

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. T13-0015
12001540125**

STERLING FREEMAN

DECISION

PER CURIUM: Before this Panel on May 29, 2013—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Goulart, sitting—is Sterling Freeman’s (Appellant) appeal from a decision of Judge Parker (trial judge), sustaining the charged violation of G.L. 1956 § 31-15-12, “Interval between vehicles.” Appellant appeared before this Panel with counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On September 9, 2012, Trooper William Reilly (Trooper Reilly) of the Rhode Island State Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on February 20, 2013.

At trial, Trooper Reilly stated that he was on a fixed traffic post directly behind the Rhode Island State Police Lincoln Woods Barracks on Route 146 watching southbound traffic. Trooper Reilly observed two vehicles traveling at seventy miles per hour in the high speed lane. (Tr. at 2.) The second vehicle, which was operated by the Appellant, was a car length to a car length and one-half away from the vehicle in front of him. Id.

Trooper Reilly exited his location, followed the vehicles, and stopped the Appellant southbound of Route 146. Id. Trooper Reilly identified the Appellant as the operator of the vehicle that was driving closely behind the speeding vehicle. Id. Trooper Reilly informed the Appellant that he was speeding, but Appellant did not receive a speeding ticket. Trooper Reilly then issued Appellant a summons for following too closely. (Tr. at 5.)

Appellant then testified on his own behalf. Appellant stated that he was not speeding and when the driver of the car in front of him stepped on his brake after seeing Trooper Reilly, it created the appearance that Appellant was traveling too closely. (Tr. at 4.) The Court asked Trooper Riley for how long he had observed the vehicles. Trooper Reilly responded, “there is really no way to say because there’s wood’s there.” (Tr. at 7.) However, Trooper Reilly estimated that he had observed the vehicles for approximately “a tenth to two tenths of a mile.” Id. Appellant argued that Trooper Reilly could not have seen the vehicles traveling for two tenths of a mile due to the woods obstructing his view. (Tr. at 8.)

After both parties presented their evidence, the trial judge issued a decision sustaining the charged violation. In sustaining the violation, the Court assessed Trooper Reilly’s credibility, finding that Trooper Reilly “seems credible with clear and convincing evidence to prove the charge.” (Tr. at 9.)

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 was an abuse of discretion and was not supported by reliable and substantial evidence on the whole record. Specifically,

Appellant argues that the trial judge erred in crediting the testimony of the Trooper over Appellant's.

The State has the burden of proving by clear and convincing evidence that the Appellant violated Section 31-15-12. That section provides:

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the highway, and shall, whenever traveling through a business or residential district, and whenever traffic permits, leave sufficient space so that an overtaking vehicle may enter and occupy the space without danger.

Appellant maintains that the Trooper had not observed the vehicle long enough to satisfy this burden of proof.¹ Appellant argues that the Trooper could not have mathematically observed Appellant's vehicle from the Trooper's location based on the speed at which Appellant was traveling. Appellant further explained that the vehicle had to be traveling close to eighty-eight feet per second in order for the Trooper to observe Appellant's vehicle for one to two seconds. Appellant claims this equation is inconsistent with the Trooper's testimony that he observed Appellant's vehicle for one tenth of a mile. (App.'s Br. 2.)

Appellant further argues that the trial judge found the Trooper's testimony more credible than his own. (App.'s Br. 2.) After listening to the testimony, the trial judge determined that the Trooper's testimony seemed "credible with clear and convincing evidence to prove the charge." (Tr. at 9.) It would be "impermissible for the appellate review body to second-guess the trial judge's factual findings and acceptance of the Trooper's testimony as credible." Environmental Scientific Corp., 621 A.2d at 206.

¹ Appellant further argued that when he was pulled over, Trooper Reilly informed Appellant that he was being pulled over for speeding. However, the trial judge stated "he didn't charge you with speeding... his testimony is that you were tail gating." (Tr. at 6.) Appellant was not charged with speeding on the citation.

The record before this Panel reflects that the trial judge's decision to sustain the charged violation of § 31-15-12 is amply supported by legally competent evidence, such as the testimony from Trooper Reilly. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion and the decision was supported by reliable evidence.

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 was not an abuse of discretion and was supported by reliable and substantial evidence on the record. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Judge Lillian M. Almeida (Chair)

Chief Magistrate William R. Guglietta

Magistrate Alan R. Goulart

DATE: _____