STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

BROWN UNIVERSITY	:	
	:	C.A. No. T15-0013
v.	:	13423500156
	:	
ROARK MALLOY	:	

DECISION

PER CURIAM: Before this Panel on May 20, 2015—Judge Almeida (Chair), Judge Parker, and Magistrate Goulart, sitting—is Roark Malloy's (Appellant) appeal from a decision of Magistrate Abbate (Trial Magistrate), sustaining the charged violations of G.L. 1956 § 31-20-9, "Obedience to stop sign," § 31-22-22(g), "No seat belt, operator," and § 31-22-22(f), "No seat belt, passenger over 13 years old." The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 31, 2014, Officer Cunningham of the Brown University Police Department (Officer) charged Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on February 24, 2015.

At trial, the Officer testified that on October 31, 2014, "at approximately 8:15, while conducting a stationary traffic post at the intersection of Power Street and Hope Street, [she] observed a Toyota traveling northbound on Hope Street, travel through a four-way intersection without attempting to stop or slow [down]." (Tr. at 3.) The Officer further stated that she pulled behind the vehicle, and identified the vehicle by the Rhode Island passenger plate "329663." Id.

The Officer then "witnessed this vehicle travel through a second four-way intersection at Hope Street [and] George Street without attempting to stop or slow [down]." <u>Id.</u> The Officer added that the vehicle's "brake lights were not activated." <u>Id.</u> at 4. Subsequently, the Officer initiated a motor vehicle stop at Hope Street and Manning Street. <u>Id.</u> She identified the motorist as the Appellant by his Rhode Island license. <u>Id.</u> The Officer notified Appellant of the traffic violations, and also brought to his attention that he and his passenger were not wearing their seat belts. <u>Id.</u> Thereafter, the Officer cited Appellant for one count of obedience to stop signs and for two seat belt violations. <u>Id.</u> Subsequently, the Officer identified the motorist in court and clarified that the four-way intersections contained a stop signs. <u>Id.</u>

Next, Appellant explained to the Trial Magistrate that he requested a police report through his attorney, but he never received any reports. <u>Id.</u> at 5. The Appellant explained that he previously had an attorney, who he dismissed. <u>Id.</u>

Subsequently, Appellant's wife Laurie Malloy (Ms. Malloy) testified. <u>Id.</u> at 6-7. Ms. Malloy stated that on the night of October 31, 2014, Appellant was driving her home. <u>Id.</u> at 7. They were driving north on Hope Street, and stopped at the stop sign. At that time, they noticed lights behind them and were pulled over. <u>Id.</u> Ms. Malloy added that the "second officer . . . was shining the lights in [her] eyes after he pulled [them] over." <u>Id.</u> Ms. Malloy testified that she and her husband "had requested representation from [the] Providence [P]olice [but the] request was never responded to." <u>Id.</u>

The Trial Magistrate explained to Ms. Malloy and Appellant that there is a process for discovery, which requires filing a motion. <u>Id.</u> The Trial Magistrate noted that nothing before the Court showed a motion was filed. <u>Id.</u> The Appellant then stated that he had a copy of the letter he sent to Officer Cunningham's superior as well as a copy of the response he received. <u>Id.</u> at 8.

The Trial Magistrate reviewed the letter, and explained that the police department told Appellant they do not have a written report of the incident. <u>Id.</u>

Thereafter, Appellant argued that he was pulled over at Young Orchard Street, not Manning Street. <u>Id.</u> at 9. The Appellant stated the Officer accused him of going through a stop sign at Hope Street and George Street, which is after Young Orchard Street. <u>Id.</u> at 11. The Appellant then added that he was not cited for going through a stop sign at Hope Street and George Street. Id.

After hearing testimony from the Officer and Ms. Malloy, and considering Appellant's arguments, the Trial Magistrate found Officer Cunningham's testimony credible. <u>Id.</u> at 13. While on duty at approximately 8:15 p.m. in the area of Hope Street and Power Street in the city of Providence, the Officer observed a vehicle bearing Rhode Island registration "329663" proceed north on Hope Street, through the intersections at George Street and Hope Street, and Power Street and Hope Street, both controlled by four-way stop signs. <u>Id.</u> at 12-13. The Trial Magistrate further found that both the motorist and passenger were not wearing seat belts. <u>Id.</u> at 13. The Trial Magistrate found "no evidence that [Officer Cunningham] would be presenting any facts before the Court . . . that would not be truthful." <u>Id.</u> The Trial Magistrate sustained the violations, and pursuant to statute, the Trial Magistrate issued a 40 dollar sanction for each of the seat belt violations, an 85 dollar fine for the stop sign violation, and court costs of 35 dollars.

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." <u>Link v. State</u>, 633 A.2d 1345, 1348 (R.I. 1993) (citing <u>Liberty Mutual Ins. Co. v. Janes</u>, 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." <u>Link</u>, 633 A.2d at 1348 (citing <u>Envtl. Scientific Corp. v. Durfee</u>, 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." <u>Link</u>, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. <u>See Janes</u>, 586 A.2d at 537.

<u>Analysis</u>

On appeal, Appellant contends that the Trial Magistrate's decision was arbitrary or capricious or characterized by abuse of discretion. Specifically, Appellant argues that he was not given a fair trial because the Trial Magistrate did not consider the neglect of the prosecution to produce a key witness or key evidence in the case, and he did not "hear out" Appellant's witness.

In order to subpoena a witness, the Traffic Tribunal Rules of Procedure require a subpoena "be issued by the clerk of court or a notary public or other officer authorized by statute." Traffic Trib. R. P. 12(a). The Traffic Tribunal Rules of Procedure also allow a defendant to request discovery of tangible objects upon a motion to the court. Traffic Trib. R. P. 11(b). Upon said motion, "the court may order the . . . prosecuting officer to permit the defendant to inspect and copy or photograph . . . tangible objects . . . which are within the possession, custody or control of the . . . agency upon a showing of materiality to the preparation of the defendant's defense and that the request is reasonable." <u>Id.</u>

In this case, Appellant never subpoenaed additional witnesses, or filed a motion for discovery. <u>See</u> Tr. at 7. Moreover, even if Appellant had been granted a motion for discovery, the court could not order the officer to produce a report that does not exist. <u>See</u> Traffic. Trib. R. P. 11(b) (explaining the court can order an officer to permit a defendant to inspect an object in the agency's possession). Thus, Appellant was not prejudiced for not having an additional witness and not receiving a police report.

In <u>Link</u>, 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." <u>Link</u>, 633 A.2d at 1348 (citing <u>Liberty Mutual</u> <u>Insurance Co. v. Janes</u>, 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 the Officer or Ms. Malloy, it would be

impermissible to second-guess the Trial Magistrate's "impressions as he . . . observe[d] [the Officer and Ms. Malloy] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." <u>Environmental Scientific Corp.</u>, 621 A.2d at 206.

The record in this case illustrates that the Trial Magistrate considered the testimony of the Officer and Ms. Malloy. <u>See</u> Tr. at 7-8 and 12. The Trial Magistrate listened to Ms. Malloy's concerns regarding an alleged police report, and he explained to Ms. Malloy the proper process. (Tr. at 7-8.) After listening to the testimony and arguments presented, the Trial Magistrate determined that the Officer's testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. <u>See</u> Tr. at 12-13. "[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [magistrate] concerning the weight of the evidence on questions of fact." <u>Environmental Scientific Corp.</u>, 621 A.2d at 208 (quoting <u>Liberty Mutual Insurance Co. v. Janes</u>, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the Trial Magistrate credited the Officer's testimony that the Appellant and Ms. Malloy were not wearing seat belts, and that the Officer observed Appellant drive through two stop signs. (Tr. at 12-13.) The Trial Magistrate concluded that he accepted the testimony of the Officer, and was "satisfied by clear and convincing evidence" that the burden of proof was met. <u>Id.</u> Accordingly the Trial Magistrate found the Appellant guilty.

Confining our review of the record to its proper scope, this Panel is satisfied that the Trial Magistrate did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. <u>See Environmental Scientific Corp.</u>, 621 A.2d at 209 (holding that the [appellate court] should give great deference to the [trial magistrate's] findings and conclusions unless clearly wrong).

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Judge Lillian M. Almeida (Chair)

Judge Edward C. Parker

Magistrate Alan R. Goulart

DATE: _____