

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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STATE OF RHODE ISLAND

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v.

C.A. No. T12-0037

ALEXANDER BROWN

PER CURIAM: Before this Panel on June 27, 2012—Chief Magistrate Guglietta (Chair, presiding), Judge Ciullo, and Magistrate Noonan, sitting—is Alexander Brown’s (Appellant) appeal from a decision of Judge Parker (trial judge), 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 G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 5, 2012, Trooper Charles LaValley (Trooper LaValley) of the Rhode Island State Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on May 17, 2012.

At trial, Trooper LaValley stated that was at a fixed traffic post on Route 4 in East Greenwich. (Tr. at 4.) Trooper LaValley observed a silver Toyota traveling northbound at a high rate of speed. Id. Trooper LaValley was able to obtain the vehicle’s speed using a radar unit in his patrol vehicle. The trooper’s radar unit determined that the silver Toyota was traveling seventy-three (73) miles per hour (mph) in a fifty-five (55) mph area. Id. Trooper LaValley then stated that the radar unit was calibrated before and after his shift, and the trooper was trained in the use of radar units at that Rhode Island State Police Academy. Id.

After obtaining this speed reading, Trooper LaValley pursued the vehicle and stopped it shortly before the Route 295 exit on Route 95. Trooper LaValley identified the operator of the vehicle as the Appellant and cited him for speeding. However, Trooper LaValley cited Appellant for traveling sixty-five (65) mph.

In response, Appellant maintained that he was not speeding. Appellant stated that he was traveling in the right lane on Route 4 and traveling fifty-five (55) mph. (Tr. at 5.) According to the Appellant, he maintained this speed even as he was passing Trooper LaValley. Appellant also stated that he was surrounded by cars, thereby making it impossible for him to speed. Appellant also found it significant that Trooper LaValley followed the Appellant for several miles.

Trooper LaValley responded by saying that he did not pull the Appellant over right away because it was a safety issue. (Tr. at 8.) The trooper then stated that he was absolutely certain that Appellant was speeding.

After hearing both sides, the trial judge sustained the charged violation. (Tr. at 10.) The trial judge based his decision on the testimony of Trooper LaValley, and the trial judge imposed a sentence. 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 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 argues that the trial judge's decision was an abuse of discretion and was not supported by the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant maintains that he was not speeding.

In Sprague, our Supreme Court held that a radar speed reading is admissible into evidence 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 Patrolman’s] training and experience in the use of a radar unit.” Sprague, 113 R.I. at 357, 322 A.2d at 39-40. Here, the requirements of Sprague were properly set forth during Appellant’s trial. Trooper LaValley explained that the radar unit had been calibrated both internally and externally, and he testified that he possessed “training and experience in the use of a radar unit.” Sprague, 113 R.I. at 357, 322 A.2d at 40.

Having reviewed the record in its entirety, it is clear that there was sufficient evidence presented by Trooper LaValley to satisfy the standards set forth by our Supreme Court in Sprague to properly introduce evidence of the speed of Appellant’s vehicle. Based on the testimony provided by Trooper LaValley to the trial judge, the members of this Panel find that the trial judge’s decision is not erroneous in view of reliable, probative, and substantial evidence on the record. Moreover, the trial judge’s decision to reject Appellant’s argument that he was not speeding was a question of fact that this Panel is without authority to disturb because the trial judge’s decision was supported by competent evidence. See Link, 633 A.2d at 1348.

### 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 not an abuse of discretion and was supported by the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.