STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T14-0010**
	:	**13001539572**
DAVID JACOBS	:	

DECISION

PER CURIAM: Before this Panel on June 18, 2014—Administrative Magistrate Cruise, Judge Almeida, and Magistrate DiSandro III, sitting—is David Jacobs' (Appellant) appeal from the decision of Judge Parker (Trial Judge), sustaining the charged violations of G.L. 1956 § 31-22-2, "Restriction on Backing—improper backing"; and § 31-13-12, "Interval between vehicles—following too close." Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1.8.

Facts and Travel

On December 21, 2013, Trooper James Thomas (Trooper) charged Appellant with the aforementioned violations of the motor vehicle code. On January 23, 2014, Appellant contested the charges, and the matter proceeded to trial on February 19, 2014.

At trial, the Trooper testified that on December 21, 2013, at around 2:05 a.m., he was traveling southbound on I-95 just north of Exit 8 in East Greenwich. (Tr. at 3.) While traveling, the Trooper testified that he observed a black Toyota with Massachusetts license plate 73PN28 (Appellant's vehicle) swerving in and out of its lane. Id. When the Trooper activated the cruiser's emergency lights and siren, he explained that Appellant's vehicle immediately began to

pull over to the left lane on I-95 South. Id. at 3-4. Thereafter, the Trooper testified that he entered the right lane to avoid being struck by traffic. Id. at 4. The Trooper stated that Appellant must have noticed because the Appellant's vehicle also moved right. Id. The Trooper testified that he followed Appellant's vehicle for approximately "a lane and a half just north of Exit 8, continued south, and took the ramp, 95 south, Exit 8 to Quaker Lane and then took a right… at the bottom of the ramp." Id. at 4-5. The Appellant's vehicle stopped at the bottom of the ramp, and the Trooper identified the driver as the Appellant. Id. at 5. Thereafter, the Trooper testified that he explained to Appellant his reason for initiating the stop, and the Trooper explained to Appellant of safe places on the highway to pull over instead of pulling off the highway onto an exit ramp. Id. Subsequently, the Trooper let Appellant go with a warning. Id.

After the traffic stop off Exit 8 on I-95 South (stop 1), the Trooper testified that he deactivated the emergency lights and cleared from the stop. Id. The Trooper stated that he then began traveling on Quaker Lane. Id. He described the intersection of Quaker Lane and Division as a five-lane road: one right turn only lane, two left turn only lanes, and two lanes traveling straight. Id. The Trooper testified that Appellant's vehicle was "in the left most turn only -- left turn only lane" and a marked cruiser was "in the second from the left turn only lane." Id. He explained that when the light turned green the cruiser began to turn left but Appellant drove straight. Id. at 5-6. The Trooper had to honk the horn in order to stop Appellant from striking the marked cruiser. Id. at 6. Thereafter, Appellant made the turn onto Division Road. Id. After making the turn, the Trooper testified that he pulled his vehicle next to Appellant in an attempt to ask Appellant if he was lost. Id. However, Appellant drove his vehicle in reverse to switch lanes before the Trooper had an opportunity to speak with him. Id. at 7. Subsequently, the Trooper witnessed the Appellant make a U-turn onto Route 4. Id. Thereafter, the Trooper activated his

vehicle's emergency lights and conducted another traffic stop. Id. The Trooper testified that the Appellant told the Trooper that he was in an unfamiliar area and the Trooper explained that there are still rules of the road to follow for safe travel. Id. The Trooper stated that Appellant responded as if he had done nothing wrong because he was trying to get away from the Trooper. Id. The Trooper testified that Appellant became argumentative and continued to state that he was trying to get away from the Trooper. Id. at 7-8. Thereafter, the Trooper cited Appellant for improper backing and interval between vehicles-following too close,[1] and the Trooper stated that Appellant again became argumentative insisting the Trooper was in the wrong because the Trooper did not supply the Appellant with directions after the first traffic stop. Id. at 9.

Subsequently, Appellant testified that he was at trial because he is unable to take the safe driving class in Rhode Island because he has a commercial driver's license. Id. at 9-10. Next, Appellant testified that on December 21 at approximately 2:30 in the morning he was driving southbound on I-95 at about 60 mph. Id. at 10. The Appellant stated that he was traveling in the left lane through the south side of Providence, past the S-curves. Id. He noted the state trooper parked in the median perpendicular to I-95 south and Appellant noted his own speed to make sure he was not speeding. Id. at 10-11. Thereafter, Appellant said he noticed a car traveling behind him at a high rate of speed and within about 30 yards the Trooper's lights flashed on. Id. at 11. The Appellant stated that he was caught off guard and swerved into the left median. Id. The Appellant then testified that he proceeded to move to the right-hand side of the highway and decided that he would not be stopping on the highway because he did not feel that was safe. Id. Thus, Appellant stated that he took the next exit and stopped. Id. at 11-12. During the stop,

[1] The trial judge clarified that the citations were for backing up to change lanes and for traveling too closely to the Trooper's vehicle. (Tr. at 9.)

Appellant said the Trooper told Appellant there were safe spots to stop on the highway and then let Appellant go with a warning. Id. at 13.

Thereafter, Appellant stated he was in the left lane of a divided highway and the Trooper was in the lane immediately to the right of Appellant. Id. at 14. The Appellant stated that they both began to turn left when the Trooper's cruiser overtook his vehicle. Id. The Appellant testified that the Trooper beeped his horn and Appellant had to stop so that his car did not hit the guardrail. Id. Thereafter, Appellant testified that the Trooper passed him. Id. The Appellant stated that he made the turn onto Division Road and began "to get his traffic bearings." Id. Subsequently, Appellant noticed the I-95 sign and he realized in order to get on I-95 he had to switch lanes. Id. at 15. Thus, Appellant stated that he backed up approximately 10 feet to get into the Trooper's lane. Id. At that point, Appellant testified that the Trooper initiated another traffic stop. Id. The Appellant stated that as the Trooper approached Appellant's window the Trooper asked him if he forgot how to drive. Id. Thereafter, Appellant testified that he did not think he was following the Trooper too closely nor does he think the Trooper was following him too closely. Id. at 16. The Appellant stated that he just did not feel his driving was unsafe. Id. at 16-18.

Subsequently, the trial judge found the Trooper's testimony credible and sustained both the § 31-15-12 violation of following too closely and the § 31-22-2 violation of improper backing up. Aggrieved by the trial judge's decision, Appellant timely filed this appeal.

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 31-31.1-8(f) provides in relevant 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 § 31-31.1-8, 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 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 clearly erroneous in view of the evidence on the record. Specifically, Appellant contends that the § 31-15-12 violation of following too closely did not take place.

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. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Officer or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

In the present case, the Trial Judge listened to the Trooper and Appellant's testimonies. After the Trooper and Appellant's testimonies, the Trial Judge sustained both violations, § 31-15-12 and § 31-22-2, as supported by the Trooper's account of all events that occurred on December 21, 2013. (Tr. 17-18.) The Trial Judge ruled, "[o]n that [improper backing] and following too closely, [the Trooper] testified that your vehicle [] was traveling behind their vehicle and there was not a safe distance in between the vehicle where a car could come safely and get between []. I'm going to find you guilty there." Id. at 18. Moreover, the Trial Judge noted that Appellant also testified that he drove in reverse, after he passed the entrance to Route 95. Id. Pursuant to Link, it is not within this Panel's authority to assess the credibility of Trooper's testimony and it cannot substitute its judgment of the evidence on questions of fact.

Id. Given the Appellant's appeal is entirely based on a factual disagreement with the Trial Judge's ruling, and no substantial right of the Appellant has been prejudiced in any way, this Panel affirms the decision of the Rhode Island Traffic Tribunal, sustaining Appellant's violations of § 31-13-12 and § 31-22-2.

Conclusion

This Panel affirms the decision of the Rhode Island Traffic Tribunal, which sustained Appellant's § 31-22-2 violation of improper backing and § 31-15-12 violation of following too closely. This Panel gives deference to the Trial Judge that heard the testimony and made conclusions of fact. As this Panel may not weigh the testimony of the Trooper, and the substantial rights of the Appellant have not been prejudiced in any way this Panel affirms the violations.

ENTERED:

_____
Judge Lillian M. Almeida

_____
Magistrate Domenic A. DiSandro, III

DATE: _____

Note: Administrative Magistrate R. David Cruise participated in the decision but resigned prior to its publication.