

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

v.

:

C.A. No. M19-0005

:

18408508261

:

NILDO-ELESIO ANDRADE

:

DECISION

PER CURIAM: Before this Panel on May 29, 2019—Magistrate Noonan (Chair), Administrative Magistrate Abbate, and Magistrate Goulart, sitting—is Nildo-Elesio Andrade’s (Appellant) appeal from a decision of Judge Jack T. Gannon (Trial Judge) of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On November 23, 2018, Detective Letourneau of the Pawtucket Police Department observed a blue vehicle traveling above the posted speed limit. (Tr. at 1.) Detective Letourneau conducted a traffic stop of the vehicle and identified the operator as Appellant. *Id.* Thereafter, Detective Letourneau issued Appellant a citation for the above-referenced violation. *Id.*; *see* Summons No. 18408508261.

Appellant disputed the charged violation, and the matter proceeded to trial on February 1, 2019. (Tr. at 1.) Detective Letourneau testified first at trial. *Id.* As an initial matter, Detective Letourneau testified that he has been a Pawtucket Police Officer for six years and previously

trained at the Rhode Island Police Training Academy. *Id.* During his training, Detective Letourneau “trained on the proper use and calibration of a Laser Unit.” *Id.* Detective Letourneau further testified that on November 23, 2018, he was “working a stationary post . . . in which [he] specifically looked for traffic enforcement as opposed to being on patrol.” *Id.* Prior to this shift on that same day, Detective Letourneau “calibrated the Unit and received a reading of zero which told [him] that the Unit was working properly.” *Id.* While stationed at this post, Detective Letourneau observed Appellant operating a blue vehicle “traveling at a speed of 47 in a 25 [miles per hour zone]” and subsequently issued Appellant a citation. *Id.*

Next, Appellant testified on his behalf at trial. *Id.* at 2. Appellant testified that on the day of the violation, he was driving in the right-hand lane behind a flatbed truck. *Id.* When Appellant observed the cars being transported on the flatbed truck “shaking,” he decided to pass the truck and “moved over to the left, went past the truck, then came back” to the right-hand lane. *Id.* Shortly thereafter, Detective Letourneau stopped Appellant’s vehicle. *Id.*

The Trial Judge inferred from Appellant’s testimony that Appellant’s “side of the story is that [Detective Letourneau] may have had an opportunity to get the reading from the wrong car.”

Id. In response, Detective Letourneau further explained how the radar unit operates:

“[W]hen you point the laser it goes directly at the license plate of the car at which I’m pointing. Soon as I pull the trigger the reading comes up, it’s not like radar cone where you have a bunch of cars and I have to figure out which one is going the fastest and that reading goes to that car. With respect to your concerns I can assure you that if I pulled you over It’s [sic] because I shot that dot at your license plate.”

Id. Based on the testimony presented at trial, the Trial Judge found that Detective Letourneau pointed the laser unit at Appellant’s vehicle, which was traveling in excess of the posted limit.

Id. at 3. In doing so, the Trial Judge noted, “Science of the laser has been accepted by all courts

of State of Rhode Island as to excess speed[.]” Therefore, the Trial Judge sustained the charged violation. *Id.*

Aggrieved by the Trial Judge’s decision, 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 sustaining the charged violation is "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record" and "[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 31-41.1-8(f)(5)-(6). Specifically, Appellant avers that Detective Letourneau may have received the laser reading from a different vehicle, but mistakenly identified Appellant's vehicle as the speeding vehicle. In support of this argument, Appellant contends that there is no evidence in the record demonstrating that Detective Letourneau obtained the laser reading from Appellant's vehicle.

For a radar unit reading to be admissible at trial, the testifying officer must satisfy two preliminary requirements: (1) "the 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, 355-57, 322 A.2d 36, 39-40 (1974). Moreover, "radar speed meter readings are admissible without prior showing of the reliability of the [device] that was used to test the accuracy of the radar unit." *Id.* at 357, 40.

Here, the evidence in the record establishes that both *Sprague* requirements were satisfied at trial. First, Detective Letourneau testified at trial to the “operational efficiency” of the laser unit he used to determine Appellant’s speed. This testimony established that the laser unit was “tested within a reasonable time and by an appropriate method” because Detective Letourneau calibrated the laser unit against “a stationary object in order to get a reading of zero prior to, or consistent with” his shift to ensure that the laser unit was working properly. Tr. at 1; *Sprague*, 113 R.I. at 355-57, 322 A.2d at 39-40. Additionally, Detective Letourneau’s testimony that he was “trained on the proper use and calibration of a [l]aser [u]nit” at the Rhode Island Police Training Academy satisfied the second *Sprague* requirement. *Id.*

However, Appellant does not necessarily question the accuracy of the speed registered by laser unit itself; rather, Appellant maintains that this laser reading did not come from his vehicle. The Appellant pointed to Detective Letourneau’s trial testimony that the speed was obtained from a Hyundai as evidence that Detective Letourneau mistakenly charged Appellant with the violation because Appellant drives a Kia. (Tr. at 1.) Appellant’s reliance on this portion of testimony is misplaced as Detective Letourneau then corrected himself, stating that the vehicle was a Kia and that the slipup stemmed from the fact the Summons listed “Hyundai Leasing Company” as the owner of Appellant’s vehicle. *Id.*

Furthermore, Detective Letourneau addressed Appellant’s concern that he obtained the laser reading from a different vehicle at trial. *Id.* at 2. Detective Letourneau testified that the laser unit derives a reading “directly” from the “license plate of the car at which I’m pointing” unlike a radar unit, which requires the officer to determine which vehicle is traveling the fastest after obtaining a speed. *Id.* Thus, Detective Letourneau confirmed, “I can assure you that if I pulled you over It’s [sic] because I shot that dot at your license plate.” *Id.* Therefore, there is

legally competent evidence demonstrating that Detective Letourneau obtained the laser unit speed reading from Appellant's vehicle.

Based on a review of the record, this Panel is satisfied that the evidence regarding the speed of Appellant's vehicle was properly admitted because Detective Letourneau's testimony fulfilled both prongs of the *Sprague* analysis. *See* Tr. at 1; *Sprague*, 113 R.I. at 357, 322 A.2d at 39-40. This Panel is also satisfied that the evidence presented at trial establishes that Detective Letourneau obtained the laser reading of forty-seven miles per hour in a twenty-five miles per hour speed zone from Appellant's vehicle. *See* Tr. at 2. Therefore, we 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, this Panel concludes that the Trial Judge's decision sustaining the charged violation was neither clearly erroneous nor arbitrary and capricious or an abuse of discretion. *See* § 31-41.1-8(f)(5)-(6).

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 neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *See* § 31-41.1-8(f)(5)-(6). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate William T. Noonan (Chair)

Administrative Magistrate Joseph A. Abbate

Magistrate Alan R. Goulart

DATE: _____