

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

TAYLA NORTHUP

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**C.A. No. T19-0016
19504500624**

DECISION

PER CURIAM: Before this Panel on October 23, 2019—Magistrate Noonan (Chair), Magistrate DiChiro, and Associate Judge Parker, sitting—is Tayla Northup’s (Appellant) appeal from a decision of Chief Magistrate DiSandro (Trial Judge) of the Rhode Island Traffic Tribunal, 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.

I

Facts and Travel

On May 25, 2019, Officer Amanda Burbank (Officer Burbank) of the Westerly Police Department observed a vehicle traveling at a high rate of speed. Tr. at 8:14-17, Aug. 6, 2019. Officer Burbank conducted a motor vehicle stop and identified the driver of the vehicle as Appellant. *Id.* at 8:19-22. Officer Burbank then issued Appellant a citation for the above-referenced violation. *Id.* at 9:1; *see also* Summons No. 19504500624.

Appellant contested the charged violation, and the matter proceeded to trial on August 6, 2019. Tr. at 1, Aug. 6, 2019. Officer Burbank testified first. *Id.* at 8:14. Officer Burbank testified that while traveling on Post Road, she observed a vehicle traveling in the opposite lane of travel at a high rate of speed. *Id.* at 8:14-17. Officer Burbank testified that her radar

displayed that the vehicle was traveling at a speed of seventy miles per hour in a fifty miles per hour speed zone. *Id.* at 8:17-19. Officer Burbank testified that she turned around to catch up to the vehicle, conducted a motor vehicle stop, and issued Appellant a citation for exceeding the posted speed limit. *Id.* at 8:19-9:1. Officer Burbank then provided the court with a radar calibration sheet, which indicated the intervals at which the radar device used during the stop had been tested and certified that the device was in working order. *Id.* 9:4-14. Additionally, Officer Burbank testified she believed the radar device was calibrated every February. *Id.* 9:9-10.

After Officer Burbank provided the court with the radar calibration sheet, the Trial Judge asked Officer Burbank, “Did you go to school?” *Id.* at 9:15. Appellant’s counsel objected to the Trial Judge’s question. *Id.* at 9:16-20. In response, the Trial Judge stated that he is permitted to ask clarifying questions, but after further argument from Appellant’s counsel, the Trial Judge posed a more general question to Officer Burbank, asking whether she wished to provide anything further for the record. *Id.* at 10:2-4. Officer Burbank responded that she was trained in both radar laser and estimating speeds. *Id.* at 10:5-7.

After briefly cross-examining Officer Burbank, Appellant’s counsel moved to dismiss the charged violation. *Id.* at 12:14-15. In support of Appellant’s motion to dismiss, counsel argued that although Officer Burbank testified that the radar device was calibrated in February of 2019, she did not testify as to whether the device was accurate. *Id.* at 12:18-13:19. Additionally, Appellant reiterated his objection to the Trial Judge’s question posed to Officer Burbank regarding whether she “[went] to school.” *Id.* at 14:7-12; *see id* at 9:15. After hearing counsel’s arguments, the Trial Judge denied Appellant’s motion to dismiss. *Id.* at 13:20-21.

Next, Appellant testified. *Id.* at 14:17. Appellant testified that other vehicles were travelling near her vehicle prior to being stopped by Officer Burbank. *Id.* at 14:20-23; 17:2-7.

Appellant testified that she did not recall witnessing Officer Burbank travelling in the opposite direction prior to her being pulled over. *Id.* at 14:24-15:2. Furthermore, Appellant testified that she was traveling with the flow of traffic and denied exceeding the posted speed limit. *Id.* at 17:10-20.

After testimony concluded, Appellant's counsel provided a closing argument. *Id.* at 18:5. The crux of Appellant's argument was that Officer Burbank may have been mistaken in pulling over Appellant's vehicle due to the presence of several other vehicles around Appellant's, and due to the amount of time between when Officer Burbank first observed Appellant's vehicle and when she actually conducted the motor vehicle stop. *Id.* at 18:5-19:17. After closing argument concluded, the Trial Judge rendered his decision. *Id.* at 19:20. The Trial Judge accepted Officer Burbank's testimony regarding Appellant's charged violation by clear and convincing evidence. *Id.* at 22:18-19. Accordingly, the Trial Judge sustained the charged violation against Appellant, imposed a statutory fine of \$205, and suspended Appellant's license for a period of ninety (90) days. *Id.* at 22:20-23:22.

Appellant subsequently filed a timely appeal of the Trial Judge's decision. *See* Appellant's Notice of Appeal. Forthwith is the 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 relevant 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 prejudiced 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 Company 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 *Environmental Science Corporation 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.” Sec. 31-41.1-8(f)(5). Specifically, Appellant argues: (1) Officer Burbank did not satisfy the burden of proof by failing to set forth the requisite elements of the charged violation in her testimony, and (2) the Trial Judge’s question regarding her training was improper, as it assisted Officer Burbank in satisfying a requisite element of the charged violation.

In order 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).

Here, the requirements of *Sprague* were not properly set forth during Appellant’s trial. Officer Burbank satisfied the first requirement of *Sprague* by providing the Trial Judge with a radar calibration sheet and testifying as to when she believed the radar device was calibrated. However, Officer Burbank failed to satisfy the second requirement of *Sprague* because she did not state that she possessed “training and experience in the use of a radar unit” during her initial testimony. *Sprague*, 113 R.I. at 357, 322 A.2d at 40. On the contrary, Officer Burbank testified as to her training and experience only after the Trial Judge asked whether she “[went] to school.” Tr. at 9:15, Aug. 6, 2019. The Rhode Island Traffic Tribunal Rules of Procedure dictate that “[t]he burden of proof shall be on the prosecution to a standard of clear and convincing evidence.” Traffic Trib. R. P. 17(a). Consequently, Officer Burbank was required to satisfy this burden by setting forth both requirements of *Sprague* through her own initial testimony—not in response to the Trial Judge’s questioning. *See Sprague*, 113 R.I. at 355-57, 322 A.2d at 39-40; *see also* Traffic Trib. R. P. 17(a). Because Officer Burbank did not do so, the prosecution did not sustain its burden of proof in Appellant’s case.

Additionally, the question the Trial Judge posed to Officer Burbank exceeded the bounds set forth by the Rhode Island Supreme Court. Although Rhode Island Rule of Evidence 614(b) permits a court to interrogate witnesses, our Supreme Court has held that “the parameters of judicial interrogation are narrowly confined to clarification of justifiably confusing matters for the jury.” *State v. Nelson*, 982 A.2d 602, 617 (R.I. 2009); *see also* R.I. R. Evid. 614(b). Furthermore, the Supreme Court has long warned that a trial judge “should guard against even the appearance of changing his position from that of a judicial officer impartially presiding at the trial to that of a partisan advocate interested in establishing the position of either party” through his or her questioning. *State v. Amaral*, 47 R.I. 245, 250, 132 A. 547, 550 (1926); *see also State v. Figueras*, 644 A.2d 291, 293 (R.I. 1994). Here, although the Trial Judge did not preside over a jury trial in Appellant’s case, the question posed to Officer Burbank was nonetheless improper because it did not seek to clarify a point in the officer’s testimony that was confusing or unclear. *See Nelson*, 982 A.2d at 617. Instead, the Trial Judge’s question elicited a requisite element of the charged violation previously absent from Officer Burbank’s testimony—one that gave at least the appearance of partiality towards the prosecution and the impression that the Trial Judge sought to establish Officer Burbank’s position. *See Amaral*, 47 R.I. at 250, 132 A. at 550.

This decision should not be read as an extension of the requirements of *Sprague*—any such extension would be properly undertaken only by the Rhode Island Supreme Court. Furthermore, this Panel is mindful of the dangers of the unauthorized practice of law. Nonetheless, although we do not ask the police to function as attorneys, this Panel does expect police officers who appear before this Court to testify credibly and comprehensively to all requisite elements of a charged violation. In order to satisfy the burden of proof, it is the responsibility of a police officer to offer the requisite elements of a charged violation through his

or her own testimony; the requisite elements cannot be elicited by a trial judge's questioning.
See Traffic Trib. R. P. 17(a).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the prosecution did not meet its burden by clear and convincing evidence. The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED:

Magistrate William T. Noonan (Chair)

Magistrate Michael DiChiro

Associate Judge Edward C. Parker

DATE: _____