

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE of RHODE ISLAND**

:

v.

:

**C.A. No. T14-0023  
14001502684**

:

**BRUCE G. ARGO**

:

**DECISION**

**PER CURIAM:** Before this Panel on July 30, 2014— Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Goulart, sitting—is Bruce Argo’s (Appellant) appeal from a decision made by Magistrate Abbate (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-3, “Move Over Law.” The Appellant was pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On January 25, 2014, Trooper Kyle Vinton (Trooper Vinton) of the Rhode Island State Police charged the Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on July 16, 2013.

At trial, Trooper Vinton testified that on January 25, 2014, at approximately 12:10 am, he was conducting a motor vehicle stop on Route 95 South at Weaver Hill in West Greenwich, Rhode Island. (Tr. at 1.) Further, Trooper Vinton testified that he was parked in the right hand breakdown lane and the overhead emergency light on his cruiser was activated. *Id.* Trooper Vinton indicated that at that time, he observed Appellant’s vehicle—a Subaru—traveling in the lane adjoining the right hand breakdown lane causing the vehicle to shake. Trooper Vinton also stated that he observed no other vehicles on the highway at that time. (Tr. at 2.)

Trooper Vinton testified that as a result of Appellant passing his car during the stop he pulled out after Appellant's Subaru and conducted a traffic stop of the vehicle on Route 95 South in Exeter. (Tr. at 2.)

After Trooper Vinton gave his testimony, he was cross-examined by the Appellant. In response to questions from the Appellant, Trooper Vinton testified that Trooper O'Connors was also at the traffic stop on the evening in question and that the two officers were not on a special Move Over Law detail. (Tr. at 3.)

The Appellant then testified at the hearing. Appellant explained that he was aware of the Move Over Law and reduced his speed while passing the Trooper. Additionally, he testified that there were vehicles in the high speed lane at the time he passed the Trooper and thus did not have an opportunity to change lanes. (Tr. at 4.)

After both parties were given an opportunity to present arguments, the trial judge determined that the Officer was a credible witness. (Tr. at 6.) The trial judge credited the Officer's testimony that he was trained at the Rhode Island State Police Academy in 2013. Id. Further, the trial judge found that on January 24, 2014 at 12:10 am, Trooper Vinton was taking part in a traffic stop on Route 95 in Exeter; that during the stop, Trooper Vinton's cruiser had its emergency lights illuminated in the breakdown lane; that the stretch of the highway had two lanes; that there were no other vehicles on the road at the time Appellant drove by; that Appellant passed Trooper Vinton's cruiser in the lane adjoining the breakdown lane; and that Appellant was traveling at a high rate of speed, causing Trooper Vinton's car to shake. Id. At the close of his bench decision, the trial judge sustained the violation. Id. Aggrieved by the trial judge's decision, the 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 challenges the trial judge’s decision on the grounds that it was affected by error of law and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, the Appellant argues that the trial judge incorrectly relied on the factual content of Trooper Vinton’s.

Section 31-14-3 of the Traffic Code provides that:

- (a) The driver of every vehicle shall, consistent with the requirements of § 31-14-1, drive at an appropriate, reduced speed when . . . in the presence of emergency vehicles displaying flashing lights as provided in § 31-24-31 . . .
- (b) When an authorized vehicle, as described in subsection (a), is parked or standing within twelve feet (12') of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe, and when not otherwise directed by an individual lawfully directing traffic, do one of the following:
  - (1) Move the vehicle into a lane that is not the lane nearest the parked or standing . . . emergency vehicle and continue traveling in that lane until safely clear of the . . . emergency vehicle . . .
  - (2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed until completely past the . . . emergency vehicle . . . [v]iolations of this section are subject to fines enumerated in § 31-41.1-4.

Here, the trial judge specifically found that Trooper Vinton’s testimony was enough to satisfy the requirements of §31-14-3 and sustain the charge against Appellant. Specifically, the trial judge found that the Appellant, despite the absence of other vehicles on the road, did not change lanes. Furthermore, the trial judge found that the Appellant passed the trooper in the lane

nearest to the Trooper's cruiser, at a speed that shook the Trooper's car. In light of the entire record, it is clear that the trial judge made sufficient factual findings to find the Appellant guilty of the violation. The trial judge sustained the charge based upon his testimony, which is within his discretion. See Link, 633 A.2d at 1348. This ruling will not be disturbed because determinations of witness credibility are questions of fact to be made by the trial judge. Id. Accordingly, upon review of the record before it, this Panel refrains from disturbing the factual findings of the trial judge.

**Conclusion**

The trial judge's decision to sustain the charged violation is supported by the legally competent evidence provided by the Officer's testimony. This Panel has both reviewed the entire record before it and heard oral argument. Having done so, the members of this Panel conclude that the trial judge's decision was not clearly erroneous and was not affected by error of law. Substantial rights of the Appellant have not been prejudiced. Accordingly, the Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Associate Judge Lillian C. Almeida (Chair)

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Chief Magistrate William R. Guglietta

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Magistrate Alan R. Goulart

DATE: \_\_\_\_\_