

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

v.

:

C.A. No. M20-0007

:

20404500905

:

WEIXING WANG

:

DECISION

PER CURIAM: Before this Panel on November 25, 2020—Magistrate Erika Kruse Weller (Chair), Judge Edward C. Parker, and Magistrate Michael DiChiro Jr., sitting—is Weixing Wang’s (Appellant) appeal from a decision of Judge Lissette Gomes (Trial Judge) of the East Providence Municipal Court, sustaining the charged violation of G.L. 1956 § 31-17-2, “Vehicle turning left or right.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

**Facts and Travel**

On July 16, 2020 Officer Michael S. Crowley (Officer Crowley) of the East Providence Police Department responded to a motor vehicle accident at the intersection of Warren Avenue and Boyd Avenue in the City of East Providence (Tr. 1). Upon arriving on scene, Officer Crowley conducted an investigation and issued Appellant, the operator of the vehicle involved in the collision, a citation for the above-referenced violation. *See* Summons No. 20404500905.

The Appellant contested the charged violation and the matter proceeded to trial on September 17, 2020. At trial, Officer Crowley testified that when he arrived on scene, he observed two vehicles that appeared to be in a collision, each sustaining heavy damage. (Tr. 1).

He identified one vehicle to be a blue Toyota Camry, operated by the Appellant, and the second vehicle to be a Volkswagen Passat, operated by Mr. Rizza (Mr. Rizza). *Id.* at 1.

Officer Crowley testified that he spoke with Appellant, who stated that “[I] was traveling westbound in the left travel lane and had gone through the intersection, had stopped in the middle of the intersection in an attempt to make a left-hand turn onto Boyd Avenue.” *Id.* at 1. He testified that Appellant further stated, “the left eastbound travel lane had come to a stop, which allowed him to then make the left-hand turn.” *Id.* at 1. Officer Crowley testified that Appellant stated, “[a]t that point, he failed to see Mr. Rizza coming in the right travel lane, and that’s when both vehicles had come to a collision.” *Id.* at 1. Officer Crowley also spoke with Mr. Rizza who told him, “he was traveling eastbound in the right travel lane approaching the intersection of Boyd, when [Appellant] had made the left hand turn in front of him, and he was unable to stop in time and their vehicles collided.” *Id.* at 2.

Mr. Rizza also testified at trial. *See id.* at 4. Mr. Rizza stated, “I was heading to... driving in the right lane on Warren Avenue.” *Id.* at 4. He explained “So, when I approached the Boyd and Warren intersection... I had green...I was heading green. And when I approached there, [Appellant] just hit me in my drivers’ side front and door.” *Id.* at 4.

Additionally, the Appellant testified at trial. *See id.* He testified “The ticket said very simple: vehicle turning left or right, failure to yield. This is not case. There is no yield. There is a traffic light . . . at the intersection where there is a traffic light, you don’t have to do anything but just follow the traffic light.” *Id.* at 7. He further explained “This is the traffic light, and I was waiting for the red light . . . After the red light was on, all cars stopped, and I turned.” *Id.* at 7. He testified that his summons is invalid because “there is no such thing that says at a traffic light you have to yield.” *Id.* at 7.

After hearing all the testimony, the Trial Judge recounted the facts asserted by Officer Crowley, Mr. Rizza and the Appellant. *See id.* The Trial Judge found that Mr. Rizza was traveling east on Warren Avenue and Appellant was traveling west in the left-hand lane attempting to make a left-hand turn onto Boyd Street. *See id.* at 8. The Trial Judge further found that both individuals testified that the light was green and “[i]n this situation Mr. Rizza had the right of way. It is then responsibility of [Appellant] to yield to allow himself to make that left-hand turn in a safe manner. However, that was not the case here because an accident did occur by [Appellant’s] failure to yield.” *Id.* at 8.

The Trial Judge found Appellant guilty of the charged violation, and Appellant subsequently filed this timely 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 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 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 argues that the Trial Judge's decision is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." § 31-41.1-8(f)(5). Specifically, Appellant contends that there are no facts to support the ticket and that the Trial Judge erred in allowing Mr. Rizza to testify at trial.

The Appellant argues that the Trial Judge did not care about the true facts of the case and that the yield rule does not apply here because the accident occurred at an intersection with traffic lights.

Section 31-17-2 establishes the required actions a motorist must take when turning left or right at an intersection. The statute provides:

"The driver of a vehicle within an intersection intended to turn to the left or right shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the

intersection or so close to it as to constitute an immediate hazard . . . The driver, having so yielded and having given a signal . . . may make the left or right turn, and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right of way to the vehicle making the left or right turn.” *Id.*

The Rhode Island Supreme Court has established “the duty to exercise due care, that is, the care an ordinarily prudent person would exercise under like circumstances, is therefore one which the driver of an automobile approaching a street intersection is particularly bound to observe.” *Dembicer v. Pawtucket Cabinet & Builders Finish Co.*, 58 R.I. 451, 193 A. 622, 624 (1937). “The driver of an automobile intending to cross an intersection should not only observe the so-called laws of the road, which include traffic regulations . . . but, before crossing, he should look when looking is efficient . . . the duty is not merely one of looking . . . but is one of observing the traffic and general situation at or in the vicinity of the intersection.” *Id.* at 625. As such, the Trial Judge found that because the light was green, Mr. Rizza had the right of way and under § 31-17-2 Appellant had a duty to yield despite there being a traffic control device. Thus, a driver of an automobile must not only abide by traffic regulations such as traffic lights, but also must yield to oncoming traffic at an intersection before crossing through. *See Dembicer*, 193 A. at 624.

Moreover, it is well-established that 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 evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). This Panel is not permitted to second-guess the Trial Magistrate’s impressions as she observed the witnesses, listened to their testimony, and determined what to accept and what to disregard. *Environmental Scientific Corp.*, 621 A.2d at 206. During the “fact-finding process, the trial justice may ‘draw inferences from the testimony of witnesses, and such inferences, if

reasonable, are entitled on review to the same weight as other factual determinations.” *Id.* Therefore, this Panel will not disturb a trial judge’s or magistrate’s credibility determinations or findings of fact unless he or she “overlooked or misconceived material evidence or was otherwise clearly wrong.” *Norton v. Courtemanche*, 798 A.2d 925, 932 (R.I. 2002) (quoting *Walsh v. Cappuccio*, 602 A.2d 927, 930 (R.I. 1992)).

Lastly, the Appellant’s argument that the Trial Judge erred in allowing Mr. Rizza to testify at trial is without merit. In his appeal form, Appellant asserts that Mr. Rizza violated the law for two years by failing to utilize a car seat and violating social distancing guidelines in the courtroom. The Appellant further asserts that the driver was seeking compensation against the Appellant in a personal injury claim.<sup>1</sup>

Rhode Island Rules of Evidence Rule 601 provides that “every person is competent to be a witness if they are able to observe, recollect, communicate, and appreciate the necessity of telling the truth. *See State v. Cabral*, 122 R.I. 623, 410 A.2d 438, 442 (R.I. 1980). A “witness may testify if the witness has personal knowledge and that evidence . . . may consist of the testimony of the witness himself.” *See* FRE 602. It is clear from the record that Mr. Rizza had direct personal knowledge of the accident because he was driving the other vehicle involved in the collision and that he further met the requirements of Rule 601.

The Appellant noted his objection to Mr. Rizza testifying at trial, and the record reveals that the Trial Judge acknowledged that the Appellant was attempting to impeach the credibility of the witness. (Tr. 6). In light of the Trial Judge’s finding that Mr. Rizza had the right of way and that it was the responsibility of the Appellant to yield in order to make a left-hand turn in a safe manner, the record reveals that the Trial Judge found Mr. Rizza to be credible and believed

---

<sup>1</sup> Rhode Island Rules of Evidence Rules 607 and 608 govern the impeachment of witness based on the character and conduct of the witness but is subject to limitations.

his testimony. The Trial Judge noted at trial “[Mr. Rizza] is testifying as a witness, and I will give his testimony the weight that I believe is appropriate based on the facts in this case.” (Tr. 6).

Moreover, the record reveals that the Appellant’s testimony was contradictory. He testified originally that he “was waiting for the yellow, I stop at yellow” and then testified “I wait there for red light, after the red light was on, all cars stopped, and I turned.” (Tr. 3, 7). The Trial Judge is solely responsible for assessing the credibility of witnesses, as they are the individuals that observe firsthand the testimony of the witnesses. See *Environmental Scientific Corp.*, 621 A.2d at 206. Thus, after a review of the record, this Panel is satisfied that the Trial Judge’s decision was not clearly erroneous in light of the evidence presented.

## V

### **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 not clearly 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 not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

---

Magistrate Erika Kruse Weller (Chair)

---

Judge Edward C. Parker

---

Magistrate Michael DiChiro, Jr.

DATE: \_\_\_\_\_