

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

KYLE ROOTS

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**C.A. No. T19-0018
19402502981**

DECISION

PER CURIAM: Before this Panel on January 22, 2020—Administrative Magistrate Abbate (Chair), Associate Judge Almeida, and Magistrate DiChiro, sitting—is Kyle Roots’ (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-7-1, “Right to operate on foreign registration.” Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On April 9, 2019, Officer Wayne Russell (Officer Russell) of the Cranston Police Department conducted a motor vehicle stop of a vehicle operated by Appellant. Tr. at 3, Sept. 3, 2019. During the course of the motor vehicle stop, Officer Russell determined that Appellant was operating the vehicle on a foreign registration in violation of Rhode Island law. *Id.* Officer Russell subsequently issued Appellant a citation for the above-referenced violation. *Id.*; see Summons No. 19402502981.

Appellant contested the charged violation, and the matter proceeded to trial on September 3, 2019. Tr. at 1, Sept. 3, 2019. Officer Russell testified first. *Id.* at 1. Officer Russell testified

that on April 9, 2019, he conducted a motor vehicle stop of a vehicle operated by Appellant at 110 Garfield Avenue in the City of Cranston. *Id.* During the course of the motor vehicle stop, Appellant provided Officer Russell with a driver's license and registration. *Id.* Officer Russell testified that the driver's license Appellant provided was for the State of Rhode Island, but the registration indicated that Appellant's vehicle was registered in the State of Maine. *Id.* Officer Russell confirmed that the vehicle was registered in the State of Maine, and further confirmed that Appellant was a Rhode Island resident, having maintained a permanent Rhode Island address. *Id.* Consequently, Officer Russell issued Appellant a citation for operating a vehicle on a foreign registration in violation of § 31-7-1. *Id.*

Next, Appellant testified.¹ *Id.* at 7. Appellant stated that he is the owner of the vehicle that was pulled over by Officer Russell. *Id.* Appellant discussed that the vehicle is often used to travel to Maine by different members of his family and is not present in Rhode Island continuously for thirty days at any given time. *Id.* Appellant further alleged that the Cranston Police Department could not have established that his vehicle was present in the State of Rhode Island for thirty days. *Id.* at 8.

Having heard all of the testimony, the Trial Magistrate sustained the charged violation based on the evidence presented at trial. *Id.* at 10. The Trial Magistrate discussed that pursuant to the different subsections of § 31-7-1, there are several ways a motorist may be found in violation of the statute. *Id.* at 9-10. The Trial Magistrate noted that Officer Russell had not proved Appellant violated subsection (b) of § 31-7-1. Accordingly, the Trial Magistrate grounded his decision

¹ Prior to testifying as to the charged violation, Appellant briefly cross-examined Officer Russell. *Id.* at 4-6. Appellant's cross-examination concerned the validity of the motor vehicle stop conducted by Officer Russell. *Id.* This issue is not relevant to Appellant's appeal of the sustained violation, and this Panel defers to any finding made by the Trial Magistrate that Appellant's motor vehicle stop was valid. *See id.* at 9.

instead in subsection (a) of the statute and found Appellant to be in violation of § 31-7-1 based on that subsection. *Id.* at 10. The Trial Magistrate imposed a fine of \$500 and a suspension of Appellant's license for three (3) months.

Appellant subsequently filed a timely appeal of the Trial Magistrate's decision. *See* Appellant's Notice of Appeal at 1-2. 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 relevant 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 Mutual Insurance Company 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 *Environmental Science Corporation 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 “[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 that in rendering his decision, the Trial Magistrate incorrectly relied on subsection (a) of § 31-7-1, which was inapplicable to Appellant’s charged violation. Appellant also argues that the testimony at trial was insufficient to prove the charged violation. Each argument will be discussed in turn.

A. The Trial Magistrate’s Application of § 31-7-1(a)

First, Appellant contends that the Trial Magistrate incorrectly applied subsection (a) of § 31-7-1, and should have instead relied on subsection (b). Subsection (a) of § 31-7-1 states:

“A nonresident owner, except as otherwise provided in §§ 31-7-2 and 31-7-3, owning any foreign vehicle of a type otherwise subject to registration pursuant to this title, may operate or permit the operation of that vehicle within this state without registering the vehicle in, or paying any fees to, this state subject to the condition that the vehicle at all times, when operated in this state, is duly registered in, and displays upon it, a valid registration card and registration plate or plates issued for that vehicle in the place of

residence of that owner.”

In the instant matter, the record is clear that Appellant is a resident of the State of Rhode Island, and therefore subsection (a) of § 31-7-1 is inapplicable. The address provided on the summons indicates that Appellant is domiciled in the State of Rhode Island. *See* Summons No. 19402502981. Officer Russell’s testimony also indicated that during the motor vehicle stop, Appellant provided a Rhode Island driver’s license which indicated he was a Rhode Island resident. Tr. at 3, Sept. 3, 2019. Furthermore, in rendering his decision, the Trial Magistrate discussed that Appellant was a resident of the State of Rhode Island. *Id.* at 3. Accordingly, it is clear that Appellant is not a “nonresident owner” pursuant to subsection (a) of § 31-7-1, and therefore the Trial Magistrate incorrectly applied that subsection in rendering his decision.

B. Burden of Proof

Appellant next argues that because subsection (a) of § 31-7-1 should not have formed the basis for sustaining his charged violation, and that subsection (b) instead was the appropriate section of the statute that the Trial Magistrate should have applied. Consequently, Appellant argues that Officer Russell’s testimony at trial was insufficient to satisfy the burden of proof required to sustain a charged violation of § 31-7-1(b). The Rhode Island Traffic Tribunal Rules of Procedure dictate that “[t]he burden of proof shall be on the prosecution to a standard of clear and convincing evidence.” Traffic Trib. R. P. 17(a). Furthermore, Subsection (b) of § 31-7-1 states:

“Any foreign vehicle(s) parked or garaged overnight in this state for more than thirty (30) days in the aggregate in any one year that is owned and/or operated by a resident of this state as defined in § 31-1-18 shall register the vehicle(s) and pay the same fee that is required with reference to like vehicle(s) owned by residents of this state. The state police and local police departments, upon observation of a foreign-registered vehicle present within the state for thirty (30) days or more shall identify the owner of the vehicle

and, if a Rhode Island resident, provide a notice containing a copy of this section to the owner and to the tax assessor in the city or town in which the vehicle is located.”

In the instant matter, the record does not indicate sufficient evidence that Appellant violated subsection (b) of § 31-7-1 because Officer Russell did not demonstrate that Appellant’s vehicle was present in the State of Rhode Island for the requisite period of time. Importantly, as the language of the statute indicates, the applicability of § 31-7-1(b) does not hinge on whether a vehicle is present in the State of Rhode Island for thirty or more *continuous* days, but depends rather on whether a vehicle is present in the state for thirty or more days “in the aggregate.” Sec. 31-7-1(b). Here, the evidence presented at trial was insufficient to sustain Appellant’s charged violation because Officer Russell did not testify as to any period of time—whether thirty days or a different amount—during which he observed Appellant’s vehicle in Rhode Island in the aggregate. Tr. at 10, Sept. 3, 2019. Additionally, in rendering his decision, the Trial Magistrate discussed that Officer Russell had not proved that Appellant violated subsection (b) of § 31-7-1. *Id.* In considering the evidence presented at trial, it is therefore unknown for how long Appellant’s vehicle was present in the State of Rhode Island. Accordingly, Appellant’s violation of § 31-7-1(b) cannot be sustained, as Officer Russell did not meet the burden of proof required to satisfy that Appellant’s vehicle was present in the State of Rhode Island the amount of time required by the statute. Sec. 31-7-1(b); *see also* Traffic Trib. R. P. 17(a).

After thoroughly reviewing the record, this Panel finds that there was insufficient evidence offered at trial to support the Trial Magistrate’s decision. *See Link*, 633 A.2d at 1348 (citing *Env’tl. Sci. Corp.*, 621 A.2d at 208). Accordingly, this Panel finds the Trial Magistrate’s decision to be “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” Sec. 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 clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5). The substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED:

Administrative Magistrate Joseph A. Abbate (Chair)

Associate Judge Lillian M. Almeida

Magistrate Michael DiChiro

DATE: _____