

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

NICHOLAS GELFUSO

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**C.A. No. T14-0024
14001503818**

DECISION

PER CURIAM: Before this Panel on May 21, 2014—Judge Almeida (Chair, presiding), Judge Parker, and Magistrate Noonan, sitting—is Nicholas Gelfuso’s (Appellant) appeal from a decision of Magistrate Abbate, sustaining the charged violations of G.L. 1956 § 31-14-3, “Conditions requiring reduced speed,” and § 31-15-11, “Laned Roadway Violations.” The Appellant appeared before this Panel pro se. However, Appellant was represented at trial by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On February 1, 2014 Trooper Nicholas Ravello 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 April 3, 2014.

It is important to note at the outset that Appellant has argued that the case be dismissed due to the Traffic Tribunals lack of jurisdiction on this matter. (Tr. at 4.) In particular, Appellant asserted that this Tribunal’s exercise of judicial authority was in violation of Article 10, Section 4 of the Rhode Island Constitution and a violation of Appellant’s due process rights

pursuant to Article 1, Section 2 of the United States Constitution. Id. In denying Appellant's motion to dismiss on the aforementioned grounds, the trial magistrate questioned, if Appellant had satisfied § 9-30-11 by providing notice to the Attorney General of the Constitutional issue being raised. (Tr. at 5.) Appellant's counsel alerted the Court that it had not, in fact, provided the Department of the Attorney General with the requisite notice. Id. As a result, the trial magistrate refused to consider Appellant's jurisdictional argument and denied the motion to dismiss. (Tr. at 5.)

At trial, the Trooper testified that on February 1, 2014, he was assisting another Trooper with a motor vehicle stop on Route 95 North at Exit 25, Smithfield Avenue, in the City of Providence. (Tr. at 2.) Moreover, the Trooper explained, that for safety reasons, he was giving the other Trooper cover by providing emergency lights and angling the vehicle in order to protect the Trooper from other motorists traveling on the highway. (Tr. at 6.) At that time, the Trooper explained that he observed a Jeep Grand Cherokee proceeding towards him and that the vehicle made no attempt to slow below the posted speed limit or yield the lane by moving into another lane of travel. (Tr. at 2.) Thereafter, the Trooper stated that he turned his cruiser's emergency lights off, that he began to follow the vehicle, and that he observed three distinct lane roadway violations. Id. Specifically, the Trooper testified that he observed Appellant swerve into the break down lane on three separate occasions. Id.

Next, Appellant's counsel asked the Trooper to describe the flow of traffic and the Trooper indicated that there was a medium flow of traffic. (Tr. at 6.) Appellant's counsel further inquired as to whether or not the Trooper had utilized a radar gun to ascertain Appellant's speed and the Trooper answered in the negative. Id. Moreover, counsel asked what the posted speed limit within that area was, and the Trooper responded that it was a fifty-five (55) mile per

hour zone. Id. In addition, counsel asked if Appellant attempted to move into another lane of travel and whether or not Appellant decelerated. (Tr. at 7.) The Trooper responded in the negative to both inquiries. Id. Furthermore, the Trooper testified that Appellant's vehicle was the only vehicle traveling in the right lane, bordering the breakdown lane, at the time Appellant's vehicle approached the two marked cruisers. (Tr. at 8.)

Subsequently, the trial magistrate issued his decision sustaining the charged violations. (Tr. at 13-16.) In particular, the trial magistrate credited the Trooper's testimony regarding the Appellant's swerving into the breakdown lane on three separate occasions. (Tr. at 15.) Additionally, the trial magistrate credited the Trooper's testimony concerning Appellant's failure to reduce speed or move into another lane of travel as he approached the Trooper's cruiser with emergency lights activated. (Tr. at 14.) Aggrieved by the trial magistrate's decision to sustain the charges, Appellant timely filed the instant 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 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 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.” 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 [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that the trial magistrate’s decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant asserts that the trial magistrate erred by crediting the testimony of the Trooper over his testimony. Additionally, Appellant asserts that that the trial magistrate’s decision to sustain he charge was an error of law. In particular, Appellant argues that the prosecution failed to meet its burden of proof as there was no testimony establishing that Appellant could have changed lanes or reduced speed in safe manner.

§ 31-14-3, “Conditions requiring reduced speed”

A

Credibility

Appellant contends that the trial magistrate’s decision to sustain the charge was clearly erroneous. In particular, Appellant asserts that the trial magistrate erred when he credited the Officer’s testimony over his own testimony and found that the State had proven each and every element of the aforementioned charge by clear and convincing evidence.

In actions tried upon the facts without a jury, the trial justice sits as a trier of fact as well as of law, and consequently, the trial justice weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences. See Parella v. Montalbano, 899 A.2d 1226 (R.I. 2006). In weighing and considering the evidence, the “trial justice has wide discretion in determining the relevancy, materiality, and admissibility of offered evidence” Accetta v. Provençal, 962 A.2d 56, 60 (R.I. 2009) (quoting State v. Lora, 850 A.2d 109, 111 (R.I. 2004)).

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 [magistrate] concerning the weight of the evidence on questions of fact.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). 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 magistrate determined that the Trooper's testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. See Tr. at 13-16. "[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [magistrate] concerning the weight of the evidence on questions of fact." Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the trial magistrate credited the Trooper's testimony concerning Appellant's failure to reduce speed and move into another lane of travel as he approached the Trooper's cruiser with emergency lights activated. See Tr. at 14. Additionally, the trial magistrate credited the Trooper's testimony regarding the Appellant's swerving into the breakdown lane on three separate occasions. See Tr. at 15. Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate's decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (the [appellate court] should give great deference to the [trial magistrate's] findings and conclusions unless clearly wrong).

B

SECTION 31-14-3

Appellant also asserts that the trial magistrate's decision was based on an error of law. Specifically, Appellant argues that it was necessary for the Trooper to testify that it was unsafe for the Appellant to change lanes or reduce speed.

Section 31-14-3 states, in pertinent part, that "[t]he driver of every vehicle shall. . .drive at an appropriate reduced speed when. . . special hazard exists with respect to. . .other traffic or by reason of weather or highway conditions and in the presence of emergency vehicles

displaying flashing lights.” § 31-14-3. Section 31-14-3(b) goes on to provide that when a motorist approaches an emergency vehicle the motorist shall either “[s]low the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed until completely past the authorized emergency vehicle or move their motor “vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle and continue traveling in that lane until safely clear of the authorized emergency vehicle.” Id.

This Panel agrees that § 31-14-3 (b) does not require a motorist to reduce speed or move into another a lane when the motorist approaches an emergency vehicle with lights activated unless the reduction in speed or lane change can be made safely. See § 31-14-3 (b). Here, the Trooper’s testimony was that there was no other traffic within Appellant’s lane of travel at the time he approached the cruiser with emergency lights activated. See Tr. at 8. The record also indicates that Appellant failed to yield the lane by changing lanes and also failed to reduce his speed. See Tr. at 2; § 31-14-3 (b). While the record is devoid of any testimony that Appellant could have changed lanes safely or any testimony regarding the volume of traffic in the adjacent lane at the time Appellant passed the Trooper’s vehicle, it is clear that a reduction in speed could have been safely made because the Trooper testified that there was no one else traveling behind Appellant at that time. See Tr. at 2 and 8; § 31-14-3 (b). Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate’s decision to sustain the charged violation was not an error of law. Environmental Scientific Corp., 621 A.2d at 209.

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 supported by the reliable, probative,

and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Judge Lillian M. Almeida (Chair)

Judge Edward C. Parker

Magistrate William T. Noonan

DATE: _____