

**STATE OF RHODE ISLAND**  
**RHODE ISLAND TRAFFIC TRIBUNAL**

<b>STATE OF RHODE ISLAND</b>	:	
	:	
v.	:	<b>C.A. No. M21-0008</b>
	:	<b>21502501042</b>
<b>PATRICK BRETTI</b>	:	

**DECISION**

**PER CURIAM:** Before this Panel on March 2, 2022—Chief Magistrate DiSandro (Chair), Magistrate Goulart, and Magistrate DiChiro, sitting—is the appeal of Patrick Bretti (Appellant) from a decision of Judge David Reilly (Trial Judge) of the North Kingstown Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2, “Speeding 1 to 10 MPH in excess of posted speed limit – 2nd offense[.]” Appellant appeared before this panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For the reasons set forth in this Decision, Appellant’s appeal is granted.

**I**

**Facts and Travel**

On August 11, 2021, at approximately 2:37 p.m., Lieutenant Donald Barrington (Lieutenant Barrington) of the North Kingstown Police Department charged Appellant with the aforementioned violation of the motor vehicle code. *See* Summons No. 21502501042. Appellant contested the charge, and the matter proceeded to trial on November 10, 2021.

The trial began with a prosecutor questioning Lieutenant Barrington. (Tr. at 1.) The prosecutor first asked Lieutenant Barrington for how long he had been a North Kingstown police officer. *Id.* Lieutenant Barrington explained that he had been a police officer for about twenty

years. *See id.* at 1, 5. Next, the prosecutor asked Lieutenant Barrington, “You graduated, [the] municipal police academy?” *Id.* at 2. Lieutenant Barrington responded affirmatively.<sup>1</sup> *Id.* Next, either the Trial Judge or the prosecutor asked, “[A]t the time at the academy, did you train in the detection of speeding violations[,]” to which Lieutenant Barrington replied, “Yes[.]” *See id.* at 2. The prosecutor also asked whether Lieutenant Barrington’s training included training in the use of radar devices and how to pace a motorist’s speed, and Lieutenant Barrington’s response was affirmative.<sup>2</sup> *Id.* Next, the prosecutor asked, “What is clocking?” *Id.* Lieutenant Barrington responded, “Clocking is when you follow behind a vehicle a certain distance and you keep a consistent speed and you clock them . . . just need 300 feet in order to clock them[.]” *Id.*

Lieutenant Barrington further testified that on the date he charged Appellant with the aforementioned violation, Lieutenant Barrington had been traveling westbound over the Jamestown Bridge, away from Jamestown and into North Kingstown. *Id.* Lieutenant Barrington explained that he was traveling in a police cruiser and observed a vehicle pass him on the left side with the license plate number BP933. *Id.* at 2-3. Lieutenant Barrington testified, “[a]s I got to the top of the bridge I then clock[ed] said vehicle um at 63 in a 45 [m.p.h.] zone . . . I then proceeded to um stop the vehicle just shy of Boston Neck R[oa]d in North Kingstown.” *Id.* at 2. Lieutenant Barrington said that he started clocking the vehicle at the peak of the Jamestown bridge and continued to do so for about half a mile. *Id.* at 2-3. Lieutenant Barrington testified that he conducted a stop of the vehicle and identified the operator as Patrick Bretti, Appellant in this matter. *Id.* Lieutenant Barrington issued Appellant a speeding ticket for traveling fifty (50) miles

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<sup>1</sup> This portion of the transcript was marked as inaudible. However, after listening to the recording, this Panel was able to fill in this portion of the transcript.

<sup>2</sup> Again, this portion of the transcript was marked as inaudible. However, after listening to the recording, this Panel was able to fill in this portion of the transcript.

per hour in a posted forty-five (45) mile per hour zone. *See id.* at 4; *see also* Summons No. 21502501042.

Lieutenant Barrington also explained that there is an agreement between North Kingstown and Jamestown that applies when an officer follows a motorist from one of the two adjacent jurisdictions into the neighboring jurisdiction. *Id.* at 5. Subsequently, the prosecutor asked, “But that [agreement] doesn’t really apply here right?” *Id.* Lieutenant Barrington replied, “Correct, [it is] our jurisdiction. *Id.*”

After Lieutenant Barrington’s testimony, Appellant declined the opportunity to cross-examine Lieutenant Barrington. *Id.* at 5-6. Appellant made a statement, detailing his account of the events that occurred prior to the traffic stop. *Id.* at 6. Appellant testified that he passed a police cruiser while traveling over the Jamestown bridge in the left-hand lane. *Id.* Appellant noted that halfway across the Jamestown bridge, the police cruiser pulled up behind his vehicle and began pacing him. *Id.* Appellant explained that the cruiser only paced him for a few seconds before the officer in the cruiser turned on the lights. *Id.* Appellant told the Trial Judge that he believed there was a jurisdiction issue and also stated that he called the Jamestown Police Department to inquire as to whether there was an agreement between Jamestown and North Kingstown. *Id.* at 6-7. During the phone call, the Jamestown Police Department informed Appellant that there is an agreement, but Appellant claimed that the Jamestown Police Department told him that North Kingstown police officers were required to call and request permission before issuing a citation. *Id.* at 7, 9. Appellant also argued that he was not speeding, and that Lieutenant Barrington did not pace him long enough to determine his speed. *Id.* at 7.

Ultimately, the Trial Judge sustained the charge based on the credible testimony of Lieutenant Barrington. *Id.* at 9. In regard to the jurisdiction issue, the Trial Judge noted, “I don’t

have any paperwork from the Jamestown Police Department[,] and I don't have any [] Jamestown Police Officer. So frankly[,] I believe Officer Barrington when he says the agreement is different from what [Appellant] said." *Id.* at 9. The Trial Judge found Appellant guilty of the speeding violation based on Officer Barrington's testimony that he paced and clocked Appellant at a speed of sixty-three miles per hour. *Id.* at 10. The Trial Judge imposed a fine of \$146 plus court costs. *Id.* Just prior to the end of the trial, Appellant argued that "the prosecutor didn't provide any evidence or proof that [was] admissible[.]" *Id.* at 11. The Trial Judge responded, "I'm sorry that the testimony of this officer is admissible, it's credible, he's been there for 10 years and I've already imposed [the] sentence. So this case is now completed." *Id.* at 11. Appellant timely filed the instant appeal.

## II

### Standard of Review

Pursuant to § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. 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 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 Mut. 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.” *Id.* (citing *Env’tl. Sci. 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.” *Id.* Otherwise, the Appeals Panel must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

On appeal, the Appellant argues that both the prosecution and Lieutenant Barrington failed to provide evidence to support the charged violation. *See* Notice of Appeal. Appellant also argues that the prosecution failed to prove guilt beyond a reasonable doubt. *See id.* At trial, Appellant had also indicated that he believed there was a jurisdiction issue. (Tr. at 6.)

#### A

##### Jurisdiction of Police Officers

Appellant argues that Lieutenant Barrington was acting outside of his jurisdiction when he stopped Appellant. While a Rhode Island municipal police officer does not have extra-territorial

authority to act outside his assigned town or city,<sup>3</sup> extra-territorial jurisdiction is not an issue in this case. Lieutenant Barrington clearly testified that Appellant’s alleged speeding occurred within the jurisdiction of the North Kingstown Police Department, as evidenced by his response to the prosecutor, “it’s our jurisdiction[.]” *See id.* at 5. The Trial Judge found that Lieutenant Barrington’s testimony was credible because Lieutenant Barrington had been a North Kingstown police officer for over twenty years. *Id.* at 9.

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*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). As the members of this Panel did not have an opportunity to observe the live testimony of Lieutenant Barrington, it would be impermissible for the Panel to second-guess the Trial Judge’s impression as he was able to “appraise [the] witness[’s] demeanor and to take into account other realities that cannot be grasped from a reading of a cold record.” *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (internal quotations omitted).

Therefore, this Panel will not disturb the Trial Judge’s credibility determinations or his assessment of the weight of the evidence on the jurisdiction issue. *See Link*, 633 A.2d at 1348. Accordingly, based on a review of the record, this Panel is satisfied that Lieutenant Barrington had authority to cite Appellant for an offense that was committed in the town of North Kingstown and that Appellant’s argument about jurisdiction is mistaken. *See* § 45-42-2. The Trial Judge did not err in finding that the police officer had jurisdiction to cite Appellant.

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<sup>3</sup> Our Supreme Court has stated, “[i]n the absence of statutory or judicially recognized exception, the authority of a local police department is limited to its own jurisdiction.” *State v. Ceraso*, 812 A.2d 829, 833 (R.I. 2002) (citing *Page v. Staples*, 13 R.I. 306, 308 (1881)).

## **B**

### **Burden of Proof**

Appellant also argues that “the prosecution failed to prove guilt beyond a reasonable doubt.” *See* Notice of Appeal. Appellant’s argument that the prosecution failed to prove guilt beyond a reasonable doubt is misplaced because Appellant’s argument references an incorrect burden of proof that the prosecution is required demonstrate.

The Rhode Island Traffic Tribunal Rules of Procedure dictate that “[t]he burden of proof shall be on the prosecution to a standard of clear and convincing evidence.” Traffic Trib. R. P., 17(a). The phrase “clear and convincing evidence” is “more than a mere exercise in semantics. It is a degree of proof different from a satisfaction by a ‘preponderance of the evidence[,]’ which is the recognized burden in civil actions, and different from proof ‘beyond a reasonable doubt[,]’ which is the required burden in criminal suits.” *Parker v. Parker*, 103 R.I. 435, 238 A.2d 57 (1968) (internal citations omitted). The clear and convincing evidence standard “does not require that the evidence negate all reasonable doubt or that the evidence must be uncontroverted.” *Cahill v. Morrow*, 11 A.3d 82, 88 n.7 (R.I. 2011) (quoting 29 Am. Jur. 2d *Evidence* § 173 at 188–89 (2008)). As such, the prosecution was not required to prove Appellant’s guilt beyond a reasonable doubt, but only by clear and convincing evidence.

## **C**

### **Sufficiency of Lieutenant Barrington’s Testimony**

Although Appellant cited an incorrect burden of proof, Appellant’s argument that the prosecution did not provide sufficient evidence to sustain the charge against him still has merit. *See* Notice of Appeal. This Panel agrees that Lieutenant Barrington’s testimony was not sufficient

to be admissible as evidence. Without that testimony, the prosecution could not sustain a speeding charge against Appellant.

As an initial note, Lieutenant Barrington did not specifically testify as to what method he used to measure Appellant's speed. The likely answer is that Lieutenant Barrington clocked Appellant's speed by using the speedometer in his police cruiser and pacing Appellant because Lieutenant Barrington checked off the box "clocked" on the summons, and the prosecutor inquired about what the process of clocking entailed. *See* Summons No. 21502501042; Tr. at 2. However, Lieutenant Barrington also testified that when he got to the top of the Jamestown Bridge, he "clock[ed]" Appellant's speed at sixty-three miles per hour. (Tr. at 2.) This testimony seems to indicate that Lieutenant Barrington may have used a radar device to obtain Appellant's speed at the top of the bridge because clocking requires an officer to follow the motorist for a certain distance in order to gauge the motorist's speed. Subsequent to this testimony, Lieutenant Barrington also testified that he began "clocking" Appellant from the peak of the bridge. *Id.* at 2-3. Taken in its entirety, Lieutenant Barrington's testimony seems to suggest that he may have used a radar device at the top of the bridge to obtain an initial speed reading on Appellant's vehicle and then subsequently began pacing Appellant using the speedometer in the police cruiser.

Although there is not complete clarity as to whether Lieutenant Barrington used a radar device or the speedometer in his vehicle to obtain Appellant's speed, Lieutenant Barrington's testimony was nonetheless inadequate to admit either speed measurement into evidence. Regardless of whether Lieutenant Barrington used a radar device or his speedometer to gauge Appellant's speed, Lieutenant Barrington would have been required to testify about the calibration or operational efficiency of these devices in order for his testimony about Appellant's speed to be admissible.



Our Supreme Court has held that a police officer must satisfy preliminary evidentiary requirements—regarding the operational efficiency of a device used by an officer to clock a vehicle’s speed—before such testimony is admissible. *State v. Mancino*, 115 R.I. 54, 58-59, 340 A.2d 128, 132 (1975) (quoting *State v. Barrows*, 90 R.I. 150, 154, 156 A.2d 81, 83 (1959)). In *Mancino*, our Supreme Court determined that testimony regarding the speed of a vehicle is only admissible upon a showing that the operational efficiency of the device used to obtain the vehicle’s speed had been tested by an appropriate method within a reasonable period of time.<sup>4</sup> *See id.* Pursuant to the court’s holding in *Mancino*, an officer must show that “the speedometer used to clock the [vehicle] was tested against another speed-testing standard and that the speedometer was operating properly at the time of the alleged violation.” *Id.*

A review of the record reveals that Lieutenant Barrington failed to provide any evidence as to the operational efficiency of the speedometer that he likely used to clock the speed of Appellant’s vehicle. *Id.* There is no testimony in the record that indicates whether Lieutenant Barrington’s “speedometer used to clock the [vehicle] was tested against another speed-testing standard [nor was there testimony] that the speedometer was operating properly at the time of the alleged violation.” *Id.* Without any such evidence, Lieutenant Barrington’s testimony regarding the vehicle’s speed at the time of the violation is thus insufficient. (Tr. at 2-5.)

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<sup>4</sup> The *Mancino* court stated:

“‘[T]estimony as to the speed at which the defendant’s automobile was being operated, based on an observation of the speedometer readings in the arresting officer’s motor vehicle, is admissible in evidence upon a showing that the operational efficiency of the device has been tested by an appropriate method within a reasonable period of time.’” *Id.*

Even if Lieutenant Barrington had used a radar device rather than the speedometer in his cruiser, his testimony would still be insufficient. In *State v. Sprague*, the Rhode Island Supreme Court held that radar unit readings are admissible as evidence at trial when the testifying officer satisfies two preliminary requirements: the officer must (1) show that “the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method,” and (2) provide “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).

At trial, Lieutenant Barrington met the second requirement of *Sprague* because he testified that he graduated from the Municipal Police Academy, where he trained in the detection of speeding violations. (Tr. at 1-2.) Lieutenant Barrington also affirmed that his training included the use of radar devices and clocking or pacing to measure the speed of a motorist. *Id.* at 2. However, Lieutenant Barrington’s testimony as to the “operational efficiency” of the device he used to determine the speed of Appellant’s vehicle was unsatisfactory. Not only did Lieutenant Barrington fail to testify that the device he used to measure Appellant’s speed was measured within a reasonable time, Lieutenant Barrington did not testify about calibration at all. Consequently, Lieutenant Barrington’s testimony did not satisfy the first prong of *Sprague*, that the radar unit was “tested within a reasonable time and by an appropriate method[.]” *See Sprague*, 113 R.I. at 355-57, 322 A.2d at 39-40.

Because this Panel finds Lieutenant Barrington’s testimony pertaining to the speed of the vehicle inadmissible, the prosecution failed to meet its burden of proof with respect to the charged violation. *See* § 31-14-2. Therefore, this Panel must conclude that the Trial Judge’s decision is “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Sec. 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 Judge's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5)-(6). Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED:

\_\_\_\_\_  
Chief Magistrate Domenic A. DiSandro, III (Chair)

\_\_\_\_\_  
Magistrate Alan R. Goulart

\_\_\_\_\_  
Magistrate Michael DiChiro

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