

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

v.

:

C.A. No. T18-0005

:

17001530437

:

DOMENICK CONNORS

DECISION

Administrative Magistrate Abbate for the Court: Before this Panel on June 6, 2018—Magistrate Abbate (Chair), Magistrate Noonan, and Judge Almeida, sitting—is Domenick Connor’s (Appellant) appeal from a decision of Chief Magistrate Domenic A. DiSandro, III (Trial Magistrate) of the Rhode Island Traffic Tribunal, 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.

I

Facts and Travel

On November 7, 2017, Rhode Island State Trooper Sean Crowley (Trooper Crowley) issued Appellant a citation for the aforementioned violation. (Tr. at 2.) The Appellant contested the charged violation, and the matter proceeded to trial on April 4, 2018. *Id.*

At trial, Trooper Crowley testified that on the day he issued Appellant the citation, he was monitoring traffic from a fixed radar post on Route 95 in the City of Cranston. *Id.* at 3. Trooper Crowley observed Appellant’s vehicle “traveling in the center lane at a speed greater than the normal flow of traffic.” *Id.*

At that time, Trooper Crowley activated the dashboard mounted radar unit in his police cruiser to obtain Appellant's vehicle's speed. *Id.* at 7. According to that radar unit, Appellant's vehicle was traveling at ninety-nine miles per hour in a fifty-five miles per hour zone. *Id.* After obtaining the vehicle's speed, Trooper Crowley left his post and pursued Appellant's vehicle. *Id.* Trooper Crowley conducted a motor vehicle stop of Appellant's vehicle, at which time he issued Appellant the citation. *Id.*

Trooper Crowley testified that the radar unit in his cruiser had been "tested and calibrated, both internally and externally, [] prior to and at the end of [his] shift." *Id.* He added: "The radar unit was found to be in good working order at the beginning and end of my shift. Furthermore, I was trained in the use of the radar in [] 2009 [at] [the] Rhode Island State Police Training Academy." *Id.* at 8.

During Trooper Crowley's testimony, Appellant, through counsel, objected to the introduction of evidence related to the calibration of the radar unit. *Id.* at 3, 8. The Appellant argued that he submitted a request for discovery to the State Police and never received the requested documents: "Obviously, if [the Trooper] [is] doing testing and calibration, and [Appellant] requested those reports, [the State Police] should have them on file, and that's a violation under the discovery order" *Id.* at 8. He also stated that on February 19, 2018, he received a signed Order from another magistrate at the Traffic Tribunal, ordering the State Police to comply with Appellant's discovery request. *Id.* at 3. Due to the State Police's non-compliance with the discovery Order, Appellant moved to dismiss the charged violation. *Id.* at 8.

The Trial Magistrate first told Appellant that Appellant could have a leave of court to obtain the discovery items sought from the State Police. *Id.* at 6-7. The Appellant stated that he

would continue with the trial. *Id.* at 7. The Trial Magistrate subsequently denied Appellant's Motion to Dismiss. *Id.* at 9. The Trial Magistrate explained:

“[P]ursuant to the radar cases that we have with the Supreme Court, the only burden that this officer has to establish is that he's familiar with the device, which he is, because he's trained in it, and that he had, in fact, tested it internally and externally both before and after the stop and found it to be in working order.” *Id.* at 9.

The Appellant was the final witness to testify at trial. *Id.* at 10. The Appellant testified that on November 7, 2017, he had a family emergency and was traveling to the hospital. *Id.* At that time, counsel moved to dismiss the charged violation “because of the fact that there was an emergency situation going on with the [Appellant]” and that Appellant “did[] [not] cause any accidents.” *Id.* at 10-11. The Trial Magistrate responded: “[I]t's a speeding violation, whether he agrees or disagrees that he was speeding. I understand that there was a family emergency. . . but we have procedures to follow. . . .” *Id.* at 12.

Based on the testimony offered at trial, the Trial Magistrate a recitation of Trooper Crowley's testimony as his findings of fact. *Id.* at 14. In addition, the Trial Magistrate ruled:

“[Appellant] mo[ved] to dismiss for failure to comply with the court order . . . relative to providing any type of calibration sheets for what he was using. I denied the motion. As I indicated, it's a radar case. If it were a speedometer . . . issue, as to the accuracy of that specific cruiser, I would agree with [Appellant], but in fact, it was a radar that was being utilized to effectuate the speed of that vehicle, so the [M]otion is denied.” *Id.*

Moreover, the Trial Magistrate indicated that Appellant “credibly testified that . . . he was operating his vehicle, and that he does not contest the fact that he was speeding[,]” and that he considered the fact that Appellant was traveling to a family emergency at the time the violation occurred. *Id.* at 14-15. Ultimately, the Trial Magistrate sustained the charged violation. *Id.* at 15.

Thereafter, Appellant filed a timely appeal of the Trial Magistrate's decision. Forthwith is this Panel's decision.

II

Standard of Review

Pursuant to § 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 Mut. 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.” *Id.* (citing *Envtl. Sci. 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.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that the Trial Magistrate’s decision is “affected by error of law,” “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record,” and “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” *See* § 31-41.1-8(f). Specifically, Appellant asserts that the Trial Magistrate erred by (1) denying Appellant’s Motion to Dismiss based on the State Police’s failure to comply with the court ordered discovery request, (2) denying Appellant’s Motion to Dismiss offered on the grounds that Appellant was dealing with an emergency situation, and (3) sustaining the charged violation without evidence showing that the radar unit had been calibrated.

A

Failure to Comply with Discovery Order

The Appellant’s first submits that the Trial Magistrate should have granted Appellant’s Motion to Dismiss because the State Police failed to comply with the court’s February 19, 2018, Order. Rule 11 of the Rhode Island Traffic Tribunal Rules of Procedure, governs pre-trial discovery motions:

“Upon motion of the defendant, the court may order the attorney for the state or prosecuting officer to permit the defendant to

inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the state . . . upon a showing of materiality of the preparation of the defendant's defense and that the request is reasonable." Traff. Trib. R. P. 11(b).

Moreover, Rule 11 also further provides:

"Failure to Comply. If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with this rule, the court may on motion order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances." Traff. Trib. R. P. 11(f)(2).

The record before this Panel reveals that Appellant filed a Motion for Discovery on November 30, 2017. In that Motion, Appellant requested documents related to the radar equipment used to obtain Appellant's vehicle's speed, procedure manuals for speeding violations, and a number of other miscellaneous documents. On December 7, 2017, Appellant filed a Motion to Compel a response to the discovery requests. Thereafter, on February 19, 2018, a Traffic Tribunal Magistrate entered an Order granting Appellant's Motion to Compel. The Appellant received a fax from the Rhode Island State Police on February 27, 2018 that stated: "The only discovery I have is a copy of the summons."

At trial, the Trial Magistrate asked Trooper Crowley if he had any of the requested documents in his possession. (Tr. at 5.) Trooper Crowley responded: "No . . . I have the citation and the citation report, as well as the original notice to appear." *Id.* The Trial Magistrate then offered to grant Appellant a leave of court "if [Appellant] need[ed] time to present a defense. . . ." *Id.* at 6. The Appellant denied the Trial Magistrate's offer to continue the matter, stating "we[] [will] continue with the trial, your honor." *Id.* at 7.

A plain reading of Rule 11(f)(2) indicates that when Appellant moved to dismiss the charged violation due to the State Police's failure to comply with the February 19, 2018 Order, the Trial Magistrate had three options: (1) grant a continuance, (2) prohibit the party from introducing in evidence the material not disclosed, or (3) enter such other order as it deems just under the circumstances." Traff. Trib. R. P. 11(f)(2). It is undisputed that Appellant did not receive the requested discovery materials as a result of the State Police's non-compliance with the discovery Order prior to trial.¹ However, the Trial Magistrate elected to grant Appellant a continuance so that Appellant could acquire the necessary materials to prepare his defense. (Tr. at 7.) Rule 11 does not require that the Trial Magistrate dismiss the charged violation based on a party's non-compliance with the discovery Order; rather, the Rule grants the Trial Magistrate the discretion to choose an appropriate remedy.

In light of the fact that Appellant decided to continue with the trial instead of accepting the Trial Magistrate's offer for a continuance, this Panel finds that the Trial Magistrate properly decided to deny Appellant's Motion to Dismiss. *See* Traff. Trib. R. P. 11(f)(2). Accordingly, the Trial Magistrate's decision is not "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." *See* § 31-41.1-8(f).

B

Emergency Circumstances

The Appellant further contends that the Trial Magistrate erred by denying his Motion to Dismiss due to emergency circumstances. Section 31-14-2, provides:

¹ This Panel pauses to note that in Appellant's memorandum offered in support of his appeal, Appellant refers to the online availability of information requested during discovery: "Per the RI State Police's website the manual with respect to the State Police states, in Title 270 Chapter 10 Section 1.5 X Reports" *See* Appellant's Notice of Appeal at 2.

“Where no special hazard exists that requires lower speed for compliance with § 31-14-1. . . the speed of any vehicle 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. . . .” Sec. 31-14-2(a).

Nowhere does the statute indicate that there is an emergency exception that permits a motorist to drive at a speed that is not reasonable or prudent. The Trial Magistrate considered the fact that Appellant was under emergency circumstances—traveling to be with his sister at the hospital. (Tr at 10-12.) However, the Trial Magistrate concluded that “its a speeding violation, whether he agrees or disagrees that he was speeding. I understand that there was a family emergency. . . but we have procedures to follow. . . .” *Id.* at 12.

Being that the statute does not create an exception for emergencies, and that the Trial Magistrate considered Appellant’s emergency circumstance in his decision, the issue turns on the Trial Magistrate’s weight of the evidence determination. Such determinations cannot be questioned by this Panel as it “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*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537).

For the reasons stated above, this Panel finds that there is legally competent evidence in the record to support the Trial Magistrate’s decision to deny Appellant’s Motion to Dismiss. Therefore, The Trial Magistrate’s decision is neither “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record,” nor, it is “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” *See* § 31-41.1-8(f).

C

Insufficient Evidence

Finally, Appellant argues that the Trial Magistrate erred by sustaining the charged violation without evidence showing that the radar unit had been calibrated. In *State v. Sprague*, the Supreme Court held that “the operational efficiency” of the radar device must be “tested within a reasonable time by an appropriate method.” 113 R.I. 351, 357, 322 A.2d 36, 39 (1974). The record must also contain evidence of the officer’s training and experience in the use of a radar device. *See Sprague*, 113 R.I. at 357, 322 A.2d at 40.

The record indicates that Trooper Crowley testified that he “tested and calibrated [the radar unit], both internally and externally, [] prior to and at the end of [his] shift.” (Tr. at 7.) He also testified: “The radar unit was found to be in good working order at the beginning and end of my shift. Furthermore, I was trained in the use of the radar in [] 2009 [at] [the] Rhode Island State Police Training Academy.” *Id.* at 8.

Therefore, this Panel finds that the evidence within the record satisfies the requirements established in *Sprague*—that the radar was in proper working order, and that Trooper Crowley was trained to use the equipment. *See Sprague*, 113 R.I. at 357, 322 A.2d at 40. As this Panel found that Trooper Crowley’s testimony regarding the operation of the radar unit was admissible irrespective of the discovery violation, the Trial Magistrate’s decision was not “affected by error of law” or “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Sec. 31-41.1-8(f).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel determine that the Trial Judge’s decision is not “affected by error of law,” “clearly

erroneous in view of the reliable, probative, and substantial evidence on the whole record,” or “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” *See* § 31-41.1-8(f). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the adjudicated violation is sustained.

Magistrate Noonan, concurring: I concur in the Panel’s Decision and analysis, though I would have reached a different conclusion. This matter involves a clear and substantial violation of the discovery rules. As this Panel discussed above, when a party fails to comply with discovery, the court has the discretion to (1) grant a continuance, (2) prohibit the party from introducing in evidence the material not disclosed, or (3) enter such other order as it deems just under the circumstances. Traff. Trib. R. P. 11(f)(2).

Under the specific facts and circumstances of this case, I would have dismissed the charged violation due to the State Police’s blatant failure to comply with the discovery Order issued by a Rhode Island Traffic Tribunal Magistrate. Specifically, I believe that the response of the State Police—a one page document, which erroneously stated that the materials did not exist—was an egregious violation of discovery protocol that would make an order of dismissal just under the circumstances. Nevertheless, I agree with the other members of this Panel that the Trial Magistrate’s decision was within the scope of permissible remedies provided for by Rule 11 of our Rules of Procedure.

ENTERED:

Magistrate Joseph A. Abbate (Chair)

Judge Lillian M. Almeida

Magistrate William T. Noonan

DATE: _____