STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF BARRINGTON	:	
	:	
v.	:	**C.A. No. T13-0013**
	:	**12101501559**
SHIRLEY THURBER	:	

DECISION

PER CURIAM: Before this Panel on April 3, 2013—Magistrate Noonan (Chair, presiding), Administrative Magistrate Cruise, and Judge Parker sitting—is Shirley Thurbur's (Appellant) appeal from a decision of Judge Almeida, sustaining the charged violation of G.L. 1956 § 31-14-2(a), "Prima facie limits." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 16, 2012, an Officer of the Barrington Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on February 25, 2013.

Shortly before the stop, the Officer was patrolling on County Road. (Tr. at 2.) The Officer's handheld radar unit determined that Appellant's vehicle was traveling fifty-one (51) miles per hour (mph) in a thirty-five (35) mph area. Id. The Officer noted that the handheld radar unit was calibrated before and after his shift on the day of the stop and the Officer had received training in the use of radar units at the Rhode Island Municipal Police Academy. Id.

Appellant then testified on her own behalf, stating that she was traveling southbound on Wampanoag Trial at a low speed with a few other cars. (Tr. at 5.) Appellant went on to testify that the Officer must have clocked the other driver who was driving down the same road as

Appellant. (Tr. at 9.) Appellant concluded the trial by insisting that the other vehicle on the road must have been the vehicle traveling beyond the posted speed limit since Appellant was driving at a low speed. (Tr. at 10.)

After both parties were given an opportunity to present evidence, the trial judge determined that the Officer was a credible witness. At the close of her bench decision, the trial judge sustained the violation. (Tr. at 11.) Aggrieved by the trial judge's decision, the Appellant timely filed this 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 argues that the trial judge's decision was not supported by the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant maintains that the Town failed to meet its burden of proof since the Officer testified at trial that he could not recall whether there was another vehicle in close proximity to the Appellant at the time the Officer clocked Appellant's speed.

In Sprague, our Supreme Court held that a radar speed reading is admissible into evidence 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 Patrolman's] training and experience in the use of a radar unit." State v. Sprague, 113 R.I. 351, 357, 322 A.2d 36, 39-40 (1974).

Here, the requirements of Sprague were properly set forth during Appellant's trial. The Officer explained that the radar unit had been calibrated both internally and externally, and he

testified that he possessed "training and experience in the use of a radar unit." (Tr. at 2.); Sprague, 113 R.I. at 357, 322 A.2d at 40.

Having reviewed the record in its entirety, it is clear that the there was sufficient evidence presented by the Officer to satisfy the standards set forth by our Supreme Court in Sprague to properly introduce evidence of the speed of Appellant's vehicle. At trial, the Officer testified that he observed Appellant's vehicle "traveling south at 51 miles per hour." (Tr. at 4.) He went on to testify that his "radar is [sic] calibrated internally and externally before and after the stop." Id. The Officer concluded by noting that he was "train[ed] to use the radar at the Rhode Island Municipal Academy" in 2009. Id. In her decision, the trial judge found it significant that the Officer testified that "when he calibrated the radar it was found to be working properly[,]" and that the Officer clocked Appellant's vehicle traveling at fifty-one miles per hour. (Tr. at 9.) Based on the testimony provided by the Officer to the trial judge, the members of this Panel find that the trial judge's decision is not erroneous in view of reliable, probative, and substantial evidence on the record. Moreover, the trial judge's decision to reject Appellant's argument that she was not speeding and to find Appellant was speeding was a question of fact that this Panel is without authority to disturb because the trial judge's decision was supported by competent evidence—the Officer's testimony. See Link, 633 A.2d at 1348.

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 supported by the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Magistrate William T. Noonan (Chair)

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Administrative Magistrate R. David Cruise

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Judge Edward C. Parker

DATE: _____