

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF RICHMOND

:
:
:
:
:

v.

**C.A. No. T14-0054
14505500435**

KAREN B. NELLIGAN

DECISION

PER CURIAM: Before this Panel on November 19, 2014—Judge Almeida (Chair), Administrative Magistrate Cruise, and Magistrate Goulart sitting—is Karen B. Nelligan’s (Appellant) appeal from a decision of Magistrate Abbate 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 June 25, 2014, Corporal William Litterio (Corporal) of the Richmond Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on September 30, 2014.

At trial, the Corporal testified that he was operating his cruiser heading Northbound on Richmond Townhouse Road, when he observed a vehicle enter his radar field. (Tr. at 2.) He testified that at the time there was only one vehicle in his radar field, and he received a radar speed of 51 miles per hour (mph) in a posted 35 mph zone. Id. The Corporal stated that he conducted the motor vehicle stop and Appellant was identified as the motorist by her license. Id. Thereafter, the Corporal testified that he was certified in the use of radar in 2003 in the Rhode Island Municipal Police Academy. Id. The Corporal also testified that the radar was in good working condition, and was self-calibrated with a 35 mph tuning fork as well as a 50 mph tuning

fork. Id. Thereafter, the Corporal entered the Certificate of Calibration for the cruiser as Exhibit 1. (Tr. at 3.)

Subsequently, Appellant questioned the Corporal about the location of the speed limit sign. (Tr. at 6.) The Corporal explained that the speed limit sign is obstructed in the picture Appellant provided, but the Corporal testified that there are additional speed limit signs posted throughout the road. Id. Thereafter, the Appellant testified that she never speeds. (Tr. at 8.)

After both parties were given an opportunity to present evidence, the trial magistrate issued a decision sustaining the charged violation. (Tr. at 10.) The trial magistrate found that the Corporal was trained to use his radar and the radar was properly calibrated. Id. The radar indicated Appellant was traveling at 51 mph in a posted 35 mph zone. Id. Based on these findings, the trial magistrate established that the Corporal had met his burden of proof. Id. Thus, the trial magistrate sustained the charged speeding violation. Aggrieved by the trial magistrate's decision to sustain the charge, 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 contends that the trial magistrate's decision was arbitrary or capricious. The Appellant maintains the decision was solely based on the Corporal's testimony.

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 Corporal or Appellant, it would be

impermissible to second-guess the trial magistrate's "impressions as he . . . observe[d] [the Corporal 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.

At trial, Appellant testified that the speed limit sign was blocked by trees. (Tr. at 6.) The trial magistrate considered this testimony as well as the photographs and video of the obstructed sign that the Appellant provided at trial. (Tr. at 9.) After considering the testimony and evidence provided at trial, the trial magistrate determined that the Corporal'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 [magistrate] 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 magistrate credited the Corporal's testimony that the radar unit determined that Appellant's motor vehicle was 51 mph in a 35 mph area and that the unit was calibrated and in good working condition. (Tr. at 12.) The trial magistrate concluded that he accepted the testimony of the Corporal. Id. The trial magistrate was satisfied by clear and convincing evidence that the town met its burden of proof in the case. Accordingly, the trial magistrate found the Appellant guilty.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate 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 magistrate'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 magistrate's decision was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Judge Lillian M. Almeida (Chair)

Magistrate Alan R. Goulart

DATE: _____

Note: Administrative Magistrate R. David Cruise participated in the decision but resigned prior to its publication.