

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF MIDDLETOWN

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:
:

v.

**C.A. No. T14-0032
14302500612**

MARVETTE NEAL

DECISION

PER CURIAM: Before this Panel on July 30, 2014—Judge Almeida, (Chair, presiding) Chief Magistrate Guglietta, and Magistrate Goulart, sitting—is Marvette Neal’s (Appellant) appeal from a decision of Administrative Magistrate Cruise (trial magistrate), sustaining the charged violation of G.L. 1956 § 31-14-2, “Speed over 11 miles per hour,” and § 31-15-11, “Laned Roadway Violations. Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On March 11, 2014, Officer Virginia Padgett of the Middletown Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on May 7, 2014.

At trial, the Officer testified that on March 11, 2014, at approximately 9:35 pm, she was traveling northbound on West Main Road in the Town of Middletown. (Tr. at 1.) The Officer further testified that she observed a green mini-van traveling towards her at a high-rate of speed. Id. In addition, the Officer testified that her radar unit obtained a reading from Appellant’s vehicle, traveling (51) miles per hour (mph) in a thirty-five (35) mph zone. Id. Next, the Officer attested that she turned her police cruiser around and caught up to Appellant’s vehicle in the area

of the Salvage Shop on West Main Road. Id. Moreover, the Officer testified that after reaching the Appellant's vehicle, she observed the passenger side tires cross over the left lane of travel, over the white dividing line, and into the right lane. Id.

Subsequently, the Officer testified that she was trained in the use of radar and laser speed measuring devices. Id. The Officer explained that she internally and externally calibrated her speed measurement devices prior to her shift, and found them to be in working order. Id.

After the Officer completed her testimony, Appellant testified that he was not speeding. (Tr. at 3.) Moreover, the Appellant did not believe that the Officer pulled him over for speeding. Id. In particular, the Appellant testified that he believed that the vehicle was stopped because of the race of its occupants. (Tr. at 4.)

Subsequently, the trial magistrate issued his decision sustaining the charged violation. (Tr. at 4-5.) In doing so, the magistrate highlighted that he found the Officer's testimony credible regarding her training in the use of speed measurement devices, including radar at the Municipal Police Academy in 2011. (Tr. at 4.) In addition, the trial magistrate found credible the Officer's testimony concerning her having externally and internally calibrated her radar equipment prior to her shift, and her testimony that the equipment was in good working order. Id. Next, the trial magistrate credited the Officer's testimony that she had obtained a reading of Appellant's vehicle traveling fifty-one (51) miles per hour in a thirty-five (35) mile per hour zone and also credited her testimony that Appellant's vehicle had crossed over the white dividing line into another lane of travel. (Tr. at 4-5.) 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 [or magistrate'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 that the trial magistrate’s decision was an abuse of discretion. Specifically, Appellant argues that he was not speeding. In addition, Appellant asserts that his due process rights have been violated as he argues that he was stopped because of his race.

The first issue for this Panel to address is Appellant’s contention that he was a victim of racial profiling. There is absolutely no evidence on the record which suggests that Appellant’s vehicle was stopped for any reason besides violating the motor vehicle code by speeding and by making an illegal movement into another lane of travel.

As for Appellant’s argument that he was not speeding and did not commit a lane roadway 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 Officer or Appellant, it would be impermissible to second-guess the trial magistrate’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 Officer’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 [magistrate] 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)). In his decision, the trial magistrate credited the Officer’s testimony that her radar unit determined that Appellant’s motor vehicle was traveling fifty-one (51) miles per hour (mph) in a thirty-five (35) mph area, that the unit was calibrated before her shift on the day of the stop and was in good working order, and that she had received training at the Municipal Police Academy in the use of radar units. See Tr. at 1; Sprague 113 R.I. at 357, 322 A.2d at 39-40. Moreover, the trial magistrate credited the Officer’s testimony that Appellant’s vehicle had crossed over the white dividing line into another lane of travel in violation of § 31-15-11. See Tr. at 4-5.

This Panel finds that the Officer’s testimony fulfilled the evidentiary requirements established in State v. Sprague 113 R.I. at 357, 322 A.2d at 39-40 (1974). In Sprague, our Supreme Court held that for speedometer or radar evidence to support a charge of speeding, “the operational efficiency” of the device must be “tested within a reasonable time by an appropriate method,” and the record must contain “testimony setting forth the [Officer’s] training and experience” in the use of radar. 113 R.I. at 357, 322 A.2d at 39-40. In addition, the requirements of § 31-15-11 were also met by the Officer’s credible testimony that Appellant’s vehicle had crossed between travel lanes. See Tr. at 1; see also § 31-15-11.

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:

Judge Lillian M. Almeida (Chair)

Chief Magistrate William R. Guglietta

Magistrate Alan R. Goulart

DATE: _____