

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

LOUISE MARCUS

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C.A. No. T09-0076

DECISION

PER CURIAM: Before this Panel on October 7, 2009—Judge Almeida (Chair, presiding) and Judge Parker and Magistrate Goulart, sitting—is Louise Marcus’s (Appellant) appeal from a decision of Judge Ciullo, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to devices.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 3, 2009, a Trooper of the Rhode Island State Police (Trooper), traveling in the city of Warwick, watched as Appellant traveled past his police cruiser and accelerated through a red light. Subsequently, the Trooper charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial, the Trooper testified that at approximately 7:50 a.m., he was in his marked cruiser stopped at the intersection of Centerville Road and Commonwealth Avenue in the city of Warwick. (Tr. at 1.) The Trooper was sitting at the left turning light, when a vehicle drove past him through the first light and continued to accelerate through the second light as “the light turned red.” Id. According to the Trooper’s testimony, he “observed the [Appellant’s] vehicle clearly, and without any doubt, pass[]

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through the red light while the light was red.” Id. Upon making these observations, the Trooper activated his cruiser’s emergency lights and initiated a traffic stop of Appellant’s vehicle. The Trooper approached the vehicle and advised Appellant that she “had actually gone through two red lights and . . . she had accelerated to go through [the second red light].” Before concluding his trial testimony, the Trooper stated that he “recall[s] the stop [of Appellant] based on how obvious the infraction was.” Id.

Next, the trial judge heard testimony from Appellant. Appellant began by asking the Trooper questions about the position of his police cruiser. The Trooper explained that the Trooper “was two cars back from the first traffic light, yet [he] had . . . certainly enough depth perception [and] the ability to observe [Appellant’s] vehicle travel through the second light.” (Tr. at 1.) Appellant disagreed with the Trooper’s statement, insisting that the Trooper was “stopped at the bottom of the exit coming onto Route 117, several hundred feet away” from her vehicle. (Tr. at 2.) Appellant explained that as she approached the intersection, she “saw other cars and trucks, [but she] did not see a state trooper vehicle in front of [her]. So [she] is certain [she] did not pass him.” (Tr. at 3.)

Appellant continued to make clear that she frequently travels on Route 117. According to Appellant, she is “absolutely certain” that the first of the two lights was green, but there was “a big truck in front of [her]” so the light “may have turned yellow when [she] went through th[e] first light, but [she] saw green so [she] went.” (Tr. at 3.) Appellant testified that as she was approaching the second light and entering the intersection, the “second light was yellow so [she] may have accelerated while already in the intersection because [she] wanted to go through rather than jam on the brakes and be stuck in the middle of the intersection.” Id.

Additionally, Appellant testified that the traffic control “lights [on Route 117] were improperly calibrated.” (Tr. at 4.) A week prior to Appellant’s trial, she drove through the same lights on Centerville Road and found that “something ha[d] changed, those lights ha[d] been calibrated differently[,] presumably so that traffic doesn’t stop mid-intersection, like what [she] was trying to avoid.” However, Appellant “did not look into” this allegation. Therefore, she was not able to present any evidence pertaining to the recalibration of the lights. Id.

Following the trial, the judge sustained the charged violation of § 31-13-4. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

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 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 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 is characterized by abuse of discretion. Specifically, she contends that the trial judge abused his discretion by choosing to credit the trial testimony of the Trooper over that of the Appellant. It is Appellant's position that she cannot be charged with failing to "obey the instructions of [the] official traffic control device applicable to her," section 31-13-4, because the light at the first intersection was green and the second light was yellow as she accelerated through the intersection.

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)). The trial judge chose to credit the Trooper’s testimony regarding that “[t]he [Appellant’s] vehicle clearly, and without any doubt, passed through the red light while the light was red” over the testimony of Appellant. (Tr. at 1.) As the members of this Panel did not have an opportunity to view the live trial testimony of the Trooper or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [the Trooper and Appellant,] listened to [their] testimony [and] . . . determine[d] . . . 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, the members of this Panel are satisfied that the trial judge’s decision is not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial record evidence. The trial judge, based on the testimony of the Trooper, found that Appellant drove “past the light and there was another light farther on, [which] . . . was yellow, [Appellant’s] vehicle accelerated[,] . . . entered the intersection and . . . the light turned red.” (Tr. at 4.) As the trial judge explained, and the members of this Panel agree, the law on this issue is clearly stated in § 31-13-6: when the traffic control device is yellow, “[v]ehicular traffic facing the signal is warned by it [such] that the red . . . signal will be exhibited immediately afterwards, and the vehicular traffic shall not enter or be crossing the intersection when the red . . . signal is exhibited.” The members of this Panel agree that Appellant was

driving toward the traffic signal when the light turned yellow, yet she continued to accelerate through the intersection. As the Trooper explained, Appellant continued to enter and cross the intersection even though the traffic control signal was red. (Tr. at 1.) Therefore, the members of this Panel find the decision of the trial judge sustaining the charged violation of § 31-13-4 is supported by the reliable, probative, and substantial evidence of record and did not constitute an abuse of discretion.

Additionally, Appellant's argument that the Department of Transportation recalibrated the traffic signals on Centerville Road is without merit. During the trial, Appellant did not submit any factual evidence to substantiate her claim. Appellant testified that she "did not know" when the traffic lights were allegedly recalibrated because she "did not look into" it. (Tr. at 4.) "The review of the Appeals Panel is confined to a reading of the record to determine whether the [trial] 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)). Therefore, evidence not presented to the trial judge cannot be considered by this Panel. We are satisfied that the trial judge's decision is not affected by an error of law or clearly erroneous in view of the evidence on the record. Thus the charged violation is sustained.

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, affected by error of law, or clearly erroneous in view of the reliable, probative, and substantial record evidence. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

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