

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF LINCOLN

v.

SALIM AYAS

:
:
:
:
:

C.A. No. T12-0042
07406007677

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
13 JAN 22 AM 8:25

DECISION

PER CURIAM: Before this Panel on October 17, 2012—Judge Almeida (Chair, presiding), Judge Parker, and Magistrate Noonan, sitting—is Salim Ayas’ (Appellant) appeal from a decision of Judge Ciullo (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On February 22, 2012, an officer of the Lincoln Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on April 23, 2012.

Shortly before the stop, the Officer was on a fixed traffic post on Route 146 North. (Tr. at 1.) The handheld radar unit determined that Appellant’s vehicle was traveling eighty-four (84) miles per hour (mph) in a fifty-five (55) mph area. Id. The Officer noted that the handheld radar unit was calibrated before and after his shift on the day of the stop; and the officer had received training in the use of radar units at the Rhode Island Municipal Police Academy. (Tr. at 1-2.) The Officer also stated that “[t]raffic was very light that morning” (Tr. at 2.)

Appellant then testified on his own behalf, stating that there was “no way” he was going the recorded speed and that the Officer was not looking in Appellant’s direction. (Tr. at 4.) Appellant went on to testify that there was another car traveling beside him that the Officer failed to pull over. (Tr. at 4.) Appellant concluded by asking the court to either dismiss the charge or to lower the officer’s findings. (Tr. at 5.)

After both parties were given an opportunity to present evidence, the trial magistrate determined that the Officer was a credible witness. The trial judge accepted the Officer’s testimony that his radar unit was properly calibrated. (Tr. at 5.) At the close of his bench decision, the trial judge sustained the violation. *Id.* Aggrieved by the trial judge’s decision, the Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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 contends that the trial judge's decision to sustain the violation was an abuse of discretion. Specifically, Appellant argues that the trial judge erred in crediting the testimony of the Officer over Appellant's. Appellant also contends that the trial judge erred because he did not take into consideration that there were other cars on the road and the Officer may have erred in reading the Appellant's speed.

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 Officer or Appellant, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [the Officer 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 testimony, the trial judge determined that the Officer’s testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. In his decision, the trial judge found it significant that “there was light traffic” at the time the Officer read Appellant’s speed, thus reducing the likelihood of mistakenly reading another cars speed. (Tr. at 4.) Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence.

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 was not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED: