

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF MIDDLETOWN

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v.

C.A. No. T11-0086

GARY LEWIS

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
12 MAY -3 AM 8:27

DECISION

PER CURIAM: Before this Panel on March 28, 2012—Chief Magistrate Guglietta (Chair, presiding), Judge Parker, and Magistrate Noonan, sitting—is Gary Lewis’ (Appellant) appeal from a decision of Magistrate Goulart (trial magistrate), 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 22, 2011, Officer Timothy O’Brady (Officer O’Brady) of the Middletown Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on December 14, 2011.

On the day of the violation, Officer O’Brady was at a fixed traffic post at the intersection of Maple Avenue and Sherman Lane in Middletown. (Tr. at 3.). Officer O’Brady was at the intersection because “it is a problem area” in Middletown with motorists driving through the stop signs at the intersection. Officer O’Brady testified that he had a clear view of the intersection from where his police cruiser was positioned. (Tr. at 4.) While monitoring the traffic at the intersection, Officer O’Brady saw the Appellant “roll[] through the stop sign, through the white line. . . .” Id. After rolling through the stop sign, Officer O’ Brady testified that Appellant saw

the officer and then come to a complete stop, but only after he was in the intersection. Officer O'Brady also stated that he could not identify the operator because of sunscreen tint on the windows.

After witnessing a perceived traffic violation, Officer O'Brady pursued the Appellant and conducted a traffic stop. Id. During the stop, the Appellant disputed that he did not come to a complete stop at the intersection, which is a violation of § 31-20-9. Officer O'Brady testified that from his training and experience as a police officer he did not believe that Appellant came to a complete stop at the intersection.

After a brief cross-examination where the Appellant questioned Officer O'Brady about the Appellant stopping only after seeing Officer O'Brady, the Appellant testified on his own behalf. (Tr. at 5.) The Appellant testified that when he came to the stop sign he stopped completely. Id. The Appellant argued that it was impractical for him to not come to a complete stop because he saw Officer O'Brady observing traffic. Appellant testified that there was no traffic at the intersection when he approached. Then, Appellant summarized his testimony by alleging that he stopped at the intersection and Officer O'Brady was mistaken. Id.

After listening to both sides present evidence, the trial magistrate issued his decision and sustained the violation. (Tr. at 7.) In sustaining the violation, the trial magistrate recounted the testimony of Officer O'Brady and Appellant. The trial magistrate also cited to § 31-20-9. Specifically, the trial magistrate stated that a motorist must come to a complete stop at a marked stop line in the road. The trial magistrate found that Officer O'Brady observed the Appellant fail to come to a complete stop at the marked stop line. The trial magistrate was also "satisfied that based on the fact that there's no other traffic at the sign, at that time, it's reasonable to believe that you didn't stop until you actually saw the Officer." Id. Finally, the trial magistrate adopted

Officer O’Brady’s testimony as his findings of fact. Thereafter, the trial magistrate imposed his 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 magistrate’s decision was an abuse of discretion and was in violation of statutory provisions. Specifically, the Appellant argues that Officer O’Brady’s assertion that Appellant’s vehicle had window tint was misguided. At oral argument, the Appellant asserts that his vehicle did not have window tint. Also at oral argument, Appellant attempted to introduce pictures demonstrating that Officer O’Brady did not have a clear view of the intersection from where he was located. Finally, Appellant argues that the trial magistrate erroneously imposed sanctions pursuant § 31-27-24, also known as the Foote Act.

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 O’Brady or Appellant, it would be impermissible to second-guess the trial magistrate’s “impressions as he . . . observe[d] [Officer O’Brady and Appellant.] [The trial magistrate] 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 that his vehicle does not have window tint and he came to a complete stop at the intersection. Unfortunately, Appellant's arguments relate to questions of fact that were heard and weighed by the trial magistrate. This Panel's review is limited to determining whether the trial magistrate made a mistake 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). Furthermore, the Appellant's attempt to introduce photographs is misguided. This Panel is not empowered to accept evidence. See id. This fact is especially true when the prosecution is not present to rebut or contradict any evidence that may be admitted by Appellant. The presentation of evidence is proper only at the trial level. However, this does not mean that the Appellant is without a remedy. Our rules provide a mechanism for the Appellant to present additional evidence to the trial magistrate. See Traffic Trib. R. P. 20 (rule provides for a relief from judgment on the basis of newly discovered evidence).

Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. The trial magistrate specifically found Officer O'Brady's testimony to be credible. (Tr. at 8.) The trial magistrate also determined that Officer O'Brady had a clear line of sight of the intersection. Finally, the trial magistrate found it significant that Officer O'Brady was in a better position than the Appellant to determine if the Appellant did, in fact, stop at the stop line. See § 31-20-9 ("Every driver of a vehicle approaching a stop sign shall stop . . . at a clearly marked stop line . . . .")

Finally, the Appellant's argument that the trial magistrate imposed enhanced sanctions pursuant to the Foote Act is without merit. The Foote Act states that a motorist can be subject to

increased penalties if they are convicted of four enumerated violations in an eighteen month period. § 31-27-24. Here, Appellant did not fall within the ambit of the Foote Act because he did not have four convictions in eighteen months—a fact that the trial magistrate was well aware. At the outset of his trial, the trial magistrate specifically noted that the Appellant did not “have enough violations within the past eighteen months for [Appellant] to qualify” for the Foote Act. (Tr. at 2.) Further evidencing the fact that Appellant was not sentenced by the trial magistrate pursuant to the Foote Act is the absence of community service as part of the Appellant’s sentence. The Foote Act demands that, as part of the increased sentencing, the motorist must perform sixty hours of community service. § 31-27-24. Here, the trial magistrate did not sentence the Appellant to this mandatory requirement. Instead, the Appellant was ordered to pay an eighty-five dollar fine and undergo a driver re-training course. Had the Appellant been sentenced pursuant to the Foote Act, Appellant would have also received community service as part of his sentence.

### 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 was not an abuse of discretion and was not in violation of statutory provisions. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.