STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF PORTSMOUTH	**:**	
	:	
v.	**:**	**C.A. No. T15-0011**
	:	**14304502033**
STEVEN HARKNESS	**:**	

DECISION

PER CURIAM: Before this Panel on May 6, 2015—Administrative Magistrate DiSandro III (Chair), Judge Parker, and Magistrate Noonan, sitting—is Steven Harkness' (Appellant) appeal from a decision of Magistrate Abbate (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On December 2, 2014, Officer Khubchandani of the Portsmouth Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on February 20, 2015.

At trial, the Officer testified that on December 2, 2014 at approximately 9:20 in the morning, he was "on a stationary radar post in the school zone of West Main at Melville School where the speed limit is 20 miles an hour." (Tr. at 3.) The Officer noticed a vehicle "heading south that appeared to be going at a high rate of speed." Id. The Officer "clocked that particular vehicle at 46 miles an hour." Id. Subsequently, the Officer initiated a motor vehicle stop and identified the operator of the vehicle as Appellant. Id. The Officer "cut [Appellant] a break" and

issued Appellant a ticket for traveling 10 miles per hour over the posted speed limit of 20 miles per hour. Id. Thereafter, the Officer testified that his radar unit was calibrated before and after his shift and he found it to be in good working order. Id. Additionally, the Officer stated he was certified in the use of radar in November 2005, at the Police Academy. Id.

On cross-examination, the Appellant asked the Officer if he works or lives in Portsmouth. Id. The Officer answered both questions affirmatively. Id. at 4. Subsequently, Appellant asked the Officer if he was aware of the service road, directly after the school zone, which is commonly used by people who work on base. Id. The Officer clarified that the road is Stringham Road and stated that he was aware of it. Id.

Thereafter, Appellant testified that on December 2, 2014, he was traveling in the left lane and needed to be in the right lane. Id. He stated that "[a]fter traveling through the school zone . . . [he] started to speed up so [he] could pass . . . one or two cars. . . ." Id. The Appellant clarified that he "was only speeding in the school zone for approximately a distance of about 100 feet. . . ." Id. The Appellant then stated that was his defense. Id.

After hearing testimony from the Officer and the Appellant, the Trial Magistrate found the Officer's testimony credible. Id. at 5. The Trial Magistrate noted that the Officer was on a fixed radar post when his radar registered Appellant's vehicle traveling at 46 miles per hour in a 20 mile per hour speed zone. Id. The Trial Magistrate found that the Officer was trained in the use of radar in 2005 at the Municipal Police Academy, and the radar was calibrated and working properly. Id. The Trial Magistrate further found that Appellant also admitted that he was speeding in the school zone. Id. Based on the Officer's testimony and the Appellant's admission, the Trial Magistrate sustained the charge. Id.

Subsequently, the Trial Magistrate asked the Appellant if he wanted to address the Court before the Trial Magistrate imposed sanctions. Id. The Appellant responded "no." Id. Thereafter, the Trial Magistrate took note of Appellant's driving record, and found Appellant had speeding violations on September 5, 2013, November 11, 2013, November 8, 2014, and March 7, 2014. Id. The Appellant also received a violation for starting and stopping on May 25, 2014. Id. Based on the Appellant's driving record, the Trial Magistrate found that Appellant posed a substantial traffic safety hazard, and thus, was subject to enhanced penalties under the Colin Foote statute, § 31-27-24. Id. Pursuant to the statute, the Trial Magistrate imposed a fine of $300, 60 hours of community service, 60 hours of driver retraining, loss of license for 3 months, and court costs. Id. 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 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 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 the Trial Magistrate's decision was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Specifically, Appellant asserts that the sanctions imposed were excessive given the infraction, and that he was only speeding for approximately 100 feet.

Section 31-27-24 reads that "[e]very person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period may be fined up to one thousand dollars ($1,000), and shall be ordered to attend sixty (60) hours of driver retraining, shall be ordered to perform sixty (60) hours of public community service, and the person's operator license in this state may be suspended up to one year or revoked by the court for a

period of up to two (2) years." Furthermore, § 31-27-24 requires 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."

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.

Here, Appellant received four speeding violations, and a violation for stopping and starting within seven months. See Tr. at 5; see also § 31-27-24 (requiring enhanced sanctions for motorists convicted of four moving violations within an 18 month period). Moreover, based on the Officer's testimony and the Appellant's driving record, the Trial Magistrate found that if Appellant "continues to operate a motor vehicle in the state of Rhode Island [he] poses a substantial traffic safety hazard." Id. The Appellant's driving record, along with the Trial Magistrate's findings, required the Trial Magistrate to impose enhanced sanctions pursuant to § 31-27-24. Thus, this Panel does not find the Trial Magistrate's decision to be arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. See Link, 633 A.2d at 1348.

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 and sanctions are sustained.

ENTERED:

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Administrative Magistrate Domenic A. DiSandro, III (Chair)

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Judge Edward C. Parker

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Magistrate William T. Noonan

DATE: _____