

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

BRUCE REILLY

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C.A. No. T09-0027

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on June 17, 2009—Magistrate Noonan (Chair, presiding) and Judge Almeida and Judge Parker sitting—is Bruce Reilly’s (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violation G.L. 1956 § 31-16-5, “Turn signal required.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 16, 2008, Trooper Lauri Ludovici (Trooper Ludovici) of the Rhode Island State Police charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial on March 17, 2009, Trooper Ludovici testified that on the date in question, at approximately 1:10a.m., she was on routine patrol on Route 95 North in Richmond when she “observed a vehicle pass our marked state police cruiser . . . on the right-hand side and move back over to the high speed left lane without the use of a turn signal.” (Tr. at 2.) Trooper Ludovici described the vehicle “as a silver Mercedes.” Id. She continued to testify that there was heavy rain and moderate traffic at the time of the alleged violation. Id. Trooper Ludovici

initiated a traffic stop of the suspect vehicle. The Trooper issued a summons to the operator identified as Appellant. Id.

Based on questions presented by the trial magistrate, Trooper Ludovici testified that at the time of the stop, there were several vehicles “all kind of clumped into a group of traffic.” (Tr. at 3.) She testified that this grouping of vehicles was traveling at a speed of approximately sixty to sixty-five (60 to 65) miles per hour. Id. Trooper Ludovici also testified as to Appellant’s lane change, “. . . at the time we had no idea that he was coming over into our left lane and it did cause us to have to slow down.” Id.

Appellant testified that he did not know that the cruiser was a State Police vehicle. (Tr. at 4.) He added that there was a tractor-trailer on his right side and he was attempting to pass this vehicle. Id. Appellant further testified that the car in front of him suddenly turned left without utilizing a turn signal. Id. According to Appellant, he quickly moved into the right lane without using his turn signal in order to avoid striking this vehicle. Id.

Following the trial, the trial magistrate sustained the charged violation of § 31-16-5. Aggrieved by this decision, Appellant filed a timely appeal to this Panel. Our decision is rendered below.

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

Appellee 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 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 magistrate's decision is clearly erroneous in view of the reliable, probative and substantial evidence on the record. Specifically, Appellant contends that the trial magistrate improperly relied upon facts that were not in evidence in sustaining the charged violation of G.L. 1956 § 31-16-5. The statute provides that "[n]o person

shall . . . move right or left upon a roadway, unless and until the movement can be made with reasonable safety.”

Having reviewed the record in its entirety, the members of this Panel are satisfied that the trial magistrate relied on facts that were not testified to by Trooper Ludovici. There is no record of the Trooper explaining how she narrowly avoided a collision with Appellant’s vehicle after his failure to use a turn signal. Instead, after the trial magistrate asked the Trooper, “[T]ell me if at all and perhaps it wasn’t whether . . . the movement [of Appellant’s vehicle] was made with reasonable safety. In other words was his movement made in a way that it wasn’t done reasonably safe?” (Tr. at 7.) The Trooper answered, “Well I do believe at that time we had no idea that he was coming into our left lane and it did cause us to have to slow down.” Id. Again the trial magistrate asked, “So you had to slow your vehicle in order to allow Appellant to enter into your lane?” Again the Trooper responded, “Correct. And like I said there was heavy rain at the time and limited visibility.” Id. Trooper Ludovici never testified that Appellant’s movement caused her to slow down “in order to avoid either striking his vehicle or putting herself in danger.” (Tr. at 6-7.) The trial magistrate stated on the record that “she [the Trooper] was afraid she was going to strike your vehicle,” upon review of Trooper Ludovici’s testimony, she never stated this on the record.

This Panel has had an opportunity to review the entire record and we find that the trial magistrate heard certain evidence which he believed supported a finding that it may have been unsafe for Appellant to operate the vehicle in the way that he did. However, closer review of the record indicates that this evidence was never presented at trial.

Conclusion

As the trial magistrate misconstrued Trooper Ludovici's testimony and mischaracterized the testimonial evidence in issuing the decision to sustain the charged violation, the members of this Panel are satisfied that his decision is clearly erroneous in light of the reliable, probative and substantial evidence on the record.

Further, the interrogation of the witness by the Court and the mischaracterization of evidence by the trial magistrate constitute an abuse of discretion. Accordingly, the Appellant's appeal is granted, and the charged violation of §13-16-5 is dismissed.