

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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C.A. No. T08-0073

v.

ROBERT BRADDOCK

APPELLANT
STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL

DECISION

PER CURIAM: Before this Panel on July 30, 2008, Magistrate Noonan (Chair), Chief Magistrate Guglietta, and Judge Parker sitting, is Robert Braddock's (Appellant's) appeal from Judge Ciullo's decision, sustaining the charged violations of G.L. 1956 § 31-14-2, speeding, G.L. 1956 § 31-15-11, laned roadway violations, and G.L. 1956 § 31-16-5, failing to use a turn signal. Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

The Appellant was cited by Trooper Jason Lawton (Trooper Lawton) of the Rhode Island State Police for the aforementioned violations. The Appellant contested the charges, and the matter proceeded to trial.

At trial on June 2, 2008, Trooper Lawton testified as follows: On October 4, 2007, at approximately 1:00 a.m., he observed a Harley Davidson motorcycle traveling westbound on Route 6 at approximately one hundred miles per hour. (Tr. at 5.) Trooper Lawton established the speed of this motorcycle with his speedometer and using a radar gun. (Tr. at 10-12.) The motorcycle "had come upon slower traffic in ... the center lane and the right lane," when it made "several aggressive and erratic lane changes, once from the center lane to the right lane, back to the left lane," leaving less than a car length

between itself and the slower-moving vehicles (Tr. at 5-6.) These maneuvers were performed “all without using a turn signal.” (Tr. at 5.) While the motorcycle was in the center lane, its operator looked over his left shoulder and Trooper Lawton was able to see his face. (Tr. at 6.) At trial, Trooper Lawton identified Appellant as the operator of the motorcycle. Id.

Trooper Lawton followed two other motorcycles engaged in similar conduct, while the Harley Davidson motorcycle exited the highway. (Tr. at 6.) Pursuant to an investigation, Trooper Lawton was able to identify the Harley Davidson motorcycle as belonging to Appellant. (Tr. at 7.) After Appellant was identified as the owner of the offending Harley Davidson motorcycle, Trooper Lawton recognized Appellant as its operator on June 2, 2008. (Tr. at 8).

Following the trial, the trial judge sustained Appellant’s violation of §§ 31-14-2, 31-15-11, and 31-16-5. The trial judge found that Appellant had traveled in excess of the speed limit (Tr. at 76.), committed laned roadway violations (Tr. at 76.), and failed to use a turn signal when changing lanes (Tr. at 77).

The Appellant has filed a timely appeal of the trial judge’s decision. Forthwith is this Panel’s decision.

Standard of Review

Pursuant to § 31-41.1-8(f), 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may 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 following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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 v. State, 633 A.2d 1345 (R.I. 1993). The Appeals Panel is "limited to a determination of whether the hearing justice's decision is supported by legally competent evidence." Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is "clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record." Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

Analysis

On appeal, Appellant argued that the trial judge erred in sustaining the charge of speeding, because there was no evidence that the devices used to ascertain Appellant's speed were accurate and in working condition. Appellant also argued that there was insufficient evidence to sustain the charges of failing to observe laned roadway rules and failing to use a turn signal. Finally, Appellant argued that all of Appellant's violations should be reversed pursuant to § 31-41.1-8(f)(6), because the trial as a whole was "characterized by abuse of discretion."

The Supreme Court of Rhode Island has held that, for speedometer or radar evidence to support a charge of speeding, "the operational efficiency" of the device must be "tested within a reasonable time by an appropriate method." State v. Sprague, 113 R.I. 351, 357, 322 A.2d 36, 39 (1974). See State v. Mancino, 115 R.I. 54, 58-59, 340 A.2d 128, 132 (1975) (holding that state, as part of prima facie case, required to show that speedometer used to clock defendant was tested against another speed-testing standard and that speedometer was operating properly at time of alleged violation). Here, the record reveals that no such evidence ever was admitted. Because there was no evidence to establish the accuracy of Trooper Lawton's speedometer or radar, the trial judge committed an error of law in sustaining the speeding charge. Accordingly, this Panel reverses the decision of the trial judge as to the speeding charge and dismisses that violation.

As to the charge of failing to observe laned roadway rules, § 31-15-11(2) provides in pertinent part:

[A] vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance, or in preparation for a left turn or where the center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is sign-posted to give notice of the allocation.

Here, Trooper Lawton testified that Appellant's motorcycle "had come upon slower traffic in ... the center lane and the right lane," when it made "several aggressive and erratic lane changes, once from the center lane to the right lane, back to the left lane," leaving less than a car length between Appellant's motorcycle and the slower-moving vehicles (Tr. at 5-6.) This testimony is sufficient to establish that Appellant drove his a vehicle in the center lane even though the center lane was not clear of traffic within a safe

distance. Accordingly, the trial judge properly sustained Appellant's violation of § 31-15-11(2).

As to the charge of failing to use a turn signal, § 31-15-5 provides that “[n]o person shall . . . move right or left upon a roadway . . . without giving an appropriate signal . . . in the event any other traffic may be affected by the movement.” Here, Trooper Lawton testified that Appellant, while navigating slower-moving traffic, made “several aggressive and erratic lane changes, once from the center lane to the right lane, back to the left lane . . . all without using a turn signal.” (Tr. at 5.) This testimony is sufficient to establish that Appellant moved both right and left upon a roadway without giving an appropriate signal, and that Appellant's failure to signal likely affected the slower-moving traffic that surrounded Appellant. (Tr. at 5-6.) Accordingly, the trial judge properly sustained Appellant's violation of Rhode Island Gen. L. § 31-15-5.

Finally, Appellant asserts that the trial judge committed an abuse of discretion because “[i]t was as if the court had pre-determined the outcome of the trial and was somehow more than hesitant to say that the trooper was not credible,” (Appellant's Brief at 9.) “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 v. State, 633 A.2d 1345 (R.I. 1993). Because determinations of credibility are not within the authority of this Panel, this Panel has no grounds to conclude that the trial judge committed an abuse of discretion.

Conclusion

Upon a review of the entire record, this Panel concludes that the trial judge committed an error of law in sustaining the charge of speeding. Accordingly, this Panel reverses the decision of the trial judge as to this charge. This Panel also concludes that the decisions of the trial judge as to the charges of failing to observe laned roadway rules and failing to use a turn signal were not clearly erroneous, nor affected by errors of law or an abuse of discretion. Accordingly, this Panel sustains the violations of § 31-15-11 and § 31-16-5 charged against the Appellant, and dismisses Appellant's appeal of these violations.

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