

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

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v.

C.A. No. T09-0009

DOUGLAS DREXEL

09 MAY 18 PM 3:59

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

**DECISION**

**PER CURIAM:** Before this Panel on April 29, 2009—Chief Magistrate Guglietta (Chair, presiding) and Judge Parker and Magistrate Noonan sitting—is Douglas Drexel’s (Appellant) appeal from a decision of Magistrate DiSandro, sustaining the charged violation of G.L. 1956 § 31-17-6, “Yielding to emergency vehicle.”<sup>1</sup> The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On October 2, 2008, Officer Ken Matsumoto (Officer Matsumoto) of the Providence Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Officer Matsumoto testified that on the date in question, at approximately 3:35 a.m., he was responding to a residential “panic alarm.” (Tr. at 1.) As Officer Matsumoto was traveling northbound on Westminster Street with his emergency lights and siren engaged, he observed a black Toyota Camry traveling westbound on Dorrance Street “come to a stop at the intersection of Westminster [and Dorrance] and then proceed[] directly in front of” his cruiser. Id. According to Officer Matsumoto, he was “forc[ed] to come to a stop.” (Tr. at 1-2.) Officer

<sup>1</sup> The Appellant was also charged with violating G.L. 1956 § 31-10-27, “License to be carried and exhibited on demand.” However, this charge was dismissed prior to trial and is not presently before this Panel on appeal.

Matsumoto initiated a traffic stop of the black Camry on Westminster Street and issued the operator—identified at trial as Appellant—a citation. Id.

On questioning by the trial magistrate, Officer Matsumoto clarified his earlier testimony by stating that he was traveling northbound on Dorrance Street in the direction of City Hall at the time he observed Appellant’s vehicle, and Appellant was traveling westbound on Westminster Street. (Tr. at 2.) Officer Matsumoto added that Appellant’s vehicle came to a complete stop at the intersection of Westminster Street and Dorrance Street and that Appellant proceeded through the intersection “presumably [upon] . . . seeing” his cruiser. (Tr. at 3.)

At the conclusion of Officer Matsumoto’s trial testimony, Appellant testified that he was “maybe about a quarter [of] a way through the green light [at the intersection] when [he] looked to [his] right about two hundred feet up the road [and saw] a Providence Police car with just lights on . . . .” (Tr. at 4.) The Appellant indicated that he traveled approximately fifty feet through the intersection when Officer Matsumoto “pulled right behind him . . . took a right to pull up behind [him]” to initiate a traffic stop of his vehicle. Id. The Appellant made clear that he did not hear the siren of Officer Matsumoto’s cruiser. Id.

On questioning by the trial magistrate, Appellant testified that his vehicle was approximately one hundred fifty to two hundred feet from Officer Matsumoto’s cruiser when his vehicle passed through the intersection. (Tr. at 5.) However, Officer Matsumoto testified that his cruiser was approximately fifty feet away and that he was “forced to stop . . . .” (Tr. at 7.) According to Officer Matsumoto, Appellant’s vehicle was “blocking [his] path, and that is why [he] came to a stop.” (Tr. at 8.)

Following the trial, the trial magistrate sustained the charged violation of § 31-17-6. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

### **Standard of Review**

Pursuant to G.L. 1956 § 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 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 magistrate’s decision is characterized by abuse of discretion. Specifically, Appellant asserts that the trial magistrate abused his discretion by choosing to credit the trial testimony of Officer Matsumoto that Appellant failed to “yield the right-of-way” to Officer Matsumoto’s cruiser, despite the fact that his cruiser was “equipped with . . . [a] lighted lamp exhibiting . . . [a] combination of red, blue, [and] white light . . . and producing an audible signal by siren” when he approached the intersection of Westminster Street and Dorrance Street. See § 31-17-6. Additionally, Appellant maintains that the trial magistrate abused his discretion by choosing to discount his trial testimony that he was unable to see the emergency lights on Officer Matsumoto’s cruiser until his vehicle had already entered the intersection, and that the cruiser’s siren was not engaged.

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 Matsumoto and Appellant, it would be impermissible to second-guess the trial magistrate’s “impressions as he . . . observe[d] [Officer Matsumoto and Appellant] [,] 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.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate’s decision to sustain the charged violation of § 31-17-6 is supported by legally competent evidence and is not affected by error of law. After listening to the trial testimony of Officer Matsumoto and Appellant, the trial magistrate stated on the record that he “c[ouldn’t] reconcile the two testimonies here . . . .” (Tr. at 8.) In order to resolve this apparent conflict in the evidence, the trial magistrate—relying on his observations and impressions of the two witnesses—chose not to credit the testimony of Appellant. Instead, the trial magistrate chose to “adopt [Officer Matsumoto’s] recollection of the event . . . .” (Tr. at 9.) The trial magistrate chose to credit the trial testimony of Officer Matsumoto that “he had his [emergency] lights and siren on [and] was in a clearly marked police cruiser,” and that Appellant “acknowledged his presence and proceeded to cross the intersection anyway . . . .” Id. Accordingly, the trial magistrate’s decision to sustain the charged violation of § 31-17-6 based on the testimony of Officer Matsumoto is supported by legally competent evidence and unaffected by error of law.

### **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 is not characterized by abuse of discretion, clearly erroneous in light of the reliable, probative, and substantial record evidence, or otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED: