

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF TIVERTON

v.

KATHLEEN CHASSE

:
:
:
:
:
:

C.A. No. T09-0048

09 SEP 23 AM 11:19

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on July 1, 2009—Magistrate Cruise (Chair, presiding) and Judge Almeida and Magistrate DiSandro sitting—is Kathleen Chasse’s (Appellant) appeal from a decision of Judge Parker, sustaining the charged violation of G.L. 1956 § 31-20-12, “Stopping for school bus required – Penalty for violation.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 18, 2009, Officer Brendon McKinnon (Officer McKinnon) of the Tiverton 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 McKinnon testified that on the date in question, at approximately 4:30 p.m., he received a complaint from a Mr. John Figuerido (Mr. Figuerido), a bus driver employed by the Town of Tiverton to transport students to and from local schools, regarding a vehicle that failed to stop for his school bus in the vicinity of number 2371 Main Road. (Tr. at 1.) According to the information provided by Mr. Figuerido, the incident had occurred at approximately 2:15 p.m. Id.

The Court next heard testimony from Mr. Figuerido. Mr. Figuerido testified that his bus had “come up for [the] normal stop [at number 2371 Main Road] and [a] passenger was disembarking at [that] address” (Tr. at 2.) As the passenger alighted from the bus, Mr. Figuerido “observed [a] car approaching and continued to watch [as] [the operator] went by like she [didn’t] even notice the bus.” Id. Mr. Figuerido further testified that at the time he observed the suspect vehicle, the “bus was approaching [the bus stop] with [its] flashing amber[] [lights] on. When [he] opened the door, the red[] [lights] automatically came on and the stop sign came out.” Id. According to Mr. Figuerido, the passenger “was on the stairs disembarking” when the vehicle passed the bus. Id. When asked by the trial judge to describe the vehicle and its operator, Mr. Figuerido testified that the vehicle was a “silver sedan” and that it was operated by a woman. (Tr. at 3.)

At the conclusion of Mr. Figuerido’s testimony, Appellant testified that the vehicle observed by Mr. Figuerido is registered to her husband and that she is “not the only one that drives this car.” Id. The Appellant added that her “sister drives this car [and] [her] son’s girlfriend drives this car.” Id. The Appellant believed that Officer McKinnon charged her with the aforementioned violation of the motor vehicle code because she is “the only female in the household [and] [the police] assume[d] that it was [Appellant]” driving the vehicle on the date in question. Id. While Appellant was emphatic that she was not the operator of the vehicle, Officer McKinnon added that

“when [he] went to [Appellant’s] house to cite her, [he] asked her if she remembered the school bus. [The Appellant] told [him] that at the time she was on [Main Road] . . . [and] she remember[ed] that the school bus was on that road . . . [and] [the light] was not red. But she [did] remember passing that school bus at that time.” (Tr. at 4.)

At the conclusion of the trial, the trial judge sustained the charged violation of § 31-20-12. 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 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." 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's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial judge abused his discretion by choosing to credit the trial testimonies of Officer McKinnon and Mr. Figuerido that Appellant "upon meeting or overtaking from any direction [a] bus marked as 'school bus' . . . and on which there [was] in operation flashing red lights, [failed to] stop [her] vehicle before reaching the bus" and "proceed[ed] [before] the bus resume[d] motion or until the flashing lights [were] no longer actuated." Section 31-20-12. The Appellant also contends that the trial judge abused his discretion by discounting her own testimony that she was not driving the suspect vehicle on the date in question.

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 McKinnon, Mr. Figuerido, or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [Officer McKinnon, Mr. Figuerido, 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 judge's decision is supported by legally competent evidence and is not affected by an error of law. After listening to the trial testimony of Officer McKinnon, Mr. Figuerido and Appellant, the trial judge had heard at least three versions of the underlying events. In order to resolve this apparent conflict in the evidence, the trial judge—relying on his observations and impressions of the three witnesses—chose not to credit the testimony of Appellant.

The trial judge's decision to discount Appellant's testimony was based, at least in part, on the fact that Appellant "changed her story." (Tr. at 5.) After hearing Appellant's version of the underlying events, the trial judge seemed incredulous, stating on the record, "You weren't driving the car? You're under oath [and] [y]ou're telling me that. You're under oath. You understand what that means." (Tr. at 3.) Instead, the trial judge stated that "[t]he credibility . . . falls on the side of the prosecution in this matter." (Tr. at 4.) As the trial judge explained,

"[T]he bus driver testified as to his stopping, seeing the car, having the proper lights and the proper sign, getting the license plate [number] from the car. The police officer testified that he visited the home of the registered owner, talked to the motorist [before the Court] who admitted she was on that road at the time and she commended with the school bus" (Tr. at 4-5.)

Accordingly, it would be improper for the members of this Panel to assess or reassess the credibility of the three witnesses on appeal or substitute our judgment for that of the trial judge on questions of fact. We are thus satisfied that his decision to sustain the charged violation of § 31-20-12 was not clearly erroneous or otherwise affected 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 judge's decision is not characterized by abuse of discretion, clearly erroneous in light of the reliable, probative, and substantial record evidence, or affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.