STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. M17-0015**
	:	**17415500346**
DANA STEPHEN	:	

DECISION

PER CURIAM: Before this Panel on August 15, 2017—Magistrate Kruse Weller (Chair), Chief Magistrate Guglietta, and Judge Almeida, sitting—is Dana Stephen's (Appellant) appeal from a decision of Judge Aram Jarret (Trial Judge) of the North Smithfield Municipal Court, sustaining the charged violation of G.L. 1956 § 31-15-11, "Laned roadways." The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On March 19, 2017, Officer Justin Switzer (Officer Switzer) of the North Smithfield Police Department conducted a traffic stop of Appellant's vehicle on Victory Highway. (Tr. at 2.) That traffic stop resulted in Officer Switzer issuing Appellant a citation for the above-mentioned violation. *Id.* at 7; *see also* Summons No. 17415500346.

The matter proceeded to trial on June 19, 2017. *Id.* at 2. Before testimony began, the Trial Judge reminded Appellant that the instant violation "was [Appellant's] fourth moving violation within an 18-month period." *Id.* at 2-3. The Trial Judge explained that if Appellant were convicted, Appellant faced a possible penalty of completing sixty hours of driver re-training classes, public community service, and license suspension for up to two years. *Id.* at 3.

The Trial Judge added, to be able to impose such penalties, he must "make a specific finding of fact and determine if [Appellant's] continued operation of a motor vehicle would pose a substantial traffic safety hazard." *Id.* at 3.[1]

After informing Appellant of the possible penalties, the Trial Judge began hearing witness testimony. *Id.* at 5. Officer Switzer was the first witness to testify. *Id.* He explained that on the night of the violation, while "traveling on Victory Highway toward Burrillville," he observed a vehicle, travelling ahead of him, "cross over the solid white line" with both of its right tires. *Id.* at 6. He added that "more than half of the vehicle made it over the white line" and that "[t]he vehicle was traveling in the breakdown lane . . . for about a mile, in and out of traffic." *Id.* Officer Switzer continued, stating that "[t]he vehicle then approached the intersection of Main Street and Victory Highway," at which point the road splits into two lanes. *Id.* at 6-7. He indicated that "[t]he vehicle continued operating in the middle of those two lanes." *Id.* at 7.

After observing the vehicle for a period of time, Officer Switzer "activated [his] emergency equipment and conducted a motor vehicle stop. [He] noted that the operator, who stands here . . . today, [was] [Appellant]." *Id.* Officer Switzer testified that Appellant "stated that he did not know that [§ 31-15-11] was a law, and he continued to argue that it was ridiculous that [Officer Switzer] pulled him over." *Id.* However, based on his observations, Officer Switzer issued Appellant a citation. *Id.*

The Appellant also testified at trial. *Id.* at 8. He explained that "[his] wheels were over the line," because "[t]he car is really wide and the front end was out of line." *Id.* The Appellant

[1] During Appellant's first appearance, the Trial Judge also recommended that Appellant "obtain legal advice or legal services." *Id.* at 3. The Appellant did not retain legal counsel for trial, choosing to proceed on the matter *pro se*. *Id.* at 4.

then reiterated that he "probably did go over the line," adding that "[t]he car was all over the road. The front end was out of line." *Id.* at 9.

After Appellant testified, the Trial Judge asked Officer Switzer to describe Victory Highway. *Id.* Officer Switzer described the highway as "a very wide highway," noting "[t]he breakdown [lane] is pretty big," and that "[Appellant] came maybe feet, before the curb." *Id.*

After testimony concluded, the Trial Judge asserted his findings of fact. *Id.* at 10-13. The Trial Judge accepted Officer Switzer's testimony and adopted his testimony as fact. *Id.* at 10-11. The Trial Judge stated that "[t]he Court takes note of" Appellant's three previous traffic violations: two for speeding and one for driving in a breakdown lane. *Id.* at 11-12. He added that "the Court finds that [Appellant], in this case, is a menace, in the sense that he . . . has permitted himself to commit violations, moving offenses, in contravention of the safety of the motoring public in the State of Rhode Island." *Id.* at 12. He concluded: "Because of this, the Court finds that it must and shall impose the restrictions under [§ 31-27-24]." *Id.* at 12-13.

The Trial Judge imposed a $500 fine and ordered "the [Appellant] to attend 60 hours of driver restraining . . . [and] perform 60 hours of public community service." *Id.* at 13. The Trial Judge stated that he was also "going to suspend [Appellant's] license up to 8 months." *Id.* at 13-14.

The Appellant filed a timely appeal. Forthwith is this Panel's decision.

II

Standard of Review

Pursuant to § 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:
>
> "(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 Mut. Ins. 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." *Id.* (citing *Envtl. Sci. 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." *Id.* Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant contends that the Trial Judge's decision is "[i]n violation of . . . statutory provisions," "[i]n excess of the statutory authority of the judge," "[m]ade upon unlawful procedure," "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Sec. 31-41.1-8(f). Specifically, Appellant argues that (1) the violation was not supported by the evidence presented at trial, (2) the Trial Judge misapplied § 31-27-24, (3) the Trial Judge lacked jurisdiction to impose penalties established in § 31-27-24, and (4) the Trial Judge relied on information improperly introduced into evidence.

A

Section 31-15-11, "Laned Roadways"

First, Appellant asserts that the record contains insufficient evidence to sustain a violation of § 31-15-11. Section 31-15-11 states, in pertinent part:

> "Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent with them shall apply:
> (1) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety." Sec. 31-15-11(1).

Thus to sustain a violation of § 31-15-11, a trial judge or magistrate must find by clear and convincing evidence that the person charged (1) operated a vehicle, (2) in such a way that the vehicle was not driven "as nearly as practical entirely within a single lane," unless (3) the driver of the vehicle travelling outside of a single lane, did so only after ascertaining that such movement can be made safely. *Id.*

Based on the evidence within the record, it is clear that Officer Switzer observed Appellant operating a vehicle that travelled outside of a single lane, as the vehicle's left tires

were on one side of a solid white line, and its right tires were on the other side of the line. (Tr. at 8.) Based on Officer Switzer's description, the vehicle was not travelling "as nearly as practical entirely within a single lane." Sec. 31-15-11(1). Moreover, Appellant did not dispute Officer Switzer's observations, testifying that "[t]he car was all over the road. The front end was out of line." (Tr. at 9.)

The Traffic Tribunal Appeals Panel has stated that "[t]his statute provides an exception to the general rule by allowing motorists to drive outside of a single land provided it is safe to do so." *State v. Deborah Saulnier*, CA No. T14-0062, 5 (Traff. Trib. 2015) (citing *Marran v. State*, 672 A.2d 875, 876 (R.I. 1996) (deciding that the exception provided in the statute applied, because "[t]he record is devoid of any factual findings to show that it was unsafe for Appellant to cross over the line"). However, in this case, the Trial Judge credited Officer Switzer's testimony "that the [Appellant] almost drove into the curb." (Tr. at 11.) Therefore, this Panel finds that the facts within the record in this case differs from the record in *Saulnier*, because the record in the present matter contains evidence indicating that it was unsafe for Appellant to cross over the solid white line.

In finding that Appellant operated a vehicle that was not driven "as nearly as practical entirely with a single lane," and that doing so did not fall within the exception as it was not safe, this Panel agrees with the Trial Judge's determination that there is legally competent evidence to sustain the violation of § 31-15-11. Accordingly, this Panel finds that the Trial Judge's decision is not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Sec. 31-41.1-8(f)(5).

B

Section 31-27-24, "Multiple moving offenses"

The Appellant also argues that the Trial Judge imposed an improper sentence pursuant to § 31-27-24 and, as a result, the Trial Judge's decision is "[i]n excess of [] statutory authority" and "clearly erroneous." Sec. 31-41.1-8(f)(2), (5). In particular, Appellant contends that § 31-27-24 allows the imposition of stricter penalties upon a motorist's fifth violation within an eighteen month period.

Section 31-27-24 states:

> "(a) Every person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period may be fined up to one thousand dollars ($1,000), and shall be ordered to attend sixty (60) hours of driver retraining, shall be ordered to perform sixty (60) hours of public community service, and the person's operator license in this state may be suspended up to one year or revoked by the court for a period of up to two (2) years. Prior to the suspension or revocation of a person's license to operate within the state, the court shall make specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard. . . .
> (c) For the purposes of this section only, the term "moving violations" shall mean any violation of the following sections of the general laws:
> (3) 31-14-2. Prima facie limits. . . .
> (6) 31-15-11. Laned roadways. . . .
> (8) 31-15-16. Use of emergency break-down lane for travel." Sec. 31-27-24.

It is well-settled that "[i]n matters of statutory interpretation [the court's] ultimate goal is to give effect to the purpose of the act as intended by the Legislature." *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001) (citing *Matter of Falstaff Brewing Corp. Re: Narragansett Brewery Fire*, 637 A.2d 1047, 1050 (R.I. 1994)). "[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and

ordinary meanings." *D'Amico v. Johnston Partners*, 866 A.2d 1222, 1224 (R.I. 2005) (citing *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)).

Based on the clear and unambiguous language of the statute, Appellant's contention that the Legislature intended—a person be convicted of five moving violations before the imposition of the listed penalties—is without merit. Sec. 31-27-24(a). Section 31-27-24(a) plainly states, "[e]very person convicted of moving violations on four (4) separate and distinct occasions within an eighteen month period. . . ." *Id.* In light of the statue's language, this Panel can surmise that the "ultimate goal" of the Legislature in instituting this provision was to give courts the authority to impose § 31-27-24 penalties for committing violations on four, not five, occasions. *Webster*, 774 A.2d at 75 (citing *Matter of Falstaff Brewing Corp. Re: Narragansett Brewery Fire*, 637 A.2d at 1050.) This Panel "has no authority to extend [the statute's] scope" to five violations. *Iselin*, 943 A.2d at 1049 (R.I. 2008) (citing *Citizens for Preservation of Waterman Lake*, 420 A.2d at 57).

At trial, the Trial Judge noted that the Appellant had two prior convictions for violations of § 31-14-2, "Prima facie limits," and one prior conviction for violating § 31-15-16, "Use of emergency break-down lane for travel" within an eighteen month period. (Tr. at 11-12.) All of Appellant's violations are classified within § 31-27-24 as "moving violations." Sec. 31-27-24(c)(3), (8). At the end of Appellant's trial, the Trial Judge also found that Appellant violated § 31-15-11, "Laned roadways," which also qualifies as a moving violation under the statute. Sec. 31-27-24(c)(6). Since, Appellant's four convictions are considered moving violations, as defined by § 31-27-24, the imposition of enhanced penalties is appropriate.

As the Trial Judge's decision complies with the language of § 31-27-24, this Panel will not disturb the Trial Judge's conclusions. Therefore, this Panel finds that the decision is neither

"[i]n excess of the statutory authority of the judge," nor is it "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Sec. 31-41.1-8(f)(2), (5).

C

Municipal Court Jurisdiction

Furthermore, Appellant suggests that the Trial Judge acted "in violation of . . . statutory provisions," based on his assertion that a municipal court judge does not have jurisdiction over matters involving such severe penalties. The Appellant contends that the Trial Judge acted in excess of the municipal court's authority to "impose a sentence not to exceed thirty (30) days in jail and impose a fine not in excess of five hundred dollars ($500), or both" by imposing the penalties listed in § 31-27-24, G.L. 1956 § 45-2-59(d).

However, a further review of § 45-2-59 reveals that "[t]he municipal court shall have concurrent jurisdiction with the Rhode Island Traffic Tribunal to hear and adjudicate those violations conferred upon the municipal court and enumerated in § 8-18-3." Sec. 45-2-59(c). Although § 8-18-3(a) does not expressly mention § 31-27-24, the statue's omission should not be taken to mean that the General Assembly did not intend to confer the power to enforce § 31-28-24 on municipal courts, since § 8-18-3(a) only refers to specific violations.

For clarification purposes, this Panel looks to an analogous criminal statute, G.L. 1956 § 12-19-21, "Habitual criminals" for guidance. Section 12-19-21 provides that once a person has been convicted of "two . . . or more felony offenses arising from separate and distinct incidents," the defendant will be incarcerated for twenty-five years. Sec. 12-19-21(a). The Rhode Island Supreme Court has classified this statute as "a sentencing-enhancement mechanism." *State v. Sitko*, 457 A.2d 260, 261 (R.I. 1983) (citing *State v. DeMasi*, 420 A.2d 1369, 1372 (R.I. 1980)).

Similarly, § 31-27-24 is not itself a violation. Instead, the statute acts as a "sentencing-enhancement mechanism" as it grants a sentencing body the authority to institute more severe

penalties upon motorists who have committed multiple violations within the given time period. *Id.* Based on § 31-27-24's classification as a "sentencing-enhancement mechanism," the Rhode Island Traffic Tribunal as well as municipal courts maintain "concurrent jurisdiction" pursuant to § 45-2-59(c).

In accordance with the reasoning above, this Panel finds that the Trial Judge acted within the municipal court's jurisdiction when imposing the penalties listed in § 31-27-24. Therefore, the Trial Judge's decision is proper, and does not "violat[e]. . . statutory provisions." Sec. 31-41.1-8(f)(1).

D

Judicial Notice of Driving Record

In his final argument, Appellant asserts that the Trial Judge's decision was "[m]ade upon unlawful procedure." Sec. 31-41.1-8(f)(3). Specifically, Appellant contends that the Trial Judge erred by considering his prior convictions, since evidence of the convictions were not properly admitted at trial.

Rule 15 of the Rhode Island Traffic Tribunal Rules of Procedure, states that "[i]n all adjudications of civil violations before the traffic tribunal and the municipal courts, the Rhode Island Rules of Evidence shall apply." Traffic Trib. R. P. 15(b). Rhode Island Rule of Evidence 201 establishes that "[j]udicial notice may be taken at any stage of the proceeding." R.I. R. Evid. 201(f). Our Supreme Court has determined that "a court may take judicial notice of two categories of facts. One category consists of facts generally known with certainty by all reasonably intelligent people in the community, and the other consists of facts capable of accurate and ready determination by resort to sources of indisputable accuracy." *Colonial Plumbing & Heating Supply Co. v. Contemporary Const. Co.,* 464 A.2d 741, 742 (R.I. 1983) (citing *McCormick's Handbook of the Law of Evidence* § 329–30 (2d ed. Cleary 1972.)). "One

aspect of the doctrine of judicial notice is that a court may take judicial notice of its own records including issues and decisions in a prior proceeding involving the same parties." *In re Michael A*, 552 A.2d 368, 369 (R.I. 1989) (citing *Perez v. Pawtucket Redevelopment Agency*, 111 R.I. 327, 302 A.2d 785 (1973) (citations omitted)).

The record in this case reflects that the Trial Judge took "note of" the Appellant's previous three moving violation conviction. (Tr. at 11-12.) Being that our Supreme Court has held that a court may take judicial notice of its own records, Appellant's prior convictions were properly admitted into evidence by way of judicial notice. *In re Michael A*, 552 A.2d at 369 (citations omitted). Therefore, the Trial Judge's decision was not "made upon unlawful procedure." Sec. 31-41.1-8(f)(3).

IV

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 "[i]n violation of . . . statutory provisions," "[i]n excess of the statutory authority of the judge," "[m]ade upon unlawful procedure," or "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Sec. 31-41.1-8(f)(1)-(3), (5). The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained. The enhanced penalties will remain in effect.

ENTERED:

_____
Magistrate Erika Kruse Weller (Chair)

_____
Associate Judge Lillian M. Almeida

DATE: _____

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.