

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

RASHARN YOUNG

:
:
:
:
:

**C.A. No. M20-0001
19408507613**

DECISION

PER CURIAM: Before this Panel on October 28, 2020—Administrative Magistrate Abbate (Chair), Judge Parker, and Chief Magistrate DiSandro, sitting—is Rasharn Young’s (Appellant) appeal from a decision of Judge Nusselbush (Trial Judge) of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-15-8, “No Passing Zone.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On October 11, 2019 Officer Justin W Snape (Officer Snape) of the Pawtucket Police Department observed a vehicle overtaking another vehicle, crossing the double-yellow line and merge back into traffic. (Tr. 5). Officer Snape identified the driver of the vehicle as Appellant and issued Appellant a citation for the above-mentioned violation. *Id.* at 8; *see* Summons 19408507613.

The Appellant subsequently pled not guilty to the charged violation, and the matter proceeded to trial on January 17, 2020. *Id.* at 3. At trial, Officer Snape testified that on October 11, 2019 he was traveling west on Division Street when he noticed a couple cars ahead of him, a vehicle overtake a sedan, cross the double yellow line, and merge back into traffic. *Id.* at 5. Officer

Snappe noticed the vehicle change lanes as he entered Division and Prospect Street without signaling. *Id.* He further testified that he initiated a traffic stop just prior to the bridge in front of 50 Division Street. *Id.*

Moreover, Officer Snappe testified that during the stop he asked Appellant the reason for the violation and he stated “he was rushing home to meet a maintenance man at his house.” *Id.* at 6. Officer Snappe gave a verbal warning for the turn-signal violation and cited Appellant for the no-passing zone violation § 31-15-8. *Id.*

The Trial Judge asked Officer Snappe to indicate what signs or markings might have been in place at the time of the violation. *Id.* at 7. Officer Snappe testified “he considered the double-yellow line to be a known marker as a no-passing zone, whereas a broken line would indicate you are allowed to pass.” *Id.*

The Appellant testified at trial explaining “he was pulled over before the bridge when it was two lanes.” *Id.* at 9. He further testified that “he did pass, but it was two lanes and there was no double-yellow line, but actually passing allowed.” *Id.*

After hearing the testimony, the Trial Judge recounted the facts asserted by Officer Snappe and the Appellant. *Id.* at 11. The Trial Judge found the police officer’s testimony to be credible. *Id.* at 12. She found the “yellow lines are the visible markings that the statute requires.” *Id.* The Trial Judge further found that Appellant “crossed the double-yellow line, overtaking another vehicle on the left, and went back into traffic.” *Id.* The Trial Judge found the Appellant guilty of the charged violation, and the Appellant subsequently filed this timely appeal.

II

Standard of Review

Pursuant to § 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 Mut. 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.” *Id.* (citing *Envtl. Sci. 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.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On Appeal, the Appellant asserts that he is innocent of the charge and there was no proof of guilt during his trial. *See* Appellant's Notice of Appeal.

The most pertinent issue on appeal, is that there is no sworn testimony in the record. A reading of the transcript held before Judge Nusselbush discloses that the Judge failed to swear in the witnesses prior to the testimony. As a result, there is no sworn testimony in the record certified for review on appeal.

IV

Conclusion

This Panel has reviewed the entire record before it. Seeing that there is no sworn testimony, this Panel grants the Appellant's appeal and dismisses the charged violation of § 31-15-8.

ENTERED:

Administrative Magistrate Joseph A. Abbate (Chair)

Judge Edward C. Parker

Chief Magistrate Domenic A. DiSandro, III

DATE: _____