STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT — RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND :
:
v. : C.A. No. T12-0021
:
INAM ISLAM :

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STATE OF RHODE ISLAND TRAFFIC TRIBUNAL FILED

DECISION

PER CURIAM: Before this Panel on May 23, 2012—Magistrate Noonan (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Goulart, sitting—is Inam Islam's (Appellant) appeal from a decision of Judge Parker (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits" and G.L. 1956 § 31-22-22, "Safety belt use--Child restraint." Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 26, 2012, a trooper from the Rhode Island State Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on March 22, 2012.

On the morning of the violation, the trooper was on patrol looking for motorists not wearing their seatbelts. The trooper was traveling south on Interstate 95 in Providence near the Route 146 off-ramp. The trooper noticed a black Mazda traveling a high rate of speed. The trooper also noticed that the operator was not wearing a seatbelt; however, the passenger was wearing a seatbelt. (Tr. at 1.) The trooper positioned himself behind the Mazda and obtained a speed reading of fifty-seven (57) miles per hour (mph). Id. The posted speed limit in the area was fifty (50) mph. The trooper also testified that his radar unit that gave him the speed reading

was calibrated—internally and externally—before and after the trooper's shift that day. Id. The trooper also testified that he was trained in the use of radar in 2000.

After witnessing a perceived traffic violation, the trooper conducted a traffic stop of the Mazda. At the trial, the trooper identified the operator of the vehicle as the Appellant. The trooper also testified that the Appellant was very argumentative during the traffic stop. After presenting the aforementioned facts, the trooper rested his case in chief.

Then, the Appellant testified on his own behalf. Appellant maintained that the speed limit in the area was fifty-five (55) mph. Appellant further maintained that he was traveling no more than fifty-five (55) mph because Appellant had set his cruise control for that speed. Appellant did admit to being guilty to the seatbelt violation. Appellant then rested his case in chief. (Tr. at 2.)

After both parties finished presenting evidence, the trial judge sustained the violation. Id. In sustaining the charge, the trial judge recounted the aforementioned facts. The trial judge then determined that Appellant was eligible for increased sanctions pursuant to G.L. 1956 § 31-27-24. For the speeding violation, the trial judge imposed the following sentence: twelve month license suspension; driver retraining; twenty-five hours community service; and a fine of ninety-five dollars. The trial judge also imposed an eighty-five dollar fine for the seatbelt violation. Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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:
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> (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 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 judge's decision to sustain the violation was an abuse of discretion. Appellant also maintains that the trial judge's decision was not supported by the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant contends that he did, in fact, have his seatbelt on. Appellant also argues that he was not speeding because the speed limit was fifty-five (55) mph was his cruise control was set for that speed. The Appellant's contentions are both without merit for the following reasons.

At the trial, Appellant admitted to not wearing a seatbelt. Appellant even went so far as to tell the trial judge that he was guilty. At oral argument, Appellant argued that he only made the guilty statement because the trooper agreed to dismiss the speeding violation if he pled guilty. Regardless of the Appellant's statement, there was still substantial evidence in the record to sustain the violation. The trooper observed the Appellant not wearing his seatbelt. Significantly, the trial judge found the trooper's testimony to be more credible than the Appellant's testimony. Therefore, this Panel concludes that the trial judge's decision to sustain the violation was supported by the reliable, probative, and substantial evidence on the whole record.

As it relates to the speeding violation, it should also be determined that the violation was supported by the evidence in the record. In Sprague, our Supreme Court held that a radar speed reading is admissible into evidence upon a showing that "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method," and upon "testimony setting forth [the Patrolman's] training and experience in the use of a radar unit." Sprague, 113 R.I. at 357, 322 A.2d at 39-40. Here, the requirements of Sprague were properly set forth during Appellant's trial. The trooper explained that the radar unit had been calibrated both internally

and externally, and he testified that he possessed "training and experience in the use of a radar unit." Sprague, 113 R.I. at 357, 322 A.2d at 40. Therefore, the trooper's radar reading of fifty-seven (57) mph was properly admitted into evidence. Appellant's argument that the speed limit was only fifty-five (55) mph was specifically rejected by the trial judge. (Tr. at 2.) The trial judge's decision to reject Appellant's contention was a question of fact that this Panel is without authority to review. See Link, 633 A.2d at 1348. This Panel concludes that the speeding violation was supported by the reliable, probative, and substantial evidence on the whole record.

Finally, this Panel would be remiss if it did not highlight the fact that Appellant was sanctioned pursuant to § 31-27-24, also known as the "Foote Act." The "Foote Act" was passed as an enhanced penalty, and is applied when operators have been convicted of four specific moving violations within an eighteen month period.[1] However, before a judge or magistrate of this Court can impose increased sanctions, the hearing judge or magistrate must make "specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard." § 31-27-24.

Here, the trial judge did not make the specific findings of fact as required by the statute. Additionally, the trial judge only sentenced the Appellant to twenty-five hours community service where the statutory minimum under the "Foote Act" is sixty hours. Therefore, the trial judge committed an error.

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[1] The violations are: (1) 31-13-4; (2) 31-14-1; (3) 31-14-2; (4) 31-14-3; (5) 31-15-5; (6) 31-15-11; (7) 31-15-12; (8) 31-15-16; (9) 31-17-4; (10) 31-20-9; and (11) 31-27.1-3.

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 was partly in violation of statutory provisions. The Appellant's case shall be remanded to the trial judge so that he can make specific findings of fact as required by the Foote Act. After making such findings, the trial judge shall impose any sentence as allowed under the "Foote Act." This Panel concludes that the Appellant's other grounds for appeal are without merit and denied. The matter is to be remanded for the purposes of the trial judge to make specific findings of fact and to appropriately sentence Appellant under the guidelines of the "Foote Act." Accordingly, Appellant's appeal is granted in part and remanded in part for proceedings consistent with this opinion.

ENTERED: