

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

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v.

**C.A. No. T19-0002  
18001520794**

**UTKUR RAKHMANOV**

**DECISION**

**PER CURIAM:** Before this Panel on April 24, 2019—Administrative Magistrate Abbate (Chair), Associate Judge Almeida, and Chief Magistrate DiSandro, sitting—is Utkur Rakhmanov’s (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-27-6, “Commercial vehicle lanes of operation.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On July 16, 2018, Trooper Daniel Gazzola (Trooper Gazzola) of the Rhode Island State Police observed a white tractor trailer truck traveling northbound on interstate 95 in a lane in which commercial vehicles are prohibited from traveling. (Tr. at 5:23-25.) Therefore, Trooper Gazzola conducted a traffic stop of the vehicle, identified the driver as Appellant, and issued Appellant a citation for the above-referenced violation. *Id.* at 6:14-7:7; *see also* Summons No. 180011520794.

Appellant contested the charged violation, and the matter proceeded to trial on February 4, 2019. (Tr. at 3:1-6.) At the start of trial, the Trial Magistrate granted Appellant’s counsel’s

motion to waive Appellant's appearance. *Id.* at 3:10-5:5. Thereafter, Trooper Gazzola testified as the only witness at trial. *Id.* at 5:8-9. Trooper Gazzola testified that on July 16, 2018, he was stationed at a post near T.F. Green Airport in the City of Warwick. *Id.* at 5:11-13. Trooper Gazzola explained that "on this portion of the highway, . . . all the way to the Point Street bridge in the City of Providence, there are signs posted along the highway in the center median and the low speed breakdown lane that state, 'Trucks, buses, campers, trailers are prohibited from the left two lanes.'" *Id.* at 6:1-7. He identified the lanes where the described vehicles are prohibited from traveling as "the Number 3 and Number 4 lane[s] of travel." *Id.* at 6:7-8.

While stationed at this post, Trooper Gazzola "observed a white Freightliner truck tractor bearing Illinois Apportion . . . with attached semi-trailer . . . travelling [sic] in the Number 3 high-speed lane of travel" northbound on interstate 95. *Id.* at 5:13-6:2. He described this vehicle as "a cab, with an attached semi-trailer." *Id.* at 5:21. Due to the travel restrictions in the Number 3 and Number 4 lanes, Trooper Gazzola "proceeded to execute a motor vehicle stop [of Appellant's vehicle] on 95 Northbound, just north of T.F. Green." *Id.* at 6:14-18. During the stop, Trooper Gazzola "observed DOT markings 2099831" on the vehicle, and Appellant "identified himself with his Florida Class CDLA license[.]" *Id.* at 6:18-7:2. Since Appellant had a CDL license and operated what appeared to be a commercial vehicle, Trooper Gazzola performed a "Level 3 Federal inspection, which is a driver-only Federal inspection." *Id.* at 7:3-5. Thereafter, Trooper Gazzola issued Appellant a citation for violating § 31-27-6. *Id.* at 7:5-7.

On examination by the Court, Trooper Gazzola reiterated that "from the area [he] was posted, there's two, possibly three center median signs that state 113, 117. They're usually at the overpasses . . . They state clearly, 'Trucks, buses, campers, trailers prohibited from the far left two lanes.'" *Id.* at 8:1-12. During cross-examination, Trooper Gazzola also clarified that

“further north of 117 that’s where T.F. Green airport is. So I pulled [Appellant] over further north of that location.” *Id.* at 10:17-19.

After Trooper Gazzola’s testimony concluded, Appellant’s counsel moved to dismiss the charged violation. *Id.* at 11:2-3. Appellant’s counsel argued that the violation should be dismissed because the evidence presented at trial did not establish that Appellant’s vehicle was used primarily for commercial purposes. *Id.* at 11:3-8. In addition, Appellant’s counsel asserted that the violation should be dismissed because “there’s been no evidence proffered by the State today that there wasn’t a left-hand exit . . . there’s nothing in the record that says where [Appellant] got pulled over.” *Id.* at 11:8-18.

The Trial Magistrate disagreed with counsel’s argument, and sustained the charged violation. *Id.* at 13:11-13. The Trial Magistrate based his decision on Trooper Gazzola’s testimony, which he found to be credible. *Id.* at 12:7-9. In rendering his decision, the Trial Magistrate was “satisfied that the facts support the charge that there is sufficient evidence to establish that the [Appellant] was operating a commercial vehicle in a prohibited lane of lane travel.” *Id.* at 13:4-9. The Trial Magistrate concluded, “Based on the description of the vehicle as well as the attached semi, that this is a vehicle which is primarily used for interstate transportation of commercial goods.” *Id.* at 12:23-13:2. Moreover, the Trial Magistrate was “certainly satisfied that [Appellant] was operating in the lane of travel, not within a mile of 295. . . it was pretty clear as to where, in fact, [Appellant] was; that he was in a prohibited lane of travel.” *Id.* at 12:19-22.

## 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 avers that the Trial Magistrate erred in sustaining the charged violation. Specifically, Appellant asserts that the Trial Magistrate’s decision is “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[ ]” and “[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion[ ]” because there is no evidence on the record demonstrating (1) that Appellant’s vehicle was primarily used for commercial purposes, and (2) that the area in which Trooper Gazzola stopped Appellant’s vehicle was not within one mile of a left-hand lane exit. Sec. 31-41.1-8(f)(5)-(6); *see* Appellant’s Notice of Appeal, at 2.

Pursuant to Rhode Island Traffic Tribunal Rule of Procedure 17(a), the charged violation must be proved “to a standard of clear and convincing evidence.” Traffic Trib. R. P. 17(a). This standard “requires that the [trial magistrate] form a clear conviction without hesitancy of the truth of the precise facts.” *In re Emilee K.*, 153 A.3d 487, 497 (R.I. 2017) (quoting *In re Veronica T.*, 700 A.2d 1366, 1368 (R.I. 1997)) (internal quotations omitted). Importantly, however, “[t]he clear and convincing evidence standard does not require that the evidence negate all reasonable doubt or that the evidence must be uncontroverted.” *Cahill v. Morrow*, 11 A.3d 82, 88 n.7 (R.I. 2011) (quoting 29 Am. Jur. 2d *Evidence* § 173 at 188–89 (2008)). Moreover, the trial magistrate’s factual findings “concerning whether this clear and convincing evidence burden has been satisfied are entitled to great weight.” *In re Emilee K.*, 153 A.3d at 497. “[S]uch findings generally will not be disturbed on appeal unless they are clearly wrong or

unless the trial justice misconceived or overlooked material evidence.” *Id.* (quoting *In re Veronica T.*, 700 A.2d at 1368).

Here, Trooper Gazzola charged Appellant with violating § 31-27-6, which provides:

(a) Any bus, commercial vehicle, camper, vehicle registered as a camper, trailer, or vehicle carrying a camper or trailer traveling on Rhode Island interstate highways shall be allowed to **travel only in the first two (2) right hand lanes, except in cases of left hand exits, in which case the vehicle shall be allowed to enter the third and fourth left hand lanes one mile prior to an exit.**

(b) For the purpose of this section, “commercial vehicle” means any vehicle registered for commercial purposes and designed and used primarily for the transportation of goods, wares, or merchandise. “Bus” means any vehicle designed for carrying ten (10) or more passengers and used primarily for the transportation of persons.

(c) The provisions of this section shall only be effective during the period that official traffic signs are in place to notify operators of the provisions of this section. Any persons violating the provisions of this section upon conviction shall be fined not more than eighty-five dollars (\$85.00).

Sec. 31-27-6 (emphasis added). The clear and unambiguous language of § 31-27-6 indicates that the types of vehicles listed in the statute are prohibited from traveling in the two leftmost lanes of the highway—unless within one mile of an exit—where posted signs notify operators of this restriction. *Id.*; see *Iselin v. Ret. Bd. of Emps’ Ret. Sys. of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) (“when 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”).

Based upon a review of the entire record, this Panel is satisfied that the Trial Magistrate’s finding that Appellant was driving a commercial vehicle is supported by legally competent evidence.<sup>1</sup> Appellant’s vehicle was a “Freightliner truck tractor . . . with an attached semi-

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<sup>1</sup> Appellant’s counsel argues, in part, that the charge must fail because there was no evidence that Appellant’s vehicle was used for the transportation of goods and, therefore, it was not a

trailer[.]” and when asked for identification, Appellant produced a commercial driver’s license. Tr. at 5:14-21; 7:1-2. In addition, the vehicle had an Illinois apportion number as well as “DOT markings 2099831[.]” which is indicative of a commercial vehicle. *Id.* at 5:14-16; 6:18-19. Lastly, “the carrier that was in charge at this company for the truck, the cab and the trailer, was Century Freight Lines[.]” and Trooper Gazzola testified that he issued the summons “for the commercial vehicle.” *Id.* at 6:19-22; 7:5-7. Accordingly, there is sufficient evidence on the record from which the Trial Magistrate could reasonably infer that Appellant’s vehicle was “designed and used primarily for the transportation of goods, wares, or merchandise.” Sec. 31-27-6(b); *see also State v. Golden*, 430 A.2d 433, 438 (R.I. 1981) (“[A]n ‘inference’ is a deduction that the trier of fact is entitled to make from a proven or admitted fact . . . based upon some evidence, direct or circumstantial[.]”). Therefore, the Trial Magistrate did not err in finding that Appellant was driving a commercial vehicle. *See DeSimone Electric, Inc., v. CMG, Inc., et al.*, 901 A.2d 613, 621 (R.I. 2006) (a trial judge’s or magistrate’s reasonable inferences “are entitled on review to the same weight as other factual determinations.”).

Appellant also avers that the Trial Magistrate’s decision is erroneous because the State failed to demonstrate—and the Trial Magistrate did not specifically find—that there was not a left-hand lane exit within one mile of where Trooper Gazzola stopped Appellant’s vehicle. *See* Appellant’s Notice of Appeal, at 2. First, the Trial Magistrate did find that Appellant “was operating in the lane of travel, not within a mile of 295. . . . it was pretty clear as to where, in

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commercial vehicle. In light of that argument, it bears reiterating that commercial vehicles are not the only types of vehicles that are barred from the two leftmost lanes pursuant to § 31-27-6. Indeed, buses, campers, vehicles registered as campers, trailers, and vehicles carrying campers or trailers also fall within the ambit of § 31-27-6. Thus, even if the record did not establish that Appellant’s vehicle was designed and used primarily for the transportation of goods—which it does—the record clearly establishes that there was a trailer attached to Appellant’s vehicle, thus subjecting Appellant to the provisions of § 31-27-6.

fact, he was; that he was in a prohibited lane of travel.” (Tr. at 12:19-20.) Second, Trooper Gazzola testified in detail as to the exact location on route 95 northbound where the violation occurred. *See* Tr. at 10:17-19 (“further north of 117 that’s where T.F. Green airport is so I pulled him over further north of that location.”). From this testimony describing the location of the stop, the Trial Magistrate could reasonably infer that Appellant’s vehicle was not within one mile of a left-hand lane exit. *See Golden*, 430 A.2d at 438. Since the Trial Magistrate’s reasonable inferences are “entitled on review to the same weight as other factual determinations,” *DeSimone Electric, Inc.*, 901 A.2d at 621, this Panel cannot substitute its judgment for that of the Trial Magistrate. *Link*, 633 A.2d at 1348.

Furthermore, whether Appellant’s vehicle was within one mile of a left-hand lane exit is an affirmative defense to the charged violation. As such, it is the burden of the Appellant to rebut the charge by demonstrating that he was traveling within one mile of a left-hand lane exit. Indeed, where an appellant “contends that circumstances exist which would serve to exempt him from the effect of the statute or to excuse his conduct alleged to violate the statute, . . . it is the burden of the [appellant] to adduce evidence sufficient to establish the existence of such matter, whether it is an affirmative defense or in the nature of an affirmative defense.” *State v. Brown*, 97 R.I. 95, 99, 196 A.2d 138, 141 (1963).

Here, the language of § 31-27-6(a) “except[ing]” a driver who is within one mile of a left-hand exit “from the effects of the statute” makes clear that this is an affirmative defense which must be proved by the driver charged under the statute. Sec. 31-27-6(a); *Brown*, 97 R.I. at 99, 196 A.2d at 141; *see also State v. Gabriau*, 696 A.2d 290, 295 (R.I. 1997) (“[T]he burden of going forward with the evidence may indeed shift from side to side, and this same burden may properly devolve upon a defendant once the state has developed a prima facie case and has



adduced evidence sufficient to make it just that *the defendant be required to challenge the proof with excuse or explanation.*”) (emphasis added). Since Appellant presented no evidence at trial showing that there was a left-hand lane exit within one mile of where the stop occurred, the Trial Magistrate’s finding—based on Trooper Gazzola’s uncontradicted testimony—was not erroneous. *Norton v. Courtemanche*, 798 A.2d 925, 932 (R.I. 2002) (a trial judge or magistrate “may not arbitrarily disregard uncontradicted testimony” unless such testimony “contains inherent improbabilities or contradictions”).

For the reasons stated above, this Panel finds that there is legally competent evidence in the record to support the Trial Magistrate’s decision to sustain the charged violation. Accordingly, this Panel concludes that the Trial Magistrate’s decision was not “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record;” or “[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” *See* § 31-41.1-8(f)(5)-(6).

**IV**

**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 neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

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Administrative Magistrate Joseph A. Abbate (Chair)

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Associate Judge Lillian M. Almeida

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Chief Magistrate Domenic A. DiSandro, III

DATE: \_\_\_\_\_