

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK

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v.

C.A. No. T12-0009

RHONDA KRIKORIAN

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
12 MAY -7 AM 11:12

DECISION

PER CURIAM: Before this Panel on March 14, 2012—Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Judge Almeida, sitting—is Rhonda Krikorian’s (Appellant) appeal from a decision of Judge Ciullo (trial judge), sustaining the charged violation of G.L. 1956 § 31-26-5, “Duty in accident resulting in damage to highway fixtures.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On November 7, 2011, Officer Raymond Cox (Officer Cox) of the Warwick Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on January 20, 2012.

On the day of the violation, Officer Cox was dispatched to Manor Drive for a report of a motorist leaving the scene of an accident, which caused damage to a highway fixture. Upon approaching the area, Officer Cox saw a gold vehicle, bearing registration OB-765, on the lawn of a residence located at Aster Drive. (Tr. at 1.) Officer Cox began his investigation at this residence. Officer Cox traced the skid marks emanating from the rear of the vehicle back to the street. Officer Cox observed “approximately four feet of curb damage,” which was in the path of

the skid marks that extended from the road to the lawn where the gold vehicle was positioned.

Id.

During his initial investigation, which included speaking with the Appellant, Officer Cox spoke with Mr. Haba, a resident of the area who witnessed the incident. At trial, Mr. Haba testified that he was in his driveway when he first observed the gold vehicle. He saw the gold vehicle driving in reverse down the street at a high rate of speed. After traveling down the street for some distance, Mr. Haba observed this vehicle hit the curb, which caused damage to the curb. After the vehicle struck the curb, Mr. Haba stated that the vehicle began making a loud screeching noise and continued down the street. At trial, Mr. Haba identified the operator of the vehicle as the Appellant. He testified that he was familiar with the Appellant because she lives in the neighborhood and he sees her frequently driving in the area. Importantly, Mr. Haba concluded his testimony by saying that he observed the curb shortly before the accident, and at that time before the accident the curb was undamaged.

Then, the Appellant testified on her own behalf. Initially, the Appellant introduced photographs of her vehicle, which she said depicted there was no damage to her vehicle. However, Officer Cox argued that the pictures did, in fact, depict damage to the vehicle. Specifically, Officer Cox stated that the pictures show the rear wheels on Appellant's vehicle as being slanted inward. Appellant testified that she took the pictures immediately after the police responded to her residence. The trial judge admitted the pictures into evidence and reviewed them. Then, in an attempt to rebut Mr. Haba's testimony, Appellant admitted into evidence a letter from her mechanic stating that her vehicle was not making a whistling noise as previously stated by Mr. Haba. It should be noted that the mechanic's report was dated about a month after

the accident. Appellant then went on to testify that she did not operate a vehicle that day. Instead, Appellant stated that she was home cooking dinner at the time of the accident.

After both parties finished presenting evidence, the trial judge issued his decision sustaining the charged violation. The trial judge recounted the aforementioned facts. The trial judge found it important that Mr. Haba identified the Appellant as the operator who was operating the vehicle that struck the curb. (Tr. at 4.) The trial judge determined that he was satisfied by clear and convincing evidence that Appellant committed the violation. Appellant timely filed this appeal.

### 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 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 to sustain the charged violation was an abuse of discretion. Specifically, Appellant argues that trial judge erred in crediting the testimony of Officer Cox and Mr. Haba over the Appellant’s testimony. Appellant further maintains her innocence arguing that she was not operating a vehicle on the day of the accident.

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 Officer Cox, Mr. Haba, or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [Officer Cox, Mr. Haba, 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.

After listening to the testimony, the trial judge determined that Officer Cox and Mr. Haba’s testimony was not only credible, but the testimony was sufficient to sustain the charged violation. It is clear to this Panel that the trial judge gave proper consideration to the evidence and testimony presented by the Appellant. The trial judge evaluated Appellant’s testimony and the evidence presented and was satisfied by clear and convincing evidence that the Appellant did, in fact, violate § 31-26-5. In so determining, the trial judge spent considerable time recounting the testimony of Mr. Haba. (Tr. at 4.) In addition to being a credible witness, the trial judge determined that Mr. Haba saw the Appellant strike the curb and cause damage to the curb. Id. In his decision, the trial judge also recounted the photographs that were admitted into evidence. The trial judge determined that the photographs clearly demonstrated that there was damage to the curb. The trial judge concluded by stating that “there [was] no doubt in [his] mind” that Appellant was guilty of the violation. Id. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence.

### 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 in violation of statutory provisions and not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.