

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH PROVIDENCE :

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:

v.

C.A. No. M12-0004

JAMES OLIVEIRA

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
12 JUL 31 AM 11:08

**DECISION**

**PER CURIAM:** Before this Panel on May 16, 2012—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Administrative Magistrate Cruise, sitting—is James Oliveira’s (Appellant) appeal from a decision of Judge DeQuattro (trial judge), sustaining the charged violation of G.L. 1956 § 31-15-11, “Laned roadways.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On December 8, 2011, an officer from the North Providence Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on March 12, 2012.

On the evening of the violation, an officer from North Providence Police was on a traffic post on Mineral Spring Avenue near the Lowe’s home improvement store. The officer was observing traffic on Mineral Spring Avenue, which was backed up traveling eastbound. (Tr. at 1.) While traffic was backed up, the officer observed a black Cadillac travel down the center lane “for quite a ways down Mineral Spring before taking a left hand turn onto Douglas [Avenue] to avoid waiting in line for the traffic.” Id. The officer stated that the land used by the

Cadillac was a westbound lane of travel and the operator was traveling eastbound. The officer stated that he had a clear and unobstructed view of the Cadillac.

After witnessing a perceived traffic violation, the officer pursued and stopped the Cadillac. The officer identified the operator of the vehicle as the Appellant. At the conclusion of the stop, the officer issued the Appellant a citation for traveling in the center lane of travel.

After the officer testified, the Appellant testified on his own behalf. Appellant stated that he was traveling eastbound on Mineral Spring Avenue when the traffic began to back up. (Tr. at 2.) However, Appellant stated that he did not travel down the center lane of travel as the officer had previously stated. Instead, Appellant stated that he entered the center lane only when it became a left-turn only lane to proceed onto Douglas Avenue. The Appellant also introduced a photograph demonstrating that he did not travel in the wrong lane. Id. However, the officer then testified to Appellant's position on the photograph, which was in the westbound lane of travel.

After hearing both sides, the trial judge issued his decision sustaining the charged violation. The trial judge specifically weighed the testimony of both the Appellant and the officer. (Tr. at 5.) The trial judge based his decision "upon the location that the officer was viewing [the] vehicle, [the officer's] complete description of the traffic that day, how the flow was going and where [Appellant] [was]" located. Id.

#### **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 judge abused his discretion. Specifically, Appellant contends that the trial judge erred in crediting the testimony of the officer over the Appellant's testimony.

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 the officer or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [the officer and Appellant.] [The trial judge] 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 that the trial judge committed error when he chose to accept the testimony of the officer over the Appellant's. The Appellant also contends that the photograph introduced at trial clearly demonstrates that Appellant was traveling in the appropriate lane of travel. Unfortunately, Appellant's arguments relate to questions of fact that were heard and weighed by the trial judge at Appellant's trial. This Panel's review is limited to determining whether the trial judge made an error 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). Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion. The trial judge's decision to sustain the charged violation is supported by legally

competent evidence—the officer’s testimony—which the trial judge chose to credit over the Appellant’s.

### **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 not an abuse of discretion or affected by other error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violation sustained.