

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T12-0033  
07001060786

MANUEL VIEIRA

13 FEB 12 AM 9:43

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

DECISION

PER CURIAM: Before this Panel on September 19, 2012—Magistrate Noonan (Chair, presiding), Magistrate Goulart, and Judge Almeida sitting—is Manuel Vieira’s (Appellant) appeal from a decision of Chief Magistrate Guglietta, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared before this panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On January 20, 2012, an officer of the Portsmouth Police Department (Officer) charged the Appellant with the aforementioned violation of the motor vehicle code.<sup>1</sup> Appellant contested the charge, and the matter proceeded to trial on May 3, 2012.

On the day of the incident, the Appellant was delivering goods to the City of Newport for his employer, Costa Food Company. (Tr. at 6.) The Officer, who was working on detail at the Seekonk River Bridge, noticed the Appellant’s 5 axel white truck trailer crossing the bridge. Id. at 2. At the time, the bridge was under construction, and signs in the vicinity indicated that only vehicles with 2 axels per vehicle that weighed no more than 18 tons could cross the bridge. Id.

<sup>1</sup> The Officer also cited the Appellant for violating G.L. 1956 § 31-13-4, “Obedience to devices.” (Tr. at 3.) At trial, the judge sustained the violation because Mr. Vieira admitted to seeing the axel restriction signs but crossed the bridge anyway. The Appellant does not appeal this citation.

The Officer followed the vehicle, engaged his radar device, and obtained a speed of 70 miles per hour in a 50 miles per hour zone. Id. at 2-3.

At some time between 12:15 and 12:24 p.m., the Officer pulled over the truck and identified the operator, Manuel Vieira, by his Massachusetts driver's license.<sup>2</sup> Id. at 3. The Officer cited him for speeding 20 miles over the speed limit—under G.L. 1956 § 31-13-4, “Obedience to devices”—and for disobeying the axel restrictions when crossing the bridge—under § 31-14-2, “Prima facie limits.” Secs. 31-13-4; 31-14-2; (Tr. at 3.).

At trial, the Appellant acknowledged that he saw the signs only permitting vehicles with 2 axels to cross the bridge and that his vehicle had 5 axels. Id. at 4-5. The Appellant, however, denied that he was speeding and emphasized that he had never received a speeding ticket.<sup>3</sup> Id. He alleged that GPS chips installed in his truck prevented him from driving at 70 miles per hour. Id. In support of his allegation, he presented time stamped GPS records indicating that at 12:05 p.m., he was driving at 39 miles per hour, and at 12:06 p.m., he was driving at 64 miles per hour. Id. He did not present evidence establishing that the GPS had been calibrated or verified. Id. at 3. Nor did the evidence show that the GPS device had been tested and found to be accurate. Id. at 3.

The Officer, however, testified that he calibrated his radar device before and after the incident to determine that it was in working order. Id. at 3. He also explained that he had been trained to use the speeding device in the State of Georgia in 1989 and in the State of Rhode Island in 1997, is a certified radar operator, and has used the radar device for 22 years. Id.

After both parties presented their evidence, the Chief Magistrate determined that the Officer was a credible witness. Id. at 7. He accepted the Officer's testimony that his radar unit was properly calibrated and determined the Appellant had been operating his vehicle at 70 miles

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<sup>2</sup> At trial, the Appellant and Officer disagreed about the time of the stop. The Appellant alleged he was stopped at 12:15. (Tr. at 4.) The Officer alleged that he made the stop at 12:24. Id.

<sup>3</sup> The Appellant's Massachusetts driving record did not indicate any traffic violations. (Tr. at 6.)

per hour. Id. at 6. The magistrate also noted that the 64 miles per hour reading on the GPS document only served to corroborate that the Appellant was speeding. Id. Under the clear and convincing evidence standard, the Chief Magistrate sustained both violations. Aggrieved by his decision, the Appellant timely filed this appeal only on the issue of speeding.

### **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:

- (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, the Appellant argues that the Chief Magistrate’s decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, the Appellant alleges that he was not speeding on January 20, 2012, which he claims is supported by his driving record and the GPS log he presented at trial.

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.

After listening to the evidence, the Chief Magistrate determined that the Officer's testimony was credible. Although the Appellant presented documentation of his driving speed around the time of the incident, the Chief Magistrate noted that if he were to accept the 39 reading indicating that Mr. Vieira was driving under the speed limit, he would also need to accept the 64 miles per hour reading at 12:06 indicating that the Appellant was speeding. (Tr. at 4.) Moreover, the Appellant's own evidence corroborates the finding that he was speeding on January 20, 2012. Confining our review of the record to its proper scope, this Panel is satisfied that the Chief Magistrate's credibility findings were not clearly erroneous. See Link, 633 A.2d at 1348.

The Chief Magistrate also found that the Officer's testimony was sufficient to sustain the speeding violation. In State v. Sprague, our Supreme Court held that a radar speed reading—regardless of whether the reading is from a moving or stationary unit—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 within a reasonable time and by an appropriate method and testified that he possessed training and experience in the use of a radar unit. See Sprague, 113 R.I. at 357, 322 A.2d at 40. Thus, there was probative evidence presented by the Officer to satisfy the standards set forth by our Supreme Court to properly introduce evidence of the speed of the Appellant's vehicle. This Panel concludes that the Chief Magistrate's findings were not in violation of statutory provisions or 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 Chief Magistrate's decision was not clearly erroneous and was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.