

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF PORTSMOUTH

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:

v.

C.A. No. T11-0038

JOHN COLEMAN

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
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DECISION

PER CURIAM: Before this Panel on August 10, 2011—Administrative Magistrate Cruise (Chair, presiding), Magistrate DiSandro, and Magistrate Noonan, sitting—is John Coleman’s (Appellant) appeal from a decision of Judge Parker, sustaining the charged violation G.L 1956 § 31-27-24, “Prima facie limits,” brought by the Town of Portsmouth (Appellee). Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

Appellant was issued a citation for traveling eighty-four miles per hour (mph) in thirty-five mph speed zone. In response, Appellant contested the charge, and the matter proceeded to trial at which the charged violation was sustained. Appellant appealed to this Panel.

The underlying facts are as follows: On March 9, 2011, Officer Khubchandani of the Portsmouth Police Department was stationed on West Main Street when Appellant’s vehicle passed his police cruiser at a high rate of speed. Officer Khubchandani’s radar stated that Appellant’s vehicle was traveling at eighty-four mph, well above street’s posted speed limit of thirty five mph. (Tr. at 1.) Accordingly, Officer Khubchandani stopped Appellant’s vehicle and issued a citation for violating G.L 1956 § 31-27-24. (Tr. at 1.)

At trial, Officer Khubchandani recounted the infraction’s surrounding facts. The testimony revealed that Appellant’s vehicle was the lead car amongst three vehicles traveling at

similar high speeds, in close proximity, on West Main Street. (Tr. at 1.) Relative to this fact, Officer Khubchandani testified that the speed of Appellant's vehicle—rather than that of the other vehicles—was captured on his radar. (Tr. at 1.) Officer Khubchandani further provided that he was radar certified and that the radar unit employed during the incident was properly calibrated. (Tr. at 1-2.) Subsequently, Appellant testified that he was speeding in an attempt to move out of the way of the other speeding vehicles. (Tr. at 2.) Appellant additionally contended that the eighty-four mph radar reading corresponded with one of the other two vehicles present during the incident. (Tr. at 2.)

Upon consideration, Judge Parker determined that Officer Khubchandani was a credible witness and adopted his findings. (Tr. at 4.) Thus, Judge Parker sustained the charged violation of G.L. 1956 § 31-27-24 and imposed penalties. Appellant, aggrieved by such decision, filed a timely appeal to this Panel.

#### **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 Liberty Mutual Insurance Co., 586 A.2d at 537.

#### Analysis

On Appeal, Appellant argues that the trial judge's decision is affected by error of law. Appellant asserts that Officer Khubchandani did not provide adequate evidence that the cited radar reading was accurate and/or corresponded with Appellant's vehicle. Further, Appellant claims that the trial judge erred in finding the testimony of Officer Khubchandani as credible.

Regarding the admissibility of radar readings, our Supreme Court has held that such evidence is permissible 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

officer's] training and experience in the use of a radar unit." State v. Sprague, 113 R.I. 357, 322 A.2d 39-40 (1974). Although the language of Sprague is facially clear, Appellant asks this Panel to impart additional requirements on the effectiveness of radar units. Appellant argues that police officers possess, and therefore should offer, critical information concerning the effectiveness of radar units. In particular, Appellant argues that Officer Khubchandani has knowledge about radar effectiveness with respect to certain vehicles makes and/or weather conditions.<sup>1</sup> Implied in this argument is that police officers should have to explain each specific issue raised by an adverse party regarding the accuracy and/or applicability of radar unit readings. We reject such argument.

The long established standard of Sprague only necessitates that a police officer offer that a radar unit has been calibrated "within a reasonable time and by an appropriate method," and that such officer possess "training and experience in the use of a radar unit." 113 R.I. at 357, 322 A.2d at 40. Police officers, under Sprague, are not required to tender any further expertises concerning how radar is affected by outside circumstances, such as weather or vehicle make. Here, Officer Khubchandani's testimony provides that he was radar unit certified and that the unit relied upon was not defective; this is the critical information necessary to satisfy Sprague.

Furthermore, regarding trial testimony, our Supreme Court has held this Appellate 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, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co., 586 A.2d 536, 537 (R.I. 1991)). Stated otherwise, this Panel was not privy to live or actual testimony and therefore does not possess any direct

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<sup>1</sup> Appellant argues that such circumstances are relevant to substantiating the charged infraction.

knowledge; thus, it would be impermissible to second-guess the trial judge's impressions or observations. Environmental Scientific Corp., 621 A.2d at 206.

After listening to the trial testimony, Judge Parker determined that Officer Khubchandani's testimony regarding the incident in question was credible. (Tr. at 4.) Confining our review to the proper scope and showing appropriate deference to the trial judge's expertise, this Panel is satisfied that the trial judge did not abuse his discretion or commit an error of law in accepting the testimony of Officer Khubchandani.

### **Conclusion**

After review, the members of this Panel do not find that the trial judge's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law. As articulated, the required burden of proof has been substantiated with legally competent evidence. Substantial rights of Appellant have not been prejudiced. Accordingly, the trial court's decision to sustain the charged violation of G.L. 1956 § 31-27-24 is affirmed, and Appellant's appeal is denied.