

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

ROBERT FRANK

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C.A. No. T12-0074
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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on January 30, 2013—Magistrate Goulart (Chair, presiding), Judge Parker, and Magistrate DiSandro sitting—is Robert Frank’s (Appellant) appeal from a decision of Magistrate Noonan, 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 September 13, 2012, a trooper of the Rhode Island State Police Department (Trooper) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on November 7, 2012.

Shortly before the stop, the Trooper was at a fixed traffic post on Route 146 North. (Tr. at 2.) The handheld radar unit determined that Appellant’s motorcycle was traveling one-hundred (100) miles per hour (mph) in a fifty-five (55) mph area. Id. The Trooper noted that the handheld radar unit was calibrated before and after his shift on the day of the stop and the Trooper had received training in the use of radar units at the Rhode Island Municipal Police Academy. Id.

Appellant then testified on his own behalf, stating “. . . I don’t deny the speed, but . . . there was a problem with the throttle, it kept sticking.” (Tr. at 3.) Appellant went on to testify that the motorcycle did not belong to him and he was “. . . just taking it out for a drive.” Id. Appellant concluded the trial by asking the court to send him to jail instead of imposing the sentence. (Tr. at 5.)

After both parties were given an opportunity to present evidence, the trial magistrate determined that the Trooper was a credible witness. The trial judge accepted the Trooper’s testimony that his radar unit was properly calibrated. (Tr. at 4.) 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 § 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 fully admits violation of the traffic code; however, he has appealed to this Panel due to his concern with the one year suspension of his license. Specifically, Appellant pleads with this Panel to review the decision of the trial judge in hopes for a reversal.

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 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 Trooper’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)). In his decision, the trial judge found it significant that Appellant himself “. . . candidly admitted [he was] speeding . . . ,” thus fulfilling the requirements necessary to sustain the violation. (Tr. at 3.) The trial judge went on to note that Appellant obtained six moving violations within one month, with two of them being speeding violations. (Tr. at 4.) The judge concluded that Appellant’s record is unprecedented and Appellant’s driving behavior presents a danger to society. 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.).

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 supported by the reliable, probative, and substantial evidence on record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.