STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK :
:
v. : C.A. No. T09-0086
:
ROBERT IANNOTTI :

DECISION

PER CURIAM: Before this Panel on August 19, 2009—Magistrate DiSandro (Chair, presiding) and Judge Almeida and Magistrate Noonan sitting—is Robert Iannotti's (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test."[1] The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On June 18, 2009, Officer Michael Lima (Officer Lima) of the Warwick Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At the outset of the trial, counsel for Appellant moved to dismiss the charged violation on the grounds that the summons issued to Appellant "[did] not comply with the rules of the Rhode Island Traffic Tribunal." (Tr. at 1.) Additionally, counsel argued that the sworn report prepared by Officer Lima in connection with his arrest of Appellant on suspicion of DUI "completely misidentified the vehicle [that] was allegedly being driven by [Appellant] . . . ." Id.

[1] The Appellant was also charged with violating G.L. 1956 §§ 31-14-2, "Prima facie limits"; 31-15-11, "Laned roadways"; and 31-47-9, "Penalties – verification of proof of financial security." However, these violations are not presently before this Panel on appeal.

In denying Appellant's dismissal motion, the trial magistrate found that "under State v. Link, the actual [sworn] report itself has no relevance . . . after the initial license suspension determination has been made and, therefore, any omissions or problems with the law enforcement report itself are really grist for cross-examination of Officer Lima . . . ." (Tr. at 2.) The trial magistrate was satisfied that "the mere fact that [Officer Lima had] misidentified the vehicle, while relevant for purposes of initially making a determination as to whether [Appellant's] license should have been suspended at the preliminary hearing [following his refusal to submit to a chemical test], really has no relevance whatsoever, other than for purposes of attacking Officer Lima's credibility." Id.

With respect to counsel's argument that the charged violation of § 31-27-2.1 should be dismissed because Officer Lima failed to notarize the summons issued to Appellant, the trial magistrate concluded that "a police officer, by neglecting to swear to the [summons] itself before a notary, does not invalidate the summons itself. [It] merely would not allow the Court to issue a default judgment . . . ." (Tr. at 3.) In denying the motion, the trial magistrate also relied on Rule 3 of the Traffic Tribunal Rules of Procedure (Rule 3) which, as the trial magistrate explained, provides that "an error or omission in the summons shall not be grounds for dismissal of the [charged violation] . . . if the error . . . did not mislead the defendant to his . . . prejudice." Traffic Trib. R.P. 3. The trial magistrate was satisfied that "while Officer Lima misidentified the vehicle in this matter," he nevertheless found that there had been "no showing that [Appellant] was prejudiced by that error . . . in the summons." Id.

Once the trial magistrate had denied his dismissal motion, counsel for Appellant indicated that Appellant was prepared to enter a plea of guilty to the charged violation of § 31-

27-2.1. (Tr. at 6.) Pursuant to Rule 7 of the Traffic Tribunal Rules of Procedure (Rule 7),[2] the trial magistrate, prior to accepting Appellant's guilty plea, addressed him on the record to determine whether his plea had been made voluntarily and with full understanding of the nature and consequences of the plea. (Tr. at 6-7.) Satisfied that Appellant's guilty plea conformed to the requirements set forth in Rule 7, the trial magistrate sustained the charged violation of § 31-27-2.1.

The Appellant, aggrieved by the trial magistrate's decision to deny his dismissal motion and sustain the charged violation, filed a timely appeal to this Panel. Our decision is rendered below.

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 Appellee 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 upon unlawful procedure;
> (4) Affected by other error of law;

[2] Rule 7 of the Traffic Tribunal Rules of Procedure reads, in pertinent part:

> "The court may refuse to accept a plea of guilty, and shall not accept such plea without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the sentence to be imposed."

(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 [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 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 [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 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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial magistrate's decision is in violation of constitutional provisions and affected by error of law. First, Appellant contends that his due process rights were violated because the summons prepared by Officer Lima did not comply with the requirements set forth in Rule 3. Next, Appellant asserts that Officer Lima misidentified his vehicle in his sworn report and, as such, the charged violation should not have been sustained. Each of the appellate arguments advanced by Appellant will be addressed in seriatim.

I

As his first argument on appeal, Appellant asserts that "[t]he truth and validity of the facts supporting the charge[d] [violation of § 31-27-2.1] [were not] sworn to before a notary public or other person authorized by law to take oaths." Traffic Trib. R.P. 3. Additionally, Appellant maintains that he did not have "adequate notice of the offense being charged" because Officer Lima failed to correctly identify his vehicle on the summons. Id.

It is well-settled in Rhode Island that a mere defect in the traffic citation issued to a motorist does not preclude a court from sustaining the charged violation. Courts consistently have found that a defect in the summons issued to a motorist does not rise to the level of a procedural due process violation, thereby depriving the motorist of notice and an opportunity to be heard on the facts underlying the charge. The case of State v. Campbell, 96 R.I. 72, 189 A.2d 342 (1963), is illustrative of the relaxed judicial review afforded to defective summonses in the context of motor vehicle offenses.

In Campbell, the defendant was charged with violating a statute requiring that an automobile insurance card be carried in the automobile or by the person operating a vehicle. Id. at 73, 189 A.2d at 342. However, the summons failed to indicate that the defendant's vehicle was registered at the time of the charged violation. Id. at 74, 189 A.2d at 343. On writ of certiorari, the defendant contended that the summons was defective because it did not directly state that his vehicle was registered; rather, this fact was to be implied. Id. The Court concluded that the requirements of criminal pleading applicable to the context of felony cases were "not applicable in the case of a simple misdemeanor as is charged in the complaint here." Id. at 75, 189 A.2d at 343. The Court stated that it was "unnecessary in such [a] case to expressly allege actual registration of the car in order to apprise defendant fairly and fully of the [motor vehicle]

offense with which he [was] charged." Id. While the Court acknowledged that the summons was "not certain in every particular[,] was sufficiently certain for the purpose of charging the offense set out in the statute." Id.

The liberal approach followed by the Court in Campbell has been followed in other Rhode Island cases. See State v. Lemme, 104 R.I. 416, 244 A.2d 585 (1968) (complaint charging defendant with leaving the scene of collision not fatally defective, despite failure to include "knowing" element of offense; such knowledge inferred by jury), State v. Noble, 95 R.I. 263, 186 A.2d 336 (1962) (complaint charging defendant with failure to reduce speed for one of enumerated hazards not fatally defective for failure to include special hazards, despite statutory language requiring motorist to drive at reduced speed when enumerated hazards exist "and" when a special hazard exists), and State v. Buchanan, 32 R.I. 490, 79 A. 1114 (1911) (complaint charging defendant with driving at excessive speed in "closely built up" area not fatally defective despite the fact that "closely built up" has different meanings according to whether violation occurred within or outside city limits).

Thus, based on our well-established case law, this Panel is satisfied that Appellant was fairly and fully apprised of the violation of the motor vehicle code with which he was charged and the date upon which he was required to appear before this Tribunal, despite the failure of Officer Lima to notarize the summons or to correctly identify the make and model of Appellant's vehicle. The information contained on the summons was sufficiently clear for the purpose of charging Appellant with violating § 31-27-2.1 and informing him of when his arraignment on that charge would take place. Further, the record before this Panel reflects that Appellant made no showing that these errors on the summons issued to him by Officer Lima "[misled] [him] to his . . . prejudice," a requirement for a charged violation to be dismissed based on an error or

omission. Traffic Trib. R.P. 3. Accordingly, the members of this Panel are satisfied that Officer Lima's failure to comply with the requirements of Rule 3 did not deprive Appellant of notice of his hearing date and an opportunity to be heard on the matter, in violation of his due process rights.

II

Next, Appellant asserts that the trial magistrate's decision to sustain the charged violation is affected by error of law because Officer Lima misidentified Appellant's vehicle when preparing his sworn report. In Link v. State, 633 A.2d 1345, 1349 (R.I. 1993), our Supreme Court explained that chemical test refusal cases are divided into "two distinct parts." The first part is the "pre-hearing procedure initiated by an arrested driver's refusal to submit to a chemical test." Id. Section 31-27-2.1 provides for automatic suspension of the individual's driver's license under the following procedure:

> If a person having been placed under arrest refuses upon the request of a law enforcement officer to submit to the tests, . . . none shall be given, but a judge of the traffic tribunal . . . , upon receipt of a report of a law enforcement officer: that he or she had reasonable grounds to believe the arrested person had been driving a motor vehicle within this state under the influence of intoxicating liquor. . .; that the person had been informed of his or her rights in accordance with § 31-27-3; that the person had been informed of the penalties incurred as a result of noncompliance with this section; and that the person had refused to submit to the tests upon the request of a law enforcement officer; shall promptly order that the person's operator's license or privilege to operate a motor vehicle in this state be immediately suspended. (Emphasis added.)

The second part of the process provides for a hearing before the Traffic Tribunal to determine whether the refusal charge and suspension of the individual's license should be sustained or dismissed. Section 31-27-2.1 outlines this process as follows:

> If the judge finds after the hearing that: (1) the law enforcement officer making the sworn report had reasonable grounds to believe

> that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; (2) the person while under arrest refused to submit to the tests upon the request of a law enforcement officer; (3) the person had been informed of his or her rights in accordance with § 31-27-3; and (4) the person had been informed of the penalties incurred as a result of noncompliance with this section; the judge shall sustain the violation. (Emphasis added.)

Although the law enforcement officer's report plays a critical role in the adjudication of refusal charges, the role of the report is nonetheless limited. In Link, our Supreme Court indicated that once the report is submitted and the individual's driver's license has been automatically suspended, the "role of the sworn report ends. . . ." Link, 633 A.2d at 1349. Further, upon an appeal to this Panel to determine whether the refusal charge should be sustained or dismissed, the required findings "may be based on whatever evidence is adduced at the hearing and are not dependent upon the validity of the [officer's] sworn report." Id. Accordingly, the Link Court held that the State has an opportunity at such an appeal to "establish the facts necessary . . . to sustain [the defendant's] breathalyzer refusal charge notwithstanding the defect in [the officer's] sworn report. Id.

As the trial magistrate indicated on the record, the role of Officer Lima's sworn report ended once the preliminary license suspension determination had been made.[3] (Tr. at 2.) As he correctly stated, any misidentification of Appellant's vehicle had become inconsequential at his trial on the charged violation. Id. Therefore, upon reviewing the record in its entirety, this Panel is satisfied that the trial magistrate's decision to sustain the refusal charge in light of the defect in Officer Lima's sworn report was not affected by error of law.

[3] Even assuming arguendo that Appellant had not entered a plea of guilty to the charged violation of § 31-27-2.1, Officer Lima would have been able to remedy the defect in his report by testifying under oath concerning the information contained therein.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision is not in violation of constitutional provisions or otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.