STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF LITTLE COMPTON	**:**	
	:	
v.	**:**	**C.A. No. T12-0067**
	:	**12306500144**
JOSEPH NOE	**:**	

DECISION

PER CURIAM: Before this Panel on January 9, 2013—Magistrate Noonan (Chair, presiding), Administrative Magistrate Cruise, and Judge Parker, sitting—is Joseph Noe's ("Appellant") appeal from a decision of Magistrate Goulart ("trial judge"), sustaining the charged violations of G.L. 1956 § 31-14-2(a), "Prima facie limits," and § 31-27-2.1, "Refusal to submit to chemical test." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On July 21, 2012, at around 8:15 in the evening, Corporal John Harris ("Corporal Harris" or "Officer Harris"), saw two vehicles leaving South Beach in Little Compton. (Tr. at 7-8.) The Officer described the first vehicle as a Mitsubishi Eclipse without paint, just a gray primer. (Tr. at 8.) Using a radar device that was mounted in the police car, he determined that the first vehicle was traveling at sixty-eight miles per hour in a twenty-five mile per hour zone. (Tr. at 8, 30.) The second vehicle, which he described as a silver Mitsubishi with "wavy graphic lines," was traveling at sixty-two miles per hour. (Tr. at 9, 11.)

At trial, Corporal Harris testified that the cars appeared to be racing. Id. He activated his lights and siren and attempted to detain the first vehicle, but that vehicle did not slow down. (Tr. at 9-10.) After losing the first vehicle, Corporal Harris attempted to locate the second vehicle and drove back towards the beach. (Tr. at 10.)

As he drove back, the Officer testified that he observed the second vehicle. (Tr. at 10-11.) He stated that he believed based on his earlier observations of color and type that the second vehicle was the same vehicle he had scanned driving at sixty-two miles per hour. (Tr. at 11.) Specifically, he stated that the car was a silver Mitsubishi with "wavy graphic lines," the same as the vehicle he had seen earlier. Id. He followed the vehicle but did not observe unsafe driving or violations. (Tr. at 14.) Nevertheless, the Officer pulled over the motorist, whom he identified as the Appellant Joseph Noe. Id. He described the operator's speech as "slurred and mumbled," stated that "his eyes were red and watery and his face was flush," and that he had difficulty retrieving his license. (Tr. at 15-16.) Corporal Harris further testified that a strong odor of alcohol emanated from the vehicle, that the Appellant "had to hold onto the door [of the vehicle] to keep himself upright," and that he swayed as he walked. (Tr. at 16-18.) As the Appellant exited the vehicle, the Officer noticed the Appellant fall forward. (Tr. at 17.) The Appellant allegedly admitted that he had consumed three beers that day. (Tr. at 16.)

Subsequently, the Officer asked the Appellant if he would submit to a standardized field sobriety test, to which he agreed. (Tr. at 17.) Based on his experience, training, and observations, the Officer concluded that the Appellant failed the test. Specifically, Corporal Harris testified that he has been a member of the Little Compton Police Department for twelve years. (Tr. at 3.) He made approximately twenty to twenty-five DUI stops and about fifteen to twenty DUI arrests. Id. He also stated that he was trained in and successfully completed

standardized field sobriety tests at the Rhode Island Municipal Police Academy. (Tr. at 3-4.) Additionally, Corporal Harris testified that he was trained by the Rhode Island Municipal Police Academy to use radar devices and successfully completed the training. (Tr. at 30.) He checked the device before leaving the police station to ensure that it was working properly. (Tr. at 31.) Furthermore, Corporal Harris also checked the calibration sheets to determine they were up to date and testified that the unit was properly calibrated. Id. A calibration certificate for the radar unit in question introduced at trial indicated that the radar unit was calibrated on January 5, 2012, that TMDE Calibration Labs in Richmond, Maine performed the calibration, and that the unit was calibrated yearly. (Tr. at 32.)

After having the Appellant perform the field sobriety test, Corporal Harris placed him under arrest for driving under the influence and read him his Rights for Use at Scene. (Tr. at 22-23.) Following the arrest, the Officer transported the Appellant to the Little Compton Police Station, read him the Rights for Use at Station, and provided him with an opportunity to make a confidential telephone call. (Tr. at 26-27.) The Officer then prepared an affidavit to which he swore in front of a notary and cited the Appellant for speeding and refusing to submit to a chemical test. (Tr. at 29-30.)

The Appellant contested the charge, and the matter proceeded to trial on September 18, 2012. The trial judge sustained the charges of speeding and refusing to submit to a chemical test following the stop. (Tr. at 85.) He then imposed the minimum fine of $200 and the minimum number of community service hours of ten hours. (Tr. at 88-89.) The judge suspended the Appellant's privilege to operate in Rhode Island for eight months, which is within the statutory period of six months to one year.[1] See § 31-27-2.1(b); Tr. at 89. He also required the Appellant

[1] The trial judge could not suspend the Appellant's license because the license was issued in Massachusetts, and the judge did not have the authority to suspend an out-of-state license. (Tr. at 89.)

to attend DWI school, as required by the statute, and ordered the Appellant to pay $500 in highway assessment fees, $200 to the Department of Health, and $35 in court costs. (Tr. at 89.)

The Appellant filed a timely appeal. On appeal, the Appellant contends that the trial judge failed to give adequate weight to certain statements made by the arresting Officer and improperly considered the Appellant's age in imposing the sentence.

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 Ins. 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 Envtl. 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 committed reversible error of law when he sustained the charged violations. Specifically, Appellant claims that the judge failed to give weight to facts that supported the Appellant's claim that he was not speeding and that the Officer did not have reasonable suspicion to stop his vehicle. Appellant also contends that the trial judge's sentence was excessive and was incorrectly increased solely on the basis of Appellant's age.

A. Weight of the Evidence

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 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.

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. “[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact).” Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). The trial judge credited the Corporal’s testimony regarding the calibration and the evidence that the radar device he used at the time of the incident was in good working order. (Tr. at 85.) In his decision regarding the speeding charge, the trial judge found it significant that “[Corporal Harris] was trained in the use of radar . . . and the device that he was using was in good working order. Id. The judge concluded by stating, “As it relates to the speeding violation . . . the State has established the two elements of the speeding violation, and I find Mr. Noe guilty of those violations.” Id. Based on this evidence, the trial judge concluded that he was satisfied that the State proved the speeding charge by clear and convincing evidence. Id. 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. Environmental Scientific Corp., 621 A.2d at 209 (The [appellate court] should give great deference to the [trial judge’s] findings and conclusions unless clearly wrong.)

B. Reasonable Suspicion

The Appellant next argues that Officer Harris did not reasonable suspicion to stop his vehicle. Specifically, the Appellant claims that the arresting Officer improperly identified the Appellant's car as the initial car he saw speeding.

Law enforcement officers must possess reasonable grounds to suspect that an individual has been driving under the influence of alcohol. Section 31-27-2.1 requires that the police officer have a reasonable suspicion that a person operating a vehicle is intoxicated. Such reasonable suspicion must be based upon specific and articulable facts from which a reasonable inference can be drawn. State v. Bruno, 709 A.2d 1048, 1050 (R.I. 1980); see State v. Jenkins, 673 A.2d 1094, 1097 (R.I. 1996) (finding that the reasonable suspicion requirement for driving under the influence is satisfied upon a police officer noticing the erratic driving of a motorist). Moreover, upon a suspect's refusal of a chemical test, law enforcement officers may rightfully proceed with a refusal charge as related to driving under the influence, and an administrative judge may rightfully sustain such charge assuming the presence of the requisite elements. Bruno, 709 A.2d at 1050 (quoting Link, 633 A.2d at 1348) (stating that a refusal charge shall be sustained when an individual has refused a chemical test, been read his or her rights, and is aware of the penalties attached to noncompliance).

In this case, the trial judge concluded that the arresting Officer had had reasonable and articulable grounds to stop the vehicle. (Tr. at 84.) He explained that there was "no question in [his] mind that the vehicle that [the Officer] pulled over was vehicle two and that that was the vehicle for which he received the sixty-two mile per hour reading in a twenty-five mile per hour zone." Id. The judge also noted that Corporal Harris specifically described the vehicle, a silver Mitsubishi with "wavy graphic lines," which was the same vehicle he indicated had passed his

location before he pulled the vehicle over. (Tr. at 11.) Therefore, we find the Appellant's arguments regarding the unreasonableness of the stop unconvincing. See Bruno, 709 A.2d at 1049-50. We are satisfied, based on the judge's careful analysis, that his conclusions are supported by legally competent evidence. See Marran v. State, 672 A.2d at 875, 876 (R.I. 1996) (holding that appellate review is limited to a determination of whether the hearing justice's decision is supported by legally competent evidence). Confining our review of the record to its proper scope, this Panel holds that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. See Link, 633 A.2d at 1348.

B. Sentence

Lastly, the Appellant argues that the trial judge "erred in applying in effect a different minimum standard for 18 year olds." The Appellant claims it is "contrary to public policy to sight [sic] the motorist's age as a reason for exceeding the minimum penalties." The Refusal Statute requires that a traffic tribunal judge

> (1) [i]mpose for the first violation a fine in the amount of two hundred dollars ($200) to five hundred dollars ($500) and shall order the person to perform ten (10) to sixty (60) hours of public community restitution. The person's driving license in this state shall be suspended for a period of six (6) months to one year. The traffic tribunal judge shall require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for the individual.

Sec. 31-27-2.1(b).

At trial, the judge imposed the minimum fine of $200 and the minimum number of community service hours of ten hours. (Tr. at 88-89.) He suspended the Appellant's privilege to operate in Rhode Island for eight months, which is within the statutory period of six months to

one year.[2] See § 31-27-2.1(b); Tr. at 89. He also required the Appellant to attend DWI school, as required by the statute and ordered the Appellant to pay $500 in highway assessment fees, $200 to the Department of Health, and $35 in court costs. (Tr. at 89.)

The Appellant erroneously interprets the judge's comment, "I don't think the minimums are appropriate for an 18 year old who's drinking alcohol," as the judge's reason for exceeding the minimum penalties. (Tr. at 88.) In fact, the trial judge imposed the minimum fine and the minimum number of community hours. See § 31-27-2.1(b). Also, the judge suspended the Appellant's license within his statutory authority to do so. He suspended the Appellant's privilege to drive in Rhode Island for eight months. (Tr. at 89.) Arguably, the suspension of privileges is a lesser penalty than a suspension of a license because the latter penalty would preclude the Appellant from driving in any state. At trial, the judge further stated:

> You're not in the same position that someone over the age of 21 is in who comes in here and . . . [asks me to] impose the minimums. I treat you differently because of the fact that you're not even yet eligible to drink alcohol. Granted, the testimony of Corporal Harris is such that I have no reason to believe that you were operating that vehicle in an erratic fashion, which is a benefit . . . [Y]ou were speeding, but it sounds to me, after you realized how fast you were going . . . [and] after you saw the police officer, you exercised better judgment and slowed down.

(Tr. at 88.) From these statements, the trial judge considered all of the factual circumstances and decided to impose the underage penalty, all of which are within the provisions of § 31-27-2.1(b). Also, we as an appellate panel have limited ability to change a sentence that has been imposed within the statutory requirements. Therefore, we hold that substantial rights of the Appellant have not been prejudiced. The trial judge's decision was not in excess of his statutory authority or affected by other error of law. See Link, 633 A.2d at 1348.

[2] The trial judge could not suspend the Appellant's license because the license was issued in Massachusetts, and the judge did not have the authority to suspend an out-of-state license. (Tr. at 89.)

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, 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. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

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Magistrate William T. Noonan (Chair)

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Administrative Magistrate R. David Cruise

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Associate Judge Edward C. Parker

DATE: _____