

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF MIDDLETOWN

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:
:

v.

**C.A. No. M13-0020
13302501453**

KYLE DECOSTA

DECISION

PER CURIAM: Before this Panel on February 12, 2014—Magistrate DiSandro, (Chair, presiding) Magistrate Noonan, and Magistrate Goulart, sitting—is Kyle Decosta’s (Appellant) appeal from a decision of the Middletown Municipal Court (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2 (a), “Prima facie limits.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On September 17, 2013, Officer Brady of the Middletown Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on November 19, 2013.

At trial, the Officer testified that on September 17, 2013, at approximately 11:44 pm, he was traveling southbound on Burma Road in Middletown. (Tr. at 1.) The Officer indicated that at that time, he observed Appellant’s vehicle traveling in the opposite direction. Id. Moreover, the Officer testified that the vehicle was bearing Rhode Island registration 474301. Id. The Officer further testified that his radar unit obtained a reading from Appellant’s vehicle, traveling (50) miles per hour (mph) in a thirty-five (35) mph road. Id. Next, the Officer attested that he turned his police cruiser around and stopped Appellant’s vehicle north of Greene Lane on Burma

Road. Id. In addition, the Officer testified that the radar unit had been internally and externally calibrated before and after his shift that day. Id. Thereafter, the Officer testified that he had completed training for the use of radar measurements of speed at the Rhode Island Municipal Police Academy in 2011. (Tr. at 2.)

Upon cross examination, Appellant asked the Officer if he was able to read his vehicle's registration number when he observed Appellant's vehicle traveling northbound.¹ (Tr. at 3.) The Officer responded in the affirmative. (Tr. at 4.) In addition, Appellant inquired how far the Officer pursued the vehicle after clocking it. Id. The Officer responded that the vehicle was not clocked. Id. Moreover, Appellant asked the Officer if he had ever lost sight of the vehicle and the Officer responded that he did. Id. Finally, Appellant argued that the Town had not met their burden. (Tr. at 5.)

At the close of the evidence, the trial judge issued his decision sustaining the charged violation. (Tr. at 5-7.) The trial judge determined that the prosecution had proven each element of the charge. (Tr. at 6.) Specifically, the trial judge noted that the Officer's testimony was credible, that the Officer had been trained in utilizing radar units, and that the radar unit had been internally and externally calibrated before and after his shift that day. (Tr. at 5-6.) Aggrieved by the trial judge's decision, Appellant timely filed the instant appeal.

¹ Appellant moved to dismiss the case based on the fact that the citation indicated that his car was a Volvo; however, Appellant's vehicle make was a Volkswagen. (Tr. at 3-4.) The trial judge based his decision to deny Appellant's motion to dismiss on Rule 3 (d) of the Rhode Island Traffic Tribunal Rules of Procedure. (Tr. at 3-4.) Specifically, the trial judge held that an error or omission on the summons warrants dismissal only if the error or omission misleads or prejudices the defendant. Id. Thereafter, the trial judge found that Appellant was not misled or prejudiced by the error in vehicle name and denied Appellant's motion. (Tr. at 4.)

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 judge’s decision was an abuse of discretion. The Appellant also asserts that the trial judge’s decision was affected by error of law. Specifically, Appellant contends that his vehicle was not the vehicle that the Officer’s radar unit measured and that the Town failed to prove beyond a reasonable doubt, each and every element of the charged violation. In addition, Appellant asserts the case should be dismissed based on an error contained in the instant summons.

I. Credibility

Appellant disputes the veracity of the Officer’s testimony and claims that the trial judge’s decision to credit the Officer’s testimony over that of the Appellant’s testimony was an abuse of discretion. Specifically, the Appellant alleges that the Officer misidentified his vehicle with another vehicle that was exceeding the speed limit. (Tr. at 2-3.)

In Link, our Supreme Court made clear that this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Officer or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony, the trial judge determined that the Officer's testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. See Tr. at 5-6. "[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact." Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the trial judge credited the Officer's testimony that the Appellant was traveling fifty (50) miles per hour in a thirty-five (35) mile per hour zone. See Tr. at 6. Furthermore, the trial judge found that the Officer had testified credibly regarding his training with radar units and the calibration of the radar unit used by the Officer on September 17, 2013. See Tr. at 5-6. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (the [appellate court] should give great deference to the [trial judge's] findings and conclusions unless clearly wrong).

II. Burden

Appellant next contends that the Town failed to prove its case beyond a reasonable doubt. Appellant's argument is misguided because the beyond a reasonable doubt standard is only applicable in criminal trials. See State v. Hazard, 745 A.2d 748, 751 (R.I. 2000) (stating that "[t]he Due Process Clause of the Fourteenth Amendment to the United States Constitution . . . den[ies] the state the power to deprive the accused of liberty unless the state proves every element necessary to constitute the crime charged beyond a reasonable doubt").

It is well-settled that a proceeding at the Rhode Island Traffic Tribunal is civil in nature. Accordingly, we look to our rules of civil procedure to determine who bears the burden and the

standard associated with that burden. Rule 17 of Traffic Tribunal Rules of Procedure reads, in relevant part: “[t]he burden of proof shall be on the prosecution to a standard of clear and convincing evidence.”² Therefore, in order for the charges to be sustained, there must be clear and convincing evidence in the record that Appellant committed the traffic violation brought against him. Here, the trial judge determined that the prosecution had proven each element of the charge. See Tr. at 6; Traffic Trib. R. P. 17(a) (“The burden of proof shall be on the prosecution to a standard of clear and convincing evidence.”). Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge’s decision is not based upon an error of law because the trial judge applied the clear and convincing standard.

III. Summons

Appellant contends that the case should be dismissed based on an error contained in the instant summons. The trial judge based his decision to deny Appellant’s motion to dismiss on Rule 3 (d) of the Rhode Island Traffic Tribunal Rules of Procedure. (Tr. at 3-4.) Specifically, the trial judge held that an error or omission on the summons warrants dismissal only if the error or omission misleads or prejudices the defendant. Id. Thereafter, the trial judge found that

² “The standard of clear and convincing evidence means more than a mere exercise in semantics. It is a degree of proof different from a satisfaction by a ‘preponderance of the evidence’ which is the recognized burden in civil actions and from proof ‘beyond a reasonable doubt’ which is the required burden in criminal suits. “To verbalize the distinction between the differing degrees more precisely, proof by a preponderance of the evidence’ means that a jury [or judge] must believe that the facts asserted by the proponent are more probably true than false; proof ‘beyond a reasonable doubt’ means the facts asserted by the prosecution are almost certainly true; and proof by ‘clear and convincing evidence’ means that the jury [or judge] must believe that the truth of the facts asserted by the proponent is highly probable.” State v. Fuller-Balletta 996 A.2d 133, 142 (R.I. 2010) (quoting Parker v. Parker, 103 R.I. 435, 442 238 A.2d 57, 60-61 (1968)).

Appellant was not misled or prejudiced by the error in vehicle name because Appellant was apprised of the charge and as a result denied Appellant's motion. (Tr. at 4.) This Panel agrees with the trial judge's application of Rule 3 (d) of our Rules of Civil Procedure. See Traffic Trib. R. P. 3 (d). This Panel is also satisfied that the trial judge did not abuse his discretion by finding that Appellant was not prejudiced or misled by the error in vehicle make contained within the summons.

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 supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the trial judge did not abuse his discretion and his decision was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate Domenic A. DiSandro, III (Chair)

Magistrate William T. Noonan

Magistrate Alan R. Goulart

DATE: _____