

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PAWTUCKET

:
:
:
:
:

v.

**C.A. No. M16-0008
15408510057**

ROBERT GOFF

DECISION

PER CURIAM: Before this Panel on March 29, 2017—Magistrate Abbate (Chair), Magistrate Kruse Weller, and Judge Almeida, sitting—is Robert Goff’s (Appellant) appeal from a decision of Judge John Gannon (Trial Judge) of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-17-2, “Vehicle turning left or right.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On November 1, 2015, the Pawtucket Police Department cited Appellant for the above mentioned violation in connection with an accident that occurred on that day. (Tr. II at 5-6.) The Appellant’s trial on the violation was held on November 4, 2016, at which four witnesses testified before the Trial Judge regarding the incident.

At trial, Patrolman Patrick Dolan (Patrolman Dolan), a three-year member of the Pawtucket Police Department testified first. (Tr. I at 3.) Patrolman Dolan testified that before the accident occurred he was driving in his police cruiser to a detail. (Tr. I at 3, 5; Tr. II at 7.) As he approached the intersection of Newport Avenue and Armistice Boulevard, Patrolman Dolan was traveling northbound in the right-hand lane of Newport Avenue at an estimated speed

of thirty miles per hour. (Tr. I at 4-5; Tr. II at 7.) He further testified that his cruiser's sirens and emergency lights were not activated at any time before the accident. (Tr. II at 6.)

Patrolman Dolan stated that as he approached the intersection, he saw Appellant's vehicle approaching the intersection via the southbound lane. (Tr. I at 5.) From his perspective, "[Appellant] appeared to be traveling south at approximately the same speed [Patrolman Dolan] was traveling." *Id.* Patrolman Dolan added that he did not see Appellant slow down as he approached the intersection, nor did he see Appellant engage his directional to signal his intention to turn left. *Id.* As both vehicles reached the intersection, Appellant attempted "to make a left-hand turn onto Armistice Boulevard and [the] vehicles collided." *Id.* Patrolman Dolan indicated that he did not have a chance to completely avoid the collision. (Tr. II at 2.) He went on to explain that his "cruiser's passenger side headlight struck [Appellant's] passenger side headlight" and that Appellant's vehicle spun approximately 90 degrees." *Id.* at 8, 13.

After the accident, Patrolman Dolan maneuvered his cruiser into the right-hand lane and activated the cruiser's emergency lights. *Id.* at 2. Patrolman Dolan then contacted police dispatch and checked on Appellant's condition. *Id.*

Patrolman Dolan testified that Patrolman Jeffrey Metfooney (Patrolman Metfooney), also of the Pawtucket Police Department, responded to the accident. *Id.* at 16; Tr. I at 3. Patrolman Dolan stated that he knows Patrolman Metfooney, but that they do not regularly work the same shift and have not worked as partners in the past. *Id.* at 4-5. He added that the two had never interacted socially outside of work. *Id.*

The second witness to testify was Patrolman Metfooney. (Tr. II at 16.) He stated that after arriving on scene, he checked on the conditions of both Patrolman Dolan and Appellant. *Id.* at 16. Patrolman Metfooney indicated that Patrolman Dolan was already outside his vehicle and

that he appeared to be fine. *Id.* Appellant, who was still in his vehicle, told Patrolman Metfooney that he was injured. *Id.* at 26-27. At that time, Patrolman Dolan began rendering aid to Appellant while Patrolman Metfooney directed traffic “to insure the safety of the accident scene because [Appellant’s] disabled vehicle [was] in the middle of the east-westbound lanes.” *Id.* at 17.

Patrolman Metfooney testified that he conducted an on-scene investigation of the accident.¹ *Id.* at 18. According to Patrolman Metfooney—who has investigated “several hundred” car accidents over his career—the damage that Appellant’s vehicle sustained was indicative of both cars traveling at 30 miles per hour. *Id.* at 44. In addition, Patrolman Metfooney took photographs of the scene and collected statements from two witnesses. *Id.* at 20, 27. He also spoke with Appellant about the accident at the hospital. *Id.* at 17. Patrolman Metfooney stated that his investigation led him to conclude that Appellant “did not yield to oncoming traffic prior to executing a left-hand turn onto Armistice Boulevard, because he was turning eastbound from the southbound lanes of Newport Avenue.”² *Id.* at 18. Based on the outcome of the investigation, Patrolman Metfooney issued Appellant a citation for violating § 31-17-2, “Vehicle turning left or right.” *Id.*

Next, the Trial Judge heard testimony from Trevor Neville (Neville) who witnessed the accident. *Id.* at 46. Neville testified that on that day, he “was driving to [his] mom’s house, down Newport Ave[nue]” when he looked in his rearview mirror and noticed Patrolman Dolan’s cruiser approaching. *Id.* at 48. Neville stated that when he recognized the police cruiser’s

¹ Patrolman Metfooney explained to the Trial Judge that he had been trained in “[t]raffic, patrol operations, community service, [and] first aid.” *Id.* at 19. Although he did not have formal accident reconstruction training, Patrolman Metfooney believed that “experience plays a lot in terms of many factors . . . [a]ll those are factors that . . . the officer is going to use, on scene, when trying to determine what happened based upon the facts and circumstances.” *Id.* at 19-20.

² Patrolman Metfooney did not cite Patrolman Dolan with any traffic violation. *Id.* at 42

headlights, he “was going 35 miles an hour. [Neville] [then] pulled over [to the next lane] and started to slow down to 30 [miles per hour].” *Id.* After Neville had pulled into the right lane, Patrolman Dolan passed him. *Id.* at 49. Based on his experience and “familiar[ity] with automobiles,” Neville estimated that Patrolman Dolan’s cruiser was traveling at “probably 50 miles per hour” when it passed his vehicle. *Id.* at 52, 60.

After Patrolman Dolan’s cruiser passed, Neville saw the cruiser collide with Appellant’s vehicle as Appellant attempted to turn left-hand. *Id.* at 53. Neville testified that Patrolman Dolan “hit [Appellant] on an angle and spun him out.” *Id.* The impact caused Appellant’s vehicle to spin “probably about 90 degrees. He was almost fully turned.” *Id.* Neville added that he did not observe Patrolman Dolan’s cruiser’s brake lights engage. *Id.* at 54.

After witnessing the accident, Neville pulled his vehicle over to check on Appellant’s condition. *Id.* at 53. After ensuring that Appellant was not in immediate danger, Neville waited for police officers to arrive. *Id.* When officers arrived, Neville “noticed that nobody . . . [no police officers] wanted to talk on the radio. Everyone was on their personal cell phones.” *Id.* at 55. Upon speaking with Patrolman Metfooney, Neville indicated that he saw Patrolman Dolan “driving at a fast rate, probably about 45, 50 miles an hour.” *Id.* at 56. Neville testified that he thought Patrolman Metfooney only wrote three words of notes regarding his statement and that the entirety of the statement lasted “45 seconds.” *Id.*

The Appellant was the last witness to testify. *Id.* at 67. The Appellant testified that on the day of the accident, he was driving home from his daughter’s house. *Id.* at 69-70. He stated that as he approached the intersection, “[He] didn’t see anyone. [He] didn’t see any cars, at all.” *Id.* at 71, 75. The Appellant explained that he began executing the left-hand turn “at about ten miles an hour” and, as he was “three quarters of the way through” the intersection, he and

Patrolman Dolan collided. *Id.* at 73, 76. The first time Appellant “noticed that there was going to be . . . that there was a collision, was [when] [he] started hearing metal crunch and . . . glass crack . . .” *Id.* at 73. The Appellant asserted that he engaged his directional before turning, but admitted that he did not stop before taking the left-hand turn because the intersection appeared to be clear. *Id.* at 73, 76. Moreover, Appellant stated that after the collision, he “lost consciousness for a brief period of time.” *Id.* at 73. When he awoke, a police officer approached Appellant and asked him some questions. *Id.*

After hearing all of the witnesses’ testimony, the Trial Judge issued his decision. *Id.* at 88. The Trial Judge acknowledged that “[s]peed is clearly an issue in this case.” *Id.* at 88. He further stated:

“I am left with conflicting estimates as to speed. Witness Neville, on cross, stated he had an estimate of 50 miles per hour. He changed that estimate from 40 miles an hour when he pulled over and then he changed it again to maybe under 30. Now, Officer Dolan said he was going about 30 miles per hour. Speed could have been a contributing factor, but I do not have any clear and convincing evidence as to what speeds were involved, so I am not going to consider speed as a factor.” *Id.* at 88-89.

The Trial Judge commented that Appellant’s testimony “trouble[d] [him] a bit, because [Appellant] could see down the road, but he never saw the two vehicles coming, and both those vehicles were placed there by Mr. Neville and Mr. Dolan.” *Id.* at 90.

Ultimately, the Trial Judge found “by clear and convincing evidence that [Appellant], for some unknown reason, failed to see the two witness vehicles approaching.” *Id.* at 91. He went on to state that “the two witnesses in this accident[] both put their vehicles in an area where [Appellant] testified that he could see, but for some reason he did not see them.” *Id.* Based on “[t]he fact that those two vehicles were approaching, required [Appellant] to yield to them before

making a left-hand turn, as both those vehicles were posing an immediate hazard,” the Trial Judge held that Appellant violated “§ 31-7-2.”³ *Id.* at 91.

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

³ Although the Trial Judge cited § 31-7-2 in his decision, it is evident based on the record that he intended to cite § 31-17-2 “Vehicle turning left or right,” which is the statute that Appellant was charged with violating. (Tr. at 91.)

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 this Panel should reverse the Trial Judge’s decision because it is “[i]n violation of . . . statutory provisions” and “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Sec. 31-41.1-8(f)(1), (5). Specifically, Appellant contends that the Trial Judge’s decision was not supported with findings of fact necessary to sustain the violation, and the decision improperly relies on Patrolman Dolan’s testimony because the testimony contradicted any reasonable interpretation of the photographic evidence.

A

Findings of Fact

First, Appellant asserts that the Trial Judge committed a fatal error when he concluded that Officer Dolan’s cruiser as well as Neville’s vehicle “[] pos[ed] an immediate hazard” without making any findings of fact regarding the location of those vehicles at the time Appellant began to turn left. Appellant further argues that the Trial Judge failed to provide his

reason for rejecting the uncontradicted and unimpeached testimony provided by Neville that directly contravenes the Trial Judge's conclusion.

The Rhode Island Supreme Court has held that when a trial judge acts as the fact finder during a trial, he or she must make findings of fact and conclusions of law on the record in order for a reviewing court to "pass upon the appropriateness of the order and the grounds upon which it rests." *Now Courier, LLC v. Better Carrier Corp.*, 965 A.2d 429, 434 (R.I. 2009) (quoting *Chiaradio v. Falck*, 794 A.2d 494, 496 (R.I. 2002)). The Court has stated that "[a] trial justice need not 'categorically accept or reject each piece of evidence in his decision for this Court to uphold it because implicit in the trial justices decision are sufficient findings of fact to support his [or her] rulings.'" *Notarantonio v. Notarantonio*, 941 A.2d 138, 147 (R.I. 2008) (quoting *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 102 (R.I. 2006)). When making factual findings, "[a] trial judge's findings 'must contain, at the very minimum, a factual finding and a conclusion of law on each cause of action adjudicated.'" *Cathay Cathay, Inc. v. Vindalu, LLC*, 136 A.3d 1113, 1119 (R.I. 2016) (citing *Cathay Cathay, Inc. v. Vindalu, LLC*, 962 A.2d 740, 747-48 (R.I. 2009)). "[I]f the [Trial Judge's] decision reasonably indicates that [he or she] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses it will not be disturbed on appeal unless it is clearly wrong or otherwise incorrect as a matter of law." *V. George Rustigian Rugs, Inc. v. Renaissance Gallery, Inc.*, 853 A.2d 1220, 1225 (R.I. 2004) (quoting *Connor v. Sullivan*, 826 A.2d 953, 960 (R.I. 2003) (per curiam)) (citations omitted).

Section 31-17-2 establishes the required actions a motorist must take when turning left or right at an intersection. *See* § 31-17-2. 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.*

In this case, the Trial Judge’s decision rested on a determination of whether Patrolman Dolan’s cruiser and Neville’s vehicle posed an immediate hazard to Appellant necessitating him to yield the right of way.⁴

After a review of the record, this Panel is satisfied that the Trial Judge properly supported his decision with findings of fact and conclusions of law. *See Cathay Cathay, Inc.*, 136 A.3d at 1119. When acting as the fact finder, the Trial Judge “need not ‘categorically accept or reject each piece of evidence . . . because implicit in the [Trial Judge’s] decision are sufficient findings of fact to support his rulings.’” *Notarantonio*, 941 A.2d at 147 (quoting *Narragansett Electric Col. V. Carbone*, 898 A.2d 87, 102 (R.I. 2006)). The record indicates that the Trial Judge based his conclusions on credible evidence presented in Patrolman Dolan’s and Neville’s testimony: “It’s pretty credible to me that the two witnesses in this accident, both put their vehicles in an area where [Appellant] testified that he could see” (Tr. II at 91.) Being that both Patrolman Dolan and Neville testified to the fact that their vehicles were approaching the intersection just before the accident occurred, the Trial Judge found that “both [] vehicles were posing an immediate hazard.” *Id.* Based on those findings, the Trial Judge reached the conclusion that Appellant’s conduct violated § 31-17-2. *Id.*

Rhode Island law does not grant this Panel the authority to “assess witness credibility or to substitute its judgment for that of the [Trial Judge] concerning the weight of the evidence on

⁴ During trial, neither party disputed the fact that Appellant was the driver of the vehicle and that he intended to turn left at the intersection. (Tr. II at 71, 75-76.)

questions of fact” such as a question of whether an approaching vehicle is an immediate hazard. *Link* 633 A.2d at 1348; *see V. George Rustigian Rugs, Inc.*, 853 A.2d at 1225 (finding that a Trial Judge’s decision that “reasonably indicates that [he or she] exercised [his or her] independent judgment in passing on the weight of the testimony . . . will not be disturbed on appeal unless it is clearly wrong or otherwise incorrect as a matter of law”); *Coutanche v. Larivierre*, 107 R.I. 1, 7, 264 A.2d 26, 29 (1970) (“determining that the trial judge’s decision properly asserted findings and inferences—drawn from testimony regarding the speed of defendant’s vehicle and the distance between defendant’s vehicle and an intersection—since a trial justice’s findings are entitled to great weight and will not be disturbed unless the findings are clearly wrong or the trial justice misconceived or overlooked material evidence.”). Therefore, this Panel will not disturb the Trial Judge’s decision as it satisfactorily asserted findings of fact and conclusions of law and was not made in violation of statutory provisions. *See* 31-41.1-8(f)(1); *Coutanche*, 107 R.I. at 7, 264 A.2d at 29.

Similarly, Appellant contends that the Trial Judge’s decision was not properly supported with specific findings of fact regarding (1) the location of Patrolman Dolan’s cruiser in relation to Appellant when he began turning left and (2) the speed at which Patrolman Dolan’s cruiser was going as he approached the intersection. As previously mentioned, the Trial Judge “need not ‘categorically accept or reject each piece of evidence . . . because implicit in the [Trial Judge’s] decision are sufficient findings of fact to support his rulings.’” *Notarantionio*, 941 A.2d at 147 (quoting *Narragansett Electric Col. V. Carbone*, 898 A.2d 87, 102 (R.I. 2006)). In addition, § 31-17-2 only requires that the Trial Judge find that Appellant’s failure to yield the right of way constituted an immediate hazard to oncoming vehicles. Thus the statute does not require that the Trial Judge make specific findings as to the location or speed of each vehicle;

however, the Trial Judge may take the location and speed of the vehicle into consideration when assessing whether there was an immediate hazard present.

Moreover, Appellant's argument that the Trial Judge erred by failing to provide a reason for rejecting portions of Neville's testimony that Appellant considers to be uncontradicted, is without merit. Appellant claims that the Trial Judge, without reason, rejected testimony—Neville's assertion that Appellant did not face an immediate hazard since Neville could have stopped his vehicle to avoid colliding with Appellant's vehicle—that Appellant suggests is uncontradicted.⁵ See Tr. II at 51. To support this contention, Appellant relies on our Supreme Court's holding in *Ronstrom v. Ronstrom*, stating that testimony, "which was uncontradicted and contained no inherent improbabilities or indications of error or falsity, [] must therefore be taken as true." 49 R.I. 292, 142 A. 162, 163 (1928).

However, Neville's testimony confirmed that he observed Patrolman Dolan's cruiser pass his vehicle prior to reaching the intersection. Tr. II at 51. Patrolman Dolan testified that he could not have completely avoided the accident. *Id.* at 2; 59. The fact that Patrolman Dolan testified that he could not have completely avoided the accident contradicts Neville's assertion that the vehicles were not an immediate hazard since Patrolman Dolan had just passed Neville's vehicle as they approached the intersection. Although Neville testified that he did not believe Appellant's vehicle constituted an immediate hazard to his vehicle, Patrolman Dolan's testimony illustrates that Appellant's vehicle could have posed an immediate hazard to him. See *id.* at 2; 51.

After reviewing the record, this Panel finds that our Supreme Court's holding in *Ronstrom* is inapplicable since the Trial Judge is only required to "accept completely

⁵ At trial, Neville testified that "[a]t the rate [he] w[as] traveling, [he] would [not] have needed to stop to avoid [Appellant] as [Appellant] turned[.]" (Tr. II at 51.)

uncontradicted and unimpeached testimony as probative of the fact it was adduced to prove.” *Jackowitz v. Deslauriers*, 92 R.I. 269, 162 A.2d 528, 530-31 (1960); *see also Ranstrom*, 49 R.I. at 292, 142 A. at 163. Given the conflicting testimony, the Trial Judge necessarily needed to assess witness credibility to reach his decision. (Tr. II at 91.) As this Panel is not permitted “to assess witness credibility or to substitute its judgment” for that of the Trial Judge, this Panel finds that the Trial Judge’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); *Link*, 633 A.2d at 1348.

B

Photographic Evidence

Appellant further contends that the photographs submitted as evidence during Appellant’s trial proves that Patrolman Dolan was not an immediate hazard when Appellant began turning left. Appellant argues that once he began to turn, it became Patrolman Dolan’s duty to yield the right of way. Sec. 31-17-2(a).

It is axiomatic 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 the evidence on questions of fact.” *Link*, 633 A.2d at 1348. During trial, the Trial Judge had the opportunity to weigh all of the evidence presented, including the photographs. (Tr. at 8, 15.) Having weighed the evidence, the Trial Judge properly made a factual determination that this Panel lacks the authority to assess. *See Link*, 633 A.2d at 1348. Accordingly, this Panel finds that the Trial Magistrate’s “decision is supported by legally competent evidence” and is not “affected by an error of law.” *Id.*

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 and was not made “[i]n violation of . . . statutory provisions.” Section 31-41.1-8(f)(1), (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 Joseph A. Abbate (Chair)

Associate Judge Lillian M. Almeida

Magistrate Erika Kruse Weller

DATE: _____