STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF LINCOLN	:	
	:	
v.	:	C.A. No. T08-0128
	:	
RICHARD MCKEE	:	

DECISION

PER CURIAM: Before this Panel on December 10, 2008, Magistrate Goulart (Chair), Chief Magistrate Guglietta, and Judge Ciullo presiding, is Richard McKee's (Appellant) appeal from a decision of Magistrate Noonan, sustaining the charged violation of G.L. 1956 § 31-24-1, "Times when lights required."[1] The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On July 19, 2008, an officer of the Lincoln Police Department (Officer) charged Appellant with violating the aforementioned motor vehicle offense. The Appellant contested the charge, and the matter proceeded to trial.

At trial, the Officer testified that on the date in question, at approximately 1:30 a.m., he was traveling westbound on Wilbur Road when he observed a silver Nissan traveling eastbound at a high rate of speed. (Tr. at 3.) As the silver Nissan rounded a "sharp corner" in the roadway, the Officer heard the sound of screeching tires. Id. Upon turning his cruiser around in order to pursue the speeding vehicle, the Officer observed the operator of the vehicle turn off the vehicle's headlamps in what the Officer believed was an attempt to evade detection. Id.

[1] The Appellant was also charged with violating G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test." However, this charge was subsequently dismissed and is not presently before this Panel on appeal.

The Officer continued driving on Wilbur Road before making a left turn onto Anna Sayles Road. Id. It was here that the Officer located the silver Nissan parked in a heavily wooded driveway. (Tr. at 4.) The Officer testified that the operator of the vehicle—later identified at trial as Appellant—was attempting to prevent his vehicle from being seen from the roadway. Id.

During his closing argument, counsel for Appellant argued that the charged violation had not been proved to a standard of clear and convincing evidence, as the trial magistrate improperly took judicial notice of the fact that the time of the charged violation, approximately 1:30 a.m., was between "sunset and sunrise . . . ." Section 31-24-1. (Tr. at 6-7.) Counsel for Appellant next argued that the charge could not be sustained because there was no in-court identification of Appellant as the operator of the suspect vehicle. (Tr. at 7.) Finally, counsel maintained that the traffic citation issued to Appellant was not signed on the back, as required by Rule 3 of the Rules of Procedure for the Traffic Tribunal (Rule 3).[2]

The trial magistrate rejected Appellant's judicial notice argument, finding that he had discretion under Rule 201 of the Rhode Island Rules of Evidence (Rule 201) to take judicial notice of the fact that the charged violation occurred within the timeframe set forth in § 31-24-1. (Tr. at 8.) The trial magistrate agreed with counsel for Appellant that there was no in-court identification of Appellant; however, he stressed that such an identification was not required in order to sustain the charge. (Tr. at 9.) With respect to

[2] Rule 3 of the Rules of Procedure for the Traffic Tribunal reads, in pertinent part:

> The summons shall be signed by the officer and served upon the motorist. The truth and validity of the facts supporting the charge(s) shall be sworn to before a notary public or other person authorized by law to administer oaths. The summons shall contain a date upon which the defendant must appear in court. The summons shall be signed by the motorist to acknowledge receipt.

the unsigned traffic ticket, the trial magistrate rejected Appellant's argument and explained his reasoning as follows:

> Trial magistrate: "I believe that for the purpose of defaulting a motorist, [the traffic citation] absolutely has to be certified and the facts have to be sworn to. However, in this case today the motorist who had proper . . . notice of the pendency of this trial and who had appeared with counsel has been here. Now, I believe that the requirement that the ticket be certified is not . . . is discharged by this Officer's live testimony . . . . I specifically find that there's been no prejudice to this motorist by the fact that the Officer did not sign the ticket. He was given notice of when and where to appear. He has appeared. And he's heard the sworn testimony of the Officer." (Tr. at 11-13.)

Following the trial, the trial magistrate sustained the charged violation of § 31-24-1. Aggrieved by the trial magistrate's decision, Appellant filed a timely appeal to this Panel. This Panel's decision is rendered forthwith.

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, affected by error of law, and in violation of constitutional provisions. Specifically, Appellant contends that the trial magistrate improperly exercised his discretionary power under Rule 201 by choosing to take judicial notice of the fact that 1:30 a.m. falls between "sunset and sunrise . . . ." Section 31-24-1. Next, Appellant argues that the charged violation cannot be sustained in the absence of an in-court identification of Appellant by the Officer. Finally, Appellant maintains that the Officer's failure to comply with the requirements of Rule 3 is violative of his due process rights, as it deprived him of notice of the "date upon which [he] must appear in court" and an

opportunity to be heard on the "truth and validity of the facts supporting the charge . . . ." Traffic Trib. R.P. 3. Each of the arguments raised by Appellant on appeal will be addressed in seriatim.

A

As his first argument on appeal, Appellant contends that the trial magistrate's decision to take judicial notice of the fact that 1:30 a.m. is a "time from sunset to sunrise" constitutes an abuse of his discretion. This Panel "review[s] decisions concerning the admissibility of evidence under the abuse of discretion standard." See Bajakian v. Erinakes, 880 A.2d 843, 848 n.9 (R.I. 2005). We "will not interfere with the trial [magistrate's] decision unless a clear abuse of that discretion is apparent." Notarantonio v. Notarantonio, 941 A.2d 138, 149 (R.I. 2008) (quoting DiPetrillo v. Dow Chemical Co., 729 A.2d 677, 690 (R.I. 1999)). This Panel reviews the trial magistrate's exercise of his discretionary power to take judicial notice "to determine whether it has been soundly and judicially exercised, . . . with just regard to what is right and equitable under the circumstances . . . ." Connecticut Valley Homes of East Lyme, Inc. v. Bardsley, 867 A.2d 788, 795 (R.I. 2005) (quoting Geloso v. Kenny, 812 A.2d 814, 817 (R.I. 2002)).

Rule 15 of the Rules of Procedure for the Traffic Tribunal (Rule 15) states that "[i]n all trials" in the Traffic Tribunal, "[a]ll evidence shall be admitted which is admissible under . . . the rules of evidence applied in the courts of this State." Pursuant to Rule 15, a trial judge or magistrate of this Tribunal may take judicial notice of a "fact . . . not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." R.I. R. Evid. 201.

Judicial notice may be taken "whether requested or not," and "[a] party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed." Id.

It is well-established that "[j]udicially noticed facts are categorized as either 'adjudicative' or 'legislative.' Generally speaking, adjudicative facts are those developed in a particular case concerning the immediate parties whereas legislative facts are established truths, facts, or pronouncements that do not change from case to case." Boucher v. Sayeed, 459 A.2d 87, 92 (R.I. 1983) (citing U.S. v. Gould, 536 F.2d 216, 219-220 (8th Cir. 1976)). "According to Professor McCormick, legislative facts are the social, economic, political, and scientific facts that simply supply premises to guide judges in the process of their legal reasoning." Id. (citing McCormick, Evidence § 328 at 759, § 331 at 766-67 (2d ed. 1972)). In Caldarone v. State, 98 R.I. 7, 13, 199 A.2d 303, 306 (1964), our Supreme Court implicitly recognized the distinction between legislative and adjudicative facts by "[taking] judicial notice of the changing commercial and industrial life in Providence," matters that were described by the Court as "common knowledge."

Here, the trial magistrate took judicial notice of the fact that 1:30 a.m. falls between sunset and sunrise, and Appellant was afforded "an opportunity to be heard as to the propriety" of the trial magistrate's decision to take judicial notice of this fact. (Tr. at 6-7.) The trial magistrate explained that his decision "to take judicial notice of the fact that 1:17 a.m. or 1:30 a.m., which is what th[e] Officer testified to as being the time frame[,]" was based on his belief that "this fact is not subject to reasonable dispute because it's generally known within the territorial jurisdiction of the trial court and

capable of accurate and ready determination by resorting to sources whose accuracy cannot be questioned." (Tr. at 7-8.)

While we note that Rule 201, by its very terms, applies "only [to] judicial notice of adjudicative facts," R.I. R. Evid. 201, this has no bearing on the instant appeal. It is well-settled in Rhode Island that both legislative and adjudicative facts are subject to judicial notice. See Caldarone, 98 R.I. at 13, 199 A.2d at 306. Furthermore, it simply cannot be said that the trial magistrate's decision to take judicial notice of the fact that 1:30 a.m. is a "time from sunset to sunrise" constitutes a clear abuse of his discretion. The record reflects "that [the trial magistrate] was taking judicial notice of that which is common knowledge, [and was] not [attempting] to supply evidence on an essential element of" the prosecution's case. Calderone, 98 R.I. at 12, 199 A.2d at 306 (citing Opinion to the Governor, 75 R.I. 54, 63 A.2d 724 (1949)). As the members of this Panel are satisfied that the trial magistrate's discretion was exercised in such a manner as to ensure that "the rights of the parties [were] fairly protected in an orderly manner," Strzebinska v. Jary, 58 R.I. 496, 500, 193 A. 747, 749 (1937), his decision to take judicial notice will not be disturbed on appeal.

B

Next, Appellant argues that the trial magistrate's decision is affected by error of law because there was no in-court identification of Appellant by the Officer. However, Appellant's argument is unavailing because he has cited no rule, case, or statute that stands for the proposition that an in-court identification is required in civil proceedings. Further, even assuming arguendo that in-court identification is required in civil proceedings, Appellant's argument would still fail because both the Officer and counsel

for Appellant identified Appellant on the record as the operator of the suspect vehicle. Counsel for Appellant began the proceeding by stating that he was appearing "on behalf of Mr. McKee," (Tr. at 2.), and the Officer testified that he "identified the driver [of the suspect vehicle] as Mr. McKee." (Tr. at 4.) Accordingly, the members of this Panel are satisfied that the trial magistrate's decision is not affected by error of law.

C

The Appellant's final argument on appeal is that the failure of the Officer to sign the back of the traffic citation pursuant to Rule 3 is violative of his due process rights, as it deprived him of notice of his court date and a meaningful opportunity to be heard on the facts supporting the charge. This argument is unavailing, however, as the courts of this state have consistently recognized that a mere defect in the traffic citation issued to a motorist does not preclude a court from sustaining the charged violation. More specifically, courts have found that a defect in the traffic citation issued to a motorist does not rise to the level of a procedural due process violation, thereby depriving the motorist of notice and an opportunity to be heard on the facts underlying the charge. The case of State v. Campbell, 96 R.I. 72, 189 A.2d 342 (1963), is illustrative of the relaxed judicial review afforded to defective charging instruments in the context of motor vehicle offenses.

In Campbell, the defendant was charged with violating a statute requiring that an automobile registration card be carried in the automobile or by the person operating a vehicle. Id. at 73, 189 A.2d at 342. However, the charging instrument failed to indicate that the defendant's vehicle was registered at the time of the charged violation. Id. at 74, 189 A.2d at 343. On writ of certiorari, the defendant contended that the charging

instrument was defective because it did not directly state that his vehicle was registered; rather, this fact was to be implied. Id. The Court concluded that the requirements of criminal pleading applicable to the context of felony cases were "not applicable in the case of a simple misdemeanor as is charged in the complaint here." Id. at 75, 189 A.2d at 343. The Court stated that it was "unnecessary in such [a] case to expressly allege actual registration of the car in order to apprise defendant fairly and fully of the [motor vehicle] offense with which he [was] charged." Id. While the Court acknowledged that the charging instrument was "not certain in every particular[,] was sufficiently certain for the purpose of charging the offense set out in the statute." Id.

The liberal approach followed by the Court in Campbell has been followed in other Rhode Island cases. See State v. Lemme, 104 R.I. 416, 244 A.2d 585 (1968) (complaint charging defendant with leaving the scene of collision not fatally defective, despite failure to include "knowing" element of offense; such knowledge inferred by jury), State v. Noble, 95 R.I. 263, 186 A.2d 336 (1962) (complaint charging defendant with failure to reduce speed for one of enumerated hazards not fatally defective for failure to include special hazards, despite statutory language requiring motorist to drive at reduced speed when enumerated hazards exist "and" when a special hazard exists), and State v. Buchanan, 32 R.I. 490, 79 A. 1114 (1911) (complaint charging defendant with driving at excessive speed in "closely built up" area not fatally defective despite the fact that "closely built up" has different meanings according to whether violation occurred within or outside city limits).

Thus, based on our well-established case law and the clear mandate of Rule 3 of the Rules of Procedure for the Traffic Tribunal that "[a]n error or an omission in the summons shall not be grounds for dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice," this Panel is satisfied that Appellant was fairly and fully apprised of the motor vehicle offense with which he was charged and the date upon which he was required to appear before this Tribunal, and was not otherwise prejudiced by the failure of the Officer to properly sign the citation. Even in the absence of the Officer's signature, the information contained on the citation was sufficiently certain for the purpose of charging Appellant with violating § 31-24-1 and informing him of when his arraignment would take place. Accordingly, the Officer's failure to comply with the signature requirement of Rule 3 did not deprive Appellant of notice of his hearing date and an opportunity to be heard on the matter, in violation of his due process rights.

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 to sustain the charged violation of § 31-24-1 was not characterized by abuse of discretion, affected by error of law, or in violation of constitutional provisions. As we conclude that substantial rights of Appellant have not been prejudiced, this Panel denies Appellant's appeal, and sustains the charge against him.

ENTERED: