STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF NORTH KINGSTOWN	**:**	
v.	**:**	**C.A. No. M14-0006**
	:	**13502503248**
DEE SCANLON	**:**	

DECISION

PER CURIAM: Before this Panel on May 14, 2014—Chief Magistrate Guglietta (Chair, presiding), Administrative Magistrate Cruise, and, Magistrate Noonan sitting—is Dee Scanlon's (Appellant) appeal from a decision of Judge White of the North Kingstown Municipal Court, sustaining the charged violations of G.L. 1956 § 31-15-11, "Laned roadway violations." Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 4, 2013, an officer of the North Kingstown Police Department (Officer) issued Appellant a citation for violation of the aforementioned charge. Appellant contested the charge and the matter was scheduled for trial on February 12, 2014.

At trial, the Officer testified that on October 4, 2013, he was on Old Baptist Road traveling towards Stony Lane in the Town of North Kingston. (Tr. at 3.) At that time, the Officer stated that he observed Appellant's vehicle make an abrupt and sharp movement from one lane into another lane without using a turn signal. Id. Moreover, the Officer testified that at least half the vehicle crossed over the double yellow line. Id. Thereafter, the Officer explained that he conducted a traffic stop and issued Appellant a citation. Id.

After the Officer completed his testimony, Appellant presented testimony that a "kitty" darted out in front of her vehicle and that she "turned [her] wheel slightly to avoid hitting the

kitty." (Tr. at 7.) Moreover, Appellant stated that when she made this maneuver without leaving her lane of travel. Id. Additionally, Appellant testified that she is in the habit of "hug[ging]" the right portion of the lane because she has previously been in two head on car crashes. (Tr. at 8.)

Subsequently, the trial judge issued his decision sustaining the charged violation. (Tr. at 17.) In particular, the judge found that the prosecution had been successful in proving, by clear and convincing evidence, that Appellant had committed a laned roadway violation. Id. Aggrieved by the trial judge's decision to sustain the charged violation, 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 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 was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant asserts that the trial judge erred by crediting the testimony of the Officer over her testimony. In addition, Appellant asserts that the Officer's decision to issue her a citation was motivated by her previous interactions with the North Kingstown Police Department.

This Panel will first address Appellant's contention that the North Kingston Police Department is maliciously prosecuting her for the instant traffic offense because of event that occurred in 2008. First, it is important to note that Appellant failed to provide the trial judge or this Panel with any evidence to support her claim that the issuance of the citation was the result of an improper motive by the North Kingstown Police Department. More importantly, this Panel finds that any alleged events that occurred in 2008 are irrelevant to the case before this Panel. See R.I. R. Evid. 401 ("'Relevant evidence' means evidence having any tendency to make the

existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"); see also R.I. R. Evidence 402 (stating, in relevant part, "[e]vidence which is not relevant is not admissible").

Appellant also contends that the trial judge's decision to sustain the charge was clearly erroneous. In particular, Appellant asserts that the trial judge erred when he credited the Officer's testimony over her own testimony.

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 Paella 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 . . . ." Acetate v. Provencal, 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 judge concerning the weight of the evidence on questions of fact." Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. James, 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 Officer or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and] . . . determine[end] . . . 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 judge determined that the Officer's testimony was not only credible, but the testimony was also sufficient to sustain the charged violation.[1] See Tr. at 17. "[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact)." Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. James, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the trial judge credited the Officer's testimony that he observed Appellant's vehicle make an abrupt and sharp movement from one lane into another lane without using a turn signal. See Tr. at 3. As a result, the trial judge determined that Appellant had failed to drive her motor vehicle "as nearly as practical entirely within a single lane" and did not first ascertain "that [her] movement [could] be made with safety." See § 31-15-11. Moreover, the trail judge credited the Officer's testimony that at least half the vehicle crossed over the double yellow line. Id. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge'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 judge's] findings and conclusions unless clearly wrong).

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,

[1] Section 31-15-11 reads, in relevant part, that

> Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent with them shall apply:
> (1) 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. See § 31-15-11

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:

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Chief Magistrate William R. Guglietta (Chair)

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Administrative Magistrate R. David Cruise

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Magistrate William T. Noonan

DATE: _____