STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT		**RHODE ISLAND TRAFFIC TRIBUNAL**
TOWN OF BURRILLVILLE	**:**	
	:	
v.	**:**	**C.A. No. M13-0010**
	:	**12416500958**
GERALDINE DAVENPORT	**:**	

DECISION

PER CURIAM: Before this Panel on October 9, 2013—Magistrate Abbate (Chair, presiding), Administrative Magistrate Cruise, and, Judge Parker, sitting—is Geraldine Davenport's (Appellant) appeal from a decision of Judge Carroll of the Burrillville Municipal Court (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits," and §31-27-24, "Multiple moving offenses." Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On May, 23 2012, Officer Generaux of the Burrillville Police Department (Officer) charged Appellant with the aforementioned violations of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on July 16, 2013.

At trial, the Officer testified that on May, 23 2013, at approximately 7:25 pm, he was traveling on Buck Hill Road in the Town of Burrillville. (Tr. at 3.) The Officer indicated that at that time, he observed the Appellant's motor vehicle travel past him on Buck Hill Road. Id. The Officer stated that he thereafter "locked the vehicle speed in with my radar unit, which was internally and externally calibrated in moving mode at forty-nine (49) miles an hour in a posted thirty (30) mile hour zone."

Previously, the Officer had testified that he had completed training for operating and calibrating radar units at the Rhode Island Municipal Police Academy. (Tr. at 2.) In describing his training, the Officer indicated that he had used a "Genesis" model radar unit, and that he had used that radar unit for the past 5 years. Id. Thereafter, the Officer submitted a certificate of calibration and tuning fork certification, which were entered as full exhibits without object from Appellant's counsel. (Tr. at 4.)

The Officer further testified that while issuing the citation, he "observed by [Appellant's] driving history that she was [subject to enhanced penalties under] the Colin Foote Act" and subsequently "cited her for that." Id. The Officer went on to state that the Appellant had previously had three violations in eighteen (18) months and that the instant one would be the Appellant's fourth violation. Id.

At the close of the evidence, the trial judge issued his decision sustaining the charged violations. (Tr. at 5.) The trial judge determined that the prosecution had proven each element of Count 1, § 31-14-2, "Prima facie limits." Id. Specifically, the trial judge noted that the Officer testified that he had been trained in using radar and that the radar unit had been calibrated. Id. The trial judge also highlighted that the Appellant had been identified as the operator of the motor vehicle and that the motor vehicle had been going forty-nine (49) miles per hour in a thirty (30) mile per hour zone. Id.

Thereafter, the trial judge made his findings in sustaining Count 2, §31-27-24, "Multiple moving offenses." In relevant part, the trial judge found:

> [a]nd there's the indication … that this is in fact the fourth violation. What was the date of this violation" May 23, 2012. We have a conviction on June 17, 2011—speeding, there's a conviction on November 10, 2011—speeding, a conviction on January 12, 2012—speeding [, and] this citation was written on May 23, 2012, which is certainly within the eighteen (18) month

> period. Now we are here, sitting here in 2013 and the case has been continued not at the request of the town but at the request of the motorist and I don't think that is sufficient to get out from under what the Colin Foote law stands for. You have a person who has disregarded the rules of the road and is a persistent violator. (Tr. at 5.)

Moreover, the trial judge stated that "[i]n the grand scheme of things, this speeding violation in and of itself was not that great, but I am appalled that this person continues to speed." Id.

Standard of Review

Pursuant to § 8-18-9, "[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8." 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 appeared before this Panel contending that the trial judge made an error of law in imposing heightened penalties, suspension pursuant to § 31-27-24, "Multiple moving violations." Specifically, the Appellant asserts that the trial judge was required and failed to make findings of fact that the Appellant's continued driving would constitute a "substantial driving hazard." Sec. 31-27-24 (a). In addition, the Appellant avers that the trial judge's decision to utilize the citation date instead of the conviction date when calculating whether the Appellant had four moving offenses within an eighteen (18) month period was also affected by error of law.

Appellant is accurate in stating that § 31-27-24 requires that "[p]rior to the suspension or revocation of a person's license to operate within the state, the court shall make specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard." At trial, the hearing judge found that the Appellant had "disregarded the rules of the road and is a persistent violator." (Tr. at 5.) In addition, the trial judge added that he was "appalled that [the Appellant] continues to speed." Id. However, the record of Appellant's trial is devoid of any "specific findings of fact and determin[ation] [that]

the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard." See § 31-27-24. The statute requires a trial judge or magistrate to make specific findings of fact relating to the motorist's risk of being a substantial traffic safety hazard. See id. In the absence of such specific findings, the trial judge's decision to suspend Appellant's license pursuant to § 31-27-24 is affected by error of law and requires reversal.

In addition, the Appellant relies on Botella v. State of Rhode Island, to argue that the trial judge's decision to utilize the citation date instead of the conviction date when calculating whether the Appellant had four moving offenses within an eighteen (18) month period was affected by error of law. (A.A. No. 12-046 (RI Sixth Division District Court, June 19, 2012). While this Panel need not decide the "Citation versus Conviction" issue today, we would be less than candid if we did not state that the Appellant's reliance on the aforementioned Sixth Division District Court Decision is misplaced. In footnote 7, of Botella, the Sixth Division District Court Judge opined:

> with regard to enhanced penalties in the criminal arena, the operative date applied for the new offense (for which the defendant is being sentenced) is the date of offense, not the date of conviction. In the instant case, the appellate panel viewed the date of conviction as being operative. Because his fourth offense date (August 22, 2011) is also — obviously — within the Foote law window, we need not decide this issue in the instant case.

The following passage makes clear that Botella did not decide whether the operative date for applying § 31-27-24 was the date of citation or of conviction.

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 suspend Appellant's operator license pursuant

to § 31-27-24 was affected by error of law. Substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

_____
Magistrate Joseph A. Abbate

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Administrative Magistrate David R. Cruise

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Judge Edward C. Parker

DATE: _____