

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

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| STATE OF RHODE ISLAND | : | |
| | : | C.A. No. T17-0024 |
| | : | 17305500312 |
| v. | : | 17305500310 |
| | : | 17305500407 |
| | : | 17305500408 |
| ERIC CHASE | : | 17305500549 |

DECISION

PER CURIAM: Before this Panel on October 11, 2017—Judge Almeida (Chair), Magistrate Abbate, and Magistrate Kruse Weller sitting—is Eric Chase’s (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violations of G.L. 1956 § 31-22-22(g), “Safety belt use;” § 31-20-9, “Obedience to stop signs;” two charges of violating § 31-8-3, “Improper use of evidences of registration or certificate of title;” and three charges of violating § 31-3-21, “Use of bailee, transporter, and in transit plates.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

The Appellant contested nine charged violations pursuant to five summonses that were issued on three separate dates. A trial was held on all charges before the Trial Magistrate at the Rhode Island Traffic Tribunal on July 7, 2017.

A

March 19, 2017 Violations

At trial, Officer Kurt Ripke (Officer Ripke) of the Tiverton Police Department testified that while he was monitoring traffic on March 19, 2017, he observed Appellant operating a gold SUV. (Tr. at 10.) He further observed that Appellant failed to stop at a stop sign, and that Appellant was not wearing his safety belt. *Id.* Officer Ripke began following Appellant's vehicle and witnessed him proceed through a second stop sign without coming to a complete stop. *Id.* Officer Ripke activated his overhead warning lights and executed a traffic stop. *Id.*

The vehicle Appellant was operating had Iowa license plates, which Officer Ripke noticed were expired. *Id.* at 11. The Appellant advised Officer Ripke that the vehicle had been repossessed, and that Appellant operated a repossession business. *Id.* The Appellant provided Officer Ripke with the registration for a bailee plate that was not affixed to the vehicle. *Id.* The Appellant further advised Officer Ripke that he was driving to a friend's house nearby. *Id.* As a result of the traffic stop, Officer Ripke cited Appellant for: (1) improper use of the bailee plate; (2) failure to obey a stop sign; (3) failure to wear a seatbelt; and (4) improper use of registration plates.¹ *Id.* at 13.

The Appellant interjected, stating that a judge of the Rhode Island Traffic Tribunal previously told him he could use his bailee plate in the manner he had used the plate on March 19, 2017. *Id.* at 19-20. The Trial Magistrate explained that such discussions were irrelevant to the violations at issue. *Id.* at 21. The Appellant admitted that he "possibly could've rolled, slowed down and rolled, and then proceeded" through the stop sign. *Id.* at 24. However, Appellant

¹ The Appellant was also cited for infractions unrelated to this appeal either because they were adjudicated in the District Court, or dismissed before trial.

maintained that he had been wearing a seatbelt. *Id.* The Appellant also admitted to having expired Iowa license plates affixed to the vehicle at the time he was stopped. *Id.* at 26. He testified that the bailee plate was in the window. *Id.* at 27. The Appellant also admitted to being on his way to a friend's home prior to driving the vehicle to his own home for the night. *Id.* at 29, 33. The Appellant testified that he was taking the vehicle to be appraised the following day, and that he does not drive repossessed vehicles for his own personal use. *Id.* at 31, 37.

The Trial Magistrate determined Officer Ripke's testimony to be credible. *Id.* at 39. The Trial Magistrate found that Appellant failed to stop at the stop sign, was not wearing a seatbelt, and operated a motor vehicle with expired license plates. *Id.* at 10-41. The Trial Magistrate further found that Appellant's use of the bailee plate was improper, as it was not being used to take the vehicle to a garage or warehouse, nor was he using the plates to take the vehicle to be demonstrated or sold. *Id.* at 42. Accordingly, the Trial Magistrate sustained the four violations. *Id.* at 43.

B

March 26, 2017 Violations

Officer Ryan Huber (Officer Huber) of the Tiverton Police Department also testified at trial. *Id.* at 45. On March 26, 2017, around 12:27 a.m., Officer Huber observed Appellant operating a vehicle—displaying a front plate from the state of Iowa—at a high rate of speed. *Id.* at 46. Officer Huber testified that he clocked Appellant for about one mile traveling fifty miles per hour through a residential area using his cruiser's speedometer. *Id.* at 47, 51. Officer Huber conducted a traffic stop and discovered the Iowa plate on the front of the vehicle had expired. *Id.* at 47-48. The Appellant was using a bailee plate on the rear of the vehicle. *Id.* The Appellant advised Officer Huber that he was traveling to Newport for an undisclosed personal reason. *Id.* at

48. Officer Huber cited Appellant for speeding, improper use of registration, and improper use of bailee plate. (Summons No. 17305500407; 17305500408.)

The Appellant stated that the Iowa plates had been confiscated during the March 19 stop, and that there was not an Iowa plate on the vehicle when Officer Huber stopped Appellant. (Tr. at 53.) The Appellant did not offer any other probative testimony regarding the other violations.

The Trial Magistrate concluded that Officer Huber's testimony was credible. *Id.* at 59. However, Officer Huber was unable to present evidence that his speedometer had been properly calibrated.² *Id.* at 63. Therefore, the Trial Magistrate dismissed the speeding charge. *Id.* at 63-64. Ultimately, the Trial Magistrate sustained the remaining violations, finding that Appellant had the expired Iowa license plate affixed to the vehicle, and that he was using a bailee plate for personal reasons. *Id.* at 60-61, 64.

C

April 21, 2017 Violations

Once again, Appellant was stopped by Officer Ripke on April 21, 2017, at approximately 3:00 a.m. *Id.* at 67. The Appellant was driving a small sedan with no front license plate. *Id.* at 68. A bailee plate was affixed to the rear of the vehicle. *Id.* at 69. Officer Ripke noted a number of personal effects in the vehicle including a laptop case, numerous tools, clothing, business keys, and trash. *Id.* Officer Ripke cited Appellant for improper use of bailee plates as well as operating without insurance. (Summons No. 17305500549.) The insurance violation was dismissed upon a showing that Appellant had insurance at the time of the stop. *Id.* at 66-67.

² Officer Huber offered evidence showing that his radar had been calibrated—not his cruiser's speedometer, which was used to measure Appellant's speed—so it was ultimately not relevant.

The Appellant maintained that he had not been operating the vehicle on a public road. *Id.* at 73. He asserted that he never left his own property. *Id.*

The Trial Magistrate again found Officer Ripke's testimony credible. *Id.* at 90. Moreover, the Trial Magistrate found that Appellant had operated the vehicle on a public road. *Id.* The Trial Magistrate also concluded that Appellant misused the bailee plates by affixing the plates to a vehicle for personal use. *Id.* at 91. Accordingly, the Trial Magistrate sustained the violation. *Id.*

Thereafter, Appellant filed a timely appeal of the Trial Magistrate's decision. Forthwith is this 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 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 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 *Env'tl. 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 contends that the Trial Magistrate's decision was affected by error of law and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The Appellant provides three arguments to support his contentions: (1) The Trial Magistrate erred by misinterpreting § 31-4-7; (2) the Trial Magistrate erroneously considered irrelevant testimony from the officers regarding the hours that Appellant operated his business; and (3) the Trial Magistrate disregarded another Rhode Island Traffic Tribunal judge's ruling—

in a separate case involving Appellant, which provided a different interpretation of § 31-4-7—by improperly excluding a transcript of that prior ruling as evidence.³

A

Statutory Interpretation

Our Supreme Court has held that on appeal, “questions of statutory interpretation [are reviewed] *de novo*.” *Alessi v. Bowen Court Condo.*, 44 A.3d 736, 740 (R.I. 2012) (citing *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)). “In matters of statutory interpretation [the Court’s] ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” *Id.* (citing *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)). “It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Id.* (citing *Waterman*, 983 A.2d at 844 (quoting *Iselin v. Retirement Board of the Employees’ Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008))).

Section 31-4-7 governs the use of bailee plates for repossessed vehicles:

“In the event of repossession of a motor vehicle under a rental agreement, lease, contract of conditional sale, or other title retention agreement, or in the event title becomes vested in the holder of a lien, mortgage, or encumbrance upon a motor vehicle, the person repossessing or so obtaining title may apply to the division of motor vehicles for and obtain bailee registration plates,

³ The Appellant’s suggestion that the Trial Magistrate erred by not following the decision of another judge at the Rhode Island Traffic Tribunal is without merit. The Appellant’s assertion relates to a separate matter that involved a different violation and a different set of facts. Such a decision does not bind this Panel. Decisions of a judge or magistrate at the Rhode Island Traffic Tribunal do not create binding precedent that other judges or magistrates of the same court must follow. *See generally Impulse Packaging, Inc. v. Sicajan*, 869 A.2d 593, 600 n.14 (R.I. 2005) (discussing precedential value of lower courts). The Trial Magistrate’s decision to exclude the prior transcript was well within his discretion, as it had no direct relevance to the violations being adjudicated.

and may operate the vehicle under those special plates only for purposes of transporting the same to a garage or warehouse, or for purposes of demonstrating or selling the same.” Sec. 31-4-7.

The plain language of the statute imposes restrictions on the use of bailee plates. *See* § 31-4-7; *Alessi*, 44 A.3d at 740. Bailee plates may be used on repossessed vehicles “only for purposes of transporting the same to a garage or warehouse, or for purposes of demonstrating or selling the same.” Sec. 31-4-7.

Here, the record indicates that in each instance, the Trial Magistrate found that Appellant was operating a vehicle with a bailee plate for personal use and not for “purposes of transporting the same to a garage or warehouse, or for purposes of demonstrating or selling the same.” *See id.* The record contains evidence, namely, Officer Ripke’s and Officer Huber’s testimony, supporting the Trial Magistrates finding that Appellant operated the vehicles for personal use. (Tr. at 29, 33, 48, 69.) Moreover, the Trial Magistrate found Officer Ripke’s and Officer Huber’s testimony credible; therefore, this Panel is precluded from “assess[ing] witness credibility or to substitute its judgment for that of the hearing judge [or magistrate]” *Link*, 633 A.2d at 1348 (citing *Liberty Mut. Ins. Co.*, 586 A.2d at 537). Accordingly, the Trial Magistrate’s decision was not affected by error of law or clearly erroneous in view of the whole record. Sec. 31-41.1-8(f).

B

Weight of the Evidence

Furthermore, it is well-established 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 *Janes*, 586 A.2d at 537). An appeals panel cannot review witness credibility as a trial judge may, since a trial judge “has had an opportunity to appraise witness demeanor and to take into account other realities that cannot

be grasped from a reading of a cold record.”” *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (quoting *State v. Van Dongen*, 132 A.3d 1070, 1076 (R.I. 2016)). As this Panel did not observe the witnesses testify, this Panel can neither assess the demeanor of the testifying witness, nor can it disturb a Trial Magistrate’s findings of credibility. *A. Salvati Masonry Inc.*, 151 A.3d at 749 (quoting *Van Dongen*, 132 A.3d at 1076); *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537).

Based on a review of the record, this Panel finds that the Trial Magistrate’s decision is supported by legally competent evidence. *Link*, 633 A.2d at 1348. The trial record reveals that the Trial Magistrate found the testimony of the officers to be credible. (Tr. at 39, 53, 90.) Despite Appellant’s argument that his business is open twenty-four hours per day, and that the police officer misstated facts at trial, the Trial Magistrate ultimately based his conclusion that Appellant used the bailee plates for recreational purposes on the weight of the evidence and credibility determinations. *See A. Salvati Masonry Inc.*, 151 A.3d at 749 (quoting *Van Dongen*, 132 A.3d at 1076).

Furthermore, the Trial Magistrate’s conclusions were supported by evidence within the record: With respect to the March 19 stop, Appellant admitted during trial that he was en route to a friend’s house with plans to then drive the vehicle home for the night. *Id.* at 29, 33. As to the March 26 stop, Officer Huber testified that Appellant admitted to being on his way to Newport for an undisclosed personal reason. *Id.* at 48. Regarding the April 21 stop, the only issue of fact that Appellant disputed was whether Appellant had driven the vehicle on a public road. *Id.* at 73.

As this Panel cannot substitute its judgment for that of the Trial Magistrate “concerning the weight of the evidence on questions of fact,” this Panel will not disturb the Trial Magistrate’s decision. *Id.* Therefore, this Panel concludes that the Trial Magistrate’s decision was not clearly

erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5).

IV

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

ENTERED:

Judge Lillian M. Almeida (Chair)

Magistrate Joseph A. Abbate

Magistrate Erika Kruse Weller

DATE: _____