

STATE OF RHODE ISLAND
RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	C.A. No. T24-0015
	:	24301500168
PATRICIA ORSI	:	

DECISION

PER CURIAM: Before this Panel on August 28, 2024—Magistrate DiChiro (Chair), Administrative Magistrate Abbate, and Magistrate Noonan—is the appeal of Patricia Orsi (Appellant) from a decision of Magistrate Kruse Weller (Hearing Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-22-31(b), “Operating a Motor Vehicle While Using a Hand-Held Wireless Controlled Device.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For reasons set forth in this Decision, Appellant’s appeal is granted.

I

Facts and Travel

On April 3, 2024, Officer Liam H. Robberson (“Officer Robberson”) of the Jamestown Police Department charged Appellant with violating § 31-22-31(b), “Operating a Motor Vehicle While Using a Hand-Held Wireless Controlled Device.” (Summons No. 24301500168.) Appellant contested the charge, and the matter proceeded to trial on May 31, 2024. *See* Docket.

At trial, Appellant was asked repeatedly by the Hearing Magistrate if Appellant wanted to use their Good Driving Record to dismiss the violation pursuant to § 31-41.1-7. Appellant refused

and was found guilty. (07//1/2024 Tr. 4:23-27.) On June 1, 2024, Appellant filed a motion to reconsider, which was then denied by the Hearing Magistrate. *See* Docket.

Aggrieved by the decision, Appellant filed this appeal.

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. 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 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.” *Id.* (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 ‘[c]learly 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. *Id.*; *see Janes*, 586 A.2d at 537.

III

Analysis

As grounds for Appeal, Appellant claims that she was sipping tea in her vehicle which Officer Robberson mistook for a cell phone. *See* Notice of Appeal. Appellant further claims that the Hearing Magistrate erroneously found Officer Robberson credible, despite evidence that Appellant claimed proved her innocence. (07/01/2024 Tr. 14:5-12.)

A

The Good Driving Statute

G.L.1956 § 31-41.1-7, “Application for Dismissal Based on Good Driving Record,” permits a driver who has held a motor vehicle operator’s license for more than three years and has been issued traffic violations that are their first within the preceding three years to request a hearing seeking dismissal of those violations based on their good driving record. § 31-41.1-7(a). The statute also provides that a violation cannot be dismissed based on a good driving record if more than six months have passed since the date of disposition. § 31-41.1-7(c). This exemption allows a driver to benefit from a clean driving history by having certain traffic violations dismissed, provided the statutory conditions are met.

In this case, Appellant declined to use her good driving record as the basis for dismissal before trial. However, during her appeal, Appellant requested an opportunity to use her good driving record to seek dismissal of the charged violation.¹ Since Appellant's request was made within the six-month period set by § 31-41.1-7(c), the Panel will permit her to use her good driving record to dismiss this charge. Therefore, the charge against Appellant is dismissed pursuant to § 31-41.1-7(c).

¹ Nothing in this decision should be interpreted as precluding a magistrate from exercising discretion to make a determination of "good cause shown" under § 31-41.1-7(b), for those who fail to qualify to invoke the statute's protections.

IV
Conclusion

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel are satisfied that the Hearing Magistrate's decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of the Appellant have not been prejudiced. However, Appellant's appeal is granted based upon § 31-41.1-7, and this Panel will allow Appellant to use their Good Driving Record to dismiss the violation.

ENTERED:

_____/S/_____
Magistrate Michael DiChiro (Chair)

_____/S/_____
Administrative Magistrate Joseph A. Abbate

_____/S/_____
Magistrate William T. Noonan

DATE: 01/29/2025