STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T16-0007**
	:	**15001531029**
BRETT GRALINSKI	**:**	

DECISION

PER CURIAM: Before this Panel on June 8, 2016—Magistrate Goulart (Chair), Judge Almeida, and Chief Magistrate Guglietta, sitting—is Brett Gralinski's (Appellant) appeal from a decision of Magistrate Noonan of the Rhode Island Traffic Tribunal (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 31, 2015, Trooper Jeffery Coleman (Trooper) of the Rhode Island State Police Department charged the Appellant with the aforementioned violation of the Motor Vehicle Code. The Appellant contested the charge, and the matter proceeded to trial on March 17, 2016.

At trial, the Trooper testified that on October 31, 2015 at 5:50 a.m., he was traveling on Route 95 North in the city of Warwick when a red Ford Fusion passed him at a high rate of speed. (Tr. at 3.) The Trooper recalled that he pulled behind the Ford Fusion and followed the car for approximately one-half of a mile. Id. While traveling behind the Ford Fusion, the Trooper "clocked [the Ford Fusion] at a speed of over 105 miles per hour." Id. at 4. The Trooper conducted a traffic stop of the Ford Fusion and identified the driver as the Appellant through his Rhode Island Driver's license. Id. The Appellant explained to the Trooper that he

was late to an appointment in Providence. Id. The Trooper issued the Appellant a citation for traveling one hundred and five miles per hour in a fifty-five miles per hour zone. Id.

At this point, the Trooper submitted into evidence the calibration sheet for the vehicle that he had been operating on the day of the violation. Id. The calibration sheet indicated that the Black Dodge Charger the officer drove was calibrated on October 18, 2015 and was "found to be in good working order." Id.

On cross-examination, the Trooper testified that he had been operating an unmarked vehicle. Id. at 5. The Trooper also clarified that it was about 5:50 a.m. when he stopped the Appellant's vehicle and that the sun had not risen at that time. Id.

At the conclusion of the Trooper's testimony, the Appellant testified in his defense. The Appellant testified that he was, in fact, driving on Route 95 North but contested the Trooper's testimony that he was late for an appointment. Id. at 7-8. The Appellant stated, "I was not late for anything. I simply apologized." Id. at 8. The Appellant then presented his recollection of the facts. Id. The Appellant recalled, "I entered [Route 95] from 117 and as I merged onto [Route 95] I accelerated." Id. The Appellant noticed that the vehicle behind him was "accelerating with" him. Id. at 9. Appellant admitted he was operating in excess of the posted speed limit and testified he was under the impression somebody was chasing, or following him, and he was concerned about the other driver's intentions. Id. at 10-11. Appellant stated that he "did not know it was a police vehicle at all until he turned the lights on." Id. at 9. Appellant concluded his testimony acknowledging he was receiving Social Security Disability Benefits due to a mental health condition. Id. at 11.

After hearing the testimony presented, the Trial Magistrate sustained the charged violation. Id. at 12. The Trial Magistrate found the Trooper's testimony to be credible. Id.

Specifically, the Trial Magistrate stated, "[t]he creditable testimony of the [Trooper] . . . I accept as my findings of fact . . . ." Id. The Trial Magistrate found that the Appellant had been traveling in excess of one hundred and five miles per hour and that the Trooper clocked the Appellant at that speed after following the Appellant for approximately one half mile. Id. Based on the testimony, the Trial Magistrate determined that the requirements of State v. Mancino had been met. Id.

Based on these findings, the Trial Magistrate concluded that the State had met its burden of proof. Id. Further, the Trial Magistrate expressed concerns over the Appellant's mental condition and found "it's a ridiculous reaction" to travel one hundred and five miles per hour out of fear of being followed. Id. at 13. As such, the Trial Magistrate sustained the charge. Id. Aggrieved by the Trial Magistrate's decision, Appellant timely filed this appeal.

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 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 [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 or magistrate's conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that the Trial Magistrate's decision was made upon unlawful procedure and was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant argues that the Trial Magistrate did not have "proof beyond a reasonable doubt" that the Appellant was operating his vehicle in a manner that was neither reasonable nor prudent in accordance with § 31-14-2. Additionally, Appellant argues that while the Trial Magistrate found the Trooper credible, the Trial Magistrate made no findings of credibility as to the Appellant even when there was no competing evidence. Lastly,

Appellant argues that the Trial Magistrate erred in concluding that the two prongs of State v. Mancino test were met.[1]

Burden of Proof

Appellant argues the weight of the evidence in the record did not establish "proof beyond a reasonable doubt." This argument is flawed.

The Rhode Island Traffic Tribunal Rules of Procedure dictate that "[t]he burden of proof shall be on the prosecution to a standard of clear and convincing evidence." Traffic Trib. R. P. 17(a). The phrase "clear and convincing evidence" is "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." Parker v. Parker, 103 R.I. 435, 238 A.2d 57 (1968) (internal citations omitted).

Section 31-14-2 sets forth, in pertinent part, "any speed in excess of the limits specified in this section or established as authorized in this title shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful." Therefore, in order to sustain a charge of § 31-14-2, the prosecution must establish by clear and convincing evidence that the motorist traveled in excess of the speed limit. Id.; see also State v. Sprague, 113 R.I. 351, 362, 322 A.2d 36, 42 (1974) ("speeds in excess of those stated [in § 31-14-2] are prima facie evidence of unreasonableness").

The record before us indicates that the Appellant admitted he was traveling above the posted speed limit. (Tr. at 10) (Counsel asking "[i]s it your testimony today that you were operating in excess of the posted speed limit?" and Appellant answering, "[y]es"). The

[1] On appeal, the Appellant requested that this Panel stay his license suspension pending this decision. At oral argument, this Panel denied Appellant's request for a stay.

Trooper's testimony established that Appellant was traveling at approximately one hundred and five miles per hour in a fifty five miles per hour zone. Id. at 4. The Trooper then provided the Trial Magistrate with a calibration sheet, establishing that his vehicle's speedometer he used to clock the Appellant at one hundred and five miles per hour was calibrated within a reasonable time and working properly. Id.

Based on the Appellant's own statements, he was traveling in excess of the posted speed limit. Id. at 10. The Trooper's testimony established that this excessive speed was approximately one hundred and five miles per hour in a fifty five miles per hour zone. Id. at 4. The uncontradicted testimony did establish, by clear and convincing evidence, that the Appellant was speeding in violation of § 31-14-2.

Besides, Appellant's argument that he was speeding because he thought he was being followed was found to be unreasonable. Id. at 10-11. The Trial Magistrate determined,

> "[t]he [Appellant's] testimony is not a denial that he was operating at a ridiculously high speed but merely that he thought this vehicle was following him . . . there is absolutely no reason in the world that you can go 105 miles per hour. If someone is following you, you let them follow you within the speed limit . . . if someone is following you, you drive right to the police station at the speed limit and tend to it." Id. at 12-13.

We agree with the Trial Magistrate. The record clearly establishes that Appellant was traveling in excess of the posted speed limit, in violation of § 31-14-2 and his reason for speeding is unreasonable and irrelevant in regards to the charged violation.

Credibility

Appellant argues that although the Trial Magistrate found the Trooper to be credible, there was no finding of Appellant's credibility. Appellant categorizes this as an abuse of discretion requiring reversal.

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)). Besides, this Panel "would have no reason to assume that [the Trial Magistrate] did not have [Appellant's credibility] in mind, or that he failed to give it proper consideration in deciding the issues before him." Garabedian v. Gorham Mfg. Co., 63 R.I. 452, 455, 9 A.2d 46 (1939) (finding that it is presumed that the trial justice considered pertinent evidence before him even though he did not specifically address it in his decision). Our Supreme Court has previously held:

> "[i]t is self-evident that a trial justice sitting without a jury must often make credibility determinations in order to arrive at necessary findings of fact. [The reviewing Court] accord[s] a substantial amount of deference to those determinations, due to the fact that the trial justice 'has actually observed the human drama that is part and parcel of every trial and * * * has had an opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record.'" B.S. Int'l Ltd. V. JMAM, LLC, 13 A.3d 1057 (R.I. 2011); see also In re Dissolution of Anderson, Zangari & Bossian, 888 A.2d 973, 975 (R.I. 2006).

Moreover, this Panel cannot "consider arguments that certain evidence is more credible than other evidence. That is a function of the trial court." J. Koury Steel Erectors, Inc. of Massachusetts v. San-Vel Concrete Corp., 120 R.I. 360, 364, 387 A.2d 694, 696-96 (1978).

The record is devoid of any factual dispute between the Appellant's testimony and the Trooper's testimony that would give rise to the issue of credibility. In fact, Appellant admits that he was speeding and the testimony of the Trooper corroborates this admission. The record is lacking any indication that the Appellant was not speeding. The only disparity between the testimonies arises from Appellant's defense that he was being followed. The Trial Magistrate

considered this testimony and mentioned it in his decision. While the Trial Magistrate did not use the formal word "credible," it is clear he was not persuaded by the Appellants argument. See id. at 12-13. We cannot say his judgment in that respect was wrong.

The Trial Magistrate determined that the Trooper was credible. See id. at 12 (Trial Magistrate stating, "[t]he creditable testimony of the Officer . . . I accept as my findings of fact"). Therefore, we must defer to that determination. See Andreozziv v. Andreozzi, 813 A2d 78, 82 (R.I. 2003) (Trial Magistrate, who found one party's testimony more credible than the others, did not have to give any reason for so finding in a case involving contested testimony); see also Ferris v. Hawkins, 457 A.2d 253, 255 (R.I. 1983); Altieri v. Dolan, 423 A.2d 482, 484 (R.I. 1980) ("[f]indings of a trial justice sitting without a jury are entitled to great weight and will not be disturbed on appeal unless they are clearly wrong or unless the justice misconceived or overlooked material evidence").

State v. Mancino

Appellant argues that the Trial Magistrate erred in determining that the two prong test set forth in State v. Mancino was met at trial. See Mancino, 115 R.I. 54, 340 A.2d 128 (1975). Mancino requires the prosecution to establish that the speedometer used to clock the motorist was tested against another speed-testing standard and that speedometer was operating properly at time of the alleged violation. See id. at 58-59 (following State v. Barrows, 90 R.I. 150, 154, 156 A.2d. 81, 83 (1959) (holding that testimony as to speeding is admissible in evidence upon a showing that the operational efficiency of the device has been tested by an appropriate method within a reasonable period of time).

The record reflects that both prongs of Mancino were satisfied at trial. The Trooper testified that the speedometer in his Dodge Charger had been calibrated on October 18, 2015,

approximately fourteen days before the citation, and was found to be in good working order. See (Tr. at 4.) The Trooper then submitted the calibration sheet into evidence. Id. The Trial Magistrate determined that this testimony established the Mancino requirements that the "operational efficiency of the device has been tested by an appropriate method within a reasonable period of time." Mancino, 115 R.I. at 58, 340 A.2d at 128. Specifically, the Trial Magistrate stated, "[b]oth prongs of Mancino have been met." (Tr. at 12.)

We agree with the Trial Magistrate. Additionally, if Appellant intended to attack the accuracy of the speedometer used by the Trooper he should have done so at trial. See Mancino, 115 R.I. at 59, 340 A.2d at 132 ("[o]nce the state has presented its . . . the defendant may mount, as an affirmative defense, an attack upon the accuracy of the device used as the standard against which the police cruiser speedometer was tested"); see also State v. Day, 925 A.2d 962 (R.I. 2007) (finding that the defendant failed to preserve for appellate review his double jeopardy argument, where he failed to raise the issue in a pretrial motion and did not raise the issue at any time during trial); State v. Hazard, 785 A.2d 1111 (R.I. 2001) ("[u]nder the raise-or-waive rule, failure to make an argument to a trial justice waives the right to raise that argument on appeal.") As such, we agree with the Trial Magistrate in concluding that both prongs of the Mancino test were satisfied in this case.

Accordingly, confining our review of the record to its proper scope, this Panel is satisfied that the Trial Magistrate 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 magistrate's] findings and conclusions unless clearly wrong").

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Magistrate Alan R. Goulart (Chair)

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Judge Lillian M. Almeida

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Chief Magistrate William R. Guglietta

DATE: _____