



STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc. DISTRICT COURT  
SIXTH DIVISION

Andrew Krichak :  
 :  
 v. : A.A. No. 2015 – 055  
 : (C.A. No. T14-037)  
 : (07-409-111971)  
 City of Providence :  
(RITT Appeals Panel) :

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** In this appeal, Mr. Andrew Krichak urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a trial magistrate’s verdict adjudicating him guilty of a moving violations: “Stopping for school bus required” in violation of Gen. Laws 1956 § 31-51-2.2 for which he had been cited by an officer of the Providence Police Department. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9 and the applicable standard of review is found in subsection 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. And, after a review of the entire record I find that — for the reasons explained below — the decision of the appeals panel should be AFFIRMED.

## I

### FACTS AND TRAVEL OF THE CASE

As stated above, the instant appeal has its origins in a citation which was issued to Mr. Krichak and which cited him for passing a school bus. He entered a plea of not guilty to the charge at his arraignment on January 14, 2014; and so, the citation was reassigned to May 20, 2014 for trial.<sup>1</sup>

At Mr. Krichak's trial, conducted by Magistrate William T. Noonan of the Rhode Island Traffic Tribunal, the City presented one witness — Officer John St. Jill, who issued the citation. The following summary of his testimony, drawn from the decision of the appeals panel, will suffice for our purposes:

... the Officer testified that on December 12, 2013, he responded to the Smart Bus Red Flex Company on Harris Avenue in Providence. (Tr. at 1.) At that time, the Officer viewed a video that showed a red Mitsubishi with Rhode Island registration "479524," pass a school bus with the stop sign extended and the red lights activated. *Id.* The Officer testified that he checked the registration plate with the Department Motor Vehicles (DMV) and the vehicle was a 2000 red Mitsubishi registered to Appellant. *Id.* Next, the Officer admitted the video of the instant violation as a full exhibit, and it was viewed by the Court. (Tr. at 2.)<sup>2</sup>

Following the conclusion of Officer's testimony, Mr. Krichak testified.<sup>3</sup>

Mr. Krichak denied that he was driving the Mitsubishi.<sup>4</sup> While conceding the car in the video was of the make and type he owns and which is driven by his daughter, he

---

<sup>1</sup> See Docket Sheet, Traffic Citation No. 07-409-111971.

<sup>2</sup> See Decision of Appeals Panel, at 1, citing Trial Transcript, at 1-2.

<sup>3</sup> See Decision of Appeals Panel, at 2 citing Trial Transcript, at 2.

<sup>4</sup> See Trial Transcript, at 2.

declined to admit the car was his because he could not read the first number on the license plate.<sup>5</sup> Appellant would only say it was “similar.”<sup>6</sup>

Magistrate Noonan found Mr. Krichak guilty of the violation.<sup>7</sup> He did so because he found Officer St. Jill’s testimony to be credible — Mr. Krichak’s not to be.<sup>8</sup>

Aggrieved by this decision, Mr. Krichak filed a timely appeal. On July 30, 2014, his appeal was heard by an RITT appeals panel composed of: Judge Lillian Almeida (Chair), Chief Magistrate William Guglietta, and Magistrate Alan Goulart.<sup>9</sup> In a decision dated April 29, 2015, the appeals panel rejected Mr. Krichak’s arguments and affirmed his convictions for failing to stop for a school bus.<sup>10</sup> On May 28, 2015, Mr. Krichak filed a further appeal to the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9.

## II STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in Gen. Laws 1956 § 31-41.1-9(d), which provides as follows:

(d) Standard of review. The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the

---

<sup>5</sup> See Trial Transcript, at 2.

<sup>6</sup> See Trial Transcript, at 2.

<sup>7</sup> See Decision of Appeals Panel, at 2 citing Trial Transcript, at 3.

<sup>8</sup> Id.

<sup>9</sup> Decision of Appeals Panel, at 1.

<sup>10</sup> Decision of Appeals Panel, passim. The analysis of the appeals panel will be presented post, in Part IV-A of this opinion, at 8.

appeals panel, or 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 appeals panel's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the appeals panel;
- (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.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, the District Court “\* \* \* may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’”<sup>11</sup> Thus, the Court will not substitute its judgment for that of the appeals panel as to the weight of the evidence on questions of fact.<sup>12</sup> And so, except in the case where the panel’s decision is affected by error of law, the decision of the panel must be affirmed as long as it is supported by legally competent evidence.<sup>13</sup>

### III

---

<sup>11</sup> Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

<sup>12</sup> See 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)(decision rendered during previous incarnation of the appeals panel during existence of Administrative Adjudication Division[AAD]).

<sup>13</sup> Link, ante, 633 A.2d at 1348 citing Environmental Scientific Corporation v. Durfee, 621 A.2d 200, 208 (R.I. 1993).

## APPLICABLE LAW

In the instant matter the Appellant was charged with violating § 31-51-2.2 of the School Bus Safety Enforcement Act, which states —

**31-51-2.2 Stopping for school bus required — Penalty for violation.** (a) Any vehicle being operated upon a street, highway, private way or private or public parking area upon meeting or overtaking from any direction any school bus on which there is in operation flashing red lights, shall stop before reaching the bus. The vehicle shall not proceed until the bus resumes motion or until the flashing lights are no longer actuated. An owner and/or operator of a motor vehicle operated in violation of this section based on evidence obtained from a live digital video school bus violation detection monitoring system shall, upon conviction of a violation of this section, be punished by a civil fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) and/or suspension of his or her driving license for a period not to exceed thirty (30) days.

(b) A law enforcement officer authorized to issue a traffic violation summons pursuant to title 31 of the general laws may issue a summons of a violation of this chapter based on evidence from a live digital video school bus violation detection monitoring system; provided, that the statement of testimony, or evidence provides the law enforcement officer with sufficient probable cause that a violation under this section was committed. The summons shall be in the form referred to in § 31-51-3.

As we can see, subsection (a) makes it a civil violation<sup>14</sup> to fail to stop for a school bus; subsection (b) authorizes officers to issue such violations based on evidence from a digital video.

Another provision of the School Bus Safety Enforcement Act is also pertinent to this case. It is § 31-51-5, which provides, in pertinent part —

(a) The registered owner of a motor vehicle shall not operate or allow the motor vehicle to be operated in violation of this chapter. There shall be a

---

<sup>14</sup> See Gen. Laws 1956 § 31-27-13.

rebuttable presumption that the registered owner of the vehicle that is photographed pursuant to this chapter was operating the vehicle.

(b) \* \* \*

(c) \* \* \*

(d) It shall be prima facie evidence, establishing a rebuttable presumption, that the owner of the registered motor vehicle was the operator of the vehicle at the time of the violation if the registered owner of the motor vehicle fails to pay the fine and fails to proceed under subdivision 31-51-5(c)(2). Evidence offered pursuant to this chapter shall be sufficient to establish a violation of § 31-51-2.2 by clear and convincing evidence.

(Emphasis added).

## IV

### ANALYSIS

#### A

#### **The RITT Appeals Panel's Analysis**

The appeals panel began its analysis of the case by focusing on Mr. Krichak's assertion that "the trial magistrate erred by crediting the officer's testimony but not his own."<sup>15</sup> The appeals panel noted that our Supreme Court has declared that the appeals 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."<sup>16</sup> This limitation flows from the fact that the appeals panel does not have the opportunity to observe the live testimony taken at the trial, while the trial judge does.<sup>17</sup>

---

<sup>15</sup> See Decision of Appeals Panel, at 3.

<sup>16</sup> See Decision of Appeals Panel, at 3-4 citing Link, ante, 633 A.2d at 1348 citing Liberty Mutual Insurance Company, 586 A.2d at 537.

<sup>17</sup> See Decision of Appeals Panel, at 4, citing Environmental Scientific, ante, 621 A.2d at 206.

Focusing on the instant case, the appeals panel found the decision of the trial magistrate was supported by legally competent evidence; and so, it affirmed Mr. Krichak's conviction for the failing to stop for a school bus.<sup>18</sup>

## **B**

### **The Positions of the Parties**

#### **1**

#### **Appellant Krichak**

In his one-page Memorandum of Law filed with this Court on July 7, 2015, Mr. Krichak reiterates his denial that he was driving his red Mitsubishi on December 12, 2013. See Appellant's Memorandum of Law.

Legally, he faults the appeals panel for not allowing his daughter to testify before it; he asks this Court to remedy that situation. Id.<sup>19</sup>

#### **2**

#### **Appellee City of Providence**

In its Memorandum of Law the City brings to our attention § 5 of the School Bus Safety Enforcement Act, which provides that the owner of a vehicle photographed pursuant to the Act is presumed to have been operating the vehicle. See Appellee's Memorandum of Law, at 2-3.

---

<sup>18</sup> See Decision of Appeals Panel, at 4, citing Environmental Scientific, ante, 621 A.2d at 209.

<sup>19</sup> This contention — that the appeals panel should have allowed his daughter to testify — reflects a fundamental misunderstanding of the panel's role, which is, like this Court's, strictly appellate in nature. See Gen. Laws 1956 § 31-41.1-8. No new testimony may be taken. Id. Accordingly, I shall not address this argument further.



**C**  
**Resolution**

Faced with the choice of finding the Officer's testimony or Mr. Krichak's to be the more credible — the trial magistrate chose the former. Indeed, he found Mr. Krichak to be incredible. See Trial Transcript, at 3. In addition, as the City points out, the law presumes the owner to have been operating. See generally, The School Bus Safety Enforcement Act, Chapter 51 of Title 31 of the General Laws.<sup>20</sup>

This Court is not empowered to review the evidence and make a de novo finding of guilt or innocence. While another fact-finder might have made a different decision an opposite decision, there is simply no doubt that the officer's testimony was competent evidence — upon which the trial magistrate had every right to rely. Taken together, the officer's testimony and the Act were sufficient to justify the guilty finding entered by the trial magistrate.

As a result, this Court has no basis upon which to set aside the appeals panel's affirmance of Magistrate Noonan's decision finding Mr. Krichak guilty of the school bus violation charged in the instant citation.

**V**  
**CONCLUSION**

Upon careful review of the evidence, I recommend that this Court find that the decision of the appeals panel was made upon lawful procedure and was not affected by error

---

<sup>20</sup> Our research has revealed no case in which our Supreme Court has interpreted the Act or determined its validity. Mr. Krichak did not raise the issue below.

of law.<sup>21</sup> Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.<sup>22</sup> Accordingly, I recommend that the decision of the appeals panel be AFFIRMED.

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph P. Ippolito  
MAGISTRATE  
October 9, 2015

---

<sup>21</sup> See Gen. Laws 1956 § 31-41.1-9.

<sup>22</sup> See Gen. Laws 1956 § 31-41.1-9.