STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T18-0025**
	:	**18405502719**
TAYLA DELVECCHIO	**:**	

DECISION

PER CURIAM: Before this Panel on March 13, 2019—Magistrate Kruse Weller (Chair), Associate Judge Almeida, and Magistrate Goulart, sitting—is Tayla DelVecchio's (Appellant) appeal from a decision of Magistrate William T. Noonan (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-14-1, "Reasonable and prudent speeds." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On August 24, 2018, Officer James Provuncher (Officer Provuncher) of the Johnston Police Department responded to 2862 Hartford Avenue in Johnston for a reported motor vehicle accident with possible injuries. (Tr. at 1.) Based upon his observations at the scene and conversations with two independent witnesses, Officer Provuncher issued Appellant, the operator of a vehicle involved in the collision, a citation for the above-mentioned violation. *Id.* at 3; *see* Summons No. 18405502719.[1]

[1] Officer Provuncher also cited Appellant with violating § 31-14-3, "Conditions requiring reduced speed." *See* Summons No. 18405502719. However, the Trial Magistrate granted Appellant's motion to dismiss that charge at trial. (Tr. at 22-23.)

The Appellant contested the charged violation, and the Johnston Municipal Court held a trial on this matter on November 15, 2018. (Tr. at 1.) At trial, Officer Provuncher testified as the first witness. *Id.* When he arrived at the scene of the accident, Officer Provuncher observed Appellant's motorcycle "lying on its side in the eastbound lane of Hartford Avenue" and the other vehicle involved in the accident "facing southeast across the westbound lanes of travel on Hartford Avenue." *Id.* at 1-2. Appellant's motorcycle "sustained complete disabling damage including [a] broke[n] right front tire and rim" while the other vehicle "sustained damage to the right driver['s] side panel along with damage to the rear left driver['s] side tire and rim." *Id.* at 2.

Both motorists were located outside their vehicles when Officer Provuncher arrived. *Id.* Appellant was "lying on her right side" approximately ten to fifteen feet "east of the motorcycle." *Id.* Officer Provuncher did not speak with Appellant at the scene of the accident because emergency technicians were treating her injuries. *Id.* However, Officer Provuncher did speak with the driver of the other vehicle, Parker Bellem (Mr. Bellem), who "was upset on scene and visibly shaken and did have a hard time composing himself." *Id.*

Next, Officer Provuncher testified that there were two independent witnesses at the scene: Paul Olsen (Mr. Olsen) and Ronald Fagan (Mr. Fagan). *Id.* Officer Provuncher testified as to what Mr. Olsen and Mr. Fagan told him at the scene regarding how the accident had occurred. *Id.* at 2—3. However, the Trial Magistrate admitted this testimony only "because it goes to the course and conduct of the officer's investigation," and did not accept the testimony for the truth of the matter asserted. *Id.* Based on "the evidence on the scene and the [two] independent witnesses," Officer Provuncher cited Appellant with violations of §§ 31-14-1 and 31-14-3. *Id.* at 3.

Officer Psilopoulos of the Johnston Police Department accident reconstruction division testified next. *Id.* at 8. On the morning following the accident, the Johnston Police Department notified Officer Psilopoulos of "a motor vehicle accident involving a motorcycle with serious injury." *Id.* Thereafter, Officer Psilopoulos obtained a statement from Mr. Bellem, who advised Officer Psilopoulos that "he looked in both directions . . . to make sure that he had a clear exit prior to leaving the parking lot[.] When he exited[,] . . . his vehicle was struck on the driver's side rear corner which resulted in his vehicle spinning counter clockwise[.]" *Id.*

On August 30, 2019, Officer Psilopoulos "made contact with [Appellant] after confirming that she was in a recovery room." *Id.* Appellant informed Officer Psilopoulos that on the day of the accident, while traveling eastbound on Hartford Avenue, she "observed the pick-up truck exiting from the gas station abruptly. . . crossing into her travel lane and striking her motorcycle. She was knocked from her motorcycle and had no recollection of what the events were that took place after that." *Id.*

Subsequently, on September 4, 2018, Officer Psilopoulos responded to the gas station near the scene of the accident to obtain video surveillance of the area. *Id.* Officer Psilopoulos explained:

> "[T]raffic on Hartford Avenue was moderate at the time. Video shows [Mr. Bellem] at the gas pump facing east. . . . Observation shows him pulling out of the business in a north direction turning to head west. Exits the lot heads on to Hartford Avenue headed west. Further observation shows the initial impact between the left rear quarter of [Mr. Bellem's] vehicle [ ] and [Appellant's] motorcycle which was traveling eastbound. Upon impact [Appellant] was thrown from the [motorcycle]."

Id. at 8-9. Officer Psilopoulos also contacted Mr. Olsen, who stated that "he believed [Appellant] was traveling at a high rate of speed . . . [approximately] in excess of 55 mph." *Id.* at 9. Officer Psilopoulos testified that his "reconstruction formulas and methods based on [the]

significance of this accident were inclusive [sic] as to providing a set formula [he] could utilize" to determine Appellant's speed. *Id.* However, based on Officer Psilopoulos's training and fifteen years' experience in traffic accident reconstruction, his "best estimation is that [Appellant] was traveling in excess of the posted speed limit which was 35 mph." *Id.*

The Trial Magistrate viewed the surveillance video at trial, and the parties stipulated that the video "is the video of the actual accident." *Id.* at 12. Furthermore, the Trial Magistrate noted on the record, "[T]he video shows the car leaving the Sunoco parking lot and a motorcycle approaching the vehicle and the collision presumably occurred off camera[.]" *Id.* at 13. The Trial Magistrate then viewed a second surveillance video, stating, "[T]he video shows [Mr. Bellem] in the parking lot of the Sunoco station from a different angle than the previous video did . . . the video shows the collision between the vehicle previously identified as [Mr. Bellem's] and [Appellant's]." *Id.*

Lastly, Mr. Olsen, one of the independent witnesses, testified at trial. *Id.* at 15. Mr. Olsen testified that on the day of the accident, he was "traveling east on Route 6" in the right lane at approximately twenty-five to thirty-five miles per hour. *Id.* At that time, Appellant passed Mr. Olsen in the left lane. *Id.* Shortly thereafter, Mr. Olsen observed Mr. Bellem's vehicle "kind of come out into the lane[,]" but Mr. Bellem's vehicle was at such a distance "where I didn't even need to slow down yet . . . but I saw [Appellant] fly by me and going towards [Mr. Bellem's] truck." *Id.* Mr. Olsen further testified that, at that moment, he remarked to his wife who was also in the car, "[T]his motorcycle is not going to make it, its [sic] going to hit this truck." *Id.* In reviewing the video again, the Trial Magistrate stated on the record that Appellant's vehicle "passes [Mr. Olsen's vehicle] at a much higher rate of speed." *Id.* at 18.

After testimony concluded, counsel for Appellant moved to dismiss the charged violations of §§ 31-14-1 and 31-14-3 because there was "no evidence of actual speed" presented at trial. *Id.* at 19. The Trial Magistrate dismissed the § 31-14-3 charge because none of the conditions requiring reduced speed delineated in the statute were present at the time of the accident. *Id.* at 22-23.

However, the Trial Magistrate sustained the violation of § 31-14-1. *Id.* at 23. In doing so, the Trial Magistrate found the testimony of Officer Provuncher, Officer Psilopoulos, and Mr. Olsen to be credible and adopted said testimony as his findings of fact. *Id.* at 23-24. The Trial Magistrate explicitly found that Mr. Bellem's "pick up truck exits and the next lane over [ ] the [Appellant] appears traveling at a much greater speed than Mr. Olsen's car and comes into collision with [Mr. Bellem's] truck." *Id.* at 24. Moreover, the Trial Magistrate "ruled out that [Mr. Bellem] operated recklessly" because he waited a considerable amount of time for traffic to clear before entering the roadway. *Id.* Therefore, the Trial Magistrate determined that Appellant "violated her obligations under 31.14.1" and imposed the minimum fine. *Id.*

Aggrieved by the Trial Magistrate's decision, Appellant timely filed the instant appeal. 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 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 erred in sustaining the charged violation. Specifically, Appellant avers that the Trial Magistrate's decision is "[i]n violation of constitutional or statutory provisions;" "[a]ffected by other error of law;" and "[c]learly

erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" Sec. 31-41.1-8(f)(1), (4)-(5). The Appellant urges this Panel to reverse the Trial Magistrate's decision on the basis that (1) a violation of § 31-14-1 cannot be sustained on its own without also charging § 31-14-2[2] or § 31-14-3[3], and (2) that the evidence on the record does not establish that Appellant violated § 31-14-1.

[2] Section 31-14-2(a) reads: "Where no special hazard exists that requires lower speed for compliance with § 31-14-1, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this title shall be lawful, but any speed in excess of the limits specified in this section or established as authorized in this title shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

> "(1) Twenty-five miles per hour (25 mph) in any business or residence district;
> "(2) Fifty miles per hour (50 mph) in other locations during the daytime;
> "(3) Forty-five miles per hour (45 mph) in such other locations during the nighttime;
> "(4) Twenty miles per hour (20 mph) in the area within three hundred feet (300') of any school house grounds' entrances and exits during the daytime during the days when schools shall be open.
> "(5) The provisions of subdivision (4) of this subsection shall not apply except when appropriate warning signs are posted in proximity with the boundaries of the area within three hundred feet (300') of the school house grounds, entrances, and exits."

[3] Section 31-14-3(a) sets forth: "The driver of every vehicle shall, consistent with the requirements of § 31-14-1, drive at an appropriate, reduced speed when approaching and crossing an intersection or railroad grade crossing; when approaching and going around a curve; when approaching a hill crest; when traveling upon any narrow or winding roadway; when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions; and in the presence of emergency vehicles displaying flashing lights as provided in § 31-24-31, tow trucks, transporter trucks, highway maintenance equipment displaying flashing lights (while performing maintenance operations), and roadside assistance vehicles displaying flashing amber lights while assisting a disabled motor vehicle."

A

Section 31-14-1, "Reasonable and Prudent Speeds"

The Appellant asserts that a charge of § 31-14-1, in light of the dismissal of § 31-14-3, cannot be sustained because it lacks sufficient specificity of exactly what conduct violated the law. Section 31-14-1 provides, in pertinent part:

> "No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care."

Sec. 31-14-1. Therefore, the prosecution must prove by clear and convincing evidence that the driver operated his or her vehicle "at a speed greater than is reasonable and prudent under the conditions" with regard to the actual and potential hazards existing at the time. Sec. 31-14-1; Trib. R. P. 17(a) (the prosecution bears the burden of proof "to a standard of clear and convincing evidence). The statute further imposes a duty upon all drivers to control the speed of his or her vehicle "as may be necessary to avoid colliding with any person, vehicle, or other conveyance entering the highway in compliance with legal requirements" and exercising due care. Sec. 31-14-1. As such, a driver may not be prosecuted under this statute if the operator of the vehicle with which the driver collided failed to exercise due care upon entering the highway. *Id.*

In *State v. Campbell*, our Supreme Court determined that the language of § 31-14-1, standing alone, did not meet the constitutional test of reasonable certainty set forth in *State v. Scofield*. *State v. Campbell*, 97 R.I, 111, 196 A.2d 131 (1963); *see also State v. Scofield*, 87 R.I. 78, 138 A.2d 415 (1958). The Court found that a complaint charging a motorist with only the language of § 31-14-1 is so lacking in definiteness that a person of ordinary intelligence could

not know at what speed he or she could drive and be within the law. *See Campbell*, 97 R.I. at 113, 196 A.2d at 132. Thus, the Court instructed that a complaint charging a motorist with violating § 31-14-1 must also reference § 31-14-2 or § 31-14-3 in order to adequately apprise the motorist of the specific accusation against him or her. *Id.* at 112, 196 A.2d at 132. In doing so, the motorist is advised that the speed at which he or she traveled was unreasonable because it was in excess of the limits designated in § 31-14-2, or because the motorist failed to reduce his or her speed when he or she encountered one of the hazards specified in § 31-14-3.

However, in *State v. Lutye*, the Court found that in addition to supplementing a charge of § 31-14-1 with § 31-14-2 or § 31-14-3, "[a] third alternative for satisfying the certainty test is to charge that the speed was unreasonable because the operator could not so control his vehicle as to avoid colliding with persons or vehicles as particularized in the second sentence of [§] 31-14-1." *State v. Lutye*, 109 R.I. 490, 493, 287 A.2d 634, 637 (1972); *see also State v. Gabriau*, 113 R.I. 420, 322 A.2d 30 (1974) (affirming the principle that a motorist's failure to control his or her vehicle as to avoid a collision satisfies the certainty requirement). Thus, the second sentence of § 31-14-3 satisfies the certainty requirement by "specifying the conduct which made the speed unreasonable." *Lutye*, 109 R.I. at 493, 287 A.2d at 637; *Gabriau*, 113 R.I at 423, 322 A.2d at 32.

In the instant matter, this Panel finds as a matter of law that the dismissal of § 31-14-3 did not automatically necessitate a dismissal of § 31-14-1 because the specific conduct of which the Appellant is accused is set out in the second sentence of § 31-14-1: "In every event, speed shall be *so controlled as may be necessary to avoid colliding* with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care." *See id.* (emphasis added). This is not a case where the Appellant is accused of traveling at an unreasonable speed beyond that set out in § 31-14-2 or where a hazard

listed in § 31-14-3 exists; rather, the Appellant is accused of traveling at an unreasonable speed because a collision resulted. The Trial Magistrate made this specific finding at trial, stating,

> "See I believe that [§ 31-14-1] is not enough if you were going to just charge for speeding[.] I believe you would also have to have another charge to support it consist [sic] with the previous decision. But this language I believe is dispositive to the facts in this case[,] [']in any event speed shall be so controlled as necessary to avoid colliding with any person, vehicle[,] or other conveyance on or entering the highway in compliance with legal requirements.[']"

(Tr. at 24.) Therefore, this Panel is satisfied that, as a matter of law, the Trial Magistrate's finding that the facts of this case allow a charge of § 31-14-1 to stand alone is not in violation of statutory or constitutional provisions or affected by error of law.

B

Findings of Fact

Having determined that a charge of § 31-14-1 can stand alone given the specific facts of this case, this Panel must now determine whether the Trial Magistrate erred in sustaining the violation. To sustain a violation of § 31-14-1, the evidence must support a finding that the driver did not control his or her vehicle's speed "as may be necessary" to avoid a collision. *See* § 31-14-1.

Here, there is ample evidence on the record establishing that Appellant traveled at an unreasonable speed. For instance, Mr. Olsen credibly testified that he drove his vehicle consistent with the speed limit, but that Appellant passed his vehicle "at a pretty high rate of speed." Tr. at 16; *see also Link*, 633 A.2d at 1348 (a trial justice may draw reasonable inferences from the testimony of the witnesses). In addition, Officer Psilopoulos testified that although he could not determine Appellant's exact speed, based on his training and experience in accident reconstruction, Appellant travelled in excess of the posted thirty-five miles per hour speed limit.

Id. at 9; *see State v. Noble*, 95 R.I. 263, 267 186 A.2d 336, 339 (1962) (where defendant charged with § 31-14-3, evidence of defendant's exact speed not necessary to sustain the violation because "the exact speed with which defendant was operating his automobile was not the issue"). The Trial Magistrate relied on these testimonies as well as the video recording produced at trial to conclude that Appellant operated her vehicle "at an excessively high rate of speed compared to the traffic." *Id.* at 24.

As this Panel cannot substitute its judgment for that of the Trial Magistrate regarding questions of fact or credibility determinations, this Panel will not question the Trial Magistrate's assessment of the weight of the evidence or the witnesses' veracity at trial. *See Link*, 633 A.2d at 1348 (citing *Liberty Mutual Ins. Co.*, 586 A.2d at 537). Accordingly, this Panel concludes that the Trial Magistrate's decision that Appellant operated her vehicle at a speed greater than reasonable was supported by reliable, probative, and substantial evidence. *See* § 31-41.1-8(f)(5).

However, a driver is guilty pursuant to the second part of § 31-14-1 only when the other motorist entered the roadway "in compliance with legal requirements" and using due care. Based on a review of the record, this Panel is not satisfied that the Trial Magistrate made sufficient findings of fact as to whether Mr. Bellem exercised due care in entering the roadway. *See Now Courier, LLC v. Better Carrier Corp.*, 965 A.2d 429, 434 (R.I. 2009) (the trial magistrate, sitting as the fact finder, must make findings of fact and conclusions of law on the record so that a reviewing court may "pass upon the appropriateness of the order and the grounds upon which it rests").

Although the Trial Magistrate "ruled out that [Mr. Bellem] operated recklessly[,]" a finding that Mr. Bellem did not drive his vehicle "recklessly" does not equate to a finding that

Mr. Bellem exercised "due care."[4] Tr. at 24; *see also Cathay Cathay, Inc. v. Vindalu, LLC*, 136 A.3d 1113, 1119 (R.I. 2016) (a trial judge's findings "must contain . . . a factual finding and a conclusion of law on each cause of action adjudicated."). Indeed, as recklessness is a higher standard than due care—and inapplicable here—a driver may very well have failed to exercise due care *without* operating his or her vehicle recklessly. *See Watkins*, 448 A.2d at 1267 (conduct constituting reckless driving "must have constituted more than mere error in judgment by the driver[,]" and "the fact that a defendant drove at an excessive speed does not necessarily establish reckless driving").

Thus, this Panel remands the matter to the Trial Magistrate for further factual findings regarding whether Mr. Bellem exercised due care upon entering the roadway consistent with the requirements of § 31-14-1.

[4] "Conviction under the reckless-driving statute requires evidence that the defendant embarked upon a course of conduct which demonstrates a heedless indifference to the consequences of his action." *State v. Watkins*, 448 A.2d 1260, 1267 (1982) (citing *State v. Dionne*, 442 A.2d 876, 883 (1982)); *see also Scofield*, 87 R.I. at 82, 138 A.2d at 417 ("[T]he word 'recklessly,' as it relates to the operation of motor vehicles, and the phrase 'reckless driving' have acquired a clear and commonly-understood meaning, namely, 'driving in such a manner as to indicate either a *willful or wanton disregard* for the safety of persons or property.'") (emphasis added).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the matter is remanded to the Trial Magistrate for further factual findings consistent with this Decision.

ENTERED:

_____
Magistrate Erika L. Kruse Weller (Chair)

_____
Associate Judge Lillian M. Almeida

_____
Magistrate Alan R. Goulart

DATE: _____