

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. T13-0006
12001544912**

WOLFHARD ANIM

DECISION

PER CURIAM: Before this Panel on April 17, 2013—Chief Magistrate Guglietta (Chair, presiding), Judge Parker, and Magistrate Noonan sitting—is Wolfhard Anim’s (Appellant) appeal from a decision of Magistrate DiSandro, sustaining the charged violation of G.L. 1956 § 31-14-2(a), “Prima facie limits.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 23, 2012, Trooper Brandon Palmer (“Trooper Palmer” or “Trooper”) of the State of Rhode Island Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on January 29, 2013.

Shortly before the stop, Trooper Palmer was at a fixed traffic post on Route 95 in the town of Richmond at the Baker Pines official turn-around. (Tr. at 1.) The Trooper’s handheld radar unit determined that Appellant’s vehicle was traveling eighty-three (83) miles per hour (mph) in a sixty-five (65) mph area. Id. The Trooper noted that the handheld radar unit was calibrated before and after his shift on the day of the stop and the Officer had received training in the use of radar units at the Rhode Island Municipal Police Academy. (Tr. at 1-3.)

Appellant then testified on his own behalf, stating that he was traveling southbound on I-95 in a safe manner at a reasonable speed. (Tr. at 9.) Appellant went on to testify that he moved into the far left lane of the highway after a vehicle in front of him continued to brake abruptly. (Tr. at 10.) As he entered into the left lane of travel, he noticed flashing lights from the vehicle of the Trooper, urging Appellant to pull over. Id. Appellant concluded the trial by testifying that upon being pulled over by the Trooper, Appellant told the Trooper that he was not speeding and then asked the Trooper not to issue the ticket. Id.

After both parties were given an opportunity to present evidence, the trial judge made extensive findings of fact. (Tr. at 11-14.) Ultimately, the trial judge determined that the Trooper was a credible witness. At the close of his bench decision, the trial judge sustained the violation. (Tr. at 14.) Aggrieved by the trial judge's decision, the Appellant timely filed this appeal.

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 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." Link, 633 A.2d at 1348 (citing Envtl. 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 judge's decision was not supported by the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant maintains that the State failed to meet its burden of proof since the Trooper lacked factual knowledge of the events that led to the Trooper's ultimate determination that a moving violation had occurred. In particular, Appellant points to the fact that the Trooper could not recall the number of vehicles in Appellant's vicinity at the time of observing the violation.

In Sprague, our Supreme Court held that a radar speed reading is admissible into evidence upon a showing that "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method," and upon "testimony setting forth [the Patrolman's]

training and experience in the use of a radar unit.” State v. Sprague, 113 R.I. 351, 357, 322 A.2d 36, 39-40 (1974). Here, the requirements of Sprague were properly set forth during Appellant’s trial. The Trooper explained that the radar unit had been calibrated both internally and externally, and he testified that he possessed “training and experience in the use of a radar unit.” Sprague, 113 R.I. at 357, 322 A.2d at 40.

Having reviewed the record in its entirety, it is clear that there was sufficient evidence presented by the Trooper to satisfy the standards set forth by our Supreme Court in Sprague to properly introduce evidence of the speed of Appellant’s vehicle. The trial judge specifically found in rendering his decision that “[Trooper Palmer] targeted [Appellant’s] vehicle with the radar, irrespective of [the Trooper’s] inability to recall any of the vehicles in the immediate area. He is adamant that it was in fact [Appellant’s] vehicle that he had visual on at the same time in seconds locking in onto (sic) the radar.” (Tr. at 13-14.) Based on the testimony provided by the Trooper to the trial judge, the members of this Panel find that the trial judge’s decision is not erroneous in view of reliable, probative, and substantial evidence on the record. Moreover, the trial judge’s decision to reject Appellant’s argument that he was not speeding was a question of fact that this Panel is without authority to disturb because the trial judge’s decision was supported by competent evidence. See Link, 633 A.2d at 1348.

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 supported by the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Chief Magistrate William R. Guglietta (Chair)

Judge Edward C. Parker

Magistrate William T. Noonan

DATE: _____