

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF CRANSTON

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C.A. No. T11-0047

v.

JOSE RODRIGUEZ

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
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DECISION

PER CURIAM: Before this Panel on August 31, 2011— Judge Almeida, (Chair, presiding), Administrative Magistrate Cruise, and Magistrate Noonan, sitting—is Jose Rodriguez’s (Appellant) appeal from a decision of Judge Ciullo, sustaining the charged violations of G.L. 1956 § 31-16-5, “Turn signal required,” and § 31-23.3-2, “Windshields and windows obscured by nontransparent materials.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On April 18, 2011, shortly after midnight, Appellant was stopped by a member of the Cranston Police Department wearing badge number 442. The Appellant was cited for the aforementioned traffic violations. The matter proceeded to trial on July 26, 2011.

At trial, the officer testified that he witnessed the Appellant driving in a neighborhood between Reservoir and Park Avenues in Cranston. (Tr. at 1.) The officer testified that the Appellant made a right turn onto Coastway Place without using a turn signal. Id. The officer, having witnessed what he perceived to be a traffic violation, initiated a traffic stop.

The officer verified the vehicle's registration, and it was determined that the vehicle was owned by Grace Molina, a passenger in the vehicle. Id. Also during the traffic stop, the officer noticed "aftermarket sunscreen" on the vehicle, a violation of Rhode Island General Laws. Id.

At the trial, Appellant testified that the officer could not have seen aftermarket sunscreen because Appellant's windows were rolled down. Id. Appellant also disputed the assertion that he did not use his turn signal. Id.

The trial judge pointed out during the trial that the officer should have issued the sunscreen summons to the registered owner, Ms. Molina. Id. However, the trial judge found the Appellant guilty of the charge. The trial judge also found the Appellant guilty for failing to use a turn signal. Aggrieved by this decision, Appellant 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 [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 clearly erroneous in view of the reliable, probative, and substantial evidence on the record, and that sufficient clear and convincing evidence was not offered to sustain the turn signal violation. Specifically, Appellant contends that the trial judge improperly relied upon facts that were not in evidence in sustaining the charged violation of G.L. 1956 § 31-16-5.

Section 31-16-5 provides that "[n]o person shall . . . move right or left upon a roadway, unless and until the movement can be made with reasonable safety." Additionally, the section states, "[n]o person shall so turn any vehicle without giving an appropriate signal . . . in the event any other traffic may be affected by the movement."

Having reviewed the record in its entirety, the members of this Panel are of the opinion that the trial judge's decisions are clearly erroneous in view of the reliable, probative, and substantial evidence on the record. The officer's testimony does not go into any detail regarding the conditions surrounding the traffic stop. In order for the trial judge to sustain a violation under section 31-16-5, the officer must prove that not using the turn signal did affect other traffic in the road. The officer simply testified that the Appellant did not use his turn signal when making a right turn at an intersection and provided no other information regarding traffic conditions. (Tr. at 1-2.) Therefore, the turn signal violation cannot be sustained.

Appellant also argues on appeal that the trial judge's decision to sustain the violation of section 31-23.3-2 is clearly erroneous in view of the reliable, probative and substantial evidence on the record. Section 31-23.3-2 states in pertinent part that "[n]o person shall own and operate any motor vehicle upon any public highway . . . with nontransparent or sunscreen material, window application, reflective film or non-reflective film. . . ." (Emphasis added.)

A review of the record shows that the Appellant was not the owner of the vehicle he was operating on the night he was issued the summons. In fact, the officer testified that the registered owner was Grace Molina. (Tr. at 1.) Because the Appellant was not the registered owner, a necessary element of § 31-23.3-2 is absent. Therefore, the violation cannot be sustained.

### Conclusion

Since the record is void of evidence necessary to sustain both violations, the trial judge's decision is clearly erroneous. Substantial rights of the Appellant have been prejudiced.

Accordingly, the Appellant's appeal is granted, and the charged violations of §§31-16-5 and 31-23.3-2 are dismissed.