

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF COVENTRY

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:
:

v.

**C.A. No. M15-0041
15201500839**

JASON SILVEIRA

DECISION

PER CURIAM: Before this Panel on February 24, 2016—Magistrate Abbate (Chair), Administrative Magistrate DiSandro III, and Chief Magistrate Guglietta, sitting—is Jason Silveira’s (Appellant) appeal from a decision of Coventry Municipal Court Judge Arthur Capaldi (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-15-11, “Laned Roadways.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On August 26, 2015, Officer Wyatt Huston of the Coventry Police Department (Officer) charged the Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on November 10, 2015.

At trial, the Officer testified that he was sitting in his patrol vehicle on Tiogue Avenue in Coventry when he observed a white Ford traveling eastbound on Tiogue Avenue. (Tr. at 2.) The Ford turned left, entering into a CVS parking lot, when it nearly collided with a patrol vehicle driven by Officer Rivella of the Coventry Police Department (Officer Rivella). Id. This concluded the Officer’s testimony. Officer Rivella was not present to testify at the trial.

On cross-examination, Appellant, the driver of the Ford, questioned the Officer regarding the basis for the stop, asking “so [almost colliding with the police officer] was their reason to

stop me [?]" Id. at 4. The Officer clarified "[w]ell, no, the reason for the stop was . . . when you took the left at CVS, you were traveling . . . at a rate of speed of 55 miles per hour. We clocked you 20 miles over the speed limit." Id.

Appellant then questioned the Officer in respect to the Officer's search of his vehicle. Id. at 5. Appellant inquired "[d]id you search my vehicle?" to which the Officer responded "[y]es . . . I searched your vehicle, because you had someone else's ID." Id. The Officer added that although it is not against the law to have someone's ID, its "unusual." Id. Appellant responded "[i]s that a reason to search the vehicle?" and the Officer replied, "I asked if I could search your car and you got out of the car and you said yes, I could." Id. at 5-6.

At this point, Appellant attempted to introduce a recording of the stop in order to contest the validity of the search and to establish that the Officer "never mentioned anything about a laned roadway." Id. at 8. The Trial Judge warned the Appellant "you better have a foundation for [the recording], because I won't accept it." Id. at 7. Appellant replied that he took the recording at the time of the stop and had informed the officers that they were being recorded. Id. The Officer stated that he did not know he was being recorded, but did not object to the recording being played. Id. at 9.

The Trial Judge played the recording, and the Officer is recorded as stating, "[y]ou were speeding. So you'll get something in the mail." Id. at 10. When the recording ended, Appellant asked the Officer "[d]id you mention anything about me almost hitting another police officer?" The Officer replied, "No." Id. at 11. This concluded Appellant's cross-examination of the Officer. The Trial Judge then asked the Officer to once again, explain what he observed, asking "[y]ou were coming out of CVS, when he almost hit the other officer [?]" Id. at 13-14. The Officer responded, "yes, sir." Id.

The Trial Judge then addressed the Appellant, stating “you never denied the charge, not once. You gave me a lot of other information, but I didn’t hear from you even once that you didn’t do what he said you did.” Id. Accordingly, the Trial Judge sustained the charged violation, § 31-15-11. Aggrieved by the Trial Judge’s decision, Appellant timely filed this appeal.

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 Ins. 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 Envtl. 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 to sustain the charged violation of § 31-15-11, "Laned Roadways" was an abuse of discretion and clearly erroneous due to the lack of probative evidence on the record. Specifically, Appellant maintains that the Trial Judge did not make any factual determinations on the record, and the testimony presented by the Officer is insufficient to meet the statutory requirements of § 31-15-11.

This Panel's review of the findings of a trial judge is quite deferential. This Panel affords a great deal of respect to the factual determinations and credibility assessments made by the trial judge who has "actually observed the human drama that is part and parcel of every trial and who has had an opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." In Re Dissolution of Anderson, Zangari, & Bossian, 888, A.2d 973, 975 (R.I. 2006); see also Link, 633 A.2d at 1348 (finding that 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"). The findings of fact by a trial judge are "entitled to great weight and will not be disturbed on appeal absent a record showing that the trial judge overlooked or misconceived material evidence or

was otherwise clearly wrong.” Alpha Omega Const., Inc. v. Proprietors of Swan Point Cemetery, 962 A.2d 733, 738 (R.I. 2008).

Based on the record before this Panel, we agree with the Appellant in concluding that the Trial Judge failed to make any factual determinations or assessments of credibility. The Trial Judge did not enumerate the grounds upon which his decision was based, credit the testimony of the Officer, or indicate any basis for his decision. Instead, the Trial Judge focused on the fact that Appellant “never denied the charge” and sustained the violation based on this absence of denial. (Tr. at 14.) In our opinion, this constitutes an abuse of discretion. See R.I. Turnpike & Bridge Authority v. Cohen, 433 A.2d 179, 183 (R.I. 1981) (stating “a trial justice is clearly wrong if he has made findings of fact that were not based on sufficient or competent evidence).

Moreover, there is no competent evidence on the record, or reasonable inference to be drawn therefrom, which supports the Trial Judge’s conclusion that Appellant violated § 31-15-11. Section 31-15-11 sets forth, in pertinent part:

“Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent with them shall apply:

(1) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.

(2) Upon a roadway which is divided into three (3) lanes, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance, or in preparation for a left turn or where the center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is sign-posted to give notice of the allocation.

(3) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway, and drivers of vehicles shall obey the directions of the sign. . . .” See § 31-15-11.

The record does not indicate that Appellant violated § 31-15-11 in any manner. There is no evidence demonstrating that Appellant “moved from the lane [without] first ascertain[ing] that the movement can be made with safety,” nor is there evidence suggesting that Appellant failed to “drive as nearly as practical entirely within a single lane.” Id.; see also Ayotte v. Rodriguez, 2006 WL 1845763 (R.I. 2006) (finding in a Superior Court context, “[§ 31-15-11] requires a motorist to remain in one lane of travel until he or she safely can move into another lane”). In fact, there is no evidence to suggest that § 31-15-11 even applies because there is no description of the roadway. See § 31-15-11 (“[w]henver any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules . . . shall apply”). Instead, the record indicates that Appellant “almost collided with [a] patrol vehicle” and was traveling “at a rate of speed of 55 miles per hour . . . 20 miles over the speed limit.” (Tr. at 3-4.) Although these facts may support a violation pursuant to § 31-14-2, “Prima Facie Limits,” neither fact, standing alone, is sufficient as a matter of law to sustain a violation pursuant to § 31-15-11. Cf. State v. Glynn, 658 A.2d 6, 7 (R.I. 1995) (stating “[a] review of the statutes in question reveals that proof of different additional facts would be required to establish each of these crimes”).

Based on the record, this Panel cannot conclude as a matter of law that Appellant committed a “Laned Roadways” violation. Consequently, because there is insufficient evidence on the record to support the Trial Judge’s conclusion that Appellant violated § 31-15-11, the decision must be reversed. See Link, 633 A.2d at 1348 (“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”).

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find that the Trial Judge's decision is not supported by the reliable, probative, and substantial evidence on the whole record and constituted an abuse of discretion. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

Magistrate Joseph A. Abbate (Chair)

Chief Magistrate William R. Guglietta

Administrative Magistrate Domenic A. DiSandro III

DATE: _____