

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF EAST PROVIDENCE

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:
:

v.

**C.A. No. M17-0020
17404501627**

ALYSSA STEPHENSON

DECISION

PER CURIAM: Before this Panel on October 11, 2017—Judge Almeida (Chair), Magistrate Abbate, and Magistrate Kruse Weller sitting—is Alyssa Stephenson’s (Appellant) appeal from a decision of Judge George E. Furtado (Trial Judge) of the East Providence Municipal Court, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to devices.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On April 24, 2017, Officer Michael Crowley (Officer Crowley) of the East Providence Police Department issued Appellant a citation for traveling onto a roadway marked with a “Do Not Enter” sign. *See* Summons No. 17404501627. The Appellant contested the charged violation, and the matter proceeded to trial before the East Providence Municipal Court on July 20, 2017. (Tr. at 1.)

At trial, Officer Crowley testified that on the day he issued Appellant’s citation, he was stationed at a fixed traffic post on the corner of Wheldon Avenue and Short Street in East Providence, monitoring motorists’ compliance with the “Do Not Enter” sign, which prohibited motorists from entering Wheldon Avenue. *Id.* at 3-4. While he had another motor vehicle stopped, Officer Crowley observed a second vehicle—operated by Appellant—pass by the “Do

Not Enter” sign. *Id.* at 4. Officer Crowley, instructed another officer to conduct a motor vehicle stop of Appellant’s vehicle. *Id.* After issuing the first vehicle a citation, Officer Crowley approached Appellant’s vehicle, advised her of the reason for the stop, and then issued her a citation for the abovementioned violation. *Id.*

The Appellant also testified at trial.¹ *Id.* The Appellant indicated that just before her vehicle was stopped, she and a passenger were traveling northbound on Short Street. *Id.* At the intersection of Short Street and Wheldon Avenue, Appellant stopped at the stop sign and turned on her vehicle’s right blinker as she intended to travel eastbound on Wheldon Avenue. *Id.* The Appellant stated that as she was turning onto Wheldon Avenue, she noticed the “Do Not Enter” sign and became confused due to changed traffic patterns in that area. *Id.* at 6-7. She went on to explain that when she “realized that sign was there, before [she] could evaluate the situation . . .” the police officer instructed her to pull her vehicle over and then issued her the citation. *Id.* at 8-9.

After considering all of the evidence, the Trial Judge stated: “I listened to your testimony and I viewed those pictures, it [is] clear to me that . . . you did go thru [sic] the sign.” *Id.* at 12. The Trial Judge found Officer Crowley’s testimony credible and explained that he relied on the testimony in rendering the decision. *Id.* In response to arguments raised by Appellant regarding the confusion due to traffic pattern changes, the Trial Judge explained: “[U]nfortunately, the law requires that all of us who are on the road obey the signs, whether they’ve been there for [forty] years, or whether they’ve been there for minutes.” *Id.*

Based on this reasoning, the Trial Judge found Appellant guilty and sustained the charged violation. *Id.* Thereafter, Appellant timely filed this appeal. Forthwith is this Panel’s Decision.

¹ The Appellant supplemented her testimony with photographs of the area where the motor vehicle stop occurred. (Tr. at 5.)

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 argues that the Trial Judge’s decision was “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 the Trial Judge erred by rejecting her assertion that she did not have enough time to react after noticing the “Do Not Enter” sign before the officer signaled Appellant to pull over.

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 concerning the weight of the evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). An appeals panel cannot review witness credibility as a trial judge may, since a trial judge “has had an opportunity to appraise witness 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) (quoting *State v. Van Dongen*, 132 A.3d 1070, 1076 (R.I. 2016)). As this Panel did not observe live testimony, this Panel can neither assess the demeanor of a testifying witness, nor can it disturb a trial judge’s findings of credibility. *A. Salvati Masonry Inc.*, 151 A.3d at 749 (quoting *Van Dongen*, 132 A.3d at 1076); *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Accordingly, this Panel will not question the Trial Judge’s assessment of the witnesses’ veracity during trial.

Based on a review of the record, this Panel finds that the Trial Judge’s decision is supported by legally competent evidence. *Link*, 633 A.2d at 1348. The record reveals that the Trial Judge heard and considered Appellant’s argument that she did not have enough time to react after noticing the “Do Not Enter” sign. (Tr. at 6.) The Trial Judge explicitly credited Officer Crowley’s testimony, indicating that he clearly “saw the vehicle travel through the Do Not Enter sign[. . .].” *Id.* at 9. As 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,” it cannot substitute its judgment for that of the Trial Judge. *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537).

Accordingly, this Panel will not disturb the Trial Judge’s decision to sustain the charged violation. In consideration of the reasons stated, this Panel concludes that the Trial Judge’s decision was not “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” *See* § 31-41.1-8(f).

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, or affected by error of law. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Judge Lillian M. Almeida (Chair)

Magistrate Joseph A. Abbate

Magistrate Erika Kruse Weller

DATE: _____