

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF GLOCESTER

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:
:

v.

C.A. No. T14-0045
14414500424

VLASH MATA

DECISION

PER CURIAM: Before this Panel on September 24, 2014—Magistrate Noonan (Chair), Judge Almeida, and Magistrate Goulart, sitting—is Vlash Mata’s (Appellant) appeal from a decision of Magistrate Cruise, 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 G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 4, 2014, Sergeant Brian Durano (Sergeant) of the Glocester Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on July 25, 2014.

At trial, the Sergeant testified that he had been trained in the use of radar, and that his radar unit had been calibrated before and after his shift. (Tr. at 1-2.) Next, the Sergeant testified that on April 4, 2014 he was on fixed traffic post on Putnam Pike, when he observed a vehicle traveling at a high rate of speed. (Tr. at 2.) The Sergeant received a reading of 56 miles per hour (mph) in a 35 mph zone. Id. Thereafter, the Sergeant stopped the motorist and identified the motorist as the Appellant. Id. The Sergeant issued a citation for traveling 5 miles an hour over the posted speed limit. Id.

Thereafter, the Appellant asked the Sergeant if he saw any other vehicles driving near the Appellant. Id. The Sergeant replied that he was not watching other cars because he was

observing the Appellant's vehicle. (Tr. at 2-3.) The Appellant followed up by asking the Sergeant how many cars were pulled over. (Tr. at 3.) Again, the Sergeant responded that he was not aware of any other cars because he was worried about the Appellant's car. Id.

Next, the Appellant questioned the Sergeant about how he received the radar reading. (Tr. at 4-5.) The Sergeant explained that the speed is displayed on the radar unit. Id. The Appellant then inquired whether the radar unit produces a receipt. (Tr. at 5.) The Sergeant answered negatively. Id. He explained that the Appellant's receipt is the summons, which has the speed listed. Id. Subsequently, the Appellant asserted that he never drives over the speed limit, and traveling 56 mph in a 35 mph zone is unbelievable. (Tr. at 8.) The Appellant contended that the Sergeant made a mistake. Id.

After both parties were given an opportunity to present evidence, the trial magistrate issued a decision sustaining the charged violation. (Tr. at 10.) The trial magistrate found that the Sergeant was trained to use his radar and the radar was properly calibrated. Id. The radar indicated Appellant was traveling at 56 mph in a 35 mph zone. Id. Based on these findings, the trial magistrate established that the Sergeant had met his burden of proof. Id. Thus, the trial magistrate sustained the charged speeding violation. Aggrieved by the trial magistrate's decision to sustain the charge, 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 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 contends that the trial magistrate's decision was arbitrary or capricious because it was not based on any facts. The Appellant asserts that because the

Sergeant did not have the radar unit with him in court, and because the Sergeant never gave a receipt of the radar speed to the Appellant, the charge should be dismissed.

Our Supreme Court has held that a radar speed reading is admissible into evidence if a two prong test is met. State v. Sprague, 322 A.2d 36, 39-40 (1974). In Sprague, the Court held that a radar reading is admissible upon a showing that “the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method,” and upon “testimony setting forth [the Officer’s] training and experience in the use of a radar unit.” Id. In his decision, the trial magistrate credited the Sergeant’s testimony that the handheld radar unit determined that Appellant’s motor vehicle was 56 mph 35 mph area; that the unit was calibrated before and after the Sergeant’s shift on the day of the stop; and, that the Sergeant had been trained in the use of radar. (Tr. at 10.)

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

After listening to the testimony, the trial magistrate determined that the Sergeant’s testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. “[The appellate court] [is] not privileged to assess the credibility of witnesses and may

not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact.” Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)).

The trial magistrate concluded that he accepted the testimony of the Sergeant. The trial magistrate was “satisfied by clear and convincing evidence that the town ha[d] met its burden of proof in the case.” Id. Accordingly the trial magistrate found the Appellant guilty.

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:

Magistrate William T. Noonan (Chair)

Judge Lillian M. Almeida

Magistrate Alan R. Goulart

DATE: _____