STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT RHODE ISLAND TRAFFIC TRIBUNAL

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| TOWN OF NORTH KINGSTOWN | : | |
| | : | |
| v. | : | C.A. No. M12-0007 |
| | : | 11502504000 |
| CHRISTOPHER FOLEY | : | |



## DECISION

**PER CURIAM:** Before this Panel on August 22, 2012—Magistrate DiSandro (Chair, presiding), Judge Ciullo, and Magistrate Noonan, sitting—is Christopher Foley's (Appellant) appeal from a decision of Judge White (trial judge) of the North Kingstown Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

### Facts and Travel

On November 20, 2011, Officer Michelle Kinney (Officer Kinney) of the North Kingstown Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on April 11, 2012.

On the morning of the violation, Officer Kinney was traveling south on Quaker Lane, just south of Stony Lane. (Tr. at 7.) While traveling south, Officer Kinney observed a vehicle traveling north at a high rate of speed. At the time, Officer Kinney's radar unit determined that the speeding vehicle was traveling sixty-four (64) miles per hour (mph). (Tr. at 8.) The posted speed limit in the area was thirty-five (35) mph. Id.

Officer Kinney then explained that her radar unit was capable of determining speeds of vehicles while her patrol car was also moving. Officer Kinney also stated that her radar unit was calibrated before she began her shift that morning. (Tr. at 8.) After observing the speeding vehicle, Officer Kinney reversed her direction and pursued the car. At the conclusion of the stop, the officer cited the operator for speeding. At trial, Officer Kinney identified the operator as the Appellant. (Tr. at 12.)

On cross-examination, Officer Kinney stated that the traffic stop happened around Stony Lane. (Tr. at 13.) Appellant then asked Officer Kinney whether a speed study had been conducted regarding "that section of road that was completed before my stop?" (Tr. at 14.) Officer Kinney responded that no study had been conducted. At this point, Appellant requested to have the matter dismissed because "[s]ection 2B-13 of the Manual Uniform Traffic Control Devices ('MUTCD') that states; speed zones shall only be established on the basis of an engineering speed study." Id. However, the trial judge denied his motion to dismiss. Appellant then continued to press the issue regarding speed studies and the MUTCD.

At the close of evidence, the trial judge issued his decision sustaining the charged violation. (Tr. at 27.) The trial judge determined that the prosecution had met its burden of proof. Specifically, the trial judge found the testimony "to be truthful and accurate." Id. The trial judge also found it significant that the Appellant never rebutted the speeding allegations; instead, the Appellant rested his argument on the MUTCD. (Tr. at 28.) Thereafter, the trial judge imposed a sentence. Appellant timely filed this appeal.

## Standard of Review

Pursuant to G.L. 1956 § 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 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:
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> (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 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." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

**Analysis**

On appeal, Appellant contends that the trial judge committed error in sustaining the violation. Appellant contends that the trial judge's finding is in violation of statutory provisions and affected by error of law. Specifically, the Appellant contends that the trial judge erred because Officer Kinney's testimony failed to address MUTCD regulations and speed zones.

While raised by the Appellant, we do not reach the merits of the MUTCD argument because the state has failed to meet its burden in prosecuting its case. In Sprague, our Supreme Court held that a radar speed reading is admissible into evidence upon a showing that "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method," and upon "testimony setting forth [the Patrolman's] training and experience in the use of a radar unit." Sprague, 113 R.I. at 357, 322 A.2d at 39-40. Here, the requirements of Sprague were not properly set forth during Appellant's trial. Officer Kinney did explain that the radar unit had been calibrated both internally and externally; however, Officer Kinney did not testify that she possessed "training and experience in the use of a radar unit." Sprague, 113 R.I. at 357, 322 A.2d at 40. Without this necessary evidence, the trial judge erred in admitting evidence regarding the speed of Appellant's vehicle. The exclusion of this evidence makes it impossible for the prosecution to sustain its burden. See Traffic Trib. R. P. 17(a) ("The burden of proof shall be on the prosecution to a standard of clear and convincing evidence.").

## 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 is in violation of statutory provisions and affected by other error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.