

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

GEORGE PHILIP

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C.A. No. T08-0126

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on November 19, 2008, Magistrate Goulart (Chair), Magistrate Noonan, and Magistrate DiSandro sitting, is George Philip's (Appellant) appeal from Judge Ciullo's decision, sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On August 13, 2008, an officer of the Foster Police Department (Officer) issued a citation to Appellant for violating the aforementioned motor vehicle offense. The Appellant contested the charge, and the matter proceeded to trial.

At trial, the Officer testified that on the date in question, she was conducting a radar surveillance post on Route 6. (Tr. at 4.) Prior to her assigned shift, the Officer internally and externally calibrated her radar unit. Id. The Officer indicated that she had been trained in the proper use of radar units at the Rhode Island Municipal Police Academy, receiving her certification in December of 2006. Id.

At approximately 12:50 a.m., the Officer observed a vehicle traveling at an excessive rate of speed. Id. The Officer focused her radar unit on the speeding vehicle and recorded its speed as 69 m.p.h. in a posted 45 m.p.h. zone. Id. The Officer initiated

a traffic stop of the speeding vehicle, and issued its operator—later identified at trial as Appellant—a citation. Id.

At the conclusion of the Officer's trial testimony, Appellant cross-examined the Officer. Following his brief cross-examination, Appellant moved to dismiss the charge. As grounds for his motion, Appellant argued that the Officer failed to testify as to the method she utilized to calibrate her radar unit. (Tr. at 7.) The Appellant also argued that there was no testimony as to whether the radar unit used to record the speed of his vehicle had been subjected to annual calibration to ensure that the unit was in proper working order. Id.

The trial judge denied Appellant's dismissal motion, thereby sustaining the charge against him. The Appellant, aggrieved by this decision, now appeals to this Panel. Forthwith is this Panel's decision.

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 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.”

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. Specifically, Appellant contends that there was not reliable, probative, and substantial evidence that the Officer’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). According to Appellant, the Officer did not set forth in her trial testimony the method used to calibrate her radar unit on the date she recorded the speed of Appellant’s vehicle. The Appellant also asserts that the Officer was required, pursuant to Sprague, to offer testimony that her radar unit had been subjected to annual certification in order to ensure that it was in proper working order.

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 that there is “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 her radar unit had been internally and externally calibrated on the date that she recorded the speed of Appellant’s vehicle, and that she had been trained in the proper use of such units during her time at the Municipal Academy in 2006. (Tr. at 4.) This testimony amply satisfies the standard of Sprague and its progeny.

However, Appellant argues that our Supreme Court’s decision Sprague should be read to require—in addition to the well-established calibration and training requirements—that the prosecution, as a condition precedent to the admissibility of a radar speed reading, introduce evidence describing the precise method utilized by the officer to calibrate the radar unit and evidence showing that the operational efficiency of the unit was certified on an annual basis. This argument is unavailing, as Appellant has cited no legal authority imposing such requirements, and our existing legal authority on the admissibility of radar speed readings—State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974), and State v. Mancino, 115 R.I. 54, 340 A.2d 128 (1975)—does not speak of such requirements. Accordingly, the trial judge’s decision to sustain the charged violation of § 31-14-2 is unaffected by error of law.

Conclusion

Upon a review of the entire record, this Panel concludes that the trial judge’s decision is unaffected by error of law. Substantial rights of Appellant have not been

prejudiced. Accordingly, the Appellant's appeal is hereby denied, and the charged violation sustained.