STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH KINGSTOWN	:	
	:	
v.	:	C.A. No. T11-0008
	:	
MICHELLE MANCINI	:	

DECISION

PER CURIAM: Before this Panel on April 20, 2011—Magistrate DiSandro (Chair, presiding), Chief Magistrate Guglietta and Judge Almeida, sitting—is Michelle Mancini's (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." Appellant was represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On November 9, 2010, Officer Roger Bonin of the North Kingstown Police Department ("Officer Bonin" or "the officer") cited Appellant for the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial.

Prior to the commencement of testimony, counsel for the Appellant motioned for the trial magistrate to recuse himself. (Tr. at 1.) Counsel felt that the trial magistrate had prejudged the matter. The motion stemmed from the fact that the trial magistrate had made note of the Appellant's driving record. The trial magistrate produced a transcript of a previous traffic violation hearing before him involving the Appellant wherein the same trial magistrate had warned her that she would be subject to suspension if she committed

another traffic violation. He informed Appellant that if this violation was upheld, her license would be suspended. Appellant's motion for recusal was denied, and the trial commenced

At trial, Officer Bonin testified that on November 9, 2010 he was on duty, posted at a "stationary radar traffic post on Ten Rod Road at the intersection of Autumn Drive. . . ." (Tr. at 2.) There the officer "observed a tan vehicle. . . traveling south bound on Ten Rod Road at a high rate of speed." Id. The stationary radar showed the vehicle moving at 53 miles per hour in a 40 miles per hour traffic zone. Id. The officer then proceeded to conduct a traffic stop of the vehicle and issue the Appellant a citation. Id. Officer Bonin added that prior to his shift, he calibrated his radar unit and that he had been trained in the use of radar equipment at the Rhode Island Municipal Police Academy in 2002. Id.

After the officer had completed his testimony, the Appellant took the stand to testify on her own behalf. She claimed that she did not believe that she was violating the posted speed limits because at the time, she "was braking at a red light behind another vehicle in front of [her]." (Tr. at 6.) She further testified that she was continuing to pursue a degree in nursing and was currently employed at Cedar Crest Rehabilitation center as a CNA. Id.

After the close of evidence, the trial magistrate sustained the charge. He sustained the $95 fine and further imposed a 6 month license suspension. Appellant appealed.

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 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.

On Appeal, Appellant argues that the trial magistrate abused his discretion and committed error of law when he failed to recuse himself from this matter. According to Appellant, the trial magistrate's pretrial reference to a previous matter concerning the Appellant clearly demonstrates that he prejudged the matter and could therefore not carry out his duties as an impartial trier of fact. Our Supreme Court has held:

> "It is well established that judicial officers are obligated to recuse themselves if they are unable to render a fair or an impartial decision in a particular case. At the same time, however, justices have an equally great obligation not to disqualify themselves when there is no sound reason to do so. The burden is on the party seeking recusal to set forth facts establishing that the justice possesses a personal bias or prejudice by reason of a preconceived or settled opinion of a character calculated to impair his [or her] impartiality seriously and to sway his [or her] judgment." State v. Mylniec, 15 A.3d 983, (R.I. 2011) (internal citations omitted).

This Panel is unconvinced that Appellant has met her burden setting the forth the proper facts to establish that the trial magistrate was obligated to recuse himself. Despite her allegations, the record is clear that the trial magistrate raised the issue of the previous matter only to give Appellant and her attorney the basis for suspension in the event that Appellant was guilty of the offense. There is nothing in the record to suggest that the trial magistrate preconceived anything about Appellant's guilt or innocence before the

trial. In fact, in response to Appellant's motion for recusal, the trial magistrate stated, "[w]ell I don't prejudge the facts of the case. I mean the town is still going to have to prove the speeding violation." (Tr. at 2.)

The record is devoid of any facts "establishing a lack of real or apparent impartiality" on the part of the trial magistrate. State v. Sampson, 884 A.2d 399, 405 (R.I. 2005). After a careful review, it is apparent to the members of this Panel that the Appellant's claim that the trial magistrate was biased is unsubstantiated. We therefore uphold the decision of the trial magistrate to not recuse himself and sustain the charged violation of § 31-14-2.

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 not an abuse of discretion, erroneous in light of the reliable, probative, and substantial record evidence or affected by other error of law. Substantial rights of Appellant have not been prejudiced.

ALMEIDA, J. (CONCURRING):

I agree with the decision of the majority in that the trial magistrate was under no obligation to recuse himself in this matter. However, I would like to address the license suspension imposed by the trial magistrate. I understand that this issue was not raised at trial, nor did Appellant bring it to the Panel's attention on appeal, but I am compelled to comment briefly.

Section 31-41-1.4 of the General Laws enumerates the various monetary penalties for violations of motor vehicle code. In addition to the monetary fines, sub-heading (b) of that section authorizes a judge to impose license suspensions for those found guilty of violating our speeding laws. Sub-heading of § 31-41-1.4 (b) reads

> "(1) For speeds up to and including ten miles per hour (10 mph) over the posted speed limit on public highways, a fine as provided for in subsection (a) of this section for the first offense, ten dollars ($10.00) per mile for each mile in excess of the speed limit for the second offense if within twelve (12) months of the first offense, and fifteen dollars ($15.00) per mile for each mile in excess of the speed limit for the third and any subsequent offense if within twelve (12) months of the first offense. In addition, the license may be suspended up to thirty (30) days. (2) For speeds in excess of ten miles per hour (10 mph) over the posted speed limit on public highways, a mandatory fine of ten dollars ($10.00) for each mile over the speed limit for the first offense, fifteen dollars ($15.00) per mile for each mile in excess of the speed limit for the second offense if within twelve (12) months of the first offense, and twenty dollars ($20.00) per mile for each mile in excess of the speed limit for the third and subsequent offense if within twelve (12) months of the first offense. In addition, the license may be suspended up to sixty (60) days."

Since Appellant was cited going less than ten miles per hour over the posted speed limit, and since her driving record indicates that she has had 3 speeding offenses in the past

year, my interpretation of the statute dictates that that her license should have only been suspended for thirty (30) days.

Although § 31-41.1-6 reads that pursuant to violations of the motor vehicle code,

> "A judge or magistrate may include in the order the imposition of any penalty authorized by any provisions of this title for the violation, including, but not limited to, license suspension and/or in the case of a motorist under the age of twenty (20), community service, except that no penalty for it shall include imprisonment."

I am well aware that that language of § 31-41.1-6 was modified with the specific suspension provisions of § 31-41-1-4 already in place. However, in my opinion, the language of 31-41-1-6 does not grant the trial judge or trial magistrate the authority to go beyond the guidelines of § 31-41.1-4 and impose a greater suspension period.

Section 31-14.1-6 grants judges and magistrate the power to impose suspensions, but I cannot agree that where specific suspension provisions are already delineated for a given penalty, that the general language § 31-14-1-6 authorizes discretion to impose more lengthy suspensions. Our Supreme Court has held "attempts should be made to construe and apply conflicting general and special provisions so as to avoid the inconsistency." Park v. Ford Motor Co., 844 A.2d 687 (2004). I believe that a correct and consistent application would be to hold that the suspension power of § 31-41.1-6 only applied to those violations where suspension or revocation is not already a prescribed penalty.