

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
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CITY OF PAWTUCKET

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v.

C.A. No. M12-0002

RUSSELL BLANCO

DECISION

PER CURIAM: Before this Panel on April 4, 2012—Judge Almeida (Chair, presiding), Administrative Magistrate Cruise, and Magistrate Goulart, sitting—is Russell Blanco’s (Appellant) appeal from a decision of Judge Nesselbush (trial judge), sustaining the charged violation of G.L. 1956 § 31-20-9, “Obedience to stop signs.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On October 20, 2011, Officer Pendergrass of the Pawtucket Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on January 20, 2012.

On the day of the violation, Officer Pendergrass was stationed at a fixed traffic post at Pond and Brewster Streets in Pawtucket. (Tr. at 1.) While at the traffic post, Officer Pendergrass observed the Appellant “fail to make a complete and full stop at the stop sign” Id. After witnessing the traffic violation, Officer Pendergrass conducted a traffic stop of the vehicle. At trial, Officer Pendergrass identified the Appellant as the operator of the vehicle. Id. Officer Pendergrass also testified that his sole purpose for being at the traffic post was to observe traffic and issue citations for traffic violations at the intersection. Officer Pendergrass also stated

that he had a clear and unobstructed view of the intersection. The officer concluded by stating that there was no doubt in his mind that the Appellant failed to make a complete stop at the stop sign. On cross examination, Officer Pendergrass admitted that he had mistakes during his policing career; however, he stated that it was not possible that he made a mistake regarding his observations of the Appellant.

After cross examination, the Appellant introduced into evidence a sketch depicting the area. Id. Appellant argued that the sketch indicated that Officer Pendergrass did not have an unobstructed view of the intersection. Appellant also admitted photographs into evidence depicting the same. After admitting the photographs into evidence, the trial judge questioned Officer Pendergrass regarding his view of the intersection. Officer Pendergrass again stated that he had a clear and unobstructed view of the intersection. (Tr. at 2.) Thereafter, the Appellant finished presenting his case in chief.

Then, the trial judge issued her decision sustaining the charged violation. Id. In sustaining the violation, the trial judge found it significant that Officer Pendergrass was at the intersection for the sole purpose of observing traffic violations. In addressing the Appellant's contention that Officer Pendergrass could not see the intersection, the trial judge stated that "I can't believe that a sworn officer of the Pawtucket Police Department is going to show up and sit in a location where he can't see the stop sign to determine whether in fact that motorists do stop." Id. The trial judge also found the testimony of Officer Pendergrass to be credible. The trial judge also found it significant that the Appellant did not present evidence to contradict the officer's assertion that he did not stop. Thereafter, the trial judge imposed the sentence. Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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." 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." Link, 633 A.2d at 1348 (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 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.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge abused her discretion in choosing to credit the testimony of Officer Pendergrass over Appellant’s testimony. Appellant argues—as he did at trial—that Officer Pendergrass did not have a clear and unobstructed view of the intersection. The Appellant contends that he did, in fact, come to a complete stop at the intersection.

In Link, 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.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 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 Officer Pendergrass or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [Officer Pendergrass and Appellant.] [The trial judge] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206.

Here, Appellant argues the same points that he did at trial. Specifically, Appellant argues Officer Pendergrass did not have a clear and unobstructed view of the intersection. However, Appellant’s arguments relate to questions of fact that were heard and weighed by the trial judge. This Panel’s review is limited to determining whether the trial judge made an error in law or

misapplied the evidence. See Link, 633 A.2d at 1348 (our Supreme Court held that this Panel's review is limited in scope). Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse her discretion. Her decision to sustain the charged violation is supported by legally competent evidence. The trial judge specifically found Officer Pendergrass' testimony to be credible as it relates to the officer's testimony regarding his line of sight and his observations of Appellant. (Tr. at 2.) Finally, the trial judge found it significant that Officer Pendergrass' purpose for being at the intersection was to observe traffic violations. Consequently, the trial judge determined that Officer Pendergrass' own mission would be thwarted if he was not in a position to observe the stop sign.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision was not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.