

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
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STATE OF RHODE ISLAND

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v.

C.A. No. T09-0052

JIM DESROSIERS

DECISION

PER CURIAM: Before this Panel on June 17, 2009—Magistrate Noonan (Chair, presiding) and Judge Parker and Judge Almeida sitting—is Jim Desrosiers’ (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violation of G.L. 1956 §§ 31-3-1, “Operation of unregistered vehicle a misdemeanor”; 31-14-2, “Prima facie limits”; and 31-47-9, “Penalties – verification of proof of financial security.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 31, 2009, Trooper Thomas Peck, Jr. (Trooper Peck) of the Rhode Island State Police charged Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charges, and the matter proceeded to trial.

At trial, Trooper Peck testified that on the date in question, at approximately 6:30 a.m., he was on patrol in Providence when he “clocked [the speed of a vehicle at] a steady speed of eighty [miles per hour] in a fifty [mile per hour zone] for a distance of three-quarters of a mile.” (Tr. at 4.) Trooper Peck initiated a traffic stop of the suspect vehicle and made contact with the operator, identified at trial as Appellant. *Id.* After stopping the vehicle, Trooper Peck performed National Crime Information Center (NCIC) inquiry of the vehicle’s license plate, ultimately

learning that the vehicle was unregistered as of April of 2008. Id. Also, at the time of the stop, Appellant was unable to provide evidence that the vehicle was insured. Id.

On questioning by the trial magistrate, Trooper Peck testified that his cruiser's speedometer had been calibrated. (Tr. at 5.) No documentary evidence was introduced, however, that would indicate when – or even whether – the speedometer was calibrated.

At the conclusion of Trooper Peck's trial testimony, Appellant admitted that he was speeding at the time Trooper Peck initiated a traffic stop of his vehicle, that he did not have insurance at the time, and that the vehicle was unregistered. (Tr. at 9.)

Following the trial, the trial magistrate sustained the charged violations of §§ 31-3-1, 31-14-2, and 31-47-9. Aggrieved by this decision, Appellant filed a timely appeal to this Panel. Our decision is rendered below.

#### **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 Appellee have been prejudiced 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's decision is affected by error or law and clearly erroneous in light of the reliable, probative, and substantial record evidence. The Appellant has advanced three arguments in support of his appeal, each of which will be addressed in seriatim.

First, Appellant contends that the trial magistrate erred in sustaining the charged violation of § 31-14-2, as he misapplied the prevailing standard for the admissibility of speed readings obtained based on an observation of the speedometer readings in the officer's cruiser, as set forth in State v. Mancino, 115 R.I. 54, 340 A.2d 128 (1975). Next, Appellant asserts that the trial magistrate's decision is affected by error of law because the prosecution failed to prove to a

standard of clear and convincing evidence that Appellant's vehicle was unregistered in Rhode Island or any other state. Finally, Appellant maintains that the trial magistrate erred in sustaining the charged violation of § 31-47-9 because there is no evidence in the record that Appellant is the "owner of a motor vehicle registered in this state" or that Appellant "knowingly operate[d] [that] vehicle . . . without having in full force and effect the financial security required by" law. Section 31-47-9. (emphasis added).

## I

The Appellant's first appellate argument is that the trial magistrate misapplied the prevailing standard for the admissibility of speed readings obtained through the use of the police cruiser's speedometer, as set forth in our Rhode Island Supreme Court's decision in State v. Mancino, 115 R.I. 54, 340 A.2d 128 (1975). In Mancino, the Court indicated that before a law enforcement officer can testify at trial as to the speed at which a defendant's vehicle was traveling based on the officer's observations of his or her cruiser's speedometer, the State is required to make a preliminary showing that "the speedometer used to clock the defendant was tested against another speed-testing standard and that the speedometer was operating properly at the time of the alleged [speeding] violation." Id. at 58-59, 340 A.2d at 132.

Here, the record before this Panel reflects that Trooper Peck testified as to his observations of his cruiser's speedometer as it related to the speed of Appellant's vehicle. (Tr. at 5). He also testified that his cruiser's speedometer had been calibrated. (Tr. at 5). However, based on the plain and clear language of Mancino, it was error for the trial magistrate to allow Trooper Peck to testify as to the calibration of his cruiser's speedometer without first requiring him to introduce the calibration sheet into evidence. Accordingly, the members of this Panel are

satisfied that the trial magistrate's decision to sustain the charged violation of § 31-14-2 is affected by error of law.

## II

Next, Appellant maintains that the trial magistrate's decision to sustain the charged violation of § 31-3-1 is affected by error of law because the prosecution failed to prove to a standard of clear and convincing evidence that Appellant "operate[d], or . . . knowingly . . . permit[ted] to be operated, upon any highway any vehicle of a type required to be registered . . . which is not registered and for which the appropriate fee has not been paid or not registered as required in any other state." Section 31-3-1. The Appellant argues that there is no legally competent evidence in the record to satisfy the prosecution's burden of proving the charge to a standard of clear and convincing evidence, as Trooper Peck failed to introduce evidence of the NCIC inquiry at trial, and his testimony on the inquiry constitutes, according to Appellant, inadmissible hearsay.

The Appellant's argument that Trooper Peck's testimony regarding the status of Appellant's vehicle registration constitutes inadmissible hearsay is unavailing, as his testimony does not fit the well-established definition of hearsay as "an out-of-court utterance that is being offered to prove the truth of the matter asserted therein." Worcester Textile Co. v. Morales, 468 A.2d 279, 281 (R.I. 1983) (emphasis added). As Trooper Peck testified at trial regarding a matter within his personal knowledge – namely, the NCIC inquiry that he performed to verify whether Appellant's vehicle registration was valid – and was available for cross-examination, his testimony is clearly outside the scope of the rule against hearsay evidence. Accordingly, the trial magistrate's decision to rely on this testimony in sustaining the charged violation of § 31-3-1 is not affected by error of law, as there was legally competent evidence in the record before him

that Appellant's vehicle was unregistered in Rhode Island or any other state at the time Trooper Peck initiated a traffic stop of his vehicle.

### III

Finally, Appellant contends that the trial magistrate's decision to sustain the charged violation of § 31-14-9 is affected by error of law because there is no evidence in the record that Appellant is the "owner of a motor vehicle registered in this state" or that Appellant "knowingly operate[d] [that] vehicle . . . without having in full force and effect the financial security required by" law, Section 31-47-9. (Emphasis added.)

The record before this Panel indicates that the trial magistrate's decision with respect to the charged violation of § 31-47-9 is affected by error of law for two reasons. First, the trial magistrate failed to consider the "knowingly" element of the offense. In State v. Dalomba, the District Court held that the State failed to meet its burden of proof as required by § 31-47-9 because the trooper only testified to the fact that the defendant did not have insurance on the day in question, and failed to show that the defendant "knowingly" violated § 31-47-9. Because knowledge is an essential element of the violation that cannot be inferred, and the trial magistrate did not require the State to offer proof on this issue, the trial magistrate erred in sustaining the charged violation of § 31-47-9.

Additionally, the trial magistrate failed to consider the statutory construction given to § 31-47-9 in State v. Picerno. In Picerno, the District Court held that § 31-47-9 "appl[ies] to 'registered vehicles' only, since unregistered vehicles are already subject to the penalty in § 31-3-1, and that penalty takes into consideration that the owner is driving the vehicle without proof of financial security." Thus, because Appellant's vehicle was not registered in Rhode Island as required by § 31-3-1, the conviction under § 31-47-9 cannot be sustained. Accordingly, the

members of this Panel reverse the decision to sustain the charged violation of § 31-47-9 because it was affected by error of law.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find that the trial magistrate's decision to sustain the charged violations of §§ 31-14-2 and § 31-47-9 was affected by error of law. Substantial rights of Appellant were prejudiced by the trial magistrate's decision. Accordingly, Appellant's appeal is granted, and the charged violations are dismissed. However, the members of this Panel are satisfied that the trial magistrate's decision to sustain the violation under § 31-3-1 is not otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced with respect to this charge. Accordingly, Appellant's appeal is denied, and the charged violation of § 31-3-1 is sustained.

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