

STATE OF RHODE ISLAND
RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	C.A. No. T21-0021
	:	21001520390
ROSEMOND PIERRE	:	

DECISION

PER CURIAM: Before this Panel on December 1, 2021—Associate Judge Almeida (Chair), Magistrate Kruse Weller, and Magistrate DiChiro, sitting—is Rosemond Pierre’s appeal from a decision of Magistrate Goulart (Trial Magistrate) of the Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-14-2, “Speeding 11+ MPH in excess of posted speed limit – 1st offense.” Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. Appellant is represented by counsel.

I

Facts and Travel

On June 4, 2021, Trooper Adam Lepre (Trooper Lepre) of the Rhode Island State Police charged Rosemond Pierre (Appellant) with the aforementioned violation of the motor vehicle code. *See* Summons No. 21001520390. Appellant contested the charge, and the matter proceeded to trial on September 8, 2021.¹

At trial, Trooper Lepre explained that on the evening of June 4, 2021, at approximately 10:26 p.m., Trooper Lepre was stationed at a fixed radar post on Route 95 South at Exit 2, facing oncoming traffic. (Tr. at 3:21-4:5.) While stationed at the fixed radar post, Trooper Lepre

¹ The matter was originally set to be heard on July 6, 2021, but was continued to August 16, 2021 before being changed, at Appellants request, to September 8, 2021.

“obtained a fixed radar speed of [two] cars coming at [him] at 103 miles per hour.” *Id.* at 4:5-7. After obtaining the fixed radar speed, Trooper Lepre left his post and “obtained a moving radar speed on the rear car, which was 107 miles per hour” in a sixty-five (65) mile per hour zone. *Id.* at 4:6-9, 5:1-3. Trooper Lepre testified that the radar unit he used that evening had been “calibrated internally and externally at the beginning of the shift.” *Id.* at 4:22-24. Trooper Lepre also testified that he had received training at the Rhode Island State Police Academy in 2016 and that he was recertified on radar calibration two years prior to the hearing. *Id.* at 4:20-22.

Trooper Lepre explained that he conducted a stop of the rear vehicle on Route 95 South at Exit 2. *Id.* at 4:11-13. After Trooper Lepre identified the driver of the vehicle by a Massachusetts Driver’s License as Rosemond Pierre, Trooper Lepre advised Appellant of the reason for the stop. *Id.* at 4:14-17. Trooper Lepre also noted that there were wet road conditions and that Appellant’s vehicle had expired registration. *Id.* at 4:13; 4:18. Trooper Lepre issued Appellant a citation for one hundred (100) miles per hour in a sixty-five (65) mile per hour zone. *Id.* at 4:19-20; *see also* Summons No. 21001520390.

After Trooper Lepre’s testimony, Appellant declined the opportunity to cross-examine Trooper Lepre. (Tr. at 5:4-14.) Instead, Appellant argued, “I was not speeding when the state trooper stopped me” and said “I thought that he was meant to stop the other guy.” *Id.* at 5:17-18, 5:21-22. In support for Appellant’s argument that he was not speeding, Appellant argued that he was following his GPS and that he has “some kind of device” in the vehicle that starts beeping whenever Appellant travels at a rate exceeding the speed limit. *Id.* at 6:17-24. In response to this argument, the Trial Magistrate pointed out that Trooper Lepre also had a device that measures speed, which was calibrated on the evening in question. *Id.* at 7:4-6. Appellant continuously stated that he was “pretty confused” about the speeding ticket because, in addition to the device in the

vehicle, Appellant also had a “good driver license” and had not received a ticket in many years. *Id.* at 7:7-23.

The Trial Magistrate found Appellant guilty of the aforementioned violation by clear and convincing evidence and explained that the fine would be \$445 with court costs. *Id.* at 9:23-10:11. The Trial Magistrate found Trooper Lepre credible and adopted Trooper Lepre’s testimony as his findings of fact. *Id.* at 9:14-17. The Trial Magistrate also explained that Appellant had not provided any evidence to suggest Appellant was traveling at a different speed than the speed Trooper Lepre obtained. *Id.* at 9:17-20. Moreover, the Trial Magistrate pointed out that Appellant had not provided any documentation as to the calibration of the device that Appellant purportedly has in his vehicle. *Id.* at 9:21-23. The Trial Magistrate explained that Appellant had a right to appeal within ten days. *Id.* at 10:17-20. 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 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 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 “there was a mistake in the judge[’s] final decision.” (Notice of Appeal.) Specifically, Appellant argues that Trooper Lepre did not testify about receiving training in the specific radar device Trooper Lepre used to obtain Appellant’s speed. Appellant also argues that there was not clear and convincing evidence to demonstrate that Appellant’s vehicle was the actual vehicle from which Trooper Lepre obtained a radar speed.

A

Sufficiency of Trooper Lepre's Testimony

Appellant argues to this Panel that while Trooper Lepre testified about the quality of the radar device and that he attended the Police Academy, Trooper Lepre failed to specifically testify about receiving training in the use of the radar device used to obtain the speed of Appellant's vehicle.

In *State v. Sprague*, 113 R.I. 351, 322 A.2d 36 (1974), 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 Lepre demonstrated that the moving radar unit was "tested within a reasonable time and by an appropriate method" because Trooper Lepre testified that the radar unit had been "calibrated internally and externally at the beginning of the shift." *See id.*; Tr. at 4:22-24. As such, Trooper Lepre 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 Lepre also offered "testimony setting forth [Trooper Lepre's] training and experience in the use of a radar unit" by testifying that he had received training at the Rhode Island State Police Academy in 2016. *See id.*; Tr. at 4:20-21. Further, Trooper Lepre testified that he was recertified on radar calibration two years prior to the hearing, which also demonstrates that Trooper Lepre had training in the use of a radar unit. (Tr. at 4:21-22.) Therefore, Trooper Lepre satisfied the second requirement of *Sprague*. *See Sprague*, 113 R.I. at 357, 322 A.2d at 39-40.

Appellant is essentially asking this Panel to read an additional requirement into *Sprague*; namely, that a law enforcement officer must testify as to the officer's training in the use of the specific radar unit used to obtain a vehicle's speed. However, all that *Sprague* requires in regard to radar training is that a law enforcement officer testify that the officer possesses "training and experience in the use of a radar unit," and not the particular radar device used to record the speed of a vehicle. *Sprague*, 113 R.I. at 357, 322 A.2d at 40. Not only did Trooper Lepre testify that he attended the Rhode Island State Police Academy and received recertification on radar calibration, but also Trooper Lepre was stationed on a fixed radar post at the time he obtained Appellant's speed. (Tr. at 4:3-4, 20-22.) One could logically infer that Trooper Lepre was trained in the use of the radar device used to obtain the speed of Appellant's vehicle because it is very unlikely that an officer would be stationed on a fixed radar post without any radar training. Appellant's contention that the State's evidence regarding the radar unit falls short of the requirements enunciated in *Sprague* is misguided and unavailing. As such, the Trial Magistrate did not err in finding that Trooper Lepre's testimony was sufficient to satisfy the requirements of *Sprague* and render the radar unit's speed readings admissible as evidence at trial.

B

Evidence of Speeding

Before this Panel, Appellant avers that Trooper Lepre may have obtained the radar reading from a different vehicle, but mistakenly identified Appellant's vehicle as the speeding vehicle. Specifically, Appellant argues that there is not clear and convincing evidence in the record demonstrating that Trooper Lepre received the radar reading from Appellant's vehicle.

Pursuant to Rhode Island Traffic Tribunal Rule of Procedure 17(a), the prosecution must prove the violation by "clear and convincing evidence." Evidence that satisfies the "clear and

convincing evidence” standard “must persuade the jury that the proposition is highly probable, or must produce in the mind of the factfinder a firm belief or conviction that the allegations in question are true.” *Cahill v. Morrow*, 11 A.3d 82, 88 n.7 (R.I. 2011) (quoting 29 Am. Jur. 2d *Evidence* § 173 at 188-89 (2008)). However, the standard “does not require that the evidence negate all reasonable doubt or that the evidence must be uncontroverted.” *Id.* (quoting 29 Am. Jur. 2d *Evidence* § 173 at 188-89 (2008)). The Trial Magistrate’s factual findings are treated with deference and are not to be disturbed by the Appeals Panel, unless the Trial Magistrate “overlooked or misconceived relevant and material evidence or was otherwise clearly wrong.” *Brown v. Jordan*, 723 A.2d 799, 800 (R.I. 1998) (internal quotation and citation omitted).

As mentioned previously, the Trial Magistrate did not err in finding that Trooper Lepre satisfied the *Sprague* requirements and that the radar unit readings were admissible as evidence at trial. The Trial Magistrate found Trooper Lepre “completely credible” in identifying Appellant’s vehicle as the one that was speeding. (Tr. at 8:22-9:1, 9:16-17.) The only evidence Appellant offered to potentially suggest Appellant was traveling at a speed different than what Trooper Lepre obtained on the radar was Appellant’s own testimony about “some kind of device” Appellant had in the vehicle to detect speeding. *Id.* at 6:17-24. However, as the Trial Magistrate pointed out, Appellant had not provided any documentation as to the reliability of the device that Appellant had in the vehicle. *Id.* at 9:21-23. As such, the Trial Magistrate here did not “overlook[] or misconceive[] relevant and material evidence” and so this Panel is not permitted to disturb the Trial Magistrate’s factual findings. *See Brown*, 723 A.2d at 800.

Further, 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). As the members of this Panel did not have

an opportunity to observe the live testimony of Trooper Lepre, 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).

IV

Conclusion

This Panel has reviewed the entire record before 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 the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Associate Judge Lillian M. Almeida (Chair)

Magistrate Erika Kruse Weller

Magistrate Michael DiChiro

DATE: _____