

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WOONSOCKET

v.

NATHAN BELISLE

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C.A. No. T15-0015
15412500176
15412500204
15412500206

DECISION

PER CURIAM: Before this Panel on May 20, 2015—Judge Almeida (Chair), Judge Parker, and Magistrate Goulart, sitting—is Nathan Belisle’s (Appellant) appeal from a decision of Administrative Magistrate DiSandro III (Trial Magistrate), sustaining the charged violations of G.L. 1956 § 31-47-9, “Operating without evidence of insurance,” § 31-8-1, “Operation of vehicles without evidences of registration,” § 31-27.1-4, “Aggressive driving,” § 31-14-2, “Prima facie limits,” § 31-16-5 “Turn signal required,” § 31-13-4, “Obedience to traffic control devices,” § 31-20-9, “Obedience to stop sign,” and § 31-15-1, “Right half of road.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On January 13, 2015, Officer Patrick Greeno of the Woonsocket Police Department (Officer) charged Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charges, and the matter proceeded to trial on March 16, 2015.

At trial, the Officer testified that he has worked for the Woonsocket Police Department for approximately five years. Id. at 4. The Officer stated that he attended the Rhode Island

Municipal Police academy in 2010, where he was “trained in various aspects of motor vehicle code, including but not limited to, detecting an estimation of speed.” Id. at 4-5. On January 13, 2015 at approximately 10:00 pm, the Officer testified that he was on patrol on Park Avenue, in a marked cruiser. Id. at 5. During that time, the Officer observed “a blue 2004 BMW Mini Cooper displaying a Rhode Island passenger plate 429-411” operating “several hundred feet” in front of the Officer. Id. The vehicle was “pulling away” from the Officer, and “appeared to be traveling a speed of about 50 miles an hour in a posted 25 mile an hour zone.” Id. The Officer testified that he attempted to close the distance and follow the vehicle. Id. The Officer noted that the vehicle approached the intersection of Park Avenue and Carrington Avenue, and took a hard right turn onto Carrington Avenue without stopping or using a directional signal, while the traffic light was displayed red. Id. at 5-6. Thereafter, the Officer followed the vehicle while it traveled east onto Carrington Avenue. Id. The Officer testified that as the vehicle approached the intersection of Grove Street, he observed the vehicle travel approximately 30 miles an hour through a stop sign, and then “accelerate down Carrington Avenue” at an estimated speed of 55 miles an hour. Id. at 6. The Officer noted that he had difficulty clocking the vehicle’s speed because it appeared to be increasing the entire length of the street and was driving erratically. Id. The Officer then testified that the vehicle took a left turn onto Bennett Street without the use of a directional signal, and at that time the Officer was able to “catch up” to the vehicle because it was stopped at a red light at the end of Bennett Street. Id. at 7. When the traffic light turned green, the Officer “followed the Mini Cooper as it turned right onto Hamlet Avenue . . . and initiated a motor vehicle stop on Hamlet Avenue.” Id.

The Officer testified that Officer Thompson arrived at the traffic stop to assist him. Id. At that time, the Officer identified the driver as the Appellant, and the passenger in the vehicle as

Kayla Reed (Ms. Reed). Id. at 8. The Officer stated that Appellant provided a license but “looked for several minutes and could not produce a registration or proof of insurance.” Id. Next, the Officer testified that Appellant stated Ms. Reed was having a medical emergency, and he was attempting to bring her to Milford Hospital. Id. The Officer testified that Ms. Reed first stated that she had heart issues “and then later changed her answer to [say] she was having an anxiety attack.” Id. The Officer asked Ms. Reed “if she would like to have a rescue respond to the scene to bring her to Landmark Medical Center or have Officer Thompson transport her [to the Landmark Medical Center] as it was only two blocks away.” Id. Ms. Reed declined both options. Id. The Officer explained that Milford Hospital was over a 20 minute drive. Id. When the Officer asked Appellant and Ms. Reed why they were going to Milford Hospital, Ms. Reed answered that she was not a resident of Rhode Island and could not go to Landmark Medical Center. Id. When the Officer told Ms. Reed they could not refuse her treatment, she added that she had been to Landmark Medical Center in the past but she did not like the medication they gave her, thus, she wanted to go to Milford Hospital. Id. at 8-9

Subsequently, the Officer explained that based on the denial of medical treatment and Ms. Reed’s statements, he made “the evaluation that the situation did not appear to be a medical emergency and [the Appellant] was placing himself and [Ms.] Reed in unnecessary danger by driving so recklessly.” Id. at 9. Thus, the Officer issued a citation to Appellant for operating without evidence of registration, operating without evidence of insurance, and aggressive driving. Id. In the meantime, the Officer noted that he was informed that Appellant had called the Woonsocket Police Department and complained to Lieutenant Picard that he was keeping Appellant from Ms. Reed’s medical emergency. Id. Lieutenant Picard called the Officer’s cell phone and asked about the situation. Id. The Officer explained that Appellant and Ms. Reed had

denied assistance, and Lieutenant Picard stated that as long as the Officer offered medical assistance, he could proceed with the car stop. Id. at 9-10.

Thereafter, the Officer presented the citation to Appellant. Id. at 10. The Officer testified that Appellant became argumentative and demanded that he stay at the scene until Appellant found his registration. Id. The Officer advised Appellant that he already wrote the ticket and told Appellant to bring the registration to court. Id. Subsequently, all parties cleared from the scene. Id.

The Officer testified that the next day he received notice from the traffic division that case law mandates that if an operator is cited with aggressive driving, the underlying moving violations must be cited or the aggressive driving charge could not be sustained. Id. at 10-11. Consequently, the Officer issued additional citations for speeding, turn signal required, obedience to traffic control devices, obedience to stop sign, and right half of road. Id. at 11. The Officer went to Appellant's residence and gave him the additional tickets. Id. at 12.

On cross-examination, Appellant's counsel questioned the Officer if it was fair to say that Appellant and Ms. Reed wanted to go to the hospital on their own. Id. at 13. The Officer responded affirmatively. Id. Thereafter, counsel for Appellant clarified that Appellant and Ms. Reed did not refuse medical treatment, and asked the Officer if it was fair to say "they just wanted to go there on their own." Id. The Officer responded that "they refused a transport to the nearest available hospital." Id.

Subsequently, Appellant testified that he owns a Mini Cooper, not a BMW. Id. at 15. Thereafter, Ms. Kayla Reed testified that she was with the Appellant on the day of the incident, and that she was suffering from a panic attack. Id. at 15-16. Ms. Reed explained that she had heart surgery when she was two years old and recently started getting panic attacks as of 2014.

Id. at 16. Ms. Reed stated that after the stop she went to the hospital, and she offered the medical papers to the court. Id. at 17. The Trial Magistrate accepted the documents as “Defense A” and clarified that the documents were discharge instructions from Milford Regional Medical Center, which stated Ms. Reed had “some type of skin condition, reaction to hives.” Id. at 18.

Thereafter, Appellant’s counsel asked the Court to dismiss the matter because the vehicle was misidentified as a BMW. Id. The Trial Magistrate explained that the ticket is not specific to the vehicle but to the person, and Appellant was properly identified in this matter. Id.

After hearing testimony from the Officer and the Appellant, the Trial Magistrate found the Officer’s testimony credible. Id. at 20. The Trial Magistrate found that on January 13, 2015, Officer Greeno had been employed by the Woonsocket Police Department for three years, is a graduate of the Rhode Island Municipal Police Academy, and is trained in motor vehicle code violations, as well as the detection of the speed of moving vehicles. Id. at 20-21. The Trial Magistrate adopted the Officer’s testimony that Appellant was traveling 50 miles per hour in a 25 mile per hour posted speed zone, Appellant made a hard right turn going through a stop sign without a turn signal at the intersection of Park Avenue and Carrington Avenue, and also took a hard right turn without coming to a stop or using a turn signal at Carrington Avenue and Grove Street, and thereafter, took a left turn onto Bennett Street without a turn signal. Id. at 21-22. The Trial Magistrate noted that the Officer described Appellant’s driving as “erratic.” Id. at 22. The Trial Magistrate further found that Appellant did not provide registration or insurance to the Officer, or to the Court. Id. at 22 and 27. The Trial Magistrate noted that Appellant indicated Ms. Reed was having a medical emergency, but that the Officer determined no medical emergency existed because Ms. Reed had refused transport to the nearest hospital. Id. at 23. Additionally, the Trial Magistrate acknowledged Ms. Reed’s testimony that after the stop she

received medical treatment at Milford Hospital. Id. at 27. Thereafter, the Trial Magistrate adopted the Officer's testimony as clear, credible, and convincing to sustain the violations. Id. The Trial Magistrate sustained the following violations: no proof of insurance, no proof of registration, aggressive driving, prima facie limits, turn signal required, obedience to traffic control device, and obedience to stop sign. Id. at 27-28. However, the Trial Magistrate dismissed the right half of roadway violation. Id. at 28. Aggrieved by the Trial Magistrate's decision, Appellant timely filed the instant appeal.

The appeal was originally heard on May 13, 2015 before Magistrate Goulart (Chair), Magistrate Noonan, and Magistrate Abbate. The matter was continued to May 20, 2015 in order for counsel to further address the speeding violation. On May 13, 2015, Appellant provided the Court with proof of insurance and registration. Consequently, on May 20, 2015 the Panel dismissed Appellant's violations for operating a vehicle without evidence of insurance and without evidence of registration.

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

Analysis

On appeal, Appellant contends that the Trial Magistrate’s decision was made in excess of the Trial Magistrate’s statutory authority and affected by error of law. Specifically, Appellant asserts that there is not sufficient evidence to support the speeding violation, and thus, the speeding violation as well as the aggressive driving violation should be dismissed. Additionally, Appellant contends that the violations were made upon unlawful procedure because the vehicle was misidentified on all summonses as a BMW. Moreover, the summonses charging Appellant with speeding, turn signal required, obedience to traffic control devices, and obedience to stop

sign were not given to Appellant at the time of the traffic stop. Therefore, Appellant argues those charges should also be dismissed.

The Aggressive Driving and Speeding Violations

The Appellant argues that the Trial Magistrate's decision to sustain § 31-27.1-4, "Penalties—Aggressive Driving," was affected by an error of law. Specifically, the Appellant maintains that in order to sustain a violation of § 31-27.1-4, there needs to be a speeding violation, and Appellant contends that his speeding violation pursuant to § 31-14-2 should be dismissed.

"Aggressive driving" is defined in § 31-27.1-3. Section 31-27.1-3 states in pertinent part:

"[Aggressive Driving] means that an individual, **coincident to operating a motor vehicle in violation of chapter 14 of this title**, engages in conduct which violates (2) two or more of the following sections of law:

"(1) Obedience to traffic control devices, § 31-13-4;

"(2) Overtaking on the right § 31-15-5;

"(3) Driving within a traffic lane, § 31-15-12;

"(4) Following too closely — interval between vehicles, § 31-15-12;

"(5) Yielding right of way, §§ 31-15-12.1, 31-17-1, 31-17-2, 31-17-4, 31-17-6, 31-17-7 and 31-17-8.

"(6) Entering the roadway, §§ 31-15-14, 31-17-3, and 31-17-5;

"(7) Use of turn signals, §§ 31-16-5, 31-16-6, 31-16-8 and 31-16-9;

"(8) Relating to school buses, special stops, stop signs, and yield signs, chapter 20 of this title; and

"(9) Use of emergency break-down lane for travel, § 31-15-16." (Emphasis added.)

As defined in section 31-27.1-3, an individual must operate a motor vehicle in violation of chapter 14 in order to be guilty of violating the aggressive driving statute. In other words, according to section 31-27.1-3, there is a condition precedent that must be fulfilled before an aggressive driving charge may be sustained pursuant to section 31-27.1-4. The condition precedent is a violation of chapter 14. Chapter 14 specifically deals with speeding violations.

In State v. Sprague, the Rhode Island Supreme Court set forth guidelines which help determine whether a motorist's speed was measured accurately. 113 R.I. 351, 357, 322 A.2d 36, 40 (R.I. 1974). In Sprague, the Court held that an officer's "testimony setting forth his training and experience in the use of a radar unit, in addition to his testimony describing the tuning fork test on the day defendant was stopped, is reasonable and sufficient proof of the accuracy of the radar unit." 113 R.I. at 357-358, 322 A.2d at 40. In State v. Mancino, our Supreme Court explained that for a prima facie speeding case where an Officer estimates a motorist's speed, a showing must be made that "the speedometer used to clock the [motorist] was tested against another speed-testing standard and that the speedometer was operating properly at the time of the alleged violation." 115 R.I. 54, 58-59, 340 A.2d 128, 132 (1975)

In the instant matter, although the Officer testified to his training, there was no evidence presented about how he estimated Appellant's speed or that the speedometer used to estimate Appellant's speed was tested. See Tr. at 4-5; see also Mancino, 115 R.I. at 58-59, 340 A.2d at 132. Thus, this Panel concludes that there is not sufficient evidence to sustain the speeding violation. Consequently, without a speeding violation (a violation of chapter 14), as required by section 31-27.1-3, this Panel finds that it was an error of law for the Trial Magistrate to sustain the violation of section 31-27.1-4, "Penalties–Aggressive Driving." Accordingly, Appellant's appeal is granted as to § 31-27.1-4, "Aggressive driving" and § 31-14-2, "Prima facie limits."

Turn signal required, Obedience to traffic control devices, and Obedience to stop sign

The Appellant further contends that the remaining violations, § 31-16-5 "Turn signal required," § 31-13-4, "Obedience to traffic control devices," and § 31-20-9, "Obedience to stop sign," should be dismissed because of unlawful procedure. Specifically, Appellant maintains

the summonses were unlawful because the summonses misidentified the vehicle as a BMW, and the summonses were given to Appellant after the motor vehicle stop.

The Rhode Island Traffic Tribunal Rules of Procedure explain the requirements for a traffic summons. See Traffic Trib. R. P. 3. In pertinent part, the rule provides,

“A summons which provides the defendant and the court with adequate notice of the violation being charged shall be sufficient if the violation is charged by using the name given to the violation by statute. The summons shall state for each count the official or customary citation of any statute that the defendant is alleged to have violated. An error or omission in the summons shall not be grounds for dismissal of the charged violation(s) or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.” Traffic Trib. R. P. 3 (d).

Moreover, the rule states that the “summons shall be . . . served upon the defendant in person or by mailing the summons to the defendant at his or her last known address, which shall be sufficient proof of actual notice in adjudications of civil violations of the motor vehicle” Traffic Trib. R. P. 3 (b).

Here, the summonses provided Appellant and the Court with notice of the violations charged. See id. The summonses identified the Appellant as the motorist, and identified the vehicle by the registration and serial number. Thus, although the summonses mislabeled the vehicle as a BMW, the Appellant had adequate notice of the violations and was not misled by the error. See Traffic Trib. R. P. 3 (d). Additionally, the summonses were properly served to Appellant at Appellant’s residence, pursuant to Rule 3. See Traffic Trib. R. P. 3 (b). Thus, the violations were not made upon unlawful procedure and substantial rights of Appellant have not been violated as to § 31-16-5 “Turn signal required,” § 31-13-4, “Obedience to traffic control devices,” and § 31-20-9, “Obedience to stop sign” violations.

Conclusion

After a review of the record and the oral arguments presented to this Court, this Panel finds that the Trial Magistrate did not abuse his discretion or make any errors of law when he sustained the violations of § 31-16-5 “Turn signal required,” § 31-13-4, “Obedience to traffic control devices,” and § 31-20-9, “Obedience to stop sign.” Therefore, this Panel denies the Appellant’s appeal as to the aforementioned violations. However, because the City did not provide evidence of a prima facie speeding violation, this Panel grants the Appellant’s appeal and dismisses the penalties for § 31-27.1-4, “Aggressive driving,” and § 31-14-2, “Prima facie limits.” Accordingly, this Panel denies the Appellant’s appeal in part and grants the Appellant’s appeal in part.

ENTERED:

Judge Lillian M. Almeida (Chair)

Judge Edward C. Parker

Magistrate Alan R. Goulart

DATE: _____