STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF WOONSOCKET	:	
	:	
v.	:	**C.A. No. M15-0042**
	:	**15412550161**
JAMES F. SULLIVAN	:	
	:	

DECISION

PER CURIAM: Before this Panel on March 9, 2016—Magistrate Goulart (Chair), Administrative Magistrate DiSandro III, and Judge Almeida, sitting—is James F. Sullivan's (Appellant) appeal from a decision of Judge Lloyd R. Gariepy of the Woonsocket Municipal Court (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 21, 2015, Patrolman Enrique Sosa (Patrolman) of the Woonsocket 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 December 2, 2015.

At trial, the Patrolman testified that he graduated from the Rhode Island Municipal Police Training Academy (the Academy) in 2009 where he received training in the use of laser and radar units. (Tr. at 3.) The Appellant then moved to strike the record regarding the Patrolman's training with laser units on the basis that the reliability of laser unit technology required expert testimony. Id. at 3-5. The Trial Judge overruled the Appellant's objection and the City continued its direct examination. Id. at 5.

The Patrolman stated that on April 21, 2015, he worked a safe street detail at the parking lot of the Ho Kong Restaurant, located at 366 Cumberland Hill Road in Woonsocket, Rhode Island. Id. at 9. The Patrolman specified that he was standing at a fixed position, using a handheld laser unit to detect vehicles traveling in excess of the 25 mile per hour speed limit. Id. The Patrolman stated that on the day in question, the laser unit was calibrated and functioning properly. Id. at 8-9. The Patrolman recalled that sometime after his detail started at 4:00 P.M., he observed a black SUV traveling towards him at a high rate of speed. Id. at 9. Using the laser unit, the Patrolman determined the vehicle was traveling at 38 miles per hour, which exceeded the posted speed limit of 25 miles per hour. Id. At that point, the Patrolman pulled the vehicle over and issued the operator a citation for driving thirteen miles over the speed limit. Id. at 9-10, 12.

The Patrolman identified the Appellant as the operator of the vehicle. See id. at 10. The Patrolman explained the process he had used to determine the speed of the Appellant's vehicle. Id. Specifically, the Patrolman testified that he had pointed the laser unit at the vehicle's license plate and pressed the trigger until the unit emitted a noise, which indicated that it had registered the speed of the vehicle. Id. at 13. The Patrolman stated that this technique is common practice. Id. The Patrolman further explained that the laser unit had not registered any error in calculating the Appellant's speed. Id. at 13. At the completion of the City's case, Appellant then conducted cross-examination. Id.

On cross-examination, the Patrolman confirmed that he had been trained in the use of radar and laser units when he attended the Academy in 2009 and that he had been employed by the Woonsocket Police Department for approximately six years. Id. In response to Appellant's questions, the Patrolman stated that he had not been re-certified in the use of laser units since his

original training at the Academy. Id. at 16. Next, Appellant questioned the Patrolman's familiarity with layout of the Ho Kong parking lot and asked about the number of speeding citations the Patrolman had issued from that particular location using the laser unit in question. Id. at 19-20. The Patrolman testified that he is very familiar with the layout of the Ho Kong parking lot, but that he could not remember specifically how many traffic tickets he has issued from that particular location. Id. However, the Patrolman explained that he issues anywhere between four hundred to five hundred speeding citations per year using the same laser unit that he used to calculate the Appellant's speed on the day in question. Id. at 20-21.

Appellant further questioned whether there were any obstructions in the parking lot that could have affected the accuracy of the Patrolman's laser unit. See id. at 34-37. The Patrolman explained that there were no obstructions in the parking lot that would have affected his laser unit's operation on the day in question. Id. Appellant then attempted to introduce several images taken from Google Maps in 2012 as evidence that there may have been an object obstructing the Patrolman's laser unit on April 21, 2015. Id. at 37. However, the Trial Judge did not allow the Appellant to introduce the images as exhibits due to the fact that they had been recorded nearly three years before the date at issue. Id.

Next, Appellant questioned whether the Patrolman had received training in order to make visual estimates of speed prior to engaging the laser unit. Id. at 54-60. The Patrolman explained that he had been trained to visually estimate speed within five miles. Id. at 55. The Patrolman further testified that he had visually estimated the Appellant's speed for several seconds and then after determining that Appellant's vehicle was traveling at a speed over the posted speed limit, he had calculated his speed using the laser unit. Id. at 52. The Patrolman further explained that in order for the laser unit to get an accurate reading, an operator of the unit must depress the trigger

for one to two seconds. Id. at 56. The Appellant continued to press the Patrolman about his training in visually estimating the speed of vehicles and asked whether the Patrolman would be able to estimate the speed of a vehicle if his laser unit experienced a mechanical failure. Id. at 56. The Patrolman testified that he was trained to do so. Id. at 55-56. However, the Patrolman reiterated that although he originally determined that Appellant was speeding based on visual observation, he used the laser unit to determine Appellant's actual speed of 38 miles per hour. Id. at 57.

After Appellant continued to question the Patrolman regarding his training in visually estimating the speed of vehicles, the Trial Judge questioned the relevancy of Appellant's line of questioning. Id. at 58. The Trial Judge asked whether Appellant's line of questioning had any relevance regarding the functionality of the laser unit at issue. Id. at 59. The Trial Judge then explained that he was limiting Appellant's cross-examination as it related to the Patrolman's training in visual estimation of speed, because it was irrelevant to the issue before the Court, which involved the accuracy of the laser unit. Id. at 59-60. The Trial Judge also noted that the Patrolman had already answered Appellant's questions, on several different occasions, regarding his training. Id. at 60. Thus, the Trial Judge limited Appellant's cross-examination after determining that the line of questioning was cumulative and irrelevant. See id.

The Appellant concluded cross-examination and then took the stand to testify on his own behalf. Id. at 73. The Appellant briefly testified that he believed that he was going the speed limit on the day in question and that he did not have a history of speeding. Id. at 74. At the conclusion of the Appellant's testimony, the Trial Judge issued a thorough decision, sustaining the charged violation. Id. The Trial Judge found the Patrolman's testimony credible. Id. at 78. He determined that the Patrolman was trained to use his laser unit, that the unit was working

properly, and that the unit registered Appellant's vehicle to be traveling at a speed in excess of the posted speed limit. Id. at 74-77. Based on these findings, the Trial Judge found that the City had met its burden of proof. Id. Thus, the speeding violation was sustained. Id. 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 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."

On review of a hearing judge's decision, 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 v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual 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 decision is supported by legally competent evidence or is affected by an error of law." Id. (citing Envt'l 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. Otherwise, it must affirm the hearing judge's conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant essentially contends that the Trial Judge's decision to affirm his violation was made upon unlawful procedure, and characterized by abuse of discretion or clearly unwarranted exercise of discretion. Specifically, Appellant argues that the Trial Judge improperly allowed the entry of non-expert testimony regarding the Patrolman's laser unit, that the record is inaccurate, and that the Trial Judge impermissibly limited the Appellant's cross examination of the Patrolman.[1]

Laser Unit Speed Reading Evidence

The Appellant argues that there is insufficient evidence to establish that he was traveling over the posted speed limit of 25 miles per hour. Specifically, Appellant argues that the Trial Judge erred when he allowed the laser unit's speed reading to be admitted into evidence without hearing expert testimony concerning the accuracy and reliability of laser units generally.

The Rhode Island Supreme Court has held that a radar speed reading is admissible into evidence without expert testimony if a two-prong test is met. State v. Sprague, 113 R.I. 351,

[1] Prior to his appeal, as a preliminary matter, Appellant requested that the members of this Panel recuse themselves from hearing the appeal. Appellant provided no basis for the Motion to Recuse other than a broad assertion of "conflicts." This Panel determined Appellant's Motion to be unsubstantiated as Appellant provided no facts to suggest that any member of this Panel may be impartial. See State v. Clark, 423 A.2d 1151, 1158 (R.I. 1980) ("[b]efore a judge is required to recuse in order to avoid the appearance of impropriety, facts must be elicited indicating that it is reasonable for members of the public or a litigant or counsel to question the trial justice's impartiality").

355-57, 322 A.2d 36, 39-40 (1974). In Sprague, the Court determined that a radar device's speed reading was admissible based upon a police officer's testimony that 1) the device's operational efficiency had been tested using an appropriate method within a reasonable period of time, and 2) the officer's testimony established his or her experience and training in the use of the device. Id.

Appellant argues that this Court should narrowly interpret the holding in Sprague and find that the two-prong admissibility test only applies in the context of radar units, rather than laser units, which are at issue in this case.[2] However, Appellant's argument ignores the Sprague Court's reliance on State v. Barrows, 90 R.I. 150, 152, 156 A.2d 81, 82 (1959), in which the Court held that a speed reading based upon a police officer's observation of a speedometer was admissible as evidence without expert testimony. Id. In deciding Sprague, the Court specifically noted that although Barrows involved the accuracy of a speedometer and Sprague involved the accuracy of a radar device, the two situations were analogous. Sprague, 113 R.I. at 357, 322 A.2d at 39. Thus, the Court determined that evidence of the radar device's speed reading was admissible without expert testimony as long as the evidence met the two-prong test. Id. Here, it

[2] This Panel notes that Appellant does not provide any relevant Rhode Island case law to support his argument. Rather, Appellant provides a case from the Ohio Court of Appeals, State v. Zhovner, 2013-Ohio Ct. App.-749, 987 N.E.2d 333. In Zhovner, the court determined that the trial justice had not properly established the scientific reliability of a laser speed measuring unit, and therefore, the unit's speed reading could not be introduced as evidence. Id. at ¶ 26. The court noted the trial justice had improperly relied on a line of cases establishing the scientific reliability of radar devices as the basis for allowing the evidence in at trial. Id. at ¶¶ 18-25. However, in Ohio, the scientific reliability of a particular speed-measuring device can only be established through expert testimony or judicial test. Id. at ¶ 16. Moreover, the court of appeals noted that Ohio's appellate courts had repeatedly stated that the line of cases establishing the scientific reliability of radar devices was narrowly limited to radar devices and did not extend to other speed measuring devices. Id. at ¶ 20. Given that the Rhode Island Supreme Court has not limited the holding of Sprague to apply in the context of radar devices alone and that Rhode Island does not require expert testimony to establish the scientific reliability of speed reading devices, Zhovner is inapposite. See Sprague, 113 R.I. at 355-57, 322 A.2d at 39-40. For the above stated reasons, this Panel declines to apply the holding of Zhovner to the facts of this case.

is clear that the reliability of a laser unit is analogous to a situation involving a radar unit. See id. Therefore, this Panel will apply the Sprague test in the instant case.

Here, the Trial Judge determined that the elements of the Sprague test had been met. The Trial Judge credited the Patrolman's testimony that he was trained in the use of the laser unit, that it was tested and functioning properly, and that the device registered that the Appellant's vehicle was traveling at a higher rate of speed than the posted speed limit. (Tr. at 74-75.) Moreover, the Trial Judge found the Patrolman's testimony credible and that his testimony regarding his training in the use of the laser unit was sufficient to establish his proficiency with the device. Id. at 76. This Panel may not substitute its judgment for that of the Trial Judge concerning questions of fact or the credibility of witnesses. See Link, 633 A.2d at 1348. Accordingly, after reviewing the record in its entirety, this Panel is satisfied that the Trial Judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence.

Inaccurate Record

Next, Appellant argues that the record of the proceeding below is inaccurate. Appellant contends that the Patrolman spoke "with a broken English dialect" during his cross-examination, which deprived Appellant of a fair and accurate record of the proceeding.

The record before this Panel contains the entire transcript of the proceeding before the Trial Judge. The object of requiring stenographic reports of court proceedings is to secure an accurate and complete official transcript of the record of such proceedings. See Macchia v. Ducharme, 44 R.I. 418, 117 A. 651, 652 (1922). Upon completion of a transcription, the court reporter will certify that the transcript is a "true, accurate, and complete transcript of the hearing." See Butler Auto Sales, Inc. v. Skog, 98 R.I. 63, 64, 199 A.2d 597, 598 (1964). A party

can rely on the presumption that "in the proper performance of [his or] her official duties the court stenographer would prepare a transcript containing a full report of the entire proceedings." Butler, 98 RI at 66, 199 A.2d at 598. In the event of a conflict between a personal recollection and the transcript, the transcript must be accepted as accurate, and a court must "act upon the hypothesis that utterances which appear in the allowed transcript [have] been made in open court." See Schafer v. Thurston Mfg. Co., 48 R.I. 244, 137 A.2d (Mem.), 5 (1927).

Here, Appellant has failed to point out any inaccuracies contained in the transcript. See State v. Briggs, 886 A.2d 735, 752 (R.I. 2005) (denying a defendant's motion to exclude a transcript on the basis that the transcript was inaccurate because the defendant had not provided any evidence pointing to an inaccuracy in the transcript). Thus, the conflict at issue here is between the Appellant's recollection of the event and the transcript before the Court. See Schafer, 48 R.I. at 244, 137 A.2d at 5. Accordingly, this Panel rejects Appellant's general assertion that the record is inaccurate and accepts the transcript as accurate. See id.

Cross Examination

Last, Appellant argues that the Trial Judge impermissibly limited his ability to cross-examine the Patrolman. Specifically, Appellant alleges that the Trial Judge prohibited him from cross examining the Patrolman about his training in visually estimating the speed of vehicles.

Rhode Island Rule of Evidence 403 provides that a trial judge has discretion to exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Moreover, "a trial justice is given wide discretion to permit or limit counsel's cross-examination of witnesses during trial,

and that discretion, absent a showing of clear abuse, will not be disturbed on appeal, and then, only if such abuse constitutes prejudicial error." State v. Oliveira, 730 A.2d 20, 24 (R.I. 1999).

Here, there is no evidence that the Trial Judge abused his discretion when he limited Appellant's cross-examination of the Patrolman as it related to the Patrolman's training in visually estimating the speed of vehicles. Rather, the record indicates that the Patrolman patiently answered Appellant's questions regarding whether he had received training in visually estimating the speed of vehicles on several occasions throughout his cross-examination. (Tr. at 55-56.) Further, in response to Appellant's questions, the Patrolman testified that although he had originally determined that Appellant was speeding based on visual observation, he used the laser unit to determine Appellant's actual speed of 38 miles per hour. Id. at 57. After Appellant failed to explain the relevance of his line of questioning, the Trial Judge limited Appellant's cross-examination as it related to the Patrolman's training in visual estimation of speed as irrelevant and needlessly cumulative in accordance with Rhode Island Rule of Evidence 403. See id. at 60.

Thus, this Panel finds that the Trial Judge was well within his discretion to limit Appellant's testimony and his ruling does not amount to a clear abuse of discretion. See State v. Briggs, 886 A.2d 735, 746-747 (R.I. 2005) (holding that a trial justice's decision to limit defense counsel's cross-examination did not amount to a clear abuse of discretion after the trial justice determined the line of questioning was repetitive and irrelevant).

For the foregoing reasons, this Panel is satisfied that the Trial Judge's decision sustaining the charged violation, § 31-14-2, "Prima facie limits," was supported by legally competent evidence and not affected by error of law. See Link, 633 A.2d at 1348 (internal citation omitted) (stating "[t]he 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").

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 is sustained.

ENTERED:

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Magistrate Alan R. Goulart (Chair)

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Administrative Magistrate Domenic A. DiSandro III

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Judge Lillian M. Almeida

DATE: _____