

STATE OF RHODE ISLAND

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

TIMOTHY SIEM

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**C.A. No. T20-0014
20001513156**

DECISION

PER CURIAM: Before this Panel on February 17, 2021—Magistrate Goulart (Chair), Judge Almeida, and Judge Parker sitting—is Timothy Siem’s (Appellant) appeal from a decision of Magistrate Kruse Weller (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared before this Panel *pro se*. For the reasons set forth in this opinion the appeal is denied. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On June 11, 2020 Trooper Christopher D’Angelo (Trooper D’Angelo) of the Rhode Island State Police issued a violation to the Appellant for speeding ninety miles per hour in a fifty-five miles per hour zone on Route I-95. *See* Summons No. 20001513156.

The Appellant pled not guilty to the charged violation and the matter proceeded to trial on December 9, 2020. At trial, Trooper D’Angelo testified that on June 11, 2020, he was at a fixed radar post on Route I-95 near exit 12, when he observed a vehicle traveling at a high rate of speed. (Tr. at 7:14-24). He explained that he activated his radar unit and obtained a speed of ninety miles an hour in a marked fifty-five miles per hour zone. *Id.* at 7:18-23. At that point,

Trooper D'Angelo testified that he initiated a motor vehicle stop of a green Subaru Forester bearing Rhode Island registration 0I978 and identified, in court, the Appellant as the operator. *Id.* at 7:23-24, 8:1-2. Trooper D'Angelo then explained he used his discretion and issued the Appellant a citation for speeding sixty miles per hour in a fifty-five miles per hour zone. *Id.* at 8:2-4.

Trooper D'Angelo further testified that he was trained at the Rhode Island State Police Academy. *Id.* at 7:19-20. At the academy, Trooper D'Angelo explained that he had been trained in the use of radar units. *Id.* at 7:18-20. He testified that his particular radar unit had been checked prior to shift, calibrated, and found to be in good working order. *Id.* at 7:20-22.

Next, the Appellant testified at trial that when the trooper first pulled him over, the trooper told him the license plate does not match the car. *Id.* at 10:15-16. The Appellant testified that his car was new and that he transferred the old plates which are registered in his name. *Id.* at 10:17-20. The Appellant also explained that Trooper D'Angelo asked for his license, registration, and other required paperwork. *Id.* at 10:20-24. The Appellant further testified that he was not speeding and that he was on his way to work. *Id.* at 11:4. He explained that he travels the same route every day and was aware that officers parked along his route. *Id.* at 11:5-8.

At the end of trial, the Trial Magistrate adopted the testimony of the trooper as her findings of fact. *Id.* at 14:10-11. The Trial Magistrate found the violation was proven by clear and convincing evidence. *Id.* at 14:12-13. Specifically, the Trial Magistrate found the trooper was trained in the use of radar at the 2013 State Police Academy and that the radar was calibrated and in good working order. *Id.* at 14:13-16. Moreover, the Trial Magistrate found that the motorist was traveling at least sixty miles per hour in a fifty-five miles per hour zone. *Id.* at 14:16-18. The Trial Magistrate further explained that the trooper's testimony was credible and

that his testimony fully supported the charge. *Id.* at 14:23-24, 15:1. The Trial Magistrate found the Appellant guilty of the charged violation and imposed a \$95 fine. *Id.* at 15:1-2. The Trial Magistrate also noted that the police had a right to ask the motorist for his license, registration, and insurance. *Id.* at 15:5-12. 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 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, it 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 was stopped for having improperly registered plates on his new vehicle. *See* Appellant Notice of Appeal. For a radar unit reading to be admissible at trial, the testifying officer must satisfy two preliminary requirements: “the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method,” and “testimony setting forth [the officer’s] training and experience in the use of a radar unit.” *State v. Sprague*, 113 R.I. 351, 355-357, 322 A.2d 36, 39-40 (1974). Moreover, “radar speed meter readings are admissible without a prior showing of the reliability of the [device] that was used to test the accuracy of the radar unit.” *Id.* at 357, 40.

At trial, Trooper D’Angelo testified as to the operational efficiency of the radar unit that he used to determine the speed of Appellant’s vehicle. (Tr. 7). Trooper D’Angelo stated that he calibrated the radar prior to shift and found it was in good working order. *Id.* at 7:20-22. It is clear that the radar unit was “tested within a reasonable time and by an appropriate method.” *Sprague*, 113 R.I. at 355-357, 322 A.2d at 39-40. Trooper D’Angelo also stated that he was trained in the use of radar at the Rhode Island State Police Academy, which satisfies the second prong of *Sprague*. *Id.* at 355-57, 39-40; (Tr. 7:18-20).

The Trial Magistrate considered Trooper D'Angelo's testimony and adopted it as her findings of fact. (Tr. 14:10-11). In doing so, the Trial Magistrate determined there was a factual basis to support the charge. *Id.* at 14:15-16. As 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," this Panel will not disturb the Trial Magistrate's factual findings or credibility determinations. *Link*, 633 A.2d at 1348.

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel determine that the Trial Judge's decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Judge Lillian Almeida

Judge Edward C. Parker

DATE: _____