

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF BURRILLVILLE

v.

C.A. No. M10-0022

JACK CARTER

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on December 8, 2010—Judge Ciullo (Chair presiding), Administrative Magistrate Cruise, and Magistrate Goulart, sitting—is Jack Carter’s (Appellant) appeal from a decision of the Burrillville Municipal Court, 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 July 2, 2010, Sergeant Leahy of the Burrillville Police Department (Sgt. Leahy) while on patrol near Whipple Avenue in Burrillville, Rhode Island, observed Appellant’s vehicle to be traveling above the posted speed limit. Sgt. Leahy issued a citation for the above mentioned violation of the motor vehicle code. Appellant contested the charge and the matter proceeded to trial.

The trial began with Sgt. Leahy testifying that he had calibrated his vehicle mounted radar unit prior to the start of his shift on July 2, 2010. (Tr. at 4.) Sgt. Leahy testified that he was posted near the Whipple Avenue overpass, when radar unit indicated that Appellant’s vehicle was traveling 66 miles per in a zone where the posted speed limit was 50 miles per hour. Id.

On cross examination, Sgt. Leahy admitted that he mistakenly wrote Volvo on the citation form even though Appellant was driving a Volkswagen on July 2, 2010. (Tr at 6.) The Appellant presented a different set of facts to the court, claiming that the Sgt. Leahy aggressively tailed him all the way from the Town of Glocester, Rhode Island. (Tr. at 8.) Sgt. Leahy admitted that he could not exactly remember the sequence of events. Id. However, he emphatically informed the court that his written narrative of the event indicated that the stop had occurred after he noticed Appellant to be speeding near the Whipple Avenue overpass. Id.

At the conclusion of testimony, the trial judge sustained the speeding charge. Aggrieved by this decision, Appellant filed an this Appeal. Forthwith is this Panel's decision.

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 of the record. We agree with the Appellant, as our review of the record indicates that the Town's case falls short of meeting the evidentiary requirements necessary to sustain a charge under § 31-14-2.

In State v. Sprague, 113 R.I. 351, 322 A.2d 36, 39-40. (1974), our Supreme Court held that a radar speed reading is admissible into evidence upon a showing that “the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method” and that there is “testimony setting forth [the officer’s] training and experience in the use of a radar unit.” Here the record indicates a failure of the Town to meet the “second prong” of Sprague. At no point did the Town put forth any evidence of Sgt. Leahy’s training or experience in using the radar equipment. Therefore, we conclude that the evidentiary burden was not met, and the charge is 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 and in violation of statutory provisions.

Substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED: