

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK

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:
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v.

C.A. No. M11-0016

ANTONIO XAVIER

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on August 3, 2011—Judge Ciullo (Chair, presiding), Judge Parker, and Magistrate Noonan, sitting—is Antonio Xavier’s (Appellant) appeal from a decision of the Warwick Municipal Court, sustaining the charged violation R.I. G.L. 1956 § 31-16-5, “Turn signal required.” The Appellant appeared with counsel before this Panel. Jurisdiction is pursuant to R.I. G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 4, 2011, Officer Raymond Cox (Officer Cox) of the Warwick Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Officer Cox testified that on the date in question, at approximately 4:53 p.m., he was parked in the area of Gorton Junior High School in Warwick. (Tr. at 7.) Officer Cox observed a vehicle outside a residence across the street from the school. Some time later, Officer Cox observed the Appellant exit the residence and get into the vehicle parked outside. (Tr. at 7.) Officer Cox followed the vehicle as it traveled down Draper Street and continued to follow as the vehicle turned on Sunset Street. Id. Officer Cox then observed the vehicle make a left turn onto

Gage Street without using a turn signal. Id. Officer Cox, perceiving what he thought to be a traffic violation, initiated a traffic stop.

Officer Cox continued to testify that the weather conditions were dry, it was daylight, and there were no vehicles between his cruiser and the vehicle at the time of the alleged violation. (Tr. at 9.) Officer Cox issued a citation to the Appellant for failure to use a turn signal. Id.

On cross-examination, Officer Cox testified that at the time of his patrol, traffic in the area was “light, I’m not going to say it’s quiet.” (Tr. at 16.) Counsel then offered into evidence numerous pictures of the location where Officer Cox was stationed and the location of the traffic stop. (Tr. at 16-24.) Officer Cox admitted that he followed the Appellant, and did not immediately observe a traffic violation. Id. Officer Cox followed the Appellant for three blocks before he observed the alleged turn signal violation (Tr. at 33.) Officer Cox testified that he could not recall if there were any other vehicles operating on the other side of the road, and reiterated that there were no cars in between his cruiser and the Appellant’s vehicle. (Tr. at 29-30.)

Following cross-examination, Appellant’s counsel moved to dismiss the violation pursuant to Rule 16 of the Traffic Tribunal Rules of Procedure. (Tr. at 40.) Appellant’s counsel argued that there was no evidence of any dangerous conditions on the roadway, and that there were no vehicles operating in the area at the time of the alleged traffic violation; thus the violation could not be maintained. (Tr. at 40-43.) Appellant’s counsel cited the statutory language of § 31-16-5¹ and Rhode Island case law to support this proposition. Id. The trial judge

¹ § 31-16-5 states: “[n]o person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in §§ 31-16-2 and 31-16-3, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway, unless and until the movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner described in this chapter in the event any other traffic may be affected by the movement. Violations of this section are subject to fines enumerated in § 31-41.1-4.” (Emphasis added.)

however, disagreed and found that the prosecution had met their burden under Rule 16. (Tr. at 47.)

At the close of evidence, the trial judge sustained the charged violation of § 31-16-5. The trial judge found that there was sufficient evidence to support a finding that Appellant had improperly made a left turn without a turn signal. (Tr. at 50-52.) Aggrieved by this decision, Appellant filed a timely appeal to this Panel. Our decision is rendered below.

Standard of Review

Pursuant to Rhode Island 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 decision is clearly erroneous in view of the reliable, probative and substantial evidence on the record. Specifically, Appellant contends that the trial judge improperly relied upon facts that were not in evidence in sustaining the charged violation of § 31-16-5. Section 31-16-5 provides that “[n]o person shall so turn any vehicle without giving an appropriate signal in the manner described in this chapter in the event any other traffic may be affected by the movement.” Appellant argues that no evidence was presented at trial that would require a turn signal being used.

Having reviewed the record in its entirety, it is clear that the trial judge relied on facts that were not testified to by Officer Cox. It is well-settled that under Section 31-16-5, turn signals are not required for every turn a motorist makes. To sustain a violation under this section, evidence must be presented demonstrating that traffic was affected by not using a turn signal.

Here, there is no record of the traffic conditions when Officer Cox initiated his traffic stop. Indeed, Officer Cox only noted that traffic was “light” in the area during his routine patrol.

(Tr. at 9.) However, Officer Cox explicitly testified that he could not recall if there were any vehicles in the area at the time he initiated the traffic stop of Appellant's vehicle. (Tr. at 29-30.) In fact, Officer Cox testified numerous times that he could not recall if there were other vehicles in the area at the time of the stop. See id. Additionally, Officer Cox never testified that the traffic was "light" at the time of the traffic stop, only that it was light during the time of his patrol. However, the trial judge stated in his decision "that traffic conditions in this area at that time were light." (Tr. at 52.) The trial judge incorrectly relied on this evidence in sustaining the violation. Additionally, no evidence was presented demonstrating how other traffic was even affected by the Appellant's failure to use a turn signal. As stated above, such evidence is a necessary element in sustaining a violation under § 31-16-5.

Conclusion

This Panel has had an opportunity to review the entire record and we find that the trial judge misconstrued the evidence which he believed supported a finding that Appellant violated § 31-16-5. This decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

Therefore, substantial rights of the Appellant have been prejudiced. Accordingly, the Appellant's appeal is granted, and the charged violation of §31-16-5 is dismissed.