STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T10-0081**
	:	
ROBERT PLASSE	:	

DECISION

PER CURIAM: Before this Panel on February 9, 2011— Chief Magistrate Guglietta (Chair, presiding), Magistrate Cruise, and Magistrate DiSandro, sitting–is Robert Plasse's (Appellant) appeal from a decision of Magistrate Noonan sustaining the charged violations of G.L.1956 § 31-3-12, "Visibility of plates" and § 31-16-5, "Turn signal required." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

On July 11, 2010, Trooper James Thomas (Trooper Thomas) of the Rhode Island State Police cited Appellant for the aforementioned violations of the motor vehicle code. At the conclusion of said trial, the trial magistrate sustained both charges. Appellant appealed.

The trial began with Trooper Thomas informing the court that on July 11, 2010, he was operating his police vehicle on Hartford Avenue in the Town of Johnston, Rhode Island. (Tr. at 3.) Being directly behind Appellant's vehicle, he observed Appellant make a left turn off Hartford Avenue and onto Reservoir Road. Id. Trooper Thomas testified that Appellant failed activate his turn signal while proceeding onto Reservoir Road. Id. He also observed Appellant's vehicle to have license plate cover which made

the lettering and numbering on his plates unreadable to the trooper. Id. Trooper Thomas then conducted a traffic stop and issued the two citations.

On cross examination, Trooper Thomas testified that he was two car lengths behind Appellant's vehicle when he made the turn onto Reservoir Road without using his turn signal. (Tr. at 6.) Despite there being a car in between Appellant's vehicle and his cruiser, the trooper had no doubt Appellant failed to signal as he could, at all times"see the complete back of [Appellant's] vehicle." (Tr. at 6- 7.) When probed, the trooper acknowledged that although Appellant failed to use his turn signal, he did not deem Appellant's decision to turn onto Reservoir Road as unsafe. (Tr. at 8.) Lastly, on cross examination, Trooper Thomas reiterated that despite being only about two car lengths behind Appellant's vehicle, he could not read the numbers on Appellant's license plate.

Next, Appellant briefly testified on his own behalf. Contrary to what Trooper Thomas had said, Appellant insisted that he did, in fact, signal when turning onto Reservoir Road. (Tr. at 12.) He also testified that he had purchased the license plate cover from an AutoZone auto supply store. (Tr. at 13.) After receiving the citation, he claimed that he returned to AutoZone to inquire about the license plate cover and was informed by one of its employees that the cover, although slightly tinted, was indeed "street" legal. Id.

At the conclusion of the trial, the trial magistrate, sustained both charges. Appellant aggrieved by this decision, timely filed an appeal before this Panel. Forthwith is our decision.

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 prejudicial because the judge's findings, inferences, conclusions or decisions are:
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> (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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge's decision to sustain the charged violation is affected by error of law and clearly erroneous due to the lack of probative evidence on the record. Specifically, he argues that facts as presented by Trooper Thomas are insufficient to meet the statutory requirements of § 31-16-5. Similarly, he urges us to find that the State failed to meet is burden under § 31-3-12.

Section 31-16-5

Section 31-16-5 holds the following:

> "No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in §§ 31-16-2 and 31-16-3, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway, unless and until the movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner described in this chapter in the event any other traffic may be affected by the movement."

As mentioned above, Trooper Thomas testified that he did not consider the turn onto Reservoir Road to be unsafe. Based upon that, Appellant urges us to hold that the turn was legal and not a violation of the statute. We disagree.

"When a statute is free of ambiguity and expresses a clear and definite meaning, there is no room for statutory construction or extension and the courts must give the words of the statute their plain and obvious meaning." State v. Calise, 478 A.2d 198, 200 (R.I. 1984) (collecting cases). Section 31-16-5 provides two distinct scenarios which a motorist can be cited. In one scenario, a person can be given a citation irrespective of his proffering of a turn signal. A turn could be reckless to the point that it is deemed unsafe regardless of whether or not a motorist activates his directional signal. That scenario was not alleged here. What was alleged is the other scenario involving a motorist who fails to activate his turn signal in spite of the presence of traffic in the area. The words "may affect traffic" do not require a safety assessment by the officer. In fact Our Supreme Court has held that any presence of traffic at the time of the citation will, in fact, be sufficient. State v. Lombardi, 727 A.2d 670, 673 (1994)

In Lombardi, a criminal defendant seeking to suppress evidence pursuant to a traffic stop posited a similar argument in attempting to negate a charge under §31-16-5. There a defendant argued that a directional signal was unnecessary due to what he termed a "lack of traffic" at the time the officer initiated the stop. Id. The Supreme Court disagreed, holding that any amount of traffic present, however small, provides a circumstance sufficient to uphold a violation of the statute. Id. In fact, in Lombardi, the only mention in the record describing the flow of traffic was the officer's testimony describing it as "light." Id.

Here, there is ample, specific evidence of record to indicate that traffic was present while Appellant made his turn. First, Trooper Thomas indicated that there was another car between the Appellant and himself. Second, he testified that there was traffic coming eastbound on Hartford Avenue, and Appellant, anticipating his turn onto Reservoir Road, waited for this traffic to pass. That testimony, accepted as credible by the trial magistrate posits a scenario in which a charge under §31-16-5 is proper. For even if all oncoming eastbound traffic had passed prior to his turn, there was a vehicle sitting directly behind Appellant as he waited to make his turn onto Reservoir Road. Clearly then, Appellant's decision to turn without a signal had some effect on, at least, that motorist. Based upon the plain meaning of the statute and Our Supreme Court's ruling in Lombardi, we find no error in the trial magistrate's decision to uphold the charge under § 31-16-5.

Section 31-3-12

Next, Appellant argues that the trial judge erred in sustaining the violation under § 31-3-12. He claims on appeal that there was no proof in the record that the officer could not read the license plate from a distance of 500 feet. Further, because the cover was purchased at a nationally known auto parts store, Appellant maintains that it was a reasonable mistake for him to believe the license plate cover would have no illegal effect on his display of plates.

First, Appellant has failed to read the exact language of § 31-3-12, which reads: "Each registration plate and the required letters and numerals on it, except the year and number for which issued, shall be of sufficient size to be plainly readable from a distance of one hundred (100') during daylight." Clearly, plates must be plainly readable from a

distance of 100 feet, not five hundred as Appellant maintains. Regardless, the testimony of Trooper Thomas makes it clear that he was unable to read the license plate while he was two car lengths behind the Appellant's vehicle on Hartford Avenue. Nor could the trooper make out the numbers while driving directly behind Appellant's vehicle in conducting the traffic stop on Reservoir Road. Although no numerical distance was provided by Trooper Thomas, the trial magistrate inferred from the testimony presented that Appellant's display of plates violated the statute. See Arden Engineering Co. v. E. Turgeon Const. Co., 97 R.I. 342, 347, 197 A.2d 743, 746 (1964) (holding that reviewing courts shall accept reasonable inferences drawn from the original trier of fact).

Secondly, we are reminded that "ignorance of the law is not an excuse for an individual to violate it, even if the individual tried to learn the law and was misled by another." State v. Foster, 22 R.I. 163, 168, 46 A.833, 835 (1900). Therefore, Appellant's claim—that he reasonably assumed the license plate cover's legality simply because AutoZone, a nationally recognized dealer in automotive parts, carried it on its shelves—fails to exonerate him from the penalties imposed. We find no error in the trial magistrate's decision to sustain the charge under § 31-3-12.

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, erroneous in light of the reliable, probative, and substantial record evidence. 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 is sustained.

ENTERED:

DATE: 3/29/11