

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. M16-0007
16415500965**

FERNANDO CABRAL

DECISION

PER CURIAM: Before this Panel on December 14, 2016—Magistrate Abbate (Chair), Magistrate DiSandro III, and Magistrate Goulart, sitting—is Fernando Cabral’s (Appellant) appeal from a decision of Judge Aram Jarret (Trial Judge) of the North Smithfield Municipal Court, affirming Appellant’s charged violation of G.L. 1956 § 31-13-6(3)(i), “Eluding traffic control lights.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On August 1, 2016, North Smithfield Police Officer Eric Rondeau (Officer Rondeau) conducted a traffic stop of Appellant’s vehicle based on his suspicion that Appellant drove through a parking lot to avoid stopping at a red light. (Tr. at 3.) Officer Rondeau subsequently charged Appellant with the aforementioned violation. *See* Summons No. 16415500965.

A trial on this matter was held on October 19, 2016 before the North Smithfield Municipal Court. (Tr. at 1.) At trial, Officer Rondeau testified that he “observed [Appellant] avoid the red light, pull into the CTS [sic] parking lot, not make any hesitation and then re-enter onto Smithfield Road into the flow of traffic.” *Id.* at 3. Officer Rondeau further testified that

after observing Appellant's vehicle drive through the parking lot, he performed the traffic stop and issued Appellant the citation. *Id.*

Appellant testified that he is a Roman Catholic priest and that he had been visiting the sick throughout the day in Smithfield and Woonsocket on August 1, 2016. *Id.* Appellant stated that he received an emergency call to attend a sick visit. *Id.* While en route, Appellant pulled his vehicle into the parking lot of CT Gas to purchase water. *Id.* After entering the parking lot, Appellant decided to go directly to the sick visit. *Id.* at 5. Appellant then exited the parking lot and had begun travelling towards the nursing home when Officer Rondeau stopped him. *Id.*

At the conclusion of trial, the Trial Judge determined that based upon the credible testimony given by Officer Rondeau, "the town, through its police officer, has prove[n] its case by clear and convincing evidence." *Id.* at 7. As a result, the Trial Judge found Appellant guilty of committing a violation of § 31-13-6. *Id.*

Thereafter, Appellant filed a timely appeal of the Trial Judge's decision. 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 Mutual 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. 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.” *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 argues that the Trial Judge’s decision was effected by an error of law. Sec. 31-41.1-8(f). At trial, the Trial Judge found Appellant guilty of committing a violation of 31-13-6(3)(i), which states:

“Vehicular traffic facing a steady circular red signal, unless entering the intersection to make another movement permitted by

another signal, shall stop at a clearly marked stop line; but if there is no stop line, traffic shall stop before entering the crosswalk on the near side of the intersection; or if there is no crosswalk, then before entering the intersection; and shall remain stopped until a signal to proceed is displayed.”

A careful review of § 31-13-6 uncovered no mention of language related to “eluding” or “evading” a traffic control light. It is important to note that in 2013, the General Assembly amended § 31-13-6. Prior to that amendment, the statute did establish a violation for “eluding a traffic control device.” *See* P.L. 2013, ch. 73, §1 (amendment effective June 7, 2013). However, the General Assembly omitted that language in its 2013 amendment. *See* § 31-13-6. Thus as it is currently written, § 31-13-6 does not establish a chargeable violation for conduct related to eluding or evading a traffic control device.¹ *Id.*

A decision sustaining a charged violation that does not exist is a decision “affected by . . . error of law.” Sec. 31-41.1-8(f)(4). The Rhode Island Supreme Court has held that “[t]he common-law rule of abatement provides that when the Legislature repeals a statute, a defendant cannot thereafter be convicted under the repealed statute, absent a savings clause.” *State v. Pereira*, 973 A.2d 19, 33 (R.I. 2009) (citing *State v. Souza*, 456 A.2d 775, 779 (R.I. 1983)). The General Assembly omitted any language that pertained to the offense of “eluding traffic control lights” from the current statute. P.L. 2013, ch. 73, §1 (amendment effective June 7, 2013). Moreover, our Supreme Court has held that “[i]t is fundamentally unfair to prosecute and individual for prior conduct that would now not constitute a violation of law.” *State v. Mullen*, 740 A.2d 783, 786 (R.I. 1999). Accordingly, this Appeals Panel finds that the Trial Judge’s decision, finding Appellant guilty of committing the charged violation of § 31-13-6, “Eluding

¹ Even if the statute established a violation for failing to stop at a clearly marked stop line, there is no evidence within the record that suggests Appellant failed to stop at a stop line before entering the parking lot. (Tr. at 1-7.)

traffic control lights,” was effected by error of law.² See § 31-41.1-8(f)(4) *see also Mullen*, 740 A.2d at 786.

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel determine that the Trial Judge’s decision was affected by error of law. The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant’s appeal is granted, and the decision is reversed.

ENTERED:

Magistrate Joseph A. Abbate (Chair)

Magistrate Domenic A. DiSandro III

Magistrate Alan R. Goulart

DATE: _____

² Because the charged violation no longer exists under Rhode Island law, there is no need for this Appeals Panel to address any issues raised on appeal related to Appellant’s claim that the decision was prejudicial because of a language barrier, or that the Trial Judge’s improperly credited Officer Rondeau’s testimony.