

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

C.A. No. M08-0012

CINDY SALAZAR

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
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DECISION

PER CURIAM: Before this Panel on September 10, 2008, Chief Magistrate Guglietta (Chair), Judge Almeida, and Magistrate Noonan sitting, is Cindy Salazar’s (Appellant) appeal from Judge Mayo’s decision, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant was represented by counsel before this Panel.¹ Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 12, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by Sergeant Edward Borges of the Warren Police Department (Sergeant Borges). The Appellant contested the charge, and the matter proceeded to trial.

At trial in the Warren Municipal Court, Sergeant Borges testified that on March 12, 2008, at approximately 12:48 a.m., he observed a vehicle traveling north on Metacom Avenue at a high rate of speed. (Tr. at 3.) Sergeant Borges testified that he fixed his radar unit on the vehicle and recorded the vehicle’s speed as 55 m.p.h. in a 30 m.p.h. zone. Id. Sergeant Borges initiated a traffic stop of Appellant’s vehicle at the intersection of Vernon Street and Metacom Avenue and issued a citation. Id. He identified Appellant at trial as the operator of the vehicle. Id. Sergeant Borges testified

¹ Appellant appeared pro se before Judge Mayo of the Warren Municipal Court, but was represented by counsel before this Panel.

that his radar unit was calibrated internally and externally both before and after the stop of Appellant's vehicle. Id.

Following Sergeant Borges' trial testimony, Appellant moved to dismiss on the ground that no evidence was introduced that Sergeant Borges was trained in the proper calibration of radar units. Id. at 4. The trial judge denied Appellant's motion and 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, Appellant argues that the trial judge erred in finding that there was reliable, probative, and substantial evidence that Sergeant Borges’ 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). We agree.

Although Sergeant Borges testified at trial that “the operational efficiency of [his] radar unit was tested within a reasonable time by an appropriate method,” he did not testify as to “his training and experience in the use of a radar unit.” Id. at 357, 322 A.2d at 40. As the testimony adduced at trial fails to satisfy the Sprague standard, Sergeant Borges’ speed reading is inadmissible.

CONCLUSION

Upon a review of the entire record, this Panel concludes that the trial judge’s decision was clearly erroneous and affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, this Panel hereby grants Appellant’s appeal and dismisses the charge against her.

ENTERED: