

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

YURAL MCKIE

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C.A. No. T09-0041

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STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on May 3, 2009—Chief Magistrate Guglietta (Chair, presiding) and Magistrate Noonan and Magistrate Goulart sitting—is Yural McKie’s (Appellant) appeal from a decision of Judge Almeida, sustaining the charged violation of G.L. 1956 § 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 December 4, 2009, Trooper Sean McCarthy (Trooper McCarthy) of the Rhode Island State Police charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Trooper McCarthy testified that on the date in question, at approximately 4:00 p.m., he was on a stationary radar post on Route 6, in the vicinity of the Killingly Street exit. (Tr. at 1.) At this time, Trooper McCarthy recorded the speed of a vehicle traveling eastbound on Route 6 as 74 m.p.h. in a posted 55 m.p.h. zone. Id. When the vehicle approached his location, Trooper McCarthy obtained a second radar speed reading of 65 m.p.h. Id. Trooper McCarthy initiated a traffic stop of the vehicle and issued the operator—identified at trial as Appellant—a citation. Id.

On questioning by the trial judge, Trooper McCarthy testified that his cruiser's mounted radar unit had been calibrated internally both before and after his assigned shift and was found to be in proper working order. Id. He also testified that he had received training in the use of radar units during his time at the Rhode Island State Police Academy in 1994. (Tr. at 2.)

At the conclusion of Trooper McCarthy's trial testimony, Appellant testified that prior to the traffic stop his vehicle's cruise control was engaged at 55 m.p.h., the posted speed limit on Route 6. Id. The Appellant then produced paperwork from the Tasca Ford car dealership indicating that his cruise control unit was functioning properly on the date in question. Id. Additionally, Appellant argued that Trooper McCarthy recorded the speed of another vehicle, as "[t]here were cars in front of [him] and [beside] him" allegedly traveling in excess of the posted speed limit. (Tr. at 3.) According to Appellant, "[t]here [were] cars in the high speed lane, [and] there was a car directly in front of him," and any of these vehicles could have been recorded by Trooper McCarthy's radar unit. (Tr. at 4.)

Following the trial, the trial magistrate 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 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

Appellee 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 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 judge's decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial judge abused her discretion by failing to properly consider evidence that Appellant characterizes as relevant and material to

adjudication of the charged violation of § 31-14-2: namely, the paperwork from Tasca Ford indicating that his vehicle's cruise control was functioning properly on the date in question.

In actions tried upon the facts without a jury, the trial justice sits as a trier of fact as well as of law, and consequently, the trial justice weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences. See Parella v. Montalbano, 899 A.2d 1226 (R.I. 2006). In weighing and considering the evidence, the "trial justice has wide discretion in determining the relevancy, materiality, and admissibility of offered evidence . . . ." Accetta v. Provencal, 962 A.2d 56, 60 (R.I. 2009) (quoting State v. Lora, 850 A.2d 109, 111 (R.I. 2004)). "[T]he exclusion of evidence on grounds of relevancy is soundly within the trial justice's discretionary powers, and . . . will not [be] reverse[d] . . . absent an abuse of discretion." Ruffel v. Ruffel, 900 A.2d 1178, 1192 (R.I. 2006) (quoting State v. Marini, 638 A.2d 507, 516 (R.I. 1994)).

Here, the record reflects that the trial judge considered Appellant's documentation from Tasca Ford and, in her discretion, chose not to attribute great weight to it. As the trial judge explained, "Saying [you had] on cruise control, that's not a defense. [Y]ou are saying you had it [and] were using it [on the date in question]. I don't know if you were going 55 [miles per hour]. [W]hy [would] the officer pull you over?" (Tr. at 5.) Based on the trial judge's on-the-record remarks, her reason for disregarding Appellant's evidentiary proffer is clear: the mere fact that Appellant's vehicle was equipped with a functioning cruise control unit does not, without more, prove conclusively that the cruise control was engaged at the time Trooper McCarthy initiated a traffic stop of his vehicle. Thus, the members of this Panel can find no abuse of discretion in the trial judge's decision to discount Appellant's evidence.

Further, this Panel is satisfied that Trooper McCarthy'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 judge chose to credit Trooper McCarthy's testimony that he was trained in the use of radar units in 1994 and that the unit used to record the speed of Appellant's vehicle had been calibrated and found to be in proper working order. (Tr. at 1.) Accordingly, the members of this Panel are satisfied that the decision to sustain the charged violation of § 31-14-2 is supported by legally competent evidence and is not otherwise affected by error of law.

### **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 is not characterized by abuse of discretion, clearly erroneous in view of the reliable, probative, and substantial record evidence, or otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.