

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T12-0005

DONNA NIGHTINGALE

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on February 22, 2012—Magistrate Goulart (Chair, presiding), Judge Parker, and Judge Ciullo sitting—is Donna Nightingale’s (Appellant) appeal from a decision of Magistrate Noonan (trial magistrate), sustaining the charged violation of G.L. 1956 § 31-14-3, “Conditions requiring reduced speed.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On September 21, 2011, a trooper—identified by badge number 232—from the Rhode Island State Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on January 19, 2012.

The Trooper testified that while he was on routine patrol on Route 95, he observed a disabled vehicle with a flat tire in the left lane of the highway. (Tr. at 1.) The Trooper approached the disabled vehicle and began directing it off the highway. In order to get the disabled vehicle off the highway the Trooper had to assist the vehicle across several lanes of traffic at low speeds. (Tr. at 1.) The Trooper—attempting to escort the disabled vehicle to the side of the highway—activated his lights to warn oncoming drivers of the disabled vehicle.

Other members of the State Police activated their lights as well to assist in escorting the disabled vehicle to the side of the highway. While the Trooper was escorting the disabled vehicle, he observed a white Toyota Camry travel between himself and the other troopers escorting the vehicle off to the side of the road.

Once [the Trooper] got the [disabled] vehicle over to the right and stopped [the Trooper] subsequently went after the [Camry] that had just passed him. (Tr. at 1.) The Trooper eventually caught up the Camry and cited the Appellant—who was the operator—for the aforementioned violation of the motor vehicle code. Id.

At trial, the Appellant argued that the Trooper was confusing her matter with another violation. Consequently, the Appellant offered a different version of events. The Appellant argued that while there were several troopers on the highway, there was no disabled vehicle. (Tr. at 2.) The Appellant testified that she saw the troopers on the highway slowing traffic. Upon seeing the troopers, the Appellant slowed her vehicle along with the other vehicles on the highway. Then, the Appellant stated that the Trooper stopped short on the highway to collect a piece of cardboard.¹ As a result of the Trooper's abrupt stop, the Appellant swerved around the Trooper to avoid a collision and continued down the highway. Id.

After both parties finished presenting evidence, the trial magistrate issued his decision sustaining the violation. (Tr. at 4.) In his decision, the trial magistrate adopted the Trooper's testimony as his findings of fact to sustain the violation. In so doing, the trial magistrate determined that the Trooper's testimony was credible and reliable. The trial magistrate imposed sentence, and the Appellant timely filed this appeal.

¹ The Trooper later testified that the cardboard was deemed to be the cause of the disabled vehicle's flat tire, and he was removing it from the roadway.

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 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 magistrate abused his discretion in crediting the testimony of the Trooper over her testimony. Specifically, the Appellant contends, as she did at trial, that the Trooper’s testimony confused the facts of her violation with a separate and unrelated violation.

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 Trooper or Appellant, it would be impermissible to second-guess the trial magistrate’s “impressions as he . . . observe[d] [the Trooper 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.

Appellant appears before this Panel presenting the same argument that she did to the trial magistrate, which was the Trooper confused the facts of her violation with another violation. Ultimately, the trial magistrate rejected this argument. Section 31-14-3 states, in pertinent part, that “[t]he driver of every vehicle shall. . .drive at an appropriate reduced speed when. . . special hazard exists with respect to. . .other traffic or by reason of weather or highway conditions and in the presence of emergency vehicles displaying flashing lights.” § 31-14-3. Section 31-14-3 goes

on to provide that when a motorist approaches a emergency vehicle the motorist shall either reduce speed or pass the emergency vehicle in the farthest lane from the emergency vehicle. Id.

After listening to the testimony, the trial magistrate determined that the Trooper's testimony was sufficient to sustain the charged violation. The trial magistrate determined that the Trooper was a credible and reliable witness. Furthermore, after adopting the Trooper's testimony as the basis for his findings of fact, the trial magistrate held that the Appellant's actions violated section 31-14-3. 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. See Link, 633 A.2d at 1348.

Accordingly, the members of this Panel conclude that the trial magistrate's decision to sustain the charged violation was unaffected by error of law and does not constitute an abuse of discretion. Accordingly, Appellant's appeal is denied.

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 is unaffected by error of law and not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.