

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

JAMES DEVINE

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C.A. No. M08-0007

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STATE OF RHODE ISLAND  
TRAFIC TRIBUNAL

DECISION

PER CURIAM: Before this Panel on July 16, 2008, Judge Ciullo (Chair), Chief Magistrate Guglietta, and Magistrate DiSandro sitting, is James Devine’s (Appellant) appeal from a decision of the Johnston Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 15, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by Johnston Patrolman Matthew LeDuc (Patrolman). The Appellant contested the charge, and the matter proceeded to trial.

At trial in the Johnston Municipal Court, the Patrolman testified that he was monitoring westbound traffic during a traffic enforcement assignment in the vicinity of 2113 Hartford Avenue. (Tr. at 2.) At approximately 4:14 p.m., the Patrolman fixed his laser unit on a white Oldsmobile traveling in the westbound lane. (Tr. at 3.) The Patrolman initiated a traffic stop of the motor vehicle after recording the vehicle’s speed as 50 m.p.h. in a posted 35 m.p.h. zone. Id. The Patrolman testified that he advised Appellant that he was traveling in excess of the recorded speed limit and issued a citation. Id. He identified Appellant at trial as the operator of the vehicle. (Tr. at 2.)

The Patrolman testified that he tested the reliability of the laser unit both before and after his traffic enforcement assignment, and that the device was calibrated and functioning properly at the time Appellant's vehicle was stopped. (Tr. at 3.) The Patrolman indicated to the Court that he was certified by the State Municipal Academy in the proper use of laser units. (Tr. at 4.)

The Appellant testified that he was exiting Route 295 onto Hartford Avenue and was traveling at approximately 15 to 20 m.p.h. at the time. (Tr. at 9.) The Appellant also testified that he requested permission from the Patrolman to view the laser unit's recorded speed immediately following the traffic stop, and that the Patrolman denied this request. (Tr. at 8.)

Following a trial, the trial magistrate sustained Appellant's violation of § 31-14-2. The Appellant has filed a timely appeal of the trial court's decision. Forthwith is this Panel's decision.

#### **Standard of Review**

Pursuant to G.L. 1956 § 31-41.1-8(f), 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.”

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 (R.I. 1993). The Appeals Panel is “limited to a determination of whether the hearing justice’s decision is supported by legally competent evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

#### Analysis

On appeal, the Appellant contends that motorists have a right to inspect a police officer’s radar or laser unit immediately following a traffic stop for speeding, and that he was denied this right when the Patrolman refused to show Appellant the laser gun used to record the speed of Appellant’s vehicle. The Appellant also argues that the trial magistrate committed factual errors when he found that the Patrolman was the operator of the laser unit on the day in question and that it was Appellant’s vehicle that was speeding.

The Appellant has raised a novel argument to this Panel; namely, that motorists stopped for speeding have an unqualified right to inspect the police officer’s radar or laser unit immediately following the traffic stop. However, this argument is unavailing because Appellant has cited and the Appeals Panel has found no legal authority for the rule advanced.

With regard to the Appellant's argument that the trial judge's factual determinations are defective, we are satisfied that the trial judge's decision is supported by legally competent evidence. Marran v. State, 672 A.2d 875, 876 (R.I. 1996). There is reliable, probative, and substantial evidence that the Patrolman's trial testimony satisfies 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).

The Patrolman testified that he was trained in the proper use of laser units at the State Municipal Academy. (Tr. at 4.) He also testified that the laser unit was properly calibrated at the time Appellant's vehicle was stopped on Hartford Avenue. (Tr. at 3.) As the Sprague Court made clear, such testimony constitutes "reasonable and sufficient proof of the accuracy of the . . . unit." Id. at 357, 322 A.2d at 49. As the trial judge found that the laser unit's "operational efficiency . . . [had been] tested within a reasonable time by an appropriate method," the Patrolman's speed reading is admissible. Id. Accordingly, the testimony adduced at trial satisfies the Sprague standard.

This Panel is mindful that the scope of review on appeal is to determine whether the trial judge's decision was supported by competent record evidence. Since this Panel cannot substitute its judgment for that of the trial judge, we must conclude that his decision to sustain Appellant's speeding conviction was based on credible evidence adduced at trial. See Maran, 672 A.2d at 876. This Panel notes that the trial judge found that the testimony of the Patrolman was more credible than the testimony of Appellant concerning operation of the laser unit and identification of the speeding vehicle. As we are constrained in our review to accept the trial judge's credibility determinations, we

will not overturn his decision on appeal. The Appellant's appeal is hereby denied, and the charge against him sustained.

**Conclusion**

Upon a review of the entire record, this Panel concludes that the trial judge's decision was not clearly erroneous and was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, this Panel sustains Appellant's violations and dismisses his appeal.

ENTERED: