

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

RASHARN YOUNG

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C.A. No. M19-0018
19407501212

DECISION

PER CURIAM: Before this Panel on February 12, 2020—Magistrate Goulart (Chair), Administrative Magistrate Abbate, and Magistrate Noonan, sitting—is Rasharn Young’s (Appellant) appeal from a decision of North Providence Municipal Court,¹ sustaining the charged violations of G.L. 1956 §§ 31-15-11, “Laned roadways” and 31-15-4, “Overtaking on left.” Appellant appeared before this Panel *pro se*. For the reasons set forth in this opinion, the appeal is denied.

I

Facts and Travel

On May 8, 2019, Patrolman Brandon Bursie (Patrolman Bursie) of the North Providence Police Department observed a motorist pass another vehicle by traveling over the double-yellow line and into oncoming traffic. (Tr. at 5).² Patrolman Bursie conducted a motor vehicle stop, identified the operator as Appellant, and issued him citations for the above-referenced violations. *Id.* at 5; *see* Summons No. 19407501099; Summons No. 19407501212.

¹ The judge who presided over Appellant’s trial was not specified on the trial transcript.

² This Panel typically includes the date of the trial in its citation to record. However, the date of Appellant’s trial was not specified on the trial transcript.

Appellant contested the charged violation, and the matter proceeded to trial. Patrolman Bursie testified first. Patrolman Bursie testified that on May 8, 2019, he was on a fixed traffic post on Mineral Spring Avenue, located in the Town of North Providence. *Id.* at 4. While on his post, Patrolman Bursie heard a vehicle sounding its horn. *Id.* at 5. He then visually observed a silver Kia Sorento (Kia) following another vehicle. *Id.* at 5. Patrolman Bursie observed the Kia proceed around the other vehicle by crossing over the double-yellow line and enter the left-hand lane of travel, before re-entering the right-hand lane of travel. *Id.* at 5. Patrolman Bursie subsequently conducted a motor vehicle stop of the Kia and identified the operator as Appellant. *Id.* at 5. Patrolman Bursie stated that during the motor vehicle stop, when asked why Appellant passed the other vehicle, Appellant responded that “the vehicle was driving too slow in front of him.” *Id.* at 6. Patrolmen Bursie then issued Appellant a summons. *Id.* at 6.

Patrolman Bursie testified that in this specific area of Mineral Spring Avenue, there is no center turning lane, nor is there a passing lane, but rather only two lanes of travel separated by a double-yellow line. *Id.* at 7, 10. Additionally, Patrolman Bursie testified that he did not observe the other vehicle pull over as the Kia passed it. *Id.* at 9. Patrolman Bursie also stated that when the Kia passed the other vehicle, there was not heavy traffic present in the area. *Id.* at 10.

After the Town rested its case, Appellant testified. Appellant stated that while operating the Kia, he noticed that the operator of the vehicle in front of him was using a cellular phone. *Id.* at 7. Appellant testified that he sounded his horn, which caused the other vehicle to pull over, allowing Appellant to pass the other vehicle. *Id.* at 7. Appellant denied traveling into oncoming travel lane and maintained that he properly traveled around the vehicle after it pulled over to the side. *Id.* at 8. Appellant also testified that he would likely have collided with another vehicle if he had crossed the double-yellow line, as there is typically heavy traffic in that area of Mineral

Spring Avenue during that time of day. *Id.* at 8.

Having heard all of the testimony, the Trial Judge sustained the charged violations based on the evidence presented at trial. *Id.* at 12. Accordingly, the Trial Judge imposed a fine of eighty-six dollars for each violation and court costs of thirty-five dollars. *Id.* at 13.

Appellant subsequently filed a timely appeal of the Trial Judge's decision. *See* Appellant's Notice of Appeal at 1. Forthwith is the Panel's decision.

II

Standard of Review

Pursuant to § 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 relevant 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 Company 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.” *Id.* (citing *Environmental Science Corporation 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.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant contends that the Trial Judge’s decision to sustain both charged violations was “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Section 31-41.1-8(f)(5). Specifically, Appellant reiterates that the evidence presented at trial was insufficient to demonstrate that he passed the other vehicle because his doing so would have likely resulted in an accident due to the high traffic. Appellant also raises a constitutional argument. Each argument will be analyzed in turn.

A

Section 31-15-11

Section 31-15-11 provides, in pertinent part:

“Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent with them shall apply:

- (1) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane

until the driver has first ascertained that the movement can be made with safety.”

Sec. 31-15-11(1). Thus, to sustain a violation under § 31-15-11, the evidence on the record must demonstrate that (1) the roadway is divided into two or more lanes; (2) the vehicle did not operate as nearly as practical entirely within a single lane; and (3) the vehicle moved from the lane at a time that the move could not be made with safety. *Id.*

Here, this Panel is satisfied that the Trial Judge’s decision sustaining the charged violation of § 31-15-11 is supported by clear and convincing evidence. At trial, Patrolman Bursie testified that the particular area of Mineral Spring Avenue is divided into two lanes, with one lane of travel in each direction, which satisfies the first element of § 31-15-11(1). Tr. at at 7:3-13; 10:8-11. In addition, Patrolman Bursie testified that he observed Appellant’s vehicle cross over the double-yellow line and enter the opposite lane of travel into oncoming traffic. *Id.* at 5:6-11. Thus, because the evidence establishes that Appellant’s vehicle crossed into the opposite direction of travel, the second element of § 31-15-11(1) is also satisfied.

Finally, the evidence in the record demonstrates that Appellant moved from his lane of travel at a time when the move could not be made safely. *See* § 31-15-11. Specifically, Patrolman Bursie testified that Appellant both entered the opposite lane of travel and that the vehicle which Appellant passed did not pull over to the right side of the road before Appellant passed it. Furthermore, the Trial Judge specifically found that passing in this area was prohibited and that there was little room for the vehicle passed to pull over creating a safety issue. Accordingly, the Trial Judge’s decision sustaining the charged violation of § 31-15-11 was neither clearly erroneous nor affected by error of law.

B

Section 31-15-4

Section 31-15-4 provides, in pertinent part:

“The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give a timely, audible signal and shall pass to the left at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.”

Sec. 31-15-4(1). Thus, to sustain a violation under § 31-15-4, the evidence on the record must demonstrate that (1) the motorist provided a timely audible signal to another motorist whom he wishes to pass; and (2) the passing motorist must pass to the left at a safe distance from the passed vehicle.

Here, this Panel is satisfied that the Trial Judge’s decision sustaining the charged violation of § 31-15-4 is supported by clear and convincing evidence. Although the Appellant provided an audible signal to the motorist, the signal to the motorist was not provided to notify the motorist that the Appellant was passing the vehicle. Rather, as Appellant admitted, the signal was provided to express Appellant’s displeasure that the motorist was using his cell phone. Accordingly, the Trial Judge’s decision sustaining the charged violation of § 31-15-4 was neither clearly erroneous nor affected by error of law.

C

Double Jeopardy

Finally, Appellant asserts that the Trial Judge violated Appellant’s constitutional right against double jeopardy by sustaining violations of both §§ 31-15-11 and 31-15-4 because the same conduct satisfies each charge. *See id.* The Double Jeopardy Clause contained in the Fifth Amendment of the United States Constitution is mirrored in Article 1, section 7, of the Rhode Island Constitution, which provides that “[n]o person shall be subject for the same offense to be

twice put in jeopardy.” See *State v. Grayhurst*, 852 A.2d 491, 501 (R.I. 2004). The prohibition against double jeopardy “protects against ‘multiple punishments for the same offense.’” *Id.* (quoting *State v. Rodriguez*, 822 A.2d 894, 905 n. 13 (R.I. 2003)). In determining whether an accused is in danger of being punished twice for the same offense, “[t]he applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *Rodriguez*, 822 A.2d at 905 (quoting *Blockburger*, 284 U.S. 299, 304 (1932)).

In the instant matter, it is clear that each statutory violation for which Appellant was charged and that the Trial Judge sustained required proof of a fact which the other does not. For example, § 31-15-11 requires proof that a roadway is divided into two lanes, while § 31-15-4 makes no mention of this, and requires different elements to be proved, such as whether a motorist provided an audible signal before passing another vehicle. Accordingly, the Trial Judge’s decision sustaining both charged violations did not violate Appellant’s constitutional right against double jeopardy.

IV

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 neither in violation of constitutional or statutory provisions nor clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. See § 31-41.1-8(f)(1), (5).

The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Administrative Magistrate Joseph A. Abbate

Magistrate William T. Noonan

DATE: _____