

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. T16-0014
16503500286**

PETER TURNER

DECISION

PER CURIAM: Before this Panel on July 20, 2016—Magistrate Goulart (Chair), Judge Almeida, and Judge Parker, sitting—is Peter Turner’s (Appellant) appeal from a decision of Chief Magistrate Guglietta (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-16-4, “Places where U-turns prohibited.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On March 3, 2016, Officer Ryan Halpin (Officer Halpin) of the South Kingstown Police Department charged Appellant with the aforementioned violation of the motor vehicle code. *See* Summons No. 16503500286. The Appellant contested the charge, and the matter proceeded to trial on May 16, 2016. (Tr. at 1.)

At trial, Officer Halpin testified that he was working a stationary detail for the Rhode Island Department of Transportation on Route 1 in North Kingstown. *Id.* Officer Halpin was approached by Samantha Smith (Ms. Smith), who was working in the same area. *Id.* Ms. Smith complained of a motorist that was frustrated with the traffic conditions *Id.* The motorist drove

within close proximity to Ms. Smith, yelled vulgarities at her, and then proceeded to make a U-turn. *Id.* Officer Halpin confirmed this with a laborer, Christopher Marley (Mr. Marley). *Id.*

Officer Halpin obtained the license plate and vehicle description from Ms. Smith and Mr. Marley. *Id.* Officer Halpin then contacted Appellant, who admitted that he was driving in the area, and that he was involved in the incident. *Id.* at 2. The Appellant explained that he was frustrated because Ms. Smith was not paying attention and failed to direct Appellant through a construction zone before a large piece of machinery blocked the roadway. *Id.* The Appellant also admitted to making a U-turn in the construction zone. *Id.* Officer Halpin informed Appellant that he would be mailed a citation. *Id.*

Officer Halpin further testified that the roadway was marked with a double, yellow medium line, and that the roadway was periodically condensed to a single lane. *Id.* at 2-3. To illustrate, Officer Halpin drew the scene of the incident to the best of his ability. *Id.* at 9. Ms. Smith and Mr. Marley also testified at trial, confirming Officer Halpin's testimony. *Id.* at 6-8.

The Appellant testified that he was traveling northbound on Route 1 and took the Pond Street exit. *Id.* at 13. He explained that he stopped his vehicle when he noticed the construction. *Id.* He further testified that when he stopped, there was no traffic in front or behind his vehicle. *Id.* Rather than waiting for the instruction from Ms. Smith to proceed, Appellant made a three-point U-turn. *Id.* at 14. In the middle of the U-turn, Appellant rolled down his window and spoke with Ms. Smith. *Id.* He then completed the U-turn and drove away from the construction site. *Id.* at 15.

After hearing all of the testimony, the Trial Magistrate acknowledged that Officer Halpin investigated the incident between Appellant and Ms. Smith by speaking with Ms. Smith, Mr. Harvey, and Appellant. *Id.* at 18-19. The Trial Magistrate noted that this particular area of Pond

Street was under construction and that Jersey barriers utilized along with road markings to accommodate the construction. *Id.*

The Trial Magistrate found that while Appellant was stopped, waiting for a machine to leave the roadway, he made a U-turn and drove away in the opposite direction. *Id.* at 20. Moreover, the Trial Magistrate explained that it was irrelevant whether the turn was a U-turn or a three-point turn, because the applicable statute states “no vehicle shall be turned as to proceed in the opposite direction where the vehicle can’t be seen by vehicles approaching in the opposite direction.” *Id.* at 20-21. The Trial Magistrate found it “significant” that the area was a construction site and that a machine was blocking the roadway. *Id.* at 21. Based on these findings, the Trial Magistrate concluded that the condition of the particular roadway was cause for concern for traffic proceeding in the opposite direction. *Id.* Based on the testimony, the Trial Magistrate determined by “clear and convincing evidence” that Appellant violated § 31-16-4. *Id.*

Thereafter, Appellant filed a timely appeal of the Trial Magistrate’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 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 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 Magistrate’s decision was in violation of statutory provisions, affected by error of law, and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(1), (4)-(5).

Specifically, Appellant claims that the Trial Magistrate erred by sustaining the charged violation as there was insufficient evidence offered at trial to support the elements of the charge.¹

The Rhode Island Supreme Court has repeatedly held: “[W]hen the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Iselin v. Ret. Bd. of Emps’ Ret. Sys. of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). Alternatively, the Court “must examine an ambiguous statute in its entirety and determine ‘the intent and purpose of the Legislature.’” *State v. Peterson*, 772 A.2d 259, 264 (R.I. 1998) (quoting *In re Advisory to the Governor*, 688 A.2d 1246, 1248 (R.I. 1996)).

Section 31-16-4 states, in pertinent part:

“No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to, or near the crest of a grade, where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet (500’).” Sec. § 31-16-4.

The clear and unambiguous language of § 31-16-4 indicates that a violation occurs when a motorist turns a vehicle so as to proceed in the opposite direction, and does so upon a curve, or upon the approach to, or near the crest of a grade, at a point where other motorists traveling in either direction cannot see the turning vehicle. *Id.*; *Iselin*, 943 A.2d at 1049 (quoting *Accent Store Design, Inc.*, 674 A.2d at 1226).

¹ Additionally, Appellant argues (1) that he was unable to proceed forward because the road was blocked and (2) that the police report was inadmissible hearsay. This Panel finds that both arguments are without merit. The fact that the road was blocked by Ms. Smith is not relevant to whether Appellant violated § 31-16-4. Moreover, the witness statements contained within the police report are also not relevant as both witnesses testified at trial.

The Appellant does not contest the fact that he turned his vehicle so as to travel in the opposite direction. (Tr. at 14.) However, the record is devoid of any evidence showing that Appellant turned his vehicle while on a curve or near the crest of a grade. There also was no testimony indicating that there were vehicles approaching from either direction within five hundred feet. In fact, the record indicates that Appellant testified that there were no vehicles in front of or behind him at the time he made the turn. *Id.* at 13. Even though the illustration drawn by Officer Halpin indicates that the area was a straight-away, the Trial Magistrate's findings focus on the fact that the area was a construction site that encompassed conditions that could have made it difficult for a driver approaching from the opposite direction to see Appellant's vehicle. *Id.* at 20-21; Tr. Ex. 1. While the Trial Magistrate's finding is supported by the record, it does not negate the lack of evidence proving that Appellant's vehicle turned on a curve or near the crest of a grade in a place where motorists approaching in either direction could not see. *See* § 31-16-4.

Based on a review of the record, this Panel finds that the record does not contain sufficient evidence to support a violation of § 31-16-4. Therefore, the Trial Magistrate's decision is clearly erroneous in light of the probative, reliable, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5).

IV

Conclusion

This Panel has reviewed the entire record before it. For the reasons stated above, the members of this Panel are satisfied that the Trial Magistrate's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Judge Lillian M. Almeida

Judge Edward C. Parker

DATE: _____