

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

RICHARD FERREIRA

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C.A. No. T10-0021

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
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DECISION

PER CURIAM: Before this Panel on June 16, 2010—Magistrate DiSandro (Chair, presiding) and Judge Parker and Magistrate Cruise, sitting—is Richard Ferreira’s (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On December 14, 2009, Trooper Ruth Hernandez (Trooper Hernandez) of the Rhode Island State Police recorded Appellant’s vehicle traveling faster than the legal speed limit. Subsequently, the Trooper charged Appellant with violating the aforementioned motor vehicle offense. Appellant contested the charge, and the matter proceeded to trial.

During the trial, Trooper Hernandez testified that on the date in question, she was at a fixed radar post on Route 6 and Atwood Avenue. (Tr. at 4.) Prior to setting her radar post, Trooper Hernandez testified that she “calibrated [her] radar both internally and externally and it was found to be in good working order.” Id. Trooper Hernandez was taught to use the radar unit while training at the Rhode Island Police Academy in October 2009. Id.

The Trooper continued to explain that, at approximately 3:48 p.m., she observed a green Ford pickup truck bearing Rhode Island commercial registration number 69815 driving above the posted speed limit. She “obtained an initial radar speed [reading] of seventy-four (74) miles per hour” and she was also able “to lock the radar as the vehicle slowed to a steady and constant speed of sixty (60) miles an hour.” (Tr. at 4.) Subsequently, Trooper Hernandez testified that she initiated a motor vehicle stop of the speeding truck. The driver of the subject vehicle “was identified through his Rhode Island operator’s license as Richard A. Ferreira[,]” the Appellant. (Tr. at 5.) At this point, the Trooper issued Appellant a citation for operating a motor vehicle at sixty (60) miles per hour (mph) in a posted fifty (50) mph speed zone. Id.

During cross-examination by counsel for Appellant, Trooper Hernandez again explained that she was trained to use the particular radar unit during her time at the Rhode Island State Police Academy. (Tr. at 6.) The Trooper also admitted that she had only been a State Trooper for a short time before issuing Appellant this citation; however, during that time she had made twenty to forty motor vehicle stops using this particular radar unit. Id. Additionally, Trooper Hernandez explained that, although other vehicles on Route 6 were driving nearby Appellant’s vehicle, these vehicles did not affect the radar speed reading of Appellant’s truck because Appellant’s “vehicle was the fastest moving vehicle out of all the vehicles traveling” and “as [Appellant] approached the [Trooper’s] cruiser, cruiser 26, [she] could see . . . that he was slowing down.” (Tr. at 9-10.) Although the Trooper stated that it was possible that the other vehicles could have affected the beam of the radar, she noted that “his vehicle was . . . the fastest moving vehicle[,] . . . the radar showed 74 miles an hour and his was the . . . fastest moving vehicle, then that’s pretty much the fastest speed it picked up.” (Tr. at 10.)

Next, the trial magistrate asked the Trooper to clarify that the radar unit was pointed toward Appellant's vehicle when the speed of seventy-four (74) miles per hour registered on the device. Trooper Hernandez responded in the affirmative and further specified that she was certain that the unit registered the speed of Appellant's vehicle. (Tr. at 11.) Trooper Hernandez continued to explain that "the [Appellant's] vehicle, the truck[] . . . [wa]s in a group of other vehicles and the radar . . . pick[ed] up the fastest moving object . . . [at] 74 miles an hour. His vehicle was surpassing [the other] moving vehicles . . . ." (Tr. at 12.) The Trooper made clear that the radar unit picks up the fastest of the moving vehicles and locks in at that speed. Additionally, Trooper Hernandez testified that she visually observed that the Appellant's vehicle was the fastest moving truck on Route 6. (Tr. at 12-13.)

At this point, counsel for Appellant made a motion to dismiss the violation. According to Appellant, one of the vehicles driving next to Appellant's truck affected the beam of the radar unit and moreover, the radar unit only registered the speed of Appellant's vehicle "for a second." (Tr. at 13-14.) Appellant posited that expert testimony was needed to show exactly how the radar unit identified and registered the speed of the moving vehicle. (Tr. at 14.) The trial magistrate denied Appellant's motion. The trial magistrate explained that he was satisfied based on the testimony of Trooper Hernandez that the vehicle operated by Appellant was traveling faster than the posted speed limit. According to the trial magistrate, the length of time that the radar unit was locked onto the moving vehicle was "really of no moment to me." (Tr. at 15.)

Subsequent to the denial of Appellant's motion, the trial magistrate heard from the Appellant. Appellant testified that, on the date in question, he was traveling back to work in Providence and he "felt like [he] was flowing with the traffic." (Tr. at 16.) Appellant did not

think he was speeding, “but [he] kind of wasn’t paying attention to the odometer, [he] was just flowing with the cars on the side of [him]” when he was pulled over by Trooper Hernandez. Id.

The trial magistrate accepted Trooper Hernandez’s testimony as truthful and credible in this matter. Additionally, the trial magistrate found that the State satisfied the requirements of State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974) to sustain the violation of §31-14-2. Accordingly, the trial magistrate sustained the charged violation. 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 was affected by error of law and characterized by abuse of discretion. Specifically, Appellant contends that the trial magistrate chose to credit Trooper Hernandez’s trial testimony—that the radar unit recorded and she observed Appellant’s vehicle operating in excess of the posted speed limit—over the testimony of Appellant. Additionally, Appellant asserts that the Trooper’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).

In Link, our Supreme Court made clear that this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing magistrate concerning the weight of the evidence on questions of fact.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of Trooper Hernandez or Appellant, it would be impermissible to second-guess the trial magistrate’s “impressions as he . . . observe[d]

[Trooper Hernandez and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206. After listening to the trial testimony, the trial magistrate determined that the radar speed reading of Appellant’s vehicle, and the testimony of the Trooper, were more credible than the testimony of Appellant. Specifically, the trial magistrate stated that he “accepted Trooper Hernandez’s testimony as truthful in this matter and credible.” (Tr. at 18.) Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate did not abuse his discretion and his decision to sustain the charged violation is supported by legally competent evidence.

Furthermore, Appellant argues that the trial magistrate should have deemed the radar speed reading inadmissible because the Trooper did not provide clear and convincing evidence that the radar beam picked up the speed of Appellant’s vehicle when other vehicles were operating too close to the subject vehicle to discern which was the speeding vehicle. Appellant’s argument rests on his belief that Trooper Hernandez did not submit adequate evidence that he was operating a speeding vehicle on the date of the charged violation. However, this Panel is satisfied that the record reflects that Trooper Hernandez’s testimony satisfies the prevailing standard for admissibility of radar speed readings set forth in State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974).

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 Trooper’s] training and experience in the use of a radar unit.” Sprague, 113 R.I. at 357, 322 A.2d at 39-40. In the present case, based on the “credible and honest” testimony of Trooper Hernandez, the trial

magistrate found that she had received the necessary training in the use of radar units, specifically the particular unit used on the date in question, while she was at the Rhode Island State Police Academy in 2009. (Tr. at 5, 16.) Additionally, the trial magistrate was able to rely on the testimony from Trooper Hernandez that on the date in question, the radar device was properly calibrated both internally and externally before she started her shift. Thus there is reliable, probative, and substantial evidence on the record to satisfy the Sprague factors. Accordingly, the members of this Panel conclude that the trial magistrate's decision to sustain the charged violation of § 31-14-2—based on Trooper Hernandez's radar speed reading and the testimony of the Trooper—is unaffected by error of law and does not constitute an abuse of discretion.

**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 was not an abuse of discretion 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 is sustained.

ENTERED:

7/29/2010