STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF NORTH PROVIDENCE	:	
	:	
v.	:	**C.A. No. M09-0002**
	:	
PAUL DINOBILE	:	

DECISION

PER CURIAM: Before this Panel on April 8, 2009—Judge Almeida (Chair, presiding) and Judge Parker and Magistrate DiSandro sitting—is Paul DiNobile's (Appellant) appeal from a decision of the North Providence Municipal Court, sustaining the charged violation of G.L. 1956 § 31-20-9, "Obedience to stop signs." The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On September 19, 2008, Officer Mark Norigian (Officer Norigian) of the North Providence Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial in the North Providence Municipal Court.

At trial, Officer Norigian testified that on the date in question, at approximately 6:45 p.m., he was monitoring the stop sign located at the "three-way intersection" at Hillside Drive and Redwood Drive. (Tr. at 4-5.) At this time, he observed a white 1992 Ford traveling on Hillside Drive proceed through the intersection without "even attempt[ing] to stop at the stop sign . . . ." (Tr. at 5.) Officer Norigian indicated that his view of the stop sign was clear and

unobstructed. (Tr. at 6.) Officer Norigian initiated a traffic stop of the vehicle and issued the operator—identified at trial as Appellant—a citation. (Tr. at 6-7.)

The Court next heard testimony from Appellant. The Appellant testified that he "pulled up to the stop sign[,] . . . stopped[,] . . . [and] signaled to take a left . . . ." (Tr. at 9.) According to Appellant, he "would have ended up on somebody's lawn" if he failed to stop at the stop sign. Id. With respect to the citation issued to him, Appellant testified that "[Officer Norigian] was in such a hurry to give [him] the ticket [that] he didn't fill out the ticket properly. He [incorrectly] listed [Appellant] as the owner of the vehicle" rather than Appellant's wife, Claire DiNobile (Mrs. DiNobile). (Tr. at 13.)

At the conclusion of Appellant's trial testimony, Mrs. DiNobile testified on her husband's behalf. Mrs. DiNobile testified that her husband activated the vehicle's turn signal as he approached the intersection of Hillside Drive and Redwood Drive and that the vehicle came to a complete stop before proceeding through the intersection. (Tr. at 11.)

Once Mrs. DiNobile had completed her testimony, Officer Norigian clarified his earlier testimony. Officer Norigian explained that he had just issued a citation to another motorist and was walking to his cruiser when he observed Appellant proceed through the intersection without stopping. (Tr. at 13.) Officer Norigian indicated that he was "clearly watching [Appellant]" and was "pretty amazed that the police vehicle was sitting right there and he" failed to stop at the stop sign. Id.

Following the trial, the trial judge sustained the charged violation of § 31-20-9. Aggrieved by this decision, Appellant filed a timely appeal to this Panel. Our decision is rendered below.

Standard of Review

Pursuant to § 8-18-9, "[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8." Section 31-41.1-8 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'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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge's decision is in violation of constitutional provisions, clearly erroneous in light of the reliable, probative, and substantial record evidence, and characterized by abuse of discretion. Specifically, Appellant maintains that the trial judge abused his discretion by choosing to credit Officer Norigian's trial testimony that Appellant proceeded through the intersection of Hillside Drive and Redwood Drive without stopping at the stop sign, and by choosing to discount the testimony of Appellant and his wife that Appellant's vehicle came to a complete stop. The Appellant also contends that the failure of Officer Norigian to list Mrs. DiNobile as the owner of the vehicle operated by Appellant on the date in question is violative of Appellant's due process rights.

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 Officer Norigian, Appellant, or Appellant's wife, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [Officer Norigian, Appellant, and Mrs. DiNobile] [,] 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.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge's decision is supported by legally competent evidence and is not affected by error of law.

After listening to the trial testimony of Officer Norigian, Appellant, and Mrs. DiNobile, the trial judge stated on the record that he had heard two versions of the underlying events: Officer Norigian testified that "he saw the [Appellant's] vehicle fail to stop at the stop sign . . . facing Hillside [Drive] . . . before he took his left onto Redwood," and Appellant and his wife testified that Appellant's vehicle came to a complete stop at the stop sign. (Tr. at 14.) In order to resolve this apparent conflict in the evidence, the trial judge—relying on his observations and impressions of the three witnesses—chose not to credit the testimony of Appellant and his wife. The record reflects that the trial judge's decision to discount their testimonies was based, at least in part, on the fact that Mrs. DiNobile's testimony was not entitled to "extensive weight . . . because she is the [Appellant's] [wife]." (Tr. at 15.) Instead, the trial judge chose to credit the trial testimony of Officer Norigian because "it seem[ed] awfully unusual that the Officer . . . would issue a citation upon [observing] . . . the [Appellant] come to a complete stop, as he states he did." Id. As there was no testimony that Appellant's vehicle had come to a "rolling stop," the trial judge concluded that there was "[n]o question that the incident did occur on the corner of Hillside and Redwood on the date in question . . . ." (Tr. at 14.) Accordingly, the trial judge's decision to sustain the charged violation of § 31-20-9 based on the "credible" testimony of Officer Norigian, (Tr. at 15), is supported by legally competent evidence and unaffected by error of law.

Further, Appellant's argument that his procedural due process rights were violated by the failure of Officer Norigian to designate Mrs. DiNobile as the owner of the white 1992 Ford on the citation is without merit, as the courts of this state have consistently recognized that a mere defect in the traffic citation issued to a motorist does not preclude a court from sustaining the charged violation. More specifically, courts have found that a defect in the traffic citation issued

to a motorist does not rise to the level of a procedural due process violation, thereby depriving the motorist of notice and an opportunity to be heard on the facts underlying the charge. The case of State v. Campbell, 96 R.I. 72, 189 A.2d 342 (1963), is illustrative of the relaxed judicial review afforded to defective charging instruments in the context of motor vehicle offenses.

In Campbell, the defendant was charged with violating a statute requiring that an automobile insurance card be carried in the automobile or by the person operating a vehicle. Id. at 73, 189 A.2d at 342. However, the charging instrument failed to indicate that the defendant's vehicle was registered at the time of the charged violation. Id. at 74, 189 A.2d at 343. On writ of certiorari, the defendant contended that the charging instrument was defective because it did not directly state that his vehicle was registered; rather, this fact was to be implied. Id. The Court concluded that the requirements of criminal pleading applicable to the context of felony cases were "not applicable in the case of a simple misdemeanor as is charged in the complaint here." Id. at 75, 189 A.2d at 343. The Court stated that it was "unnecessary in such [a] case to expressly allege actual registration of the car in order to apprise defendant fairly and fully of the [motor vehicle] offense with which he [was] charged." Id. While the Court acknowledged that the charging instrument was "not certain in every particular[,] was sufficiently certain for the purpose of charging the offense set out in the statute." Id.

The liberal approach followed by the Court in Campbell has been followed in other Rhode Island cases. See State v. Lemme, 104 R.I. 416, 244 A.2d 585 (1968) (complaint charging defendant with leaving the scene of collision not fatally defective, despite failure to include "knowing" element of offense; such knowledge inferred by jury); State v. Noble, 95 R.I. 263, 186 A.2d 336 (1962) (complaint charging defendant with failure to reduce speed for one of enumerated hazards not fatally defective for failure to include special hazards, despite statutory

language requiring motorist to drive at reduced speed when enumerated hazards exist "and" when a special hazard exists); State v. Buchanan, 32 R.I. 490, 79 A. 1114 (1911) (complaint charging defendant with driving at excessive speed in "closely built up" area not fatally defective despite the fact that "closely built up" has different meanings according to whether violation occurred within or outside city limits). Thus, based on our well-established case law, this Panel is satisfied that Appellant was fairly and fully apprised of the motor vehicle offense with which he was charged and the date upon which he was required to appear before the North Providence Municipal Court, despite the failure of Officer Norigian to perfectly fill out the citation to reflect that Mrs. DiNobile is the owner of the white Ford. Even in the absence of this information, the information contained elsewhere on the citation was sufficiently certain for the purpose of charging Appellant with violating § 31-20-9 and informing him of when his arraignment would take place. Accordingly, the members of this Panel are satisfied that Appellant was not deprived of notice of his hearing date and an opportunity to be heard on the matter, in violation of his due process rights.

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 decision is not in violation of constitutional provisions, clearly erroneous in light of the reliable, probative, and substantial record evidence, or characterized by abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.