

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

:

v.

:

C.A. No. T15-0031

:

07001070254

JASON DELANNOY

:

07001070255

DECISION

PER CURIAM: Before this Panel on August 26, 2015—Judge Almeida (Chair), Administrative Magistrate DiSandro III, and Magistrate Goulart, sitting—is Jason Delannoy’s (Appellant) appeal from a decision of Judge Parker (Trial Judge), sustaining the charged violations of G.L. 1956 § 31-22-22(g), “No seatbelt, operator”; § 31-22-22(f), “No seatbelt, passenger over 13 years old”; § 31-15-11, “Laned roadway violations”; and § 31-16-5, “Turn signal required.” The appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 27, 2015, Trooper Peter Filuminia of the Rhode Island State Police Department (Trooper) charged Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on June 3, 2015.

At trial, the Trooper testified that at approximately 1:25 in the afternoon on April 27, 2015, he was traveling on Route 95 in Pawtucket, entering the area of Lonsdale Avenue. (Tr. at 1.) The Trooper testified that he was in the second lane of travel when he merged with a brown Chevy blazer. Id. The blazer was driving on the right-hand side of the Trooper’s vehicle, in the first lane of travel, when the Trooper observed that the driver of the blazer was not wearing a seatbelt. Id. The Trooper, who was on a seatbelt government program that day, conducted a

traffic stop of the vehicle just north of Smithfield Avenue on the Pawtucket/Providence line. Id. At that time, the Trooper noticed that both the driver and the passenger's seatbelts were against the pillars on the vehicle, and not strapped across their torsos, as required by Rhode Island law. Id.; see also § 31-22-22. Upon approaching the car, the Trooper identified the driver as the Appellant. (Tr. at 1.)

The Trooper testified that the Appellant was "agitated with the stop" and became "very agitated after I issued the first summons." Id. Upon issuing the summons, the Trooper returned to his cruiser and watched as the Appellant crossed over and stuck his middle finger through the window. Id. The Trooper states that that the Appellant was preoccupied with "flipping me off" and consequently, "exited from the solid breakdown lane into the first lane of travel almost striking a red Toyota that was on the side of him . . . [and] he never had his turn signal on." Id. The Trooper kept his emergency lights activated, waited, pulled the Appellant back over and approached Appellant's window. The Appellant argued that he used his turn signal, specifically stating, "I used my turn signal, I used my hand." Id. At that time, the Trooper issued the Appellant a second summons for laned roadway violation and turn signal required. Id.

At trial the Appellant disputed the Trooper's testimony and maintained that he was wearing his seatbelt and properly used his left directional to reenter the roadway. Id. at 2. The Appellant argued that he did use a turn signal and there was no way he could have used a hand signal because his window does not open. Id. Additionally, the Appellant contended that at the time of the traffic stop he was wearing a lap strap rather than a cross strap, to which the trial judge responded "[you're] not wearing a seatbelt if you don't have it on the proper way." Id.

After hearing the testimony presented, the trial judge considered Appellant's testimony but found that the Trooper had a clear view into the vehicle and saw that the Appellant and the

passenger were not wearing their seatbelts. Id. Additionally, the trial judge found the Trooper's testimony regarding the laned roadway violation to be credible. Id. The trial judge adopted the Trooper's testimony that Appellant pulled into traffic almost striking another vehicle and did not properly use his turn signal, creating a hazard. Id. Consequently, the trial judge sustained the charges, and the Appellant filed this appeal.

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...;
- (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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that the trial judge's decision to sustain the charged violations was clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Specifically, the Appellant asserts that (1) there is no supporting evidence to establish that the passenger had her seatbelt off, (2) that he had his turn signal on, and (3) that the breakdown lane is not for traffic, as set forth in § 31-15-11.

I

Seatbelt Violations

The Appellant concedes that he was not using his seatbelt properly. However, the Appellant argues that there is no supporting evidence to establish that the passenger had her seatbelt off, specifically noting that the Trooper did not notice the passenger had her seatbelt off until after the vehicle was pulled over and no longer in operation. Furthermore, the Appellant argues that the trial judge did not make a finding of fact as to whether the passenger had her seatbelt fastened.

This Panel determines that the trial judge did find that the passenger was in violation of § 31-22-22 (f). The judge stated “Mr. Delannoy did not have his seatbelt on also further [the Trooper] observed the female passenger did not have a seatbelt on. I believe the officer’s testimony.” (Tr. at 2.) Appellant’s argument disputes a question of fact that was heard and weighed by the trial judge at Appellant’s trial. See Environmental Scientific Corp., 621 A.2d at 208 ([The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute [its] judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). Consequently, this Panel will not substitute its own judgment for that of the trial judge. See § 31-41.1.8 (f).

II

Turn Signal and Laned Roadway Violations

The Appellant contends that he had his turn signal on and the trial judge’s decision to sustain the laned roadway violation was erroneous. This Panel is mindful that “[t]he appeals panel is limited to a determination of whether the hearing justice’s decision is supported by competent evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link v. State, 633 A.2d at 1348). It is well-settled that credibility determinations are within the province of the hearing judge. See Link, 633 A.2d at 1348.

Here, the Trooper testified that he observed Appellant’s vehicle “[break] the solid white line into another lane which somebody already established and he didn’t use his turn signal when he was doing it.” (Tr. at 1.) Subsection (a) of § 31-15-11 provides, in relevant part: “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.”

Moreover, § 31-16-5 sets forth that “No person shall so turn any vehicle without giving an appropriate signal in the manner described in this chapter in the event any other traffic may be affected by the movement.” Sec. 31-16-5 (emphasis added).

Appellant argues on appeal that the red Toyota occupying the lane to his left was positioned directly next to him, not behind him; thus, traffic was not affected by his movement. Id. It is well-established that a turn signal is required whenever there is any traffic even if the motorist’s failure to use a turn signal does not affect that traffic. See State v. Lombardi, 727 A.2d 670, 673 (R.I. 1999) (finding police officer's stop of automobile for failing to use turn signal to be legal, despite defendant's claim that the record revealed that there was no other traffic in area).

Furthermore, Appellant states that regardless of the traffic, he did use his turn signal—attacking the credibility of the Trooper’s trial testimony. As the members of this Panel did not have an opportunity to view the live trial testimony of the Trooper or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [the Trooper and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[,] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206. After listening to the testimony, the trial judge determined that the Trooper’s testimony was credible, stating “I believe his testimony.” (Tr. at 2.)

Regarding the laned roadway violation, Appellant argues that § 31-15-11 is not applicable in this matter. Section 31-15-11 begins “[w]henver 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. . . .” Sec. 31-15-11. Appellant contends that his vehicle was stopped in the breakdown lane, a lane designated for disabled cars and police stops, but not a

lane delineated for traffic. Thus, Appellant reasons that there was only one lane, the lane established by the Toyota, and consequently, §31-15-11 does not apply because the statute only applies to roadways divided into two or more lanes. This Panel notes that the breakdown lane is for vehicles in traffic that are disabled or pulled over, and thus, §31-15-11 does apply. Moreover, the record in this case illustrates that regardless of the lanes, it was hazardous for Appellant to cross over the line. Marran, 672 A.2d at 876; see Tr. at 3 (trial judge finding that Appellant's movements "created a hazard"). Based upon the Trooper's testimony and the evidence on the record, the trial judge's decision to sustain the laned roadway and turn signal violations is not erroneous or affected by error of law.

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 supported by the reliable, probative, and substantial evidence of record. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations sustained.

ENTERED:

Judge Lillian M. Almeida (Chair)

Administrative Magistrate Dominic A. DiSandro III

Magistrate Alan R. Goulart

DATE: _____