STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T21-0029**
	:	**21001521800**
SAMUEL ABOH, JR.	:	

<u>DECISION</u>

<u>PER CURIAM:</u> Before this Panel on February 23, 2022—Administrative Magistrate Abbate (Chair), Magistrate Noonan, and Magistrate Kruse Weller, sitting—is the appeal of Samuel Aboh (Appellant) from a decision of Magistrate Goulart (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-14-2, "Speeding 11+ MPH in excess of posted speed limit – 1st offense[.]" Appellant appeared before this panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For the reasons set forth in this Decision, Appellant's appeal is denied.

I

Facts and Travel

On June 15, 2021, at approximately 12:36 a.m., Trooper Luis A. Blanco (Trooper Blanco) of the Rhode Island State Police charged Appellant with the aforementioned violation of the motor vehicle code. *See* Summons No. 21001521800. Appellant contested the charge, and the matter proceeded to trial on November 23, 2021.

At trial, Trooper Blanco testified that at the time of the incident, he was stationed at a fixed radar post on Route 295 North near Exit 18. (Tr. at 3.) Trooper Blanco "observed a black Honda Accord traveling at a high rate of speed . . . ." *Id.* Using a radar device, Trooper Blanco obtained a speed of eighty-nine (89) miles per hour in a posted sixty-five (65) mile per hour zone from the

black Honda Accord. *Id.* Trooper Blanco testified that "prior to and after the shift, [his] radar was calibrated externally and internally." *Id.* In addition, Trooper Blanco testified that he received training as a police officer at the Rhode Island State Police Training Academy (Police Academy) in 2019. *Id.* Trooper Blanco testified that he conducted a stop of the vehicle and identified the operator as Samuel Aboh, the Appellant in this matter. *Id.* Trooper Blanco issued Appellant a speeding ticket for traveling eighty-nine (89) miles per hour in a posted sixty-five (65) mile per hour zone. *See id.* at 4; *see also* Summons No. 21001521800.

Next at trial, Appellant cross-examined Trooper Blanco. *Id.* at 4-5. Appellant recounted that Trooper Blanco had testified about attending the Police Academy and then asked, "do you have any proof of - - that you are certified to operate the specific radar that you allegedly clocked me with?" (Tr. at 4.) Trooper Blanco explained that his training at the Police Academy included radar certification and that all police officers are trained in the use of radar. *Id.* Appellant asked Trooper Blanco whether the radar had been calibrated before Trooper Blanco's shift, and Trooper Blanco responded affirmatively. *Id.* Appellant then said, "Your Honor, I'd like to, uh, present evidence that this is not so." *Id.* The Trial Magistrate reminded Appellant that the cross-examination portion of the trial was reserved for questions, and Appellant stated that he had no further questions. *Id.* at 5. The Trial Magistrate briefly asked Trooper Blanco to clarify what he meant by external calibration. *Id.* Trooper Blanco responded, "Your Honor, we have tuning forks and tuning forks are used internally as in within the cruiser and externally from outside of the cruiser, Your Honor." *Id.*

The next to testify at trial was Appellant. *Id.* at 5-16. Appellant explained that he made a public records request for Trooper Blanco's calibration records. *Id.* at 6. Appellant received these records and Appellant reported that Trooper Blanco's radar had not been calibrated since 2011. *Id.*

at 6-7. Appellant also said that the public records showed Trooper Blanco's radar was calibrated in July, a month after Trooper Blanco stopped Appellant. *Id.* at 7. Appellant said, "it seems like the only reason why it was calibrated was because I made . . . the request for these records." *Id.* The Trial Magistrate declined to speculate as to why the radar had been calibrated in July. *Id.* at 7-8. The Trial Magistrate also explained that Appellant was discussing two different types of calibration and described the calibration as follows:

> "[A radar] can be calibrated by use of an external force. They take the devices out and they utilize . . . an actual object that's moving at a particular speed. They use other radar devices and they make sure that device is actually working. That's done, usually, at intervals of six months or a year. . . The other way that devices are calibrated is they are calibrated both [] internally and externally, generally speaking at the start and end of each trooper's shift. That is calibrated - - the device calibrates itself, [it] is a self-calibration internally. Externally, they utilize tuning forks to make sure that the device is properly working. That use of tuning forks as a calibration device has been accepted by our Supreme Court as valid calibration for a radar device. So, in fact, it was, at least according to the testimony of [Trooper] Blanco, if I accept it, was calibrated and working properly on the night of the stop." *Id.* at 7-9.

Appellant responded to the Trial Magistrate's explanation with "[o]kay" and "I agree." *Id.* at 9. Appellant then said, "in that light, I also requested the, uh, proof . . . from his department that he . . . calibrated it before and after his shift." *Id.* The Trial Magistrate responded, "[t]here's not going to be any proof." *Id.* After Appellant asked Trooper Blanco a few additional questions, Appellant asked the court to dismiss his charge based on precedent. *Id.* at 9-12. Appellant first referenced *State v. Sprague*, 113 R.I. 351, 322 A.2d 36 (1974). *See id.* at 13. Appellant also referenced *Town of Smithfield v. Connole*, C.A. No. T13-0066, Sept. 3, 2014, R.I. Traffic Trib. *See id.* at 14. The Trial Magistrate was familiar with both cases. *See id.* at 13-14.

Ultimately, the Trial Magistrate sustained the charge based on the credible testimony of Trooper Blanco. *Id.* at 18. The Trial Magistrate found that Trooper Blanco's testimony met the

requirements of *Sprague*. *Id.* at 19. The Trial Magistrate imposed a fine of $335 plus court costs. *Id.* at 20. Appellant timely filed the instant appeal.

II

Standard of Review

Pursuant to § 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 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 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 Mut. Ins. 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." *Id.* (citing *Envtl. Sci. 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." *Id.* Otherwise, the Appeals Panel must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that he was not speeding, and that Trooper Blanco's radar was not properly calibrated. Appellant attached several documents to his appeal as exhibits, none of which were admitted into evidence at trial. *See* Notice of Appeal. Ex. A-E. Appellant also argues that the Trial Magistrate abused his discretion by not allowing Appellant to enter these documents into evidence at trial.

A

Speeding

Appellant asked the Trial Magistrate to dismiss the charges based on the precedent *State v. Sprague*, 113 R.I. 351, 322 A.2d 36 (1974), which is the governing case in Rhode Island for determining the admissibility of radar readings. *See* Tr. 12-13. In *Sprague*, the Rhode Island Supreme Court held that radar unit readings are admissible as evidence at trial when the testifying officer satisfies two preliminary requirements: the officer must (1) show that "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method," and (2) provide "testimony setting forth [the officer's] training and experience in the use of a radar unit[.]" *Sprague*, 113 R.I. at 355-57, 322 A.2d at 39-40.

At trial, Trooper Blanco demonstrated that the radar unit was "tested within a reasonable time and by an appropriate method" because Trooper Blanco testified that "prior to and after the

shift, [his] radar was calibrated externally and internally." *See id.*; Tr. at 3. During Appellant's cross-examination of Trooper Blanco, Appellant asked Trooper Blanco whether the radar had been calibrated before Trooper Blanco's shift, and Trooper Blanco responded affirmatively. *See* Tr. at 4. As such, Trooper Blanco adequately testified to the operational efficiency of the radar unit and satisfied the first requirement of *Sprague*. *See Sprague*, 113 R.I. at 355-357, 322 A.2d at 39-40. Trooper Blanco also offered "testimony setting forth [Trooper Blanco's] training and experience in the use of a radar unit" by testifying that he received training as a police officer at the Police Academy in 2019. *See id.*; Tr. at 3. In addition, during Appellant's cross-examination of Trooper Blanco, Trooper Blanco explained that his training at the Police Academy necessarily meant that he was certified in the use of radar devices because all troopers are trained in the use of radar at the Police Academy. *See* Tr. at 4. Therefore, Trooper Blanco satisfied the second requirement of *Sprague*. *See Sprague*, 113 R.I. at 357, 322 A.2d at 39-40. As such, the Trial Magistrate did not err in finding that Trooper Blanco's testimony was sufficient to satisfy the requirements of *Sprague* and render the radar unit's speed readings admissible as evidence at trial.

The Trial Magistrate found Officer Blanco credible and also found that Officer Blanco's testimony met the requirements of *Sprague*. (Tr. at 18-19.) 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 *Janes*, 586 A.2d at 537). Because the members of this Panel did not have an opportunity to observe the live testimony of Trooper Blanco, it would be impermissible for the Panel to second-guess the Trial Magistrate's impression, as he was able to "appraise [the] witness['s] demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (internal quotations omitted).

Therefore, this Panel will not disturb the Trial Magistrate's credibility determinations or assessment of the weight of the evidence in this case. *See Link*, 633 A.2d at 1348. Based on a review of the record, this Panel is satisfied that, pursuant to § 31-41.1-8(f), the Trial Magistrate did not abuse his discretion or misconceive material evidence, and his decision to sustain the charged violation is supported by reliable, probative, substantial, and legally competent evidence. *Id.* (citing *Environmental Scientific Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)); *see also* § 31-41.1-8(f)(5).

B

Radar Calibration Documents

On appeal, Appellant argues that he attempted to introduce copies of radar certifications and a copy of the Rhode Island State Police Lincoln Woods Barracks' internal policy for the certification of calibration for RADAR devices and the policy for the frequency with which RADAR devices are to be calibrated. Appellant said that he obtained these documents through a public records request. Appellant contends that the Trial Magistrate abused his discretion by not permitting Appellant to introduce these documents as evidence at trial.

A trial justice has wide discretion in determining the relevancy, materiality, and admissibility of offered evidence. *See State v. Houde*, 596 A.2d 330, 335 (R.I. 1991). The trial justice's ruling will be upheld absent a clear abuse of discretion. *Id.* To reiterate, it is well-settled that "the admissibility of evidence is within the sound discretion of the trial justice." *State v. Grayhurst*, 652 A.2d 491, 504 (R.I. 2004). When reviewing a trial justice's or magistrate's evidentiary determination, "we will not conclude that a trial justice abused his or her discretion as long as some grounds to support the decision appear in the record." *Id.* at 505 (quoting *State v. Pena–Rojas*, 822 A.2d 921, 924 (R.I. 2003)). As such, this Panel can only examine whether the

Trial Magistrate clearly abused his discretion in deciding not to admit the documents that Appellant brought to trial.

Pursuant to Rule 15 of the Traffic Tribunal Rules of Procedure, the Rhode Island Rules of Evidence govern "all proceedings before the Traffic Tribunal." Traffic Trib. R. P. 15(b). Rhode Island Rule of Evidence 402 provides that "all *relevant* evidence is admissible, except as otherwise provided by the Constitution of the United States, by the [C]onstitution of Rhode Island, by act of [C]ongress, by the [G]eneral [L]aws of Rhode Island, by these rules, or by other rules applicable in the courts of this state." R.I. R. Evid. 402 (emphasis added). Relevant evidence is defined as "evidence having any tendency to make any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." R.I. R. Evid. 401.

Based on a review of the record, it is clear that the Trial Magistrate did not err in excluding the documents from evidence because Appellant did not provide an adequate foundation demonstrating the authenticity of the documents. *See* R.I. R. Evid. 901; *O'Connor v. Newport Hospital*, 111 A.3d 317, 323 (R.I. 2015) ("[A]uthentication and identification are regarded as a special aspect of relevancy; evidence is relevant only if it is in fact what the party seeking its admission claims it to be."). Here, Appellant made a public record request outside of the court instead of obtaining the documents through formal discovery under Rule 11 of the Traffic Tribunal Rules of Procedure.[1] (Tr. 16-17.) As such, the Trial Magistrate was unable to determine that the

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[1] Rule 11 of the Rules of Procedure for the Traffic Tribunal reads, in pertinent part:

> "Upon motion of a defendant the court may order the attorney for the state to permit the defendant to inspect and copy or photograph books, papers, documents, photograph, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the state, upon a showing of materiality to the preparation of the defendant's defense and that the request is reasonable." Traffic Trib. R. P. 11.

evidence was "in fact what [Appellant] claimed it to be" and so the evidence was not relevant. *See id.* On the record, the Trial Magistrate specifically said, "when you go outside the scope of the court to make requests . . . for evidence . . . we can't monitor compliance with that because . . . you haven't requested discovery pursuant to our rules." *See id.* at 16. Therefore, the Trial Magistrate did not abuse his discretion by failing to admit the documents Appellant brought to trial.

In the case Appellant presented at trial, *Connole*, this Court held that a radar device was not calibrated within a reasonable time, based on certifications that the radar had not been calibrated for over seventeen months, which violated an internal policy of the Smithfield Police Department that required yearly calibration of radar devices. *Id.* at *5-6. While the *Connole* court considered evidence similar to what Appellant is presenting here, the evidence in *Connole* was obtained through discovery, authenticated by the officer, and entered as full exhibits. *Connole*, C.A. No. T13-0066, at *2. Here, when Appellant attempted to present the police department's policy at trial, the Trial Magistrate asked, "are you familiar with the policy?" (Tr. at 11-12.) Both Appellant and Trooper Blanco testified that they were not familiar with the policy. *Id.* at 12. As such, Appellant could not authenticate the evidence.

Furthermore, in *Connole*, this court specifically said the following:

> "Despite Appellant's contention, *Sprague* does not mention a specific time frame for certification, nor does it say anything more than that the radar unit's 'operational efficiency' will be 'tested within a reasonable time.' In addition, *Sprague* makes no mention of internal regulations of police departments in this state. For these reasons, Appellant's attempt to expand what our Supreme Court suggested in *Sprague* is misguided." *Connole*, C.A. No. T13-0066, at *5.

As mentioned previously, the Trial Magistrate did not err in finding that Trooper Blanco satisfied the *Sprague* requirements and that the radar unit reading was admissible as evidence at

trial. The Trial Magistrate found Trooper Blanco was credible in identifying Appellant's vehicle as the one that was speeding. (Tr. at 18.) The only evidence Appellant attempted to present to suggest Appellant was traveling at a speed different than what Trooper Blanco obtained on the radar was in the form of documents that were not authenticated or obtained through proper discovery. As such, the Trial Magistrate here did not "overlook[] or misconceive[] relevant and material evidence," and therefore this Panel is not permitted to disturb the Trial Magistrate's factual findings. *See Brown*, 723 A.2d at 800.

As this Panel reviews a trial magistrate's decisions concerning the weight of evidence under an abuse of discretion standard, we cannot find that the Trial Magistrate abused his discretion in excluding the documents based on the facts contained within the record. *See Link v. State*, 633 A.2d at 1348. Accordingly, this Panel concludes that the Trial Magistrate's decision is supported by the reliable, probative, and substantial evidence on the whole record; and further, that the Trial Magistrate's decision is neither arbitrary nor an abuse of discretion *See* § 31-41.1-8(f)(5)-(6).

IV

Conclusion

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

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Administrative Magistrate Joseph A. Abbate (Chair)

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Magistrate William T. Noonan

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Magistrate Erika Kruse Weller

DATE: ______________