

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**TOWN OF EAST GREENWICH**

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v.

**C.A. No. M13-0014  
13202501001**

**ANTHONY IANIERO**

**DECISION**

**PER CURIAM:** Before this Panel on December 4, 2013—Magistrate DiSandro III (Chair, presiding), Magistrate Noonan, and, Magistrate Abbate, sitting—is Anthony Ianiero’s (Appellant) appeal from a decision of the East Greenwich Municipal Court (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On July 13, 2013, Officer Petrucci of the East Greenwich Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on August 21, 2013.

At trial, the Officer testified that on July 13, 2013, he was posted on the corner of Division Street and Overbrook Road in the Town of East Greenwich. (Tr. at 3.) The Officer indicated that at that time, he observed a white Toyota traveling westbound at a high rate of speed. Id. Thereafter, the Officer testified that he had completed training at the Rhode Island Municipal Police Academy in 2010. (Tr. at 3-4.) In addition, the Officer testified that his radar unit was calibrated internally and externally at the beginning of his shift that day. (Tr. at 4.)

Subsequently, the Officer testified that he utilized his radar unit and acquired a reading that the vehicle was traveling forty-five (45) miles per hour in a clearly posted twenty-five (25) mile per hour zone. Id. As a result, the Officer initiated a traffic stop of the Appellant's vehicle, identified the Appellant as Anthony Ianiero, and issued a speeding ticket. Id.

Next, the Appellant's counsel cross-examined the Officer. (Tr. at 8.) Specifically, Appellant's counsel further inquired about the Officer's radar training at the police academy. Id. The Officer responded that he had been certified in both the use of radar and laser units. Id. Moreover, the Officer distinguished radar systems from laser systems. (Tr. at 9-10.)

At the close of the evidence, the trial judge issued his decision sustaining the charged violation. (Tr. at 11.) The trial judge determined that the prosecution had proven each element of the charge. Id. Specifically, the trial judge noted that the Officer's testimony was credible and that the Officer had identified Appellant as the operator. Id. Aggrieved by the trial judge's decision to sustain the charge, the 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 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 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 [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." 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 light of the reliable, probative, and substantial evidence of record. The Appellant also asserts that the trial judge's decision was affected by error of law. Specifically, Appellant contends that the record does not contain the required testimony regarding the Officer's radar training. Moreover, the Appellant asserts that the trial judge decision to deny Appellant's Counsel's motion to dismiss was an error of law.

## **I. Calibration**

The Appellant contends that in order for the Town of East Greenwich to prove each element of the charge by clear and convincing evidence, the Officer would have had to have testified in greater particularity regarding his qualifications and training in the use of radar. For this proposition, the Appellant relies on State v. Sprague, 113 R.I. 351, 357, 322 A.2d 36, 39-40 (1974).

In Sprague, our Supreme Court held that for speedometer or radar evidence to support a charge of speeding, “the operational efficiency” of the device must be “tested within a reasonable time by an appropriate method,” and the record must contain “testimony setting forth the [Officer’s] training and experience” in the use of radar. 113 R.I. at 357, 322 A.2d at 39-40. The requirements of Sprague were properly set forth during the Appellant’s trial. (Tr. at 4; Tr. at 8-10.) The Officer testified that he had completed training for the use of radar at the Rhode Island Municipal Police Academy in 2010. (Tr. at 3-4.) In addition, the Officer testified that his radar unit was calibrated internally and externally at the beginning of his shift that day. (Tr. at 4.) On cross-examination, Appellant’s counsel further inquired about the Officer’s radar training at the police academy. (Tr. at 8.) The Officer responded that he had been certified in both the use of radar and laser units. Id. Moreover, the Officer distinguished radar systems from laser systems. (Tr. at 9-10.) Therefore, this Panel finds that the trial judge’s decision was not affected by error of law.

## **II. Motion to Dismiss**

Appellant avers that the trial judge’s decision to deny Appellant’s Counsel’s motion to dismiss was an error of law. Specifically, Appellant asserts the Officer’s failure to identify Appellant as the operator constitutes grounds for dismissal.

Appellant places too much emphasis on the issue of identification because “in-court identification by a witness is not necessarily required . . . [because] [i]dentification can be inferred from all the facts and circumstances that are in evidence.” United States v. Ayala, 289 F.3d 16, 25-26 (1st Cir. 2002) (citing United States v. Alexander, 48 F.3d 1477, 1490 (9th Cir.1995) (citations omitted) (quoting United States v. Weed, 689 F.2d 752, 754 (7th Cir.1982))); see also Town of North Kingstown v. Philip Dey, C.A. No. T13-0008, September 10, 2013, R.I. Traffic Trib. (finding that in-court identification can be inferred from all the facts and circumstances presented to the finder of fact).

Here, the trial judge stated he was satisfied that Appellant had been identified as the operator of the vehicle based on the fact the Officer referred to him as the operator of the vehicle. See Tr. at 7. Therefore, this Panel holds that the trial judge’s finding that Appellant had been identified as the operator of the vehicle was supported by reliable, probative, and substantial evidence of the record.

### **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. This Panel is also satisfied that the trial judge did not abuse his discretion and his decision was not affected by error of law. 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 Domenic A. DiSandro, III (Chair)

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Magistrate William T. Noonan

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Magistrate Joseph A. Abbate

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