

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T08-0135

MICHAEL O'BRIEN

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

AMENDED DECISION

PER CURIAM: Before this Panel on November 26, 2008, Magistrate Cruise (Chair Judge Almeida, and Magistrate DiSandro presiding, is Michael O'Brien's appeal from Judge Ciullo's decision, sustaining the charged violation of G.L. 1956 § 31-16-5, "Turn signal required." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On July 31, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by a trooper of the Rhode Island State Police (Trooper). The Appellant contested the charge, and the matter proceeded to trial.

At trial, the Trooper testified that on the date in question, at approximately 12:30 p.m., he was traveling southbound on Route 95 in the vicinity of Cowesett Road in Warwick.¹ (Tr. at 2.) At this time, the operator of a Honda pick-up truck—later identified at trial as Appellant—made a lane change directly in front of the Trooper without the use of a turn signal. (Tr. at 2-3.) The Trooper indicated that Appellant's lane change occurred so suddenly that he was forced to apply his cruiser's brakes. (Tr. at 3.)

¹ The Trooper further testified that he was referring to the stretch of Route 95 known as "the Route 4/95 split." (Tr. at 3.) After Exit 9 on Route 95 South, the roadway splits: the two left travel lanes become Route 4, while the remaining three travel lanes continue on as Route 95.

Upon observing Appellant's lane change without the use of his turn signal, the Trooper initiated a traffic stop and issued a citation. Id.

At the conclusion of the Trooper's trial testimony, Appellant took the witness stand. The Appellant testified that he was traveling southbound on Route 95 towards Route 4 at approximately 55 m.p.h. when he noticed that the traffic in front of him was gridlocked. (Tr. at 4.) The Appellant indicated that there was a vehicle directly behind his and that this vehicle was "very close to [him]." (Tr. at 5.) In order to avoid what he perceived to be an imminent collision with the vehicle behind him, Appellant looked in his rearview mirror and side mirror before making a "defensive lane change." Id. Although he acknowledged the presence of the Trooper before making the lane change, Appellant believed that there was a sufficient distance between his vehicle and the cruiser in order to make the lane change safely. Id.

Following the trial, the trial judge sustained the charged violation of § 31-16-5. Aggrieved by the trial judge's decision, Appellant filed a timely appeal to this Panel. This Panel's decision is rendered forthwith.

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 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.”

In reviewing a hearing judge'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 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 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 is characterized by abuse of discretion. Although Appellant acknowledges that he “turn[ed] [his] vehicle without giving an appropriate signal” to “any other traffic [that] may [have] be[en] affected by the movement,” he maintains that the movement of his vehicle was “made with reasonable safety.” Section 31-16-5. Accordingly, Appellant contends that the trial

judge's decision to credit the Trooper's testimony that the movement of Appellant's vehicle was unsafe constitutes an abuse of his discretion.

In reviewing the trial judge's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility. . . ." Link, 633 A.2d at 1348. Unlike the trial judge, the members of this Panel did not have an opportunity to form our own impressions upon observing the Trooper and Appellant testify and listening to their testimony; accordingly, it would be improper for this Panel to second-guess the trial judge's determinations as to what testimony to accept and what testimony to disregard. See Environmental Scientific Corp., 621 A.2d at 206.

Here, the trial judge chose to credit the Trooper's testimony that the movement of Appellant's vehicle from one lane to another was not "made with reasonable safety," as the Trooper was forced to apply his cruiser's brakes in order to avoid a collision with Appellant's vehicle. (Tr. at 3.) The trial judge also chose not to credit Appellant's testimony that there was a sufficient distance between his vehicle and the Trooper's cruiser at the time the lane change was made. (Tr. at 8.) As there is reliable, probative, and substantial evidence in the record that Appellant did not utilize his turn signal at the time the movement of his vehicle was made, this Panel is satisfied that the trial "judge's decision is supported by legally competent evidence [and] is [un]affected by an error of law." Link, 633 A.2d at 1348.

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 to sustain the charged violation of § 31-16-5 was not characterized by abuse of discretion, affected by error of law, or

clearly erroneous in view of the reliable, probative, and substantial record. As we conclude that substantial rights of Appellant have not been prejudiced, this Panel denies Appellant's appeal and sustains the charge against him.