STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF PAWTUCKET	:	
	:	
v.	:	**C.A. No. M14-0039**
	:	**15408504012**
TALIA TURCO	:	

DECISION

PER CURIAM: Before this Panel on August 5, 2015—Magistrate Noonan (Chair), Chief Magistrate Guglietta, and Magistrate Abbate, sitting—is Talia Turco's (Appellant) appeal from a decision of Judge Gannon of Pawtucket Municipal Court (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." The appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 18, 2015, Detective Sergeant Maciel (Detective Sergeant) of the Pawtucket Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on June 19, 2015.

At trial, the Detective Sergeant testified that on April 18, 2015, he was working traffic enforcement during the day shift in the area of Smithfield Road and Power Road. (Tr. at 1-2.) The Detective Sergeant specified that at approximately 3:00 pm he was in his cruiser on Varnum Avenue, monitoring Power Road, and was using a laser unit to assist him. Id. at 2-3. The Detective Sergeant testified that he was certified in the academy to use the laser unit, and that he tested the laser unit against a telephone pole on April 18, 2015, and found it was working properly. Id. at 3. The Detective Sergeant explained that "locking" the laser unit on a stationary object, such as a telephone pole, is a way to test the laser unit's reading and ensure that it is

functioning properly. Id. Thereafter, Detective Sergeant testified that he used the laser and "locked in on the operator who was traveling north . . . going 38 miles an hour," in a posted 25 miles per hour (mph) zone. Id. at 3-4. The Detective Sergeant pulled over the vehicle, and identified Appellant as the operator. Id. at 4.

On cross-examination, the Detective Sergeant clarified that the laser "shoots out a red beam and [is] like a scope . . . and I can put it anywhere." Id. at 6. He explained that putting the beam on a stationary object, such as a telephone pole, allows him to tell whether the device is functioning properly because when operating correctly, the reading will be zero. Id. at 8-9. The Detective Sergeant, again, stated that he was trained and certified in the use of a laser unit by an instructor at the academy. Id. at 6. The Detective Sergeant added that there is no recertification process and clarified that the laser he used during this traffic stop was a handheld, self-calibrating unit. Id. at 7.

Appellant's counsel then questioned the Detective Sergeant about the notarization process for the ticket. The Detective Sergeant responded that he turns the ticket into the traffic division and they notarize it. Id. at 12. At this point, counsel for the Appellant moved to dismiss the charge arguing that the signature on the ticket was not notarized properly because the Officer had no knowledge as to who notarized the ticket. Id. at 13. The Trial Judge explained that based on his understanding "when you notarize a document the person has to be in front of you and you have to at least identify yourself to [the notary]." Id. The prosecution countered that "[i]f I sign something and hand it to [a notary] and I say I signed that two days ago and [the notary] recognize[s] me and my signature, [they] can notarize that." Id. The Trial Judge noted that the problem with this argument is "I don't have the notary here to tell me that part. I think if I had the notary here to tell me I know his signature, I see it all the time, and I did notarize it, that may

make the case for the notary." Id. at 14. The Trial Judge then reserved ruling on the motion, pending testimony by the notary. Id.

Second, counsel for the Appellant moved to dismiss the charge on the ground that there was no certification of the laser device admitted into evidence. Id. at 15. The Trial Judge responded that there is no requirement to produce any written document of certification, and "they just have to testify they're certified to operate the unit and they properly calibrate[d] it" pursuant to the requirements of State v. Sprague, 113 R.I. 351, 357, 322 A.2d 36, 40 (1974). Id. The Trial Judge determined that the Detective Sergeant "testified adequately" as to his certification and the calibration of the unit. Id. at 15.

At this time, the notary, Donna Spence (Ms. Spence), testified that she signed the ticket as a notary. Id. at 16. Ms. Spence stated that she recognized the signature of the Detective Sergeant, and that she is familiar with him. Id. She testified that she does not recall this specific ticket, but she estimates that she has signed approximately one hundred and fifty (150) of his tickets in the past year. Id. at 16-17. Ms. Spence added that she does not always notarize the tickets with the Detective Sergeant present. Id. at 17. On cross-examination, Ms. Spence explained that when she receives the documents, she "flips through them," makes sure they are all signed by the officers, and then notarizes them. Id. at 17-18.

After Ms. Spence's testimony, counsel for the Appellant renewed his motion to dismiss, arguing that Ms. Spence did not follow proper notarization procedure because the Detective Sergeant was not present when the ticket was notarized. Id. at 19. The Trial Judge responded that he was satisfied that the ticket was notarized properly because Ms. Spence was familiar with the Detective Sergeant's signature. Id.

After preserving counsel's motion, the Trial Judge issued a decision sustaining the charged violation. Id. at 20. The Trial Judge found the Detective Sergeant's testimony credible. Id. He determined that the Detective Sergeant was trained to use his laser, the laser was working properly, and that the laser was locked on Appellant's vehicle. Id. The laser indicated Appellant was traveling at 38 mph in a 25 mph zone. Id. Based on these findings, the Trial Judge ruled that the City had met its burden of proof. Id. Thus, the Trial Judge sustained the charged speeding violation. Aggrieved by the Trial Judge's decision to sustain the charge, Appellant timely filed this appeal.

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 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 prejudicial 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 Mutual Insurance 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 Environmental 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." Link, 633 A.2d 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 clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant argues (1) that the ticket was not properly notarized, and (2) that the City failed to produce certifications of both the Detective Sergeant and of the laser device used to determine Appellant's speed.

The Summons

Appellant's argument that this Panel should grant her appeal because her ticket was not properly notarized, is unavailing. The Rhode Island Traffic Tribunal Rules of Procedure set the guideline requirements for a summons. See Traffic Trib. R. P. 3. The rules provide in pertinent part that "[t]he summons shall be signed by the issuing officer alleging that the facts contained therein are true, and served upon the defendant . . . which shall be sufficient proof of actual

notice in adjudications of civil violations of the motor vehicle code." Traffic Trib. R. P. 3(b).[1] There is no requirement that the summons be notarized. Appellant broadly points to the "notary statute" in arguing that the Detective Sergeant should have been present when the ticket was notarized by Ms. Spence. However, Rule 3 of the Rhode Island Traffic Tribunal Rules of Procedure governs requirements for a valid summons, not the "notary laws" as Appellant asserts. Therefore, since there is no requirement for the summons to be notarized, the notarization process does not affect Appellant's summons.

The Speeding Charge

Appellant's argument that the City failed to produce evidence of the Detective Sergeant's certification, and the certification of the laser device used to determine Appellant's speed, is meritless. Our Supreme Court has held that a radar speed reading is admissible into evidence if a two-prong test is met. See Sprague, 113 R.I. at 357, 322 A.2d at 39-40. In Sprague, the Court held that a radar reading is admissible upon a showing that "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method," and upon "testimony setting forth [the Officer's] training and experience in the use of a radar unit." Id. Both requirements set forth in Sprague were met here.

At Appellant's trial, the Detective Sergeant testified that he was trained to use a laser unit in police academy. (Tr. at 2.) He established that after training he was certified to operate a laser unit and that this certification does not expire. Id. at 2-3. He also testified that prior to using a laser unit, he checks to ensure that it is functioning properly by locking the laser on a stationary object, if the unit returns a "zero" reading then the unit is functioning properly. Id. at

[1] The notarization requirement was removed when the rules were amended in 2013.

3. The Detective Sergeant stated that on the day in question he locked the laser on a telephone pole and found that the unit was functioning properly. Id.

In his decision, the Trial Judge determined that the Detective Sergeant's testimony—that he was trained in the device, it was tested on the day in question and found to be functioning properly, and the device determined that Appellant's motor vehicle was traveling 38 mph in a 25 mph zone—was sufficient to sustain the charged violation. Id. at 20. Specifically, the Trial Judge stated "it's been argued that there is no certification provided with the laser gun. I think the case law doesn't require that . . . I think he testified accurately as to using the laser . . . and that it was functioning properly." Id. at 21. This Panel agrees.

Confining our review of the record to its proper scope, this Panel is satisfied that the two-prong test set forth in Sprague was sufficiently met here. The Detective Sergeant testified as to his experience in using the laser unit, and explained that he ensured the unit was functioning properly on the day in question. The Trial Judge properly concluded that certification of the Detective Sergeant and the laser unit, are not legally required in order to sustain a speeding violation. Consequently, the Trial Judge's decision to sustain the charged violation was not an abuse of discretion and is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (The [appellate court] should give great deference to the [trial magistrate's] findings and conclusions unless clearly wrong.).

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Magistrate William T. Noonan (Chair)

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Chief Magistrate William R. Guglietta

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Magistrate Joseph A. Abbate

DATE: _____