

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

C.A. No. T11-0042

KEVIN SILVA

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on July 27, 2011—Magistrate Goulart (Chair, presiding), Magistrate DiSandro, and Magistrate Noonan, sitting—is Kevin Silva’s (Appellant) appeal from a decision of Chief Magistrate Guglietta, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared with counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On April 29, 2011, Trooper Pete Filuminia of the Rhode Island State Police (Trooper Filuminia) observed the subject vehicle travel eighty three (83) miles per hour (mph) in a posted fifty-five (55) mph speed zone. The Officer charged the driver of the vehicle, later identified at the trial as Appellant, with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial.

Trooper Filuminia began his trial testimony by explaining that on the date in question, he was traveling north on Route 95 in response to a motor vehicle accident. While proceeding north in the high speed lane, Trooper Filuminia observed a green Nissan traveling faster than the posted speed limit. Trooper Filuminia clocked the vehicle on his speedometer at eighty three miles per hour. (Tr. at 3.) According to the Trooper Filuminia, the posted speed limit on Route

95 is fifty-five (55) mph. (Tr. at 4.) Trooper Filuminia continued to follow the vehicle on Route 95 north of Park Avenue. (Tr. at 3.) After clocking the vehicle for over a half a mile, Trooper Filuminia ran a license query of the registered owner. (Tr. at 3.) After review of the license query Trooper Filuminia identified the operator of the registered owner of the subject vehicle. (Tr. at 3-4.) Trooper Filuminia testified that his car speedometer was calibrated on April 16, 2011. (Tr. at 4.) Trooper Filuminia provided Chief Magistrate Guglietta with a calibration sheet for his vehicle. (Tr. at 5.) While Trooper Filuminia did not conduct a traffic stop at this time, he used his discretion to cite the Appellant for driving sixty five (65) miles per hour in a fifty five (55) mile per hour zone. (Tr. at 4.)

At the completion of Trooper Filuminia's testimony, Appellant asked the Trooper if he was "trained to be able to identify someone at 83 miles per hour." (Tr. at 6.) Trooper Filuminia explained that he could identify the Appellant at 120 miles per hour. (Tr. at 7.) Additionally, Trooper Filuminia testified that he did not have a dispatch log for the incident because it was a civil violation. (Tr. at 7-8.)

After the testimony of Trooper Filuminia, the Appellant then testified regarding the incident in question. Appellant explained to Chief Magistrate Guglietta that he had "no recollection of the incident" and that he simply received a ticket in the mail at a later time. (Tr. at 9.)

Chief Magistrate Guglietta then recounted the testimony and evidence presented at trial. (Tr. at 9-12.) The Chief Magistrate then determined that the testimony of Trooper Filuminia was more credible than that of the Appellant. (Tr. at 13.) Indeed Chief Magistrate Guglietta found Trooper Filuminia's testimony to be "unequivocal." (Tr. at 13.) As such, Chief Magistrate

Guglietta sustained the charged violation of § 31-14-2 and imposed penalties. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

Standard of Review

Pursuant to § 31-4.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possess appellate jurisdiction to review an order of a judge or magistrate of the RITT. Section 31-41.1-8 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'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 Chief Magistrate’s decision was affected by an error of law and clearly erroneous in light of the lack of reliable, substantive and probative record evidence. Appellant asserts the Chief Magistrate abused his discretion by choosing to credit Trooper Filuminia’s trial testimony that he observed Appellant’s vehicle operating in excess of the posted speed limit.

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 Trooper Filuminia or Appellant, it would be impermissible to second-guess the trial magistrate’s “impressions as he . . . observe[d] [Trooper Filuminia 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. After listening to the trial testimony, the Chief Magistrate determined that Trooper Filuminia’s testimony was sufficient to find Appellant guilty. Confining our review of the record to its proper scope, this Panel is satisfied that the Chief Magistrate did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence.

Accordingly, the members of this Panel conclude that the Chief Magistrate's decision to sustain the charged violation of § 31-14-2, based on the documentary evidence and Trooper Filuminia's testimony, is unaffected by error of law and does not constitute an abuse of discretion. Accordingly, Mr. Silva's appeal is denied.

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 is not affected by an error of law or erroneous in light of the lack of reliable, probative, and substantial record evidence. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED: