

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF WEST GREENWICH

v.

JOHN KORNLIFF

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C.A. No. T10 - 0035

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on July 14, 2010—Magistrate Noonan (Chair, presiding) and Judge Parker and Judge Ciullo, sitting—is John Kornliff’s (Appellant) appeal from a decision of Judge Almeida, sustaining the charged violations of G.L. 1956 §§ 31-15-3, “Passing of vehicles proceeding in opposite directions,” and 31-15-12, “Interval between vehicles.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On February 6, 2010, an Officer of the West Greenwich Police Department (Officer) received a call from the Coventry Police Department regarding a “neurotic operator traveling [Route] 102 South just entering” the Town of West Greenwich. (Tr. at 5.) The Officer was parked at the station when she received the phone call. The Officer and Sergeant Brown both got into their own police cruisers and drove to Route 102. The Officer testified that he was traveling southbound on Route 102 when he observed a vehicle “attempting to pass somebody, another vehicle[,] in a no passing zone double yellow by the truck stop.” (Tr. at 5-6.)

At this point, the Officer continued to testify that he watched as “[t]he vehicle swerved back in and was riding the vehicle in front of him driving too closely.” (Tr. at 6.) The Officer then activated his overhead lights and attempted to initiate a motor vehicle stop of Appellant’s

vehicle. According to the Officer, Appellant did not immediately pull to the side of the road. Id. Sergeant Brown then drove his cruiser to the side of Appellant's vehicle with his overhead lights activated, motioning for Appellant to move his vehicle to the side of the road. Once Appellant's vehicle stopped on the side of the road, the Officer and Sergeant Brown "blocked him in" with their police cruisers. (Tr. at 6.)

The Officer then approached Appellant's vehicle. He continued to explain that Appellant said he did not immediately move his vehicle to the side of the road because "his passenger . . . had stomach pains." (Tr. at 6.) The Officer called an ambulance. When the ambulance arrived on the scene, Appellant and his passenger refused treatment. According to the Officer, Appellant stated that his passenger did not want to pay for a rescue; instead, he wanted to bring her to the hospital himself.

Next, the trial court heard from Appellant. Appellant explained that the passenger in his car was "very sick" and was suffering from diticulitus. (Tr. at 6.) Appellant testified that there were three cars between him and the Officer when he was operating his vehicle on Route 95. Appellant contends that he did not drive over the double yellow lines nor did he follow anyone too close because "it's only two lanes there from 95 where it goes west back up to the hill." (Tr. at 8.) Furthermore, Appellant posits that the description of the car driving erratically did not match the description of his own vehicle. (Tr. at 9.) "Well there were other Thunderbirds on the road that day. Maybe [the Officer] might have seen the one that was in front of [Appellant] when he was turn[ing] from [Route] 118 to 102 that was heading fast up 102 to the highway who was about maybe six or seven car lengths in front of me." (Tr. at 15-16.)

Appellant continued to explain that he did not stop immediately when the Officer activated his overhead lights because he had to continue to drive "about a half mile to the

highway before [he] could pull over because [he was] on I-95.” (Tr. at 19.) He testified that as soon as he could he pulled right over, put his directional signal on, and stopped his vehicle on the side of the road. *Id.* Furthermore, the trial judge questioned Appellant as to the female passenger in his vehicle. Appellant explained that there was an emergency so he had to get her on the highway to Kent County Hospital. (Tr. at 19-20.) Appellant also presented papers to the trial judge evidencing that he took his female passenger to Kent County Hospital. (Tr. at 12, 19.)

Lastly, the trial court heard from Appellant’s witness, Ann Marie Silveria (Ms. Silveria). Ms. Silveria explained to the trial judge that she has “more serious health issues other than what [Appellant] was stating, and [she] was in a great deal of intensive pain, and [she] was not able to move at all, and [she] didn’t want to go in the rescue because [she] cannot afford a rescue.” (Tr. at 26.) Ms. Silveria continued to testify that she asked Appellant to drive her to the hospital and she did not want to take a rescue to the hospital because she adamantly states that she cannot afford to pay for a ride in an ambulance. (Tr. at 26-27.) Moreover, Ms. Silveria testified that he was “not over the line” while he was operating his vehicle. (Tr. at 29.)

Following the trial, the trial judge sustained the charged violations of §§ 31-15-3 and 31-15-12. The Appellant, aggrieved by this 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 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 argues that the trial judge's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial judge abused his discretion by choosing to credit the testimony of the West Greenwich Police Officer over his own testimony.

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., 586 A.2d at 537). As the members of this Panel did not have an opportunity to view the live trial testimony of the Officer and Appellant, it would be impermissible to second-guess the trial judge’s “impressions as [s]he . . . observe[d] [them,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . and what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206. “[W]hen credibility evaluations are implicated, . . . the standard of review [imposed upon this Panel] requires [us] to defer to the evidentiary findings of the trial judge.” Id.

It is outside the scope of this Panel’s review to assess the credibility of either the Officer or Appellant’s testimony. The trial judge found the testimony of the Officer to be more credible than that of the Appellant. Specifically, the trial judge stated that the Officer has

“been doing this [for] eleven years and lying under oath of course is not anything[,] perjury is not anything that anybody wants to do. But especially an officer. Certainly [the Appellant] is not that important—no offense—but for him to lose a job or after eleven years on the force. And he here telling me under oath that . . . he did see this” violation take place on the day in question. (Tr. at 32.)

Therefore, it is impermissible for this Panel to second-guess the trial judge’s determinations and substitute our judgment for that of the trial judge.

This Panel must affirm the trial judge’s decision if it is supported by the reliable, probative, and substantial evidence of record. Link, 633 A.2d at 1348; see Environmental Scientific Corp., 621 A.2d at 208. At trial, the Officer testified that Appellant was operating a vehicle “attempting to pass somebody, another vehicle in a no passing zone. . . .” (Tr. at 6.) Moreover, according to the Officer’s testimony, Appellant’s vehicle was “swerve[ing] back in

and was riding the vehicle in front of him driving too closely.” *Id.* The Officer explained to the trial judge that he observed as Appellant’s vehicle was “follow[ing] [the] vehicle more closely than [was] reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon the condition of the highway. . . .” Section 31-15-12. Based on the substantial testimonial evidence before her, the trial judge found that Appellant did not “leave sufficient space so that an overtaking vehicle may enter and occupy the space [in between the two vehicles] without danger.” *Id.* Relying on the record before this Panel, we are satisfied that the trial judge’s decision is not erroneous in view of the reliable, probative and substantial testimonial evidence on the record.

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 neither characterized by abuse of discretion nor erroneous in view of the reliable, probative, and substantial evidence on the record. The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation of § 31-15-12 is sustained.

ENTERED: