

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
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TOWN OF JOHNSTON

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v.

C.A. No. T09-0078

GREGORY ACCIARDO

DECISION

PER CURIAM: Before this Panel on August 19, 2009—Magistrate DiSandro (Chair, presiding) and Judge Almeida and Magistrate Noonan sitting—is the Town of Johnston’s (Appellant) appeal from a decision of Judge Ciullo, dismissing Gregory Acciaro’s (Appellee) charged violations of G.L. 1956 §§ 31-15-3, “Passing of vehicles proceeding in opposite directions” and 31-16-5, “Turn signal required.” The Appellee was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 15, 2009, Officer Ryan Lemieux (Officer Lemieux) of the Johnston Police Department charged Appellee with the aforementioned violations of the motor vehicle code. The Appellee contested the charges, and the matter proceeded to trial.

At trial, Officer Lemieux testified that on the date in question, at approximately 1:00 a.m., he observed a black Jeep Wrangler make a “wide sweeping [right-hand] turn heading northbound on Atwood Avenue” from the parking lot of Mr. Bigg’s Saloon. (Tr. at 4-5.) Officer Lemieux indicated that the vehicle did not utilize a turn signal when exiting the parking lot. (Tr. at 5.)

Officer Lemieux then observed the vehicle “cross[] . . . a little bit over the double yellow lines [and] then [travel] back into its lane of travel and continue[] northbound.” (Tr. at 4-5.) Deciding to follow the suspect vehicle, Officer Lemieux exited the parking lot directly across from Mr. Bigg’s Saloon and turned onto Atwood Avenue. (Tr. at 6.) At this time, Officer Lemieux noted that “there were already two vehicles behind the Jeep Wrangler.” Id.

Although Officer Lemieux proceeded to follow the suspect vehicle on Atwood Avenue, he indicated that the “two motor vehicle[s] . . . in front of [his cruiser] . . . obstructed [his] view [of] the Jeep Wrangler going back and forth between the yellow line and the fog line.” (Tr. at 7.) However, Officer Lemieux was able to observe the vehicle “swerving a little bit back and forth, going from the outside to the inside of the [travel] lane.” Id.

At the intersection of Hartford Avenue and Atwood Avenue, the two vehicles that had been following the suspect vehicle “went in different directions, [whereupon Officer Lemieux] continued to follow the Jeep Wrangler north[bound] on Atwood Avenue.” Id. In the 1700 block of Atwood Avenue, Officer Lemieux observed the vehicle cross the yellow lines in the roadway before reentering the lane of travel. Id. At this time, Officer Lemieux activated his cruiser’s emergency lights and initiated a traffic stop of the vehicle. Id. He made contact with the operator of the vehicle, identified at trial as Appellee. (Tr. at 9.)

Following Officer Lemieux’s trial testimony, counsel for Appellee moved to dismiss the charged violations. (Tr. at 10.) Counsel first argued that the summons issued to Appellee on the date in question indicated that he was charged with “driving left of center,” whereas § 31-15-3 prohibits the “passing of vehicles proceeding in opposite directions.” Id. According to counsel, the charged violation could not be sustained because “[Officer Lemieux’s] testimony does not indicate that [Appellee] was passing any vehicle in the opposite direction” and, as such, “it is the

wrong charge” Id. With respect to the charged violation of § 31-16-5, counsel for Appellee argued that a turn signal is inapplicable when exiting a parking lot.

Before reaching the merits of Appellee’s dismissal motion, the trial judge stated that “[b]oth of these statutes require that other cars be in the area” and that he hadn’t heard testimony by Officer Lemieux that other vehicles had been affected by the movement of Appellee’s vehicle on Atwood Avenue. (Tr. at 12.) Accordingly, the trial judge dismissed the charged violations of §§ 31-15-3 and 31-16-5. The Appellant, aggrieved by the trial judge’s decision, filed a timely appeal to this Panel. Our decision is rendered below.

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 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 Appellee 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 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’s decision is affected by error of law and clearly erroneous in view of the reliable, probative, and substantial record evidence. The Appellant has advanced two arguments in support of its appeal, each of which will be addressed in seriatim.

First, Appellant asserts that there is legally competent evidence in the record that “other traffic [on Atwood Avenue] [was] affected by the movement” of Appellee’s vehicle, as Officer Lemieux testified at trial that there were two vehicles in the immediate vicinity of Appellee’s vehicle when he failed to use his vehicle’s turn signal. Section 31-16-5. Additionally, Appellant maintains that there is legally competent record evidence that Appellee failed to “give to [another vehicle traveling on Atwood Avenue] at least one-half of the main traveled portion of the roadway as nearly as possible” when Appellee passed the vehicle, which was “proceeding in [the] opposite direction[.]” on the roadway.

In order for the trial judge to sustain the charged violation of § 31-16-5, the prosecution was required to prove to a standard of clear and convincing evidence that Appellee “move[d] right . . . upon [Atwood Avenue]” without first ascertaining that “the movement [could] be made with reasonable safety,” and that Appellee executed this movement “without giving an appropriate signal . . . in the event that any other traffic [was] affected by the movement.” The record before this Panel reflects that Officer Lemieux failed to testify as to whether Appellee, when exiting the parking lot of Mr. Bigg’s Saloon, failed to ascertain that the movement could be made with reasonable safety. While Appellant asserts that the two vehicles that separated Appellee’s vehicle from Officer Lemieux’s cruiser were affected by the movement of Appellee’s vehicle, there no evidence in the record to support this assertion. Accordingly, the trial judge’s decision to dismiss this charged violation was not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial record evidence.

With respect to the charged violation of § 31-15-3, the prosecution was required to prove to a standard of clear and convincing evidence that Appellee passed a vehicle proceeding in the opposite direction, “upon [a] roadway[] having a width for not more than one line of traffic in each direction,” failed to “give the other [vehicle] at least one-half of the main traveled portion of the roadway” The record before this Panel contains no legally competent evidence that Appellee passed another vehicle “proceeding in [the] opposite direction[]” on Atwood Avenue. Section 31-15-3. Indeed, Officer Lemieux indicated in his trial testimony that the two vehicles that separated his cruiser from Appellee’s vehicle were proceeding in the same direction. Accordingly, the members of this Panel are satisfied that the trial judge’s decision to dismiss the charged violation of § 31-15-3 was not clearly erroneous or otherwise affected by error of law.

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 is not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial record evidence. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied.