STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T21-0017**
	:	**21001518766**
RYAN WARZEKA	**:**	

DECISION

PER CURIAM: Before this Panel on January 26, 2022—Magistrate DiChiro (Chair), Chief Magistrate DiSandro, and Magistrate Kruse Weller, sitting—is Ryan Warzeka's appeal from a decision of Magistrate Noonan, 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.

I

Facts and Travel

On May 22, 2021, at approximately 2:30 a.m., Detective Sergeant William F. Reilly, Jr. (Sergeant Reilly) of the Rhode Island State Police charged Ryan Warzeka (Appellant) with the aforementioned violation of the motor vehicle code. *See* Summons No. 21001518766. Appellant contested the charge, and the matter proceeded to trial on August 30, 2021.

At trial, Sergeant Reilly testified that at the time of the incident, he was stationed on a fixed radar post on Route 4 South at the Frenchtown Road Overpass conducting traffic enforcement. (Tr. at 3:25-4:3.) In the rearview mirror, Sergeant Reilly observed a couple of vehicles "approaching in the high-speed lane, at a high rate of speed and faster than the normal flow of traffic." *Id.* at 4:3-6. Sergeant Reilly testified that he activated the dash-mounted radar unit, which was checked "prior to and after [Sergeant Reilly's] shift, and found to be in good working order[.]"

Id. at 4:7-9. Sergeant Reilly testified that he was trained twice in the use of radar. *Id*. at 4:9-10. Sergeant Reilly explained that the first training occurred in 1998 at the Rhode Island Municipal Academy and that the second training occurred in 2005 at the Rhode Island State Police Training Academy. *Id*. at 4:10-14. Sergeant Reilly obtained a speed of 112 miles per hour in a fifty-five (55) mile per hour zone from the first vehicle traveling down the high-speed lane. *Id*. at 4:15-18. Sergeant Reilly also mentioned that the driver of the first vehicle was flashing the vehicle's lights in what appeared to be an effort urge the traffic in front of the vehicle to move out of the way. *Id.* at 4:18-21. Sergeant Reilly exited his post and followed the vehicle. *Id*. at 4:21-22.

Next, Sergeant Reilly explained that he conducted a stop of the vehicle "on Route 4 South just north of Route 2 in the town of East Greenwich." *Id*. at 4:22-24. The operator of the vehicle identified himself as Ryan Warzeka with a Rhode Island Driver's License. *Id*. at 4:25-5:1. Sergeant Reilly asked whether Appellant knew the driver of the second vehicle, and Appellant responded that he had no idea about the identity of the other driver. *Id*. at 5:3-6. When Sergeant Reilly asked why Appellant had been flashing his lights, Appellant responded that he was trying to use the turn-signal. *Id*. at 5:6-8. Sergeant Reilly told Appellant that Appellant could have been arrested for reckless driving at a speed of 112 miles per hour. *Id*. at 5:10-13. However, Sergeant Reilly only issued Appellant a speeding ticket for traveling 112 miles per hour in a fifty-five (55) mile per hour zone. *Id*. at 5:15-17.

Next at trial, Appellant's counsel cross-examined Sergeant Reilly. *Id*. at 5:18-21. During this cross-examination, Appellant's counsel asked Sergeant Reilly when the radar gun had been calibrated, to which Sergeant Reilly responded, "prior to the shift and then after the shift." *Id*. at 13:12-15. Sergeant Reilly also explained the process of internally calibrating the radar gun, stating: "[t]here's a button on the radar unit. You press the button, and it circulates through, and

it quick [*sic*] checks all the different speeds." *Id*. at 13:16-25. Sergeant Reilly explained that this was the method he was trained to use to calibrate the radar device and that he did not use a tuning fork or anything else to calibrate the device. *Id*. at 14:2-12.

The next to testify at trial was Appellant, on direct examination. *Id*. at 15:9-11. Appellant stated the reason for his speed as follows: "I was trying to get off at an exit and nobody would let me over, so I just continued on." *Id*. 17-20. Appellant testified that there was a medium amount of traffic at the time Sergeant Reilly pulled Appellant over. *Id*. at 16:21-23. Appellant's counsel also tried to admit a few photos, which the Trial Magistrate only admitted for the limited and exclusive purpose of showing where Appellant believed that he was pulled over because Sergeant Reilly did not agree that this was the location of the stop. *Id*. at 15:24-20:7, 26:6-9.

Appellant's counsel moved for a motion to dismiss. *Id*. at 20:10-12. In support of the motion, Appellant's counsel argued that *Daniel Houle v. State of Rhode Island*, A.A. No. 19-58 (D.R.I. January 25, 2021), requires the Patrolman to testify as to both the internal and external methods of calibration, and that, because Sergeant Reilly did not testify in this respect, his testimony should be stricken. *Id*. at 20:21-22:5. The Trial Magistrate denied the motion because the *Houle* case is not binding on the Rhode Island Traffic Tribunal.[1] *Id*. at 23:2-24:24. The Trial Magistrate noted that if the court were to follow *Houle*, then "we would live in a wonderful world where everybody could go 112, because nobody could ever sustain their burden in a speeding case." *Id*. at 23:6-14. Instead, the Trial Magistrate followed *State v. Sprague*, 113 R.I. 351, 355-57, 322 A.2d 36, 39-40 (1974). *Id*. at 24:14-24.

Ultimately, the Trial Magistrate sustained the charge based on the credible testimony of Sergeant Reilly. *Id*. at 25:1-5. The Trial Magistrate clarified that Sergeant Reilly had performed

[1] The case is from the District Court Sixth Division, rather than the Rhode Island Supreme Court.

an internal calibration and noted that Sergeant Reilly was trained in the use of radar twice. *Id*. at 25:15-22. As such, The Trial Magistrate found that the requirements of Sprague were satisfied. *Id.* at 25:21-24. The Trial Magistrate also elaborated on the dangers of traveling at a speed of 112 miles per hour, stating:

> "[t]he reality is, if you go 112, sooner or later you will plow into somebody. It could be me. It could be my family. It could be your lawyer's family. It could be anybody. And if you hit somebody at 112, they die most of the time . . . [y]ou were going an outrageous speed, endangering the safety and welfare of everyone on the highway." *Id*. at 26:18-27:5.

The Trial Magistrate imposed the minimum fine, which was $665. *Id*. at 27:16-17. The Trial Magistrate also imposed the minimum license suspension, which was a one-month suspension. *Id*. at 27:21-23. 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

In the Notice of Appeal form, Appellant lists the following three grounds for appeal: (1) "Arbitrary and Capricious error[,]" (2) "Error of Law[,]" and (3) "the State did not meet their burden of proof and the Judge did not apply A.A. No. 6AA-2019-58[.]" Notice of Appeal. In Appellant's Memorandum in Support of Appeal, Appellant argues that the Trial Magistrate committed error by finding that Sergeant Reilly's testimony about the radar calibration was adequate to find Appellant guilty of the aforementioned violation. (Appellant's Memorandum in

Support of Appeal (Appellant's Mem.) 6.) Appellant also argues that the Trial Magistrate failed to follow the precedent of *Houle* and failed to properly apply *Sprague*. *Id*. at 6-10.

First, in regard to Appellant's arguments under the *Houle* case, the Trial Magistrate stated that he would continue to ignore the *Houle* case until the Supreme Court rules that *Sprague* is not good law. (Tr. at 24:14-18.) Likewise, this Panel refuses to read a requirement into *Sprague* that is not contemplated by the text or to heighten the burden on law enforcement without explicit direction from our Supreme Court because this Panel is bound only by decisions of the Rhode Island Supreme Court. *Forte Brothers, Inc. v. State, Department of Transportation*, 541 A.2d 1194, 1196 (R.I. 1988) ("only the decisions of [the Rhode Island Supreme] [C]ourt are of binding effect upon all justices of trial courts of this state").

However, this Panel will consider Appellant's contention that the Trial Magistrate improperly applied *Sprague*. 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, Sergeant Reilly certainly met the second requirement of *Sprague* because Sergeant Reilly testified that he was trained twice in the use of radar. *See id.*; Tr. at 4:9-10. Sergeant Reilly explained that the first training occurred in 1998 at the Rhode Island Municipal Academy and that the second training occurred in 2005 at the Rhode Island State Police Training Academy. (Tr. at 4:10-14.) Appellant does not argue that Sergeant Reilly's testimony was insufficient to support the second element of *Sprague* and instead, Appellant contends that Sergeant Reilly "did not apply

his training correctly in the case at hand." (Appellant's Mem. 7.) Appellant takes issue with Sergeant Reilly's testimony regarding the operational efficiency of the radar unit. *Id.* at 7-10.

First, Appellant argues that the Trial Magistrate's verdict was arbitrary and capricious error "because it was made by finding [Sergeant Reilly's] testimony credible that the calibration of the radar unit was properly conducted internally and externally." *Id.* at 7. Appellant argues that "an external calibration was not done here." *Id.* However, the Trial Magistrate never suggested that Sergeant Reilly conducted an external calibration. The Trial Magistrate specifically said that Sergeant Reilly conducted an internal calibration, stating "[t]hat was the testimony of the trooper, that it was an internal calibration. He pressed a button on the outside, but the calibration was internal." (Tr. 25:14-21.) As such, Appellant is mistaken that the Trial Magistrate's verdict was based on a finding that an external calibration occurred. *See* Appellant's Mem. 7.

Appellant also argues that Sergeant Reilly's failure to conduct an external calibration is problematic under *Sprague*. *Id.* at 10. Specifically, Appellant argues that "[t]he Court in *Sprague* certainly never suggested than an external calibration is not required." *Id.* Further, Appellant notes that the officer in *Sprague* used a tuning fork to conduct an external calibration, but that Sergeant Reilly "did something totally different by only pressing a button and stating that was all the calibration that was needed." *Id.* Appellant is correct that Sergeant Reilly did not testify as to an external method of calibration, but Appellant is incorrect in suggesting this is a requirement of *Sprague*. *Sprague* only requires that the operational efficiency of the radar unit be tested "by an appropriate method" and "within a reasonable time." *Sprague*, 113 R.I. at 355-57, 322 A.2d at 39-40. Although a tuning fork may have been an appropriate method in *Sprague*, technology has

changed since the time of the *Sprague* decision more than forty-five years ago.[2] *See id.* Appellant even points out that Sergeant Reilly "testified that he was not required to calibrate a radar unit with a tuning fork and the method he used in this case was the method he learned in his training at the Rhode Island State Police Academy." (Appellant's Mem. 10.) Indeed, *Sprague* is devoid of any indication that the calibration "by an appropriate method" requirement is satisfied only when the device is calibrated by a tuning fork.

The dash-mounted radar unit was "tested within a reasonable time and by an appropriate method" because Sergeant Reilly testified that the radar unit was checked "prior to and after [Sergeant Reilly's] shift, and found to be in good working order[.]" *See* Tr. at 4:7-9; *Sprague*, 113 R.I. at 357, 322 A.2d at 39-40. Additionally, during cross-examination, Appellant's counsel asked Sergeant Reilly when the radar gun had been calibrated, to which Sergeant Reilly responded, "prior to the shift and then after the shift." (Tr. at 13:12-15.) Sergeant Reilly also explained the process of internally calibrating the radar gun. *Id.* at 13:16-25. As such, Sergeant Reilly 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. In light of Sergeant Reilly's testimony, which the Trial Magistrate found credible, this Panel finds that the Trial Magistrate properly determined that Sergeant Reilly's testimony met both prongs of the *Sprague* analysis and the evidence regarding the speed of Appellant's vehicle was properly admitted. *See* Tr. at 25:1-5; *Sprague*, 113 R.I. at 357, 322 A.2d at 39-40.

[2] Although only persuasive and not binding on this Court, the District Court Sixth Division examined this very issue and found that "the technology discussed in *Sprague* is now out-of-date. But the principals it pronounces are not." *Daniel Buck v. Town of Westerly*, A.A. No. 2015-033, 8 (D.R.I. June 8, 2016) The *Buck* court held that an officer's description of how a radar machine internally calibrates itself, with no testimony of external calibration, was sufficient to satisfy the operational efficiency requirement of *Sprague*. *See id.*

This Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the [Trial Magistrate] 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 Sergeant Reilly, 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. Accordingly, 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 the decision to sustain the charged violation is supported by reliable, probative, substantial, and legally competent evidence. *Id.* (citing *Envtl. 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 it. 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:

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Magistrate Michael DiChiro (Chair)

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Chief Magistrate Domenic A. DiSandro III

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Magistrate Erika Kruse Weller

DATE: _____