

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK

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:
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v.

C.A. No. T08-0127

MICHAEL PALMISCIANO

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on December 17, 2008, Magistrate DiSandro (Chair) Magistrate Noonan, and Magistrate Cruise presiding, is Michael Palmisciano’s (Appellant) appeal from a decision of Judge Ciullo, sustaining the charged violations of G.L. 1956 §§ 31-10-27, “License to be carried and exhibited on demand,” and 31-47-9, “Penalties – verification of proof of financial security.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 28, 2008, an officer (Officer) of the Warwick Police Department charged Appellant with violating the aforementioned motor vehicle offenses. The Appellant contested the charges, and the matter proceeded to trial. The Appellant, terminally ill with cancer, surrendered his operator’s license to the Rhode Island Department of Motor Vehicles prior to trial.

At trial, the Officer testified that on the date in question, at approximately 10:30 p.m., he was traveling northbound on Post Road when he observed a white Dodge Caravan traveling southbound with an inoperative front headlight. (Tr. at 7.) The Officer pursued the vehicle to a driveway on Elmwood Avenue and made contact with the operator, later identified at trial as Appellant. Id. The Appellant informed the Officer

that he did not have his driver's license on his person, but that he had a valid driver's license at the time of the traffic stop. Id. The Officer entered Appellant's personal information into his dashboard computer and discovered that Appellant's driver's license, while valid, had been temporarily suspended. (Tr. at 8.)

The Officer further testified that Appellant was unable to provide him with proof of financial security upon his request for such documentation. Id. However, on cross-examination by counsel for Appellant, the Officer testified that Appellant presented him with a certificate of registration in the name of another. (Tr. at 9.) The Officer also indicated on cross-examination that he did not ask Appellant whether he knew that "the owner of it d[id] not have in full force and effect financial security" Section 31-47-9.

Following the trial, the trial judge sustained the charged violations of §§ 31-10-27 and 31-47-9. Aggrieved by this decision, Appellant filed a timely appeal to this Panel. Forthwith is this Panel's decision.

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 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.”

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 is affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. Specifically, Appellant contends that the prosecution failed to prove to a standard of clear and convincing evidence that Appellant “operate[d] in this state [a] motor vehicle registered in this state with the knowledge that the owner of it d[id] not have in full force and effect financial security” Section 31-47-9. The Appellant also argues that because he voluntarily surrendered his operator’s license to the Rhode Island

Division of Motor Vehicles prior to trial, he was unable to “produce[] in court . . . an operator’s . . . license previously issued to him . . . and valid at the time of his . . . arrest.” Section 31-10-27. As such, Appellant maintains that the trial judge erred in sustaining the charge, as § 31-10-27 makes clear that “no person charged with violating this section shall be convicted if he . . . produces” said license. Id.

This Panel has reviewed the entire record before it and, having done so, we are satisfied that the prosecution failed to prove to a standard of clear and convincing evidence that Appellant possessed the knowledge required by § 31-47-9. The record reflects that the Officer did not, upon initiating the traffic stop, ask Appellant whether he knew that the vehicle he was operating did not have in full force and effect the financial security required by § 31-47-9. (Tr. at 9.) Although he testified that the vehicle’s registration was not in Appellant’s name, the Officer stated repeatedly on cross-examination that he did not probe Appellant’s knowledge of the vehicle’s insurance coverage. Id. Accordingly, this Panel concludes that the trial judge’s decision to sustain the charged violation of § 31-47-9 without testimony on the issue of Appellant’s knowledge was affected by error of law and clearly erroneous based on the reliable, probative, and substantial record evidence.

With respect to the charged violation of § 31-10-27, the record reflects that Appellant was placed in an untenable position: Appellant could have had the charge dismissed by producing the operator’s license previously issued to him and valid—albeit suspended—at the time of his encounter with the Officer, but was unable to actually produce the license because it had been surrendered to the Department of Motor Vehicles

shortly before trial. This legal conundrum is contrary to the letter and spirit of the Rules of Procedure for the Traffic Tribunal.

The Rules of Procedure for the Traffic Tribunal “are intended to provide for the just determination of every civil traffic violation proceeding to which they apply.” Traffic Trib. R.P. 2 (Emphasis added.) Rule 2 goes on to state that our Rules are to “be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay” Id. (Emphasis added.) Nowhere are the overarching themes of fairness and justice more apparent than in Rule 20, which provides that “[o]n motion and upon such terms as are just the court may relieve a party . . . from a final judgment . . . for . . . [a]ny other reason justifying relief from the operation of the judgment, in whole or in part.” Traffic Trib. R.P. 20. Here, the members of this Panel conclude that Appellant is entitled to relief from the operation of the trial judge’s judgment sustaining the charged violation of § 31-10-27. But for Appellant’s decision to voluntarily surrender his operator’s license to the Department of Motor Vehicles, the charge would have been dismissed. Accordingly, the charged violation of § 31-10-27 is hereby dismissed pursuant to Rule 20.

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 to sustain the charged violation of § 31-47-9 was affected by error of law and clearly erroneous in view of the reliable, probative, and substantial record evidence. The members of this Panel are also satisfied that the charged violation of § 31-10-27 must be dismissed in the interests of justice

pursuant to Rule 20 of the Rules of Procedure for the Traffic Tribunal. Accordingly, Appellant's appeal is granted, and the charges against him dismissed.

ENTERED: