

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

C.A. No. T11-0037

BRUCE SLATER

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on September 21, 2011—Magistrate Noonan (Chair, presiding), Judge Parker, and Judge Ciullo sitting—is Bruce Slater’s (Appellant) appeal from a decision of Administrative Magistrate Cruise, sustaining the charged violations of G.L. 1956 §§ 31-15-11, “Laned roadways”; 31-23-13, “Muffler violation”; and 31-16-5, “Turn signal required.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 3, 2011 Appellant was issued three citations for the aforementioned violations. Appellant disputed the citations received, and the matter proceeded to trial on May 25, 2011. At trial, a trooper (Trooper) from the Rhode Island State Police testified that on April 3, 2011 he was on routine patrol on Route 95 in Providence, heading north. The Trooper observed several cars racing in the area of the Thurbers Avenue exit on Route 95. (Tr. at 2-3.) The Trooper observed a green Acura, with Rhode Island registration number 991-574, in the group of cars that appeared to be racing. (Tr. at 3.) The Trooper testified that the Acura was, “weaving in and out of traffic, changing lanes unnecessarily as well as not using a turn signal.” Id.

According to the Trooper, it appeared one of the vehicles had spun out because there was a large plume of smoke on the roadway. Id. The Trooper then observed the Acura exit the

highway in the vicinity of Point Street. Id. The Acura was stopped on Point Street by the Trooper. During the traffic stop, the Trooper noticed an after-market muffler on the Acura. Id.

Upon approaching the Appellant, the Trooper testified that Appellant said he was out to dinner with his wife and he “decided to get into it” with the other cars. (Tr. at 4.) At trial, the Trooper identified Appellant as the operator of the vehicle on that night. (Tr. at 3.) After a brief detention, the Trooper cited the Appellant for the aforementioned traffic violations. As part of the Muffler violation, the Trooper issued the Appellant a “five-day tag”¹ to correct the violation.

At trial, the Appellant provided a much different account for the events that evening. Appellant argued that the Trooper misidentified the Appellant as the operator the Trooper witnessed committing the moving violations. (Tr. at 5.) Appellant contended that the Trooper’s identification of a four-door green Acura² absolved him of liability because Appellant operated a two-door green Acura that night. Id. Appellant offered to the Court pictures of his car as being a two-door; the trial magistrate took note of this distinction. (Tr. at 9.)

Appellant then testified that he and his wife were driving down Broad Street, “where everyone was meeting up.” (Tr. at 5.) At this point, “everyone” was leaving to go racing, and the Appellant followed the cars because he had not seen racing in a while. Id. Appellant then testified that he got into the crowd of cars as they proceeded to Route 95. Id. Appellant’s wife became nervous while driving, so the Appellant pulled over to the side of the highway and parked his vehicle. (Tr. at 6.) Appellant exited the highway heading towards a nightclub where he planned to go with his wife. Id. Appellant was then pulled over by the Trooper. Id.

¹ Section 31-23-13 of the Rhode Island General Laws reads in pertinent part, “[f]ailure to replace or restore the exhaust system as required in this section within five (5) days shall be deemed a civil violation and violators are subject to fines enumerated in § 31-41.1-4.”

² At the beginning of Trooper’s testimony, Trooper twice referred to the vehicle observed as a four-door Acura. After the second reference, Trooper corrected his testimony and referred the vehicle simply as a green Acura.

After Appellant's testimony, the Trooper testified that there was a group of cars racing and that Appellant was one of operators in the crowd of cars. (Tr. at 8.) In response to a question from trial magistrate, the Trooper testified that there was no doubt in his mind that Appellant was operating one of the vehicles racing. (Tr. at 8-9.)

At the close of the testimony, the trial magistrate issued a decision adopting the Trooper's testimony as the basis for his findings of fact. The trial magistrate rejected the Appellant's contention that the Trooper mistakenly identified the vehicle committing the moving violations. The trial magistrate found the Appellant guilty of all three violations. (Tr. at 12.) The magistrate fined Appellant eighty-five (85) dollars each for violating §§ 31-23-13 and 31-16-5. The trial magistrate fined the Appellant five hundred (500) dollars and ordered Appellant to complete sixty (60) hours community service and driver retraining as a habitual offender under the Foote Act³ for violating § 31-15-11. (Tr. at 12-14.)

³ Section 31-27-24 of the Rhode Island General Laws provides: Multiple moving offenses. – (a) Every 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. Prior 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.

(b) At the expiration of the time of revocation as set by the court pursuant to subsection (a) above, the person may petition that court for restoration of his or her privilege to operate a motor vehicle in this state. The license privilege shall not thereafter be reinstated until evidence satisfactory to the court, following a hearing, establishes that no grounds exist which would authorize refusal to issue a license and until the person gives proof of financial responsibility pursuant to chapter 32 of this title.

(c) For the purposes of this section only, the term "moving violations" shall mean any violation of the following sections of the general laws: (1) 31-13-4. Obedience to devices. (2) 31-14-1. Reasonable and prudent speeds. (3) 31-14-2. Prima facie limits. (4) 31-14-3. Conditions requiring reduced speeds. (5) 31-15-5. Overtaking on the right. (6) 31-15-11. Laned roadways. (7) 31-15-12. Interval between vehicles. (8) 31-15-16. Use of emergency breakdown lane for travel. (9) 31-17-4. Vehicle entering stop or yield intersection. (10) 31-20-9. Obedience to stop signs. (11) 31-27.1-3. "Aggressive driving" defined.

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 magistrate’s decision is characterized by abuse of discretion and clearly erroneous in light of the reliable, probative, and substantial evidence on the record. Specifically, Appellant maintains that the trial magistrate abused his discretion by choosing to credit the Trooper’s trial testimony over the Appellant’s.

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 Trooper and Appellant, it would be impermissible to second-guess the trial magistrate’s “impressions as he . . . observe[d] [the Trooper 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.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate’s decision is supported by legally competent evidence and is not affected by an error of law. The trial magistrate chose to credit the trial testimony of the Trooper that Appellant was, in fact, operating his vehicle in a manner that caused the Appellant to violate §§ 31-11-15 and 31-16-5. The Trooper also testified that he witnessed the Appellant change lanes several times without using a turn signal. Additionally, the Trooper testified that there was not a doubt in his mind that it was the Appellant racing that night. Accordingly, the trial magistrate’s

decision to sustain the charged violations of §§ 31-11-15 and 31-16-5 is supported by reliable, probative, and substantial record evidence.

Finally, Appellant contends that the trial magistrate erred in sustaining the charged violation of § 31-23-11. Appellant contends that the trial magistrate's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the record. During the trial, the Trooper's only testimony regarding the violation of § 31-23-13 was that the Trooper noticed an after-market muffler on the Appellant's vehicle. The Trooper failed to expound on this point and offer any testimony about training the Trooper received in after-market muffler detection.

This Panel finds that the trial magistrate's decision sustaining the violation of § 31-23-13 was erroneous in view of the reliable, probative, and substantial evidence on the whole record. The Trooper's blanket statement that he noticed an after-market muffler standing alone does not rise to the level of clear and convincing proof as required by our rules of procedure. The Trooper would have needed additional evidence to develop this point. Absent such proof, it must be determined that the trial magistrate's decision was erroneous in view of the reliable, probative, and substantial evidence on the record.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel have determined that the Appellant's appeal is granted in part and dismissed in part. This Panel is satisfied that the trial magistrate's decision regarding the violations of §§ 31-15-11 and 31-16-5 were not characterized by abuse of discretion or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. However, the trial magistrate's decision sustaining the violation of § 31-23-13 was erroneous in view of the reliable, probative, and substantial evidence on the whole record.