

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

ALESSANDRO RESCIO

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C.A. No. T08-0143

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on January 21, 2009, Magistrate DiSandro (Chair), Chief Magistrate Guglietta, and Judge Ciullo presiding, is Alessandro Rescio's (Appellant) appeal from Magistrate Noonan'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. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On September 2, 2008, a trooper of the Rhode Island State Police (Trooper) charged Appellant with violating the aforementioned motor vehicle offense. The Appellant contested the charge, and the matter proceeded to trial.

The Trooper began his trial testimony by describing the training that he received in the use of radar units at the Rhode Island Municipal Police Training Academy and the internal and external calibration that his radar unit was subjected to both before and after his assigned shift. (Tr. at 3.) Then, focusing the court's attention on the date in question, the Trooper testified that at approximately 10:25 a.m., he was conducting a radar post on Route 165 in Exeter in the vicinity of Woody Hill Road. Id. At this time, the Trooper observed a late model black Peterbilt truck traveling eastbound on Route 165 and recorded the truck's speed as 57 m.p.h. in a posted 45 m.p.h. zone. Id. The Trooper

initiated a traffic stop and issued the operator—later identified at trial as Appellant—a citation for traveling 55 m.p.h. in a posted 45 m.p.h. zone. (Tr. at 3-4.)

At the conclusion of the Trooper's trial testimony, Appellant took the witness stand. The Appellant testified that shortly before he was stopped by the Trooper, his truck was overtaken by two vehicles also traveling eastbound on Route 165. (Tr. at 6.) According to Appellant, the operators of these vehicles were not stopped by the Trooper and issued citations for speeding. Id. Following Appellant's testimony, the trial magistrate asked the Trooper whether it was possible that he had erroneously recorded the speed of one of the vehicles described by Appellant; the Trooper was emphatic that traffic conditions were "light" and, as such, there were no other vehicles in his "radar area." (Tr. at 7.)

Following the trial, the trial magistrate sustained the charged violation of § 31-14-2. Aggrieved by this decision, Appellant has filed a timely appeal 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 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 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 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 [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 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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial magistrate's decision is characterized by abuse of discretion. Specifically, Appellant maintains that the trial magistrate abused his discretion by choosing to credit the Trooper's trial testimony that there were no other

vehicles traveling in excess of the posted speed limit in the immediate vicinity of Appellant's vehicle at the time he recorded the speed of Appellant's vehicle.

In Link, our Supreme Court made clear that this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing [magistrate] concerning the weight of the evidence on questions of fact." Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Trooper or Appellant, it would be impermissible to second-guess the trial magistrate's "impressions as he . . . observe[d] [the Trooper and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate's decision is supported by legally competent evidence and is not affected by an error of law. The record reflects that there was reliable, probative, and substantial evidence that the Trooper'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).

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 trial magistrate found, based upon the Trooper's "credible" trial testimony, that the Trooper's radar unit had been calibrated both internally and

externally prior to his assigned shift and that he was qualified, based on his training at the Rhode Island Municipal Police Training Academy, to operate a radar unit. (Tr. at 3, 9.) As the record reflects that the Sprague standard has been satisfied, we affirm the trial magistrate's conclusions on appeal.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision is not characterized by abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED: