

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF EAST PROVIDENCE**

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v.

**C.A. No. M16-0002  
15404505756**

**MARGARIDA DASILVA**

**AMENDED DECISION**

**PER CURIAM:** Before this Panel on May 18, 2016—Magistrate DiSandro (Chair, presiding), Chief Magistrate Guglietta, and Judge Parker, sitting—is Margarida DaSilva’s (Appellant) appeal from a decision of Judge George Furtado (Trial Judge) of the East Providence Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2(a), “Prima facie limits” for speeding. Appellant proceeded pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On December 5, 2015, Officer Richard Cordeiro (Officer Cordeiro) of the East Providence Police Department (the Department) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on February 18, 2016.

At approximately 5:55 p.m., Appellant was traveling northbound on North Broadway in East Providence. (Tr. at 1.) Appellant allowed another vehicle to pass before turning left onto Greenwood Avenue. (Tr. at 1-2; 4-5.) Appellant was stopped by Officer Cordeiro at the top of the hill on Greenwood Avenue. (Tr. at 3; 6.)

Officer Cordeiro testified at trial that the radar in his police cruiser indicated that Appellant was traveling 44 m.p.h. in a 30 m.p.h. zone while driving on North Broadway. (Tr. at 1.)<sup>1</sup> The radar in the police cruiser was last calibrated in February 2015. (Tr. at 1.) The calibration was set to expire in February 2016, approximately three months after Appellant's traffic stop. (Tr. at 1.)

Appellant stressed concern over the fact that she was not pulled over immediately. (Tr. at 4-7.) Officer Cordeiro explained that his vehicle was parked when his radar detected Appellant's speed. (Tr. at 6.) Therefore, Officer Cordeiro had to place the vehicle in drive and pursue Appellant's vehicle that had already passed by. (Tr. at 6-7.) Officer Cordeiro testified that by the time he reached Appellant's vehicle, the pair was at the intersection of North Broadway and Greenwood Avenue. (Tr. at 7.) Officer Cordeiro stated that he did not pull over Appellant while she waited to turn onto Greenwood Avenue because it would have been unsafe to conduct a traffic stop at the intersection. (Tr. at 7.) Moreover, Officer Cordeiro testified multiple times that his view was not obstructed and traffic conditions on that particular day were light. (Tr. at 5-7.)

The Trial Judge accepted Officer Cordeiro's testimony. (Tr. at 7-8.) He also acknowledged that Officer Cordeiro testified that his view was not obstructed. (Tr. at 8.) In addition, the Trial Judge recognized that the accuracy of the radar was never challenged in discovery. (Tr. at 8.) Therefore, the evidence remained uncontradicted. (Tr. at 8.) Appellant's charge was ultimately sustained. (Tr. at 8.) An appeal was timely filed and heard on May 18, 2016.

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<sup>1</sup> Exercising his discretion, Officer Cordeiro wrote Appellant's citation for only 40 m.p.h. (Tr. at 1.)

### Standard of Review

Pursuant to G.L. 1956 § 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." Link, 633 A.2d at 1348 (citing Envtl. Scientific 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. at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

### **Analysis**

On appeal, Appellant contends that the Trial Judge’s decision was affected by error of law and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant claims that Officer Cordeiro’s radar was not calibrated within a reasonable time of her traffic stop. Appellant also argues that there is only approximately one-quarter of a mile between the point that the radar clocked her speed and the intersection where she came to a stop. Appellant contends that because the distance was so short, she would have been unable to come to a stop if she was speeding.

#### **I. Radar Calibration**

Appellant argues that the radar in the police cruiser was not calibrated within a reasonable time, as the radar was calibrated approximately nine months prior to Appellant’s traffic stop.

In State v. Sprague, 113 R.I. 351, 357, 322 A.2d 36, 39 (1974), the Supreme Court held that “the operational efficiency” of the radar device must be “tested within a reasonable time by an appropriate method.” The record must contain evidence of the officer’s training and experience in the use of a radar device. 113 R.I. at 357, 322 A.2d at 40. The record contains evidence that the requirements of Sprague were sufficiently set forth. First, the record indicates that Officer Cordeiro received proper certification and training from the Rhode Island Police Academy in 2006. (Tr. at 1.) Second, Officer Cordeiro testified that the radar was last calibrated in February 2015. (Tr. at 1.) This calibration was set to expire one-year later in

February 2016. (Tr. at 1.) Since the traffic stop occurred in December 2015, the radar calibration was valid for approximately another three months by the Department's guidelines.

Other police departments in the State of Rhode Island require yearly calibration of their radar devices. See Town of Smithfield v. Connole, C.A. No. T13-0066, 13411501398, at \*5 (Sept. 3, 2014).<sup>2</sup> In Connole, the Panel held that a radar device was not calibrated within a reasonable time. Id. at \*5-6. The Panel recognized that internal policy of the Smithfield Police Department required yearly calibration of radar devices. Id. at \*5. However, the device at issue had not been calibrated for over seventeen months. Id. at \*5-6. The Panel recognized that while Sprague does not set forth specific time limits for radar calibration, "it is reasonable to assume that [police departments] . . . promulgate[] internal procedures for radar certification and calibration in order to ensure that the machines are working properly." Id. Here, Officer Cordeiro testified that the radar calibration was valid for one year. (Tr. at 1.) This evidence was not contested at trial by Appellant. In contrast with Connole, the radar device at issue here was calibrated in accordance with internal policy at the time of the traffic stop. As a result, a review of the record indicates that the radar in the police cruiser was calibrated within a reasonable time, as required by Sprague. The Trial Judge's decision was not affected by error of law or clearly erroneous in light of the record.

## II. Evidence of Speeding

Appellant argues that the distance between where the radar clocked her speed and the point where she stopped to make a left-hand turn is merely a quarter of a mile in length. Appellant

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<sup>2</sup> This amended decision was filed to remove the following sentences as they appeared in the decision filed on January 31, 2017. On page 5, first full paragraph, the citations to Town of Smithfield v. Cannole, C.A. No. T13-0066, 13411501398 (Sept. 3, 2014) were changed to reflect the correct case name Town of Smithfield v. Connole, C.A. No. T13-0066, 13411501398 (Sept. 3, 2014).

posits that she could not have sped within that distance and came to a stop at the intersection. Consequently, Appellant maintains that the Trial Judge committed error by concluding that she was speeding.

The Panel notes that Appellant did not raise this argument at trial. The Panel is confined to a review of the record. Link, 633 A.2d at 1348. As a result, the Panel does not have the authority to hear new evidence, assess witness credibility, or weigh evidence on questions of fact. Id. This Panel is without the ability to weigh the facts and re-determine whether it was plausible that Appellant was speeding. A review of the record indicates that the Trial Judge's conclusions were sufficiently supported by the evidence presented. Appellant did not present any evidence at trial as to her ability to speed within an alleged short distance. Therefore, the Panel is unable to review the Trial Judge's conclusions in light of Appellant's most recent contention. The argument was not properly preserved and has been waived. Substantial rights of Appellant have not been prejudiced.

**Conclusion**

This Panel has reviewed the entire record before it. For all the reasons stated above, the members of this Panel are satisfied that the Trial Judge's decision was not affected by error of law. Also, the decision was supported by reliable, probative, and substantial evidence on the whole record. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Administrative Magistrate Domenic A. DiSandro III (Chair)

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Chief Magistrate William R. Guglietta

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Judge Edward C. Parker

DATE: \_\_\_\_\_