

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH PROVIDENCE

:

v.

C.A. No. M12-0005

ROGER TAVARES

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:
:

DECISION

PER CURIAM: Before this Panel on May 16, 2012—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Administrative Magistrate Cruise, sitting—is Roger Tavares' (Appellant) appeal from a decision of Judge DeQuattro (trial judge), sustaining the charged violation of G.L. 1956 § 31-15-4, "Overtaking on left." Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 20, 2012, Officer Michael Scaramuzzo (Officer Scaramuzzo) of the North Providence Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on March 26, 2012.

On the evening of the violation, Officer Scaramuzzo was on routine patrol in the Charles Street area. (Tr. at 1.) Officer Scaramuzzo was passing through the intersection of Mineral Spring Avenue and Smithfield Road when he saw a black Acura. The Acura was passing Officer Scaramuzzo in the opposite direction and was traveling down the center of the road overtaking vehicles on the left. Officer Scaramuzzo reversed his direction and pursued the vehicle. Subsequently, Officer Scaramuzzo stopped the vehicle and identified the Appellant as the

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
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operator. At the conclusion of the stop, Officer Scaramuzzo issued the Appellant the aforementioned citation.

Then, at the trial, Appellant testified on his own behalf. The Appellant claimed that while he was waiting in traffic on Mineral Spring Avenue he also observed a car traveling down the center of the roadway overtaking cars on the left. However, Appellant maintained that he remained in the appropriate lane of travel and did not travel in the center of the roadway.

At the close of the evidence, the trial judge sustained the violation. In sustaining the violation, the trial judge found the testimony of Officer Scaramuzzo to be credible. Consequently, the trial judge found that the town had met its burden of proof that the Appellant did, in fact, overtake vehicles on the left in violation of the statute.

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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 abused his discretion. Specifically, the Appellant argues that the trial judge erred in crediting the testimony of Officer Scaramuzzo over the Appellant’s testimony. Appellant maintains, as he did at trial, that it was another vehicle that was overtaking the vehicles on the left.

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. Janes, 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 Scaramuzzo or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [the Officer Scaramuzzo and Appellant.] [The trial judge] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

Here, Appellant argues that the trial judge committed error when he chose to accept the testimony of the Officer Scaramuzzo over the Appellant's. The Appellant maintains that he was not overtaking cars on the left; instead, it was another vehicle overtaking cars on the left. However, Appellant's arguments relate to questions of fact that were heard and weighed by the trial judge at Appellant's trial. This Panel's review is limited to determining whether the trial judge made an error in law or misapplied the evidence. See Link, 633 A.2d at 1348 (our Supreme Court held that this Panel's review is limited in scope). Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion. The trial judge's decision to sustain the charged violation is supported by legally competent evidence—Officer Scaramuzzo's testimony—which the trial judge chose to credit over the Appellant's.

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 was not an abuse of discretion or affected by other error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.