STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF PROVIDENCE	**:**	
	:	
v.	**:**	**C.A. No. T15-0028**
	:	**07409127345**
DOMINIQUA NEWKIRK	**:**	

DECISION

PER CURIAM: Before this Panel on October 21, 2015—Chief Magistrate Guglietta (Chair), Judge Almeida, and Magistrate Noonan, sitting—is Dominiqua Newkirk's (Appellant) appeal from a decision of Magistrate Abbate (Trial Magistrate), sustaining the charged violations of G.L. 1956 § 31-14-3, "Conditions Requiring Reduced Speed" and § 31-47-9, "Operating Without Insurance." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 23, 2015, Officer Cleary of the Providence Police Department (Officer) charged the Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charges, and the matters proceeded to trial on May 26, 2015.

At trial, the Officer testified that at approximately 8:22 P.M., he was dispatched to an accident at the intersection of Admiral Street and River Avenue. (Tr. at 2.) Upon arrival, the Officer observed substantial damage to the two vehicles involved in the accident and noted that airbags were deployed. Id. The Officer identified the driver of vehicle number one as the Appellant. The Appellant's vehicle had sustained damage in the front, and the front driver's side tire was ripped off the axel. Id. The second vehicle had damage to the passenger center side. Id. The Officer testified that he spoke with the driver of the second vehicle at the scene. The driver

stated to the Officer that she was making a left hand turn from Admiral Street onto River Street when the collision occurred. Id. at 2-3. She stated that she looked twice before turning and negotiated the left hand turn, at which point the Appellant crashed into her. Id. at 3.

The Officer testified that because he is an accident reconstructionist, he investigated the area, examining the surrounding environment and the damage to the vehicles. Id. The Officer stated that based on the crosswalks, the major intersection, the speed limit, the lack of hills in the area, and the damage to the vehicles, he was able to conclude that Appellant was speeding. Id. Consequently, the Officer issued Appellant citations for § 31-14-2, "Prima Facie Limits," and § 31-14-3, "Conditions Requiring Reduced Speed." Id. Furthermore, the Officer testified that Appellant was unable to provide proof of insurance at the time, and consequently, she was issued a third citation for § 31-47-09 "Operating Without Insurance." Id.

On cross-examination, the Officer stated that his decision to issue the citations, for conditions requiring reduced speed and speeding, was not based on the other driver's statements to him; rather, his decision was based on the physical damage to the vehicles and the environment that surrounded the accident scene. Id. The Officer testified that other than his police report, he did not create any notes or take any photographs of the physical damage to the vehicles. Id. at 3-4. Furthermore, he testified that he did not conduct any actual reconstruction of the accident in order to determine speed. Id. at 3. However, the Officer noted that physical reconstruction is not necessary in a situation with no fatality or serious bodily injury. Id.

Counsel for the Appellant asked the Officer whether he had any actual knowledge of Appellant's true speed at the time of the impact or as she was traveling through the intersection. Id. at 4. The Officer admitted that he did not have any actual knowledge but that he had estimated her speed based on his visual inspection of the damage to the vehicles. Id. Counsel

then asked if the Officer had any understanding of whether the second vehicle was stopped before trying to turn or whether the vehicle was in-motion continuing through the intersection. Id. The Officer stated that he did not recall, that he did not take a written statement from the second driver, and admitted that the second driver could have continued through the intersection without actually stopping and checking for oncoming traffic. Id. Lastly, Counsel asked the Officer if he had spoken to Appellant before issuing her the summons. Id. at 5. The Officer stated that he had spoken to Appellant, that Appellant informed him she was traveling straight through the intersection, that she had a green light, and that she had the right of way. Id. The Officer then clarified that despite this testimony, his education in accident reconstruction led him to estimate that Appellant was traveling at least thirty-five miles per hour in a twenty-five miles per hour zone. Id. at 8.

At this point, Counsel moved for "judgment as a matter of law as directed verdict" seeking that the charges of speeding and conditions requiring reduced speed "be dismissed." Id. at 11. Counsel argued that the Officer did not know the Appellant's true speed, that there was no independent evidence of Appellant's true speed, and that there was no physical reconstruction to determine Appellant's actual speed. Id. at 12. Furthermore, Counsel argued that the Officer disregarded potential evidence, did not take a statement from Appellant, and omitted the fact that Appellant had the right of way. Id. However, Counsel did concede that Appellant did not have active insurance at the time of the accident. Id.

After hearing Counsel's motion, the Trial Magistrate offered Counsel an opportunity to present a defense for the conditions requiring reduced speed charge. Id. In her defense, Appellant testified that she was traveling straight through the green light at the intersection of Admiral Street and River Street when the driver of the second vehicle turned right in front of her.

Id. at 14-15. The Appellant testified that she tried to swerve and that she hit her breaks. Id. at 15-16. Furthermore, she testified that she is familiar with that intersection because she travels on that road daily, is certain that traffic traveling in the opposite direction did not have a green arrow, and insisted that she never saw the other vehicle stopped waiting to take a left turn. Id. at 16-17.

After hearing the testimony, the Trial Magistrate adopted the testimony of the Officer. However, the Trial Magistrate determined that despite the Officer's testimony, there was not clear and convincing evidence with regard to the actual speed of the Appellant's vehicle. Id. at 17. Therefore, the Trial Magistrate found that the City had not sustained its burden of proof as to speeding and dismissed the speeding violation, § 31-14-2. Id. With regard to the conditions requiring reduced speed violation, the Trial Magistrate found the testimony of the Officer to be credible and determined that the Appellant failed to reduce her speed as required by § 31-14-3. With regard to the insurance violation, the Trial Magistrate found that this was surely Appellant's second offense and could possibly be her third offense. Id. at 18. The Trial Magistrate noted that Appellant had previously been suspended for operating without insurance. Despite this determination, the Trial Magistrate imposed first offense sanctions. Id. at 19. As such, the Trial Magistrate sustained the charged violations of §§ 31-14-3 and 31-47-9. Aggrieved by the Trial Magistrate's decision, Appellant timely filed the instant 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…;
> (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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the Trial Magistrate's decision to uphold the charged violations of §§ 31-14-3 and 31-47-9 was affected by error of law and clearly erroneous in view

of the reliable, probative, and substantial evidence on the record. In regards to § 31-14-3, Appellant asserts that the evidence relied upon by the Trial Magistrate was lacking, and there was no actual evidence of speeding. In regards to § 31-47-9, Appellant argues that the Trial Magistrate erred by not reciting Appellant's prior insurance violations on the record.

I

Conditions Requiring Reduced Speed

Appellant maintains that the evidence relied upon by the Trial Magistrate in sustaining the charged violation of § 31-14-3 was lacking. Appellant argues that the sole basis for the charge was property damage, and there was no individual evidence of speeding. Furthermore, the Appellant argues that because the testimony and evidence presented did not meet the burden of clear and convincing evidence for the speeding charge, § 31-14-2, it cannot subsequently meet the burden of clear and convincing evidence for the conditions requiring reduced speed charge, § 31-14-3.

Section 31-14-3, incorporating by reference § 31-14-1, specifies certain special hazards which require a driver to reduce speed below that which in the absence of such hazard would otherwise be lawful. Section 31-14-3 sets forth, in pertinent part: "[t]he driver of every vehicle shall, consistent with the requirements of § 31-14-1, drive at an appropriate, reduced speed when [special hazards exist]. . . ." Sec. 31-14-3(a).[1] In § 31-14-1, the Legislature has provided that

[1] Section 31-14-3(a) reads: "The driver of every vehicle shall, consistent with the requirements of § 31-14-1, drive at an appropriate, reduced speed when approaching and crossing an intersection or railroad grade crossing; when approaching and going around a curve; when approaching a hill crest; when traveling upon any narrow or winding roadway; when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions; and in the presence of emergency vehicles displaying flashing lights as provided in § 31-24-31, tow trucks, transporter trucks, highway maintenance equipment displaying flashing lights (while performing maintenance operations), and roadside assistance vehicles displaying flashing amber lights while assisting a disabled motor vehicle."

failure to drive at a "reasonable and prudent speed," having regard to the actual and potential hazards, shall constitute a violation of the motor vehicle code.[2] Id. Thus, where a special hazard exists, the Legislature has "placed on a defendant the burden of establishing that driving at a rate otherwise lawful was not unreasonable in the circumstances of a particular case." See State v. Noble, 95 R.I. 263, 265 186 A.2d 336, 338 (1962). It is only in the language of § 31-14-2 that the legislature has established the lawful rate of speed. See § 31-14-2 (a) ("the speed of any vehicle not in excess of the limits specified in this section . . . shall be lawful, but any speed in excess of the limits specified in this section . . . shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful . . .").

Upon interpretation of the three relative statutes, our Supreme Court has mandated that § 31-14-1 must be read in conjunction with §§ 31-14-2 and 31-14-3. See State v. Campbell, 97 R.I. 111, 196 A.2d 131(1963). In Campbell, the Court determined that the language of § 31-14-1, standing alone, did not meet the constitutional test of reasonable certainty set forth in State v. Scofield. See id. (stating "[the] language ["reasonable and prudent under the conditions and having regard to the actual and potential hazards, then existing"] standing by itself without the aid of the standards in §§ 31-14-2 or 31-14-3 does not meet the constitutional requirement of reasonable certainty"); see also State v. Scofield, 87 R.I. 78, 138 A.2d 415 (1958) (stating "the act condemned, commanded or prohibited must be defined with sufficient certainty in specifying the conduct commanded or prohibited to the end that a citizen may know in advance from the written statute what act or omission is made criminal").

[2] Section 31-14-1, sets forth: "[n]o person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care."

The Campbell Court explained that a complaint charging a defendant with only the language of § 31-14-1, alone, is so lacking in definiteness that a person of ordinary intelligence could not know at what speed he or she could drive and be within the law. See Campbell, 97 R.I. at 113, 196 A.2d at 132. Therefore, the Court instructed that a complaint charging a defendant with § 31-14-1 must reference the standards of §§ 31-14-2 or 31-14-3, in order to apprise a driver of the legislative standard for determining a "reasonable and prudent speed" in the circumstances in which he finds himself.[3] Id. at 112, 196 A.2d at 132; see also State v. Reis, 107 R.I. 188, 192, 265 A.2d 651, 654 (1970) (stating "[i]f [the] complaint [in Campbell] had alleged that the defendant had driven at an excess of the different speed limits described in § 31-14-2, the complaint would have withstood the constitutional attack made on [it]"); State v. Marsocci, 98 R.I. 478, 204 A.2d 639 (1964) (finding a complaint that recited only the general language of § 31–14–1, to be "so lacking in definiteness that a person of ordinary intelligence could not know at what speed he could drive and be within the law"); State v. Gabriau, 113 R.I. 420, 423, 322 A.2d 30, 32 (1974) ("certainty is attained by specifying the conduct which made that speed unreasonable").

Here, the Officer initially charged Appellant with both §§ 31-14-2 and 31-14-3. However, the Trial Magistrate found insufficient evidence to sustain the charge of § 31-14-2 and dismissed this charge. (Tr. at 17.) Consequently, this Panel must address whether a complaint charging § 31-14-3, standing alone, meets the constitutional test of reasonable certainty set forth

[3] In reading §§ 31-14-1, 31-14-2, and 31-14-3 together, the Campbell Court tracked the original intent of the legislative drafters. See P.L. 1950, chap. 2595, art. XXV, sec. 1. Prior to being fragmented and sectionalized by the codifiers of the 1956 General Laws, the three provisions were part of a single statutory enactment. Id. When read in their entirety and as integral parts of a whole rather than as separate enactments, they "reveal a complete legislative plan whose obvious design is . . . to proscribe the operation of motor vehicles at unreasonable speeds and . . . to apprise motorists of the speeds at which they may drive and generally be within the law." See State v. Lutye, 109 R.I. 490, 492, 287 A.2d 634, 636 (1972) (internal citations omitted).

in Scofield, or whether it is "so lacking in definiteness" as to require us to follow the Court's reasoning in Campbell. We interpret § 31-14-3, standing by itself, without the aid of the standards in §§ 31-14-1 or 31-14-2, to withstand the scrutiny of the constitutional test of certainty. We form this opinion based on the definiteness underpinning the language of § 31-14-3 and based on the fact that § 31-14-1 is incorporated by reference into the statute. See § 31-14-3 ("consistent with the requirements of § 31-14-1").

In § 31-14-3, certain concrete instances of such special hazards have been specifically enumerated by the Legislature. See § 31-14-3, supra note 1. The Legislature has provided that failure to drive at an appropriate reduced speed at a time or place, when one of such enumerated hazards exists, shall constitute a violation of the motor vehicle code. Id; see also Noble, 95 R.I. at 266, 186 A.2d at 338. The words "appropriate, reduced speed" require the operator of a motor vehicle, if confronted with one of such hazards, to "drive at a reduced speed even below that which in the absence of such hazard would otherwise be lawful." Noble, 95 R.I. at 266, 186 A.2d at 338. Therefore, this language "appropriate, reduced speed" fairly apprises motorists of the speed at which they may drive and generally be within the law: a speed below the legal speed limit prescribed in § 31-14-2. Id.

Besides, the language of § 31-14-2 need not be incorporated into a charge of § 31-14-3 because the question is not whether the driver was operating above the posted speed limit, but rather whether the driver reduced his or her speed below the posted speed limit based on the condition. Id. at 268, 186 A.2d at 339. Therefore, where § 31-14-3 specifies the conduct which made the speed unreasonable, we cannot say that § 31-14-3, alone, lacks the indefiniteness and uncertainty found in the language of § 31-14-1. See Gabriau, 113 R.I. at 423, 322 A.2d at 32.

This interpretation is consistent with decisions formerly issued by this Panel. See State v. Edwin Loignon, T11-0027 (2011); see also State v. Nicholas Gelfuso, T14-0024 (2014). In both cases, the Appellant's violated § 31-14-3(b), a provision that directs a driver as to the appropriate response when approaching an emergency vehicle displaying flashing lights. See § 31-14-3(b).[4] In each case, this Panel affirmed the findings of the Trial Magistrate and determined that the record clearly reflected a failure to reduce speed when confronted with an emergency vehicle displaying flashing lights.

Here, the record reflects that the Appellant was traveling through an intersection when the accident occurred. (Tr. at 5.) The Officer testified that this intersection was a "major intersection" with crosswalks. Id. at 3. The Officer further testified that based on the location of the accident, the damage to the vehicles, and his experience as an accident reconstructionist, he believed that the Appellant failed to reduce speed when approaching the intersection. Id. The Trial Magistrate agreed, concluding that Appellant failed to reduce speed as required by § 31-14-3. See § 31-14-3(a) ("[t]he driver of every vehicle shall, consistent with the requirements of § 31-14-1, drive at an appropriate, reduced speed when approaching and crossing an intersection") (emphasis added). Based on the record, we defer to the Trial Magistrate's decision and conclude that the decision is supported by legally competent evidence and not affected by error of law. See Link, 633 A.2d at 1348 (citing Envtl. Scientific Corp., 621 A.2d at 208) (stating "[t]he

[4] Section 31-14-3(b) sets forth, in pertinent part: "[w]hen an authorized vehicle, as described in subsection (a), is parked or standing within twelve feet (12') of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe, and when not otherwise directed by an individual lawfully directing traffic, do one of the following: (1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized highway maintenance equipment displaying flashing lights; or (2) slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed until completely past the authorized highway maintenance equipment displaying flashing lights."

review of the Appeals Panel is confined to a reading of the record to determine whether the judge [or Magistrate's] decision is supported by legally competent evidence of is affected by an error of law").

II

Insurance Violation

Appellant argues that the Trial Magistrate erred by not reciting Appellant's prior traffic offenses on the record. Additionally, Appellant offers that she now has insurance.

Section 31-47-9 sets forth, in pertinent part:

> "[a]ny owner of a motor vehicle registered in this state who shall knowingly operate the motor vehicle or knowingly permit it to be operated in this state without having in full force and effect the financial security required by the provisions of this chapter . . . may be subject to a mandatory suspension of license and registration. . . ." See § 31-47-9(a).

The language of § 31-47-9 does not require that a judge or trial magistrate recite a driver's prior violations on the record. Furthermore, § 31-47-9 has never been interpreted to require that a trial judge or magistrate make specific findings of fact as to a driver's prior record. In contrast, other traffic statutes—such as the Colin Foote Act, § 31-27-24—require that the trial judge or magistrate make specific findings of fact on the record as to a driver's prior traffic violations. See § 31-27-24 ("the court shall make specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard"); see also State of R.I. v. Jacob Bottella, T11-0075 (2011). In Bottella, this Panel interpreted the Colin Foote Act to require that the trial judge or magistrate recite the Appellant's prior traffic violations on the record. This Panel declines to extend this interpretation to insurance violations.

This Panel has, however, interpreted § 31-47-9 to require that the State prove the Appellant had knowledge that the vehicle was uninsured. See State of R.I. v. Fayerweather, T14-0058 (2014) (citing Albanese v. Providence Police Department, 711 A.2d 651, 652 (R.I. 1998)) (holding that the State had to prove by clear and convincing evidence that the driver knew his car was uninsured to be in violation of § 31-47-9). Here, counsel did not argue that Appellant had no knowledge that the vehicle was uninsured. Rather, counsel conceded that Appellant did not have active insurance at the time of the accident. Furthermore, at trial, counsel did not contest the Trial Magistrate's determination that Appellant had previously been suspended for operating without insurance. Despite this determination, the Trial Magistrate imposed first offense sanctions. Now, Appellant seeks to appeal the Trial Magistrate's discretionary ruling.

Even had the Appellant contested her prior suspension or argued that she had no knowledge that the vehicle was uninsured, the weight of the evidence and the Officer's testimony led the Trial Magistrate to determine that Appellant was in violation of § 31-47-9. Having reviewed the record in its entirety, this Panel is satisfied that the Trial Magistrate's decision sustaining the violation of "Operating without insurance" was not erroneous, and his decision is supported by legally competent evidence. See Link, 633 A.2d at 1348.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find that the Trial Magistrate's decision is supported by reliable, probative, and substantial evidence on the whole record, and is not in violation of constitutional provisions. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

_____
Chief Magistrate William R. Guglietta (Chair)

_____
Judge Lillian M. Almeida

_____
Magistrate William T. Noonan

DATE: _____