

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF SOUTH KINGSTOWN

v.

JON LACHAPELLE

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C.A. No. T10-0045

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
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**DECISION**

**PER CURIAM:** Before this Panel on July 14, 2010—Magistrate Noonan (Chair, presiding) and Judge Parker and Judge Ciullo, sitting—is Jon Lachapelle’s (Appellant) appeal from a decision of Judge Almeida, sustaining the charged violation of G.L. 1956 § 31-15-1, “Right half of road.”<sup>1</sup> The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On March 22, 2010, an officer of the South Kingstown Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial. During the trial, Judge Almeida sustained the charged violation and imposed as a penalty a suspension of Appellant’s license for a thirty (30) day period. Upon request by Appellant’s attorney, Judge Almeida issued a stay of the imposition of the suspension pending Appellant’s appeal before this Panel. Aggrieved by the imposed penalty of license suspension for a violation of § 31-15-1, Appellant filed a timely appeal to this Panel. Our decision is rendered below.

<sup>1</sup> Originally, Appellant was charged with the additional violation of § 31-22-22.1, “Presence of alcoholic beverages while operating or riding in a motor vehicle.” Following a trial before Judge Almeida, § 31-22-22.1 was dismissed for want of evidence. Thus § 31-15-1 is the only charge presently before this Panel.

### 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 prejudiced 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 sentence is in excess of the statutory authority of a trial judge or magistrate and an abuse of discretion. Specifically, Appellant contends that the trial judge’s decision was in excess of her statutory authority when she imposed a thirty (30) day suspension of Appellant’s license, following her decision to sustain the charged violation of § 31-15-1. According to Appellant, § 31-15-1, specifies in subsection (5) that “[v]iolations of this section are subject to fines enumerated in § 31-41.1-4.” Appellant contends that the trial judge erroneously decided to suspend Appellant’s license for a violation of § 31-15-1 because the violation schedule of § 31-41.1-4 does not enumerate license suspension as the penalty for such a violation.

After reviewing the evidence before this Panel, we find that the trial judge sustained the violation of § 31-15-1 and as a result, imposed a thirty day suspension of Appellant’s license. The penalty for a violation of § 31-15-1—enumerated in the violation schedule of § 31-41.1-4—is eighty-five (85) dollars. However, a further read of chapter 41.1 of title 31, § 31-41.1-6 also includes statutory language enacted by the Rhode Island General Assembly that grants a judge or magistrate the discretion to impose additional penalties to those listed in § 31-41.1-4.

The pertinent language of § 31-41.1-6 reads,

“[a] judge or magistrate may include in the order the imposition of any penalty authorized by any provisions of this title for the violation, including but not limited to, license suspension and/or in the case of a motorist under the age of twenty (20), community service, except that no penalty for it shall include imprisonment.”

Relying on the language set forth in § 31-41.1-6, this Panel concludes that any penalty that is authorized by any provision of Title 31, "Motor and Other Vehicles" may be imposed upon the motorist by the trial judge or magistrate. After reading the language of § 31-41.1-6, the members of this Panel agree that the General Assembly intended to give the judge or magistrate discretion in imposing a sanction for a violation of any offense in Title 31. These sanctions could include the suspension of a person's license to operate. See 2A Sutherland Statutory Construction § 45:5 ("An overwhelming majority of judicial opinions considering statutory issues are written in the context of legislative intent"). In the present case, the trial judge imposed a penalty of license suspension. License suspension is an authorized penalty under Title 31.<sup>2</sup> Thus the trial judge has the statutory authority under § 31-41-1.6 to include license suspension as a penalty for the violation.

Furthermore, the procurement of a driver's license is not a right, but a privilege. "[A] license may be taken away or encumbered as a means of meeting a legitimate legislative goal, or when the interest of public safety or welfare is at stake." 7A Am. Jur. 2d Automobiles § 104 (2010). Our Supreme Court has held that "[t]he importance of the license to drive lies in the fact that its possession allows a person to legally operate a motor vehicle. It is the right to drive, not the license that comes under the protection of due process." Dana v. Petit, 120 R.I. 168, 386 A.2d 189 (1978) (internal citations omitted) (also finding that "[e]very state has the power to suspend or revoke motor vehicle operating privileges of its citizens for just cause; however, the right to operate motor vehicle, absent exceptional circumstances, may be suspended or revoked only in manner consistent with procedural due process). Here, Appellant presented his case during his trial before the judge, and again, he was granted the opportunity of due process during his appeal

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<sup>2</sup> For example, license suspension is permitted in § 31-27-2.1 (b) and in § 31-41.1-4 (b)(1) and (2).

before this Panel. As such, in the case at hand, the requirements of due process have been satisfied.

Moreover, it is within the discretion of the trial judge to determine the length of time that he or she will suspend the motorist's license. The record before this Panel does not contain a transcript of the trial because counsel for Appellant waived his right to have a transcript made available. Accordingly, it is impossible for this Panel to ascertain the reasoning behind the trial judge's decision to include in the Appellant's order the imposition of a thirty day license suspension.<sup>3</sup> See State v. Jennings, 117 R.I. 291, 366 A.2d 543 (1976) (finding that in the absence of transcript of testimony in record, Supreme Court was unable to consider issues of whether warrantless search and seizure was unconstitutional, arrest was illegal and implied consent statute was unconstitutional). Therefore, relying on the record before this Panel, we are satisfied that we cannot consider the issue of whether the trial judge's decision to impose a thirty day suspension was an abuse of her discretion. The trial judge's imposition of the suspension of Appellant's license was legally valid, however, the length of time of that suspension cannot be considered by this Panel. Thus, the order of the trial judge shall remain in full force and effect.

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<sup>3</sup> However, after a review of the Appellant's driving record, the members of this Panel agree that the trial judge may have based her findings on the driving record abstract of Appellant and, upon realizing that Appellant had been charged with operating his vehicle above the speed limit four times in 2008, decided to suspend his license for the thirty day period.

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 is neither in excess of statutory authority nor characterized by abuse of discretion. The rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, the charged violation of § 31-15-1 is sustained, and the thirty day suspension of Appellant's license is upheld.

ENTERED:

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