

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T08-0103

BRANDON GORGONE

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on September 10, 2008, Chief Magistrate Guglietta (Chair), Judge Almeida, and Magistrate Noonan sitting, is Brandon Gorgone’s (Appellant) appeal from Judge Parker’s decision, sustaining the charged violation of G.L. 1956 § 31-16-1, “Care in starting from stop.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On June 5, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by Patrolman Damato of the Gloucester Police Department. The Appellant contested the charge, and the matter proceeded to trial.

At trial, the Patrolman testified that on June 5, 2008, his cruiser was parked in a parking lot adjacent to Terry Lane, a dead-end street in the village of Chepachet.<sup>1</sup> (Tr. at 1.) The Patrolman testified that his cruiser was parked approximately 25 feet from the entrance of Terry Lane and that the front of his cruiser was facing the entrance. Id.

The Patrolman testified that at approximately 3:30 p.m., he observed a white vehicle enter Terry Lane. Id. The vehicle slowed to a stop in the middle of Terry Lane and began to “rev” its engine. Id. Patrolman Damato testified that the vehicle suddenly

<sup>1</sup> Chepachet is a village within the municipality of Gloucester.

accelerated at a high rate of speed, with smoke emanating from the vehicle's rear tires. Id. At this time, the Patrolman activated his emergency lights, took a left onto Terry Lane from the parking lot, and initiated a traffic stop of Appellant's vehicle in the vicinity of Auto Body Concepts. Id.

When questioned by the trial judge as to whether the movement of Appellant's vehicle was made with reasonable safety—as required by § 31-16-1—the Patrolman testified that there were no vehicles in the vicinity of Appellant's vehicle at the time he was “revving” the vehicle's engine and smoking the tires. Id. at 2. However, the Patrolman indicated that another vehicle had entered Terry Lane at the time Appellant's vehicle began to accelerate, and that this vehicle was in jeopardy because of Appellant's driving. Id.

The Appellant testified that Terry Lane is frequently used by trucks traveling to and from an industrial park, and that sand and gravel have a tendency to collect there. Id. Although Appellant admitted that his tires briefly spun out of control, he attributed this spinning to the sandy conditions of the roadway. Id. The Appellant indicated that his actions were not intentional and that no other vehicles were endangered by his driving. Id. at 3.

Following a trial, the trial judge sustained Appellant's violation of § 31-16-1. The Appellant has filed a timely appeal of the trial court's decision. Forthwith is this Panel's decision.

#### Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may 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 following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

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 v. State, 633 A.2d 1345 (R.I. 1993). The Appeals Panel is “limited to a determination of whether the hearing justice’s decision is supported by legally competent evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge when the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

#### Analysis

On appeal, Appellant argues that the trial judge’s decision was clearly erroneous in view of the reliable, probative, and substantial record evidence. Specifically, Appellant contends that the trial judge erred in finding that the movement of Appellant’s vehicle was not made with reasonable safety.

This Panel is mindful that the scope of review on appeal is to determine whether the trial judge's decision was supported by legally competent record evidence. Since this Panel cannot substitute its judgment for that of the trial judge, we must conclude that his decision to sustain Appellant's violation of § 31-16-1 was based on credible evidence adduced at trial. See Marran v. State, 672 A.2d 875, 876 (R.I. 1996). The trial judge found the testimony of the Patrolman more credible than that of the Appellant with regard to the operation of Appellant's vehicle on Terry Lane, as evidenced by his decision to adopt the Patrolman's testimony in its entirety as his findings of fact. (Tr. at 3.) There was also direct testimony that another vehicle had entered Terry Lane at the time Appellant's vehicle began to accelerate and that the safety of this vehicle was endangered by the actions of Appellant. (Tr. at 2.) The trial judge properly addressed the issue of reasonable safety as required by the statute and concluded, by the direct testimony of Officer Damato, that the requirements were satisfied. As we cannot substitute our judgment for that of the trial judge concerning the weight of the evidence on questions of fact, see Link v. State, 633 A.2d 1345 (R.I. 1993), we will not overturn the trial judge's decision on appeal. The Appellant's appeal is hereby dismissed, and the charge against him sustained.

### CONCLUSION

Upon a review of the entire record, this Panel concludes that the trial judge's decision was not clearly erroneous or affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, this Panel hereby denies Appellant's appeal and sustains the charge against him.

ENTERED: