STATE OF RHODE ISLAND

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. M20-0009**
	:	**045.0002600461**
NORTH AMERICAN AUTO	**:**	
LEASING LLC	**:**	

DECISION

PER CURIAM: Before this Panel on January 20, 2021—Magistrate Kruse Weller (Chair), Judge Almeida, and Magistrate DiChiro, sitting—is North American Auto Leasing LLC's (Appellant) appeal from a decision of Judge Donna Nesselbush (Trial Judge) of the Pawtucket Municipal Court, sustaining a school zone speed enforcement violation of G.L. 1956 § 31-41.3-10 entitled "Driver/Registered Owner Liability." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8. After hearing thereon, the Appellant's appeal is denied and the summons is dismissed.

I

Facts and Travel

On January 27, 2020 Officer Thomas Hayes (Officer Hayes) of the Pawtucket Police Department issued a citation for the above-mentioned violation which occurred on Smithfield Avenue at Greene Elementary School. *See* Summons 045.0002600461. The Appellant contested the charged violation and the case proceeded to trial on October 9, 2020.

At trial, the Appellant did not contest it owned the vehicle or that the vehicle went by the camera, but limited its contentions to the speed of the car and the accuracy of the radar camera. *See* Tr. 4:20-25. The Appellant explained it is a rental car company and under the statute,

because the citation may be issued to the owner of the vehicle, it maintained that the motorist's presence is not required. *See id.* at 6:14-16, 7:5-8. After some initial discussion, it became clear that counsel was not representing the motorist; rather counsel expressly stated "I'm here representing the rental car company." *Id.* at 6:15-16. The Trial Judge permitted the leasing company to proceed to trial.

At trial, Robert Ortega (Mr. Ortega) an engineering manager testified on behalf of Sensys Gatso, the company that maintains and operates the speed enforcement cameras. *See id.* at 9:24-25, 10:13-17. Mr. Ortega testified that on January 27, 2020, the camera located at Nathanael Greene School on Smithfield Avenue was properly functioning and further explained if the camera had an internal issue, it would automatically turn off and stop collecting events. *Id.* at 12:1-11, 16:10-13. Mr. Ortega testified that the radar devices are calibrated from the factory and the calibration is good for one year. *Id.* at 13:1-2. He also presented a certificate of calibration and verified the data by matching the serial numbers from the citation to the certificate which indicated that the calibration was valid through June 2020. *Id.* at 13:5-25, 14:1-14, 17:6-8.

After the close of the testimony, the Appellant made an oral motion to dismiss claiming the motorist was not given proper notice of the radar and was unable "to dispute that that is the actual radar that's in the machine that's being verified by this expert." based on the requirements in *State v. Sprague. Id.* at 29:17-25, 30:18-25. The Trial Judge denied the motion, finding this case to be distinguishable from *Sprague* as radar guns employ different technology than speed cameras. *See id.* at 33:7-17. Moreover, the Trial Judge explained the calibration certificate was sufficient after Mr. Ortega testified that a one-year period was standard in the industry. *Id.* at 34:21-25.

The Trial Judge ultimately found the Appellant guilty of the charged violation. *See id.* at 37:13-15. The Trial Judge noted that Appellant admitted "that the car in question in the image is, in fact, owned and operated by the leasing company that is on the ticket . . . and that the car did go through that particular camera on . . . January 27, 2020 at . . . 9:30a.m." *Id.* at 36:7-16. The Trial Judge further explained that "based on the expert's testimony and the documents that he relied on and that have been admitted into evidence, that, in fact, the radar was working properly that day; and that the speed of 36 miles per hour is within the statutory requirement of . . . one mile an hour over the speed limit, which is 20." *See id.* at 37:5-11. The Appellant subsequently filed this timely 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 a municipal court. 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:
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> "(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, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, the Appellant argues that the Trial Judge's decision was arbitrary and capricious and based on error of law. *See* § 31-41.1-8(f). Specifically, the Appellant argues the decision of the Trial Judge violated *State v. Sprague*, and that the city failed to meet its burden by failing to identify the radar unit on the actual summons. *See* Appellant Notice of Appeal.

Here, Appellant is charged with a violation of the Rhode Island Automated School-Zone Speed Enforcement System Act of 2016 as set forth in Title §31 Chapter 41.3. Within the Act, is §31-41.3-10 entitled "Driver/registered owner liability" and provides in relevant part:

> "(a) The registered owner of the motor vehicle shall be primarily responsible in all prosecutions brought pursuant to the provisions of this chapter, except as otherwise provided in this section.
> (b) In all prosecutions of civil school-zone violations based on evidence obtained from an automated traffic-speed-enforcement system, the registered owner of a vehicle which has been operated

> in violation of a civil traffic violation, may be liable for such violation. The registered owner of the vehicle may assume liability for the violation by paying the fine, or by defending the violation pursuant to the remedies available under the law.
> (c) **The lessee of a leased vehicle shall be considered the owner of a motor vehicle for purposes of this section.**" (Emphasis added.)

As a result, when a vehicle is leased, the lessee (not the registered owner) is considered the owner of the motor vehicle for the purposes of liability and as such may "assume liability … by paying the fine, or by defending the violation…." *Id.*

At oral argument on appeal, the Panel inquired as to the standing of the Appellant based on this section. In response, the Appellant argued that it is permitted to contest the alleged violation because the vehicle in question is not a "leased" vehicle, rather a "rental" vehicle and as such, there is no lessee/lessor relationship.[1]

However, the affidavit form that accompanies the instant summons supplied by the City of Pawtucket clearly supports the opposite contention by permitting "an enterprise engaged in a rental, sale or lease of motor vehicles" to provide an affidavit of defense if the motor vehicle was in the care, custody or control of another person. The language is clear that a company in the business of renting cars is considered a lessor and can shield itself from liability pursuant to § 31-41.3-10.

In addition, the General Assembly and the Rhode Island Supreme have used the words "renter" and "lessee" interchangeably or in conjunction with one another, indicating they are analogous. In *Spratt v. Forbes*, the Rhode Island Supreme Court also referenced "the owner-lessor of a rental vehicle . . . ." 705 A.2d 991 (R.I. 1997). (Emphasis added).

[1] Despite the name of the Appellant's business "North American Auto Leasing, LLC" counsel asked the Court to disregard the use of the word "leasing" in the title to determine the nature of its business; Appellant asserts that it is not in the business of "leasing" but "renting." However as explained in further detail in this Court's decision, and as supported in *Oliveira v. Lombardi*, a rental is a lease, but for a shorter term. 794 A.2d 453, 462 (R.I. 2002).

Other provisions of the Motor Vehicle Code support such an interpretation. Section 31-34-4 which pertains to the responsibility of owners of rental vehicles, provides in subsection (c) that a "lessor includes any entity in the business of renting motor vehicles pursuant to a written rental agreement." (Emphasis added).

Moreover § 31-21-16(c) pertaining to Stopping, Standing and Parking Restrictions, provides that "the renter or lessee shall not be considered an agent of the owner if the owner is engaged in the business of renting or leasing."

An analogous statutory scheme for moving violations captured on video occurs in the School Bus Safety Enforcement Act and supports the same interpretation. Section 31-51-5(e) entitled "Driver/Registered Owner Liability," provides that "the owner of a rented or leased motor vehicle may provid[e] to the issuing authority a copy of the written rental or a lease agreement which shall be prima facie evidence, establishing a rebuttable presumption, that the lessee was the operator of the vehicle." (Emphasis added).

The Rhode Island Supreme Court has consistently held: "[W]hen the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Iselin v. Ret. Bd. of Emps' Ret. Sys. of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)).

Thus, aligning with the intent of the General Assembly, this Panel finds that a rental car company for purposes of the applicability of § 31-41.3-10(c) is the equivalent of a lessor - whether governed by a short term rental agreement or longer term lease agreement. Section 31-41.3-10 echoes the General Assembly's intent to hold the operator accountable, not the rental or leasing company.

In addition, the Rhode Island Supreme Court has held that "standing is a threshold inquiry into whether the party seeking relief is entitled to bring suit." *Note Capital Group, Inc. v. Perretta*, 207 A.3d 998, 1004 (R.I. 2019). "The *sin qua non* of standing is that a plaintiff must have a personal stake in the outcome." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 535 (R.I. 2013). The pivotal question is whether the party alleges that the challenged action caused an injury in fact which is categorized as an invasion of a legally protected interest that is both concrete and particularized and actual or imminent. *Cruz v. Mortgage Electronic Registration Systems, Inc.*, 108 A.3d 992, 996 (R.I. 2015). However, "standing is generally limited to those asserting their own rights, not the rights of others." *See id.*

It is clear from the record, that counsel did not represent the motorist/lessee at trial, but the rental car company. However, the Appellant is not the proper party to contest the speed of the vehicle and the accuracy of the speed camera, not only because it is the intent of the General Assembly to exempt a lessor/renter of a motor vehicle from liability, but because the rental car company was neither operating the vehicle nor was it present at the time of the alleged violation.

Thus, this Panel finds that the Appellant does not have standing to contest this matter and proceed to trial. There is simply no authority for the rental company to stand in the motorist's shoes, without the motorist's knowledge, to contest a violation on his or her behalf. The proper party to contest the validity of the speed and the accuracy of the camera, should he/she so decide, is the motorist. As a result, this Court need not address Appellant's remaining allegations regarding the sufficiency of the proof of calibration or its due process arguments.

V

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find the Appellant lacked standing to contest the violation, and as such the matter improperly proceeded to trial. Accordingly, Appellant's appeal is denied, and the charged violation is dismissed.

ENTERED:

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Magistrate Erika Kruse Weller (Chair)

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Judge Lillian Almeida

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Magistrate Michael DiChiro, Jr.

DATE: _____