

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. M17-0012
17412500785**

MOMODOU CHAM

DECISION

PER CURIAM: Before this Panel on July 19, 2017—Chief Magistrate Guglietta (Chair), Judge Parker, and Magistrate Kruse Weller, sitting—is Momodou Cham’s (Appellant) appeal from a decision of Judge Thomas M. Dickinson (Trial Judge) of the Woonsocket Municipal Court, 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.

I

Facts and Travel

On February 25, 2017, Officer Matthew McGourty (Officer McGourty) of the Woonsocket Police Department conducted a traffic stop of Appellant’s vehicle. (Tr. at 3-4.) The traffic stop resulted in Officer McGourty issuing Appellant the abovementioned citation for traveling ten miles per hour over the posted twenty-five miles per hour speed limit. *Id.* at 4; *see also*, Summons no. 17412500785.

At Appellant’s trial, on May 3, 2017, Officer McGourty testified that he “observed a vehicle traveling northbound on River Street in front of [his] cruiser that appeared to be traveling at a higher [speed] than the posted speed limit of 25 miles per hour.” (Tr. at 4.) Using the speedometer in his cruiser, Officer McGourty tracked the vehicle’s speed “at a constant speed of 41 miles per hour for over a quarter of a mile.” *Id.* After Officer McGourty obtained a

consistent speed by “clocking the vehicle from a distance of two car lengths,” he conducted a motor vehicle stop. *Id.* Once he approached the vehicle, Officer McGourty identified Appellant as the driver and issued Appellant a citation for traveling only ten miles per hour over the speed limit. *Id.*

The Appellant also testified at trial. *Id.* He explained that “[t]here is a very sharp curve” and a “big bump” in the area that Officer McGourty conducted the traffic stop. *Id.* at 5. The Appellant testified that Officer McGourty “followed [him]. . . then [] started flashing his high beam lights . . . distracting [Appellant’s] attention, [and] then he pulled [Appellant] over.” *Id.* The Appellant further stated that Officer McGourty took his license and registration to his cruiser and later returned with the summons. *Id.* The Appellant added that he “definitely [was not] speeding.” *Id.*

At the conclusion of trial, the Trial Judge stated that “Officer McGourty testified quite credibly” and then recounted the officer’s testimony as his findings of fact. *Id.* The Trial Judge concluded by stating, “I find in the evidence that the City has met its burden of proof and, therefore, I find [] [Appellant] responsible and I will, therefore, find in favor of the City.” *Id.* at 6-7.

Thereafter, Appellant 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 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 asserts that the Trial Judge’s decision is “[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)(5)-(6). Specifically, Appellant argues that the Trial Judge erred by not crediting his testimony.

The Rhode Island Supreme Court has stated that this Appeals 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 *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). An appeals panel cannot review witness credibility, since a trial judge “has had an opportunity to appraise witness 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) (quoting *State v. Van Dongen*, 132 A.3d 1070, 1076 (R.I. 2016)). Therefore, this Panel will not question the Trial Judge’s assessment of either the witnesses’ credibility or the weight of the evidence.

However, 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, 340 A.2d 128, 132 (1975) (quoting *State v. Barrows*, 90 R.I. 150, 154, 156 A.2d 81, 83 (1959)).

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.*

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.* at 58-59, 132.

A review of the record reveals that Officer McGourty failed to provide any evidence as to “the operational efficiency of the [speedometer]” that he used to clock the speed of Appellant’s vehicle. *Id.* There is no testimony within the record that indicates whether Officer McGourty’s cruiser had “been tested by an appropriate method within a reasonable period of time.” *Id.* Without any such evidence, Officer McGourty’s testimony regarding the vehicle’s speed at the time of the violation is inadmissible. (Tr. at 4.)

Being that this Panel finds Officer McGourty’s testimony pertaining to the speed of the vehicle inadmissible; the City of Woonsocket has 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 find 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). The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the adjudicated violation is reversed.

ENTERED:

Associate Judge Edward C. Parker

Magistrate Erika Kruse Weller

DATE: _____

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.