

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

C.A. No. T09-0012

FRANCISCO MELO

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on April 8, 2009—Judge Almeida (Chair, presiding) and Judge Parker and Magistrate DiSandro sitting—is Francisco Melo’s (Appellant) appeal from a decision of Magistrate Noonan, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.”¹ The Appellant was represented by counsel before this Panel.² Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On November 8, 2008, Trooper Daniel Hernandez (Trooper Hernandez) of the Rhode Island State Police charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.³

At trial, Trooper Hernandez testified that on the date in question, at approximately 7:15 p.m., he was on a fixed radar post on Route 295 in the vicinity of Exit 5. (Tr. at 1.) At this time, he observed a red Honda Odyssey “traveling faster than the normal flow of traffic.” *Id.* Trooper Hernandez fixed his radar unit on the vehicle and recorded its speed as 87 m.p.h. in a posted 65

¹ The Appellant was also charged with violating G.L. 1956 § 31-22-22, “Safety belt use.” While the trial magistrate sustained this charge following trial, it is not presently before this Panel on appeal.

² Counsel for Appellant did not personally appear before the members of this Panel. Rather, he relied on the arguments set forth in his “Reasons for Appeal.”

³ The Appellant, a non-English speaker, was provided with interpretive services at trial.

m.p.h. zone. (Tr. at 1-2.) Trooper Hernandez initiated a traffic stop of the vehicle in the vicinity of Exit 4 and issued the operator—identified at trial as Appellant—a citation. (Tr. at 2.)

Trooper Hernandez testified that his cruiser's radar unit had been calibrated internally and externally both before and after his assigned shift and was found to be in proper working order. (Tr. at 1.) He added that he had been trained to use radar units during his time at the Rhode Island Municipal Police Training Academy in 2004. Id.

On cross-examination by counsel for Appellant, Trooper Hernandez testified that his radar unit had not been calibrated using a moving object. (Tr. at 2.) He further testified that he did not receive additional training in the use of radar units following his time at the Municipal Academy in 2004. (Tr. at 3.)

Following the trial, the trial magistrate sustained the charged violation of § 31-14-2. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

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 magistrate's decision is affected by error of law. Specifically, Appellant contends that Trooper Hernandez's trial testimony fails to satisfy the prevailing standard for the admissibility of radar speed readings set forth in State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974). The Appellant maintains that the operational efficiency of Trooper Hernandez's radar unit was never conclusively established, as Trooper Hernandez indicated in his trial testimony that the radar unit had not been calibrated using a moving object. In addition, Appellant posits that Trooper Hernandez's testimony setting forth his training in the

use of radar units at the Municipal Academy in 2004 and his subsequent experience is not reasonable and sufficient proof of the accuracy of the radar unit used to obtain the speed of Appellant's vehicle, as Trooper Hernandez failed to indicate whether he was trained on that particular model of radar unit.

In Sprague, our Supreme Court held that a radar speed reading is admissible in evidence upon a showing that "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method," and "testimony setting forth [the officer's] training and experience in the use of a radar unit." Sprague, 113 R.I. at 357, 322 A.2d at 39-40. Although the language of Sprague is plain and clear on its face, Appellant would have this Panel read two additional requirements into the Court's decision: namely, that the operational efficiency of the radar unit was tested on a moving object and that the officer received professional training on the particular radar unit used to record the speed of the vehicle. We reject Appellant's argument. All that Sprague requires is that a law enforcement officer must set forth in his or her trial testimony that the unit has been calibrated "within a reasonable time and by an appropriate method" and that he or she possesses "training and experience in the use of a radar unit," and not the particular radar unit used to record the speed of a vehicle. Sprague, 113 R.I. at 357, 322 A.2d at 40. (Emphasis added.)

Having reviewed the evidentiary record in its entirety, the members of this Panel conclude that the trial magistrate did not err in applying the Sprague factors to the evidence before him. Here, the trial magistrate chose to credit Trooper Hernandez's testimony that he was trained in the use of radar units in 2004 and that the unit used to record the speed of Appellant's vehicle had been properly calibrated and found to be in proper working order. (Tr. at 1.) Accordingly, the members of this Panel are satisfied that the decision to sustain the charged

violation of § 31-14-2 is supported by legally competent evidence and is not otherwise affected by error of law.

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 is not clearly erroneous in light of the reliable, probative, and substantial record evidence or affected by other error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.