STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T13-0069**
	:	**13001514522**
JEFFREY BABB	**:**	

DECISION

PER CURIAM: Before this Panel on November 13, 2013—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and, Magistrate Noonan, sitting—is Jeffrey Babb's (Appellant) appeal from a decision of Judge Parker (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." Appellant appeared before this Panel represented by Counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On May 11, 2013, Trooper Sean McCarthy of the Rhode Island State Police (Trooper) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on October 21, 2013.

At trial, the Trooper testified that on May 11, 2013, at approximately 4:20 pm, he was at a fixed laser post on route 295 South in the Town of Johnston. (Tr. at 1.) The Trooper indicated that at that time, he observed a vehicle traveling southbound that appeared to be traveling faster than the posted sixty-five (65) mile per hour speed limit. Id. The Trooper also testified that he received a primary laser reading of the Appellant's motor vehicle traveling eighty-eight (88) miles per hour within that sixty-five (65) mile per hour zone. Id. In addition, the Trooper

testified that he took a secondary reading of seventy-five (75) miles per hour within that sixty-five (65) mile per hour zone as the Appellant's vehicle moved closer to his position.

During his testimony, the Trooper testified that he had completed training for the use of the laser system in the Rhode Island Municipal Police Academy in the year 2000. Id. Moreover, the Trooper testified that the laser system he utilized had been calibrated prior to use that day. Id. The Trooper further indicated that there were no other vehicles between the laser system and the front bumper of Appellant's vehicle. Id. Subsequently, the trooper identified Appellant in open court, and testified that there was no question that Appellant was the operator of the vehicle. (Tr. at 2.)

Thereafter, Appellant admitted that he was driving over the speed limit when he was stopped by the Trooper. (Tr. at 6.) At the close of the evidence, the trial judge issued his decision sustaining the charged violation. (Tr. at 6-7.) Specifically, the trial judge noted that the Trooper's testimony was credible, that the Trooper had been trained in the use of the laser system, and that the Trooper testified that the laser unit had been calibrated prior to its use that day. Id.

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 contends that the trial judge's decision was clearly erroneous in light of the reliable, probative, and substantial evidence of record. Appellant also asserts that the trial judge's decision was affected by error of law. Specifically, Appellant contends that the Trooper's testimony regarding calibration of the laser system was insufficient. Moreover, Appellant avers that Appellant was not adequately identified at trial.

I. Calibration

Appellant contends that in order for the State of Rhode Island to prove each element of the charge by clear and convincing evidence, the trooper would have had to have testified that the laser system was calibrated both before and after the traffic stop at issue in the instant matter.

For this proposition, Appellant relies on State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974). In Sprague, our Supreme Court held that for speedometer or radar evidence to support a charge of speeding, "the operational efficiency" of the device must be "tested within a reasonable time by an appropriate method," and the record must contain "testimony setting forth the [Trooper's] training and experience" in the use of the device. 113 R.I. at 357, 322 A.2d at 39-40. Reading Sprague to suggest a further requirement; namely, that "the operational efficiency" of the device be tested both before and after the issuance of a speeding citation, is contrived, cannot be exacted from the text, and adds language to the decision.

The requirements of Sprague were properly set forth during the Appellant's trial. (Tr. at 1.) The Trooper testified that he had completed training for the use of laser systems at the Rhode Island Municipal Police Academy in 2000. Id. In addition, the Trooper testified that the laser system he utilized had been calibrated prior to use that day. Id. Moreover, the Trooper indicated that there were no other vehicles between the laser system and the front bumper of Appellant's vehicle. Id. Therefore, this Panel finds that the trial judge's decision was consistent with our Supreme Court's opinion in Sprague and not affected by error of law.

II. Identification

Appellant additionally disputes the Trooper's in-court identification of the Appellant. Specifically, Appellant avers that the Trooper identified the operator of the vehicle as Alan Babb,

and as a result all of Trooper's testimony was offered against an individual that was not charged with the violation.

During the trial, the Trooper testified that "[w]hen the vehicle was stopped, the owner, or operator that day was identified as Alan Babb who is here before us . . . ." (Tr. at 1.) In the case at bar, the Appellant's name is Jeffrey Babb. Appellant places too much emphasis on the Trooper's inaccuracy because "in-court identification by a witness is not necessarily required . . . [because] [i]dentification can be inferred from all the facts and circumstances that are in evidence." United States v. Ayala, 289 F.3d 16, 25-26 (1st Cir. 2002) (citing United States v. Alexander, 48 F.3d 1477, 1490 (9th Cir.1995) (citations omitted) (quoting United States v. Weed, 689 F.2d 752, 754 (7th Cir.1982))); see also Town of North Kingstown v. Philip Dey, C.A. No. T13-0008, September 10, 2013, R.I. Traffic Trib. (finding that in-court identification can be inferred from all the facts and circumstances presented to the finder of fact).

In the instant matter, the trial judge was in a position to make the necessary identification finding based on the citation being issued to Jeffrey Babb and Jeffrey Babb's signature appearing on the citation. See Ayala, 289 F.3d at 25-6. In addition, the trial judge was also able to consider that the Appellant's driver's license number was recorded on that citation. See id.

Moreover, Appellant admitted he was the operator of the vehicle on the night in question. (Tr. at 2.) Specifically, Appellant states "my name is Jeff Babb, so I was the one was operating the car, not my father . . . ." Id. Appellant cured any defect in the Trooper's identification testimony by testifying that he was the operator of the vehicle on May 11, 2013, at approximately 4:20 pm.

"A judicial admission is a deliberate, clear, unequivocal statement of a party about a concrete fact within that party's knowledge[,]" which is "considered conclusive and binding as to

the party making [it]." 29A Am.Jur.2d Evidence § 783 at 48, 49 (2008); see also Black's Law Dictionary 54 (9th ed. 2009) (noting that a judicial admission "relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing it"). In other words, "[a] judicially admitted fact is conclusively established." Crafford Precision Products Co. v. Equilasers, Inc., 850 A.2d 958, 963 (R.I. 2004) (quoting DiLuglio v. Providence Auto Body, Inc., 755 A.2d 757, 767 (R.I. 2000)).

However, the record of Appellant's trial is devoid of any "specific findings of fact and determin[ation] [that] the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard." See § 31-27-24. The statute requires a trial judge or magistrate to make specific findings of fact relating to the motorist's risk of being a substantial traffic safety hazard. See id. Finally, while the Trooper did misspeak by identifying the operator as Alan Babb, he did identify Appellant in open court and testify that there was no question Appellant was the operator of the vehicle. See Equilasers, Inc., 850 A.2d at 963. Therefore, for all these reasons, this Panel finds that the trial judge's decision was supported by reliable, probative, and substantial evidence of record.

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 of record. This Panel is also satisfied that the trial judge did not abuse his discretion and his decision was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

_____
Judge Lillian M. Almeida (Chair)

_____
Magistrate William T. Noonan

_____
Magistrate Domenic A. DiSandro, III

DATE: _____