

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF EAST PROVIDENCE**

:

**v.**

:

**C.A. No. M17-0023**

:

**17404500734**

:

**JOSHUA VASQUEZ**

:

**DECISION**

**PER CURIAM:** Before this Panel on January 31, 2018—Magistrate Kruse Weller (Chair), Judge Almeida, and Magistrate Noonan, sitting—is Joshua Vasquez’s (Appellant) appeal from a decision of Judge George E. Furtado (Trial Judge) of the East Providence Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On March 2, 2017, Officer Darnell C. Sherrill (Officer Sherrill) of the East Providence Police Department issued Appellant a citation for the aforementioned violation. The Appellant contested the charged violation, and the matter proceeded to trial on September 21, 2017.

At trial Officer Sherrill testified that on March 2, 2017, while stationed at a fixed traffic post on Veterans Memorial Parkway, he observed a white Ford Explorer traveling at a high rate of speed. (Tr. at 8-9.) Officer Sherrill then followed the vehicle for one and two tenths of a mile to estimate the vehicle’s speed. *Id.* at 9, 12. While traveling behind the Ford Explorer, Officer Sherrill “clocked the [Ford Explorer’s] speed to be no less than 50 miles per hour and no higher than 52 miles per hour.” *Id.* at 9. Officer Sherrill then conducted a traffic stop of the vehicle and

identified its operator as Appellant. *Id.* Thereafter, Officer Sherrill issued Appellant a citation for traveling at fifty miles per hour in a forty mile per hour speed zone. *Id.* at 10.

At the conclusion of Officer Sherrill's testimony, Appellant, through counsel, moved to dismiss the charged violations for three reasons: (1) improper notice, (2) improper burden shifting, and (3) Officer Sherrill did not properly establish the operational efficiency of his cruiser's speedometer. *Id.* at 11. The Trial Judge denied the motion. *Id.*

During Appellant's cross-examination of Officer Sherrill, Officer Sherrill produced the calibration sheet showing that his cruiser had been "calibrated accurately to show the accurate speed." *Id.* at 12. The Trial Judge also inquired about the calibration of the speedometer. *Id.* Officer Sherrill responded to the Trial Judge's question by explaining that "calibration sheet show[ed] that the speedometer in [his] cruiser ha[d] been certified to be accurate, meaning when [he] followed [the Ford Explorer] for 1.2 miles . . ." his speedometer accurately displayed the speed of his vehicle. *Id.* at 12-13.

After hearing the testimony, the Trial Judge found Officer Sherrill's testimony to be credible. *Id.* at 14. The Trial Judge also found that Appellant was speeding based on Officer Sherrill's testimony that he clocked Appellant traveling between fifty and fifty-two miles per hour in a forty miles per hour zone. *Id.* Based on these findings, the Trial Judge sustained the charged violation. *Id.* at 12. Having been aggrieved by the Trial Judge's decision, Appellant timely filed this appeal. Forthwith is this Panel's Decision.

## II

### Standard of Review

Pursuant to § 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 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 *Envtl. 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, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

### **III**

#### **Analysis**

On appeal, Appellant contends that the Trial Judge’s decision was affected by error of law and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant argues that the Trial Judge (1) erred by denying his Motion to Dismiss; (2) improperly questioned Officer Sherrill; and (3) erred by imposing enhanced penalties pursuant to the Colin B. Foote Act.<sup>1</sup>

#### **A**

##### **Motion to Dismiss**

With respect to § 31-14-2 violations, the Rhode Island Supreme Court has held that police officers may clock a motorist’s speed using a police vehicle’s speedometer so long as “the speedometer used to clock the [motorist] was tested against another speed-testing standard and that the speedometer was operating properly at the time of the alleged violation.” *State v. Mancino*, 115 R.I. 54, 58-59, 340 A.2d 128, 132 (1975). In *Mancino*, our Supreme Court determined that testimony regarding the speed of a vehicle is 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. *See id.* at 58-59 (citing *State v. Barrows*, 90 R.I. 150, 154, 156 A.2d. 81, 83 (1959)). When the requirements established in *Mancino* are not met, Rule 16 of the Traffic Tribunal Rules of Procedure affords a defendant the opportunity

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<sup>1</sup> During oral arguments before this Panel, Appellant’s counsel waived the third argument pertaining to the imposition of enhanced penalties under the Colin B. Foote Act.

to move to dismiss a speeding violation for the prosecution's failure to proffer sufficient evidence. *See* Traffic Trib. R. P. 16 ("The court, on motion of a defendant . . . shall at the close of the evidence offered by the prosecution order the dismissal of one (1) or more violations charged in the summons if the evidence is insufficient to sustain such violation or violations to a standard of clear and convincing evidence.")

A review of the record in this matter reveals that Officer Sherrill failed to offer sufficient evidence to sustain a § 31-14-2 violation prior to Appellant's Rule 16 Motion to Dismiss. (Tr. at 10.) After Officer Sherrill testified, Appellant moved to dismiss the violation on the grounds that Officer Sherrill did not offer evidence regarding "the calibration or the re-calibration of any device used." *Id.* at 11. Following the Trial Judge's denial of Appellant's Motion, Officer Sherrill testified that the speedometer in his cruiser had been calibrated and was found to be in good working order. *Id.* Only then did Officer Sherrill submit as evidence, the cruiser's calibration sheet, showing that his cruiser had been calibrated within a reasonable time. *Id.*

After reviewing the record, this Panel finds that Officer Sherrill failed to prove the necessary elements of the charged violation as required by *Mancino*. Thus, the Trial Judge erred by denying Appellant's Motion to Dismiss pursuant to Rule 16 of the Traffic Tribunal Rules of Procedures. *See* Traffic Trib. R. P. 16; *Mancino*, 115 R.I. at 58-59, 340 A.2d at 132. Accordingly, the Trial Judge's decision was affected by error of law and clearly erroneous in view of the record.<sup>2</sup>

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<sup>2</sup> In light of the aforementioned findings, this Panel need not delve into Appellant's argument that the Trial Judge improperly questioned Officer Sherrill to elicit testimony related to the speedometer's operational efficiency. This Panel does note, however, that our Supreme Court has stated: "[A] trial justice's prerogative to question witnesses . . . is limited to inquiry that will clarify a matter which he justifiably feels is a cause for confusion . . ." *State v. Nelson*, 982 A.2d 602, 615 (R.I. 2009). Additionally, "it is improper for the trial judge, sitting as the finder of fact in a non-jury trial, to exceed the boundaries of questioning for the function of clarification

**IV**

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel finds that the Trial Judge’s decision was affected by an error of law and clearly erroneous in view of the entire record. The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant’s appeal is granted, and Trial Judge’s decision to deny Appellant’s Motion to Dismiss is reversed.

ENTERED:

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Magistrate Erika Kruse Weller (Chair)

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Judge Lillian M. Almeida

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Magistrate William T. Noonan

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

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and to, instead, steer the course and content of the witness’s testimony.” See Nelson, 982 A.2d 602, 615.