STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT — RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF CUMBERLAND	:	
v.	:	C.A. No. T12-0010
CASEY RONDEAU	:	

STATE OF RHODE ISLAND TRAFFIC TRIBUNAL FILED 12 NOV 30 PM 3:54

DECISION

PER CURIAM: Before this Panel on June 6, 2012— Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Judge Ciullo sitting —is Casey Rondeau's (Appellant) appeal after Appellant pled guilty to the charged violations of G.L. 1956 § 31-15-11, "Laned roadways," and G.L. 1956 § 31-18-8, "Due care by drivers" before Magistrate DiSandro (hearing magistrate). Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On June 17, 2011, an officer from the Cumberland Police Department charged Appellant with the aforementioned violations of the motor vehicle code.[1] Appellant did not contest the charges and pled guilty on February 2, 2012.

At an earlier hearing in January, the prosecution recited the facts necessary to sustain the violations of § 31-15-11 and § 31-18-8. The prosecution stated that on June 17, 2011, at approximately 6:20 a.m., Appellant was traveling southbound on Mendon Road—a two lane road—in Cumberland. (Tr. at 3, January 5, 2012.) At this time, two pedestrians were walking northbound on the sidewalk of Mendon Road. (Tr. at 4, Jan. 5, 2012.) Then, Appellant's

[1] Appellant was also cited for violating G.L. 1956 § 31-23-1, "Driving of unsafe vehicle"; however, that violation was dismissed by the prosecution.

vehicle, inexplicably crossed into the northbound lane of travel, over the curb, and struck the two pedestrians. The accident resulted in the death of one pedestrian and serious injury to the other.

After the accident, the Cumberland Police Department conducted an investigation. The police concluded that Appellant was not impaired, was not speeding and his vehicle did not malfunction before the accident occurred. After reciting these facts, the matter was continued one month for sentencing.[2]

On February 2, 2012, the Appellant entered a guilty plea and was sentenced. (Tr. at 1, February 2, 2010.) At this hearing, Appellant argued that the Court was limited in sentencing to the fines articulated in § 31-15-11 and § 31-18-8. Appellant argued that the Court could not apply § 31-41.1-6—the enhanced sentencing statute—because it was unconstitutionally vague and overbroad. (Tr. at 8, Feb. 2, 2012.) Appellant's argument was premised on the fact that § 31-41.1-6 did not articulate any standards or factors for a sentencing judge or magistrate to consider when sentencing a defendant. In response, the prosecution argued that the statute was constitutional because it simply provided a judge or magistrate of this Court discretion to impose a sentence. Moreover, the prosecution argued that the statute was constitutional because the statute provided minimum and maximum penalties. Therefore, the statute did not grant a judge or magistrate with unfettered power.

After hearing both sides, the hearing magistrate determined that § 31-4.1-6 did, in fact, empower him to order a license suspension. (Tr. at 13, Feb. 2, 2012.) Thereafter, the hearing magistrate informed the Appellant that upon entry of a guilty plea the Appellant's license would be suspended for eight months and he would be required to complete driver retraining. (Tr. at

[2] Appellant was informed by the hearing magistrate that the magistrate intended to suspend the Appellant's license pursuant to G.L. 1956 § 31-41.1-6.

18, Feb. 2, 2012.) After being informed of all the penalties, Appellant entered a plea of guilty. Appellant timely filed this appeal.

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.

Analysis

On appeal, Appellant argues that the hearing magistrate's sentence was in violation of constitutional provisions and affected by error of law. Specifically, Appellant argues that the statute the hearing magistrate relied on—§ 31-41.1-6—is unconstitutional because it is vague and overbroad. Appellant argues that the lack of standards or factors in the statute makes the hearing justice's decision arbitrary and grants the hearing magistrate unfettered discretion. Moreover, Appellant argues that the § 31-41.1-6 is overly broad because it is not referenced in § 31-15-11 or § 31-18-8—the statutes Appellant was charged with violating.

As an initial matter, this Panel concludes that § 31-41.1-6 granted the hearing magistrate the authority to impose this particular sentence on the Appellant. Pursuant to G.L. 1956 § 31-41.1-4, the penalties imposed for violations of § 31-15-11 and § 31-18-8 is eighty-five dollars each. However, § 31-41.1-6 provides that additional penalties may be imposed by a judge or magistrate of this Court. Section 31-41.1-6 states, in pertinent part, that:

> "[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." § 31-41.1-6 (emphasis added.)

Relying on the language set forth in § 31-41.1-6, this Panel concludes that a motorist may be sentenced to any penalty that is authorized by any provision of Title 31 after that motorist has

been found guilty or entered a plea of guilty to a violation of Title 31. Accordingly, the hearing magistrate was properly within the scope of his authority.

As to the constitutional arguments raised by Appellant, this Panel notes that our Supreme Court has instructed that when reviewing a challenge to a statute or ordinance it is presumed to be constitutional. State v. Russell, 890 A.2d 453, 458 (R.I. 2006); see also State ex rel. Town of Westerly v. Bradley, 877 A.2d 601, 605 (R.I. 2005). Moreover, the Court should "attach every reasonable intendment in favor of constitutionality in order to preserve the statute" being challenged. Gem Plumbing & Heating Co. v. Rossi, 867 A.2d 796, 808 (R.I. 2005); see also Bradley, 877 A.2d at 605; Casa DiMario, Inc. v. Richardson, 763 A.2d 607, 616 (R.I. 2000). It is the party contesting the constitutionality of the statute that bears "the burden of proving beyond a reasonable doubt that the challenged enactment is unconstitutional." Bradley, 877 A.2d at 605; see also Russell, 890 A.2d at 458; Rossi, 867 A.2d at 808.

Appellant contends that the statute, § 31-41.1-6, is impermissibly vague because it does not provide any guidelines or factors for a sentencing judge to adhere to when sentencing a motorist. In support of his position, Appellant directs this Panel to State v. Berker, 328 A.2d 729 (R.I. 1974). In Berker, the defendant was cited for violating the Warwick city ordinance relating to disorderly conduct. Id. at 730. The disorderly conduct ordinance stated that "[a]ny person who shall be found reveling, quarreling, fighting or wantonly making a false alarm or cry of fire or otherwise behaving in a disorderly or indecent manner in the city or who shall aid, incite or encourage the same to be done shall be guilty of a violation of this section." Id. The defendant was ultimately found guilty and appealed this finding. On appeal, the defendant argued that his conviction should be overturned because the ordinance was unconstitutionally vague. Our Supreme Court agreed. Id. at 73, 328 A.2d at 731. The Court found that the:

> "ordinance is vague and indefinite since it contains no standards by which conduct may be measured and thus fails to give a person of ordinary intelligence fair notice of what conduct it attempts to forbid. The absence of proper standards also encourages arbitrary arrests and convictions. The ordinance being vague and indefinite fails to meet constitutional standards and is void." Id., 328 A.2d at 730-31.

Appellant's reliance on Berker is misguided and not applicable to the facts presented in the case at bar because § 31-41.1-6 does not restrict or forbid behavior. The statute that Appellant challenges on vagueness grounds, § 31-41.1-6, is simply a sentencing statute and does not define illegal behavior. Therefore, it cannot be subjected to the scrutiny of the void-for-vagueness doctrine. "A statute is not vague because it allows for judicial discretion in imposing penalties, but rather when its language does not convey, to a person of ordinary intelligence, adequate notice of what conduct is proscribed." State v. Spilton, 315 S.W.3d 350, 357 (Mo. 2010). Here, § 31-41.1-6 is not vague because it does not define behavior, but rather clearly delineates penalties for motorists found guilty of violations of Title 31. See id. A judge or magistrate is limited in the sentence he or she can impose and is not granted unfettered discretion as Appellant contends. Therefore, the principles of vagueness are inapplicable.

This Panel remains mindful that "perfect clarity and precise guidance have never been required" when analyzing a statute for vagueness. United States v. Williams, 553 U.S. 285, 304 (2008) (quoting Ward v. Rock Against Racism, 491 U.S. 781, 794 (1989)) (internal quotation mark omitted). Moreover, Appellant's argument regarding vagueness and separate punishment statutes has been heard and rejected by the Supreme Court of the United States. In U. S. v. Batchelder, 442 U.S. 114, 123 (1979), the Supreme Court stated that "[s]o long as overlapping criminal provisions clearly define the conduct prohibited and the punishment authorized, the notice requirements of the Due Process Clause are satisfied."

Finally, Appellant argues that § 31-41.1-6 is overbroad. The question of whether an ordinance is overbroad is separate and distinct from that of whether it is unconstitutionally vague. Russell, 890 A.2d at 459. Overbreadth challenges typically come in the realm of the First Amendment context. See id. (The overbreadth doctrine "generally applies in the context of First Amendment freedoms and is intended to prevent the imposition of criminal penalties for the exercise of one's constitutional rights."). However, challenges can be made when a statute is overreaching and prohibits innocent conduct as well as criminal conduct. State v. Beine, 162 S.W.3d 483, 486 (Mo. 2005); see also Grayned, 408 U.S. at 114 (A statute "may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct.").

Section 31-41.1-6 neither regulates conduct nor limits some behavior but not others, as is required for an overbreadth challenge to be successful. Instead, § 31-41.1-6 is a sentencing statute that simply allows the members of this Court to increase a penalty for particularly egregious traffic offenses. The fact that it does not regulate conduct clearly takes it out of the realm of an overbreadth challenge. See Beine, 162 S.W.3d at 486. Moreover, keeping in mind that the Appellant bears a heavy burden here, Appellant had failed to direct this Panel to any cases that would lend support to his argument that a sentencing statute such as this one is susceptible to an overbreadth challenge. See Russell, 890 A.2d at 458. Finally, it should be noted that "[t]he overbreadth doctrine is strong medicine that is used sparingly and only as a last resort." New York State Club Association, Inc. v. City of New York, 487 U.S. 1, 14 (1988).

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the hearing magistrate's decision is not in violation of constitutional provisions or affected by other error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations sustained.