

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**TOWN OF BURRILLVILLE**

:

:

v.

:

**C.A. No. M13-0009**

:

**13416500276**

**VENUS A. LAROCHELLE**

:

**DECISION**

**PER CURIAM:** Before this Panel on October 30, 2013—Chief Magistrate Guglietta (Chair, presiding), Judge Parker, and Magistrate Abbate, sitting—is Venus Larochelle’s (Appellant) appeal from a decision made by Judge Carroll of the Burrillville Municipal Court (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On March 13, 2013, Officer Hughes (Officer) of the Burrillville Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on July 16, 2013.

At trial, the Officer testified that on March 13, 2013, at approximately 9:45 am, he was patrolling the 800 block of East Avenue in the Town of Burrillville. (Tr. at 10.) The Officer indicated that at that time, he observed Appellant’s vehicle traveling towards him, in a thirty (30) mile per hour zone, at a high rate of speed. (Tr. at 11.) The Officer further testified that the Appellant was exceeding the speed limit, that his radar unit determined the vehicle was traveling

fifty-one (51) miles per hour (mph)<sup>1</sup> and as a result he reversed his direction in order to pursue Appellant's vehicle and conduct a traffic stop. Id. At the conclusion of the stop, the Officer cited the operator for speeding. (Tr. at 11-12.)

At trial, the Officer identified as the operator. Id. The Officer also testified that his radar unit was properly calibrated before and after his shift, and that the Officer was trained in the use and operation of radar units at the Rhode Island Municipal Police Academy. Id. After this testimony, the Officer referred to three (3) calibration documents (calibration reports) which reiterated his testimony regarding the functioning radar unit. (Tr. at 8.)

At the end of the Town of Burrillville's argument, Appellant's counsel moved to dismiss the charge because the calibration documents were not certified. (Tr. at 14-15.) The trial judge denied this motion.<sup>2</sup> (Tr. 14-16.) Despite the denial of the motion, the trial judge never admitted the calibration reports into evidence.

After both parties were given an opportunity to present argument, the trial judge determined that the Officer was a credible witness. (Tr. at 17.) The trial judge credited the Officer's testimony that his radar unit was calibrated and he was sufficiently trained and experienced in using the radar unit. (Tr. at 16-17.) At the close of his bench decision, the trial judge sustained the violation. Id. Aggrieved by the trial judge's decision, the Appellant timely filed this appeal.

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<sup>1</sup> The Appellant was issued a ticket for driving forty (40) miles per hour. (Tr. at 13.)

<sup>2</sup> This denial is not the basis of the current appeal. The grounds for the motion were based upon the certification requirement of documents in cases in which the status of an individual's license is at risk under G.L. 1956 § 9-19-40, a different statute than was argued before this Panel.

### Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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 challenges the trial judge’s decision on the grounds that it was affected by error of law and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, the Appellant argues that the trial judge incorrectly relied on the factual content of the calibration reports because (1) the calibration reports were never admitted into the record as full exhibits and (2) the calibration reports provided at trial were not certified copies of the original reports.

Appellant asserts, in support of her first contention, that the Officer’s trial testimony, without considering the calibration reports, failed to provide enough evidence to the trial judge in order 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 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.” Sprague, 113 R.I. at 357, 322 A.2d at 39-40.

As support for her argument, Appellant relies on a prior decision of this Court, State v. Melissa Baker, C.A. No. T08-0004, June 24, 2009, R.I. Traffic Trib. In Baker, this Tribunal held that a trial judge’s ruling to sustain a speeding charge was affected by an error of law because the trial judge had relied upon the factual content of the calibration report that had not been admitted

into the record as a full exhibit and its contents should not have been considered.<sup>3</sup> Id. Specifically, the Panel found that there was no evidence offered to prove the radar had been calibrated without the facts provided by the calibration report. Id. As a result, the facts in the record were insufficient to satisfy the Sprague admissibility standard adopted by our Supreme Court. Id.

For the instant action, the requirements of Sprague were satisfied and properly set forth during Appellant's trial. Specifically, the Officer recited the speed he read on the radar, explained that the radar unit had been calibrated both internally and externally on the day of the traffic stop, and testified that he was trained and experienced in the use of radar devices. (Tr. at 5-8.)

In light of the entire record, it is clear that the case before us is distinguishable from Baker because the trial judge specifically found that the Officer's testimony was enough to satisfy the Sprague standard and sustain the charge against Appellant, without relying on the calibration reports. Accordingly, whether or not the calibration reports offered were certified copies is of no consequence, and it is thus unnecessary to address Appellant's second argument.<sup>4</sup>

### **Conclusion**

The trial judge's decision to sustain the charged violation is supported by the legally competent evidence provided by the Officer's testimony. This Panel has both reviewed the entire record before it and heard oral argument. Having done so, the members of this Panel

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<sup>3</sup> This Panel also held in Baker, that the evidence was lacking to sustain the speeding charge because the officer did not offer any testimony as to his training and experience in using the radar unit. However, this issue of training and experience is not disputed in this case.

<sup>4</sup> The Appellant's second argument postulated that the trial judge committed an error of law because he relied on the calibration reports which, as public records, should not have been allowed into evidence because they were not certified copies in compliance with Rule 1005 of the Rhode Island Rules of Evidence. See R.I. R. Evid. 1005.

conclude that the trial judge's decision was not clearly erroneous and was not affected by error of law. Substantial rights of the Appellant have not been prejudiced. Accordingly, the Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Chief Magistrate William R. Guglietta (Chair)

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Associate Judge Edward C. Parker

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Magistrate Joseph A. Abbate

DATE: \_\_\_\_\_