

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH PROVIDENCE

v.

MARK F. MEDEIROS

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**C.A. No. M13-0005
07407021930**

DECISION

PER CURIAM: Before this Panel on June 5, 2013—Magistrate Noonan (Chair, presiding), Administrative Magistrate Cruise, and Magistrate Goulart, sitting—is Mark Medeiros’s (Appellant) appeal from a decision of the Municipal Court, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to traffic control devices.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On January 10, 2013, Officer Gannon of the North Providence 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 25, 2013.

At trial, Officer Gannon stated that he and Officer Mark Noregian were on a fixed traffic post at the intersection of Smith Street and High Service Avenue. (Tr. at 9.) This intersection has a traffic control device; specifically, a three way light facing east and west on Smith Street and north on High Service Avenue. (Tr. at 10.) While at the traffic post, Officer Noregian and Officer Gannon observed the light rotate several times. Id. Officer Gannon testified that the light in question was operating in good working order. Id. At approximately 6:35 p.m., Officer

Gannon stated that he observed a silver Honda, traveling westbound on Smith Street, operate through the light while it was clearly red. (Tr. at 11.) Officer Gannon testified that he had a clear and unobstructed view of the Honda. (Tr. at 12.) Upon seeing the vehicle operate through a red light, both Officer Gannon and Officer Noregian initiated a motor vehicle stop in front of 1373 Smith Street. Id. The Officers made contact with the operator who was identified from his driver's license as a Mark Medeiros (Appellant). Id. The Officers issued two summonses: one for obedience to traffic control device and one for operating a motor vehicle with a suspended license. (Tr. at 13.) Officer Gannon was present at trial and identified the Appellant as the operator of the vehicle. Id.

Appellant's main contention at trial was that the statutory traffic rules did not apply to him because he is a sovereign state. (Tr. at 4, 14.) Though Appellant moved to dismiss on a number of grounds, the motion was denied. (Tr. at 4-6.) Appellant filed multiple affidavits and motions in support of his contention.¹ During questioning, Appellant confirmed that he provided a driver's license bearing the name "Mark F. Medeiros" to the Officers. (Tr. at 18.) However, Appellant denied ownership of the driver's license, stating, "It's a legal fiction's, it's not mine." Id. Upon further questioning, Appellant admitted that he was the individual who was the subject of that traffic stop. Id.

At the close of the evidence, the trial judge determined that based on the evidence presented and the testimony of Officer Gannon, the Appellant failed to abide by a traffic device by clear and convincing evidence. (Tr. at 19.) The trial judge found Appellant guilty of the charge, and the Appellant timely filed this appeal.

¹ In regards to each affidavit submitted by Appellant, this Panel reviewed all documents submitted by Appellant and finds them to be immaterial.

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. In accordance with § 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 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 violated his Constitutional right when the trial judge spoke to Appellant off the record.² Appellant further argues that the judge’s decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

In regards to Appellant’s due process argument, Appellant’s reliance on due process is misguided and not applicable to the facts presented in the case at bar. Due process does not restrict or forbid the judge’s conduct. The subject communication occurred in open court with both parties present; however, the exchange was not recorded. The Defendant alleged that the trial judge stated that the Defendant would be in more trouble if he continued down the road he was going. Under the Fourteenth Amendment, Due Process within administrative procedures requires the opportunity to be heard “at a meaningful time and in a meaningful manner.” Millett v. Hoisting Engineers’ Licensing Div. of Dept. of Labor, 119 R.I. 285, 296, 377 A.2d 229, 235-36 (1977)); see also Gimmicks, Inc. v. Dettore, 612 A.2d 655, 660 (R.I. 1992) (court held due process requires that an agency allow a person to present evidence and testimony). Canon 2A of Article VI of the Code of Judicial Conduct of the Supreme Court Rules provides that: “[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes

² The Panel has reviewed all documents submitted by the Appellant. This Panel finds those documents to be immaterial, as they fail to provide support for Appellant’s argument on appeal.

public confidence in the integrity and impartiality of the judiciary.” In addition, Canon 3B.8 in pertinent part provides that:

[a] judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding

An ex parte communication is defined as “[a] communication between counsel and the court when opposing counsel is not present.” Black's Law Dictionary 1804 (9th ed. 2009); see also Arnold v. Lebel, 941 A.2d 813, 820 (R.I. 2007). The Appellant’s argument is unavailing because the exchange between the trial judge and the Appellant was made in open court with both interested parties present.³ Therefore, the exchange cannot be characterized as an ex parte communication.

In the present controversy, Appellant was afforded the opportunity to present his case in chief at trial, and the record fails to show that Appellant’s Constitutional rights were substantially prejudiced by the trial judge’s conduct. The review of the Appeal 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 at 208 (R.I. 1993)). The words spoken by the trial judge to the Appellant, which were not recorded and were in open court, are not material to the case and not material as to whether the Appellant violated § 31-13-4. Therefore, the due process rights of the Appellant were not substantially prejudiced.

The trial judge’s decision to sustain the charged violation is supported by legally competent evidence—the testimony of the officer—which the trial judge chose to credit over the

³ Appellant appeared before North Providence Municipal Court pro se.

Appellant’s testimony. Even though there was no calibration of the traffic light to ensure it was properly working that day—there was testimony from Officer Gannon that the Officers had the opportunity to view the light for a period of time and that it was in proper working order. See (Tr. at 10.) In addition, there is a presumption of regularity to which we must adhere. State v. Piscopio, 366 A.2d 146, 147 (R.I. 1976) (holding that the presumption of regularity becomes operative in cases of this kind upon proof of the mere fact of the existence of a traffic control device that is supported by the authorities). Law enforcement officers are allowed to make this presumption. See id.; see also State v. Klapes, 2 Conn.Cir. 23, 193 A.2d 901 (App.Div.1963); State v. Cooper, 129 N.J.Super. 229, 322 A.2d 836 (1974); Commonwealth v. Kubelius, 209 Pa.Super. 535, 232 A.2d 39 (1967); 31A C.J.S. Evidence § 250 (2013). The presumption of regularity was not rebutted by any evidence presented by the Appellant.

Appellant’s arguments relate to questions of fact that were heard and weighed by the trial judge at Appellant’s trial. In rendering a decision, the trial judge specifically found that all of the elements of the violation were met, and the judge went on to state that Appellant “did not present any defense to those accusations, therefore, the defendant will be found guilty of violating the traffic rule.” (Tr. at 19.) This Panel’s review is limited to determining whether the trial judge made an error in law or misapplied the evidence. See Link, 633 A.2d at 1348 (our Supreme Court held that this Panel’s review is limited in scope). Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion.

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 not an abuse of discretion or affected by

other error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate William T. Noonan (Chair)

Administrative Magistrate R. David Cruise

Magistrate Alan R. Goulart

DATE: _____