

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
:

v.

C.A. No. T08-0107

AARON DESJARLAIS

08 OCT 27 PM 11:33
STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL

DECISION

PER CURIAM: Before this Panel on September 24, 2008, Judge Almeida (Chair), Magistrate Goulart,¹ and Magistrate Cruise sitting, is Aaron Desjarlais' (Appellant) appeal from Magistrate Noonan's decision, sustaining the charged violation of G.L. 1956 § 31-15-5, "Overtaking on the right."² Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 17, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by Patrol Officer Jeffrey Ducharme (Officer Ducharme) of the Burrillville Police Department. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Officer Ducharme testified that he was on vehicular patrol on Broncos Highway,³ heading northbound in the vicinity of Burrillville Middle School. Id. Officer Ducharme described Broncos Highway as having two southbound travel lanes, with the right-hand lane designated as a slow speed travel lane. Id. At approximately 2:50 p.m.,

¹ Magistrate Goulart sat on the Panel for Chief Magistrate Guglietta.

² The Appellant was also charged with violating G.L. 1956 § 31-14-2, "Prima facie limits." However, this charge was dismissed at trial upon the State's failure to satisfy the prevailing standard for the admissibility of radar speed readings set forth in State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974).

³ Officer Ducharme testified that Broncos Highway is synonymous with Route 102. (Tr. at 6.)

Officer Ducharme observed a black Subaru with Rhode Island passenger registration traveling at a high rate of speed in the right-hand travel lane. Id. As the black Subaru passed the line of traffic in the left-hand travel lane, Officer Ducharme's dashboard radar unit indicated that the vehicle was traveling at 70 m.p.h. Id.

Officer Ducharme began to pursue the vehicle and initiated a traffic stop approximately one-half mile away at the intersection of Broncos Highway and the "Glendale Cutoff."⁴ (Tr. at 5.) The driver of the Subaru, positively identified as Appellant by his driver's license and passenger registration, was issued a summons for overtaking on the right. (Tr. at 6.)

At the conclusion of Officer Ducharme's trial testimony, Appellant's counsel argued that the summons issued to Appellant indicated that the violation of § 31-15-5 occurred at 2910 Victory Highway, in direct contradiction to Officer Ducharme's testimony that he stopped Appellant's vehicle on Broncos Highway. (Tr. at 8.) It was Appellant's contention that, based on the discrepancy between the summons and Officer Ducharme's trial testimony, the charge against Appellant should be dismissed on due process grounds. Id.

At the conclusion of the trial, the trial magistrate sustained Appellant's violation of § 31-15-5. The Appellant has filed a timely appeal of the trial magistrate's decision. Forthwith is this Panel's decision.

⁴ Broncos Highway (Route 102) and Victory Highway are perpendicular roads, but are connected in Glendale, a village of Burrillville. The "Glendale Cutoff" that Officer Ducharme mentioned in his trial testimony refers to this connecting road.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced 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 following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

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 v. State, 633 A.2d 1345 (R.I. 1993). The Appeals Panel is “limited to a determination of whether the hearing justice’s decision is supported by legally competent evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

Analysis

On appeal, Appellant argues that the trial magistrate's decision warrants reversal because it is in violation of constitutional provisions and affected by errors of law. Specifically, Appellant contends that the State failed to prove by clear and convincing evidence that Appellant committed a traffic violation on Victory Highway—the location listed on the summons issued to Appellant—because Officer Ducharme testified as to a completely different location, Broncos Highway. According to Appellant, Officer Ducharme's failure to properly designate Broncos Highway on the summons issued to Appellant effectively deprived him of due process because he had no notice of the precise location of the traffic stop. As such, Appellant was denied a meaningful opportunity to be heard on the issue of his driving on the date in question.

Having reviewed the entire record before it, this Panel is satisfied that Appellant had “an opportunity to be heard in a meaningful manner at a meaningful time.” Leone v. Town of New Shoreham, 534 A.2d 871, 874 (R.I. 1987). The record makes clear that Appellant was afforded “notice of the hearing [before the trial magistrate], notice of the claimed [overtaking on the right] violation, the opportunity to be heard and present evidence [on] [his] behalf, and the right to confront and cross-examine [Officer Ducharme].” State v. Pompey, 934 A.2d 210, 214 (R.I. 2007) (quoting State v. Bernard, 925 A.2d 936, 938-39 (R.I. 2007)). Although Appellant's counsel did not have notice of the precise location of Appellant's traffic violation, we are confident that this did not impair his “opportunity to respond adequately” before the trial magistrate, State v. Manocchio, 448 A.2d 761, 764 n.3 (R.I. 1982), as the exact location of Appellant's driving was not an essential element of the § 31-15-5 charge. See Ransom v. DaLomba,

755 A.2d 840 (R.I. 2000) (typographical error on summons identifying incorrect address did not excuse failure to serve process within 120 days).

This Panel is mindful that the scope of review on appeal is to determine whether the trial magistrate's decision was supported by competent record evidence. Since this Panel cannot substitute its judgment for that of the trial magistrate, we conclude that his decision to sustain Appellant's conviction for overtaking on the right was based on credible evidence adduced at trial. See Maran, 672 A.2d at 876. This Panel notes that the trial magistrate indicated in his findings of fact that Officer Ducharme's trial testimony was "very clear and specific" and "certainly very credible" with respect to Appellant's overtaking other vehicles on the right and in a lane reserved for slower traffic. (Tr. at 8-9.) The Appellant's appeal is hereby dismissed, and the charge against him sustained.

CONCLUSION

Upon a review of the entire record, this Panel concludes that the trial magistrate's decision was not in violation of constitutional provisions or affected by error of law. Substantial rights of Appellant have not been prejudiced. The Appellant's appeal is hereby dismissed.

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