

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**TOWN OF NORTH KINGSTOWN**

:

v.

:

**C.A. No. M14-0020**

:

**14502501581**

:

**MICHAEL DELLAGROTTA**

:

**DECISION**

**PER CURIAM:** Before this Panel on September 24, 2014—Magistrate Noonan (Chair), Judge Almeida, and Magistrate Goulart, sitting—is Michael Dellagrotta’s (Appellant) appeal from a decision of Judge White (trial judge) of North Kingstown 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 is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On May 10, 2014, Officer Raymond (Officer) of the North Kingstown Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on July 30, 2014.

At trial, the Officer testified that he was traveling East on West Main Road at approximately 9:35 in the evening on a routine patrol, when he observed a vehicle traveling in the opposite direction (westbound) at a high rate of speed. (Tr. at 2.) The Officer activated his radar unit, and received a reading for the vehicle of 42 miles per hour (mph) in a 25 mph zone. Id. Thereafter, the Officer attested that he calibrated his radar unit before his shift. (Tr. at 3.)

Next, the Officer testified that he turned his vehicle around, and activated his overhead lights to initiate a car stop. (Tr. at 5.) The driver of the vehicle did not stop until he reached the

North Kingstown Police Department on Post Road. (Tr. at 6.) Thereafter, the Officer identified the driver as the Appellant by his Rhode Island driver's license. Id. The Officer testified that he issued the Appellant a summons for speeding 5 mph over the posted speed limit. Id.

Subsequently, Appellant inquired if the location listed on the summons was the location where the violation occurred. Id. The Officer replied affirmatively. Id. The Appellant then questioned if the speed limit on Post Road (the location on the summons) is 35 mph. (Tr. at 6-7.) Again, the Officer answered affirmatively. (Tr. at 7.) On redirect, the Officer testified that the location on the summons does not specify the location of the violation or the stop, it simply says location. Id.

Thereafter, Appellant made a motion to dismiss because (1) there was no testimony that the radar was calibrated at a time reasonably close to the stop; (2) the Officer did not testify that he was trained in the use of the radar; and (3) the location on the summons lists the location of the stop and not the violation. Id. The trial judge denied the motion and found that the (1) the calibration argument was not worthy because the Officer calibrated his radar unit prior to his shift; (2) the Officer's testimony that he had been on the force for a year and a half, qualifies him to use the radar; and (3) the location on the summons has to give the driver an indication as to where the stop occurred, but does not need to be an exact address. (Tr. at 8.)

Afterwards, the parties waived the opportunity to make final statements, and the trial judge found the Appellant guilty of speeding. 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 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.

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 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 committed an error in sustaining the violation. Appellant asserts that the trial judge's findings are in violation of statutory provisions; in excess of the statutory authority of the judge; made upon unlawful procedures; affected by error of law; and arbitrary or capricious. Specifically, Appellant contends that the trial judge erred because the summons identified the location of the stop and not the location of the violation; the Officer did not testify that the radar device was tested within a reasonable time; and the Officer failed to testify regarding his training and experience utilizing his radar unit.

### **I**

#### **The Location on the Summons**

Appellant contends he was prejudiced because the location on the summons was the location of the stop and not the location of the violation. Appellant maintains that the trial judge erred when the trial judge determined that the location on the summons was close enough to the address of the violation, and gave the driver an indication of where the violation occurred.

The Rhode Island Traffic Tribunal Rules of Procedure lay out the requirements for a valid summons. See RITT Rule 3. "A summons which provides the defendant and the court with adequate notice of the violation being charged shall be sufficient if the violation is charged by using the name given to the violation by statute." (RITT Rule 3d.) Additionally, the Rules require "[t]he summons shall state for each count the official or customary citation of any statute that the defendant is alleged to have violated." Id. Furthermore, the Rules explain that "[a]n error or omission in the summons shall not be grounds for dismissal of the charged violation(s)

or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.” Id. Here, the trial judge considered the evidence and found that the summons gave the Appellant and the Court adequate notice, and was not grounds for dismissal. (Tr. at 8.)

It is well settled that credibility determinations are within the province of the hearing judge. See Link 633 A.2d at 1348. This Panel “shall not substitute its judgment for that of the judge...as to the weight of the evidence on questions of fact.” § 31-41.1-8. Here, the trial judge considered the evidence and found that the location on the summons was sufficiently close to the location of the violation. Pursuant to § 31-41.1-8, this Panel will not substitute its own judgment for that of the trial judge. Therefore, pursuant to the holding in Link, this Panel will not revisit the credibility of the findings made by the trial judge.

## II

### **Admitting a Radar Reading into Evidence**

Appellant asserts that the speed on the radar reading should not have been admissible because the Officer failed to testify that the radar unit was calibrated in a reasonable time of the violation. Furthermore, the Officer did not testify that he received appropriate training for the device.

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.

Here, the requirements of Sprague were not properly set forth during Appellant’s trial. The Officer explained that the radar unit had been calibrated prior to his shift, which sufficiently

satisfied the “reasonable time” prong of Sprague. However, the Officer did not testify that he possessed “training and experience in the use of a radar unit.” Id. at 40. The Officer’s testimony that he was on the force and working patrol for a year and a half is not sufficient evidence to establish that the Officer was trained in the use of the radar unit. See id. Without this necessary evidence, the trial judge erred in sustaining the violation because the evidence presented falls short of that required by Sprague. See 322 A.2d at 39-40.

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find that the trial judge’s decision was in violation of statutory provisions and affected by other error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant’s appeal is granted, and the charged violation is dismissed.

ENTERED:

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Magistrate William T. Noonan (Chair)

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Judge Lillian M. Almeida

\_\_\_\_\_  
Magistrate Alan R. Goulart

DATE: \_\_\_\_\_