yellow dividing lines into his travel lane in order to make the turn before he entered the intersection. Id. In order to avoid an imminent collision, Trooper Hernandez had to turn his vehicle sharply to the left, causing his cruiser to spin out and almost hit a tree. Id. The Trooper then turned around and initiated a traffic stop of the motor vehicle. Id. Upon stopping the vehicle, Trooper Hernandez observed the operator and subsequently identified Appellant at trial as that operator. Id. He then cited Appellant for violating § 31-16-2.

Following trial, the trial magistrate sustained Appellant's violation. The Appellant has filed a timely appeal of the trial magistrate's decision. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may 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 following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

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 (R.I. 1993). The Appeals Panel is “limited to a determination of whether the hearing justice’s decision is supported by legally competent evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

Analysis

On appeal, Appellant argues that the trial magistrate’s decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial magistrate abused his discretion by choosing to credit the trial testimony of Trooper Hernandez, testimony that Appellant characterizes as “not accurate”; refusing to consider photographs depicting the intersection where the violation occurred; and by refusing to consider a document attached to Appellant’s appeals packet entitled “My Story.”

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 [magistrate] concerning the weight of the evidence on questions of fact.” Link, 633 A.2d at 1348. As the members of this Panel did not have an opportunity to view the live trial testimony of Trooper Hernandez, it would be impermissible to second guess the trial magistrate’s “impressions as he . . . observe[d] [Trooper Hernandez] [,] listened to [his] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 206

(R.I. 1993). Accordingly, this Panel may not assess or reassess Trooper Hernandez's testimony on appeal. See Link, 633 A.2d at 1348.

Appellant also argues that the trial magistrate's decision to disregard the photographic evidence adduced at trial amounted to an abuse of his discretion. It is well-established in our case law that "[t]he determination of the relevancy and materiality of a photograph is ordinarily left to the sound discretion of the trial [magistrate]." State v. Greene, 74 R.I. 437, 443, 60 A.2d 711, 715 (1948). It is equally well-established that the trial magistrate has wide discretion in determining the relevancy, materiality, and admissibility of offered evidence, including photographs. See State v. Houde, 596 A.2d 330, 335 (R.I. 1991). The trial magistrate's ruling will be upheld absent a clear abuse of discretion. Id.

"For the admission of photographic evidence, [our Supreme Court] ha[s] always required that an adequate foundation be laid. [The Court] ha[s] consistently held that a proper foundation requires testimony that the photograph is a fair and accurate representation of facts personally observed by the witness." State v. Manocchio, 497 A.2d 1, 11 (R.I. 1985) (citing State v. Pulphus, 465 A.2d 153 (1983)). Turning to the facts of the case at bar, the trial magistrate determined that a proper evidentiary foundation had not been laid, as Appellant failed to adduce "evidence sufficient to support a finding that the [photographs] in question [were] what [she] claim[ed]." R.I. R. Evid. 901. The record reflects that Appellant failed to proffer "testimony that the photograph[s] [were] a fair and accurate representation of facts personally observed" by her on the date in question. Pulphus, 465 A.2d at 157. Accordingly, the trial magistrate did not abuse his discretion by refusing to admit the photographs.

Finally, Appellant argues that the trial magistrate's failure to consider the additional information attached to her appeals packet—evidence not adduced at trial—amounted to an abuse of his discretion. In Maran, our Supreme Court held that this Tribunal “may not substitute its decision for that of the hearing [magistrate's] decision. Rather, the [A]ppeals [P]anel is limited to a determination of whether the hearing [magistrate's] decision is supported by legally competent evidence.” Marran, 672 A.2d at 876. Based on the plain and clear language of Maran, it would be impermissible for this Panel to consider Appellant's handwritten “My Story,” as this evidence was not before the trial magistrate and was not part of the record for his decision. Were this Panel to reverse or modify the trial magistrate's decision based on evidence adduced by Appellant on appeal, we would be acting in excess of our statutory authority: “The appeals panel . . . may reverse or modify the decision [of the trial magistrate] if the substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions, or decisions are . . . [c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” See § 31-41.1-8. (Emphasis added.) As the record reflects that the trial magistrate's decision is supported by legally competent evidence, and there is no evidence that he misapplied the law, misconceived material evidence, or made factual findings that were clearly wrong, this Panel will not reverse his decision on appeal. See Link, 633 A.2d at 1348.

Conclusion

Upon a review of the entire record, this Panel concludes that the trial magistrate's decision was not characterized by abuse of discretion. Substantial rights of Appellant

have not been prejudiced. Accordingly, this Panel sustains the violation charged against Appellant and dismisses her appeal.

ENTERED: