STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T21-0014**
	:	**21001515084**
SHANICA CHARLES	**:**	

DECISION

PER CURIAM: Before this Panel on October 27, 2021—Magistrate DiChiro (Chair), Chief Magistrate DiSandro, and Associate Judge Parker, sitting—is Shanica Charles's appeal from a decision of Magistrate Kruse Weller (Trial Magistrate) of the Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-14-2, "Speeding 11+ MPH in excess of posted speed limit – 1st offense." Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On April 25, 2021, Lieutenant Thomas Chabot (Lieutenant Chabot) of the Rhode Island State Police charged Shanica Charles (Appellant) with the aforementioned violation of the motor vehicle code. *See* Summons No. 21001515084. Appellant contested the charge, and the matter proceeded to trial on July 20, 2021.

At trial, Lieutenant Chabot testified that at approximately 1:32 a.m., he was traveling in his marked state police cruiser on Route 95 North and observed a green Nissan Rouge "traveling at a higher rate of speed." (Tr. at 3.) The vehicle approached him from the rear, and prior to the vehicle passing him, he was able to obtain a radar speed of the vehicle. *Id.* According to the radar unit, the motorist was traveling at a speed of one hundred (100) miles per hour in a fifty-five (55) mile

per hour zone. *Id.* Lieutenant Chabot testified that he had received training in the utilization of radar units at the Rhode Island State Police Training Academy in the year 2000. *Id.* He also testified about the radar unit he was using at the time, stating "At the time, prior to my patrol, it was calibrated both internally and externally, found to be in proper working order." *Id.* After obtaining the vehicle's speed, Lieutenant Chabot accelerated to catch up to the vehicle and pulled up along the passenger side of the vehicle with his emergency lights turned on. *Id.*

Lieutenant Chabot testified that he stopped "the Nissan Rogue on 95 North just prior to route 37." *Id.* After conducting a stop of the vehicle, he identified the operator as Shanica Charles and noticed that there were three other young females in the vehicle. *Id.* Lieutenant Chabot explained his reason for the stop, and Appellant said that she was traveling back from a vacation in North Carolina and that she was not aware of how fast she was going. *Id.* After explaining to Appellant the danger of traveling one hundred (100) miles per hour in a fifty-five (55) mile per hour zone, he issued her a citation for ninety (90) miles per hour in a fifty-five (55) mile per hour zone. *Id.* Prior to the conclusion of Lieutenant Chabot's testimony, the Trial Magistrate asked for clarification on when and how Lieutenant Chabot tested the radar, to which Lieutenant Chabot responded "we calibrated both internally and externally. Prior to my shift and after my shift, and found to be in proper working order." *Id.*

After Lieutenant Chabot's testimony, Appellant declined the opportunity to cross-examine Lieutenant Chabot but argued that she was not speeding. *Id.* at 4. In support for her argument, Appellant stated the following: "[m]y daughter was awake[;] all of them was awake. My daughter 18, my younger daughter 10 years old and my niece were in the car. We were all just talking at the time. I was not speeding I just looked at meter." *Id.* Appellant also testified as to her reaction after receiving the ticket, stating:

> "I'm looking at the ticket and I couldn't believe. I was like what did I do. But my kids was to [sic] tired and I was ready to go home. I literally had my knee brace on me and I got my doctor note right here . . . [f]or me to go that fast I have to put my whole pressure. I have a meniscus tear so I don't know what he's talking about." *Id.*

In response to this testimony, the Trial Magistrate asked Appellant "are you submitting that as evidence . . . are you saying that you are unable to press the pedal[?]" *Id.* In response, Appellant responded "[N]ot as fast as you think I was pressing it. I was lightly pressing pedal. I was just drive regular [o]kay." *Id.*

The Trial Magistrate found Appellant guilty of the aforementioned violation and explained that the fine would be $445 with court costs. *Id.* at 5. Appellant then continued to argue that there was no evidence of her speeding and stated multiple times, "I was not speeding." *Id.* She also said "There's no proof. No video proof[,]" and suggested that the radar could have detected another vehicle that was speeding before her. *Id.* After some back and forth discussion, the Trial Magistrate said "[y]ou can certainly appeal it you have 10 days . . . to do that, you can cite the error that you believe that I've made, but I said I found him credible. I adopt his testimony as my findings of fact." *Id.* 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 states that 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 as follows, 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 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 '[c]learly 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 (quoting Section 31-43-4(6)(d) and

(e)). "Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions" on appeal. *Id.*; *see Janes*, 586 A.2d at 537.

III

Analysis

As grounds for her appeal, Appellant reiterated many of the same arguments that she made at trial. In her Notice of Appeal, Appellant argued that there was no proof she was speeding. Notice of Appeal. Appellant also wrote that "[i]n the 6th amendment no one can be found guilty without a reasonable doubt to be guilty." *Id.*

A

Burden of Proof

As an initial consideration, Appellant's argument that "[i]n the 6th amendment no one can be found guilty without a reasonable doubt to be guilty" is flawed because her argument references an incorrect burden of proof that the prosecution must demonstrate at the Traffic Tribunal.

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).

Further, § 31-14-2 sets forth, in pertinent part, "any speed in excess of the limits specified in this section or established as authorized in this title shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful." Section 31-14-2. Therefore, in order to

sustain a charge of § 31-14-2 in this case, the prosecution's burden is to establish by clear and convincing evidence that the motorist traveled in excess of the speed limit. *Id.*; *see also State v. Sprague*, 113 R.I. 351, 362, 322 A.2d 36, 42 (1974) ("speeds in excess of those stated [in § 31-14-2] are prima facie evidence of unreasonableness").

B

Evidence of Speeding

Appellant argues that the Trial Magistrate erred in sustaining her violation because Appellant contends that there is "no proof" to establish that she was traveling over the posted speed limit of fifty-five (55) miles per hour.

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: (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." 113 R.I. at 357, 322 A.2d at 39-40.

At trial, Lieutenant Chabot satisfied the first preliminary requirement of *Sprague* when he testified as to the operational efficiency of the radar unit that he used to determine the speed of Appellant's vehicle. It is clear that the moving radar unit was "tested within a reasonable time and by an appropriate method" because Lieutenant Chabot testified that the radar was internally and externally calibrated both before and after his shift, and it was "found to be in proper working order." *See* Tr. at 3. Lieutenant Chabot also met the second requirement of *Sprague* because he testified that he had completed training for the use of the radar through the Rhode Island State Police Training Academy in the year 2000. *See id.*

Further, Appellant's testimony at trial, admitting that she was talking to her daughters at the time she was pulled over, shows that it is possible Appellant was not aware of her actual speed while she was operating the vehicle. A trial judge or magistrate "may not arbitrarily disregard uncontradicted testimony" unless such testimony "contains inherent improbabilities or contradictions . . . [or] may also be disregarded on credibility grounds as long as the factfinder clearly but briefly states the reasons for rejecting the witness' testimony." *Norton v. Courtemanche*, 796 A.2d 925, 932 (R.I. 2002) (quoting *Lombardo v. Atkinson–Kiewit*, 746 A.2d 679, 688 (R.I. 2000)). Here, the Trial Magistrate's acceptance of Appellant's testimony at trial is not clearly wrong as the record is devoid of any evidence indicating that Appellant's testimony contained "inherent improbabilities or contradictions." *See id.* As such, the court cannot disregard Appellant's statement, that she was speaking with her daughters at the time she got pulled over, or the conclusion that may be drawn from it.

In light of both Appellant's testimony and Lieutenant Chabot's testimony, which the Trial Magistrate also found credible, this Panel finds that the Trial Magistrate properly determined that Lieutenant Chabot's testimony met both prongs of the *Sprague* analysis and that Appellant's testimony did not contradict Lieutenant Chabot's evidence. *See* Tr. at 4-5; *Sprague*, 113 R.I. at 357, 322 A.2d at 39-40. As such, the evidence regarding the speed of Appellant's vehicle was properly admitted, and, contrary to Appellant's argument, there is evidence on the record to support a finding that Appellant was speeding. *See id.*

C

Credibility

Lastly, Appellant asserts that the Trial Magistrate erred when she credited Lieutenant Chabot's testimony over the Appellant's testimony.

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 Chabot, it would be impermissible for the Panel to second-guess the Trial Magistrate's impression as she 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 Magistrate's credibility determinations or her assessment of the weight of the evidence in this case. *See Link*, 633 A.2d at 1348. Accordingly, based on a review of the record, this Panel is satisfied that, pursuant to § 31-41.1-8(f), the Trial Magistrate did not abuse her discretion or misconceive material evidence and her decision to sustain the charged violation is supported by reliable, probative, substantial, and legally competent evidence. *Id.* (citing *Envtl. Scientific Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)); *see also* § 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 neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

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Magistrate Michael DiChiro (Chair)

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Chief Magistrate Domenic A. DiSandro III

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Associate Judge Edward C. Parker

DATE: _____