

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

ALABA SOBOWALE

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C.A. No. T09-0037

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on June 17, 2009—Magistrate Noonan (Chair, presiding) and Judge Parker and Judge Almeida sitting—is Alaba Sobowale’s (Appellant) appeal from a decision of Magistrate DiSandro, sustaining the charged violation of G.L. 1956 § 31-15-7, “Places where overtaking prohibited.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 2, 2009, a trooper of the Rhode Island State Police (Trooper) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial, the Trooper testified that on the date in question, at approximately 3:47 p.m., he was traveling on Bridgham Street in Providence. (Tr. at 1.) The Trooper described Bridgham Street as a two lane road with one travel lane in each direction. Id. At this time, he observed a white Chrysler Pacifica leave “his lane of travel, cross[] [the] double yellow line, . . . [and] go[] head on towards [the Trooper] at a distance of about twenty feet. [The suspect vehicle] then . . . pulled back into traffic.” (Tr. at 1-2.) The Trooper identified Appellant at trial as the operator of the suspect vehicle. (Tr. at 2.) The

Trooper clarified his testimony by adding that Appellant's vehicle "passed a black Honda in front of [it] [by proceeding] over the double yellow line, and came . . . head on at [the Trooper]." (Tr. at 3.)

On cross-examination by Appellant, the Trooper acknowledged that there were potholes in the roadway on the date in question, but he added that he did not observe other vehicles attempting to avoid them by traveling over the double yellow line. Id. The Appellant then produced a series of photographs of Bridgham Street that he alleged had been taken the day after he was stopped by the Trooper; upon viewing the photographs, the Trooper testified that "the whole road look[ed] pretty much the same right now" and "show[ed] significant pot holes." (Tr. at 4.)

The Appellant then testified that the Honda had come to a complete stop in the roadway to avoid the potholes and that "everyone was passing on the left" of the Honda. Id. When asked by the trial magistrate why he did not allow the Honda "sufficient time to negotiate the pothole[s]," Appellant responded that he did not want to cause damage to his vehicle and "that was what everybody [was] doing just [to] avoid[] [the] potholes." (Tr. at 5-6.)

Following the trial, the trial magistrate sustained the charged violation of § 31-15-7. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

Standard of Review

Pursuant to § 8-18-9, "[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8." Section 31-41.1-8 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'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 magistrate's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial magistrate abused his discretion by failing to properly evaluate and assign the appropriate weight to evidence that Appellant introduced at trial: namely, the photographs demonstrating "the road conditions and the damage it could [have] caused to [his] personal propert[y]."

It is well-settled that this Panel cannot "substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link, 633 A.2d at 1348. Here, the trial magistrate stated on the record that he did "take[] [the] photographs into consideration" and was satisfied that they were "[a] fair and accurate depiction of the road conditions as agreed upon by the Trooper." (Tr. at 9.) However, he placed great weight on the statement by the Trooper that "all of the vehicles that were trying to get passed that road passed the potholes, and only one of them crossed the double yellow line." (Tr. at 7.) The trial magistrate found that "the Honda . . . negotiated the potholes, albeit by slowing down and going through it one tire at a time" and that, based on the Trooper's trial testimony, "[Appellant] should have done the same thing." (Tr. at 9.) Thus, as the trial magistrate chose to credit the trial testimony of the Trooper that Appellant could have avoided the potholes in Bridgham Street without leaving his lane of travel, this Panel will not substitute its judgment for that of the trial magistrate on this question of fact. See Link, 633 A.2d at 1348. Accordingly, we are satisfied that the trial magistrate's decision to sustain the charged violation of § 31-15-

7—despite Appellant’s evidentiary proffer—was not characterized by an abuse of his discretion.

Conclusion

This Panel has reviewed the entire evidentiary record before it. Having done so, the members of this Panel are satisfied that the trial magistrate’s decision to sustain the charged violation is not characterized by an abuse of his discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violation is sustained.

ENTERED: