

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

C.A. No. T08-0117

KWAME DARKO

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on October 29, 2008, Magistrate Noonan (Chair), Judge Almeida, and Judge Ciullo sitting, is Kwame Darko’s (Appellant) appeal from Chief Magistrate Guglietta’s decision, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On July 6, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by Trooper Brian Macera (Trooper Macera) of the Rhode Island State Police. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Trooper Macera testified that on the date in question, at approximately 8:25 p.m., he was conducting a radar surveillance post on Route 95 South in the vicinity of Route 10 in Cranston. (Tr. at 2.) At that time, Trooper Macera observed a silver Chrysler “traveling at a greater speed than the normal flow of traffic.” (Tr. at 2-3.) Using his radar unit, Trooper Macera recorded the vehicle’s speed as 81 m.p.h. in a posted 55 m.p.h. zone. (Tr. at 3.) Trooper Macera initiated a traffic stop of the speeding vehicle and issued a citation to the operator, later identified at trial as Appellant. Id.

Trooper Macera testified that the radar unit used to record the speed of Appellant's vehicle had been calibrated both internally and externally prior to his shift and was found to be in proper working order. Id. He further testified that he had been trained in the use of radar units during his time at the Rhode Island State Police Training Academy in November of 2004. Id. Upon questioning by the trial magistrate, Trooper Macera indicated that he was also certified in the use of radar units. Id.

On cross-examination, Appellant challenged Trooper Macera's recollection of the traffic stop. According to Appellant, he was traveling northbound on Route 95 from his workplace in Cranston to his home in Pawtucket, in direct contradiction to Trooper Macera's testimony that Appellant's vehicle was traveling southbound. (Tr. at 6.) The Appellant stated that Trooper Macera recorded the speed of his vehicle as 54 m.p.h. in a 50 m.p.h. zone, but offered to reduce the recorded speed to 51 m.p.h. (Tr. at 4.)

At the conclusion of the trial, the trial magistrate sustained the charged violation of § 31-14-2. The Appellant filed a timely appeal to this Panel. Forthwith is this Panel's decision.

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 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.”

In reviewing a hearing judge'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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial magistrate’s decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial magistrate abused his discretion by choosing to credit Trooper Macera’s trial testimony and discount his own testimony, as he explained that Trooper Macera appeared “confused” and “disoriented” when he recounted the events of the date in question.

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 [magistrate] 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 Court explained in the context of proceedings before the Rhode Island Department of Environmental Management,

the presence of credibility determinations at the trial level raises the level of scrutiny that the appellate division [of the DEM] applies. The trial judge’s impressions as he or she observes a witness and listens to testimony are all important to the evidence sifting which precedes a determination of what to accept and what to disregard. Observations of live testimony necessarily enter into a determination of what the trial judge believes and disbelieves. The weight of the evidence . . . is to be determined by the touchstone of credibility. That touchstone, however, is not available to the [appellate division] which never sees the witness or hears him testify and which, on review, looks only at a silent record. As a consequence, when credibility evaluations are implicated, we have imposed a standard of review upon the appellate division that requires it to defer to the evidentiary findings of the trial judge. Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 206 (R.I. 1993) (quoting Laganieri v. Bonte Spinning Co., 103 R.I. 191, 196, 236 A.2d 256, 258 (1967)) (internal citations and quotations omitted).

The administrative standard of review applied to DEM proceedings is equally applicable in the context of proceedings before this Panel; accordingly, this Panel applies a heightened level of scrutiny when credibility determinations made at the trial level are before us on appeal. See Environmental Scientific Corp., 621 A.2d at 206. As the members of this Panel did not have an opportunity to view the live trial testimony of Trooper Macera and Appellant, it would be impermissible to second guess the trial magistrate’s “impressions as he . . . observe[d] [Trooper Macera and Appellant] [.]

listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Id. Accordingly, this Panel may not assess or reassess Trooper Macera’s or Appellant’s testimony on appeal. See Link, 633 A.2d at 1348.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate’s decision is supported by legally competent evidence and is not affected by an error of law. The record reflects that there was reliable, probative, and substantial evidence that Trooper Macera’s trial testimony satisfies 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).

In Sprague, our Supreme Court held that a radar speed reading is admissible in evidence upon a showing that “the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method,” and “testimony setting forth [the officer’s] training and experience in the use of a radar unit.” Sprague, 113 R.I. at 357, 322 A.2d at 39-40. Here, the trial magistrate found, based upon Trooper Macera’s “truthful and credible” testimony, that Trooper Macera’s radar unit had been calibrated both internally and externally prior to his shift, and that he was qualified, based on his training at the Rhode Island State Police Academy and certification, to operate a radar unit. (Tr. at 7-8, 10.) As the record reflects that the Sprague standard has been satisfied, we affirm the trial magistrate’s conclusions on appeal.

Conclusion

This Panel has reviewed the entire record before it. Having done so, this Panel is satisfied that the trial magistrate’s decision is not characterized by abuse of discretion or

otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED: