STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

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TOWN OF SOUTH KINGSTOWN :
:
v. : C.A. No. T10-0060
:
:
FREDERICK CHANNING

## DECISION

**PER CURIAM:** Before this Panel on December 8, 2010—Judge Ciullo (Chair, presiding), Administrative Magistrate Cruise, and Magistrate Goulart, sitting—is Frederick Channing's (Appellant) appeal from a decision of Judge Parker, 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 § 31-41.1-8.

## Facts and Travel

On May 30, 2010, an officer of South Kingstown Police Department, (the Officer) was on patrol near Moorefield Road in South Kingstown, Rhode Island. (Tr. at 1.) Utilizing his mounted radar unit, he determined Appellant to be traveling above the posted speed limit. Subsequently, he issued Appellant a citation for the aforementioned violation of the motor vehicle code. At trial, the judge sustained the charge. Appellant then filed an appeal to this Panel.[1]

At trial the officer testified that the radar he used on May 30, 2010 was "calibrated both internally and externally before and after [his] shift. . . ." (Tr. at 1.) He informed the court that his radar reading indicated that Appellant's vehicle was traveling

[1] Though Appellant was represented by counsel before this Panel, he appeared pro se at trial.

65 miles per hour in a zone where the posted speed limit was 40 miles per hour. Id. Furthermore, he informed the court that he had been certified in the use of speed radar systems at the Rhode Island Municipal Police Academy in 2006. Id.

After the officer had concluded his testimony, Appellant requested that the trial be continued to a later time. (Tr. at 2.) He informed that judge that his "furnace failed and filled his entire home with smoke. . . ." Id. According to the Appellant, that unfortunate turn of events did not allow him to "compile all of [his] evidence because [he] did not get any sleep." Id. The judge refused to grant a continuance, and the trial proceeded. Id.

On cross examination, the officer indicated that it was his routine practice to check the radar unit before and after each appeal. (Tr. at 4.) Appellant informed the court he was usually a cautious driver, and that he was not aware that he was speeding at the time he was cited. (Tr. at 6.)

At the conclusion of the testimony, the trial judge sustained the charge. Aggrieved by the decision, Appellant filed an this Appeal. Forthwith is this Panel' Decision.

**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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may 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 following unlawful procedure;
(4) Affected by another error of law;
(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing a hearing judge'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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

**Analysis**

On appeal, Appellant argues that he was prejudiced by the judge's decision to move along with the trial despite his request for a continuance. Further, he contends the radar evidence presented by the town was insufficient to sustain the charge. We disagree.

**Request for a Continuance**

"[A] motion for a continuance is addressed to the sound discretion of the trial judge. State v. Lanagan, 528 A.2d 310, 316 (R.I. 1987) "In reviewing the denial of a

motion for a continuance [reviewing courts] look to the circumstances of each case to determine whether or not an abuse of discretion has taken place." State v. Ucero 450 A.2d 809, 814 (R.I. 1982).

In reviewing the record before us, we fail to find any indication that trial judge abused his discretion when he denied Appellant's request for a continuance. First, Appellant's motion can hardly be classified as timely, as it was not made until after the Town had rested its case. (Tr. at 2.) Second, while we certainly sympathize with Appellant's home heating issues, we are not compelled by those reasons to the point where we find the judge abused his discretion in going forward with the trial. Therefore, we conclude that it was well within the trial judge's discretion to deny the motion and proceed with the trial. See State v. Allan, 433 A.2d 222, 225 (R.I. 1981) ("Discretion is the option that a trial justice has in doing or not doing a thing that cannot be demanded by a litigant as an absolute right.")

**Validity of the Radar**

Appellant also argues that the evidence of the radar reading is not admissible. Specifically, he maintains that the Town failed to introduce the required foundational evidence, as required by our Supreme Court's decision, State v. Sprague, 113 R.I 351, 322 A.2d 36 (1974). We disagree.

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 that there is "testimony setting forth [the officer'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, the testimony of the officer clearly

demonstrates that he ensured his radar unit was in good working order and that he had been trained in the use of radar during his time at the police academy. (Tr. at 1.) Therefore we conclude that the Town met its burden in proving all of the elements of the speeding charge as required by our Supreme Court in the Sprague decision.

## 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, erroneous in light of the reliable, probative, and substantial record evidence, in excess of statutory authority 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:

DATE: 1-25-11