

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF CRANSTON

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:
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v.

C.A. No. T08-0134

KRISEL BAUMET

DECISION

PER CURIAM: Before this Panel on December 3, 2008, Chief Magistrate Guglietta (Chair), Judge Parker, and Magistrate Goulart¹ presiding, is Krisel Baumet’s (Appellant) appeal from Judge Almeida’s decision, sustaining the charged violations of G.L. 1956 §31-14-2, “Prima facie limits”; G.L. 1956 § 31-16-5, “Turn signal required”; and G.L. 1956 §31-22-22, “Safety belt use - child restraint.”² The Appellant appeared before this Panel pro se. This Panel’s jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On August 24, 2008, an officer of the Cranston Police Department (Officer) charged Appellant with violating the aforementioned motor vehicle offenses. The Appellant contested the charges, and the matter proceeded to trial.

At trial, the Officer testified that on the date in question, at approximately 7:30 p.m., he was exiting the parking lot of the Cranston Police Department³ when he observed a silver Nissan traveling at a very high rate of speed. (Tr. at 1.) As the vehicle passed his location, the Officer noticed several people inside the vehicle, including an adult male in the front passenger seat with

¹ Magistrate Goulart sat for Judge Ciullo on this matter.

² The Appellant was charged with seven separate violations of Section 31-22-22.

³ The Cranston Police Department is located on Garfield Avenue.

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a small child sitting on his lap. Id. The Officer also noted that there were several children in the rear of the vehicle, and that all of the children were unrestrained. Id.

Using his radar unit—which the Officer indicated had been calibrated prior to his shift—the Officer recorded the vehicle’s speed as 52 m.p.h. in a posted 25 m.p.h. zone. Id. When the Officer began to pursue the speeding vehicle, he observed the operator of the vehicle move into the right lane of Garfield Avenue without utilizing a turn signal. Id. The Officer activated his cruiser’s lights and sirens, initiating a traffic stop in the parking lot of the Texas Roadhouse restaurant. Id.

When he approached the suspect vehicle, the Officer noted that the operator of the vehicle—later identified at trial as Appellant—was not wearing a safety belt. Id. The Officer was also able to confirm all seven of the vehicle’s passengers were similarly unrestrained by safety belts. Id.

At the conclusion of the Officer’s trial testimony, Appellant testified on her own behalf. The Appellant indicated that she was not speeding and that she properly utilized her turn signal when moving her vehicle into the right lane of Garfield Avenue. (Tr. at 2.) The Appellant further testified that she did not enter the parking lot of the Texas Roadhouse restaurant in response to the Officer’s emergency lights and siren; rather, she claimed that she did not know that the Officer was pursuing her until he approached her parked vehicle and issued her the citations. Id. With regard to the seatbelt violations, the Appellant maintained that all of the passengers in the vehicle were utilizing their seat belts, but that they had removed the belts upon arriving at the Texas Roadhouse restaurant. Id.

Following the trial, the trial judge sustained the charged violations of §§ 31-14-2, 31-16-5, and 31-22-22. Aggrieved by the trial judge's decision, Appellant filed a timely appeal to this Panel. 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced 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 following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, 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 characterized by abuse of discretion. Specifically, Appellant contends that the trial judge’s decision to credit the Officer’s trial testimony and to discount her own constitutes an abuse of discretion. For the purposes of this appeal, each of Appellant’s charged violations will be addressed in seriatim.

Section 31-22-22

In reviewing the trial judge’s decision pursuant to § 31-41.1-8, this Panel lacks the authority to assess witness credibility in the first instance or reassess witness credibility on appeal. See Link, 633 A.2d at 1348. Unlike the trial judge, the members of this Panel did not have an opportunity to form our own impressions upon observing the Officer and Appellant testify and listening to their testimony; accordingly, it would be improper for this Panel to second-guess the trial judge’s determinations as to what testimony to accept and what testimony to disregard. See Environmental Scientific Corp., 621 A.2d at 206.

Here, the trial judge chose to credit the Officer’s testimony that Appellant and her adult male passenger were not “properly wearing a safety belt and/or shoulder harness system,” as required by Section 31-22-22. The trial judge also chose to credit the Officer’s testimony that Appellant was “transporting [several] child[ren] under the age of seven (7), less than fifty-four (54) inches in height and less than eighty (80) pounds in [her] motor vehicle” without “properly restrain[ing] [the children] in a child restraint system approved by the United States Department of Transportation” Id. Further, the trial judge chose not to credit Appellant that the safety

belts had been removed upon entering the parking lot for the Texas Roadhouse restaurant. As there is reliable, probative, and substantial evidence in the record that Appellant and her passengers were not utilizing safety belts and/or child restraints, this Panel is satisfied that the trial judge's decision "is supported by legally competent evidence [and] is [un]affected by an error of law." Link, 633 A.2d at 1348. The Appellant's appeal with respect to the several safety belt violations is denied and the charges against her sustained.

Section 31-14-2

With respect to the charged violation of § 31-14-2, this Panel concludes that the trial judge's decision is clearly erroneous in light of the record evidence. Having reviewed the entire record before it, this Panel is satisfied that the Officer's trial testimony does not satisfy the prevailing standard for the admissibility of radar speed readings set forth in State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974). While the Officer set forth in his trial testimony "that the operational efficiency of the [radar] device had been tested by an appropriate method within a reasonable period of time[,]" he failed to testify that he was qualified, by virtue of his professional training and experience, to operate the radar unit used to record the speed of Appellant's vehicle. See Sprague, 113 R.I. at 357, 322 A.2d at 40. As the testimony adduced at trial fails to satisfy the standard established in Sprague, the Officer's radar speed reading is inadmissible. Accordingly, Appellant's appeal with respect to the speeding violation is granted, and the charge dismissed.

Section 31-16-5

Finally, with respect to the charged violation of § 31-16-5, this Panel concludes that the trial judge's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. At trial, the trial judge chose to credit the Officer's testimony that

Appellant “turn[ed] [her] vehicle [on Garfield Avenue] without giving an appropriate signal . . . in the event any other traffic may be affected by the movement.” Section 31-16-5. However, no evidence was adduced that the movement of Appellant’s vehicle on Garfield Avenue was not “made with reasonable safety.” Id. In the absence of this testimony, it was error for the trial judge to sustain the charged violation of § 31-16-5. Accordingly, Appellant’s appeal with respect to the turn signal violation is granted and the charge 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 to sustain the charged violations of §§ 31-14-2 and 31-16-5 was affected by error of law and clearly erroneous in view of the reliable, probative, and substantial record. However, the trial judge’s decision to sustain the several violations of § 31-22-22 was not characterized by abuse of discretion, and is supported by legally competent evidence and unaffected by error of law. Accordingly, Appellant’s appeal is granted with respect to the speeding and turn signal violations, and is denied with respect to the safety belt violations.

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