STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Daniel A. Buck	:	
	:	
v.	:	**A.A. No. 15 - 033**
	:	
Town of Westerly	:	
(RITT Appeals Panel)	:	

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings and Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED that the Findings and Recommendations of the Magistrate are adopted by reference as the decision of the Court and the decision of the Appeals Panel is AFFIRMED.

Entered as an Order of this Court at Providence on this 8th day of June, 2016.

By Order:

/s/
Stephen C. Waluk
Chief Clerk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Daniel A. Buck	:	
	:	**A.A. No. 2015 – 033**
v.	:	**(C.A. No. M14-0023)**
	:	**(14-504-500899)**
Town of Westerly	:	
(RITT Appeals Panel)	:	

F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this appeal, Mr. Daniel A. Buck urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a municipal court judge's verdict adjudicating him guilty of a moving violation: "Prima Facie Limits" (i.e., speeding) in violation of Gen. Laws 1956 § 31-14-2. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9 and the applicable standard of review is found in subsection 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1. After a review of the entire record I find that — for the reasons explained below — the

decision of the panel is not clearly erroneous and should be affirmed; I so recommend.

I

FACTS & TRAVEL OF THE CASE

The facts of the incident in which Mr. Buck was cited for speeding by Officer Waterman of the Westerly Police Department on June 16, 2014 are sufficiently stated in the decision of the panel. The core of the incident is described as follows:

> …
>
> At trial, the Officer testified that he was traveling South on Post Road (also known as Route 1 Southbound) at approximately 8:39 in the evening on routine patrol, when he observed a vehicle traveling in the opposite direction (Northbound) at a high rate of speed. (Tr. at 9-10.) The Officer's mounted radar unit received a reading for the vehicle of 56 miles per hour (mph) in a posted 35 mph zone. (Tr. at 10.) The Officer then 'testified that he activated his overhead lights, made a U-tum on Route 1, and stopped the vehicle. (Tr. at 12.)
>
> The Officer identified the driver of the vehicle as the Appellant by his Rhode Island State Identification Card because Appellant did not have his driver's license on him. Id. The Officer testified that he issued the Appellant a summons for speeding 5 mph over the posted speed limit. (Tr. at 13.)

Decision of Panel, March 4, 2015, at 1-2.

Appellant was cited for speeding and entered a plea of not guilty at his arraignment on July 10, 2014. The matter proceeded to trial before Judge Peter

Lewiss of the Westerly Municipal Court on August 21, 2014.

At the trial the officer testified as to the salient facts of the traffic stop in a manner consistent with the foregoing narrative. But much of the officer's testimony was taken up with setting out his credentials and with explaining how the radar unit works:

> At trial, on direct examination, the Officer testified that he was a 2014 graduate of the Rhode Island Municipal Police Academy, where he received training in the use of radar and laser units; specifically, "how to properly calibrate [and] use moving and stationary radar." (Tr. at 5.) Mr. Manfred, for the Town of Westerly, submitted into evidence the Traffic Safety Radar Certification of Calibration (Certification Document) for the radar unit mounted in the Officer's car, which stipulated that the unit was certified from February 5, 2014 until February 28, 2015. (Tr. at 7); see also Pros. Ex. 1. The Certification Document was admitted as a full exhibit over Appellant's objection. (Tr. at 18.) The Officer further testified that the radar unit calibrates itself internally upon turning the unit on from being off. (Tr. at 8.) According to the Officer's observations, the radar unit was working properly on the night of June 16, 2014 when he stopped Appellant. (Tr. at 9.) On cross examination, Appellant asked the Officer if any other person was in the cruiser on June 16, 2014. (Tr. at 14.) The Officer replied that his Field Training Officer (FTO) was also in the car as "back up" and that his FTO was "training [him] in police functions." (Tr. at 16.)

Decision of Panel, March 4, 2015, at 2. At the close of the officer's testimony, Defendant Buck moved to dismiss, on the ground that the officer's testimony did not prove that the radar unit had been calibrated externally, proof that he urges is required by our Supreme Court's decision in State v. Sprague, 113 R.I.

351, 322 A.2d 36 (1974). Decision of Panel, March 4, 2015, at 2. Mr. Buck's motion was denied by the judge, who found the machine's internal calibration sufficient to satisfy Sprague. Decision of Panel, March 4, 2015, at 3.

Mr. Buck then declined to put on a defense. Decision of Panel, March 4, 2015, at 3. The Court then rendered its decision; the trial judge found that the officer had proven the speeding citation. Id. See also Trial Transcript, at 31. A fine of $95.00 (plus costs) was imposed. Trial Transcript, at 31.

Aggrieved by this decision, Mr. Buck filed an immediate appeal. On November 19, 2014 his appeal was heard by an RITT appeals panel composed of: Judge Almeida (Chair), Administrative Magistrate Cruise, and Magistrate Goulart. In a decision dated March 4, 2015, the appeals panel rejected Appellant's argument — i.e., that Sprague requires proof of external calibration. Decision of Panel, March 4, 2015, at 4-6. Instead, it quoted Sprague for the following two-part test for the admissibility of radar readings: first, there must be a showing that "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method" and second, there must be "testimony setting forth [the Officer's] training and experience in the use of a radar unit." Decision of Panel, March 4, 2015, at 4-5 (quoting from Sprague, 113 R.I. at 357, 322 A.2d at 39-40). In the instant case, the appeals panel found

that the officer's testimony satisfied both elements of the test. Decision of Panel, March 4, 2015, at 5.

On March 25, 2015, Mr. Buck filed a claim for judicial review by the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9. A conference was conducted and the Court established a briefing schedule. Helpful memoranda have been received from both parties.

II
STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in Gen. Laws 1956 § 31-41.1.-9(d), which provides as follows:

> (d) Standard of review. The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or 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 appeals panel's findings, inferences, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the appeals panel;
> (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.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, the District Court "* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.' "[1] Thus, the Court will not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.[2] Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.[3]

However, when reviewing the factual determinations of the appeals panel, this Court's role is limited; indeed, it is doubly limited — our duty in this case is to decide whether the panel was "clearly erroneous" when it found Judge Lewis's adjudication of Mr. Buck was not "clearly erroneous" — a limited review of a limited review. See Gen. Laws 1956 § 31-41.1-8(f) and Gen. Laws 1956 § 31-41.1-9(d), quoted ante at 5. See also Link v. State, 633 A.2d 1345, 1348 (R.I. 1993)(opining, construing prior law — which was also

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1 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

2 Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

3 Id., at 506-507, 246 A.2d at 215.

"substantively identical" to the APA procedure — that the District Court' role was to review the trial record to determine if the decision was supported by competent evidence).

III
APPLICABLE LAW

In the instant matter the Appellant was charged with violating section 31-14-2 of the Rhode Island General Laws which states in pertinent part:

> **31-14-2 Prima facie limits. —** Where no special hazard exists that requires lower speed for compliance with § 31-14-1, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this title shall be lawful, but any speed in excess of the limits specified in this section or established as authorized in this title shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful …

IV
ANALYSIS
A
Positions of the Parties

In his Memorandum of Law, Mr. Buck argues, as he did before the appeals panel, that the trial judge erred in admitting the Calibration Report as an exhibit for two reasons — (1) it was not shown that the radar device had been externally calibrated (which, in Appellant's view, was a precondition to its

admission), and (2) the trial court permitted the Town to elicit testimony about the document on redirect, when it had not been mentioned during cross-examination. Appellant's Memorandum of Law, at 1-2.

In its response, the Town argues that there is no need for external calibration, since the documentation shows that the radar unit is internally calibrated and it is, in fact, "state of the art." Appellee's Memorandum of Law, at 3-4.

B

Discussion

At the outset, it must certainly be conceded that Appellant's interpretation of the applicable law, while perhaps overly formalistic, is certainly rooted in the facts of the Sprague case, which is still the leading precedent on the admissibility of radar readings. Nevertheless, because that decision is now over 40 years old, the technology discussed in Sprague is now out-of-date. But the principals it pronounces are not.

As quoted above, ante at 4, Sprague requires only proof that "… the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method." Sprague, 113 R.I. at 357, 322 A.2d at 39-40. Such evidence was clearly presented here. The officer described how the radar machine internally calibrates itself. Trial Transcript, at 8. And the Town

introduced into evidence the manufacturer's Certificate of Calibration. See Prosecution's Exhibit No. 1, which may be viewed on page 30 of the electronic record attached to this case.[4] Therefore, the Court did not err by admitting the Certificate of Calibration and declining to dismiss the speeding charge brought against Mr. Buck pursuant to Sprague.

Appellant's second claim of error must also be overruled. While Appellant urges that the Court erred by allowing redirect on a matter not discussed on cross-examination, this is really not so. At the conclusion of Mr. Buck's cross-examination, the Town merely moved the certificate as a full exhibit, which is a timely motion until the moment when the prosecution has rested. Trial Transcript, at 17. The prosecutor asked no questions. Therefore, this argument must also fail.

Moreover, even if the prosecution had rested, the decision to allow the Town to reopen for the purpose of moving the admission of the exhibit would have been a matter within the Court's sound discretion, as our Supreme Court outlined in State v. Benevides, 420 A.2d 65 (1980):

> As we have noted on previous occasions, the regulation of the order of proof at trial rests within the sound discretion of the trial

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[4] By its terms, the Calibration Report was produced in February of 2014; it was good until the end of February, 2015.

> justice. In his discretion he may admit competent evidence at any stage of the trial. State v. LaPlume, 118 R.I. 670, 681, 375 A.2d 938, 943 (1977); State v. Mattatall, 114 R.I. 568, 571, 337 A.2d 229, 232 (1975); State v. Falcone, 41 R.I. 399, 402, 103 A. 961, 962 (1918). Thus, a motion to reopen a case to introduce additional evidence is addressed to the discretion of the trial justice and a decision made in the exercise of such discretionary power will not be disturbed by this court on appeal absent a showing of an abuse of that discretion. Marshall v. Tomaselli, 118 R.I. 190, 198-99, 372 A.2d 1280, 1285 (1977); Vigneau v. LaSalle, 111 R.I. 179, 182, 300 A.2d 477, 479 (1973); State v. Shea, 77 R.I. 373, 377, 75 A.2d 294, 296 (1950). We have said that we will not find such an abuse of discretion unless it is affirmatively shown that the party offering the evidence was guilty of trickery or that substantial prejudice resulted from the order of proof. State v. Mattatall, 114 R.I. at 571, 337 A.2d at 232; Gillogly v. New England Transp. Co., 73 R.I. 456, 463, 57 A.2d 411, 414 (1948).

Benevides, 420 A.2d at 68. But since the state had not rested, this analysis is unnecessary; Nevertheless, in my estimation, Mr. Buck has not shown prejudice.

In sum, the facts found by the panel, quoted supra at 2-3, are fully supported in the record certified by the RITT to the District Court. And so, because the officer's testimony was, itself, adequate to constitute competent evidence sufficient to satisfy the prosecution's burden of proof; and because I find no error of law, I find no reason to set aside the decision of the appeals panel.

V
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appeals panel was made upon lawful procedure and was not affected by error of law. Gen. Laws 1956 § 31-41.1-9. Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Id.

Accordingly, I recommend that the decision of the appeals panel be AFFIRMED.

/s/
Joseph P. Ippolito
Magistrate

June 8, 2016