STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T15-0035**
	:	**15414500974**
ANDREW LOWELL	**:**	

DECISION

PER CURIAM: Before this Panel on February 3, 2016—Magistrate Goulart (Chair), Magistrate Noonan, and Judge Almeida, sitting—is Andrew Lowell's (Appellant) appeal from a decision of Judge Parker of the Rhode Island Traffic Tribunal (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On July 28, 2015, Officer David P. Hebert of the Glocester Police Department (Officer), charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on October 5, 2015.

At trial, the Officer testified that at approximately 9:00 a.m., he was at a fixed radar post on Route 44 near the Powder Mill Creamery, when he observed a vehicle traveling eastbound at a high rate of speed. (Tr. at 1.) Using his radar gun, the Officer obtained a reading of 61 miles per hour in a posted 35 miles per hour zone. Id. The Officer noted that the radar gun "was calibrated prior to, during, and after the stop" and that he was "certified in the use of radar at the Rhode Island Municipal Academy." Id.

The Officer stopped the vehicle on West Greensward Road in Smithfield. Id. The Officer testified that he identified the driver of the vehicle as the Appellant. Id. The Officer

asked the Appellant to explain his reason for speeding and the Appellant replied that he "was two hours late for work." Id. At this point, the Officer issued the Appellant a citation for exceeding the speed limit, pursuant to § 31-14-2, "Prima facie limits." Id.

At the conclusion of the Officer's testimony, counsel for the Appellant questioned the Officer regarding the issuance of the citation, asking "[i]s there any reason why you didn't issue the citation immediately?" Id. The Officer explained, "I had problems with the computer at the time" and as a result, mailed the citation to Appellant. Id.

After concluding cross-examination, Appellant's counsel argued that the testimony, alone, did not meet the burden of proof required to sustain the charge. Specifically, counsel argued that "while testimony of calibration does not have to be by affidavit, it has to be more specific than 'it was calibrated before, during, and after [the stop].'" Id. at 2. Counsel continued, "there is no indication of how it was calibrated, whether it's self-calibrated . . . [or whether] it was properly calibrated." Id.

After hearing both the testimony presented and the Appellant's argument, the Trial Judge sustained the charged violation. Id. The Trial Judge reasoned, "[the Officer] has testified to all the requirements . . . he's testified as to his training, he's testified as to the device working . . . ." Id. The Trial Judge concluded, "given the testimony of the Officer I'm going to find [Appellant] guilty." Id. Aggrieved by the Trial Judge's decision, 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:
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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 Judge's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant points to the testimony of the Officer indicating that the radar gun was "calibrated

before, during, and after" the stop. (Tr. at 1). Appellant argues that this testimony is not sufficient to establish that the radar was calibrated properly; therefore, the Officer did not meet the standard required to sustain a speeding violation pursuant to § 31-14-2.

This contention raises an issue with which this Panel has dealt in many decisions, that is, the proper calibration of a radar device. See City of East Providence v. Fogarty, T15-0024 (2015); City of Pawtucket v. Turco, M14-0039 (2015); Town of North Kingstown v. Dellagrotta, M14-0020 (2014); Town of Smithfield v. Connole, T13-0065 (2014); State v. Anim, T13-0006 (2013). From these decisions a clear path emerges. That path, carved by our Supreme Court in Sprague, establishes 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 Officer's] training and experience in the use of a radar unit." State v. Sprague, 113 R.I. 351, 357, 322 A.2d 36, 39-40 (1974).

The requirements of the Sprague test were satisfied in the present case. The Officer testified that he was "certified in the use of radar at the Rhode Island Municipal Academy." (Tr. at 1). He further testified that the radar unit he used to determine Appellant's speed "was calibrated prior to, during and after the stop." Id. Therefore, the Officer properly established that he was trained in the use of the radar unit and tested the operational efficiency of the radar unit within a reasonable time. Id.

We concede that the Officer did not testify with specificity that the operational efficiency of the radar unit was tested by an appropriate method; however, the Trial Judge inferred that the unit was working properly. Id. at 2 (Trial Judge determining "[the Officer] testified . . . as to his device working"). We believe this inference was properly drawn based on the Officer's testimony and the definition of the term "calibrated." See Waldman v. Shipyard Marina, Inc.,

102 R.I. 366, 371, 230 A.2d 841, 844 (1967) (stating "[a] trier of fact may draw reasonable inferences from established evidentiary facts that become facts upon which reliance may be placed in the fact-finding process"). The term "calibrate" is defined as "to adjust or mark something, such as a measuring device, so that it can be used in an accurate and exact way." See The Miriam Webster Dictionary, online (2015). The logical implication to be drawn from the definition of "calibrate" is that once adjusted or marked, the measuring device can be used in an accurate and exact way. Id. Therefore, the Officer's testimony that "the radar was calibrated prior to . . . the stop," implies that the radar unit was functioning in an accurate and exact way. Id.; see also Tr. at 1; State v. Theroux, 111 R.I. 617, 622, 306 A.2d 44, 47 (1973) (stating "when an inference is such as to exclude any other reasonable inference being drawn from the basic fact, such an inference partakes of the nature of a fact to which probative force must be attributed"). Based on the Officer's testimony and the reasonable inference to be drawn therefrom, we agree with the Trial Judge that the requirements of Sprague were satisfied.[1]

At oral argument, Appellant raised the claim that the Officer could not have calibrated his radar "during" the stop. See (Tr. at 1) (Officer testifying that the radar gun "was calibrated prior to, during, and after the stop") (emphasis added). We can infer, based on the record, that the Officer intended to say that he calibrated his radar "during his shift," rather than "during the stop." Or perhaps, the Officer misspoke entirely and did not intend to say "during." Regardless, we think Appellant's reliance on this factor is misplaced where the record reflects that the radar unit was calibrated "prior to" the stop. Id.

[1]This is not to say that the requirements of Sprague need not be set forth in their entirety. Rather, we decline to extend the mandates of Sprague to a point where they need to be set forth with the degree of specificity that Appellant suggests.

Based on the record before this Panel, we are satisfied that the Trial Judge's decision sustaining the charged violation, § 31-14-2, was not clearly erroneous, but rather, is supported by legally competent evidence. See Environmental Scientific Corp., 621 A.2d at 209 ("the [Appellate Court] should give great deference to the [Trial Judge'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 find that the Trial Judge's decision is supported by reliable, probative, and substantial evidence on the whole record. Substantial rights of the 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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Magistrate William T. Noonan

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Judge Lillian M. Almeida

DATE: _____