STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T19-0006**
	:	**18401504455**
JHONDER ALARCON	:	

DECISION

PER CURIAM: Before this Panel on May 8, 2019—Associate Judge Almeida (Chair), Magistrate DiChiro, and Associate Judge Parker, sitting—is Jhonder Alarcon's (Appellant) appeal from a decision of Magistrate Erika L. Kruse Weller[1] (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violations of G.L. 1956 § 31-26-4, "Duty on collision with unattended vehicle," and § 33-27-2.1, "Refusal to submit to chemical test." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On December 16, 2018, Officer Brian Graves (Officer Graves) of the Central Falls Police Department responded to a reported motor vehicle accident at the intersection of Charles Street and High Street.[2] (Tr. at 14:6-13.) Based upon his investigation at the scene, Officer Graves

[1] The trial transcript lists Associate Judge Lillian Almeida as the trial judge. However, it is clear from the audio recording of the trial, and confirmed by Appellant's counsel on the record on May 8, 2019, that the trial was held before Magistrate Kruse Weller.

[2] At the time of the violation, Officer Graves was a member of the Central Falls Police Department. (Tr. at 10:10-14.) As of January 2019, Officer Graves is a police officer with the West Warwick Police Department. *Id.* at 9:13-16.

identified Appellant as the driver involved in the motor vehicle accident and charged Appellant with the above-referenced violations. *See* Summons 18401504455.

Appellant pled not guilty to the charged violations, and the matter proceeded to trial on March 8, 2019. As an initial matter, Appellant's counsel and the State stipulated to the fact that Mr. Jose Negro Torres (Mr. Negron Torres) observed Appellant operate a motor vehicle and Mr. Negron Torres conveyed that information to Officer Graves. (Tr. at 3:21-4:3.) Appellant's counsel and the State also stipulated as to the Rights for Use at the Scene and Rights for Use at the Station forms that Officer Graves utilized during Appellant's arrest. *Id.* at 6:8-16.

Officer Graves testified as the first witness at trial. *Id.* at 9:1-4. First, Officer Graves testified in detail as to his training and experience conducting DUI investigations. Officer Graves attended DUI training at the Rhode Island Municipal Police Training Academy and within the Central Falls Police Department. *Id.* at 11:2-5; 14-16. This training included administering standardized field sobriety tests (SFSTs)—the horizontal gaze nystagmus, walk-and-turn, and one-leg stand tests—and identifying physical characteristics of alcohol impairment, such as bloodshot watery eyes, slurred speech, the odor of alcohol, and swaying or unsteadiness. *Id.* at 13:7-21. Officer Graves also attended more advanced training regarding DUI investigations. *Id.* at 11:6-10. In his time as a police officer, Officer Graves has conducted approximately sixty DUI investigations. *Id.* at 12:5-7.

Next, Officer Graves recalled the events of the night in question. On December 16, 2018, Officer Graves was on patrol in a marked police cruiser. *Id.* at 14:2-5. At approximately nine o'clock in the evening, Officer Graves dispatched to the scene of a motor vehicle accident at the intersection of Charles Street and High Street in Central Falls. *Id.* at 14:6-13. When he approached the scene, Officer Graves observed "a parked car with what appeared to be a hubcap

missing and some plastic" at the bottom of the hill (Vehicle 1). *Id.* at 14:14-18. As he came over the crest of the hill, Officer Graves observed another vehicle (Vehicle 2) and "[i]t appeared like the wheel was almost folded under the car." *Id.* at 14:21-15:2. Officer Graves testified that there was approximately four hundred feet between Vehicle 1 and Vehicle 2. *Id.* at 15:9-11.

When Officer Graves arrived at the scene, a man "who appeared kind of upset, [and] was later identified as Mr. Negron Torres[,]" approached Officer Graves and "began telling [him] that someone had hit [Mr. Negron Torres's] car which was the Acura that [Officer Graves] described with the driver's side damage parked further up the hill." *Id.* at 16:14-20. Mr. Negron Torres indicated to Officer Graves that he saw Appellant in the driver's seat of the vehicle that hit Mr. Negron Torres's vehicle, and that "he was sure" it was Appellant. *Id.* at 16:21-2.

Thereafter, Officer Graves observed Appellant standing against a chain link fence near the corner of Sacred Heart Avenue and High Street with another gentleman. *Id.* at 17:10-17. When Officer Graves asked Appellant what happened, Appellant told Officer Graves "that he was headed home and he hit a parked car." Id. at 17:24-18:1. Officer Graves then asked Appellant why people reported that Appellant tried to leave the scene and Appellant "stated that he could not have left because of the vehicle damage or something to the effect of the wheel." *Id.* at 18:2-5. Based upon the physical location of the vehicles, Officer Graves testified that he "would characterize that as leaving the scene of the accident" because "it wouldn't have been possible to go that far unintentionally." *Id.* at 19:10-21.

While speaking to Appellant, Officer Graves "observed the odor of alcohol emanating from [Appellant's] person. *Id.* at 18:6-8. Officer Graves testified that Appellant stated that "he [Appellant] had four beers at home and then two at the Tropicana Bar which is a bar on Cowden Street in Central Falls." *Id.* at 18:8-11. Officer Graves also observed that Appellant "had

bloodshot watery eyes." *Id.* at 18:14-15. Therefore, Officer Graves began conducting a DUI investigation. *Id.* at 18:15-16. Officer Graves brought Appellant "to the most flat level area available which is the sidewalk next to that business in front of the chain-link fence[,]" and asked Appellant if he would submit to a series of SFSTs to which Appellant agreed. *Id.* at 18:19-23; 19:22-24. Before conducting any SFSTs, Officer Graves asked Appellant if Appellant had any medical or physical conditions that would prevent him from completing those tests. *Id.* at 20:8-11. Initially, Appellant said that he did not have any issues; then Appellant "stated he had some sort of foot injury." *Id.* at 20:11-14. Although Officer Graves could not recall at trial whether he asked Appellant if the foot injury would interfere with Appellant's ability to perform he tests, Officer Graves testified that he did not notice Appellant walking with a limp or other in any other way that would prevent Appellant from performing the SFSTs. *Id.* at 20:21-21:1.

Officer Graves first asked Appellant to submit to a horizontal gaze nystagmus test. *Id.* at 21:6-9. During the test, Appellant "was able to follow Officer Graves's finger, but [Officer Graves] had to tell [Appellant] to stop moving his head."[3] *Id.* at 25:2-6. Next, Appellant performed the walk-and-turn test after Officer Graves provided instructions and a demonstration. *Id.* at 25:18-20. Officer Graves observed "six clues of impairment" while Appellant performed this test. *Id.* at 27:1-3. Lastly, Officer Graves then asked Appellant to submit to the one-leg-stand test. *Id.* at 27:16-21. Officer Graves testified that if one of Appellant's feet were injured, Appellant could have chosen to stand on the non-injured foot and lift the injured foot. *Id.* at

[3] Appellant's counsel objected to Officer Graves's testimony regarding the horizontal gaze nystagmus test on the basis that "it's scientific evidence that needs expert interpretation." *Id.* at 21:12-16. In response, the State explained that the line of questioning pertains only to "the instructions and what [Officer Graves] observed during that" and not the results of the test. *Id.* at 21:18-21. The Trial Magistrate allowed the testimony "for the very limited purpose in terms of just the instructions and what [Officer Graves] observed, not for the scientific evidence." *Id.* at 21:21-22:2.

28:13-18. Officer Graves observed three clues of impairment during this test. *Id.* at 29:1-4. Based on his training, experience, and observations that night, Officer Graves determined that Appellant "was unable to operate a motor vehicle safely." *Id.* at 30:1-8. Consequently, Officer Graves placed Appellant under arrest and read Appellant his rights from the Rights for Use at the Scene form. *Id.* at 30:9-12.

After transporting Appellant to the police station, Officer Graves read Appellant the Rights for Use at the Station form. *Id.* at 32:7-9. Officer Graves also provided Appellant with an opportunity to make a confidential phone call, which Appellant proceeded to do. *Id.* at 32:14-20. Thereafter, Officer Graves asked Appellant to submit to a chemical breath test. *Id.* at 32:21-33:1. Officer Graves testified that Appellant asked "about his rights and I told him I couldn't give him legal advice. And he kept asking me questions and eventually I said, you know, 'It's up to you, either way you get out of here tonight.' And he refused." *Id.* at 33:2-6. Appellant signed the form and circled "Refuse." *Id.* at 33:7-16.

On cross-examination, Officer Graves testified that he did not ask Appellant in what time frame Appellant drank the beers that Appellant admitted to drinking that day. *Id.* at 35:16-19. Additionally, Appellant's counsel asked Officer Graves to look at Appellant's eyes at trial. *Id.* at 37:8-10. Officer Graves noted that Appellant "has some redness to his eyes," but further stated that Appellant's eyes appeared redder and more watery on the day the violations occurred. *Id.* at 37:11-13; 38:7-15.

Appellant also testified at trial. *Id.* at 40:8-15. Appellant testified that he told Officer Graves on the day of the incident that he had four beers at home and two beers at the Tropicana Club. *Id.* at 43:17-21. More specifically, Appellant stated that he consumed the four beers between the hours of noon and four o'clock in the afternoon. *Id.* at 44:5-45:6. Then Appellant

went to the Tropicana at approximately five-thirty in the afternoon and stayed there "[p]robably like three hours and a half or something like that" and had two beers with dinner. *Id.* at 45:19-23; *Id.* at 46:24-46:1.

Regarding Appellant's foot injury, Appellant testified that he told Officer Graves at the scene of the accident that he had a foot problem two months prior to the incident. *Id.* at 41:5-10. Appellant testified that he still has an issue with his left foot and that he has "a little ball in between my [toes] and sometimes it gets worse and sometimes kind of hard to walk, too." *Id.* at 41:13-19; 48:6-13. Appellant stated that when he performed the one-leg-stand test "on my left foot and I tried to do it like that and I couldn't . . . but then [Officer Graves] said, 'Try it on the other one.'" *Id.* at 48:6-13; 48:15. Appellant then testified that he attempted the one-leg-stand test standing on his right foot and lifting his left foot, but he could not remember putting down his left foot during the test. *Id.* at 48:16-17; 48:21-23.

Appellant further testified that he asked Officer Graves at the police station if he could refuse to sign the form, but Officer Graves "said he was not a lawyer, he cannot tell me . . . anything besides that." *Id.* at 43:1-12. Appellant stated that he decided to sign the Rights for Use at the Station form "[b]ecause I read the word 'can' and I thought that penalties can be negotiated and I thought, you know, I can reduce anything that could happen." *Id.* at 46:13-19. On cross-examination, when asked if he believed that "nothing" could happen if Appellant refused the test, Appellant replied, "No." *Id.* at 50:14-15. Additionally, upon being asked whether Appellant believed penalties were optional, Appellant replied, "Probably not." *Id.* at 51:3-7. Lastly, Appellant testified that he "probably" thought he would lose his license for a period of time if he refused but thought that he "could negotiate the penalties." *Id.* at 51:17-23.

In closing, Appellant's counsel moved to dismiss the charged violations, arguing that the evidence is insufficient to support the conclusion that Appellant attempted to flee from the scene of the accident. *Id.* at 59:16-22. Moreover, Appellant's counsel asserted that the evidence does not support a finding that Appellant was under the influence of alcohol such that he could not operate a vehicle safely because Appellant could not properly perform the one-leg-stand test due to his foot injury. *Id.* at 60:7-13. Further, Appellant's counsel averred that Appellant's refusal is void *ab initio* because the Rights for Use at the Station form's use of the word use "can" rather than "shall" in reference to the imposition of mandatory penalties did not adequately inform Appellant of the penalties he would incur. *Id.* at 61:24-62:7.

After hearing all the testimony and evidence presented, the Trial Magistrate continued the matter for decision. *Id.* at 66:16-17. On March 18, 2019, the parties reconvened before the Trial Magistrate on the record for decision. The Trial Magistrate recounted the facts asserted at trial, finding the testimony of both Officer Graves and Appellant to be credible and accepting such testimony as her findings of fact. Trial Magistrate's Decision at 12:2-5. As part of her findings, the Trial Magistrate stated, "It's clear to me from the testimony of both the police officer and Mr. Alarcon, that Mr. Alarcon was in fact the driver of the vehicle which collided with an unattended vehicle causing damage. That testimony is undisputed." *Id.* at 12:24-13:4. Regarding the charge of § 31-26-4, the Trial Magistrate determined that "[i]t's also clear from the testimony of the police officer, the observations of where the vehicle was located, and the circumstances that . . . [Appellant] continued to drive after the accident and did not immediately stop and then and there locate and notify the owner of the vehicle." *Id.* at 13:4-9; 16-18.

Based upon the trial testimony, the Trial Magistrate further concluded,

> "The fact that the defendant continued to operate the vehicle for a considerable distance, not withstanding [sic] disabling damage to

> the wheel, the admission of the motorist to drinking alcohol earlier in that day as well as the observations of the motorist including the odor of alcoholic beverage, bloodshot watery eyes and the performance on the Standardized Field Sobriety Test, I find that there were reasonable grounds to believe the motorist was operating under the influence." *Id.* at 14:9-21.

In addition, the Trial Magistrate specifically addressed Appellant's foot injury, finding that "the description of the injury was vague. And the testimony was lacking as to what extent that injury may or may not have impacted his performance or whether it prevented him from performing the One-Leg Stand and the Walk-And-Turn." *Id.* at 14:21-15:2. Therefore, the Trial Magistrate determined that "the evidence was sufficient in order to support a finding that there were reasonable grounds to believe [Appellant] was operating under the influence." *Id.* at 15:2-8.

Lastly, the Trial Magistrate addressed Appellant's argument regarding the language of the Rights for Use at the Station form at length. The Trial Magistrate determined that the distinction between "can" and "shall" in the form is irrelevant and concluded that the purpose of the form is only to inform motorists of their rights and the penalties associated with a refusal. *Id.* at 16:12-13; 17:4-6; 18:19-23. In doing so, the Trial Magistrate rejected Appellant's argument, finding that Appellant was adequately apprised of all direct penalties incurred as a result of a refusal and that Appellant made an informed decision. *Id.* at 18:19-19:6. Therefore, the Trial Magistrate found Appellant guilty of the charged violations. *Id.* at 19:6-8.

Appellant subsequently filed this timely 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 Mutual Insurance Company 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 *Environmental Science Corporation 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 Magistrate's decision sustaining the charged violations is "[a]ffected by error of law;" "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record;" and "[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 31-41.1-8(f)(4)-(6). Specifically, the Appellant avers that the Trial Magistrate erred in sustaining the violation of § 31-26-4 because there is no testimony in the record establishing that Appellant tried to flee the scene. In addition, with respect to the violation of § 31-27-2.1, Appellant asserts that the Trial Magistrate erred because (1) the evidence does not establish that Appellant was physically capable of performing the SFSTs, and (2) the language in the Rights for Use at the Station form did not properly apprise Appellant of the penalties associated with a refusal.

A

§ 31-26-4, "Duty on Collision with Unattended Vehicle"

The Appellant argues that the record contains insufficient evidence to support the charge of § 31-26-4. Section 31-26-4 provides:

> The driver of any vehicle which collides with another vehicle which is unattended and damage results to either vehicle shall immediately stop and shall then and there either locate and notify the operator or owner of the unattended vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in or upon the unattended vehicle a notice written in the English language giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances of the collision, and shall immediately give notice of the accident to a nearby office of local or state police. In the event the office so notified does not have jurisdiction of the locale of the accident, it shall be the duty of the officer receiving the notice to immediately give notice of the accident to the office having jurisdiction.

Pursuant to the clear and unambiguous language of § 31-26-4, a violation under this statute will be sustained when clear and convincing evidence exists proving that the defendant operated "[a] vehicle which collide[d] with another vehicle which [was] unattended and damage result[ed] to either vehicle" and that the defendant failed to notify the driver of the other vehicle and local law enforcement. *See* § 31-26-4; *Iselin v. Ret. Bd. of Emps' Ret. Sys. of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) ("when the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings"); Traffic Trib. R. P. 17 ("The burden of proof is on the prosecution to a standard of clear and convincing evidence."). Importantly, § 31-26-4 "imposes the dual requirements of leaving a written statement . . . *and* reporting the accident to the nearest officer of the local or state police. Failure to comply with either is a circumstance sufficient to support conviction[.]" *State v. Lemme*, 104 R.I. 416, 424, 244 A.2d 686, 590 (1969) (emphasis added).

Here, the evidence on record supports the Trial Magistrate's decision sustaining the charged violation. First, Appellant admitted to hitting Mr. Negron Torres's vehicle, which the testimony revealed to have sustained heavy damage. *See* § 31-26-4. Second, the evidence in the record supports the Trial Magistrate's finding that Appellant did not stop and notify either the owner of the vehicle or law enforcement. Officer Graves testified that, based upon the location of the vehicles, he "would characterize that as leaving the scene of the accident" because "it wouldn't have been possible to go that far unintentionally." (Tr. at 19:10-21.) Therefore, based upon Officer Graves' testimony regarding the location of the vehicles, the physical damage, and conversation with Appellant and Mr. Torres, the Trial Magistrate could reasonably infer that Appellant violated § 31-26-4. *See DeSimone Electric, Inc. v. CMG, Inc., et al.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walter v. Baird*, 433 A.2d 963, 964 (R.I. 1981)) (the trial justice may

'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations'").

B

§ 3-27-2.1, "Refusal to Submit to Chemical Test"

Section 31–27–2.1 provides in pertinent part:

> "Refusal to submit to chemical test. (a) Any person who operates a motor vehicle within this state shall be deemed to have given his or her consent, to chemical tests of his or her breath, blood, and/or urine for the purpose of determining the chemical content of his or her body fluids or breath [and the tests] shall be administered at the direction of a law enforcement officer having *reasonable grounds* to believe such person to have been driving a motor vehicle within this state while under the influence of intoxicating liquor. . . ." Sec. 31-27-2.1 (emphasis added).

Based on the plain language of the statute, the standard for administering a chemical test is reasonable suspicion to believe that the driver is operating the vehicle under the influence of alcohol. *Id.*

Here, per stipulation of the parties, there is no question that Appellant operated a motor vehicle on the day of the incident. (Tr. at 3:21-4:1.) Thus, the issue is whether the Trial Magistrate erred in finding that Appellant operated a motor vehicle *under the influence of alcohol.* Based on a review on the record, there is legally competent evidence supporting the Trial Magistrate's decision that Appellant operated the vehicle under the influence alcohol. Considering that Officer Graves observed Appellant exhibiting signs of intoxication, Appellant subsequently failed the standard field sobriety tests that Officer Graves administered, and Appellant admitted that he consumed four beers earlier that day, there is sufficient evidence establishing that Appellant operated a motor vehicle under the influence of alcohol. Tr. at 18:6-8-15; 30:1-8; *see State v. Perry*, 731 A.2d 720, 722 (R.I. 2000) (police officer had reasonable

suspicion to believe defendant operated a motor vehicle while intoxicated where the officer smelled a strong odor of alcohol on defendant's breath, observed defendant's eyes were bloodshot, and that defendant was stumbling).

Moreover, the Trial Magistrate did not err in discounting Appellant's "foot injury" and its impact on the one-leg-stand test as Appellant only vaguely described the "injury" and did not testify as to how it affects his ability to walk or stand. Indeed, Appellant only noted that it is "sometimes kind of hard to walk." (Tr. at 41:13-19). Additionally, Appellant and testified that he stood on his non-injured foot during the one-leg-stand test. *Id.* at 48:16-17. In determining that this testimony was "vague" and lacking," the Trial Magistrate exercised her inherent responsibility as fact-finder to weigh the evidence presented and make credibility determinations. *DeSimone Electric*, 901 A.2d 613 at 621. As this Panel can neither "assess witness credibility or [ ] substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact[,]" it will not disturb the Trial Magistrate's factual findings. *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Thus, the Trial Judge's decision is neither clearly erroneous, nor is it characterized by an abuse of discretion. *See* §. 31-41.1-8(f)(5)-(6).

Furthermore, there is also legally competent evidence on the record demonstrating that Appellant had been informed of his rights and the penalties incurred as a result of refusing to submit to the chemical test. *See* § 31-27-2.1(b). Appellant argues that he was not adequately informed of the penalties incurred in refusing a chemical because the use of the word "can" rather than "shall" in the Rights for Use at the Station form led Appellant to believe that the penalties were not mandatory and that he could "negotiate" the penalties with the assistance of counsel. However, pursuant to § 31-27-2.1, a motorist must only be *informed* of his or her rights and the associated penalties for refusing; what the motorist "believed" he or she could do with

the assistance of counsel is irrelevant.[4] *See* § 31-27-2.1. Thus, whether a motorist was adequately informed of the penalties incurred is a credibility and factual determination within the exclusive discretion of the trial judge or magistrate. See *DeSimone Electric*, 901 A.2d at 621.

Here, the Trial Magistrate did not err in finding that Appellant was adequately informed of the penalties associated with a refusal because Appellant testified that he did not believe he would incur no penalties and that he knew he would lose his license for a period of time after refusing to submit to the chemical test. Tr. at 50:14-15; 51:3-7; 17-23. Accordingly, this Panel finds that the Trial Magistrate's decision is not affected by law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or characterized by an abuse of discretion. Sec. 31-41.1-8(f)(4)-(6).

[4] This Panel also notes that Appellant's reliance on canons of statutory construction are misplaced as the Rights for Use at the Station form is the wording of the Central Falls Police Department, not the Legislature. The purpose of this form and the language that it contains is neither controlling nor binding; its sole purpose is merely to inform motorists. Furthermore, this Panel agrees with and reiterates the Trial Magistrate's analysis that the distinction between "can" and "shall" in the Rights for Use at the Station form is irrelevant because the form clearly enumerates the range of penalties that the judge or magistrate may impose. *See* Tr. at 15:17-19:5.

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 not affected by law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or characterized by an abuse of discretion. *See* § 31-41.1-8(f)(1), (4)-(6). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

_____
Associate Judge Lillian M. Almeida (Chair)

_____
Magistrate Michael DiChiro

_____
Associate Judge Edward C. Parker

DATE: _____