STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF WESTERLY	**:**	
	:	
v.	**:**	**C.A. No. M14-0023**
	:	**14504500899**
DANIEL A. BUCK	**:**	

DECISION

PER CURIAM: Before this Panel on November 19, 2014—Judge Almeida (Chair), Administrative Magistrate Cruise, and Magistrate Goulart, sitting—is Daniel A. Buck's (Appellant) appeal from a decision of Judge Lewis (trial judge) of the Westerly Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2 (a), "Prima Facie Limits." Appellant appeared before this Panel, represented by counsel. Jurisdiction pursuant to § 31-41.1-8.

FACTS AND TRAVEL

On June 16, 2014, Officer Waterman (Officer) of the Westerly Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on August 21, 2014.

At trial, the Officer testified that he was traveling South on Post Road (also known as Route 1 Southbound) at approximately 8:39 in the evening on routine patrol, when he observed a vehicle traveling in the opposite direction (Northbound) at a high rate of speed. (Tr. at 9-10.) The Officer's mounted radar unit received a reading for the vehicle of 56 miles per hour (mph) in a posted 35 mph zone. (Tr. at 10.) The Officer then testified that he activated his overhead lights, made a U-turn on Route 1, and stopped the vehicle. (Tr. at 12.)

The Officer identified the driver of the vehicle as the Appellant by his Rhode Island State Identification Card because Appellant did not have his driver's license on him. Id. The Officer

testified that he issued the Appellant a summons for speeding 5 mph over the posted speed limit. (Tr. at 13.)

At trial, on direct examination, the Officer testified that he was a 2014 graduate of the Rhode Island Municipal Police Academy, where he received training in the use of radar and laser units; specifically, "how to properly calibrate [and] use moving and stationary radar." (Tr. at 5.) Mr. Manfred, for the Town of Westerly, submitted into evidence the Traffic Safety Radar Certification of Calibration (Certification Document) for the radar unit mounted in the Officer's car, which stipulated that the unit was certified from February 5, 2014 until February 28, 2015. (Tr. at 7); see also Pros. Ex. 1. The Certification Document was admitted as a full exhibit over Appellant's objection. (Tr. at 18.) The Officer further testified that the radar unit calibrates itself internally upon turning the unit on from being off. (Tr. at 8.) According to the Officer's observations, the radar unit was working properly on the night of June 16, 2014 when he stopped Appellant. (Tr. at 9.) On cross examination, Appellant asked the Officer if any other person was in the cruiser on June 16, 2014. (Tr. at 14.) The Officer replied that his Field Training Officer (FTO) was also in the car as "back up" and that his FTO was "training [him] in police functions." (Tr. at 16.)

Thereafter, Appellant filed a Motion to Dismiss on the grounds that the Officer's testimony fails to meet the requirements outlined in the controlling authority of State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974), which mandates that radar units be calibrated before and after a stop. (Tr. at 19.) Furthermore, Appellant contends that since the radar unit was not externally calibrated by a separate device on the day in question, it is unclear whether or not the instrument was working properly and had not been susceptible to some type of inaccuracy. (Tr. at 20.)

After a brief recess to review the ruling of State v. Sprague, the trial judge denied Appellant's Motion to Dismiss and found that the Officer's testimony that the radar unit is internally calibrated when turned on from being off was credible and sufficient to satisfy Sprague. (Tr. at 27.) Following the trial judge's denial of Appellant's Motion to Dismiss, the trial judge provided an opportunity for Appellant to present a case in his defense regarding the speeding violation. Id. Appellant subsequently declined to present a case. (Tr. at 28.) Aggrieved by the trial judge's decision to deny the Motion to Dismiss, Appellant timely filed the instant 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 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 . . . as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge…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…;
> (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.

When 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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

ANALYSIS

On appeal, Appellant contends that the trial judge's decision was affected by error of law in denying his Motion to Dismiss. The Appellant asserts that the trial judge's findings are in contravention of the case of State v. Sprague; made in clear error of law; against the greater weight of credible evidence; clearly erroneous; and arbitrary and capricious. Specifically, Appellant contends that the trial judge erred because the Officer did not testify that the radar unit was externally calibrated on the day of the motor vehicle stop by a separate device, and the Certification Document stipulating that the radar unit was one time calibrated is not sufficient to satisfy Sprague.

Our Supreme Court has held that a radar speed reading is admissible into evidence if a two prong test is met. State v. Sprague, 322 A.2d 36, 39-40 (1974). In Sprague, the Court held that a radar reading is admissible 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 Officer's] training and experience in the use of a radar unit." Id. In Sprague, the Court concluded that the officer's testimony describing the tuning fork test used to calibrate the radar unit on the day the defendant was stopped, was "reasonable and sufficient proof of the accuracy of the radar unit . . . even though the tuning fork used to test the accuracy . . . was itself not tested for accuracy." Sprague, 322 A.2d at 40. When making this conclusion, the Sprague Court relied on its decision in State v. Barrows, which held that "the testimony as to the speed at which the defendant's automobile was being operated . . . was admissible in evidence upon a showing that the operational efficiency of the device had been tested by an appropriate method within a reasonable period of time." 90 R.I. 150, 152, 156 A.2d 81, 82 (1959) (emphasis added). Although both Sprague and Barrows involved testing the radar unit and speedometer, respectively, with a tuning fork, nowhere in either decision does the court maintain that the testing of these devices be done by an external source, but rather, that such testing be performed by an "appropriate method within a reasonable period of time." Sprague, 322 A.2d at 39; see Barrows, 90 R.I. at 153, 156 A.2d at 83.

In this case, the Officer testified that he was trained in the use of radar. (Tr. at 5.) Furthermore, the Officer stated that the radar unit calibrates itself internally upon turning the unit on from being off, and that the radar unit appeared to be working properly on the night of June 16, 2014 when he stopped Appellant. Id. at 8-9. The Officer's testimony that the radar unit calibrates itself upon turning the unit on, and that the unit was in good working condition on the day of the stop, is admissible evidence that "the operational efficiency of the device had been tested by an appropriate method within a reasonable period of time." Barrows, 90 R.I. at 153, 156 A.2d at 83. Moreover, the Officer's testimony regarding his training and the calibration of the radar unit meets the Sprague test. See 322 A.2d at 39-40.

After reviewing the evidence and listening to the testimony, the trial judge concluded that, "[t]he testimony of Officer Waterman, which is un-contradicted and credible to this Court, is that the radar unit, when is turned on from being off, is internally tested, therefore, I am going to deny the Motion to Dismiss." (Tr. at 27.)

In Link, our Supreme Court explicitly clarified that 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, 633 A.2d at 1348 (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." Id. Consequently, this Panel will not substitute its own judgment for that of the trial judge.

It is well settled that, "[the appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact." Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). Thus, substantial deference is given to the trial judge in determinations on questions of fact. In his decision, the trial judge validated the Officer's testimony that the radar unit determined that Appellant's motor vehicle was 56 mph in a 35 mph area and that the unit was calibrated internally when it was activated on the day of the stop.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion and his decision to deny the Motion to Dismiss and sustain the charged violation is supported by legally competent evidence. See Environmental Scientific

Corp., 621 A.2d at 209 (The [appellate court] should give great deference to the [trial judge's] findings and conclusions unless clearly wrong.).

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 Alan R. Goulart

DATE: _____

Note: Administrative Magistrate R. David Cruise participated in the decision but resigned prior to its publication.