STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF JOHNSTON	:	
	:	
v.	:	**C.A. No. M09-0010**
	:	
LUCRETIA LYNN PERRY	:	

DECISION

PER CURIAM: Before this Panel on October 14, 2009—Magistrate Noonan (Chair, presiding) and Judge Ciullo and Magistrate DiSandro, sitting—is Lucretia Lynn Perry's (Appellant) appeal from a decision of the Johnston Municipal Court, sustaining the charged violation of § 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 January 20, 2009, Patrolman Matthew Winsor of the Johnston Police Department (Officer Winsor) observed Appellant traveling on Hartford Avenue, at which time his radar detected the vehicle traveling above the posted speed limit. Officer Winsor charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial in the Johnston Municipal Court.

At trial, Officer Winsor testified that on the date in question, at approximately 5:50 PM, he was on patrol driving westbound on Hartford Avenue. (Tr. at 1.) The Officer observed a single vehicle, later identified to be that of Appellant's, operating on Harford Avenue. Officer Winsor testified that the "radar detector [in his police cruiser] detected [the vehicle traveling at] a speed of sixty-one miles per hour (mph)" in a thirty-five mph speed zone. (Tr. at 2.) After the

radar detected Appellant's speeding vehicle, the Officer initiated a traffic stop and issued her a citation. (Tr. at 2.)

Officer Winsor testified that he had conducted an internal test on the moving radar detector inside his police cruiser, and "everything had come back in working order." (Tr. at 2.) Additionally, he had calibrated the external radar detector, prior to and at the end of his shift, using the tuning forks. Id. Officer Winsor also confirmed that he has been trained in the use of radar equipment, but he failed to elaborate as to the details of such qualifications. (Tr. at 1.)

Next, the trial judge heard from Appellant that there were "a lot of cars" on Hartford Avenue at the time of her alleged violation. (Tr. at 3.) Appellant then made a motion to dismiss based on errors written on her citation by Officer Winsor. Appellant argued that the date of the charged violation and the date of her court appearance were incorrect on the citation, and the Officer listed her as having a driver's license, instead of a commercial driver's license, thus warranting dismissal of the violation. (Tr. at 3.)

The trial judge denied Appellant's motion to dismiss based on the incorrect date of her court appearance. He explained that Appellant was "astute enough to show up" to court on the correct day, therefore finding sufficient notice was given despite the Officer's error. (Tr. at 6.) Additionally, the trial judge denied her motion to dismiss based on the fact that Officer Winsor did not indicate that she has a commercial driver's license. (Tr. at 3.) The trial judge found that Appellant was "sufficiently informed of the charge or charges against her" because the citation gave her reasonable notice of such, regardless of this harmless error. Id.

As to Appellant's final basis for her motion to dismiss, the issue was whether the error of Officer Winsor—in writing on the ticket a violation date of January 20, 2008 instead of January 20, 2009—was "so defective" that it violated Appellant's rights, warranting dismissal of the

charged violation. (Tr. at 7.) At this point in the trial, the prosecution moved to amend the citation and stated that the error of Officer Winsor "does not affect the ticket because one[,] it was right after the new year and a lot of people make that mistake, and [secondly,] she knew what date she was traveling, just as the date of the court date. She obviously came here on the right date knowing that it should have been [20]09." (Tr. at 4.) The trial judge agreed and found that "regardless of some immaterial mistakes[,] if the citation or the complaint or the indictment give[s] [Appellant] sufficient notice of what [she is] being charged with[,] that [i]s all that is required." (Tr. at 9.) Thus the trial judge denied Appellant's motion to dismiss.

Following the trial, the judge 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 § 8-18-9, "[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8." Section 31-41.1-8 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'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 and clearly erroneous in view of the lack of reliable, probative, and substantial evidence on the record. Specifically, Appellant contends that the record is devoid of specific findings of fact to satisfy the prevailing standard for the admissibility of radar speed readings, as set forth in State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974). Appellant maintains that the operational efficiency of the Officer's radar unit was never conclusively established, as the Officer failed to provide adequate testimony that he received training in the use of radar units. Additionally, Appellant argues that the citation issued to her contained errors made by the Officer that warrant dismissal of the charged violation.

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," in addition to "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 his radar unit had been calibrated internally and externally prior to recording the speed of Appellant's vehicle. (Tr. at 2.) However, the Officer did not testify that he was qualified, by virtue of his professional training and experience, to operate a radar unit. During the trial, when the Officer was asked if he was trained to use a radar unit, his response of "[y]es, I am" was not sufficient to satisfy the requirements set forth in Sprague. 113 R.I. at 357, A.2d at 40. (Tr. at 1.) The record reflects that the Officer did not set forth in his trial testimony that he possessed the necessary "training and experience in the use of a radar unit," as required by Sprague. Id.

As required by § 31-41.1-6(b),[1] the members of this Panel conclude that the trial judge never made any specific findings of fact due to his focus on resolving a motion to dismiss based on minimal mistakes made in the citation. In the absence of such testimony, the trial judge's decision to sustain the charged violation of § 31-14-2 is affected by error of law and requires reversal. Appellant's arguments as to the errors enumerated on her citation are de minimis and were adequately resolved at trial. G.L. 1956 §§ 8-18-4(e),[2] 8-18-11[3]; see also R.I.T.T. Rule 3(d).[4]

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[1] Section 31-41.1-6(b) reads, "[a]fter due consideration of the evidence and arguments, the judge or magistrate shall determine whether the charges have been established, and appropriate findings of fact shall be made on the record. If the charges are not established, an order dismissing the charges shall be entered."

[2] Section 8-18-4(e) reads in pertinent part, "[a]ll municipal courts shall be courts of record, shall tape record all sessions, maintain dockets, and adjudicate all violations on the summonses . . ."

[3] Section 8-18-11 reads in pertinent part, "[a]ll municipal courts which shall hear and decide traffic matters pursuant to the authority of this chapter shall do so in a manner consistent with the procedures of the traffic tribunal."

[4] Rule 3(d) of the R.I. Traffic Tribunal Rules of Procedure reads in pertinent part, "[a]n error or an omission in the summons shall not be grounds for dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice."

Accordingly, this Panel is satisfied that the trial judge's decision to sustain the charged violation of § 31-14-2 was clearly erroneous in light of the lack of record evidence.

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 affected by error of law and clearly erroneous in light of the lack of reliable, probative, and substantial record evidence. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.