STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF MIDDLETOWN	:	
	:	
v.	:	**C.A. No. M09-0025**
	:	
JOHN MCNULTY	:	

DECISION

PER CURIAM: Before this Panel on November 18, 2009—Magistrate Noonan (Chair, presiding) and Judge Almeida and Judge Parker, sitting—is John McNulty's (Appellant) appeal from a decision of the Middletown Municipal Court, sustaining the charged violation of G.L. 1956 § 31-22-22, "Safety belt use." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On May 19, 2009, Officer Clancy of the Middletown Police Department (Officer Clancy) recorded on his radar unit a vehicle driving faster than the posted speed limit. He initiated a traffic stop of the subject vehicle and, upon his approach, noted that the operator, identified at trial as Appellant, was not wearing his safety-belt. Subsequently, Officer Clancy charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial.

At trial in the Middletown Municipal Court, counsel for Appellant moved to dismiss on the basis that the violation of § 31-22-22 is the single offense charged on the summons. According to Appellant, the statutory language stating, "violations of . . . this section shall be

considered secondary offenses" indicates that Appellant cannot only be charged with a violation of § 31-22-22; there must be an underlying offense charged. The trial judge took Appellant's motion under advisement, and the trial continued with Officer Clancy's testimony.

Officer Clancy testified that on the date in question, at approximately 12:27 p.m., he was at a standing traffic post, outside his vehicle, at the intersection of Aquidneck Avenue and Newman Road. (Tr. at 5.) The Officer "had a hand-held radar unit, which was operating properly internally and externally." Id. He recorded the subject vehicle traveling northbound on Aquidneck Avenue at a speed of forty-one (41) miles per hour (mph) in a posted twenty-five (25) mph speed zone. Id.

Officer Clancy initiated a motor vehicle stop of the subject vehicle, and as he approached the car, he "could clearly see that [the driver of the vehicle] was not wearing a seatbelt." (Tr. at 5.) At trial, the Officer identified the operator of the vehicle as Appellant. Officer Clancy explained that he gave Appellant "a verbal warning on [his] speed," instead of issuing him a citation for driving in excess of the posted speed limit. The Officer explained that he did not issue Appellant a citation for speeding because Appellant was "cooperative." (Tr. at 5-6.) Additionally, the Officer made clear to the trial judge that he made a written note on the back of the citation, which read "41 in a 25 with the radar unit." (Tr. at 5-6.) Officer Clancy presented the ticket, with his personal notes written on the back, to the trial judge.

After the completion of the Officer's testimony, Appellant chose not to cross-examine Officer Clancy, and he decided not to testify on his own behalf. (Tr. at 7.) Subsequently, the trial judge denied Appellant's motion, and sustained the charged violation of § 31-22-22. The trial judge explained that it is "permissible to charge this violation, in the absence of another charge, so long as [this violation] does not form the basis of the stop." (Tr. at 8.) "Essentially,

the Officer's testimony is that he stopped [Appellant] for speeding, and essentially gave him a break by charging him only with the seatbelt violation." Id.

Following the trial, the trial judge sustained the charged violation of § 31-22-22. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

II
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 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'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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that the trial judge's decision is affected by error of law. Specifically, Appellant explains that because the phrase "secondary offense" is used within the language of the statute, then there must be a sustained underlying charge in order to find that Appellant violated § 31-22-22. Additionally, Appellant contends that the failure of Officer Clancy to charge him with a violation of § 31-14-2, "Prima facie limits" is violative of his due process rights, as it deprived him of "adequate notice of the offense being charged . . . ." Traffic Trib. R.P. 3. As the summons did not include the underlying charge, which formed the basis of the traffic stop of Appellant's vehicle, Appellant maintains, the charged violation of § 31-22-22 must be dismissed.

A

Section 31-22-22

According to Appellant, subsection (k) of § 31-22-22 provides that a violation of the statute is classified as a "secondary offense"; thus his charge must be dismissed unless another "primary" motor vehicle offense is also alleged and sustained. Section 31-22-22.

The members of this Panel note that, although any motor vehicle offense may form the basis of the Officer's traffic stop, prior to charging the driver with a violation of § 31-22-22, the motorist does not have to be charged with the initial offense. Section 31-22-22 states in pertinent part, "[a]ny person who is an operator of a motor vehicle shall be properly wearing a safety belt and/or shoulder harness system . . . while the vehicle is in operation on any of the roadways, streets, or highways of this state." The statute continues to explain that "[v]iolations . . . of this section shall be considered secondary offenses and no motor vehicle may be stopped by any state or municipal law enforcement agency for failure of an operator or passenger to wear a safety belt system or for any violation . . . of this section." Section 31-22-22 (g) (1) and (k).

This Panel's "responsibility in interpreting [§ 31-22-22] is to determine and effectuate the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes." Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987) (citing Gryguc v. Bendick, 510 A.2d 937, 939 (R.I. 1986)). The General Assembly's intent in the enactment and, subsequent reformation of § 31-22-22, is to reduce "highway fatalities through promoting the increased use of safety belts." See Swajian v. General Motors Corp., 559 A.2d 1041, 1047 (R.I. 1989). In ascertaining and giving effect to the intention of the General Assembly with respect to § 31-22-22, this Panel must "consider the entire statute as a whole," Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994), and "view[] it in light of circumstances and purposes that motivated its passage." Brennan, 529 A.2d at 637 (citing Shulton, Inc. v. Apex, Inc., 103 R.I. 131, 134, 235 A.2d 88, 90 (1967)).

This Panel is satisfied that the trial judge appropriately read the statute "as a whole" and, not in part as the Appellant would suggest, correctly determining that the question posed by the statutory language of § 31-22-22 is "whether or not there was a basis for the stop, other than

whether or not [Appellant] was wearing his seatbelt." (Tr. at 6.) As our Supreme Court has enumerated, "[i]t is . . . [a] fundamental maxim of statutory construction that statutory language should not be viewed in isolation." In re Brown, 903 A.2d 147, 149 (R.I. 2006); see also In re Tavares, 885 A.2d 139, 146 (R.I. 2005) (quoting Park v. Ford Motor Co., 844 A.2d 687, 692 (R.I. 2004) ("[s]tatutory construction is a holistic enterprise[]")).

Accordingly, this Panel agrees with the trial judge's findings, and concludes that Officer Clancy's testimony formed an adequate basis for the stop of Appellant. The Officer testified that he observed and recorded, on his hand-held radar unit, Appellant traveling well above the speed limit. (Tr. at 5.) Although he did not charge Appellant with a speeding violation, Officer Clancy testified to, and submitted to the trial judge, evidence of the violation, including his handwritten note on the back of Appellant's summons, which read "41 in a 25 with the radar unit." Id. As clearly intended by the General Assembly in its enactment of § 31-22-22, Appellant was not "stopped by . . . law enforcement . . . for failure of an operator . . . to wear a seatbelt"; instead he was stopped by Officer Clancy for speeding, and as the Officer approached Appellant's vehicle, only then "could [the Officer] clearly see that [Appellant] was not wearing a seatbelt." Section 31-22-22 (k) and (Tr. at 5). See State of Louisiana v. Antoine, 721 So. 2d 562 (1998) (holding that defendant's conviction is reversed because he was stopped solely for failing to wear his seatbelt, which is a secondary offense for which he should not have been initially stopped.) (emphasis added.).

Furthermore, police officers are able to exercise their discretion with regard to charging the motorist with the separate underlying offense. However, there must be reasonable suspicion to justify the initial stop of the motorist, and during the trial, there must be testimony of the officer explaining the basis of the traffic stop. As established by our Supreme Court, "a police

officer can stop and briefly detain a person for investigative purposes absent probable cause if the officer has reasonable suspicion based upon specific and articulable facts . . . ." State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996) (finding that the reasonable suspicion requirement was satisfied when the police officer stopped and detained defendant after observing the erratic movement of her vehicle.); see also Town of Portsmouth v. Casey, C.A. No. T08-0128 (filed March 10, 2009) (The arresting officer used his cruiser's radar unit to determine that appellant was operating her vehicle in excess of the posted speed limit, which was a reasonable basis for the officer to initiate a traffic stop.). However, beyond an adequate basis for the initial traffic stop, it is within the discretion of the police officer to cite the motorist for violations of the motor vehicle code as he or she deems fit. For example, oftentimes an officer will record a motorist traveling much faster than the posted speed limit, but will only issue a citation for five or ten miles over the legal limit. See Town of Glocester v. Donald Lisi, C.A. No. T09-0096 (filed March 9, 2010).

During the trial, Officer Clancy testified that Appellant was "cooperative" during the traffic stop. (Tr. at 5-6.) Thus Officer Clancy did not charge Appellant with a violation of the speeding statute, § 31-14-2; instead he gave Appellant a "break" and only cited him for not wearing his seat-belt. Id. The members of this Panel are satisfied that Appellant does not have to be charged with the motor vehicle violation that formed the basis of Officer Clancy's traffic stop. The trial judge did not err in sustaining the charged violation of § 31-22-22.

Likewise, this Panel does not conclude that the trial judge abused his discretion by choosing to credit the testimony of the Officer regarding the speed of Appellant's vehicle and the speed reading on his radar unit. 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 Officer Clancy, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [Officer Clancy] [,] listened to [his] 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 trial testimony, the trial judge determined that the radar speed reading of Appellant's vehicle and the testimony of the Officer were credible. Based on this testimony, the trial judge concluded that the radar speed reading was an appropriate basis for the stop of Appellant's vehicle, and Officer Clancy's testimony was adequate evidence that Appellant was not wearing a safety belt. (Tr. at 5.) Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge's decision to sustain the charged violation is supported by legally competent evidence and is not affected by error of law or abuse of discretion.

B

Defect in the Citation

Additionally, Appellant contends that the failure of Officer Clancy to charge him with a violation of § 31-14-2, "Prima facie limits" is violative of his due process rights, as it deprived him of "adequate notice of the offense being charged . . . ." Traffic Trib. R.P. 3. Appellant argues that because the summons did not include the underlying charge, which formed the basis for the Officer to initiate a traffic stop of Appellant's vehicle, the charged violation of § 31-22-22 must be dismissed. We disagree.

It is well-settled in Rhode Island that a defect in the summons issued to a motorist does not preclude a court from sustaining the charged violation. More specifically, courts consistently have found that a defect in the traffic summons issued to a motorist does not rise to the level of a procedural due process violation, thereby depriving the motorist of notice and an opportunity to be heard on the facts underlying the charge. As set forth in Rule 3 of the Rhode Island Traffic Tribunal Rules of Procedure, "[a] summons which provides the defendant and the court with adequate notice of the offense being charged shall be sufficient if the offense is charged by using the name given to the offense by statute." Traffic Trib. R.P. 3. Officer Clancy accurately identified the offense allegedly violated by Appellant, as "no seat belt operator" and "§ 31-22-22 (g)." Appellant's summons provided adequate notice of the charged offense. Thus Rule 3 is satisfied by the facts present in this case.

Furthermore, Rule 3 continues to explain, ". . . an omission in the summons shall not be grounds for dismissal of the complaint 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. In the present case, this Panel concludes that Appellant was not "misled to his prejudice" because the only traffic infringement he was charged with violating was accurately listed on his citation. However, Appellant argues that he did not have adequate notice because the speeding violation was not enumerated on his summons. Thus he suffered prejudice.

The case of State v. Campbell is illustrative of the relaxed judicial review afforded to defective charging instruments in the context of motor vehicle offenses. 96 R.I. 72, 189 A.2d 342 (1963). In Campbell, the defendant was charged with violating a statute requiring that a registration card be carried in the automobile or by the person operating a vehicle. However, the charging instrument failed to indicate that the defendant's vehicle was registered at the time of

the charged violation. Id. at 73, 75, 189 A.2d 342, 343. On writ of certiorari, the defendant contended that the charging instrument was defective because it did not directly state that his vehicle was registered; rather, this fact was to be implied. Id. The Court stated that it was "unnecessary in such [a] case to expressly allege actual registration of the car in order to apprise defendant fairly and fully of the [motor vehicle] offense with which he [was] charged." Id. While the Court acknowledged that the charging instrument was "not certain in every particular[,] [it] was sufficiently certain for the purpose of charging the offense set out in the statute." Id.

The liberal approach followed by the Court in Campbell has been followed in other Rhode Island cases. See State v. Lemme, 104 R.I. 416, 244 A.2d 585 (1968) (complaint charging defendant with leaving the scene of collision not fatally defective, despite failure to include "knowing" element of offense; such knowledge inferred by jury); State v. Noble, 95 R.I. 263, 186 A.2d 336 (1962) (complaint charging defendant with failure to reduce speed for one of enumerated hazards not fatally defective for failure to include special hazards, despite statutory language requiring motorist to drive at reduced speed when enumerated hazards exist "and" when a special hazard exists); State v. Buchanan, 32 R.I. 490, 79 A. 1114 (1911) (complaint charging defendant with driving at excessive speed in "closely built up" area not fatally defective despite the fact that "closely built up" has different meanings according to whether violation occurred within or outside city limits). Therefore, based on our well-established case law, this Panel is satisfied that Appellant was fairly and fully apprised of the motor vehicle offense with which he was charged, despite the failure of Officer Clancy to charge him with the speeding violation. Even in the absence of this charge, Appellant was sufficiently aware of the charge that was against him and properly informed of when his arraignment would take place. Accordingly,

Officer Clancy's decision not to charge Appellant with a violation of 31-14-2, did not rise to the level of a due process violation or otherwise "mislead the [Appellant] to his . . . prejudice." Traffic Trib. R.P. 3.

The members of this Panel are satisfied that Appellant did not suffer substantial prejudice as a result of Officer Clancy's omission. Instead Appellant was rewarded by his decision not to charge him with the speeding violation. The "omission" in the citation actually benefited the motorist in that the penalty imposed was less than it would have been had Officer Clancy cited the motorist for speeding.[1] Appellant did not need "adequate notice of the [speeding] offense" because he was not being charged with that violation. Accordingly, the members of this Panel are satisfied that the trial judge's decision to sustain the charged violation of § 31-22-22 is not affected by error of law.

[1] Appellant's argument—that the "omission" in his citation misled Appellant to his prejudice because Officer Clancy gave him a break—reminds this Panel of the oft-quoted maxim, "no good deed goes unpunished."

IV

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 is supported by reliable, probative and substantial record evidence and not affected by error of law or abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.