

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF CRANSTON

v.

THOMAS MERCURIO

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C.A. No. M09-0009

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on May 20, 2009—Magistrate DiSandro (Chair, presiding) and Chief Magistrate Guglietta and Judge Ciullo sitting—is Thomas Mercurio’s (Appellant) appeal from a decision of the Cranston Municipal Court, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to devices.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 22, 2009, Officer Lee Sohn (Officer Sohn) of the Cranston Police Department charged Appellant with violating the aforementioned section of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial in the Cranston Municipal Court, Officer Sohn testified that on the date in question, at approximately 12:45 p.m., he was traveling westbound on Carolina Street¹ when he observed a vehicle drive through the red traffic control device applicable to it. (Tr. at 5.) Officer Sohn initiated a traffic stop of the vehicle on Cranston Street and issued the operator a citation. (Tr. at 5, 9.) Officer Sohn made clear that he had a clear

¹ Carolina Street becomes Garfield Avenue when it crosses Carlsbad Street.

and unobstructed view of the traffic control device at the time he made the above observations. (Tr. at 6.)

At the conclusion of Officer Sohn's testimony, Appellant testified that the traffic control device applicable to his vehicle was green at the time he turned left onto Cranston Street from Carolina Street. (Tr. at 10.) The Appellant's mother, Alba Mercurio (Ms. Mercurio), also testified that the traffic control device was green at the time Appellant turned onto Cranston Street. (Tr. at 12.)

Following the trial, the trial judge sustained the charged violation of § 31-13-4. In sustaining the charge, the trial judge stated that

“based on the probative, credible, trustworthy and reliable evidence, including the testimony of Officer Lee [Sohn], with due consideration thereof, the City has proven each element of this violation by clear and convincing evidence. The Court finds that [Appellant] did violate Rhode Island General Law 31-13-4 on January 22nd, 2009”

Aggrieved by this decision, Appellant has filed a timely appeal to this Panel. Forthwith is this Panel's decision.

Standard of Review

Pursuant to § 8-18-9, “[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8.” Section 31-41.1-8 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'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 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 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 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 § 31-13-4 is affected by error of law. The Appellant first argues that the trial judge's oral and written decisions are defective in that neither articulates findings of fact.

Additionally, Appellant asserts that he was denied an opportunity to address the Court prior to the imposition of the sentence. Each of Appellant's appellate arguments will be addressed in seriatim.

I

In addition to the trial judge's remarks at the end of the trial, Appellant focuses this Panel's attention on the following excerpt from the trial judge's written decision:

"After careful consideration of all evidence presented, including the testimony of [Officer Sohn] and [Appellant], I find that the City of Cranston has sustained the charge. Therefore, the Court finds defendant, [Appellant], did violate Rhode Island General Law 31-13-4 on January 22, 2009 and that the charge has been established."

It is Appellant's position that the trial judge, in rendering his decision from the bench and in his written decision, failed to articulate findings of fact in support of his decision to sustain the charge.

Section 8-18-11 of the General Laws reads, in pertinent part, that "[a]ll municipal courts which shall hear and decide traffic matters . . . shall do so in a manner consistent with the procedures of the traffic tribunal." Section 31-41.1-6, applicable to "[e]very hearing for the adjudication of a traffic violation," states that the trial judge or magistrate, "[a]fter due consideration of the evidence and arguments, . . . shall determine whether the charges have been established, and appropriate findings of fact shall be made on the record." (Emphasis added.)

Here, the record before this Panel reflects that the trial judge did not articulate appropriate factual findings in his decision from the bench or in the written decision issued to Appellant. Although the trial judge casually alluded to the testimony of Officer Sohn, it is unclear from the record how Officer Sohn's testimony factored into his

decision to sustain the charged violation of § 31-13-4. Likewise, the record fails to reflect whether or how the trial judge resolved the conflict between the testimony of Officer Sohn, Appellant, and Ms. Mercurio. Accordingly, this matter must be remanded to the Cranston Municipal Court for factual findings in accordance with § 31-41.1-6.

II

The Appellant also argues that he was denied an opportunity to address the Court prior to the imposition of sentence, in contravention of Rule 18 of the Rules of Procedure for the Traffic Tribunal (Rule 18). Rule 18 requires the trial judge or magistrate, “[b]efore imposing sentence [,] . . . [to] address the defendant personally and ask the defendant if [he or she] wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment.”

The record before this Panel reflects that the trial judge did not ask Appellant whether he would like to avail himself of his opportunity to address the Court and present any mitigating evidence, as required by Rule 18. While this Panel cannot say with any degree of certainty what mitigating factors, if any, Appellant would have brought to the trial judge’s attention had he been properly advised of his rights under our Rule 18, we conclude that the failure of the trial judge to properly advise Appellant prior to imposing a sentence requires that this matter be remanded to the Cranston Municipal Court.

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 is affected by errors of law and was made upon unlawful procedure. Substantial rights of Appellant have been

prejudiced. Accordingly, Appellant's appeal is granted, and the matter is remanded to the Cranston Municipal Court for further proceedings consistent with this Decision.

ENTERED