

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

FRANCISCO APONTE

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**C.A. No. T15-0033
15001509717**

DECISION

PER CURIAM: Before this Panel on October 28, 2015—Administrative Magistrate DiSandro III (Chair), Chief Magistrate Guglietta, and Judge Parker, sitting—is Francisco Aponte’s (Appellant) appeal from a decision of Magistrate Noonan (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-16-2, “Manner of Turning at Intersection.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On April 15, 2015, Trooper Ben Sternberg of the Rhode Island State Police (Trooper) charged the Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on June 18, 2015.

At trial, the Trooper testified that on April 15, 2015, at approximately 12:05 A.M., he was on patrol in the City of Newport. (Tr. at 4.) While on patrol, the Trooper observed a silver Dodge Caravan apply its brakes while entering a rotary. Id. The Trooper noticed that the middle brake light was not functioning. Id. The Trooper proceeded after the Caravan and observed that the Caravan was accelerating towards the Rolling Green Apartment Complex. Id. Within fifteen feet of the Complex the Caravan activated its right directional and “turned into Rolling Green in an erratic manner by swerving left away from the curb and quickly turn[ing] back right to make

the turn.” Id. The Trooper continued to follow the Caravan into the Complex and watched as the Caravan accelerated over speed bumps “caus[ing] the rear end of the vehicle to visibly leave the ground.” Id. The Trooper then observed the Caravan make a sharp left turn into a parking space “in such an erratic manner that the front end was facing 45 degrees in the parking space.” Id. The operator of the Caravan quickly exited the vehicle and fled into the Complex. Id.

The Trooper further testified that he stopped his cruiser behind the Caravan “just as the operator began to open the door to his apartment.” Id. at 5. The Trooper instructed the operator to return to the vehicle, but the operator ignored the command and proceeded into his apartment. Id. The Trooper explained that he approached the Caravan to check for other occupants and “discovered the operator had left the vehicle unlocked with his wallet, driver’s license, and other belongings skewed along the floor throughout the vehicle.” Id. The Trooper retrieved the license and identified the operator of the Caravan as the Appellant. Id. The Appellant was subsequently issued citations for § 31-23-4, “Brake Equipment Required”; § 31-16-2, “Manner of Turning at Intersection”; and § 31-16-6, “Time of Signaling Turn.” Id.

In his defense, Appellant argued that he was never pulled over and that the Trooper searched his car in violation of his constitutional rights. Id. at 6. The Trial Magistrate instructed Appellant that the only time period relevant at trial is the span of time in which Appellant was operating the Caravan, not the time period after the Appellant had exited the vehicle. Id. Appellant replied that during the period of operation, he was not stopped by the Trooper. Id. Appellant added that contrary to the Trooper’s testimony, his brake light was not broken, and he had a time-stamped photograph on his phone to support his argument. Id. Furthermore, Appellant argues that he was never instructed to stop, as the Trooper testified. Rather, Appellant states that the Trooper yelled, “hey you”, with no indication that the comment was directed

towards Appellant. Id. at 8. Appellant then sought to introduce a photograph depicting the distance between his apartment and the area where the Trooper yelled, “hey you.” Appellant argued that this picture demonstrates that he was far from the Trooper when the Trooper attempted to make contact. Thus, because of the distance, it was reasonable that Appellant did not know the Trooper was there. Id. at 8-9. The Trial Magistrate explained that Appellant could not admit this picture into evidence but that the record would reflect that the picture was presented to the Court. Id. at 10.

After hearing the testimony of both the Trooper and the Appellant, the Trial Magistrate adopted the Trooper’s testimony as his findings of fact. Id. Specifically, the Trial Magistrate found that the Trooper “made eye contact with the motorist and the motorist ignored him.” Id. at 11. The Trial Magistrate then indicated to the Appellant, “I don’t believe you. I don’t believe you didn’t see him or you didn’t know he was there. I think you’re lying.” Id. Despite this determination, the Trial Magistrate found that there was not enough evidence to sustain the charge of § 31-23-4, “Break Equipment Required.” Therefore, as a matter of law, the Trial Magistrate dismissed this charge. Id. Additionally, the Trial Magistrate found that in the absence of testimony indicating that a turn signal was required to ensure the reasonable safety of other drivers, he could not sustain the charge of § 31-16-6, “Time of Signaling Turn.” Id. However, the remaining charge of § 31-16-2, “Manner of Turning,” was sustained at trial.

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:

- “(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.” Link, 633 A.2d at 1348 (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.” 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 to sustain the charged violation of § 31-16-2, "Manner of Turning," is affected by error of law and clearly erroneous due to the lack of probative evidence on the record. Specifically, Appellant maintains that the Trooper was not credible and the testimony presented by the Trooper is insufficient to meet the statutory requirements of § 31-16-2.

Section 31-16-2 sets forth, in pertinent part, "[b]oth the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway." See Sec 31-16-2(1)(i). Here, this Panel is confined to a reading of the record to determine whether the Trial Magistrate's decision to sustain the charge of § 31-16-2 is supported by legally competent evidence or is affected by error of law. See Link, 633 A.2d at 1348 (citing Environmental Scientific Corp., 621 A.2d at 208). Confining our review of the record to its proper scope, this Panel is satisfied that the testimony presented by the Trooper is sufficient to meet the statutory requirements of § 31-16-2. Specifically, the record indicates that the Appellant activated his right directional and "turned into Rolling Green in an erratic manner by swerving left away from the curb and quickly turn[ing] back right to make the turn." (Tr. at 4.) Appellant's action of "swerving left away from the curb and quickly turn[ing] back right" is unmistakably in violation of the § 31-16-2 requirement that a "right turn shall be made as close as practicable to the right-hand curb. . . ." Id.; see also §31-16-2. Therefore, this Panel determines that the Trial Magistrate's decision to sustain the charge of § 31-16-2 was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

In regards to Appellant's second argument that the Trooper was not credible, 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,

633 A.2d at 1348 (citing Liberty Mutual Insurance Co., 586 A.2d at 537). After listening to the evidence, the Trial Magistrate determined that the Trooper’s testimony was credible. Moreover, the Trial Magistrate found Appellant to lack credibility, stating “I don’t believe you. I don’t believe you didn’t see him or you didn’t know he was there. I think you’re lying.” (Tr. at 10.) As the members of this Panel did not have an opportunity to view the live trial testimony of the Trooper, it would be impermissible to second-guess the Trial Magistrate’s “impressions as he . . . observe[d] [the Trooper] [,] listened to [his] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206. Consequently, after reviewing the record, this Panel is satisfied that the Trial Magistrate did not abuse his discretion and his decision to sustain the charged violation was supported by legally competent evidence.

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 supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the Trial Magistrate's decision was not clearly erroneous and not otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Administrative Magistrate Domenic A. DiSandro, III (Chair)

Chief Magistrate William R. Guglietta

Judge Edward C. Parker

DATE: _____