STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T13-0049**
	:	**13001512816**
ABRAHAM CURE JR.	**:**	

DECISION

PER CURIAM: Before this Panel on September 11, 2013—Magistrate Goulart (Chair, presiding), Judge Parker, and, Magistrate Noonan, sitting—is Abraham Cure's (Appellant) appeal from a decision of Magistrate DiSandro III (trial magistrate), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On April 25, 2013, Trooper Capone of the Rhode Island State Police (Trooper) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on July 15, 2013.

At trial, the Trooper testified that on April 25, 2013, at approximately 11:23 pm, he was at a fixed radar post on 295 North in the Town of Cumberland. (Tr. at 1.) The Trooper indicated that he had recorded a radar speed of ninety-one (91) miles per hour in a sixty-five (65) mile per hour zone on a black Hyundai bearing a Massachusetts' license plate. Id. The Trooper testified that he had been trained in the use of the radar unit at the Rhode Island State Police Training Academy in 2004. Id. In addition, the Trooper indicated that the radar unit had been calibrated both internally and externally prior to beginning his shift that evening. Id. The Trooper

concluded this segment of testimony by representing that he was located in the far right breakdown lane when he obtained the radar speed. Id.

Defendant was then allowed to ask the Trooper some questions. Appellant asked the Trooper whether he had a certificate of calibration for the radar unit and the Trooper responded in the negative. (Tr. at 1.) Subsequently, the trial magistrate interjected that a certificate of calibration was not required under Rhode Island law. (Tr. at 2.) Next, the Appellant testified that the Trooper was not on the right side of the highway, but instead positioned on the left side. Id. The Appellant also testified that his motor vehicle was traveling sixty (60) miles per hour and set to cruise control at the time he passed the Trooper. Id. Shortly after passing the Trooper, the Appellant indicated that an unidentified vehicle came dangerously close to the rear of his vehicle. Id. In response, the Appellant testified that he accelerated, and attempted to take the next exit in order to extricate himself from what the Appellant perceived to be a precarious situation. Id. The Appellant declared that it was not until that moment that he realized that it was the Trooper he had previously seen on the side of the road. (Tr. at 3.) The trial Magistrate asked, "[w]hen you accelerated Abraham, what did you accelerate to?" Id. The Appellant responded, "I probably accelerated ten miles more and then he came up again." Id.[1]

At the close of evidence, the trial magistrate issued his decision sustaining the charged violation. (Tr. at 3-4.) The trial magistrate determined that the prosecution had proven each element of the charge by clear and convincing evidence. (Tr. at 3.) Specifically, the trial magistrate found

> that on the 25th day of April of this year at 11:23 pm, [the trooper] had established a fixed post radar, [the Trooper] indicated that he

[1] The Appellant initially testified that his car was set to cruise control and was traveling sixty (60) miles per hour. (Tr. at 1.) The Trooper had previously established that the traffic stop occurred in a sixty-five (65) mile per hour zone. Id. The trial magistrate remarked that the Appellant had admitted that he had exceeded the speed limit. (Tr. at 3.)

> stationed his cruiser in the right breakdown lane and he was monitoring traffic on 295 Southbound. [The Trooper] indicated a vehicle approached his location, [the Trooper] can't rightfully recall how far away the vehicle was, but [the Trooper] indicated it was the only vehicle at the time. [The Trooper] targeted the vehicle and obtained a speed of ninety-one[.]
> (Tr. at 3.)

The trial magistrate also found that the Trooper had identified the Appellant as the vehicle's operator through both his Massachusetts license and in court identification. (Tr. at 3.) In addition, the trial magistrate made specific findings that the Trooper had been trained in the use of radar at the Rhode Island State Police Academy in 2004, and the Trooper had indicated that the radar unit had been calibrated both internally and externally prior to his shift. Id.

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:
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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 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 magistrate's decision was clearly erroneous in light of the reliable, probative, and substantial evidence of record. The Appellant also asserts that the trial magistrate's decision was affected by error of law. Specifically, Appellant contends that he was prejudiced by the trial magistrate's facilitating the testimony of the Trooper regarding the Trooper's training, and calibration of the radar unit. Additionally, the Appellant avers that the evidence of radar calibration was not properly admitted at trial. Lastly, Appellant disputes the veracity of the Trooper's testimony and claims that the trial magistrate abused his discretion in crediting the Trooper's testimony over that of the Appellant's testimony.[2] This Panel will discuss each issue raised by the appellant in seriatim.

[2] The Appellant also claimed he was not informed of his right to appeal pursuant to Rule 18 (b). This claim is immaterial as rule 18 (b) within our Rules of Procedure addresses withdrawal of a guilty plea. See Traffic Trib.

I. Prejudice

The Appellant claims that he was prejudiced by the trial magistrate's conduct while questioning the Trooper during his nonjury trial. Notably, " [i]n all adjudications of civil violations of the motor vehicle code, the Rhode Island Rules of Evidence shall govern all proceedings before the traffic tribunal and the municipal courts." Traffic Trib. R.P. 15 (b). Pursuant to the Rhode Island Rules of Evidence, a "court may interrogate witnesses, whether called by itself or by a party." R.I. R. Evid. 614 (b). It is also worth noting for purposes of this discussion that "[o]bjections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present." R.I. R. Evid. 614 (c).

Here, the trial magistrate asked the Trooper, "All right, how far away was your fixed position from the vehicle when you targeted it?" (Tr. at 1.) The Trooper responded, "Well I believe I was . . . I don't . . . I looked at my notes and I did not put down what lane of travel he was in but when I run radar on 295 North . . . this particular spot I was in the far right breakdown lane with the lights off." Id. The authority of the trial magistrate to interrogate a witness extends to any "relevant matters proper to be presented to the jury" in furtherance of justice. State v. Amaral, 47 R.I. 245, 249-50, 132 A. 547, 549 (1926); see also State v. Fournier, 448 A.2d 1230, 1232 (R.I.1982) (citing State v. Dionne, 442 A.2d 876, 885 (R.I.1982)).

Furthermore, in Amaral, this court declared that "[t]o the questions of a [magistrate] the same rules apply as to the time and method of making objections and taking exceptions as govern the objections and exceptions of counsel to the questions of his adversary." 47 R.I. at 250-51, 132 A. at 550. In a nonjury trial, "[o]bjections and exceptions to questions must be

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R.P. 18 (b) It is also worth noting that this issue is moot because the Appellant did file an appeal, and as a result the Appellant was not prejudiced .

taken as soon as the question is asked and before it is answered, and if the answer to a question is not responsive or is in any way improper motion should be made that it be stricken out." Id. at 251, 132 A. 547, 132 A. at 550. Review of the record in the instant case indicates that no objection was made by the Appellant to the question asked and answered. Nevertheless, even if this issue had been preserved for review, this Panel concludes that the question asked by the trial magistrate was for clarification purposes and failed to rise to the level where "the [magistrate] had become an advocate." See State v. Phommachak, 674 A.2d 382, 388-89 (R.I. 1996). The record in the instant case is devoid of anything that "demonstrates that the questions as submitted by the trial [magistrate] [either] prejudiced [Appellant]'s case [or] created the appearance that the [magistrate] was favoring the prosecution," Fournier, 448 A.2d 1230, 1232 (R.I.1982), nor does anything in the record lead this Panel "to believe that the tenor of the trial justice's questioning contained prejudicial influences." State v. Evans, 618 A.2d 1283, 1284 (R.I.1993).

II. Calibration

The Appellant contends that in order for the State to prove each element of the charge by clear and convincing evidence, the Trooper would have had to offer the radar unit's certificate of calibration into evidence. For this proposition, the Appellant relies on State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974), and City of Warwick v. Edmund Hathway, C.A. No. M10-0020, February 23, 2011, R.I. Traffic Trib. The Appellant's reliance on both cases is misplaced.

In State v. 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 [Trooper's] training and experience" in the use of the device. 113 R.I. at 357, 322 A.2d at 39-40. In the present controversy, the requirements of Sprague were properly set forth during

Appellant's trial. The Trooper testified that he had been trained in the use of the radar unit at the Rhode Island State Police Training Academy in 2004. (Tr. at 1.) In addition, the Trooper indicated that the radar unit had been calibrated both internally and externally prior to beginning his shift that evening. Id.

In Edmund Hathway, the Appeals Panel noted that the city of Warwick

> went to great lengths to provide clear and convincing evidence of the operational efficiency of the radar unit used by [the officer]. Not only did the officer testify that he personally checked the radar's calibration, but the City submitted two certificates into evidence: one for the radar unit and another certifying the tuning fork. However, the City failed to present any evidence that [the officer] had any training or experience in the use of radar equipment.

Consequently, the Panel concluded that the trial judge erred when he sustained the charge and granted the Appellant's appeal because the city of Warwick failed to meet the second prong of the Sprague test. The Panel's ruling was based on the insufficiency of testimony regarding the officer's training, and in no way held that it was neccesary for the officer to submit certificates regarding calibration into evidence. Any other reading of Edmund Hathway would be a tortured and strained manipulation of this Panel's decision. Here, the Officer clearly established his training at the Rhode Island State Police Training Academy regarding the use of radar units. (Tr. at 1.) Therefore, this Panel finds that the trial magistrate's decision was not affected by error of law.

III. Credibility

Appellant additionally disputes the veracity of the Trooper's testimony and claims that the trial magistrate committed an abuse of discretion in crediting the Trooper's testimony over that of the Appellant's testimony. Specifically, the Appellant alleges that he was not speeding.

In Link, our Supreme Court made clear that 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, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Trooper or Appellant, it would be impermissible to second-guess the trial magistrate's "impressions as he . . . observe[d] [the Trooper and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony, the trial magistrate determined that the Trooper's testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. (Tr. at 3.) "[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [magistrate] concerning the weight of the evidence on questions of fact)." Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the trial magistrate remarked that he did not find the Appellant to be credible. (Tr. at 3.) Namely, the trial magistrate stated on the record that he did not believe the Appellant's account of events. Id. Alternatively, the trial magistrate found the Trooper to be credible. Id. In particular, the trial magistrate found that he perceived the Trooper's testimony to be "true and correct." Id. In his decision, the trial magistrate found it significant that Appellant himself candidly admitted that he was speeding. (Tr. at 3.) Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate did not abuse his discretion, and his decision to sustain the charged violation 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 magistrate's decision was supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the trial magistrate 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 Alan R. Goulart (Chair)

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Judge Edward C. Parker

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Magistrate William T. Noonan

DATE: _____