STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. M21-0009**
	:	**21406500445**
PAUL P. MONTEIRO	**:**	

DECISION

PER CURIAM: Before this Panel on February 23, 2022— Administrative Magistrate Abbate (Chair), Magistrate Noonan, and Magistrate Kruse Weller, sitting—is the appeal of Paul Monteiro (Appellant) from a decision of Judge Louis W. Grande (Trial Judge) of the Lincoln Municipal Court, sustaining a charged violation of G.L. 1956 § 31-20-9, "Obedience to stop signs[.]" Appellant appeared before this panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For the reasons set forth in this Decision, Appellant's appeal is denied.

I

Facts and Travel

On October 31, 2021, Officer Robert Morrissey (Officer Morrissey) of the Lincoln Police Department charged Appellant with the aforementioned violation of the motor vehicle code. *See* Summons No. 21406500445. Appellant contested the charge, and the matter proceeded to trial on December 15, 2021.

At trial, Officer Morrissey testified that while stationed on a traffic post in a marked police cruiser at Ladner Drive and Cobble Hill Road, he observed a vehicle with a Rhode Island Veteran License plate numbered 2G575 fail to stop at a stop sign while traveling at a high rate of speed. (Tr. at 2.) Officer Morrissey "followed the vehicle onto Cobble Hill Road[] and observed the

vehicle overtake another vehicle in the opposite lane of travel." *Id.* At that point, Officer Morrissey conducted a stop of the vehicle. *Id.* At trial, Officer Morrissey identified Appellant as the operator of the vehicle. *Id.*

Next at trial, Appellant had the opportunity to cross-examine Officer Morrissey. *Id.* at 4. Appellant first asked, "where was the stop sign that I proceeded though[,]" to which Officer Morrissey responded that there are two stop signs each side of Ladner Drive, one located on the right-hand side attached to a metal post and the other located on a telephone poll. *Id.* Appellant subsequently asked Officer Morrissey to identify which stop sign he had passed. *Id.* Officer Morrissey testified that Appellant had passed the sign on the metal post. *Id.* Appellant also presented photographs to Officer Morrissey and asked whether Officer Morrissey recognized any of the photographs. *Id.* At that point in the trial, the Trial Judge interrupted and said to Appellant, "I'd like to take a look at those photos, please." *Id*. The Trial Judge examined the photographs. *Id.* at 4-5.

After Appellant asked Officer Morrissey a few questions, the Trial Judge asked Appellant, "do you have any other questions for the officer?" *Id.* at 7. Appellant asked Officer Morrissey an additional question and then after Officer Morrissey's response, Appellant asked the Trial Judge, "can I make a statement as well?" *Id.* The Trial Judge said, "[y]ou'll have an opportunity in a minute. Right now, we're just . . . dealing with questions." *Id.* Appellant responded, "All right. So that's all I have then was just a statement for the officer." *Id.* The Trial Judge then permitted Appellant to provide his position on what transpired during the incident. *Id.*

Appellant proceeded to present his interpretation of the incident. *Id.* Appellant explained that on the date of the incident, he had been traveling up Cobble Hill with his friend, Steven Buckley (Mr. Buckley), as a passenger in the car. *Id.* Appellant testified, "we had gone out the

night prior. Uh, people were drinking, so we left cars behind, and I brought them back the next day for their vehicles." *Id.* Appellant further explained that when he was driving up Cobble Hill, there was a vehicle in front of him. *Id.* Appellant said that about halfway up the hill, he passed this vehicle. *Id.* Appellant explained that:

> "[t]he speed limit was 25 there, I was maybe going 13, 14 miles an hour behind this vehicle. Um, the roadway had no markings. So, I waited until I felt it was safe. There was nobody on the other side, I flashed my lights to signal my intention to pass." *Id.*

Appellant also testified that when Officer Morrissey stopped him, Appellant apologized and said to Officer Morrissey, "you've gotta understand the vehicle was going much too slow." *Id.* at 8. Appellant testified that Officer Morrissey said he had not pulled Appellant over for passing the other vehicle but instead, for passing a stop sign. *Id.* Appellant told Officer Morrissey that he had not remembered seeing a stop sign. *Id.* Appellant explained that subsequent to the stop, he and Mr. Buckley agreed that there was not a stop sign. *Id.* The day after the incident, Appellant claims that he returned to the scene and determined that there was no stop sign. *Id.* Appellant brought Mr. Buckley to trial as a witness of the incident. *Id.* at 2. Mr. Buckley testified only as follows:

> "Um, well I was a passenger the day of the traffic stop, but I was also one of the members that was drinking the night before and uh, so I was still hung over a little bit, but I do not remember seeing a stop sign at the place that he said we blew through a stop sign." *Id.*

There was no further testimony by Mr. Buckley, but Officer Morrissey did provide further clarification on the issue of the stop sign. *Id.* at 9. Officer Morrissey explained that he frequently patrols traffic from a post at Ladner Drive and Cobble Hill. *Id.* Officer Morrissey testified, "I always do see the two posted stop signs and that day I made sure that there were two posted stop signs before I set up a post." *Id.* However, Officer Morrissey explained that approximately one

week after the incident, there was not a stop sign at the intersection. *Id.* Upon noticing the missing stop sign, Officer Morrissey called the highway department and requested the installation of a new sign. *Id.* The Trial Judge requested confirmation on whether the sign was up or down at the time of the violation, to which Officer Morrissey reiterated that the stop sign was up at the time of the violation. *Id.*

The Trial Judge found that Officer Morrissey established each element of the offense charged against the motorist by clear and convincing evidence. *Id.* Prior to rendering his decision, the Trial Judge stated that the summons "charg[ed] the motorist with violating section 31-13-4; Obedience to Stop Signs."[1] *Id.* The Trial Judge found Officer Morrissey's testimony to be credible, but the Trial Judge found Appellant's testimony to be less than credible. *Id.* The Trial Judge also noted that Mr. Buckley was hungover from drinking and unable to recall the stop sign. *Id.* at 10. The Trial Judge rendered his decision, stating, "I find the motorist[,] based on substantial weight of the evidence, guilty of the violation, um, 31-2[0-]9[2]; Obedience to Stop Signs." *Id.*

[1] At the February 23, 2021 Appeals Hearing, Appellant did raise the issue that the Trial Judge improperly cited the section number of the statute in this portion of the trial. However, this was a *de minimis* error that did not prejudice Appellant. The Rhode Island Supreme Court has held that a nonprejudicial error in statutory citation is of the *de minimis* variety when it is clear what violation is being charged, despite that error in statutory citation. *Ricci v. State*, 196 A.3d 292, 302 (R.I. 2018) (citing *State v. Donato*, 414 A.2d 797, 802-804 (R.I. 1980). In this case, the Trial Judge clearly indicated that Appellant was being charged with violating a charge for "Obedience to Stop Signs[.]" (Tr. at 9.) In rendering the decision at a later point in trial, the Trial Judge also correctly cited the statute. *Id.* at 10. This Panel finds Appellant was not prejudiced by this *de minimis* error.

[2] This number was changed slightly from the transcript, which said "31-29[.]" Upon re-listening to the recording, the Trial Judge says the numbers thirty-one, twenty, nine, with no mention of the word dash. While this could be interpreted as the numbers thirty-one and twenty-nine, it is clear from the Trial Judge's subsequent mention of "Obedience to Stop Signs" that the Trial Judge was referring to G.L. 1956 § 31-20-9, "Obedience to stop signs[.]"

Next, the Trial Judge explained that § 31-27-24, commonly referred to as the Colin Foote Statute (Colin Foote Act), was applicable to the matter because Appellant had committed a minimum of four moving violations within an eighteen-month period. *Id.* The Trial Judge first noted that Appellant was charged with crossing the center section of a divided highway on February 16, 2021. *Id.* The Trial Judge noted that there was an additional violation on February 16, 2021. *Id.* Next, the Trial Judge referenced to Appellant's March 19, 2021 violation for speeding one to ten miles over the speed limit. *Id.* The Trial Judge noted that there was an additional violation on March 19, 2021. *Id.* The Trial Judge also cited a speeding violation, which occurred on March 27, 2021. *Id.* In addition, the Trial Judge noted that Appellant was already assessed penalties under the Colin Foote Act in 2019. *Id.*

Due to the fact that Appellant had four violations within a ten-month span, the Trial Judge assessed sanctions under § 31-27-24, the Colin Foote Act. *Id.* The Trial Judge explained that driving was a privilege, rather than a right, and that Appellant had abused that privilege. *Id.* Further, the Trial Judge said, "I can't fathom that having been found in violation of the Colin Foote Act some two years ago that we're [] back in the [] same situation with again, four moving violations . . . within the last 10 months." *Id.* The Trial Judge also stated to Appellant, "you are going to hurt yourself or someone else." *Id.* The Trial Judge found that Appellant was a habitual offender and posed a substantial traffic safety hazard. *Id.*

The Trial Judge imposed a fine of $500, a one-year license suspension, driver retraining, and sixty hours of community service. *Id.* at 11. After the Trial Judge announced the sanctions, Appellant said, "I understand." *Id*. Appellant timely filed the instant appeal.

II

Standard of Review

Pursuant to § 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 as follows, 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 prejudiced 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 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 '[c]learly 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 (quoting Section 31-43-4(6)(d) and (e)). "Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions" on appeal. *Id.*; *see Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that the Trial Judge "abused his discretion in finding the officer's testimony credible[,] which the officer decided to add in after hearing [Appellant] testify." *See* Notice of Appeal. Appellant contends that Officer Morrissey was not truthful. *See id.* Additionally, Appellant argues that the Trial Judge erred by "refus[ing] to allow [Appellant] to present the entirety of [his] evidence[,] despite numerous attempts." *Id.* Lastly, Appellant averred, "I believe the decision was wrong." *Id.*

A

Credibility

Appellant contends that the Trial Judge erred by finding that Officer Morrissey's testimony that Appellant failed to stop at a stop sign was credible. *See id.* On appeal, Appellant wishes to challenge Officer Morrissey's credibility because Appellant believes that Officer Morrissey was not truthful. *See id.*

This 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 *Janes*, 586 A.2d at 537). As the members of this Panel did not have an

opportunity to observe the live testimony of Appellant or Officer Morrissey, it would be impermissible for the Panel to second-guess the Trial Judge's impression as he was able to "appraise [the] witness['s] 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) (internal quotations omitted).

Here, the Trial Judge based the decision on Officer Morrissey's testimony that he observed a vehicle with a Rhode Island Veteran License plate numbered 2G575 fail to stop at a stop sign while traveling at a high rate of speed. *See* Tr. at 2, 9. Even though Appellant's contention is that there was no stop sign, Officer Morrissey's testimony was that there were two stop signs on the date of the incident. *See id.* at 9. Officer Morrissey explained that he frequently patrols traffic from a post at Ladner Drive and Cobble Hill. *Id.* Officer Morrissey testified, "I always do see the two posted stop signs and that day I made sure that there were two posted stop signs before I set up a post." *Id.* Officer Morrissey also noted that approximately one week after the incident, there was not a stop sign at the intersection. *Id.* Upon noticing the missing stop sign, Officer Morrissey called the highway department and requested the installation of a new sign. *Id.*

In light of the fact that the record contains competent evidence to support the Trial Judge's decision to sustain the charged violation of § 31-20-9,[3] this Panel "lacks the authority to assess

[3] Section 31-20-9 provides that:

> "Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection. In the event there is no crosswalk, the driver shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway before entering the intersection, except when directed to proceed by a police officer or traffic control signal. Violations of this section are subject to fines enumerated in § 31-41.1-4." Sec. 31-20-9.

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 *Janes*, 586 A.2d at 537). To reiterate, "[t]he appeals panel is limited to a determination of whether the hearing justice's decision is supported by competent evidence." *Marran v. State*, 672 A.2d 875, 876 (R.I. 1996) (citing *Link*, 633 A.2d at 1348). Based upon Officer Morrissey's testimony and the evidence on the record, the Trial Judge's decision to sustain the violation is not erroneous or affected by error of law.

B

Colin Foote Sanctions

Section 31-27-24, the Colin Foote Act, states that "[e]very person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period" is subject to increased penalties.[4] Sec. 31-27-24. The Colin Foote Act also provides that "[p]rior to the suspension or revocation of a person's license to operate within the state, the court shall make specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard." *Id.*

In this case, the Trial Judge found that Appellant was a habitual offender and posed a substantial traffic safety hazard to the motorists of Rhode Island because Appellant had a minimum of four moving violations within an eighteen-month period. (Tr. at 10.) At trial, the Trial Judge recounted the Appellant's driving record, which included three previous moving violations that occurred within a ten-month period of the aforementioned violation. *Id.* Specifically, the Trial Judge cited to Appellant's violations on February 16, 2021; March 19, 2021; and March 27, 2021.

[4] Those penalties are (1) a fine up to one thousand dollars ($1,000); (2) a mandatory sixty hours of driver retraining; (3) a mandatory sixty hours of public community service; (4) and the operator's driver's license may be suspended up to one year or revoked for a period of up to two years. *See* § 31-27-24.

Id. The Trial Judge's articulation of three out of Appellant's numerous previous violations satisfies the statutory requirement that "the court shall make specific findings of fact and determin[ations] [that] the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard." *Id.; See* § 31-27-24. Therefore, the Trial Judge's decision to impose increased penalties, pursuant to § 31-27-24, was supported by specific, reliable, and probative evidence on the record and the Trial Judge did not commit an error of law by imposing the Colin Foote Act.

C

Procedural Due Process

Appellant's argument that the Trial Judge erred by "refus[ing] to allow [Appellant] to present the entirety of [his] evidence[,] despite numerous attempts" raises a concern of procedural due process. *See* Notice of Appeal. However, Appellant does not identify any specific evidence that the Trial Judge allegedly failed to permit.

The Rhode Island Supreme Court has held that the right to a hearing is the "opportunity to be heard at a meaningful time and in a meaningful manner." *State v. Oliveira*, 774 A.2d 893, 923 (R.I. 2001). The constitutional guarantee of procedural due process assures that there will be fair and adequate legal proceedings. *State v. Germane*, 971 A.2d 555, 574 (R.I. 2009). To ensure fairness and the adequacy of legal proceedings, procedural due process requires that a defendant be provided: (1) notice of the hearing and the alleged violation; (2) an opportunity to be heard by an impartial trial judge; (3) an opportunity to present evidence; (4) and the right to confront and cross-examine witnesses. *State v. Pompey*, 934 A.2d 210, 214 (R.I. 2007); *see also State v. Lomba*, 37 A.3d 615, 621 (R.I. 2012) (recognizing that a defendant must have a "full opportunity to establish the best and fullest defense available to him [or her]"); *State v. Doctor*, 690 A.2d 321,

327 (R.I. 1997) (holding that the ability of a defendant to "meaningfully cross-examine the state's witnesses is 'an essential element'" of the due process right to present a defense).

In the instant matter, Appellant does not dispute that he received proper notice of the violation. *See* Summons No. 21406500445. The record reveals that Appellant also had the opportunity to cross-examine the officer and present a defense. (Tr. at 3-7.) At trial, the Trial Judge explicitly told Appellant, "you have the opportunity to ask the police officer any questions that you like." *Id.* at 3. Appellant asked Officer Morrissey multiple questions. *Id.* at 4-7. After some questioning, the Trial Judge asked Appellant, "do you have any other questions for the officer?" *Id.* at 7. Appellant asked Officer Morrissey an additional question and after Officer Morrissey's response, Appellant asked the Trial Judge, "can I make a statement as well?" *Id.* The Trial Judge said, "[y]ou'll have an opportunity in a minute. Right now, we're just . . . dealing with questions." *Id.* Appellant responded, "All right. So that's all I have then was just a statement for the officer." *Id.* The Trial Judge then permitted Appellant to provide his position on what transpired during the incident. *Id.*

The Trial Judge also permitted Appellant to present a witness and viewed photographs that Appellant wanted to present. *Id.* at 4-8. The Trial Judge heard testimony from Appellant's witness, Mr. Buckley, and even asked "[d]o you have anything further you'd like to add?" *Id.* at 8. When Appellant presented photographs, the Trial Judge specifically said to Appellant, "I'd like to take a look at those photos, please" and spent time viewing the photographs. *Id.* at 4-5. Whether the Trial Judge found these photographs to be relevant is not for this Panel to question because "[t]he determination of the relevancy and materiality of a photograph is ordinarily left to the sound discretion of the trial judge." *State v. Greene*, 74 R.I. 437, 443, 60 A.2d 711, 715 (1948). Further, the trial judge has wide discretion in determining the relevancy, materiality, and admissibility of

offered evidence, including photographs. *See State v. Houde*, 596 A.2d 330, 335 (R.I. 1991). The Trial Judge's ruling will be upheld absent a clear abuse of discretion. *Id.*

Again, Appellant does not specify what evidence the Trial Judge allegedly limited. Appellant mentions that he had videos to present to the Trial Judge a couple times during the trial, but never actually moved to have the videos introduced into evidence. *See* Tr. at 5, 8. In regard to whether the stop sign was there the day after the incident, Appellant said, "I also have a video [] if you'd like to see." *Id.* at 8. In order to introduce a video into evidence, the video must be authenticated, meaning that the video "is received into evidence only after a witness with personal knowledge testifies that it is a true and accurate representation." *State v. Brown*, 88 A.3d 1101, 1117 (R.I. 2014). Here, Appellant only mentioned that he had a video and did not move to introduce the video to the court at trial. Thus, the Trial Judge was not required to consider the admissibility of the video, because the evidence was never formally presented to the court. *See* Tr. at 5, 8.

Most importantly, Appellant was afforded the opportunity to present any evidence or testimony on his own behalf. In this regard, the record shows that Appellant's constitutional rights were not substantially prejudiced by the Trial Judge's conduct. The Trial Judge allowed the Appellant to cross-examine Officer Morrissey and present evidence. *See* Tr. at 4-8. Before rendering his decision, the Trial Judge even asked, "Is there anything further either of you'd like to add?" *See id.* at 9. Any issues or additional evidence Appellant had could and should have been raised at this point in trial. Instead, Appellant responded, "No, Your Honor." *Id.* Our Supreme Court has continually stated that "an issue that has not been raised and articulated previously at trial is not properly preserved for appellate review." *State v. Donato*, 592 A.2d 140, 141 (R.I. 1991). Accordingly, our Supreme Court's "well settled 'raise-or-waive' rule precludes us from considering at the appellate level issues not properly presented before the trial court." *State v. Forand*, 958 A.2d 134, 141 (R.I. 2008); see also *State v. Moreno*, 996 A.2d 673, 684 (R.I. 2010); *State v. McManus*, 990 A.2d 1229, 1237 (R.I. 2010);

State v. Gomez, 848 A.2d 221, 237-38 (R.I. 2004); *State v. Grant*, 840 A.2d 541, 546 (R.I. 2004); *State v. Pacheco*, 763 A.2d 971, 976 (R.I. 2001).

From the record presented to this Panel, there is no showing that the Trial Judge improperly limited evidence or violated Appellant's procedural due process rights. Based on a review of the record, this Panel finds that Appellant was given an opportunity to testify at trial and to be heard in a meaningful manner. *See Pompey*, 934 A.2d at 214; *Oliveira*, 774 A.2d at 923. The Trial Judge provided Appellant an opportunity to question the officer and also allowed Appellant an opportunity to present his defense, which included a witness and photographs. *See* Tr. at 3-9. Accordingly, the Trial Judge's decision was not made in violation of constitutional or statutory provisions, or upon unlawful procedure as Appellant's procedural due process rights were not violated.

IV

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 was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, nor was the decision made "[i]n violation of constitutional or statutory provisions." Appellant's substantial rights have not been prejudiced. Accordingly, Appellant's appeal is denied based on Appellant's valid guilty plea.

ENTERED:

_____
Administrative Magistrate Joseph A. Abbate (Chair)

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Magistrate William T. Noonan

_____
Magistrate Erika Kruse Weller

DATE: _____