

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF EAST PROVIDENCE

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v.

C.A. No. M12-0009  
11404504408

JAMES ROBERSON

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on August 15, 2012—Chief Magistrate Guglietta (Chair, presiding), Judge Ciullo, and Magistrate DiSandro, sitting—is James Roberson’s (Appellant) appeal from a decision of Judge Farley of the East Providence Municipal Court (trial judge), sustaining the charged violations of G.L. 1956 § 31-15-11, “Laned roadways,” and G.L. 1956 § 31-16-5, “Turn signal required.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 28, 2011, Officer Michael Rapoza (Officer Rapoza) of the East Providence Police Department charged Appellant with the aforementioned violations of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on April 19, 2012.

At trial, Officer Rapoza stated that he was at a stationary traffic post in a parking lot at the intersection of Warren and Pawtucket Avenues on the morning of the violation. (Tr. at 1.) While on this fixed post, the officer stated that he heard “a vehicle accelerate at an extremely high rate of speed coming from what sounded like [South] to [North] on Warren Avenue.” Id. Officer Rapoza stated that at this time traffic “was medium.” Id.

Officer Rapoza quickly determined that it was a Nissan Altima traveling at a high rate of speed towards him, which the officer estimated was traveling “well above the posted twenty-five miles per hour speed limit.” Id. Officer Rapoza then began to pursue the vehicle. While in pursuit, Officer Rapoza observed the vehicle pass other vehicles in and out of traffic. Officer Rapoza then stated that the vehicle “continued to travel over the lane lines [at] a high rate of speed, traveling over lane lines, passing vehicles on both the left and right.” Id.

At this time, Officer Rapoza activated his emergency lights in an attempt to stop the vehicle. The vehicle ultimately stopped in the parking lot of a nearby restaurant on Warren Avenue. Officer Rapoza approached the vehicle and identified the driver as the Appellant. At the conclusion of the stop, Officer Rapoza cited the Appellant for the aforementioned citations because of the way Appellant was changing lanes erratically and straddling the lane line while passing vehicles and not using his turn signal. (Tr. at 2.)

After the officer finished his testimony, Appellant testified on his own behalf. Notably, Appellant admitted that “the bulb [was] out on [his] car . . . so that was probably why [Officer Rapoza] did not see that the [turn signal] was on.” Id. Appellant then went to testify regarding his displeasure with the subsequent search of his vehicle after the traffic stop.

After hearing both sides, the trial judge sustained the violations. In sustaining the violation, the trial judge found it significant that Appellant admitted to having a non-working turn signal. Id. Thereafter, the trial judge imposed sentence. Appellant timely filed this appeal.

#### **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 contends that the trial judge's decision to sustain the charged violations was not supported by the reliable, probative, and substantial evidence on the whole record and was an abuse of discretion. Specifically, on appeal, Appellant maintains that the trial judge erred in finding the Appellant guilty of the violations.

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 Trooper or Appellant, it would be impermissible to second-guess the trial magistrate's "impressions as he . . . observe[d] [the Trooper and Appellant] [,] 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.

After listening to the testimony, the trial judge determined that Officer Rapoza's testimony was sufficient to sustain the charged violations. In sustaining the violation, the judge stated "I am going to find you guilty of turn signal required . . . in fact your turn signal wasn't working." (Tr. at 2.) After determining that the Officer cited the Appellant for the laned roadway violation because the Appellant crossed the center line, the trial judge went on to state, "[o]n the laned roadway violation, I'm going to also find you guilty." Id. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. See Link, 633 A.2d at 1348.

Finally, this Panel must point out an area where the Municipal Court did err. It evident to this Panel that, in finding the Appellant guilty, the East Providence Municipal Court assessed court costs for each violation the Appellant was found guilty. Section 8-18-4 states that “[a] thirty-five dollar (\$35.00) hearing fee shall be assessed by both municipal courts and the traffic tribunal against ‘each person’ pleading guilty to or found guilty of a traffic offense or violation.” G.L. 1956 § 8-18-4(h). Notably, the statute mandates that the court cost fee shall be assessed to “each person” and not for each violation. See City of E. Providence v. Int'l Ass'n of Firefighters Local 850, 982 A.2d 1281 (R.I. 2009) (When the language of a statute is clear and unambiguous, Supreme Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.). Therefore, we hold that the Municipal Court erred in assessing court costs for each violation and the defendant is entitled to a refund for any costs assessed beyond the \$35.00 statutory hearing fee in § 8-18-4(h).

### 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 on the violation was supported by the reliable, probative, and substantial evidence on the whole record and was not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. However, as to the imposition of court costs, we remand to the Municipal Court for the allocation of costs required by statute. Accordingly, Appellant's appeal is denied, and the charged violations sustained.