

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

JUSTIN ZEBROWSKI-BLACKSON

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C.A. No. T09-0107

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on December 2, 2009—Chief Magistrate Guglietta (Chair, presiding) and Judge Almeida and Magistrate Goulart, sitting—is Justin Zebrowski-Blackson's (Appellant) appeal from a decision of Judge Parker, sustaining the charged violation of G.L. 1956 § 31-15-16, "Use of emergency break-down lane for travel." The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On July 24, 2009, State Police Trooper Number 182 (Trooper) observed the subject vehicle, operated by Appellant, traveling in the emergency breakdown lane of Route 4 in North Kingstown. Subsequently, the Trooper charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial.

At trial, the Trooper testified that he was on Route 4 South in North Kingstown, at 6:21 p.m., when he observed a vehicle traveling in the breakdown lane at approximately thirty-five (35) to forty-five (45) miles per hour (mph). The Trooper watched as the subject vehicle drove in the breakdown lane for "about four miles." (Tr. at 1.) According to the Trooper, the vehicle was neither broken down nor was there smoke coming out of the engine. Id.

The court next heard testimony from Appellant. Appellant explained to the trial judge that he “was driving [in the breakdown lane] because [his] car was breaking down[.] [He has] a floating needle and whenever it goes up to high [he] do[esn’t] know if its breaking down and [he has] to stop and wait for [the vehicle] to cool off.” (Tr. at 1.) When the Trooper approached his vehicle, Appellant did not inform him that the car was potentially breaking down because Appellant admits that he gets “really nervous” whenever he is stopped by the police so he tries “not to talk as much.” Id. Appellant contends that he stepped outside his car, to look at the radiator for about five minutes, so he “guessed” that the Trooper “would probably know something was wrong or broken with it.” Id.

Following the trial, the trial judge found that the testimony of the Trooper—explaining his observations of Appellant’s vehicle “traveling for over a quarter of a mile in the breakdown lane”—was credible. (Tr. at 2.) Thus, the trial judge sustained the charged violation of § 31-15-16. 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 appellant 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 judge's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial judge abused his discretion by choosing to credit the testimony of the Trooper over his own testimony. The members of this Panel disagree.

In Link, our Supreme Court made clear that 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, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co., 586 A.2d at 537). 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] [them,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . and what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206. “[W]hen credibility evaluations are implicated . . . the standard of review [imposed upon this Panel] requires [us] to defer to the evidentiary findings of the trial judge.” Id.

It is outside the scope of this Panel’s review to assess the credibility of either the Trooper or Appellant’s testimony. The trial judge found the testimony of the Trooper to be concise and on point, as well as more credible than that of Appellant. (Tr. at 2.) Therefore, it is impermissible for this Panel to second-guess the trial judge’s determinations and substitute our judgment for that of the trial judge.

Additionally, this Panel must affirm the trial judge’s decision if it is supported by the reliable, probative, and substantial evidence of record. Link, 633 A.2d at 1348; see Enviromental Scientific Corp., 621 A.2d at 208. At trial, the Trooper testified that Appellant was “traveling in the breakdown lane for about four miles.” (Tr. at 1.) Moreover, according to the Trooper’s testimony, Appellant’s vehicle was not broken down, and smoke was not coming out of the engine. However, Appellant continued to drive his vehicle in the emergency breakdown lane of Route 4 South. Id. Furthermore, during the trial Appellant admitted to operating his vehicle in

the breakdown lane when he stated, "I wanted to continue driving until there was no railing just because the traffic was heavy" (Tr. at 1.)

Based on the testimonial evidence before this Panel, we agree with the trial judge's findings that Appellant "operate[d] a motor vehicle for travel on the emergency break-down lane of the highway" for four miles. Section 31-15-16 and Tr. at 2. Relying on the record before this Panel, we are satisfied that the trial judge's decision is not erroneous in view of the reliable, probative and substantial testimonial evidence on the record.

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 is neither characterized by abuse of discretion nor erroneous in view of the reliable, probative, and substantial evidence on the record. The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation of § 31-15-16 is sustained.

ENTERED:

3-29-10