

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF SCITUATE

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:
:

v.

**C.A. No. T12-0089
07410006639**

TAYLA DELVECCHIO

DECISION

PER CURIAM: Before this Panel on February 20, 2013—Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Noonan sitting—is Tayla DelVecchio’s (Appellant) appeal from a decision of Judge Almeida (trial judge), 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 § 31-41.1-8.

Facts and Travel

On September 19, 2012, Sergeant Donald Delaere (“Sergeant Delaere” or “Officer”) of the Scituate Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on December 14, 2012.

At trial, Sergeant Delaere testified that he was at a fixed traffic post on Hartford Avenue. (Tr. at 1.) The handheld radar unit determined that Appellant’s vehicle was traveling fifty-one miles per hour (mph) in a thirty-five mph area. Id. Sergeant Delaere noted that the handheld radar unit was calibrated before and after his shift on the day of the stop and the Officer had received training in the use of radar units at the Rhode Island Municipal Police Academy. Id.

Appellant then testified on her own behalf that “[she] was positive [she] was not speeding.” (Tr. at 2.) Appellant went on to testify that “[i]t wasn’t [Sergeant Delaere who clocked her speed]. Another officer was on the opposite side of the road. [The other officer] called [Sergeant Delaere] in after he pulled [Appellant] over.” (Tr. at 3.) Appellant concluded the trial testifying that she had to be going the speed limit because “[she] was behind a tractor trailer truck the whole way, and after that [she] was behind a school bus.” Id.

After both parties were given an opportunity to present evidence, the trial judge determined that the Sergeant was a credible witness. The trial judge accepted the Sergeant’s testimony that he did, in fact, observe the Appellant operate her vehicle above the speed limit. (Tr. at 6.) In her bench decision, the trial judge sustained the violation, suspended Appellant’s license for four months, and imposed a \$400 fine. (Tr. at 7.) Aggrieved by the trial judge’s decision, the Appellant timely filed this 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:

- (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, the Appellant argues that the trial judge’s decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, the Appellant alleges that she was not speeding. Additionally, Appellant contends that the trial judge’s decision was in excess of her statutory authority when she imposed a \$400 fine.

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

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After listening to the evidence, the trial judge determined that the Officer’s testimony was credible. In rendering her decision, the trial judge noted that the Officer met the burden of proof in order to sustain the charged violation by testifying that the radar device was properly calibrated, explaining his training in using radar devices, and stating the actual speed Appellant was driving. (Tr. at 6-7.) Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge’s credibility findings were not clearly erroneous. See Link, 633 A.2d at 1348.

In regards to Appellant’s second argument, the Colin B. Foote Act, which is codified as section 31-27-24 of the General Laws, states that “[e]very person convicted of moving violations on four separate and distinct occasions within an eighteen month period may be fined up to one thousand dollars” § 31-27-24. The entirety of the possible penalties in this Act includes (1) a fine up to one thousand dollars (\$1000); (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. Id. The trial judge stated in her findings, “[t]his is [Appellant’s] fourth speeding violation since May in four

months.” (Tr. at 7.) Given that the convictions occurred within the parameters for enhanced penalties under § 31-27-24, the trial judge did not commit an error of law, abuse her discretion, or act in excess of statutory provisions by imposing sanctions pursuant to the Colin Foote Law upon Appellant. The sanctions imposed were within the statutory penalties allowed under § 31-27-24.

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 was not clearly erroneous, affected by error of law, an abuse of discretion, or in excess of statutory provisions. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Chief Magistrate William R. Guglietta

Magistrate William T. Noonan

DATE: _____