

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH PROVIDENCE

:

V.

:

Appeal No. T11-0023

:

FRANK MANFREDI

:

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
11 OCT 11 AM 8:11

DECISION

PER CURIAM: Before this Panel on June 22, 2011 – Magistrate Goulart (Chair, presiding), Judge Parker, Magistrate Noonan, sitting – is the Town of North Providence’s (Appellant) appeal from a decision of Administrative Magistrate R. David Cruise, dismissing the charged violations of G.L. 1956 § 31-22-9 “Throwing debris on highway—Snow removal,” brought against Frank Manfredi (Appellee). The Appellant was represented by Town Solicitor, Robert A. Peretti, Esq., and Frank Manfredi represented himself pro se before this Panel. Jurisdiction is pursuant to §31-41.1-8.

I

**Facts and Travel**

On January 21, 2011 Patrolman Jonathan Picard (Patrolman Picard) of the North Providence Police was dispatched to 37 Carriage Way in North Providence in response to a call by the building inspector complaining of a resident at the location throwing snow into the street. (Tr. at 3.). Upon arriving at the scene, Patrolman Picard approached the front door of the residence and made contact with the Appellee after ringing the doorbell. (Tr. at 4.) Patrolman Picard advised the Appellee that “throwing snow into the street was a violation of both town ordinance and state law.” (Tr. at 4.) The Appellee responded by walking out into the front lawn

of the residence. There, Patrolman Picard observed Appellee begin to throw snow into the street once again. (Tr. at 5.) Upon observing Appellee throwing snow into the street, Patrolman Picard advised the Appellee that he was in violation of state law. (Tr. at 5.) Appellee continued throwing snow into the street and demanded to know where in the town ordinances or state statutes his behavior was prohibited. (Tr. at 5.) Patrolman Picard then contacted Sergeant Perez who responded to the scene. (Tr. at 5.) Upon arriving at the scene, Patrolman Picard advised her that both he and the building inspector had witnessed Appellee throwing snow into the street. Sergeant Perez determined that Appellee had violated Rhode Island General Law § 31-22-9 and the Appellee was issued a summons for the violation. (Tr. at 6.) Patrolman Picard and Sergeant Perez provided Appellee with the necessary information regarding how to appropriately contest the violation. (Tr. at 6.) Following this interaction, Appellee went back inside the residence but later returned and acknowledged his actions were indeed a violation of state law. He also apologized for his behavior. (Tr. at 6.) Appellee attempted to hire a plow truck driver to respond to the location, and remove the snow thrown into the street. (Tr. at 6.)

At trial, Appellee provided Patrolman Picard with a copy of the issued citation. (Tr. at 7.) Appellee inquired why a delay had occurred between the time of the issuance of the citation and its eventual delivery. (Tr. at 7.) Furthermore, Appellee questioned Patrolman Picard regarding the timeframe of the events in question. (Tr. at 7.) Patrolman Picard noted that he was told that a plow had been hired to remove the snow from the street, “ten or fifteen” after he witnessed the violation. (Tr. at 7.) During the cross-examination of Patrolman Picard, Administrative Magistrate Cruise asked for the original summons. (Tr. at 9.) At this time, Patrolman Picard was only able to provide the court with a copy. (Tr. at 10.)

At the conclusion of the testimony, the trial magistrate dismissed the charge against the Appellee. The trial magistrate reasoned that because the Court was not provided with the original citation and there existed a genuine question of material fact regarding whose signature was attached to the document he was required to dismiss the summons. Appellant appealed this Decision. The Decision of the Appeals Panel is rendered below.<sup>1</sup>

## II

### Standard of Review

Pursuant to § 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 other 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

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<sup>1</sup> The Appellee has claimed his prosecution was politically motivated. The solicitor acknowledged during oral argument that this was the first time in recent memory that the town had taken an appeal of an adverse decision by a judge or magistrate of the Rhode Island Traffic Tribunal and the first time its interests were represented at oral argument by the town solicitor.

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.

### III

#### Analysis

On appeal, Appellant contends that the trial magistrate committed an error of law when he dismissed the summons because the police were unable to provide the original summons.

The Rules of Procedure for the Traffic Tribunal make clear that "[a]n error or an omission in the summons shall not be grounds for dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice." See Traffic Tribunal Rule 3. Accordingly, in the instant matter, the error of the Appellant in failing to produce an original copy of the summons did not constitute grounds for dismissal. See id. There was no showing that the use of the copy of the summons, rather than the original, mislead the Appellee. See id. Appellant furthermore provided a sufficient explication for using a duplicate in lieu of the original copy of the summons. The trial magistrate erred when he dismissed the case solely on the failure of the police to produce the original summons. The Town of North Providence was prohibited from calling witnesses or producing other admissible evidence which supported the facts of the case. Accordingly, the Town was prejudiced when the trial magistrate

dismissed the case solely on the basis that the town was unable to produce the original summons.<sup>2</sup>

For the aforementioned reasons, the Appellee was not prejudiced by the inability of the town to produce the original summons and the trial magistrate erred when he dismissed the summons. Accordingly, his decision is hereby reversed and remanded for trial in order to give the parties the opportunity to further develop the record.

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<sup>2</sup> The trial magistrate may, of course, utilize the failure to produce the original summons as part of his basis in determining whether the town has established its case by clear and convincing evidence.

### Conclusion

Having reviewed the record before it, this Panel is satisfied that the trial magistrate's decision dismissing the charged violation of § 31-14-3 was affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, the decision of the trial magistrate is reversed and remanded to the trial magistrate for further proceedings consistent with our opinion.

ENTERED: