



STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc. DISTRICT COURT  
SIXTH DIVISION

Jason Delannoy :  
 :  
 v. : A.A. No. 2016 – 026  
 : (C.A. No. T15-0031)  
 : (07-001-070254)  
 State of Rhode Island : (07-001-070255)  
 (RITT Appeals Panel) :

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** In this appeal, Mr. Jason Delannoy urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed an RITT trial judge’s verdict adjudicating him guilty of four civil traffic violations: “No seatbelt, operator” in violation of Gen. Laws 1956 § 31-22-22(g); “No seatbelt, passenger” in violation of Gen. Laws 1956 § 31-22-22(f); “Laned roadway violations” in violation of Gen. Laws 1956 § 31-15-11; and, “Turn signal required” in violation of Gen. Laws 1956 § 31-16-5. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-

41.1-9 and the applicable standard of review is found in subsection 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1. After a review of the entire record I find that — for the reasons explained below — the decision of the panel is not clearly erroneous and should be AFFIRMED; I so recommend.

**I**  
**FACTS & TRAVEL OF THE CASE**

At the trial conducted in this matter on June 3, 2015, Trooper Peter Filuminia of the Rhode Island Division of State Police testified regarding the incident in which Mr. Delannoy was cited for the four violations of the motor vehicle code listed ante. In narrative form, he described what transpired thusly:

... Your Honor if I may, Badge number 204, at approximately 1:25 pm, I was traveling Route 95 in the city of Pawtucket. Entering the area of Lonsdale Ave, I merged with a vehicle, that was on the side of me. A brown Chevy blazer, bearing Ma 1WH691, the vehicle was to my right, first lane of travel coming from, Lonsdale Ave. I was in the second lane of travel. I looked over, the operator was lacking the use of a seatbelt. I could see that he didn't have the cross strap across his chest. I was on a seatbelt government program that day. I stopped the Vehicle, I positioned my marked cruiser behind him. I

conducted a stop just north of Smithfield Ave on the Pawtucket/Providence line. And at that time I had also noticed the seatbelts through the window, the seatbelts were both against the window with the driver and female passenger, their buckles were against the pillars on the vehicle. I exited the vehicle, when approached immediately I smelled the odor of marijuana, I advised him as to why he was stopped and I asked how much he had on him, he had a medical card. He did have about 1/2 oz. of marijuana on him, again but he did have the card on him, at that time he was identified as Jason Delannoy who stands before me, he's the gentleman to my left with the black polo shirt on.

Trial Transcript, at 1. As a result of these observations, the trooper cited Mr. Delannoy for both seat belt violations in universal summons number 07-001-070254.

At this juncture, the trial judge then asked about the laned roadway violation, which prompted the following additional testimony:

Your Honor, shortly after he became agitated with the stop, he also questioned as to why I was stopping him and like I said, I had already told him. I stopped him for the seatbelt also, the passenger upon stopping was lacking her seatbelt. He became very agitated after I issued the first summons 07001107254 he put his seat belt on. I went back to the cruiser, as he's putting his seat belt on he crosses over, he sticks his middle finger through the window, but he was paying so much attention to that when he threw it into drive he exited from the solid breakdown lane into the first lane of travel almost striking a red Toyota that was on the side of him. The red Toyota had to take the next lane of travel. He never indicated he never had his turn

signal on. I think he was, whatever he was doing he wasn't paying attention because he was trying, he was preoccupied flipping me off and not paying attention to the lane of travel, he took that lane of travel broke the solid white line into another lane which somebody already established and he didn't use his turn signal when he was doing it. I kept my emergency lights active, waited, pulled the vehicle back over advised him for the stop at which point in time he goes "I used my turn signal, I used my hand." Those were his comments at that time he was issued summons 0700107255 for lane override violation, which he clearly committed and not using his turn signal and the he advised me he did use a turn signal but the last time I checked I've seen that done on motorcycles, I haven't seen it done on cars.

Id. Mr. Delannoy then gave his version of the events:

... Your Honor, that's not true, I put on my left directional and there's no way I could put a hand signal because my window doesn't even open, so I don't know what this officer is talking about and he said that he couldn't see the cross strap, I don't wear the strap over my front, I got in a very bad accident back in "05" I wear a lap strap. I put the other strap behind my back, as for my girlfriend wearing her seatbelt, I don't know. But, I was wearing my seatbelt and I think this officer was having a very bad day. I don't know about obstructing this Toyota Your Honor. To me, I would have got a lot more severe ticket then obstructing a lane or a turn signal actually almost creating an accident. I think the officer would have been inclined to write more of a ticket than that.

Id.

For clarity's sake, let us summarize Mr. Delannoy's position as to each

of the charges: he offered no defense to the passenger's seat-belt violation; as to his own, he stated he did have the lap-belt portion secured, but was not wearing the shoulder part because of an injury; his defense to the turn signal charge was factual — he said he did use his directional; and, as to the laned roadway violation, his defense was an attack on the trooper's credibility — urging that if he had done so, the trooper would have charged him with a more serious violation.

The Court then rendered its decision. The trial judge found the trooper's testimony to be credible and found Mr. Delannoy guilty of all four civil traffic violations. Trial Transcript, at 2.

Aggrieved by this decision, Mr. Delannoy filed an immediate appeal. On August 26, 2015 his appeal was heard by an RITT appeals panel composed of: Judge Almeida (Chair), Administrative Magistrate DiSandro, and Magistrate Goulart. In a decision dated February 5, 2015, the appeals panel rejected each of Mr. Delannoy's arguments.

First, regarding the seatbelt violations, the appeals panel noted that Mr. Delannoy's defense was factual. Decision of Appeals Panel, at 4-5. The appeals panel stated that, as a matter of law, it could not substitute its

judgment for that of the trial judge, who had the opportunity to assess the credibility of the two witnesses at trial. Id.

Second, the appeals panel addressed the turn signal and laned roadway violations. Decision of Appeals Panel, at 5-7. The panel acknowledged that, as to these charges, Mr. Delannoy had made both legal and factual arguments. Decision of Appeals Panel, at 6.

Appellant's legal argument regarding the turn-signal charge — that his actions did not affect the red Toyota because it was beside him, not behind him — was rejected based on the principle that a turn-signal is required even if the failure to do so does not affect other motorists. Id., citing State v. Lombardi, 727 A.2d 670, 673 (R.I. 1999). His factual argument — that he did use his turn signal — was rejected by invoking the appeal panel's limited standard of review of factual determinations made by a trial judge. Decision of Appeals Panel, at 6.

Finally, the appeals panel discussed the laned roadway violation. Decision of Appeals Panel, at 6-7. It declined to accept Mr. Delannoy's argument that his actions could not have violated the statute, § 31-15-11, because he was proceeding out of the breakdown lane, which was not a lane

for traffic. Decision of Appeals Panel, at 6-7. The appeals panel found that the statute was applicable and that Appellant's actions were hazardous. Decision of Appeals Panel, at 7.

Based upon the elements of analysis just enumerated, the appeals panel found that Mr. Delannoy's conviction was supported by the reliable, probative and substantial evidence of record and that substantial rights of Mr. Delannoy had not been prejudiced. It therefore affirmed his convictions.

On February 25, 2016, Mr. Delannoy filed a claim for judicial review by the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9. The Court established a briefing schedule. Helpful memoranda have been received from both parties.

## II

### STANDARD OF REVIEW

The standard of review which this Court must employ in this case is enumerated in Gen. Laws 1956 § 31-41.1-9(d), which provides as follows:

(d) Standard of review. The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or 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 appeals panel's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the appeals panel;
- (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.

This standard of review is a mirror-image of that found in Gen. Laws 1956 § 42-35-15(g) — the State Administrative Procedures Act (“APA”). Accordingly, we are able to rely on cases interpreting the APA standard as guideposts in this process.

Under the APA standard, the District Court “\* \* \* may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’” Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5). See also Link v. State, 633 A.2d 1345, 1348 (R.I. 1993). And our Supreme Court has reminded us that, when handling refusal cases, reviewing courts lack “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, ante, 633 A.2d at 1348 citing Liberty Mutual Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991). This Court’s review, like that of the RITT appeals panel, “is confined to a reading of the record to determine whether the judge’s decision is supported by legally competent evidence or is affected by an error of law.” Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993).

### III

#### ANALYSIS

##### A

##### Positions of the Parties

##### 1

##### Appellant’s Memorandum

In his three-page handwritten memorandum, which he begins by requesting “a trial on this matter,” Mr. Delannoy urges that the testimony of Trooper Filuminia was false. See Appellant’s Memorandum, passim. He particularly asserts that the tint on his vehicle is so heavy that the trooper could not possibly have seen through the window. Appellant’s Memorandum, at 1. Moreover, Mr. Delannoy urges that he did have his seat

belt engaged and he did use his directional when he proceeded away from the stop. Appellant’s Memorandum, at 2. He additionally asserted that the trooper, and not he, almost hit the red Nissan. Id. In sum, he says there were no grounds for either the stop or the charges that have been leveled against him. Id.

2

**State’s Memorandum**

In its three-page memorandum, the State argues that it is not able to glean from Mr. Delannoy’s memorandum “any clear, suitable appellate issue.” State’s Memorandum, at 1.

Firstly, the State points out that, contrary to Mr. Delannoy’s request, this Court has no authority to retry the case. State’s Memorandum, at 1-2. The State also reminds us that, under § 31-41.1-9(d), this Court’s review of the factual determinations of the trial judge is limited — we cannot substitute our judgment on factual issues for those of the trial judge. State’s Memorandum, at 2, citing Link v. State, 633 A.2d 1345, 1348 (R.I. 1993). Next, the State asserts that Mr. Delannoy’s statement concerning the degree of tint on his windows goes beyond his trial testimony; and thus, it may not

be considered by this Court. State's Memorandum, at 2. Finally, the State notes that the issue of whether Mr. Delannoy used his directional was the subject of a factual finding by the trial judge, which ought not to be disturbed. State's Memorandum, at 3.

## **B** **Discussion**

At the outset, we must proffer a few comments about the nature of this Court's § 31-41.1-9(d) review of decisions of the Traffic Tribunal's appeals panel; it is, generally speaking, rather narrow. We cannot afford Mr. Delannoy a new trial; nor may we enlarge the record which has been certified to us. While we review questions of law de novo, we are bound to accept the trial judge's factual determinations if they are supported by competent evidence of record. We shall now apply these principles to Mr. Delannoy's case.

The trial judge found the trooper's testimony to be credible. Mr. Delannoy argues that it was false. But, without doubt, if that testimony is credited, it is, standing alone, competent evidence sufficient to justify guilty findings on each of the four civil violations with which he was charged.

Accordingly, this Court has no basis upon which to set aside Mr. Delannoy's convictions based upon the insufficiency of evidence.

Moreover, the statement Mr. Delannoy made in his memorandum — asserting that his car's windows were so severely tinted that neither the trooper nor anyone else could have seen inside well enough to detect whether or not he and his passenger were wearing seatbelts — may not be considered by this Court for its truth, since it was not made at trial. And another statement made by Mr. Delannoy in his memorandum must also be similarly disregarded by this Court: this is the allegation he made that the trooper, not he, almost hit the red Toyota.

But there is one legal issue which he raised at trial which I believe does merit our consideration. This is his argument that, for medical reasons, he was wearing the lap-belt part of his seat belt, but not the shoulder-harness portion. On this basis, he argues that he did not violate the statute.

As it happens, our statute does recognize that some individuals cannot, physically, wear a full safety belt and harness. But, under § 31-22-22(i), in order to be excused from properly wearing a safety belt and/or harness, the operator or passenger in question must possess "... a written

verification from a licensed physician that the driver or passenger is unable to wear a safety belt system for physical or medical reasons.” Mr. Delannoy has not stated that he was, at the time of the stop, in possession of such a document. Therefore, he cannot avail himself of this defense.

## V

### CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appeals panel was made upon lawful procedure and was not affected by error of law. Gen. Laws 1956 § 31-41.1-9. Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Id.

Accordingly, I recommend that the decision rendered by the appeals panel in this case be AFFIRMED.

\_\_\_\_\_/s/  
Joseph P. Ippolito  
Magistrate

November 10, 2016