

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH PROVIDENCE

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:
:

v.

C.A. No. M10-0026

DENNIS GAGNE

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on February 16, 2011—Judge Almeida (Chair, presiding), Judge Ciullo, and Magistrate Noonan, sitting—is Dennis Gagne’s (Appellant) appeal from a decision of the North Providence Municipal Court, sustaining the charged violations of §§ 31-17-6, “Yielding to an emergency vehicle,” and 31-16-5, “Turn signal required.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On September 26, 2010, Officer Michael Tavarozzi of the North Providence Police Department (Officer Tavarozzi) cited Appellant for the aforementioned violations of the motor vehicle code. Appellant contested the charges, and the matter proceeded to trial.

The trial began with Officer Tavarozzi testifying that on September 26, 2010 he was at a fixed traffic post near the Ferguson Animal Hospital on Smith Street and Woonasquatucket Avenue in North Providence, Rhode Island. (Tr. at 4.) While posted the officer testified that he “observed [Appellant’s] vehicle drive through [a] yield sign” while traveling through a rotary. (Tr. at 5.) At this time, the officer “activated [his emergency] lights, followed behind the vehicle.” (Tr. at 6.) Despite the fact that the

officer had activated his emergency lights, Appellant proceeded down Woonasquatucket Avenue, and made turns onto George Street and then Lincoln Street without ever utilizing his vehicle's directional signal. Id.

Appellant eventually yielded to Officer Tavarozzi's sirens and stopped his car in front of 26 Lincoln St. Id. Thereafter another officer, identified in the record as Officer Pond, arrived on the scene to assist in the traffic stop. (Tr. at 8.) When he first asked Appellant to produce his driver's license and vehicle registration, Officer Tavarozzi testified that Appellant first disregarded his requests and carried on with a cellular phone conversation. (Tr. at 8.) Then, another male (later identified as the Appellant's father) approached the scene prompting the Appellant to exit his vehicle without the officers' permission and begin to converse with his father. (Tr. at 8-9.) Finally, another Officer, identified as Sergeant Anzevino, arrived on the scene and was able to quell matters so that Officer Tavarozzi could issue the proper citations. (Tr. at 9.)

Next Appellant took an opportunity to present his case to the court (Tr. at 10.) He began by inquiring as to why the shift supervisor, Sergeant Anzevino, was not present in the courtroom. Id. The trial judge interjected and informed the Appellant that the State was allowed to present its case as it saw fit, and if the Appellant felt Sergeant Anzevino was material to this case, the onus was on the Appellant to issue a subpoena ordering him to appear. (Tr. at 11.)

The Appellant then testified to a different set of facts than those testified to by Officer Tavarozzi. He said that he did in fact yield while proceeding through the rotary. In fact, he testified that he had had no choice but to yield as there was another vehicle in front of him which had come to a complete stop within the rotary. (Tr. at 14.) He also

informed the court that he employed his directional signal while he made both turns. Id. Furthermore, he testified that Officer Tavarozzi was behind him since the rotary on Smith Street, but did not activate his emergency lights until he reached Lincoln Street. Id.

Regarding the traffic stop, he categorized Officer Tavarozzi's behavior as "extremely belligerent." (Tr. at 14.) He claimed he immediately complied with the officer's request to present his identification and registration. (Tr. at 15.) He then explained that his father approached his vehicle out of concern for his well being. Id. Appellant went on to testify that the officers were extremely belligerent to his father, informing him that he would be arrested if he did not leave the scene. (Tr. at 17.)

After he was finished testifying to his version of events, he motioned to call his father as a witness. (Tr. at 19.) Upon objection from the City's attorney, the trial judge informed the Appellant that his request to call his father as a witness was denied. The trial judge reminded Appellant that "[his] purpose [as a municipal judge] is to listen to a trial on traffic violations." (Tr. at 20.) With that, he informed the Appellant that the issues that could be addressed through his father's testimony concerned matters that "[were] not for this forum to address. . . ."

With the testimony concluded, the trial judge sustained the charges under § § 31-17-6, "Yielding to an emergency vehicle," and 31-16-5, "Turn signal required."¹ Aggrieved by this decision, Appellant filed an appeal before this Panel. Forthwith is our Decision.

¹ Officer Tavarozzi had issued a third citation under § 31-18-8, "Due care by drivers." That charge was dismissed by the trial judge.

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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge’s decision to sustain the charged violation is affected by error of law and clearly erroneous due to the lack of probative evidence on the record. Specifically, he argues that he was prejudiced by the trial judge’s decision denying his request to call his father as a witness.

Before this Panel, Appellant argues that contrary to the assertion of the trial judge, his father was, in fact, a relevant and material witness to this matter. He claims that his father was prepared to testify that (1) that he was on the phone with the Appellant the entire time Officer Tavarozzi was said to have been following Appellant’s vehicle and (2) during that time, he never heard any police sirens. According to the Appellant, this testimony would have directly contradicted the assertions of Officer Tavarozzi that he activated his emergency lights at the Smith Street rotary and would serve to attack the officer’s credibility in refuting the charge of § 31-17-6, “Yielding to an emergency vehicle.”

Regardless of what his father may have testified to, we note that at no time did the Appellant ever bring this issue to the attention of the trial judge. In fact, Appellant, in addressing the scope of his father’s testimony, informed the court that his father was prepared to testify to “[t]he manner in which [he] was treated when [he] was stopped.”

(Tr. at 19.) He never raised this potential aspect of his father's testimony to the trial judge. If we were to evaluate this evidence as part of our appellate calculus, we would essentially be entertaining new evidence—an exercise which is beyond our scope of our review. See Link supra. Appellant's failure to raise the issue at trial results in it being foreclosed. State v. Patriarca, 112 R.I. 14, 38, 308 A.2d 300, 315 (1973) (“where a defendant seeks on appeal to establish the materiality of any evidence, we will consider it only where an offer of proof was made during the trial[]”); see also Bouchard v. Clark, 581 A.2d 715, 716 (R.I. 1990) (“It is well established rule of law in Rhode Island that [reviewing courts] will not consider an issue raised for the first time on appeal that was not properly presented before the trial court.”) Therefore, we find that Appellant's due process rights were not prejudiced by the trial judge's decision to deny Appellant's request to call his father as a witness.

Conclusion

This Panel has reviewed the entire record before it. Having done so, this Panel is satisfied that the trial judge's decision sustaining the charged violations of §§ 31-17-6 and 31-16-5 was not affected by error of law, clearly erroneous based on the reliable, probative, and substantial record evidence, characterized by abuse of discretion, or in violation of constitutional provisions.

Finding that substantial rights of Appellant have not been prejudiced, we hereby deny his appeal and sustain the violations charged against him.

ENTERED:

STATE OF RHODE ISLAND
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