

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
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STATE OF RHODE ISLAND

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v.

C.A. No. T08-0111

DERRICK COREY

DECISION

PER CURIAM: Before this Panel on November 5, 2008, Judge Almeida (Chair), Chief Magistrate Guglietta, and Magistrate Goulart sitting, is Derrick Corey’s (Appellant) appeal from Magistrate Noonan’s decision, sustaining the charged violation of G.L. 1956 § 31-47-9, “Penalties – verification of proof of financial security.”<sup>1</sup> The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On June 20, 2007, Appellant was charged with violating the aforementioned motor vehicle offense by an officer of the Providence Police Department (Officer). The Appellant contested the charge, and the matter proceeded to trial.

On the date in question, the Officer was dispatched to the intersection of Douglas Avenue and Chalkstone Avenue to respond to a report of a hit-and-run collision. (Tr. at 1.) According to the information available to the Officer, the vehicle involved in the collision was white and had Rhode Island passenger registration “GE 320” or “GM 320.” Id. On July 17, 2007, the Officer contacted the respective vehicle owners. Id. The owner of the vehicle with Rhode Island passenger registration “GM 320” responded to

<sup>1</sup> The Appellant was also charged with violating G.L. 1956 § 31-27-9, “Parties to offenses.” However, this charge is not presently before this Panel on appeal.

the Providence Police Station and was subsequently ruled out as the driver of the hit-and-run vehicle. Id.

On July 8, 2008, Appellant, the owner of a white vehicle with Rhode Island passenger registration "GE 320," contacted the Providence Police Department. Id. The Appellant provided the Officer with a time card from his place of employment in an attempt to exonerate himself. Id. The Appellant also provided the Officer with proof of financial security that took effect on June 22, 2007—two days after the hit-and-run collision at the intersection of Douglas Avenue and Chalkstone Avenue. Id. The Officer testified that Appellant denied having been in an accident, although he could not explain whether anyone else had been driving his vehicle on the date in question. Id. In his report, the Officer noted that Appellant's vehicle had sustained approximately \$1000 worth of damage. (Tr. at 3.)

The Appellant testified that his vehicle was garaged at his father's residence in East Providence on June 20, 2007, as it was not insured. (Tr. at 1.) The Appellant further testified that he took time off from work on June 21, 2007 to obtain proof of financial security. Id. The Appellant maintained that the keys to his vehicle were within his exclusive possession and control during the several months that the vehicle was garaged, including on the date of the hit-and-run accident. (Tr. at 3.) When questioned by the trial magistrate regarding the damage to his vehicle, Appellant testified that any damage antedated the hit-and-run collision. Id.

Following the trial, the trial judge sustained the charged violation of § 31-47-9. It is from this decision that Appellant now appeals. 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.”

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 magistrate's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial magistrate abused his discretion by choosing not to credit his trial testimony that his vehicle was not involved in the hit-and-run collision and that the damage to his vehicle pre-dated the collision.

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 the Officer and Appellant, it would be impermissible to second guess the trial magistrate's impressions as he observed the Officer and Appellant, listened to their testimony, and determined what to believe and what to disbelieve. See Environmental Scientific Corp., 621 A.2d at 2006. Accordingly, the members of this Panel will not assess or reassess the Officer's or Appellant's testimony on appeal. See Link, 633 A.2d at 1348.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate's decision is supported by legally competent evidence and is not affected by an error of law. The record reflects that the vehicle involved in the hit-and-run collision had license plates closely matching those of Appellant's vehicle and was of the same color; that Appellant obtained financial security for his vehicle two days after the collision; and that Appellant's vehicle had sustained damage consistent with having

been in a collision. Accordingly, as there is reliable, probative, and substantial record evidence that Appellant's vehicle was involved in a hit-and-run collision at the intersection of Douglas Avenue and Chalkstone Avenue and that he did not have proof of financial security at the time, the trial magistrate's decision to sustain the charged violation of § 31-47-9 was not clearly erroneous or affected by error of law.

**Conclusion**

Upon a review of the entire record, this Panel concludes that the trial magistrate's decision is not clearly erroneous in view of the reliable, probative, and substantial record evidence, affected by error of law, or characterized by abuse of discretion. Substantial rights of Appellant have not been prejudiced. The Appellant's appeal is hereby denied, and the charged violation of § 31-47-9 is sustained.

ENTERED: