

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH KINGSTOWN

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:
:

v.

C.A. No. T11-0028

JAMES ALMEIDA

11 JUN - 8 AM 8:40

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on May 11, 2011—Judge Almeida (Chair, presiding), Judge Parker and Magistrate Noonan, sitting—is James Almeida’s(Appellant) appeal from a decision of Judge Ciullo, sustaining the charged violations of G.L. 1956 § § 31-14-1, “Reasonable and prudent speeds,” 31-26-3., “Immediate notice of accident.”¹ Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

After being issued the above mentioned citations on March 17, 2011, Appellant contested the charges and the matter proceeded to trial before Judge Ciullo on April 22, 2011. The trial began with Officer Miga of the North Kingstown Police Department (Officer Miga or the officer) testifying that on March 17, 2011, he was dispatched to “scene of a motor vehicle accident in which a motor vehicle had allegedly left the scene. . . near the Old American Bar on Post Road” (Tr. at 3.) When he arrived, he noticed that a telephone pole snapped in half causing it to “lean over into both. . . southbound lanes of

¹ Appellant was also charged with four other violations of the motor vehicle code: § 31-47-9, “Operating motor vehicle without insurance,” § 31-23-1 (d) (2), “Driving an unsafe vehicle,” § 31-15-11, “Laned roadway violation,” and § 31-26-5, § 31-26-5, “Duty in accident resulting in damage to highway fixture.” The Town withdrew the charge pursuant to § 31-26-5, the three others were dismissed by the trial judge.

travel.” (Tr. at 4.) Amongst the debris, Officer Miga testified that he retrieved a head lamp with markings indicating that it belonged to a Ford vehicle. Id. As he was continuing his investigation, “[the officer] was notified by dispatch, that [Appellant] had contacted the North Kingstown Police Department and indicated that he had been involved in a motor vehicle accident on Post Road.” (Tr. at 7.) Officer Miga then responded to the Appellant’s residence, where Appellant informed him that his vehicle collided with the pole as he was distracted by “reaching for his french fries.” (Tr. at 9.) Appellant went home and called the police to report the accident. Id.

After the testimony of Officer Miga, the trial judge concluded that the evidence of the accident as well as Appellant’s admission to the officer were sufficient to uphold the charge under § 31-14-1. Further, by introducing evidence of the automobile’s damaged condition, the trial judge found that the Town had met its burden in proving § 31-26-3.2. Appellant appealed.

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 argues that the trial judge's decision is affected by error of law; clearly erroneous based on the reliable, probative, and substantial record evidence; characterized by abuse of discretion; and in violation of constitutional and statutory provisions. Specifically, Appellant posits on appeal that the Town failed to provide sufficient evidence to sustain either charge. After a review of the record, we agree with the Appellant and dismiss the charged violations of the motor vehicle code.

§ 31-14-1

Section 31-14-1 reads as follows:

“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.”

In bringing this charge, the Town relied only on the fact that Appellant admitted to being behind the wheel of his car as it hit the pole, but that alone fails to meet the burden in proving a violation of the statute. As our Supreme Court held in State v. Brown, 97 R.I. 115, 121, 196 A.2d 133, 136 (R.I. 1963),

“The offense of operating a motor vehicle at an unreasonable speed created in § 31-14-1 may result from operation and speeds in excess of the limits set out in § 31-14-2 or from failure to reduce the speed of operation when the conditions of hazard exist that are designated in § 31-14-3.”

We recognize that an accident can result from a violation of § 31-14-1, but a one-car accident is not prima facie evidence of a violation. In Brown, the Court found that the State had not met its burden in proving a violation of the statute because there, the “complaint in no manner disclose[d] whether the unreasonable operation with which the defendant is therein charged was in excess of the speed limits provided in said § 31-14-2 or resulted from a failure to reduce speed in the face of one of the hazards provided for in § 31-14-3.” Id. Similarly in the facts before us, Officer Miga’s testimony provided no evidence that Appellant operated in excess of the posted speed limit or faced any particular hazard which would statutorily require him to reduce his speed. The record indicates that he was driving, and that he hit the pole, nothing further. With the statutory elements not met, we find the trial judge’s decision to sustain the charged violation of § 31-14-1 clearly erroneous.

§ 31-26-3

Section 31-26-3 reads:

“The driver of a vehicle involved in an accident resulting in injury to or death of any person, or any vehicle other than a vehicle moved by human power becoming so disabled as to prevent its normal and safe operation, shall immediately by the quickest means of communication give notice of the accident to the nearest office of a duly authorized police authority.”

Officer Miga’s testimony made clear that although a bystander called the accident to the police’s attention, Appellant also made a call to the North Kingstown Police Department to report the accident. No specific timeline was posited on the record. We therefore conclude that the record does not provide clear and convincing evidence that Appellant failed to utilize the quickest means of communication available to him to notify the

police. Moreover, we find that the Town also failed to prove that Appellant's vehicle was so "disabled as to prevent its normal and safe operation." The mere reference in Officer Miga's narrative that a headlamp was retrieved at the scene is not sufficient evidence to prove said element of the offense.² See Aetna Ins.Co.v. Paddock, 301 F.2d 807, 811 (5th Cir. App. 1963). (clear and convincing evidence enable[s] [a trier of fact] to come to a clear conviction without hesitancy of the truth of the [citation charged].)" Therefore we conclude that the trial judge's decision to sustain the charged violation pursuant to § 31-26-3 was clearly erroneous based upon the evidence and in light of statutory authority.

Conclusion

Our review of the record reveals no legally competent evidence to support the trial judge's decision in upholding the violations of the motor vehicle code. Substantial rights of Appellant have been prejudiced.

² In fact, the case to be made for the condition of Appellant's appeared to be so weak that, at trial the Town dismissed the charged violation of § 31-23-1 (d) (2), "Driving an unsafe vehicle."

Accordingly, Appellant's appeal is granted, and the charged violations are hereby dismissed.

ENTERED:

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DATE: 6-9-11