

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF EAST PROVIDENCE

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v.

C.A. No. M09-0004

CLEO GRAHAM

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on May 6, 2009—Judge Almeida (Chair, presiding) and Chief Magistrate Guglietta¹ and Magistrate DiSandro sitting—is Cleo Graham’s (Appellant) appeal from a decision of the East Providence Municipal Court, sustaining the charged violation of § 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 September 22, 2008, an officer of the East Providence Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial in the East Providence Municipal Court.

At trial, the Officer testified that on the date in question, at approximately 10:20 a.m., he was on a stationary radar post on the Shore Expressway.² (Tr. at 1.) At this time, he observed Appellant operating her vehicle at a rate of speed that the Officer “was sure was over the speed limit on that road” Id. Using his radar unit—which the Officer indicated had been calibrated internally and externally—the Officer recorded the speed of Appellant’s vehicle as 65

¹ Chief Magistrate Guglietta sat for Magistrate Cruise on this appeal.

² The Shore Expressway is also known as the Wampanoag Trail and Route 114.

m.p.h. in a posted 50 m.p.h. zone. Id. The Officer initiated a traffic stop of Appellant's vehicle and issued her a citation. Id.

The Appellant then testified that she is "disabled" and has "a tendency to drive quite slow because [she] [didn't] want anyone bumping [her] [vehicle]" so as to exacerbate a pre-existing back condition. (Tr. at 2.) The Appellant further testified that there were "a ton of cars going super fast" at the time the Officer recorded the speed of her vehicle and that she "couldn't tell who [the Officer] was stopping because everyone was going so fast." (Tr. at 3.)

The Officer clarified his earlier testimony by stating that Appellant "was passing the cars [in] the left-hand lane" and "passed all the cars in the left-hand lane that were going slower than her." Id. The Officer indicated that Appellant's vehicle was traveling at 65 m.p.h. as she passed the other vehicles on the roadway. Id. According to the Officer, "everybody else [traveling on the Shore Expressway] was actually going slower than [Appellant]" Id.

Following the trial, the trial judge sustained the charged violation of § 31-14-2. Aggrieved by this decision, Appellant filed a timely appeal to this Panel. Our decision is rendered below.

Standard of Review

Pursuant to § 8-18-9, "[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8."

Section 31-41.1-8 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'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 the trial judge's decision is affected by error of law and clearly erroneous in view of the reliable, probative, and substantial record evidence. Specifically, Appellant contends that the Officer's trial testimony fails 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). The Appellant maintains that the operational efficiency of the Officer's

radar unit was never conclusively established, as the Officer failed to testify that he received training in the use of radar units.

In Sprague, our Supreme Court held that a radar speed reading is admissible in evidence upon a showing that “the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method,” and “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. Here, the Officer testified that his radar unit had been calibrated internally and externally prior to recording the speed of Appellant’s vehicle. (Tr. at 1.) However, the Officer did not testify that he was qualified, by virtue of his professional training and experience, to operate a radar unit. Accordingly, the members of this Panel are satisfied that the trial judge’s decision to sustain the charged violation of § 31-14-2 is affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence.

Conclusion

This Panel has reviewed the entire record before it.³ Having done so, the members of this Panel are satisfied that the trial judge's decision is affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

DAI. _____

³ Several procedural irregularities came to light when the members of this Panel reviewed the audiotape recording of Appellant's trial in the East Providence Municipal Court. First, we note with disapproval that the testimony of the Officer was not given under oath or affirmation, as the trial judge inexplicably dispensed with the swearing in of the witness because the Officer was an "officer of the court." This assertion is not only incorrect as a matter of fact but incorrect as a matter of law. See R.I. R. Evid. 603 ("Before testifying, every witness shall be required to declare that he or she will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the witness' duty to do so.") (Emphasis added.) Our review of the audiotape also reveals that the trial judge, while administering the proper oath to Appellant, impliedly acknowledged that all of the previous witnesses had not been sworn. The possibility that even one of these witnesses could have lied under oath and escaped liability for perjury is simply unacceptable. See G.L. 1956 § 11-33-1 ("Every person under oath or affirmation who knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing it contains any false material declaration, shall be deemed guilty of perjury.") (Emphasis added.) Finally, we note that the trial judge, at the conclusion of Appellant's trial, advised her of her right to take an appeal to the Superior Court. It is well-settled that all such appeals are properly directed to this Panel, and it was error for the trial judge to advise Appellant otherwise.