

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T12-0004

BRIAN GILBERT

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
12 APR -2 PM 2:34

DECISION

PER CURIAM: Before this Panel on March 14, 2012—Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Judge Almeida, sitting—is Brian Gilbert’s (Appellant) appeal from a decision of Magistrate Noonan (trial magistrate), sustaining the charged violation of G.L. 1956 § 31-22-30, “Text messaging while operating a motor vehicle.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On October 15, 2011, a trooper from the Rhode Island State Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on January 17, 2012.

The facts pertinent to this decision are as follows. The night that Appellant was stopped he was traveling south on Route 95. The trooper was traveling in the same direction. The trooper began following the Appellant because the Appellant had a taillight out.

While following the Appellant, the trooper observed the Appellant swerve “in and out of the travel lane.” (Tr. at 1.) The trooper also observed the Appellant change lanes without using a turn signal. The trooper continued to follow the Appellant’s vehicle when he noticed a “persistent glow coming out of the rear window.” Id.

Upon seeing this glow, the trooper positioned himself alongside the Appellant's vehicle and shined his lights into the Appellant's vehicle. The light illuminated the entire cabin of the vehicle giving the trooper a clear view inside the vehicle. Id. With the light still shining, the trooper observed the Appellant's two thumbs on a cell phone, which was positioned at the center of the steering wheel. Id. The trooper testified that he saw the Appellant's fingers "going at the cell phone." Id. Subsequently, the trooper conducted a traffic stop of the Appellant for operating a vehicle while texting.

After the trooper testified, the Appellant testified on his own behalf. The Appellant disputed both the trooper's contention that he was swerving in and out of lanes and that he was texting while driving. The Appellant also testified that he had cell phone records demonstrating that neither his cell phone nor his passenger's cell phone was receiving text messages or using data at the time of the stop. (Tr. at 2.) However, the trial magistrate informed the Appellant that such information would be of little probative value because such documentation does not accurately reflect whether the Appellant was in violation of the statute.¹ Id.

The trial magistrate sustained the charge following the Appellant's testimony. Id. In sustaining the charge, the trial magistrate found the trooper to be a credible witness. Id. The trial magistrate also accepted the trooper's testimony as his findings of fact in sustaining the violation. The Appellant timely filed this appeal.

¹ For example, cell phone records do not reflect when a motorist reads a text message, which if done while driving, is in violation of the statute. Cell phone records also do not reflect a motorist composing a text message that is never sent, which is also in violation of the statute. Furthermore, § 31-22-30 was written broadly enough to encompass more than just sending/receiving a text message. See § 31-22-30(a)(6) (A text message "means the process by which users send, read, or receive messages on a wireless handset, including but not limited to, text messages, instant messages, electronic messages or e-mails, in order to communicate with any person or device.").

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 argues that the trial magistrate’s decision was characterized by an abuse of discretion. Specifically, Appellant argues that the trial magistrate abused his discretion by crediting the trooper’s testimony over the Appellant. Finally, Appellant argues that the trooper’s testimony was insufficient to sustain the violation by the applicable standard of proof.

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 magistrate’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 magistrate determined that the trooper’s testimony was not only credible, but the testimony was sufficient to sustain the charged violation. The trial magistrate specifically rejected the Appellant’s assertion that he was not texting while driving. (Tr. at 2.)

Finally, the standard of proof in all civil motor vehicle infraction cases is clear and convincing evidence. See Traffic Trib. R. P. 17 (a). “[P]roof by ‘clear and convincing evidence’ means that [the trial magistrate] must believe that the truth of the facts asserted by the proponent is highly probable.” Parker v. Parker, 103 R.I. 435, 442, 238 A.2d 57, 60-61 (1968).

Additionally, section 31-22-30 states, in pertinent part, that “[n]o person shall use a wireless handset to compose, read or send text messages while operating a motor vehicle on any public street or public highway within the state of Rhode Island. § 31-22-30(b). Here, the trial magistrate determined that it was highly probable that Appellant was either “compos[ing], read[ing], or send[ing] [a] text message[] while operating a motor vehicle” based on the Trooper’s testimony, which the trial magistrate found credible, that Appellant had his thumbs on a cell phone. (Tr. at 2.)

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.

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 is not violation of statutory provisions and was not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.