## STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**CRANSTON, RITT** 

## RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

v. : C.A. No. T19-0003

18001539224

DANIEL HOULE :

# **DECISION**

**PER CURIAM:** Before this Panel on May 29, 2019—Magistrate Noonan (Chair), Administrative Magistrate Abbate, and Chief Magistrate DiSandro, sitting—is Daniel Houle's (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-14-2, Prima facie limits." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

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#### **Facts and Travel**

On December 16, 2018, Trooper William Reilly (Trooper Reilly) observed a vehicle traveling at a high rate of speed. Tr. at 8:11-13, Feb. 13, 2019 (Vol. 1). After activating his dash-mounted radar device, which registered the vehicle's speed at ninety-four miles per hour in a fifty-five miles per hour speed zone, Trooper Reilly conducted a traffic stop of the vehicle. *Id.* at 8:14-9:7. Trooper Reilly identified the driver of the vehicle as Appellant, and issued

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<sup>&</sup>lt;sup>1</sup> This Panel orally granted Appellant's counsel's motion to waive Appellant's appearance at the May 29, 2019 appeal hearing pursuant to Rule 23(b) of the Rhode Island Traffic Tribunal Rules of Procedure.

Appellant a citation for the above-referenced violation. *Id.* at 9:8-13; 10:18-20. *See also* Summons No. 18001539224.

Appellant contested the charged violation, and the matter proceeded to trial on February 13, 2019. At the start of trial, Appellant's counsel moved to dismiss the charged violation pursuant to *City of East Providence v. DaSilva*, C.A. M16-0002 amended (February 13, 2017). Vol. 1 Tr. at 4:18-19. In support of Appellant's motion to dismiss, counsel argued that the radar device used to determine Appellant's speed had not been calculated within a reasonable time because the radar device's "certificate of accuracy" indicated that the device had not been calibrated since July 7, 2014. *Id.* at 4: 20-22; 5:10-15. The Trial Magistrate denied Appellant's motion to dismiss, finding that Appellant's motion to dismiss was not "appropriate" at that juncture as Trooper Reilly had not yet testified. Tr. at 4:11-12, Feb. 13, 2019 (Vol. 2). The Trial Magistrate noted that he would allow Appellant's counsel to renew the motion to dismiss after the close of evidence. *Id.* at 4:12-14.

During trial, Trooper Reilly testified that on the day of the stop he was stationed at a "fixed radar post on Route 4 south, just north of Frenchtown Road, in a marked Rhode Island State Police cruiser." *Id.* at 7:2-6. Trooper Reilly recalled that there was "light traffic" and "moderate rain" at that time. *Id.* at 8:4-8. While monitoring the southbound traffic, Trooper Reilly "observed a vehicle approach [his] location in the high speed lane at a high rate of speed, and it was traveling faster than the normal flow of traffic." *Id.* at 8:11-14. Thus, Trooper Reilly activated the "dash-mounted radar unit" and "obtained a speed of 94 miles an hour on the approaching vehicle in the high speed lane in a well posted 55 miles an hour zone." *Id.* at 9:5-8. At that point, Trooper Reilly "exited [his] location, never losing sight of the vehicle[,]" and stopped the vehicle "southbound on Route 4." *Id.* at 9:8-10. As Appellant's "speed [was] that

high above the posted speed limit[,]" Trooper Reilly issued Appellant a summons for violating § 31-14-2. *Id.* at 10:14-20.

In addition, Trooper Reilly testified as to his training and experience using radar unit devices. Trooper Reilly testified that he had been instructed on how to use radar units at the Rhode Island Municipal Police Academy in 1998 and at the Rhode Island State Police Academy in 2005. *Id.* at 8:14-19. Regarding the specific radar unit used to determine Appellant's speed, Trooper Reilly testified that he "checked the radar unit before the shift and after the shift using the test button on the dash-mounted radar unit[.]" *Id.* at 9:1-4. The radar unit "was found to be in good working order." *Id.* at 9:4.

On cross-examination, Trooper Reilly explained that with respect to the care and upkeep of the radar units,

"[t]he only procedure we do is when you turn the cruiser on . . . you turn your [] dash radar mounted unit on. There is a test button. You hit the test button. It calculates and tests the internal calculations of the radar unit itself, for each individual speed . . . if there is ever an error, it shows a test error and then you cannot use the dash-mounted unit." *Id.* at 12:19-13:8.

Trooper Reilly clarified that "[i]t's an internal test[,]" and that "there has never been an error reading" on the specific radar unit used on the day of the stop. *Id.* at 13:10-14:1. However, Trooper Reilly also noted that he would not know the history of that specific radar unit because he does not use that vehicle regularly. *Id.* at 14:22-15:1.

At the close of the State's case, Appellant's counsel offered into evidence the "certificate of accuracy" for the radar device used to determine Appellant's speed (Defendant's A or certificate of accuracy). *Id.* at 15:23-16:4. Defendant's A shows "the tuning of the radar device" calibrated by a third party. *Id.* at 15:14-22. Trooper Reilly confirmed that Defendant's A is the "most recent calibration sheet" for the radar device that he used on the day of the stop. *Id.* at

16:2-8. Thereafter, Appellant's counsel once again moved to dismiss the charged violation. *Id.* at 16:18-20. The Trial Magistrate subsequently denied the motion to dismiss. *Id.* at 16:21-22. Appellant's counsel then introduced General Order 56 A-1 (Defendant's B) into evidence, which is a Rhode Island State Police regulation stating that all radar and laser units shall be examined and calibrated in accordance with applicable federal regulations and industry standards. *Id.* at 17:14-24. Appellant's counsel also introduced the National Highway Safety Traffic (NHTSA) regulations stating that radar devices be calibrated annually (Defendant's C) and rested Appellant's case. *Id.* at 18:6-11; 19:3-4.

The Trial Magistrate found Trooper Reilly's "uncontradicted" testimony to be "completely credible." *Id.* at 19:9-10; 21:9-10. The Trial Magistrate was "satisfied by clear and convincing evidence that the facts support the charge[]" because Trooper Reilly testified that "he calibrated the device, and it was working properly on the date of the violation." *Id.* at 21:3-7. Additionally, the Trial Magistrate stated that *DaSilva* is distinguishable from Appellant's case because in *DaSilva* there was no testimony from the officer that he had calibrated the device on the day of the stop, and "the sole evidence, which was offered to show the accuracy of the radar and the efficiency of the radar was the calibration sheet[.]" *Id.* at 20:20-24. Therefore, the Trial Magistrate found Appellant guilty and sustained the charged violation. *Id.* at 21:12-13.

Appellant subsequently filed this timely appeal of the Trial Magistrate's ruling. Forthwith is this Panel's decision.

#### Standard of Review

Pursuant to § 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 Company 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." *Id.* (citing *Environmental Science Corporation 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." *Id.* Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

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### **Analysis**

On appeal, Appellant contends that the Trial Magistrate's decision sustaining the charged violation is "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" Sec. 31-41.1-8(f)(5). Specifically, Appellant asserts that the Trial Magistrate erred because the evidence presented at trial established that the radar device used to determine Appellant's speed had not been calibrated within a reasonable time.

Radar unit readings are admissible at trial when the testifying officer satisfies two preliminary requirements: (1) "the operational efficiency of the radar unit was tested within a reasonable time and by an appropriate method," and (2) "testimony setting forth [the officer's] training and experience in the use of a radar unit." *State v. Sprague*, 113 R.I. 351, 355-57, 322 A.2d 36, 39-40 (1974). In addition, the *Sprague* court explicitly noted that "radar speed meter ratings are admissible *without* a prior showing of the reliability of the [device] that was used to test the accuracy of the radar unit." *Id.* at 357, 40 (emphasis added).

Here, the evidence demonstrates that the radar unit used to detect Appellant's speed was "tested within a reasonable time and by a reasonable method" because Trooper Reilly testified that he tested the radar unit prior to and after his shift that day using "the test button on the dash-mounted radar unit." *Id.* at 355-357, 39-40; Vol. 1 Tr. at 9:1-4. Trooper Reilly also testified that the test indicated the radar unit was "in good working order." *Id.* In addition, the evidence presented at trial satisfies the second prong of the *Sprague* analysis as Trooper Reilly testified

that he received instruction on how to use radar units at the Rhode Island Municipal Police Academy in 1998 and at the Rhode Island State Police Academy in 2005. *Sprague*, 113 R.I. at 355-57, 322 A.2d at 39-40; Vol. 2 Tr. at 8:14-19.

However, Appellant asserts that the charged violation cannot be sustained because the evidence Appellant presented at trial rebuts Trooper Reilly's testimony that the radar unit was calibrated within a reasonable time. At trial, Appellant presented the Rhode Island State Police regulations requiring that all radar and laser units be calibrated annually. *See* Defendant's B. Appellant also presented the certificate of accuracy for the radar unit that Trooper Reilly used on the day of the stop, which indicated that a third party calibrated the radar unit in July 2014. *See* Defendant's A. Appellant, relying on *DaSilva*, argues that this evidence establishes that the radar unit had not been calibrated in four years, in violation of Rhode Island State Police regulations, and thus the radar unit had not been calibrated "within a reasonable time."<sup>2</sup>

Appellant's argument overlooks the fact that Trooper Reilly calibrated the radar unit before and after his shift, demonstrating that the device had been calibrated *after* July 2014. *See* Vol. 2 Tr. at 9:1-4. The certificate of accuracy does not rebut Trooper Reilly's testimony that he calibrated the radar unit that day; it merely evidences that a third party calibrated the radar unit in July 2014. *Sprague* only requires that radar and laser unit devices be calibrated "by an appropriate method" and "within a reasonable time." *Sprague*, 113 R.I. at 355-57, 322 A.2d at 39-40. Indeed, *Sprague* is devoid of any indication that the calibration "by an appropriate

<sup>&</sup>lt;sup>2</sup> The *DaSilva* panel merely determined that the radar device at issue had been calibrated within a reasonable time—ten months prior to the stop—which was in accordance with the police department's internal regulations. This Panel, however, is bound only by decisions of the Rhode Island Supreme Court. *Forte Brothers, Inc. v. State, Department of Transportation*, 541 A.2d 1194, 1196 (R.I. 1988) (only the decisions of [the Rhode Island Supreme] [C]ourt are of binding effect upon all justices of trial courts of this state"). Our Supreme Court has explicitly declined to extend the doctrine of *stare decisis* "regarding decisions of trial courts as having binding effects upon other members of the same or coordinate trial courts." *Id.* 

method" requirement is satisfied only when the device is calibrated by a third party or that radar devices must be calibrated in accordance with police department regulations.

Furthermore, the certificate of accuracy does not demonstrate that the radar unit was not in good working order at the time of the stop. While the police department regulations, which are not binding upon this Court, require yearly calibration, there is no evidence on the record that radar units not calibrated yearly are *per se* inefficient. Such evidence would require expert testimony. *See Peerless Ins. Co. v. Luppe*, 118 A.3d 500, 506 (R.I. 2015) (quoting *Vallinoto v. Di Sandro*, 688 A.2d 830, 851 (R.I.1997)) (it is well settled that expert testimony is necessary "when the subject matter is wholly scientific or so far removed from the usual and ordinary experience of the average lay person").

The Trial Magistrate considered Trooper Reilly's testimony—which he found to be credible—and weighed the evidence presented by Appellant. In doing so, the Trial Magistrate determined that the radar unit was calibrated before the stop and found to be in good working order based upon Trooper Reilly's testimony. As this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of evidence on questions of fact[,]" this Panel will not disturb the Trial Magistrate's factual findings or credibility determinations. *Link*, 633 A.2d at 1348. Based on a review of the record, this Panel is satisfied that the Trial Magistrate did not overlook or misconceive material evidence, and further that the Trial Magistrate's decision was supported by reliable, probative, and substantial evidence. *See* § 31-41.1-8(f)(5).

IV

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 was not clearly erroneous in view of the

reliable, probative, and substantial evidence on the whole record. See § 31-41.1-8(f)(5). The

substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is

denied, and the charged violation is sustained.

ENTERED:
Magistrate William T. Noonan (Chair)
Administrative Magistrate Joseph A. Abbate
Chief Magistrate Domenic A. DiSandro, III

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