

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

ALBERT STEINHAUER

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**C.A. No. M17-0009
17302500131**

DECISION

PER CURIAM: Before this Panel on August 15, 2017—Magistrate Kruse Weller (Chair), Chief Magistrate Guglietta, and Judge Almeida, sitting—is Albert Steinhauer’s (Appellant) appeal from a decision of Judge Robert M. Silva (Trial Judge) of the Middletown Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On January 25, 2017, Officer Jennifer Lopez (Officer Lopez) conducted a traffic stop of Appellant’s vehicle on West Main Road in Middletown. *See* Summons No. 17302500131. Officer Lopez subsequently issued Appellant a citation for the abovementioned violation, specifically, “speeding 1 to 10 [miles per hour] in excess of [the] posted speed limit.” *Id.*

At Appellant’s trial for the violation, held on April 11, 2017, Officer Lopez testified that just before the issuance of the citation, she was traveling southbound on West Main Road. (Tr. at 1.) While driving, Officer Lopez observed a “white Hyundai Elantra” pass her location, travelling northbound. *Id.* Officer Lopez testified that the moving radar unit located in her

cruiser registered the vehicle's speed to be thirty-nine miles per hour while travelling through a twenty-five miles-per-hour zone. *Id.*

After observing the speed of Appellant's vehicle, Officer Lopez "turned [her] cruiser around and observed the vehicle cross[] the white dotted line on two occasions [i]n the right-hand lane." *Id.* Officer Lopez then conducted the motor vehicle stop and cited Appellant for traveling at a speed of thirty-five miles per hour in a twenty-five miles-per-hour zone. *Id.* at 2.

Officer Lopez also testified that she graduated from the Rhode Island Municipal Police Academy in 2013, where she had received training in the "motor vehicle code." *Id.* Furthermore, Officer Lopez stated that the moving radar unit in the cruiser she drove that day was "calibrated internally and externally," and determined "to be in good working order prior to beginning [her] shift and after [her] shift." *Id.*

During Appellant's cross-examination of Officer Lopez, Appellant asked if the speed limit in the area where the violation occurred was twenty-five or thirty miles per hour. *Id.* Officer Lopez restated that she observed Appellant travelling thirty-nine miles per hour in a posted twenty-five miles-per-hour zone. *Id.* The Appellant then stated, "I [do not] have anything to prove[,] but I only go [ten] over in every mile zone." *Id.*

Thereafter, witness testimony concluded and the Trial Judge asserted his findings of fact on the record. *Id.* at 3. The Trial Judge stated that "[t]he court finds . . . that [Officer Lopez's testimony is] truthful and worthy of being believed by the court." *Id.* After recounting Officer Lopez's testimony, the Trial Judge upheld the charged violation of § 31-14-2. *Id.*

Appellant subsequently filed this timely 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’s 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 “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Sec. 31-41.1-8(f)(5). Specifically, Appellant challenges the accuracy of Officer Lopez’s testimony, arguing that he was traveling in a thirty miles-per-hour speed zone at the time the violation occurred.

It is well-established that this Appeals 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)).

Here, Appellant argues that the Trial Judge should have credited his testimony that the speed limit was thirty miles-per-hour, rather than Officer Lopez’s testimony that the violation occurred in a twenty-five miles-per-hour speed zone.¹ (Tr. at 1-2.) However, the record clearly indicates that Officer Lopez testified that she observed Appellant’s vehicle traveling at thirty-nine miles per hour in a twenty-five miles-per-hour zone. *Id.* The Trial Judge stated that “[t]he

¹ Appellant wished to introduce new evidence to support his contention that the speed limit was not as Officer Lopez testified. However, it is well-settled that an Appeals Panel will not consider new evidence, as its review is confined to only a review of the record. *See Link*, 633 A.2d at 1348 (citing *Envtl. Sci. Corp.*, 621 A.2d at 208).

court finds . . . that [Officer Lopez’s testimony is] truthful and worthy of being believed by the court.” *Id.* at 3.

Being that this Panel did not observe Appellant’s or Officer Lopez’s 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. Therefore, this Panel concludes that the Trial Judge’s decision is supported by legally competent evidence, and is not “clearly erroneous.” Sec. 31-41.1-8(f)(4)-(5).

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 is not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." 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)

Associate Judge Lillian M. Almeida

DATE: _____

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.