

**STATE OF RHODE ISLAND**  
**RHODE ISLAND TRAFFIC TRIBUNAL**

<b>STATE OF RHODE ISLAND</b>	:	
	:	
v.	:	<b>C.A. No. T21-0015</b>
	:	<b>21414500388</b>
<b>MICHAEL CINNAMON</b>	:	

**DECISION**

**PER CURIAM:** Before this Panel on October 27, 2021—Magistrate DiChiro (Chair), Chief Magistrate DiSandro, and Associate Judge Parker, sitting—is Michael Cinnamon’s appeal from a decision of Magistrate Noonan (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-14-2, “Speeding 11+ MPH in excess of posted speed limit – 3rd offense.” Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On May 12, 2021, Patrolman Robert Glaude (Patrolman Glaude) of the Glocester Police Department charged Michael Cinnamon (Appellant) with the aforementioned violation of the motor vehicle code. *See* Summons No. 21414500388. Appellant contested the charge, and the matter proceeded to trial on August 13, 2021.

At trial, Patrolman Glaude testified that at approximately 7:30 p.m., he was conducting a routine traffic patrol at 519 Putnam Pike and saw a silver BMW with Connecticut license plates (the vehicle) “traveling at a high rate of speed.” (Tr. at 4:9-13.) Patrolman Glaude stated that “[u]sing an internal and external calibrated radio unit found in proper working order[,]” he obtained the vehicle’s speed as sixty-four (64) miles per hour in a clearly posted forty-five (45)

mile per hour zone. *Id.* at 4:14-18. Patrolman Glaude testified that he had received training in the utilization of radar units at the Rhode Island Municipal Police Training Academy in the class of 2020-2021. *Id.* at 4:15-17. He did not testify as to the time frame in which the radar was calibrated, or to the specific method used to internally and externally calibrate the radar unit. *See id.*

Patrolman Glaude explained that he conducted a stop of the vehicle and identified the operator as Michael Cinnamon. *Id.* at 4:18-20. After Patrolman Glaude identified himself and the reason for the stop, Appellant said he was keeping up with the traffic. *Id.* at 4:18-23. However, Patrolman Glaude told the court that “at that time there was no traffic in front of [Appellant] [and] [h]e had ended up catching up with the traffic that had passed [Patrolman Glaude] earlier.” *Id.* at 4:23-5:1. During the stop, Appellant also “stated he had trouble focusing on his speed while operating the vehicle and he apologized multiple times.” *Id.* at 5:1-3. Patrolman Glaude issued Appellant a citation for a third-plus offense. *Id.* at 5:4-6.

After Patrolman Glaude’s testimony, Appellant’s counsel declined the opportunity to cross-examine Patrolman Glaude but argued for a motion for judgment as a matter of law. *Id.* at 5:7-22. In support of the motion, Appellant’s counsel argued that *Daniel Houle v. State of Rhode Island* requires the Patrolman to testify as to the method of calibration, and that, because Patrolman Glaude did not testify in this respect, his testimony should be stricken. A.A. No. 19-58 (D.R.I. January 25, 2021); (Tr. at 5:14-23.) The Trial Magistrate denied the motion because the *Houle* case is not binding on the Rhode Island Traffic Tribunal,<sup>1</sup> and the case attempts to add a requirement to the traditional two-element test found in *State v. Sprague*. 113 R.I. 351, 355-57, 322 A.2d 36, 39-40 (1974); (Tr. at 5:24-6:21.)

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<sup>1</sup> The case is from the District Court Sixth Division, rather than the Rhode Island Supreme Court.

Appellant’s counsel argued that even under *Sprague*, Patrolman Glaude still had to testify as to the method of calibration and that without that testimony, the prosecution failed to meet its burden under *Sprague*. (Tr. At 6:24-7:10.) The Trial Magistrate did not agree with Appellant’s argument but did state that he “[did not] believe there was any testimony about a specific method” and that “[w]hether or not that’s required under *Sprague* will be part of the subject of the appeal.” *Id.* at 7:11-12; 10:2-5.

The Trial Magistrate sustained the charge based on the credible testimony of Patrolman Glaude. *Id.* at 10:7-8. Additionally, Appellant had three previous speeding tickets on his record: a \$95 speeding ticket on 7/24/20, a \$305 speeding ticket on 10/17/20, and a \$335 speeding ticket on 12/16/20. *Id.* at 10:8-11. Since all the offenses were within eleven months, the Trial Magistrate invoked the Colin Foote Multiple Offenses Act (Act). *Id.* at 10:16-17; § 31-27-24. Pursuant to the Act, the Trial Magistrate imposed the following: “a six-month license suspension, 60 hours of driver retraining, 60 hours of community service,” and a \$205 fine. *Id.* at 10:17-22; *see* § 31-27-24. The Trial Magistrate also stayed the suspension pending an appeal to RITT. (Tr. at 11:2-5.); *see* Order to Stay Suspension. Appellant timely filed the instant appeal.

## **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

As grounds for his appeal, Appellant argues that the Trial Magistrate made a decision “upon unlawful procedure, affected by error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the record and arbitrary and capricious and characterized by abuse of discretion.” Notice of Appeal. Specifically, Appellant argues the Trial Magistrate erred in finding that Patrolman Glaude’s testimony was sufficient to sustain Appellant’s charge

because Patrolman Glaude’s testimony “failed to prove by reliable evidence that the radar unit used to initiate the traffic stop was in good working order and calibrated by an appropriate method and within a reasonable time in violation of the case[s] *State v. Sprague* and *Daniele Houle v. State of Rhode Island*.” *Id.*

First, in regard to Appellant’s arguments under the *Houle* case, the Trial Magistrate stated that “[f]or the 22 years that [he has] been on this Court, every single attempt to expand the Supreme Court definition of *Sprague* has been thwarted or denied.” (Tr. at 6:13-15.) Likewise, this Panel refuses to read a requirement into *Sprague* that is not contemplated by the text or to heighten the burden on law enforcement without explicit direction from our Supreme Court.

However, this Panel will consider Appellant’s argument that even under *Sprague*, the officer’s testimony was not sufficient. In *Sprague*, the Rhode Island Supreme Court said that radar unit readings are admissible 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) the officer gives “testimony setting forth [the officer’s] training and experience in the use of a radar unit.” 113 R.I. at 355-57, 322 A.2d at 39-40.

At trial, Patrolman Glaude met the second requirement of *Sprague* because he testified that he had completed training for the use of radar through the Rhode Island Municipal Police Training Academy in 2021. (Tr. at 4:15-17.) However, Patrolman Glaude’s testimony as to the “operational efficiency” of the radar unit he used to determine the speed of Appellant’s vehicle was unsatisfactory. Patrolman Glaude only testified that the radar was internally and externally calibrated and “found in proper working order.” *See id.* at 4:14-18. He did not testify as to the date or time that the radar was calibrated as required by *Sprague*. He also did not testify as to the specific method that he used to calibrate the radar device internally and externally. Consequently,

Patrolman Glaude’s testimony did not satisfy the first prong of *Sprague*, that the radar unit was “tested within a reasonable time and by an appropriate method[.]” *See* 113 R.I. at 355-57, 322 A.2d at 39-40. As such, the Panel concludes that the Trial Magistrate erred when he sustained the charge under § 31-14-2 because the prosecution failed to meet its burden.

#### 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 clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5)-(6). Accordingly, Appellant’s appeal is granted, and the charged violation is dismissed.

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: \_\_\_\_\_