STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF NORTH SMITHFIELD	:	
	:	
v.	:	**C.A. No. M14-0002**
	:	**07415013003**
SANTO P. MASCENA	:	

DECISION

PER CURIAM: Before this Panel on May 21, 2014—Judge Almeida (Chair, presiding), Judge Parker, and Magistrate Noonan, sitting—is Santo Mascena's (Appellant) appeal from a decision of Judge Jarrett of the North Smithfield Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2(a), "Prima Facie Limits." Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 15, 2013, Officer Steven Donavan of the North Smithfield 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 on January 15, 2014.

At trial, the Officer testified that on October 15, 2013, he was at a fixed radar post on 146 Northbound when he observed Appellant's vehicle traveling at a high rate of speed traveling Southbound. (Tr. at 4.) Moreover, the Officer testified that utilizing his radar unit, he obtained a speed of Appellant's vehicle traveling eighty-five (85) miles per hour in a clearly posted fifty-five (55) mile per hour zone. Id. The Officer further testified that he conducted a motor vehicle stop and issued Appellant a citation. Id.

Thereafter, the trial judge asked the Officer whether or not he calibrated his radar unit and the Officer answered that the unit had been calibrated the previous July. (Tr. at 5.) Furthermore, the Officer testified that he had tested the radar unit before and after his shift and that it appeared to be "working well." Id. The trial judge then inquired whether the Officer was a certified radar operator and the Officer responded that he had been trained in the use of radar at the Municipal Police Academy in 2012. Id.

Subsequently, the trial judge issued his decision sustaining the charged violation. (Tr. at 7-9.) In reaching his decision, the trial judge noted that he credited the Officer's testimony that he had been trained and certified in the use of radar speed measurement machines. (Tr. at 7.) Additionally, the trial judge highlighted that he found the Officer's testimony credible regarding the fact that the radar unit had been calibrated within the required time and that the Officer had ensured its operational efficiency by testing the unit before and after his shift. Id. Aggrieved by the trial judge's decision to sustain the charge, 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 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 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:
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> (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 or magistrate'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 [or magistrate] 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 [or magistrate'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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that the trial judge's decision was made upon unlawful procedure. Specifically, Appellant asserts that the trial judge erred by improperly directing or guiding the Officer's testimony.

This Panel agrees with Appellant's contention in this case that the trial judge's questioning the witness was improper because it was incumbent on the Officer to provide testimony that established the elements our Supreme Court outlined in State v. Sprague 113 R.I. at 357, 322 A.2d at 39-40 (1974) without the excessive judicial assistance. In Sprague, our

Supreme Court held that for speedometer or radar evidence to support a charge of speeding, "the operational efficiency" of the device must be "tested within a reasonable time by an appropriate method," and the record must contain "testimony setting forth the [Officer's] training and experience" in the use of radar. 113 R.I. at 357, 322 A.2d at 39-40. The requirements of Sprague may have been set forth during the Appellant's trial, but the Officer did not testify to these elements on his own volition. See Tr. at 5. Instead, the trial judge asked pinpoint questions that were calculated to extract the necessary testimony regarding training and calibration. See id. It is worth noting for purposes of this discussion that a trial judge or magistrate has the ability to directly question or cross-examine a witness before him. See R.I. R. Evidence 614(b), "Interrogation by Court" ("[t]he court may interrogate witnesses, whether called by itself or by a party"). However, in the instant matter this Panel concludes the trial judge surpassed his role as impartial finder of fact and facilitated the testimony of the Officer. See Tr. at 5.

In State v. Nelson, 982 A.2d 602, 615 (R.I. 2009), our Supreme noted that "[s]ince the adoption of Rule 614(B) in 1987, a trial justice's prerogative to question witnesses . . . is limited to inquiry that will clarify a matter which he justifiably feels is a cause for confusion . . . ." Moreover, the Court opined that "even as to clarification, the trial justice should 'first allow counsel every opportunity to refine the witness's testimony.'" See id. (quoting State v. Giordano, 440 A.2d 742, 745 (R.I. 1982)). Additionally, our Supreme Court held that "judicial interrogation of witnesses must be conducted reluctantly, cautiously, and in limited circumstances. Id. For purposes of this discussion, it is worth mentioning that the need for judicial restraint while questioning a witness is even more pronounced in a jury trial. See State v. Figueras, 644 A.2d 291, 293 (R.I. 1994) (citing State v. Amaral, 47 R.I. 245, 249-50, 132 A.

547, 549 (1926). For example, in Amaral, 47 R.I. at 250, 132 A. at 550, our Supreme Court cautioned judges presiding over jury trial to practice restraint when questioning witnesses in order to "guard against even the appearance of changing . . . position from that of a judicial officer impartially presiding at the trial to that of a partisan advocate interested in establishing the position of either party." Moreover, in State v. Fenik, 45 R.I. 309, 316, 121 A. 218, 222 (1923), our Supreme Court highlighted that a trial justice must "exercise scrupulous care that the jury should not be influenced in their finding of fact by what they believed to be the opinion of the judge." It is clear that the permissible scope of judicial inquiry allowed in a non-jury trial is broader than the judicial questioning of witnesses allowed in a jury case. See Figueras, 644 A.2d at 293; Fenik, 45 R.I. at 316, 121 A. at 222. However, it is improper for the trial judge, sitting as the finder of fact in a non-jury trial, to exceed the boundaries of questioning for the function of clarification and to, instead, steer the course and content of the witness's testimony. See Nelson, 982 A.2d 602, 615.

In the within matter, the trial judge asked the Officer whether or not he calibrated his radar unit. See Tr. at 5. Additionally, the trial judge inquired whether the Officer was a certified radar operator. See id. The aforesaid questions were not asked for the purpose of clarifying confusing testimony or subject matter, but in order to ensure that the Officer's testimony met the requirements delineated in Sprague. But see Nelson, 982 A.2d at 615. While this Panel is mindful that Nelson can be distinguished from the instant matter as it was a jury case, we apply its wisdom to the case before the Panel in order to demarcate the boundaries of appropriate judicial inquiry. See Nelson, 982 A.2d at 615. Additionally, we reaffirm the right of a trial judge to ask questions of a witness for the purpose of clarification. See R.I. R. Evid. 614(b). In

this case, based upon these facts, we feel that the trial judge went "too far" as his particular questioning exceeded both the scope of Rule 614(b) and the spirit of Nelson.

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 made upon unlawful procedure and abuse of discretion. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

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Judge Lillian M. Almeida (Chair)

_____
Judge Edward C. Parker

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Magistrate William T. Noonan

DATE: _____