

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

KENTON SMITH

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**C.A. No. M17-0006
16407502498**

DECISION

PER CURIAM: Before this Panel on May 31, 2017—Magistrate Goulart (Chair), Magistrate Abbate, and Magistrate Kruse Weller, sitting—is Kenton Smith’s (Appellant) appeal from a decision of Judge Valentino Lombardi (Trial Judge) of the North Providence Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant filed his appeal *pro se*, but did not appear before this Panel for oral argument. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On November 8, 2016, while monitoring traffic from a fixed traffic post, Officer Keith Rowe (Officer Rowe) of the North Providence Police Department observed a vehicle traveling at a speed of thirty-five miles per hour in a twenty-five miles per hour speed zone. (Tr. at 3.) Officer Rowe identified Appellant as the driver of the vehicle and issued Appellant a citation for the above mentioned violation. *Id.* at 6-7.

The Appellant subsequently pled not guilty to the violation, and the matter proceeded to trial, on February 27, 2017. *Id.* at 1. Officer Rowe testified that on November 8, 2016, he was stationed at a fixed traffic post located “in the parking lot of Sheers Styles, the hair style place

right on the [P]rovidence line on Charles Street.” *Id.* at 4. Officer Rowe explained that while he was parked at that location, he “was operating a radar [unit]” to obtain the moving speed of passing vehicles. *Id.* During that time, Officer Rowe observed a black Lexus traveling at a registered radar unit speed of thirty-five miles per hour, which he obtained using the radar unit. *Id.* at 3. Officer Rowe stated that the area in which the vehicle was travelling was a posted twenty-five miles per hour zone. *Id.* After obtaining the vehicle’s speed, he conducted a motor vehicle stop and subsequently issued Appellant a citation for violating § 31-14-2. *Id.* at 5-6. Officer Rowe noted that during his interaction with Appellant, Appellant was irate and exited his vehicle twice, despite Officer Rowe’s instructions to remain inside the vehicle. *Id.* at 6, 12.

Officer Rowe went on to testify about his training and experience using a radar unit, stating that he had “been certified in radar use at the Rhode Island Police Academy.” *Id.* at 4. He indicated that the radar unit had been calibrated and tested for accuracy that day. *Id.* at 4, 9. Officer Rowe presented the radar unit’s certification as evidence, which the Trial Judge admitted. *Id.* at 5. Moreover, Officer Rowe added that he had personally tested the radar unit that day and attested to the fact that the radar unit was in “good working order.” *Id.*

During cross-examination, Appellant questioned Officer Rowe about the location of the traffic stop; specifically, whether Officer Rowe stopped Appellant’s vehicle at the address provided on the summons, 20 Hurdis Street. *Id.* at 8. Officer Rowe confirmed that the stop occurred at that address. *Id.* at 8-9. The Appellant also inquired about the possibility that the radar unit registered an inaccurate speed. *Id.* at 10. Officer Rowe responded that “anything is possible but [the radar unit] was tested [that day] and [he] also estimated [Appellant] to be going 35 miles [per] hour” based on the training he received at the Rhode Island Municipal Academy. *Id.* Officer Rowe again indicated that the radar unit had been calibrated within the past six

months, tested for accuracy that day, and that it had shown no indication of failure or inaccuracy. *Id.* at 11.

The Appellant also testified at trial. *Id.* at 18. During his testimony, Appellant stated that Officer Rowe pulled his vehicle over in the parking lot of an apartment complex located on Josephine Street, not at 20 Hurdis Street. *Id.* Officer Rowe stated that Appellant's assertion was correct, stating that he made an error while filling out the citation. *Id.* at 20-21. The Appellant also refuted Officer Rowe's testimony indicating that Appellant was irate during their interaction. *Id.* at 19.

After hearing the testimony of both witnesses, the Trial Judge stated his findings of fact. *Id.* at 27. The Trial Judge found that "there [was] no evidence that the [radar unit] was not in good working order and not operating correctly and not operated correctly by Officer Rowe." *Id.* He added that "with regard to the mistake in the address . . . based upon the Rhode Island case law, it's not a fatal mistake and it's only a nonmaterial fact" that does not amount to a violation of due process. *Id.* Based on his findings, the Trial Judge concluded that "for [those] reasons, I find [Appellant] guilty of the charge of speeding." *Id.*

The Appellant timely filed an appeal. 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 asserts that the Trial Judge's decision was made “[i]n violation of constitutional or statutory provisions;” “[a]ffected by . . . error of law;” and “[c]learly erroneous

in view of the reliable, probative, and substantial evidence on the whole record.”¹ Sec. 31-41.1-8(f). Specifically, Appellant challenges the accuracy of the speed registered by the radar unit, and further argues that the summons violated his due process rights by incorrectly identifying the location of the traffic stop. *See* Appellant’s Notice of Appeal at 2.

A

The Speeding Charge

The Appellant argues that the Trial Judge’s decision is clearly erroneous in light of the fact that the radar unit used by Officer Rowe could have malfunctioned when it registered the speed of Appellant’s vehicle. *See* Appellant’s Notice of Appeal at 2. Our Supreme Court has held that a radar speed reading is admissible at trial upon a showing of two preliminary requirements: (1) “[T]he operational efficiency of the radar unit was tested within a reasonable time by an appropriate method,” and (2) “testimony setting forth [the Officer’s] training and experience in the use of a radar unit.” *State v. Sprague*, 113 R.I. 351, 355-357, 322 A.2d 36, 39-40 (R.I. 1974). If both preliminary requirements are satisfied, then testimony regarding the speed of a vehicle, obtained by a radar unit, is admissible. *Id.*

At trial, Officer Rowe testified to the “operational efficiency” of the radar unit that he used to determine the speed of Appellant’s vehicle. (Tr. at 4-5.) Officer Rowe stated that the radar unit was calibrated within the past six months, and a radar certification sheet was submitted as evidence. *Id.* at 4-5. Officer Rowe also stated that he personally tested the radar unit for accuracy “at the beginning of [his] traffic post” on November 8, 2016. *Id.* at 11. Moreover,

¹ This Panel assesses each of Appellant’s arguments bearing in mind that Appellant did not appear for oral argument and that “[s]imply stating an issue for appellant review, without a meaningful discussion thereof or legal briefing of the issues, does not assist the court in focusing on the legal questions raised, and therefore constitutes a waiver of that issue.” *Wilkinson v. State Crime Lab. Comm’n*, 788 A.2d 1129, 1132 n.1 (R.I. 2002) (citations omitted).

Officer Rowe testified about his training and experience operating a radar unit, stating that he had “been certified in radar use at the Rhode Island Police Academy.” *Id.* at 4. In his decision, the Trial Judge accepted Officer Rowe’s testimony as his findings of fact. *Id.* at 27.

The Rhode Island Supreme Court has established 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 *Janes*, 586 A.2d at 537). Furthermore, as the members of this Panel did not have an opportunity to observe the live testimony of the witnesses, it would be impermissible to second-guess the trial judge’s impression as he was able to “appraise [each] witness[‘s] demeanor and to take into account other realities that cannot be grasped from a reading of a cold record.” *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (internal quotations omitted).

In light of record revealing that Officer Rowe testified to the operational efficiency of the radar unit and that he had training and experience using a radar unit, this Panel finds that the Trial Judge properly determined that Officer Rowe’s testimony met both prongs of the *Sprague* analysis. *See* Tr. at 4-5, 11, 27. As such, the evidence regarding the speed of Appellant’s vehicle was properly admitted. *See Sprague*, 113 R.I. at 357, 322 A.2d at 39-40. Additionally, this Panel will not disturb the Trial Judge’s credibility determinations or his assessment of the weight of the evidence in this case. *Link*, 633 A.2d at 1348.

Accordingly, based on a review of the record, this Panel is satisfied that the Trial Judge did not abuse his discretion, and that his decision to sustain the charged violation is “supported by legally competent evidence.” *Id.* (citing *Envtl. Scientific Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)).

B

Due Process

The Appellant also argues that the Trial Judge erred in finding that Appellant's due process rights were not violated as the citation issued indicated an incorrect address. *See* Appellant's Notice of Appeal at 2. Specifically, Appellant contends that the summons failed to provide him with proper notice. *Id.*

At trial, Officer Rowe testified that he believed he conducted the traffic stop at 20 Hurdis Street in North Providence. (Tr. at 5-6.) Not only did the citation state that the traffic stop occurred at that address, but it also indicated that Appellant resided there as well. *Id.* at 7-8. The Appellant clarified that he lived on Josephine Street, and that is where Officer Rowe conducted the motor vehicle stop. *Id.* at 20. Officer Rowe acknowledged that he had made an error with respect to the location. *Id.* at 20-21. Ultimately, the Trial Judge found that the defect in the summons was "not a fatal mistake" but only "a nonmaterial fact" and sustained the charged violation.² *Id.* at 27.

Rule 3 of the Rhode Island Traffic Tribunal Rules of Procedure clearly states that "[a] summons which provides the defendant and the court with adequate notice of the violation being charged shall be sufficient if the violation is charged by using the name given to the violation by statute." Traffic Trib. R. P. 3(d). The rule further states that "[a]n error or omission in the

² It appears that the Trial Judge relied on a previous Appeals Panel decision analyzing Rule 3 of the Rhode Island Traffic Tribunal Rules of Procedure in making his determination as to the effect of this error. *Town of Middletown v. McNulty*, C.A. No. M09-0025, Nov. 18, 2009, R.I. Traffic Trib. In that case, the Appeals Panel held that despite receiving a citation form not noting a speeding violation, the appellant was aware of the charges, and the omission "did not rise to the level of a due process violation or otherwise 'mislead the [the appellant] to his . . . prejudice.'" *McNulty*, C.A. No. M09-0025 10-11 (citing Traffic Trib. R. P. 3(d)).

summons shall not be grounds . . . for dismissal of the charged violation(s), or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.” *Id.*

In this case, the defect contained within in the summons merely misidentifies the address where the motor vehicle stop occurred. (Tr. at 19-20.) However, Officer Rowe provided Appellant with a copy of the summons during the traffic stop. *Id.* at 6. Additionally, the summons indicated the charged violation. *Id.*; *see also* Summons No. 16407502498.

Upon a review of the record, this Panel finds that Appellant was not “misled to his prejudice” as a result of the defect in the summons. The Appellant received accurate information regarding the charged violation and Appellant had proper notice of the charge against him since he received the summons during the traffic stop. It is clear that the Trial Judge heard the undisputed testimony regarding the error and properly decided that such an error did not prejudice Appellant. *Id.* at 27. Thus this Panel finds that the Trial Judge did not err in finding that the defect “did not mislead the defendant to his . . . prejudice” and, therefore, the Trial Judge’s decision did not violate Appellant’s right to due process. Sec. 31-41.1-8(f)(1); Traffic Trib. R. P. 3(d).

IV

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 made "[i]n violation of constitutional or statutory provisions;" "[a]ffected by . . . error of law;" or "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Sec. 31-41.1-8(f)(1); (4)-(5). The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Magistrate Joseph A. Abbate

Magistrate Erika Kruse Weller

DATE: _____