STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF CENTRAL FALLS	:	
	:	
v.	:	**C.A. No. M17-0027**
	:	**17401502132**
HIRAK BISWAS	:	

DECISION

PER CURIAM: Before this Panel on April 11, 2018—Magistrate Abbate (Chair), Magistrate Kruse Weller, and Magistrate Goulart sitting—is Hirak Biswas's (Appellant) appeal from a decision of Judge Raymond Cooney (Trial Judge) of the Central Falls Municipal Court, sustaining the charged violation of G.L. 1956 § 31-18-3, "Right of way in crosswalks." The Appellant appeared before this Panel *pro se.* Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On September 13, 2017, police officers from the Central Falls Police Department conducted a traffic enforcement operation that targeted pedestrian safety in crosswalks. Tr. at 3; *see also* Summons No. 17401502132. During that operation, Appellant received a citation for the aforementioned violation. *Id.* The Appellant contested the charged violation, and the matter proceeded to trial on October 10, 2017. (Tr. at 3.)

At trial, Officer Charles Walker (Officer Walker) from the Central Falls Police Department was the first witness to testify. *Id.* at 3-4. Officer Walker explained that the traffic enforcement operation was executed by two plain-clothed officers and a third officer down the road in a police cruiser. *Id.* at 2. First, the officers created a "safety zone" by placing two orange

traffic cones approximately one hundred and sixty two feet away from the crosswalk. *Id.* As vehicles approached the "safety zone," one officer would begin crossing the roadway in the crosswalk while the other officer monitored vehicles traveling towards the crosswalk. *Id.*at 2. If a vehicle did not yield for the officer in the crosswalk, the other officer would signal the third officer in the cruiser to conduct a traffic stop of that vehicle to issue the operator of that vehicle a citation. *Id.*

Officer Walker further testified that on September 13, 2017, he and Sergeant Rodriquez of the Central Falls Police Department were the plain-clothed officers assigned to the crosswalk. *Id*. As the vehicle that Appellant was operating on that day approached, Officer Walker observed the vehicle "travel through the crosswalk as [Sergeant Rodriquez] was trying to cross the street without stopping." *Id*. at 4. Officer Walker then "called [the violation] out to Officer Matuck," who was the officer in the police cruiser down the road. *Id.*

Officer Matuck also testified at trial. *Id.* at 6. Officer Matuck testified that "when [Officer Walker] went over the radio stating, a black Mercedes, south on Broad Street; [he] already knew the violation had occurred, so [he] conducted the traffic stop." *Id.* At that time, Officer Matuck issued Appellant the citation. *Id.*

The Appellant also testified at trial. *Id.* at 4. The Appellant stated:

> "I observed a plain clothe[d] person, not an officer . . . just came off the pavement on the [cross]walk and then when [he] slowed down, he stayed back, so I assumed that he [was] asking me to go, and when I went through [the crosswalk], I even waved at the person." *Id.* at 5.

The Appellant further indicated that the person he saw that day—identified at trial to be Sergeant Rodriquez—did not cross the street; rather, Appellant observed the person step back onto the sidewalk leading Appellant to believe that the person was gesturing him on to continue traveling.

Id. at 7-8. When the Trial Judge asked Appellant to describe the gesture, Appellant stated that "it was a gesture, like, something with the hand. I don't remember exactly . . . that's why . . . I waved at [Sergeant Rodriquez] thanking him." *Id.* at 17.

After hearing the testimony, the Trial Judge found that "the police have made out their case," relying on "the fact that . . . [Appellant] did not have a clear recollection as to what sort of hand gesture the police officer may or may not have made." *Id.* at 17-18. The Trial Judge continued, stating that Appellant's inability to recall the gesture was a "serious problem." *Id.* at 18. The Trial Judge ultimately concluded that "once the officer stepped into the crosswalk, the officer had the absolute right of way[,] [a]nd [Appellant] had to stop." *Id.* Accordingly, the Trial Judge found Appellant guilty and sustained the charged violation. *Id.* at 18. Thereafter, Appellant timely filed this appeal. Forthwith is this Panel's decision.

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

On appeal, Appellant contends that the Trial Judge's decision was "affected by an error of law" and "clearly erroneous in view of the reliable, probative, and substantial evidence." *See* § 31-41.1-8(f)(4)(5). Specifically, Appellant asserts that the Trial Judge erred by sustaining the violation without Sergeant Rodriquez's testimony; and (2) the Trial Judge's decision was clearly erroneous as the record lacks sufficient evidence to sustain the charged violation.

A

Burden of Proof

First, Appellant maintains that the Trial Judge erred by determining that the "police [] made [] their case" without hearing testimony from Sergeant Rodriquez, the officer that stepped into the crosswalk. Rule 17 of the Rhode Island Traffic Tribunal Rules of Procedure states: "The burden of proof is on the prosecution to a standard of clear and convincing evidence." Traff. Trib. R. P. 17. The Rhode Island Supreme Court has held that "[t]he clear and convincing standard requires that the factfinder form 'a clear conviction without hesitancy of the truth of the precise facts.'" *In re Emilee K.*, 153 A.3d 487, 497 (R.I. 2017) (*quoting In re Veronica T.*, 700 A.2d 1366, 1368 (R.I. 1997)). Moreover, our Supreme Court has stated that "[t]he testimony of a single witness, if believed, is sufficient to sustain a jury verdict in a criminal case and, thus, is certainly capable of supporting a finding of fact by clear and convincing evidence." *Id.*; *see also State v. Rieger*, 763 A.2d 997, 1001 (R.I. 2001) (declaring that "a victim's testimony alone is sufficient to sustain a conviction . . ."). "The factual findings of the trial justice concerning whether this clear and convincing evidence burden has been satisfied are entitled to great weight." *In re Veronica T.*, 700 A.2d at 1368. "[S]uch findings generally will not be disturbed on appeal unless they are clearly wrong or unless the trial justice misconceived or overlooked material evidence." *Id.*

After reviewing the record in this matter, it is clear that Sergeant Rodriquez's testimony was not necessary to satisfy the prosecution's burden of proof. Traff. Trib. R. P. 17; *In re Emilee K.*, 153 A.3d at 497. Officer Walker testified that he observed Appellant drive through the crosswalk as "[Officer Rodriquez] tried to cross without stopping." (Tr. at 4.) This Panel finds that Officer Walker's testimony regarding his personal observation of Sergeant Rodriquez at the

crosswalk was sufficient evidence to make a determination regarding Sergeant Rodriquez's actions at the crosswalk. *See Ranieri*, 586 A.2d at 1098. Moreover, Officer Matuck testified that he identified Appellant as the driver of the vehicle, and that he issued Appellant the citation. *Id.* at 6. Therefore, the Trial Judge did not err by determining the matter without Sergeant Rodriquez's testimony as it was not necessary for the prosecution to satisfy its burden of proof.[1]

B

Sufficiency of Evidence

The Appellant further contends that the Trial Judge's decision was "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record" because the record otherwise lacks sufficient evidence to sustain the charged violation. *See* § 31-41.1-8(f)(6). The Rhode Island Supreme Court has continuously held: "[W]hen the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Iselin v. Ret. Bd. of Emps' Ret. Sys. of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). Alternatively, the Court "must examine an ambiguous statute in its entirety and determine 'the intent and purpose of the Legislature.'" *State v. Peterson*, 772 A.2d 259, 264 (R.I. 1998) (quoting *In re Advisory to the Governor*, 688 A.2d 1246, 1248 (R.I. 1996)).

Section 31-18-3(a) provides:

> "[T] driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the

[1] It is important to note that while the prosecution was not required to call Sergeant Rodriquez as a witness, Appellant could have presented Sergeant Rodriquez as a defense witness.

> pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. . . .” Sec. 31-18-3(a).

The record in this case reveals that Officer Walker testified that Sergeant Rodriquez “tri[ed] to cross the street without stopping.” (Tr. at 4.) However, there is insufficient evidence indicating that Appellant did not “slow[] down or stop[] if need be to so yield” as the statute’s clear and unambiguous language requires. *See* § 31-18-3(a); *Iselin*, 943 A.2d at 1049 (quoting *Accent Store Design, Inc.*, 674 A.2d at 1226). The Appellant testified that “[he] observed a plain clothes person, not an officer was at the pavement, just came off the pavement on the walk and then when I slowed down, he stayed back.” (Tr. at 4-5.) Nevertheless, neither Officer Walker, nor Officer Matuck testified as to Sergeant Rogdriguez’s location in the crosswalk to prove that Appellant was required to yield the right of way. *Id.* Additionally, the record contains no evidence proving that Appellant did not slowdown in order to satisfy his duty under the statute. *Id.*

Based on the evidence in the record, this Panel finds that the Trial Judge’s decision is not supported by legally competent evidence. *See Link*, 633 A.2d at 1348 (*citing Envtl. Sci. Corp.*, 621 A.2d at 208). The Trial Judge improperly asserted that Appellant had to stop as pedestrians have an absolute right of way. (Tr. at 18.) Without evidence proving that Sergeant Rodriquez was in the crosswalk at a location that would have required Appellant to yield the right of way, and evidence proving that Appellant did not yield that right of way by slowing down, the record lacks sufficient evidence to sustain the charged violation. Accordingly, the Trial Judge’s decision is “[c]learly erroneous in view of the evidence within the record.” Sec. 31-41.1-8(f)(5).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel determine that the Trial Judge's decision is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *See* § 31-41.1-8(f)(5). The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the adjudicated violation is reversed.

ENTERED:

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Magistrate Joseph A. Abbate (Chair)

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Magistrate Erika Kruse Weller

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Magistrate Alan R. Goulart

DATE: _____