

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH SMITHFIELD

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:
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v.

C.A. No. T10-0014

ROBERT PINARDI

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on April 14, 2010—Magistrate Goulart (Chair, presiding) and Judge Almeida and Magistrate Cruise, sitting—is Robert Pinardi’s (Appellant) appeal from a decision of Judge Ciullo, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On December 22, 2009, a patrolman of the North Smithfield Police Department (Patrolman) observed the subject vehicle travel fifty (50) miles per hour (mph) in a posted thirty-five (35) mph speed zone. The Patrolman charged the driver of the vehicle, later identified at the trial as Appellant, with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial.

The Patrolman began his trial testimony by explaining that on the date in question, he was following the subject vehicle on Route 146A for approximately 1.8 miles. (Tr. at 2.) The Patrolman watched as the vehicle “exceeded fifty (50) miles an hour in a properly posted thirty-five (35) mile an hour zone.” Id. Subsequently, the Patrolman initiated a stop of the motor vehicle.

The Patrolman noted that the driver—identified at trial as Appellant—failed to stop his car for about three-tenths of a mile until he reached the driveway of his home. (Tr. at 3-4.) Upon approaching the vehicle, the Patrolman contends that Appellant began to argue with him. Appellant wanted the Patrolman to remove his badge and start a fist fight. The Patrolman refused to do so. Subsequently, the Patrolman issued Appellant a citation for operating his vehicle faster than the posted speed limit. (Tr. at 3.) Additionally, the Patrolman testified that his police cruiser was calibrated on the night in question. Id.

Next, Appellant testified that he was traveling down Route 146A when he noticed the headlights of a police cruiser on the side of the road. (Tr. at 3.) Appellant explained that he immediately checked his speed and saw that he was driving forty (40) miles per hour as he operated his vehicle past the cruiser. After stopping at a red light, Appellant noticed that the police cruiser was driving behind him. The police cruiser continued to follow Appellant “all the way to [his] house.” (Tr. at 3-4.) Appellant explained that as he pulled into his driveway the Patrolman activated the cruiser’s overhead lights. (Tr. at 4.) Appellant posits that he “did not challenge [the Patrolman] in a fight.” Id.

Following the trial, the trial judge sustained the charged violation of § 31-14-2. The Appellant, aggrieved by this decision, 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 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 argues that the trial judge's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Appellant contends that the

Patrolman's trial testimony fails to satisfy the prevailing standard for the admissibility of speed readings set forth in State v. Mancino, 115 R.I. 54, 340 A.2d 128 (1975); and State v. Barrows, 90 R.I. 150, 156 A.2d 81 (1959). Specifically, Appellant argues that the Patrolman did not testify whether the speedometer was tested by an appropriate method within a reasonable period of time from the date of the violation. Additionally, Appellant posits that the police officer did not submit adequate evidence that the speedometer used to clock his vehicle was tested against another speed-testing standard and that it was operating properly at the time of the violation.

Our Supreme Court, in Mancino, requires that a showing be made by the police officer "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 violation." Mancino, 115 R.I. at 59, 340 A.2d at 132. Additionally, the Court in Barrows requires an additional showing that the "operational efficiency of the [speedometer] has been tested by an appropriate method within a reasonable period of time" from the date of the charged violation. Barrows, 90 R.I. at 153, 156 A.2d at 83. In the instant case, the Patrolman testified that he followed a speeding vehicle for 1.8 miles and that he "believe[d] [his car] was calibrated," but he didn't "have the calibration with" him during the trial. (Tr. at 2-3.) However, the record does not reveal that any further testimony was presented to the trial judge as to the requisite details of the operational efficiency of the speedometer, what method was used to test the efficiency, and when the calibration testing was performed.

Having reviewed the evidentiary record in its entirety, it is clear that there was insufficient evidence presented by the Patrolman to satisfy the standards set forth by our Supreme Court to properly introduce evidence of the speed of Appellant's vehicle. Based on the lack of testimony provided by the Patrolman to the trial judge, the members of this Panel find

that the trial judge's decision is erroneous in light of the lack of reliable, probative, and substantial record evidence. Therefore, Appellant's appeal must be granted, and the charged violation dismissed.

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 clearly erroneous in light of the reliable, probative, and substantial record evidence. Substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED: