

**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. T14-0030  
14001506082**

**NOOR AL-NUBANI**

**DECISION**

**PER CURIAM:** Before this Panel on August 13, 2014—Administrative Magistrate Cruise (Chair, presiding), Magistrate DiSandro III, and Judge Almeida, sitting—is Noor Al-Nubani’s (Appellant) appeal from a decision of Magistrate Abbate, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On February 22, 2014, Trooper Peter Filuminia of the Rhode Island State Police Department (Trooper) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on April 30, 2014.

At trial, the Trooper testified that on February 22, 2014, he was traveling south in the low speed lane on Route 95 when he observed Appellant’s vehicle traveling at a high rate of speed. (Tr. at 4.) The Trooper explained that he clocked Appellant’s vehicle traveling sixty-five (65) miles per hour in a fifty-five (55) mile per hour zone for approximately three-quarters of a mile. (Tr. at 4-5.) Moreover, the Trooper stated that in 2000, he was trained in speed detection utilizing his vehicle to clock another vehicle’s speed. (Tr. at 5.) The Trooper entered his vehicle’s calibration sheet as a full exhibit, which showed the vehicle had been calibrated within

the requisite time. (Tr. at 5-6.) After the Trooper completed his testimony, Appellant told the Court that she had no questions for the Trooper. (Tr. at 6.)

Thereafter, Appellant testified that she has a device in her car that documents her speed. (Tr. at 8.) The Appellant stated that the device shows that on the date and time in question she was traveling 60 miles per hour, 5 miles per hour over the speed limit. Id. The Appellant asked the trial magistrate if her husband could present the emailed evidence to the Court. Id. The trial magistrate explained to Appellant that in order to present a document to the Court it has to be authenticated. Id. The trial magistrate agreed to take a look at the document in order to determine how to proceed. (Tr. at 9.) Thereafter, Appellant presented the speed chart from the device to the Trooper and to the Court. (Tr. at 11.) After viewing the document, the trial magistrate stated that the information is not authenticated. (Tr. at 13.) The trial magistrate explained that he did not know if the device was operating efficiently or if the information was actually coming from the device. Id.

Next, Appellant called Muhammed Soulainman as a witness. (Tr. at 14.) Mr. Soulainman testified that the device calculating Appellant's speed was from the Progressive Insurance Company.

Id. Mr. Soulainman explained that he went online and viewed the different speeds Appellant was traveling on the date and time of the ticket, and at no time was the car traveling above 60 miles per hour. (Tr. at 15.) He further testified that the website stated the device could fail up to 30% of the time. (Tr. at 16.) The trial magistrate explained that the device was not

authenticated, and the speed chart from the device cannot be admitted as evidence. (Tr. at 19-21.)

Subsequently, the trial magistrate issued his decision sustaining the charged violation. (Tr. at 22.) The trial magistrate found the Trooper's testimony to be credible in totality and found that the State proved every element of the charged violation by clear and convincing evidence. (Tr. at 23.) Next, the trial magistrate sentenced Appellant, which included a six month license suspension. (Tr. 25-26.) The trial magistrate explained that, based on her driving record, he deemed Appellant to have a flagrant disregard for the traffic laws of the State of Rhode Island. (Tr. at 25.) Aggrieved by the trial magistrate's decision, Appellant timely filed the instant 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 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 magistrate's imposition of a six month license suspension was in excess of his statutory authority. In particular, Appellant asserts that she previously lost her license as a result of the application of the Colin Foote Law, and that the trial magistrate erred when he considered her driving record in imposing the current sentence.

Section 31-41.1-6 of the motor vehicle code vests a trial judge or magistrate with broad authority to include license suspension as part of a sentence for a violation of the motor vehicle code. The pertinent language of § 31-41.1-6 reads,

[a] judge or magistrate may include in the order the imposition of any penalty authorized by any provisions of this title for the violation, including but not limited to, license suspension and/or in the case of a motorist under the age of twenty (20), community service, except that no penalty for it shall include imprisonment.

This Court has continuously affirmed that § 31-41.1-6 grants a judge or magistrate the authority to impose any penalty authorized by any provision of Title 31. State of Rhode Island v. Nicholas Light, C.A. No. T13-0057, January 24, 2014, R.I. Traffic Trib; Town of Cumberland v. Casey Rondeau, C.A. No. T 12-0010, November 30, 2012, R.I. Traffic Trib. Furthermore, this Court has held that a plain reading of § 31-41.1-6 leads to the conclusion that the General Assembly intended to give a judge or magistrate of this Court broad discretion in imposing a sanction for a violation of any offense in Title 31. State of Rhode Island v. Zigmond Coffey, C.A. No. T 12-0014, May 4, 2012, R.I. Traffic Trib; Town of South Kingstown v. Jon Lachapelle, C.A. No. T 10-0045, September 30, 2010, R.I. Traffic Trib.

In the present case, the trial magistrate imposed a penalty which included a license suspension. License suspension is an authorized penalty under Title 31 because license suspension is permitted in § 31-27-12.3 (c) (3). The pertinent language of § 31-27-12.3 (c) (3) reads,

The judge of any court in the state may, upon his or her own initiative, or upon the request of the division of motor vehicles or its agents, furnish to the division of motor vehicles the details of all particularly flagrant cases which may be heard before the judge and may make any recommendations to the division of motor vehicles as to the suspension of the license of the persons defendant in the case that the judge may deem necessary.

License suspension is also permitted pursuant to § 31-11-5. See Town of Cumberland v. Johnathan Felice, C.A. No. T 04-0076, September 9, 2004, R.I. Traffic Trib. The pertinent language of § 31-11-5 reads,

The judge of any court in the state may, in his or her discretion, or upon the request of the division of motor vehicles or its agents, furnish to the division of motor vehicles the details of cases which have been heard before the court; and the judge may make an order to the division of motor vehicles as to the suspension of the license

of the defendant in cases as he or she may deem necessary. The order shall be binding on the division of motor vehicles.

Thus, a trial judge or magistrate has the statutory authority under § 31-41-1.6 to include license suspension as a penalty for the aforementioned violation of the motor vehicle code. See Jon Lachapelle, C.A. No. T 10-0045, September 30, 2010, R.I. Traffic Trib.

Furthermore, a driver's license is not a right, but a privilege. "[A] license may be taken away or encumbered as a means of meeting a legitimate legislative goal, or when the interest of public safety or welfare is at stake." 7A Am. Jur. 2d Automobiles § 104 (2010). Our Supreme Court has held that "[t]he importance of the license to drive lies in the fact that its possession allows a person to legally operate a motor vehicle. It is the right to drive, not the license that comes under the protection of due process." Dana v. Petit, 120 R.I. 168, 386 A.2d 189 (1978) (internal citations omitted) (also finding that "[e]very state has the power to suspend or revoke motor vehicle operating privileges of its citizens for just cause; however, the right to operate motor vehicle, absent exceptional circumstances, may be suspended or revoked only in manner consistent with procedural due process).

Here, it is within the discretion of the trial magistrate to determine the length of time that he or she will suspend the motorist's license. Our Supreme Court has consistently reaffirmed a policy against interfering with a trial justice's discretion in sentencing matters. See State v. Tavera, 936 A.2d 599, 600 (R.I.2007). A trial magistrate's discretion is only abridged in extraordinary circumstances when the trial magistrate has imposed a sentence that is without justification and is grossly dissimilar from other sentences commonly imposed for similar offenses. See State v. Coleman, 984 A.2d 650, 654 (R.I. 2009). After hearing the evidence at trial and reviewing Appellant's driving record, the trial magistrate found Appellant to have a flagrant disregard for the traffic laws of the State of Rhode Island. (Tr. at 25.) Confining our

review of the record to its proper scope, this Panel is satisfied that the trial magistrate did not abuse his discretion.

### **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 not in excess of statutory authority or an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Judge Lillian M. Almeida

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Magistrate Domenic A. DiSandro, III

DATE: \_\_\_\_\_

Note: Administrative Magistrate R. David Cruise participated in the decision but resigned prior to its publication.