No. 24-CV-718

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

MATTHEW JOSEPH RICCIARDI,
APPELLANT,

v.

DISTRICT OF COLUMBIA,
APPELLEE.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

# BRIEF FOR APPELLEE THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

*GRAHAM E. PHILLIPS
Deputy Solicitor General
Office of the Solicitor General

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-6647
graham.phillips@dc.gov

*Counsel expected to argue

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES*

*Cases*



*Statutes*



---

* Authorities upon which we chiefly rely are marked with asterisks.

*Regulations*

*Other Authorities*

## STATEMENT OF THE ISSUES

The District of Columbia generally penalizes speeding with modest civil fines. The penalty is $50.00 for driving "Up to 10 mph" above the applicable limit and $100 for driving "11 to 15 mph" above the limit. 18 DCMR § 2600.1. Many speeders are caught by automated photo radar devices—i.e., speed cameras. If a driver disputes a speeding ticket, the District must prove the violation by clear and convincing evidence. But District law also provides that a speeding ticket generated by a speed camera constitutes "prima facie evidence" of the violation. D.C. Code § 50-2209.01(b); 18 DCMR § 3012.6.

A speed camera captured Matthew Ricciardi's vehicle speeding in a 50-mph zone. The camera reported his speed as 61 mph, so the District issued him a ticket for $100. Pointing to a regulation governing the proper calibration of speed cameras, Ricciardi argued that the camera had a ±1 mph margin of error, and thus he might have been traveling less than 61 mph, making the $100 penalty improper. The Traffic Adjudication Appeals Board held that invoking the calibration regulation alone—without adducing any case-specific evidence—was not enough to overcome the District's prima facie evidence, so it upheld the penalty. The issues on appeal are:

1. Whether the ±1 mph threshold referenced in the calibration regulation means that the speed recorded by this particular camera should not be treated as

legally accurate, when Ricciardi introduced no other evidence about the camera's accuracy.

2. Whether, under the correct interpretation of the penalty table, which uses consecutive *integer* speeds to define the categories, the $100 penalty remains proper even if Ricciardi's speed could have been anywhere between 60 and 62 mph.

## STATEMENT OF THE CASE

The Department of Motor Vehicles (DMV) mailed Ricciardi a notice of infraction for speeding on May 5, 2023. Appellant's Appendix (App.) 8. After Ricciardi contested the ticket, a DMV hearing examiner found him liable on August 15, 2023.[1] Addendum 1. The hearing examiner denied Riccardi's reconsideration motion on August 31, 2023. App. 11. The Traffic Adjudication Appeals Board upheld the hearing examiner's decision on October 31, 2023. App. 2-6. Ricciardi timely appealed to the Superior Court, which initially vacated the Board's decision in an order dated February 13, 2024. App. 13-17. On reconsideration, however, the court issued a second order on July 9, 2024 affirming the Board. App. 19-23. Ricciardi filed a timely notice of appeal on August 5, 2024.

[1] The hearing examiner's initial decision, which is part of the administrative record and was filed in the Superior Court, is attached to this brief as an addendum.

## STATEMENT OF FACTS

### 1. Legal Background.

With certain limited exceptions, drivers in the District who exceed properly posted speed limits "shall, upon determination of liability therefor, be subject to a civil fine pursuant to the District of Columbia Traffic Adjudication Act [D.C. Code § 50-2301.01 *et seq.*]." 18 DCMR § 2200.11; *see generally id.* § 2200 ("Speed Restrictions"). The civil fines for speeding are graduated and defined by the amount that the car exceeded the applicable speed limit:

| | |
|---|---|
| Up to 10 mph in excess of limit [§ 2200] | $50.00 |
| 11 to 15 mph in excess of limit [§ 2200] | $100.00 |
| 16 to 20 mph in excess of limit [§ 2200] | $150.00 |
| 21 to 25 mph in excess of limit [§ 2200] | $200.00 |
| Over 25 mph in excess of limit on controlled access roadways [§ 2200] | $400.00 |
| Over 25 mph in excess of limit on non-controlled access roadways [§ 2200] | $500.00 |

*Id.* § 2600.1 (bracketed text in original).

Since 1997, the D.C. Council has authorized the Mayor "to use an automated traffic enforcement system to detect moving infractions," such as speeding. D.C. Code § 50-2209.01(a). The automated enforcement system consists of "equipment that takes a film or digital camera-based photograph which is linked with a violation detection system that synchronizes the taking of a photograph with the occurrence of a traffic infraction." *Id.* "Proof of an infraction may be evidenced by information obtained through the use" of such traffic cameras. *Id.*

When a traffic camera detects a violation, "the Mayor shall mail a summons and a notice of infraction to the name and address of the registered owner of the vehicle." *Id.* § 50-2209.02(b). The notice of infraction (commonly called a ticket) must include "the date, time, and location of the violation, the type of violation detected, the license plate number, and state of issuance of the vehicle detected, and a copy of the photo or digitized image of the violation." *Id.* If the recipient wishes to challenge the ticket, they can then "request a hearing which shall be adjudicated pursuant to subchapter I of Chapter 23 of this title." *Id.* § 50-2209.02(c); *see id.* §§ 50-2302.01 to -2302.08 (adjudication procedures for moving violations).

In a hearing on a moving violation, "[t]he burden of proof shall be on the District and no infraction shall be established except by clear and convincing evidence." *Id.* § 50-2302.06(a). However, "[t]he Notice of Infraction shall constitute prima facie evidence of the statements contained in the notice and shall be a record in the ordinary course of business." 18 DCMR § 3012.6. In particular, "[r]ecorded images taken by an automated traffic enforcement system are prima facie evidence of an infraction and may be submitted without authentication." D.C. Code § 50-2209.01(b). A respondent who wishes to counter that prima facie evidence has "the right to present witnesses, to conduct examination and cross examination, and to introduce documentary evidence." 18 DCMR § 3012.4. Other applicable regulations provide additional "mechanisms by which a respondent can

discover information to attack the accuracy of a photo radar device or otherwise contest the alleged violation, including applying for the issuance of subpoenas (18 DCMR § 1020 (2010)), seeking authorization to take depositions (18 DCMR § 1021 (2010)), and submitting written interrogatories (18 DCMR § 1022 (2010)).” *DeVita v. District of Columbia*, 74 A.3d 714, 723 (D.C. 2013).

A DMV regulation also defines the circumstances in which “[a] photo radar device shall be deemed to be calibrated correctly and in proper working order.” 18 DCMR § 1035.2; *see DeVita*, 74 A.3d at 723 (“[T]he images and other data used in ATE [Automated Traffic Enforcement] System proceedings are only accepted as valid evidence if the photo radar unit was properly calibrated and certified to be in working order, 18 DCMR § 1035 (2010).”). When this regulation was first enacted in 2001, the calibration criteria were specific to the particular equipment then in use. *See* 48 D.C. Reg. 7316, 7316 (Aug. 10, 2001) (requiring, *inter alia*, an equipment log indicating “that the electronic radar tuning fork reading was 36, 37 or 38 and that the radar test sequence displayed the number ‘288 888’, at the beginning and the end of deployment”). In 2013, DMV recognized that the existing regulations “did not take into account that different manufacturers and models [of speed cameras] would have diverse criteria to determine accuracy of the equipment.” 60 D.C. Reg. 12219, 12219 (Aug. 23, 2013). DMV therefore adopted new rules designed to be “applicable to all equipment, irrespective of manufacturer or model.” *Id.* For a

stationary outside device (as opposed to a mobile device operated from a vehicle), there must be:

> a Unit Deployment Log for the device dated not more than four (4) days before and four (4) days after the date of the alleged violation that:
>
> (1) Indicates that the tuning fork reading was accurate to plus or minus one (1) mile per hour of the tuning fork frequency being used and that the unit test sequence shows the unit was operating properly at the beginning and end of the deployment; and
>
> (2) Contains certifications by a technician or police officer, or both, that the device was correctly set up.

18 DCMR § 1035.2(b).

**2. Facts And Procedural History.**

In May 2023, DMV mailed Ricciardi a notice of infraction for speeding that was captured by a speed camera. App. 8. It included photographs of Ricciardi's vehicle and identified the location and time of the infraction. App. 8. It noted that the "Posted Speed" was "50mph" and the "Vehicle Speed" was "61mph." App. 8. The description of the violation was "SPEED 11-15 OVR LIMT" and the penalty due was $100. App. 8; *see* 18 DCMR § 2600.1 (setting penalty of $100 for speeding "11 to 15 mph in excess of limit").

Ricciardi contested the ticket before a DMV hearing examiner, but he "did not submit any evidence to show the speed recorded was in error." Addendum 1. Instead, he merely "state[d that] any error in the speed recording would mean the vehicle was not traveling at 11 - 15 mph over the speed limit." Addendum 1. For

its part, the government submitted a "deployment log" for the camera that demonstrated that the "equipment was tested, working properly and calibrated correctly." Addendum 1; *see* App. 10 (deployment log). The hearing examiner concluded that Ricciardi had "failed to establish a sufficient defense to the violation." Addendum 1. The hearing examiner subsequently denied Ricciardi's motion for reconsideration, which did not contain any new or additional evidence. App. 11; *see* D.C. Code § 50-2303.11 ("Reconsideration.").

Ricciardi appealed to the Traffic Adjudication Appeals Board. *See* D.C. Code §§ 50-2304.01 to -2304.04. Pointing to the calibration regulation, 18 DCMR § 1035.2, Ricciardi argued that the speed camera had a ±1 mph margin of error, and thus the government could not show by clear and convincing evidence that he had been traveling 11 mph over the limit. The Board rejected Ricciardi's appeal. The notice of infraction, the Board explained, "serves as *prima facie* evidence that the Appellant was traveling between 11 and 15 mph over the speed limit, as charged in the [notice]. App. 4 (citing 18 DCMR § 3012.6). Ricciardi, "therefore, had the burden of producing evidence to the Hearing Officer sufficient to establish that he should not be held liable for the offense cited." App. 4. His invocation of Section 1035.2 was unpersuasive because "[t]he plus or minus one margin of error refers to the testing of the radar unit not the speed captured on the violation." App. 4.

Because Ricciardi "failed to submit evidence to show that he was not exceeding the speed limit," the Board affirmed. App. 5.

Ricciardi then appealed to the Superior Court. *See* D.C. Code § 50-2304.05. The court initially agreed with Ricciardi and vacated the Board's decision. App. 17. The court accepted Ricciardi's premise that "the margin of error" referenced in the calibration regulation "must also refer to the speeds captured by the radar." App. 15. In the court's view, then, Ricciardi "could have been traveling anywhere between 60 and 62 miles per hour," App. 16, and this was not enough to show by clear and convincing evidence that he was going 11 to 15 mph over the limit, App. 16-17.

The District moved for reconsideration, arguing that the ±1 mph margin of error in Section 1035.2 is merely the threshold for deeming a speed camera properly calibrated. "The regulations do not in turn apply the margin of error to the speed of the vehicle captured by the automated system," as the court had assumed. Recons. Mot. 5 (Feb. 27, 2024). Instead, the District urged, if the camera is properly calibrated, its "recording is considered legally accurate." Recons. Mot. 3.

The Superior Court granted reconsideration and affirmed the Board. The court focused on the deployment log and observed that the test reading for this camera was not merely within 1 mph of the internal tuning fork frequency—it was the same (40 mph). App. 21-22. The court viewed this as "support for the notion

that the photo radar device was precise in its speed measurement." App. 22. The evidence thus supported the conclusion, by clear and convincing evidence, that Ricciardi was driving 11 mph over the limit. App. 22.

## STANDARD OF REVIEW

"Although this is an appeal from a review of agency action by the Superior Court rather than a direct appeal" to this Court, the Court "review[s] the administrative decision as if the appeal had been heard initially in this [C]ourt." *DeVita*, 74 A.3d at 719 (cleaned up) (applying this principle to a decision of the Traffic Adjudication Appeals Board). The Court will not disturb the Board's decision if it is supported by substantial evidence and is not arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. *Id.* (citing D.C. Code § 2-510(a)(3)(A)). The Court reviews legal issues de novo. *Id.*

## SUMMARY OF ARGUMENT

The Court should affirm the $100 penalty on either of two independent grounds.

1. By statute and regulation, the notice of infraction constituted "prima facie evidence" that Ricciardi was driving 61 mph. *See* D.C. Code § 50-2209.01(b); 18 DCMR § 3012.6. Prima facie evidence is, by definition, evidence that suffices to carry a party's burden of proof—even a heightened burden like the clear-and-convincing standard—unless the opponent produces competent contrary evidence.

Ricciardi did not produce any evidence that he was driving at a speed less than 61 mph. He merely invoked the calibration regulation, 18 DCMR § 1035.2, which in his view establishes that the speed reported by the camera in this case was subject to a ±1 mph margin of error. The Court should reject that argument for either of two reasons. *First*, the calibration regulation specifies when a speed camera is "*deemed* to be calibrated correctly and in proper working order." 18 DCMR § 1035.2 (emphasis added). In other words, if the criteria are satisfied, the camera's output is *treated* as accurate in law, even if it might not be 100% accurate in fact. This presumption is a sensible and fair way to manageably adjudicate a high volume of tickets. *Second*, in any event, it is not factually correct that the ±1 mph threshold referenced in the regulation means that this particular camera was accurate only to ±1 mph. Ricciardi introduced no evidence about the specifications or characteristics of this camera. Mere speculation about the camera's potential for measurement error is not enough to overcome the District's prima facie evidence.

2. Alternatively, even accepting Ricciardi's premise that he might have been driving anywhere between 60 and 62 mph in a 50-mph zone, the penalty remains $100 under the correct interpretation of the penalty table in 18 DCMR § 2600.1. The first two entries in the table cover excess speeds of "Up to 10 mph" ($50) and "11 to 15 mph" ($100). Read hyper-literally, the table seems to provide *no* penalty for an excess speed of, for instance, 10.5 mph—an absurd result. To avoid that

absurdity, the Court should adopt one of two reasonable interpretations of the table. *First*, the best interpretation is that the table entries for "11 to 15 mph," "16 to 20 mph," and "21 to 25 mph" encompass excess speeds *above* 10, 15, and 20 mph, respectively. Only this interpretation accords with the final entry, "Over 25 mph in excess of limit," and it creates a coherent overall scheme keyed to even, 5-mph increments. On this view, the $100 fine would apply unless Ricciardi was traveling *exactly* 60 mph, which is exceedingly unlikely. *Second*, another reasonable interpretation is to apply rounding: an excess speed of 10.4 mph rounds down to 10 mph ($50), while one of 10.5 mph rounds up to 11 mph ($100). On this view, too, the $100 fine applies because there is at least a 75% chance that Ricciardi was driving 60.5 mph or faster, which is enough to satisfy the clear-and-convincing threshold.

## ARGUMENT

### I. The Board Correctly Held That Ricciardi Failed To Counter The Government's Prima Facie Evidence.

When the District seeks to penalize a driver for a moving violation, such as speeding, "[t]he burden of proof shall be on the District and no infraction shall be established except by clear and convincing evidence." D.C. Code § 50-2302.06(a). Although clear and convincing evidence "does not mean clear and unequivocal," it does mean "evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re F.W.*, 870 A.2d 82, 85

(D.C. 2005) (internal quotation marks omitted). At the same time, however, District law provides that a notice of infraction "constitute[s] prima facie evidence of the statements contained in the notice." 18 DCMR § 3012.6. In particular, "[r]ecorded images taken by an automated traffic enforcement system are prima facie evidence of an infraction and may be submitted without authentication." D.C. Code § 50-2209.01(b).

Prima facie evidence is "[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced." *Evidence*, Black's Law Dictionary (12th ed. 2024). A statute or regulation "may create an evidential presumption, or a rule of 'prima facie' evidence, i.e., a rule which does not shut out evidence, but merely declares that certain conduct shall suffice as evidence until the opponent produces contrary evidence." *Id.* (quoting John H. Wigmore, *A Students' Textbook of the Law of Evidence* 237 (1935)). A rule of prima facie evidence can apply even where the ultimate burden of proof (i.e., the burden of persuasion) is heightened. Indeed, this Court has held that a rule of prima facie evidence can permit the government in a criminal case to establish a fact beyond a reasonable doubt, the highest possible burden of persuasion. *See Rogers v. Johnson*, 862 A.2d 934, 937-38 (D.C. 2004). There is no inconsistency between a rule of prima facie evidence that favors the government and the government's bearing a heightened burden of persuasion: if the rule is triggered and the respondent produces no competent

contrary evidence, the government's evidence is enough to satisfy its burden of persuasion—however high—as a matter of law; but if the rule is triggered and the respondent *does* produce competent contrary evidence, the factfinder must evaluate the totality of the evidence in light of the heightened burden of persuasion. It is therefore not unreasonable to call a rule of prima facie evidence a "legal fiction," as petitioner does, Br. 11, but it is an entirely legitimate one. *See Agomo v. Fenty*, 916 A.2d 181, 193-94 (D.C. 2007).

Here, the notice of infraction stated, based on the speed camera's photographs, that Ricciardi's speed was 61 mph. App. 8. Given the applicable rule of prima facie evidence, the notice itself sufficed to establish by clear and convincing evidence that Ricciardi was driving 61 mph—unless he produced contrary evidence. Ricciardi's contention (Br. 11) that the notice merely "states that a photo-radar device *measured* a vehicle owned by Appellant traveling at 61 MPH" is wrong. The notice does not refer to a measurement; it asserts an ultimate fact about Ricciardi's velocity: "Vehicle Speed: 61mph." App. 8. Ricciardi bore the burden to produce evidence contradicting that fact.

Ricciardi is also wrong insofar as he suggests that D.C. Code § 50-2209.01(b) and 18 DCMR § 3012.6 merely "concern authentication" and not evidentiary burdens. Br. 12 n.3. They do both: they establish a rule of prima facie evidence "and" make the notice of infraction (including the photographs) self-authenticating.

*See* D.C. Code § 50-2209.01(b); 18 DCMR § 3012.6. Authentication and prima facie evidence are distinct concepts. To treat the statute and regulation as addressing only authentication would therefore wrongly render their explicit references to "prima facie evidence" meaningless. *See Grayson v. AT & T Corp.*, 15 A.3d 219, 238 (D.C. 2011) (en banc) ("A basic principle of statutory interpretation is that each provision of the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous." (cleaned up)).

The key question, then, is whether Ricciardi produced competent evidence that his speed was less than 61 mph. The Board correctly concluded that he did not. App. 4-5. Ricciardi introduced no competing evidence of what his speed actually was. He did not, for instance, introduce speed data captured by his vehicle or his phone's GPS. Nor did he testify that he was monitoring his speedometer and that it never reached 61 mph. Nor did he provide evidence that this particular speed camera was malfunctioning or that the technician identified in the deployment log made any error in servicing it. *Cf. DeVita*, 74 A.3d at 723 (describing the "mechanisms by which a respondent c[ould] discover information" of this kind).

Rather than point to any *evidence*, Ricciardi merely pointed to the speed-camera calibration regulation, 18 DCMR § 1035.2. He contends that, because that regulation refers to a test reading "accurate to plus or minus one (1) mile per hour of the tuning fork frequency being used," *id.* § 1035.2(b)(1), the speed captured by the

camera in his case could be wrong by 1 mph in either direction. And that means, he says, that there is a 50% chance he was traveling below 61 mph. *See* Br. 9-10. The Court should reject this argument for either of two reasons.

*First*, the Court should reject the argument as a matter of law based on the text of the calibration regulation. The regulation defines the circumstances in which "[a] photo radar device shall be *deemed* to be calibrated correctly and in proper working order." 18 DCMR § 1035.2 (emphasis added). To "deem" is "[t]o treat (something) as if (1) it were really something else, or (2) it has qualities that it does not have." *Deem,* Black's Law Dictionary (12th ed. 2024). "Legislators (and other drafters) find the word useful when it is necessary to establish a legal fiction, either by 'deeming' something to be what it is not or by 'deeming' something not to be what it is." *Sturgeon v. Frost*, 587 U.S. 28, 47 (2019) (cleaned up). Thus, by using the term "deemed" in the regulation, the regulation defines circumstances in which the speed camera will, as a legal matter, be *treated* as accurate, even if it may not be 100% accurate *in fact*.

This interpretation makes good sense. The whole point of the automated traffic enforcement system is to create an efficient method of detecting and adjudicating a high volume of moving violations through generally reliable technology, while imposing only limited civil penalties on those found liable through such technology. *See DeVita*, 74 A.3d at 723 ("[T]he risk of an erroneous finding

of liability is low because 'the ATE System accurately captures and records traffic violations,' . . ." (quoting *Agomo*, 916 A.2d at 193)); D.C. Code § 50-2209.01(c) (prohibiting suspension of driver's license based on a "violation detected by an automated traffic enforcement system"); 18 DCMR § 303.1 (such violations do not trigger "points" toward license suspension or revocation). The efficiency of that system would be severely degraded if the speeds reported by the District's cameras could be attacked as uncertain in every single case based on nothing more than the theoretical possibility of measurement error. The calibration regulation forecloses that possibility by *deeming* a camera's output to be accurate so long as the testing threshold is met.

That is not unfair; as Ricciardi acknowledges, measurement error can in theory run in either direction. And the regulation's "deeming" principle does not preclude a respondent from producing *affirmative evidence* that his speed was less than the camera reported—including evidence that the particular camera was malfunctioning in some way. It merely precludes evidence-free appeals to the theoretical risk of measurement error, which is all that Ricciardi has offered here.

*Second*, and alternatively, the Court can reject Ricciardi's argument as a factual matter. His central contention is that because the calibration regulation refers to a maximum acceptable range of ±1 mph, the speed captured by the specific camera in this case must be subject to an equal margin of error. But that simply does not

follow as a matter of logic. That the calibration regulation refers to a range of ±1 mph does not mean that this particular camera was accurate only to ±1 mph, and not a higher degree of accuracy. As noted, the regulation was adopted in 2013, and as its enactment history confirms, it is not based on—and therefore does not reflect the accuracy of—a particular make or model of speed camera. *See* 60 D.C. Reg. at 12219 (calibration standard would be "applicable to all equipment, irrespective of manufacturer or model"). Ricciardi produced no evidence about the characteristics or accuracy of the speed camera that photographed him in 2023. There is thus no evidentiary basis on which to conclude that—despite the dead-on calibration readings both before and after, *see* App. 8 (rows B1 and E1)—the camera's reading of 61 mph actually means that Ricciardi could have been traveling anywhere between 60 and 62 mph with equal likelihood.

Ricciardi says in a footnote that "[t]he record here contains no statement of any margin of error other than ±1 MPH," Br. 10 n.2, but that does not help him. It was *Ricciardi's* burden to produce evidence contradicting the District's prima facie case. That the record contains no relevant evidence about this camera's accuracy is precisely why this Court should affirm the Board. And the out-of-jurisdiction cases that Ricciardi cites in the same footnote cannot fill the evidentiary gap; there is no basis to assume that they even involved the same type of camera.

Finally, even the assumption that this camera must have had *some* range of likely error does not aid Ricciardi. *See* Br. 10 n.2 (contending that "zero margin of error" is "physically impossible"). There is no evidence in the record that any such error would be evenly distributed above and below the camera's reading. The nature and distribution of potential error would, like accuracy in general, depend on the particular characteristics of the device. For instance, the camera here produced an *integer* speed (a whole number, like 61 or 62), *see* App. 8, suggesting it used a rounding or truncation algorithm of some kind. If that algorithm was simple truncation—that is, eliminating any decimal such that 61.7 mph becomes 61 mph—then the camera was much more likely to have *under*estimated Ricciardi's speed. But in the absence of any record evidence, such speculation is unwarranted and the District's prima facie case should stand undisturbed.

## II. Alternatively, Even If Ricciardi's Proposed Margin Of Error Applies, The $100 Penalty Remains Proper Under The Correct Interpretation Of The Penalty Table.

Even if the Court disagrees with the District's arguments in Part I, it should still affirm. Accepting in full Ricciardi's margin-of-error premise, he was traveling somewhere between 60 and 62 mph in a 50-mph zone. *See* Br. 10 (number line diagram). Under the correct interpretation of the penalty table for speeding offenses, $100 remains the appropriate penalty for that violation.

Here, again, is the penalty table for speeding:

| | |
|---|---|
| Up to 10 mph in excess of limit [§ 2200] | $50.00 |
| 11 to 15 mph in excess of limit [§ 2200] | $100.00 |
| 16 to 20 mph in excess of limit [§ 2200] | $150.00 |
| 21 to 25 mph in excess of limit [§ 2200] | $200.00 |
| Over 25 mph in excess of limit on controlled access roadways [§ 2200] | $400.00 |
| Over 25 mph in excess of limit on non-controlled access roadways [§ 2200] | $500.00 |

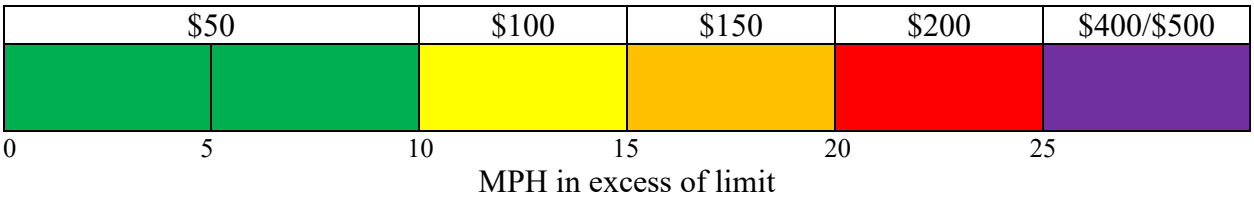
18 DCMR § 2600.1 (bracketed text in original). Note that the first three boundaries are stated in terms of consecutive *integers* (10 and 11, 15 and 16, 20 and 21). As a result, under a hyper-literal reading, there would appear to be *no* penalty applicable to a driver traveling, say, 10.6 (or 15.3 or 20.4) mph over the limit. But that would be patently nonsensical, and "statutes and regulations must be interpreted to avoid 'absurd results' and 'obvious injustice.'" *In re Bright Ideas Co.*, 284 A.3d 1037, 1050 (D.C. 2022) (quoting *Corbin v. United States*, 120 A.3d 588, 597 (D.C. 2015)); *see also, e.g.*, *Cardozo v. United States*, 315 A.3d 658, 672 (D.C. 2024). Instead of this strictly literal and obviously absurd reading, the Court should interpret the table in a manner that makes it sensible *as a whole*. Two such reasonable interpretations are possible, both of which compel affirmance here.

*First*, the best reading is that any excess speed greater than the upper bound of a given category falls into the next category—such that, for instance, an excess speed of 10.3 mph triggers a $100 penalty. The first row, after all, specifically says "*Up to* 10 mph in excess of limit" (emphasis added), and so seemingly does not

include someone driving 10.3 mph over the limit. Thus, the table's penalties would apply as follows:

- 0.1 mph over the limit → $50
- 10.1 mph over the limit → $100
- 15.1 mph over the limit → $150
- 20.1 mph over the limit → $200

This reading is supported by the final speed category in the table: "Over 25 mph in excess of limit." This final category indisputably applies to an excess speed of 25.1 mph. Thus, this interpretation—and *only* this interpretation—yields a coherent, logical penalty scheme keyed to multiples of 5, as follows:

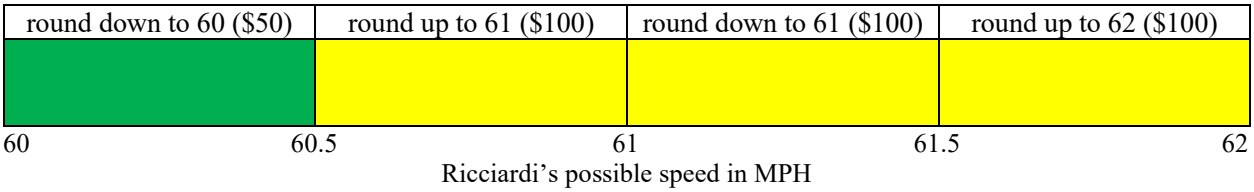



Ricciardi himself appears to implicitly acknowledge that this is the best reading of the penalty table when he refers to it as containing "5-MPH charging range[s]." Br. 7 n.1. The charging ranges correspond to even 5-mph increments only if the penalty table is interpreted as described in this paragraph.

Under this interpretation, Ricciardi was properly penalized $100. He contends that his speed could have been, with equal likelihood, anywhere between 60 and 62 mph—that is, between 10 and 12 mph over the limit. But only if his speed

was *exactly* 60 mph would the proper penalty have been $50. The likelihood that, within this range, Ricciardi's speed was *exactly* 60 mph is vanishingly small. There was thus clear and convincing evidence to support the violation and $100 penalty.

*Second*, another reasonable way to interpret the penalty table is by applying ordinary arithmetic rounding. On this view, an excess speed of 10.3 mph would be rounded down to 10 mph and would trigger a $50 penalty, while an excess speed of 10.7 mph would be rounded up to 11 mph and trigger a $100 penalty. Under this interpretation, too, the proper penalty here was $100. If Ricciardi's excess speed was 10.5 mph or greater (meaning an actual speed of 60.5 mph or greater), that higher penalty would apply. And even on Ricciardi's view, there was a 75% chance he was traveling at least that fast, as the following diagram illustrates:




If Ricciardi's speed fell anywhere within the three yellow boxes, a 75% probability, his excess speed would round to 11 mph (or more), triggering the $100 penalty. Only if his speed fell within the single green box, a 25% probability, would his excess speed round down to 10 mph and trigger the $50 penalty. The 75% chance that Ricciardi was traveling at least 60.5 mph satisfies the clear-and-convincing requirement of "a firm belief or conviction as to the facts sought to be established." *In re F.W.*, 870 A.2d at 85; *see United States v. Fatico*, 458 F. Supp. 388, 405

(E.D.N.Y. 1978) (quantifying "clear and convincing" as "in the order of above 70%"), *aff'd*, 603 F.2d 1053 (2d Cir. 1979).[2]

To be sure, the Board did not reach this question of the proper interpretation of the penalty table because it agreed that Ricciardi had not produced evidence undermining the District's prima facie evidence. *See supra* Part I. But the Court can nonetheless affirm on this ground. The proper interpretation of the penalty table is a pure question of law, and for the reasons explained, the only permissible interpretations require affirmance here. In other words, if this Court "were to remand, it would be 'clear what the agency's decision has to be.'" *Apartment & Off. Bldg. Ass'n of Metro. Wash. v. Pub. Serv. Comm'n of D.C.*, 129 A.3d 925, 933 (D.C. 2016) (quoting *Bio-Med. Applications of D.C. v. D.C. Bd. of Appeals & Rev.*, 829 A.2d 208, 217 (D.C. 2003)). In such circumstances, no remand is required. *Id.*

---

[2] This analysis assumes, favorably to Ricciardi, that all speeds between 60 and 62 mph are equally likely. A more plausible assumption is that any measurement error follows a normal (bell-curve) distribution, such that a true speed somewhere between 60.5 and 61.5 mph is more likely than one below 60.5 mph or above 61.5 mph. If so, the probability that Ricciardi's excess speed rounds to at least 11 mph is even higher than 75%.

## CONCLUSION

The Board's decision should be affirmed.

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

/s/ Graham E. Phillips
GRAHAM E. PHILLIPS
Deputy Solicitor General
Bar Number 1035549
Office of the Solicitor General

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-6647
graham.phillips@dc.gov

April 2025

# ADDENDUM

# Government of the District of Columbia

**Department of Motor Vehicles**
**Adjudication Services**
**P.O. Box 37135**
**Washington, D.C. 20013**

Go Green with ticket email alerts. Sign up at www.dmv.dc.gov

## HEARING RECORD

MATTHEW JOSEPH RICCIARDI
2001 15TH ST N APT 516

ARLINGTON, VA 22201-2693

**VEHICLE ST PLATE/PERMIT:** VAAEV4561

**DATE:** 08/15/2023 **CASE NO:** C0000590953

| Citation_No | Violation_Code | Infraction | Dispo | Fine | Penalty | Amount_Due |
|---|---|---|---|---|---|---|
| F158174379 | T119 | SPEED 11-15 OVR LIMT | 011 | 100.00 | 0.00 | 100.00 |
| | | | | | **TOTAL DUE** | **100.00** |

**STATEMENT OF FACT:** Respondent denies the infraction in a written statement. Respondent states any error in the speed recording would mean the vehicle was not traveling at 11 - 15 mph over the speed limit. The Government provided photographs of the violation and a deployment log as evidence.

**FINDINGS OF FACT:**
District of Columbia Government, upon the basis of an engineering and traffic investigation, determines the speed that is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a street or highway (Title 18 DCMR section 2200.2). The declared reasonable or safe speed limit shall be effective at all times, during the hours of daylight or darkness, or at such other times as may be determined when appropriate signs giving notice of the speed limits are erected at such intersections or other place or part of the highway. On all streets and highways, unless otherwise designated in accordance with Section 2200.2, the maximum lawful speed shall be twenty-five miles per hour (25 mph). Title 18 DCMR §2200.6. Effective, June 1, 2020, Title 18 2200.6 was amended to provide as follows: "On all streets and highways, unless otherwise designated in accordance with § 2200.2, the maximum lawful speed shall be twenty miles per hour (20 mph).

Respondent did not submit any evidence to show that the speed recorded was in error.

On the date, time and location listed on the Notice of Infraction, the Respondent's vehicle was observed traveling in excess of the posted speed limit. Drivers of vehicles should observe 20 MPH on roadways and 50 MPH on highways (35 MPH in WZ). Vehicles traveling 11 MPH or more over the posted speed limit are subject to be issued an infraction. The Government provided photographic evidence and a deployment log in support of the violation. The government has provided sufficient evidence to demonstrate that equipment was tested, working properly and calibrated correctly. Respondent has failed to establish a sufficient defense to the violation. As a result, there was a violation of the posted speed limit and the D.C. municipal regulations.

**CONCLUSIONS OF LAW:** Respondent is liable for the violation. There are no points assessed for this photo infraction.

# Government of the District of Columbia

**Department of Motor Vehicles**
**Adjudication Services**
**P.O. Box 37135**
**Washington, D.C. 20013**

Go Green with ticket email alerts. Sign up at www.dmv.dc.gov

## HEARING RECORD

S. BOYD
Hearing Examiner

Payment is due within 30 calendar days of the date of this hearing record. If you request reconsideration of the hearing examiner's decision, do not make payment. If the hearing examiner denied your Motion to Vacate, you cannot ask for reconsideration, but, can appeal the decision to the Traffic Adjudication Appeals Board. All requests for reconsideration or appeals must be in writing and must be received by DC DMV within 30 calendar days of the date of this record. For detailed information on the reconsideration or appeals processes, visit dmv.dc.gov, or obtain the appropriate form from the Adjudication Services Information Desk.
400ml 10/18

## CERTIFICATE OF SERVICE

I certify that on April 3, 2025, this brief was served through this Court's electronic filing system to:

Matthew Joseph Ricciardi

/s/ Graham E. Phillips
GRAHAM E. PHILLIPS