

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

ADELINO LOMBA

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**C.A. No. M19-0013
19401501070**

DECISION

PER CURIAM: Before this Panel on March 11, 2020—Magistrate Kruse Weller (Chair), Chief Magistrate DiSandro, and Magistrate Goulart, sitting—is Adelino Lomba’s (Appellant) appeal from a decision of the Central Falls Municipal Court, sustaining the charged violation of G.L. 1956 § 31-22-22(g), “Safety belt use – Child restraint.”¹ Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On April 30, 2019, Officer Nicholas Parker (Officer Parker) of the Central Falls Police Department observed a vehicle being operated by a driver with no seatbelt in the City of Central Falls. Tr. at 2, June 25, 2019. Officer Parker subsequently conducted a motor vehicle stop, identified the operator as Appellant, and issued him the aforementioned citation. *Id.*; Summons No. 19401501070.

Appellant pled not guilty, and the matter proceeded to trial on June 25, 2019. Officer Parker testified first. Officer Parker testified that on April 30, 2019, he was situated at a fixed traffic post working a seatbelt detail. Tr. at 2, June 25, 2019. Officer Parker stated that he

¹ On the Rhode Island Traffic Tribunal Judgment sheet, the Violation Description indicates “NO SEAT BELT - OPERATOR.”

observed a vehicle traveling on Broad Street with an operator and another passenger, both of whom were not wearing a seatbelt. *Id.* Officer Parker conducted a motor vehicle stop of the vehicle, during which Appellant and the passenger admitted to not wearing a seatbelt. *Id.* Officer Parker issued a citation to the operator, Appellant. *Id.*

Next, Appellant, appearing *pro se* at trial, questioned Officer Parker. *Id.* Appellant cited several studies that purported to indicate that Central Falls produces a disproportionate number of seatbelt violations as compared to the other municipalities in Rhode Island. *Id.* Appellant also argued that the motor vehicle stop is inconsistent with other safety laws, such as the requirement of a motorcycle helmet and thus implicates the Ninth Amendment to the United States Constitution. *Id.* at 3.

Having heard all of the testimony, the Trial Judge sustained the violation based on the evidence presented at trial. *Id.* at 5. The Trial Judge determined that Officer Parker's testimony was credible, and found by clear and convincing evidence that Appellant was guilty of the charged violation. *Id.* Accordingly, the Trial Judge imposed a fine of forty dollars, a court fee of thirty-five dollars, and an assessment of one dollar, for a total cost of seventy-six dollars.

Appellant subsequently filed a timely appeal of the Trial Judge's decision. *See* Appellant's Notice of Appeal at 1. Forthwith is the Panel's decision.

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 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 Mut. Ins. 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.” *Id.* (citing *Envtl. Sci. 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.” *Id.* Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that the Trial Judge decision to sustain the charged

violations was “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Sec. 31-41.1-8(f)(5). Specifically, Appellant argues “every motorist in Rhode Island under the Ninth Amendment should have the same rights not to be construed to deny or disparage others retained by the people” and further that there was no evidence against him for the charged violation.

In the instant matter, while Appellant cited a study, the contents were not accepted as actual evidence at trial and cannot be considered on Appeal. Appellant discussed at trial that the City of Central Falls experiences a large number of seatbelt violations, and on Appeal further argued that the Central Falls Police Department deliberately seeks to effectuate a large number of seatbelt violation citations. Because Appellant did not develop this argument other than a brief mention based on unsubstantial statistical information which was not submitted as evidence, the Panel is unable to consider it on appeal. *See State v. Barros*, 148 A.3d 168, 172 (R.I. 2016) (stating, “a litigant cannot raise an objection or advance a new theory on appeal if it was not raised before the trial court” (internal quotations omitted)).

Second, the motorist contends he was innocent and there was no evidence to support his conviction. The record however contains sufficient evidence to establish the violation. Officer Parker testified that during the traffic stop on April 30, 2019, he observed that the defendant and the passenger were not wearing seatbelts. Tr. at 4. While questioning the Officer, the defendant admitted that he was not wearing a seatbelt stating “I would take my seatbelt off before the officer approaches.” *Id.* As such, the Trial Judge found the officer’s testimony to be credible and sufficient to approve the city’s burden of the charged violation of driving without a seatbelt. Tr. at 5. On appeal, this Panel is confined to a reading of the record and may not weigh the

evidence. *See* § 31-41.8(f). Thus, this Panel cannot disturb the Trial Judge’s finding of credibility. *See* § 31-41.8(f).

IV

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 was not “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” Sec. 31-41.1-8(f)(5). The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied.

ENTERED:

Magistrate Erika Kruse Weller (Chair)

Chief Magistrate Domenic A. DiSandro III

Magistrate Alan R. Goulart

DATE: _____