STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF BRISTOL	**:**	
	:	
v.	**:**	**C.A. No. M15-0040**
	:	**15102500857**
DANIELE NOGUEIRA	**:**	

DECISION

PER CURIAM: Before this Panel on January 20, 2016—Magistrate Goulart (Chair), Chief Magistrate Guglietta, and Judge Almeida, sitting—is Daniele Nogueira's (Appellant) appeal from a decision of Municipal Court Judge Howlett (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-15-1, "Right Half of Road." The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On August 14, 2015, Officer Barry Corina (Officer) of the Bristol Police Department charged the Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on October 13, 2015.

At trial, the Officer testified that at approximately 2:04 a.m. he was on patrol traveling south on Metacom Avenue in Bristol, driving directly behind a silver Mercedes Benz. (Tr. at 3.) The Officer observed the Mercedes "travel over the white fog line with both passenger side tires and mount the grated curbing and sidewalk." Id. The Mercedes soon returned to the lane of travel and then, again, crossed over the white fog line. Id. At this point, the Officer activated his emergency equipment and conducted a traffic stop of the Mercedes. Id. Upon stopping the Mercedes, the Officer identified the operator as the Appellant, and identified the passenger as Gilmore Andrade. Id. The Officer also observed a small dog that was unrestricted within the

passenger compartment of the Mercedes. Id. The Officer asked the Appellant to explain her reason for operating the Mercedes outside the paved surface of the road. Id. The Officer recalled Appellant answering "the dog—something along the lines of the dog was trying to get in the front seat or something similar." Id. Finding Appellant's reasoning to be unpersuasive, the Officer issued Appellant a citation for § 31-15-1, "Right Half of Road."

At the conclusion of the Officer's testimony, the Appellant was afforded an opportunity to question the Officer. Appellant began by stating "[w]ell that's not all that happened. You left a lot of stuff out." Id. Appellant continued, "[w]hen I asked you if I was speeding you said that I was driving in the white lane for ten minutes. And I had just left the ATM . . . so that wouldn't even be ten minutes." Id. at 3-4. The Appellant then recalled "you asked me if I had something to drink. I told you that I went to Aiden's and I had a beer. And you made me walk out of my car, and you did the drunk test on me. And you were going to charge me for driving under the influence." Id. at 4. At this point, the Trial Judge interrupted the Appellant and instructed her to ask the Officer questions and to refrain from testifying. Id. However, before the Appellant could properly cross-examine the Officer, the Officer addressed the statements Appellant had just made. The Officer disputed Appellant's recollection, stating "when you asked me if you were speeding I told you [that] you were driving over the white fog line. I don't believe I told you ten minutes because from . . . Metacom and Pagnano Street to the point where I stopped you is probably about two minutes." Id. The Officer maintained that Appellant was not driving in the lane the entire time but rather "was in and out of that lane." Id.

The Officer then defended his reasoning to suspect that Appellant was driving under the influence. Id. He stated "[t]hat behavior, that type of driving, erratic operation is indicative of somebody who is under the influence of alcohol." Id. The Officer added that there was an odor

of alcohol coming from Appellant's vehicle and Appellant admitted to consuming some alcoholic beverages prior to driving. Id. Based on these observations, the Officer conducted a field sobriety test, which the Appellant successfully completed. Id. The Appellant responded to the Officer, "[b]ut you told me . . . that I was going to get [a] ticket because . . . it's against the law to have a puppy driving with you in the car in the State of Rhode Island." Id. at 5. The Officer explained, "in lieu of me giving you a ticket for driving with a loose animal in your vehicle . . . instead of giving you two summonses which would have been an additional cost . . . I gave you one ticket for leaving the lane of travel." Id.

At the conclusion of cross-examination, the Appellant presented her case. Appellant stated that she was coming out of the ATM, driving at approximately twenty-five (25) to thirty (30) miles an hour when she was pulled over by the Officer. Id. at 6. At first, Appellant thought she was being pulled over for speeding but then the Officer informed her that she was "driving [for] ten minutes on the white line." Id. Appellant recalled that the Officer posed questions to the passenger in the Mercedes and then requested that Appellant submit to a field sobriety test. Id. Appellant stated that after the test the Officer spoke to another police officer and then returned to the Mercedes and told Appellant that she "couldn't have [her] dog with [her] while driving." Id. Appellant explained that she was confused because she thought she was being charged with having a dog with her while driving, an action that she did not realize was in violation of the law. Id. The Appellant further explained that she "didn't understand why . . . all of the sudden he said that I swerved." Id. Appellant maintained that she did not agree with the Officer's decision to issue her a ticket for § 31-15-1, "Right Half of Road," and did not want to sign for the charge, but was instructed by the Officer to sign it anyways. Id.

After Appellant's testimony, the Officer cross-examined the Appellant.[1] The Officer began by citing § 31-22-28, "Transporting Animals." This statute makes it unlawful for a driver to transport any animal in an "open air motor vehicle" unless certain safety measures are met. Id. at 7. The Officer then focused on whether the Appellant may have been distracted by her dog while driving, causing her to veer from the lane of travel. Id. The Officer asked, "[w]ould it be reasonable to say that your dog inside of the vehicle caused some type of distraction that could have caused you to go over the white line?" The Appellant responded, "[w]ell my friend was holding him. And we were about to make a right turn. That's when he jumped onto my lap." Id. The Appellant then added "[i]f you're saying that I swerved, yea, that could have been the case, but if you said that I was traveling on the fog lane for [ten minutes] then no." Id.

After hearing the testimony presented, the Trial Judge restated the facts according to the Officer's perspective and then issued a decision based solely on Appellant's testimony. Id. at 8-9. The Trial Judge stated:

> "[b]ased on the testimony that I heard I'm entering [a] finding of guilty. And this is because [Appellant] . . . honestly testified that it could have been the case that [her] puppy was in the car and . . . was trying to jump into [her] lap . . . [which] caused [Appellant] to travel over the white line. And therefore [Appellant] fall[s] into the violations that I enumerated under § 31-15-1." Id. at 9.

The Trial Judge also stated "§ 31-15-1 . . . states that you shall drive on the right half of the roadway unless you're overtaking or passing another vehicle which you weren't . . . I heard nothing about that [nor did I hear] if the roadway is divided into three marked lanes for travel." Id. The Trial Judge then, sua sponte, took judicial notice that "Metacom Avenue is two lanes,

[1] This Panel is mindful that the Officer's cross-examination of the Appellant was not an issue raised on appeal. Additionally, we recognize that the Officer may, indeed, be licensed to practice law. However, where the record is devoid of the Officer's legal credentials, and with no indication in the record that he is a licensed attorney, we find it prudent to express our disapproval of the Officer's questioning of the witness in the case. See §§ 11-27-2, 11-27-5.

one in each direction and the last one is upon a roadway designated and sign posted for one way traffic, but there is no testimony on that." Id. Despite finding the evidence to be lacking, the Trial Judge sustained the charged violation, § 31-15-1. Aggrieved by the Trial Judge's decision, Appellant timely filed this 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:
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> "(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 contends that the Trial Judge's decision to sustain the charged violation was an abuse of discretion and was not supported by reliable, probative, and substantial evidence on the record. Specifically, Appellant maintains (1) the language barrier prevented her from understanding the questions posed to her at trial and therefore she did not have the opportunity to fully present a defense; and (2) the Officer did not establish by clear and convincing evidence that she had violated § 31-15-1.

Alleged Language Barrier

Appellant submits that she was unable to understand the questions posed by the Officer and the Trial Judge at trial because her native language is not English. She contends that she needed an interpreter and was not provided with one. We reject this contention.

G.L. 1956 § 8-19-1 sets forth, in pertinent part,

> "[it is the] policy of the state of Rhode Island to guarantee the rights of persons who, because of a non-English speaking background, are unable to readily understand or communicate in the English language, and who consequently need the assistance of an interpreter to be fully protected in legal proceedings in matters before the Rhode Island unified state court system . . . [i]t is the intent of the legislature, by the enactment of this chapter, to provide interpreters to limited-English-proficient persons in proceedings before the state courts in Rhode Island." Sec. 8-19-1.

A trial justice is "entrusted with the discretion to appoint an interpreter if he or she determines that a defendant is unable to understand the English language adequately." State v. Ibrahim, 862 A.2d 787, 797-98 (R.I. 2004). Our Supreme Court has endorsed the recommendation made by the First Circuit that "the trial justice should make the defendant aware that he or she has a 'right to a court-appointed interpreter if the court determines that one is needed, and, whenever put on notice that there may be some significant language difficulty, the court should make such a determination of need.'" Id. at 798 (quoting United States v. Carrion, 488 F.2d 12, 15 (1st Cir. 1973)). On appeal, for the absence of an interpreter to constitute reversible error, an applicant must show "actual, irremediable prejudice." State v. Lopez–Navor, 951 A.2d 508, 513 (R.I. 2008).

Based on the record before us, we are unable to conclude that Appellant's deficiency in English was so significant that the Trial Judge should have realized that an interpreter was necessary. During the trial, Appellant did not suggest that she could not understand the questions posed by the Officer or the Trial Judge. See Ibrahim, 862 A.2d at 798 (the court's assessment of whether defendant needed an interpreter included a review of whether the defendant could understand the questions posed by the investigator). Appellant did not state that she was deficient in understanding English. Id. Appellant did not ask that the Officer or the Trial Judge speak slowly or repeat questions. Id. Appellant did not request an interpreter at any point before or during the trial. Id. Finally, and perhaps most meaningfully, Appellant has failed to show that she was prejudiced in any cognizable way by the alleged language barrier. Consequently, in the absence of "actual, irremediable prejudice," we cannot conclude that the absence of an interpreter at Appellant's trial constitutes reversible error. See Lopez-Navor, 951 A.2d at 513.

Sufficiency of Findings

Appellant claims that the prosecution failed to prove that she drove outside the right half of the roadway in violation of § 31-15-1.[2] Additionally, Appellant argues that the Trial Judge erred in sustaining the charge because of the lack of probative evidence on the record.

This Panel is mindful that our review "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)). We recognize that in making a decision, a trial justice "may draw reasonable inferences from established evidentiary facts that become facts upon which reliance may be placed in fact-finding process." Waldman v. Shipyard Marina, Inc., 102 R.I. 366, 371, 230 A.2d 841, 844 (1967). However, "when confronted with situations involving the pyramiding of inferences . . . such inference drawn from another inference is rejected as being without probative force. Obviously the reason for the rule is to protect litigants against verdicts predicated upon speculation or remote possibility." Id. (citing Fox v. Personnel Appeal Bd. of City of Cranston, 99 R.I. 566, 209 A.2d 447 (1965)). Consequently, a "conclusion reached by drawing inferences from inferences is never considered as being probative of an ultimate fact under any proper concept of judicial proof." Id. (citing Industrial National Bank v. Dyer, 96 R.I. 39, 188 A.2d 909 (1963)).

Before this Panel is a record burdened with the pyramiding of inferences. These inferences were not based on established evidentiary facts but rather conjectured by the Trial

[2] G.L. § 31-15-1 provides, in pertinent part, "[u]pon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows: (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing the movement; (2) When the right half of a roadway is closed to traffic while under construction or repair; (3) Upon a roadway divided into three (3) marked lanes for traffic under the rules applicable to it; or (4) Upon a roadway designated and signposted for one-way traffic."

Judge. See Hill v. State, 121 R.I. 353, 356, 398 A.2d 1130, 1132 (1979) (stating "[p]roof by inference must be based on reasonable inferences drawn from facts in evidence and not conjecture"). The Trial Judge engaged in such conjecture in drawing the inference that none of the exceptions enumerated in § 31-15-1 applied, despite acknowledging "I heard nothing about [those exceptions]." (Tr. at 9.) The Trial judge continued, "I heard nothing about . . . if the roadway is divided into three marked lanes for travel . . . there is no testimony on that." Id. Notwithstanding this lack of evidence, the Trial Judge sua sponte took judicial notice that "Metacom Avenue is two lanes, one in each direction." Id.

Most significantly, the Trial Judge based her ultimate conclusion that Appellant "travel[ed] over the white fog line" on the remote possibility underlying Appellant's statement, "[i]f you're saying that I swerved, yea, that could have been the case." Id. at 7, 9. The Trial Judge did not base her decision on the testimony of the Officer, nor did she assess the Officer's credibility. Instead, the Trial Judge solely focused on Appellant's testimony that she "could have" swerved. Id. at 9. The Trial Judge concluded, "your puppy was in the car . . . and was trying to jump into your lap. And it's a very common thing." Id. In our opinion, a conclusion based on "a very common thing" is not a conclusion based on sufficient or competent evidence. See R.I. Turnpike & Bridge Authority v. Cohen, 433 A.2d 179, 183 (R.I. 1981) (stating "a trial justice is clearly wrong if he has made findings of fact that were not based on sufficient or competent evidence).

Essentially, the Trial Judge "constructed a ladder of inferences on whose top rung [she] rested [her] ultimate conclusion." Conlin v. Greyhound Lines, Inc., 120 R.I. 1, 7, 384 A.2d 1057, 1060 (1978). We find this conclusion, based on nothing more substantial than sheer speculation, to be error. Based on the record, this Panel cannot conclude as a matter of law that

Appellant failed to drive upon the right half of the roadway as mandated by § 31-15-1. Consequently, because there is insufficient evidence on the record to support the Trial Judge's findings, the decision must be reversed. See Link, 633 A.2d at 1348.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find that the Trial Judge's decision is not supported by the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

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Magistrate Alan R. Goulart (Chair)

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Chief Magistrate William R. Guglietta

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Judge Lillian M. Almeida

DATE: _____