STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF HOPKINTON	:	
	:	
v.	:	**C.A. No. M12-0008**
	:	**07506006001**
KEITH W. BOWERS	:	

DECISION

PER CURIAM: Before this Panel on July 25, 2012—Magistrate Noonan (Chair, presiding), Judge Parker, and Magistrate Goulart, sitting—is Keith Bowers' (Appellant) appeal from a decision of Judge Steele (trial judge) of the Hopkinton Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 18, 2012, Officer Glen Ahern (Officer Ahern) of the Hopkinton Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on April 13, 2012.

At trial, Officer Ahern testified that he was on routine patrol traveling southbound on Woodville Altman Road in Hopkinton during the evening of the violation. (Tr. at 3.) While on patrol, the officer observed a red pickup truck abruptly enter Woodville Altman Road from Collins Road and proceed northbound. Upon seeing this movement, Officer Ahern reversed his direction and pursued the vehicle. After a short distance, Officer Ahern saw the pickup truck traveling at a high rate of speed.

In an effort to obtain the vehicle's speed, Officer Ahern stopped his patrol car and activated its radar unit. Id. Officer Ahern stated that his radar had a clear and unobstructed view of the speeding pickup. The radar unit determined that the speeding vehicle was traveling forty-one (41) miles per hour (mph) in a twenty-five (25) mph zone. Id. Officer Ahern, then, pursued the vehicle and conducted a motor vehicle stop and issued the operator—identified as the Appellant at trial—a citation for speeding.

Also, at trial, Officer Ahern stated that the radar unit in his cruiser was calibrated both before and after his shift on the day of the violation. Officer Ahern received training in radar units at the Rhode Island Municipal Police Academy. Id.

On cross examination, Officer Ahern admitted that he lost sight of the speeding pickup after the officer reversed his direction, but before he initiated the radar unit. (Tr. at 4.) Officer Ahern also estimated that the distance between himself and the Appellant was approximately one-quarter of a mile when he first attempted to obtain the vehicle's speed using the radar unit.

After cross-examination, Appellant testified on his own behalf.[1] (Tr. at 7.) At the close of evidence, the trial judge issued her decision sustaining the violation. (Tr. at 9.) In sustaining the violation, the trial judge recounted the aforementioned facts. Also, the trial judge found it significant that Officer Ahern's testimony went uncontradicted by the Appellant. Id.

Before she imposed sentence, Appellant argued that he should be sentenced to a minimum fine. The trial judge, however, imposed a sentence pursuant to G.L. 1956 § 31-27-24, also known as the Foote Act, which is an enhanced penalty statute for motorists who have four specific moving violations within an eighteen month period. The trial judge sentenced Appellant as follows: two hundred ninety-five dollar fine; a sixty day loss of license; forty hours of

[1] Appellant's testimony was largely irrelevant to the issue before the trial judge, which was whether Appellant was, in fact, speeding. As a result, the Panel need not recite his testimony for purposes of this Decision.

community service; and a driver retraining course. (Tr. at 13.) In imposing the sentence, the trial judge found it significant that Appellant did have four specific violations within eighteen months. (Tr. at 10.) The trial judge found that Appellant was a habitual offender and that Appellant "posed a substantial safety hazard." Id. Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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:
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> (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 judge's decision to impose increased sanctions was affected by error of law and in violation of statutory provisions. Specifically, Appellant argues that the trial judge failed to make specific findings of fact that the Appellant posed a substantial threat to safety as required by Foote Act.

It is a well-established principle of statutory interpretation that when the language of a statute is clear and unambiguous, the Court must enforce the statute as written by giving the words of the statute their plain and ordinary meaning. DeMarco v. Travelers Insurance Co., 26 A.3d 585, 616 (R.I. 2011); Sidell v. Sidell, 18 A.3d 499, 504 (R.I. 2011). The task in construing any statute is to effectuate and establish the intent of legislature. Pierce v. Pierce, 770 A.2d 867, 871 (R.I. 2001). When charged with the duty of statutory construction, one must read language so as to effectuate legislative intent behind its enactment; if language is clear on its face, then the plain meaning of statute must be given effect. Gilbane Co. v. Poulas, 576 A.2d 1195 (R.I. 1990); see also Mullowney v. Masopust, 943 A.2d 1029, 1034 (R.I. 2008). Therefore, if a statutory provision is unambiguous, there is no room for statutory construction and the court must apply

the statute as written. International Broth. of Police Officers v. City of East Providence, 989 A.2d 106 (R.I. 2010).

The Foote Act states that "[e]very person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period" is subject to increased penalties.[2] § 31-27-24. The Foote Act goes on to state that "[p]rior to the suspension or revocation of a person's license to operate within the state, the court shall make specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard." Id. The use of the word "shall" connotes that before imposing increased sanctions pursuant to the Foote Act a trial judge or magistrate must make specific findings of fact as to whether the motorist poses a substantial traffic safety hazard. See Brown v. Amaral, 460 A.2d 7, 10 (R.I. 1983) ("[t]he word 'shall' usually connotes the imperative and contemplates the imposition of a duty.") (quoting Carpenter v. Smith, 79 R.I. 326, 334-35, 89 A.2d 168, 172-73 (1952)).

Here, the trial judge, in imposing sanctions pursuant to the Foote Act, made the requisite findings of fact that the Appellant did pose a substantial traffic safety hazard. The trial judge stated that she found the Appellant to be a habitual offender of the motor vehicle code. (Tr. at 10.) The trial judge then recounted the Appellant's driving record, which included three previous moving violations within a five month period. Based upon those violations and the most recent speeding charge, the trial judge found that Appellant "pose[d] a substantial safety hazard. . . ." Id. Appellant's contention that the trial judge did not make specific findings as required by the Foote Act is misplaced. The trial judge clearly made specific findings of fact by reviewing the Appellant's driving record and finding based upon his record the Appellant posed

[2] Those penalties are (1) a fine up to one thousand dollars ($1,000); (2) a mandatory sixty hours of driver retraining; (3) a mandatory sixty hours of public community service; (4) and the operator's driver's license may be suspended up to one year or revoked for a period of up to two years. See § 31-27-24.

a substantial traffic safety hazard. Furthermore, Appellant's reliance on State v. Bottella, T11-075 (R.I. Traffic Trib., filed February 7, 2012) is misguided. In Bottella, members of this Court remanded the matter to the trial judge because she failed to make the requisite findings of fact as required by the Foote Act—the trial judge simply recited the motorist's driving record. Here, the trial judge did make such specific findings of fact. Not only did the trial judge recount the Appellant's driving record, but she specifically articulated that she was imposing increased sanctions based upon Appellant's driving record and her finding that the Appellant posed a substantial traffic safety hazard. This was not the case in Bottella.

Finally, this Panel notes sua sponte that the trial judge's sentence only included forty (40) hours community service. When imposing sanctions pursuant to the Foote Act a trial judge or magistrate shall "order[] . . . sixty (60) hours of public community service." § 31-27-24. Section 31-27-24 makes clear that the statutory minimum is sixty (60) hours of community service and not forty (40) hours as ordered by the trial judge. See Brown, 460 A.2d at 10 (the word "shall" means mandatory). Therefore, it must be determined that the trial judge erred in not ordering the statutory minimum for hours of community service to be performed.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's imposition of the enhanced penalties under § 31-27-24 was partly in violation of statutory provisions relating to community service and therefore affected by error of law. Accordingly, Appellant's appeal is denied, the charged violation sustained. However, Appellant's case shall be remanded to the trial judge to impose a sentence within the requirements of § 31-27-24 as it relates to community service.