

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF BURRILLVILLE

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:

v.

C.A. No. T13-0018  
12416501680

ROBERT WOODS

**DECISION**

**PER CURIAM:** Before this Panel on May 15, 2013—Magistrate DiSandro (Chair, presiding), Judge Parker, and Magistrate Noonan sitting—is Robert Wood’s (Appellant) appeal from a decision of Judge Almeida (trial judge), sustaining the charged violation of G.L. 1956 § 31-15-11, “Laned roadways.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On December 18, 2012, an Officer of the Burrillville Police Department charged Appellant with the aforementioned violations of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on February 27, 2013.

At trial, the Officer stated that he was patrolling westbound on Pascoag Main Street. (Tr. at 3.) While on patrol, the Officer stated that he observed a vehicle located directly in front of him cross over the double yellow solid center line on the road. Id. At this time, the Officer activated his emergency lights in order to stop the vehicle. (Tr. at 4.)

The Officer approached the vehicle and identified the driver as the Appellant. Appellant then became irate and aggressive with the Officer. Id. When the Appellant appeared to be exiting his vehicle, the Officer called for backup. Id. At the conclusion of the stop, the Officer

cited the Appellant for the aforementioned citation since the Officer witnessed the Appellant cross over the double yellow center line. (Tr. at 3-4.)

After hearing the testimony presented, the trial judge sustained the violations. Thereafter, the trial judge imposed sentence. 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:

- (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 not supported by the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant maintains that the trial judge did not take Appellant’s argument presented at trial into consideration when making her ruling.

This Panel is mindful that “[t]he appeals panel is limited to a determination of whether the hearing justice’s decision is supported by competent evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link v. State, 633 A.2d at 1348). It is well-settled that credibility determinations are within the province of the hearing judge. Link, 633 A.2d at 1348. Consequently, this Panel will not substitute its own judgment for that of the trial judge. § 31-41.1.8 (f).

Here, the Officer testified that Appellant’s “. . . vehicle crossed over the double line with over half of the [Appellant’s] vehicle over that line.” (Tr. at 3.) However, the Appellant countered the Officer’s testimony by testifying that it was not unsafe to cross over the line and the Appellant had proceeded to cross over the line to avoid hitting potential pedestrians. (Tr. at 11.)

Subsection (a) of § 31-15-11 provides in relevant part: “A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.” (Emphasis added.) The statute provides an exception to the general rule to allow motorists to cross over the double line in the event it is safe to do so. The record is devoid of any factual findings to show that it was unsafe for Appellant to cross over the double lines. Marran, 672 A.2d at 876. An element of the violation was not proven at trial, and therefore the charged violation cannot be sustained.

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge’s decision was in violation of statutory provisions and affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant’s appeal is granted, and the charged violation dismissed.

ENTERED:

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Magistrate Domenic A. DiSandro, III (Chair)

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Judge Edward C. Parker

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Magistrate William T. Noonan

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