

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. M18-0019
18412502845**

ANGELA MARTIN

DECISION

PER CURIAM: Before this Panel on May 29, 2019—Magistrate Noonan (Chair), Administrative Magistrate Abbate, and Magistrate Goulart, sitting—is Angela Martin’s (Appellant) appeal from a decision of Judge Thomas M. Dickinson (Trial Judge) of the Woonsocket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-15-11, “Laned roadway violations.” The Appellant appeared before this Panel represented by counsel.¹ Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On October 12, 2018, Patrolman Joseph Zinni (Patrolman Zinni) of the Woonsocket Police Department responded to the scene of a reported motor vehicle accident at the intersection of North Main Street and Aldrich Street in the City of Woonsocket. (Tr. at 3:6-9.) Upon arriving at scene, Patrolman Zinni began conducting an investigation. *Id.* at 3:9-4:9. Based upon this investigation, Patrolman Zinni issued Appellant, the operator of a vehicle involved in the

¹ This Panel orally granted Appellant’s counsel’s motion to waive Appellant’s appearance at the May 29, 2019 appeal hearing pursuant to Rule 23(b) of the Rhode Island Traffic Tribunal Rules of Procedure.

collision, a citation for the above-reference violation. *Id.* at 4:11-19; *see* Summons No. 18412502845.

Appellant pled not guilty to the charged violation, and the matter proceeded to trial on November 5, 2018. At trial, Patrolman Zinni stated that he responded to the accident scene on October 12, 2018, and first spoke with Paul McKeon (Mr. McKeon), the operator of the other vehicle (City Truck) involved in the accident. *Id.* at 3:9-10. At the scene, Mr. McKeon told Officer Zinni that he was traveling northbound on North Main Street, activated his left directional, and slowed the City Truck to take a left-hand turn onto Aldrich Street. *Id.* at 3:11-18. Officer Zinni further testified that Mr. McKeon also told him that the City Truck came to a complete stop before turning left and when Mr. McKeon began turning left, Appellant struck Mr. the City Truck on the driver's side. *Id.*

Officer Zinni also spoke with Appellant at the scene. *Id.* at 3:20-23. Appellant told Officer Zinni that the City Truck appeared to be parked on the roadway, so she proceeded to go around the vehicle, but the City Truck had started to turn left, causing the collision. *Id.* at 4:2-7. Officer Zinni explained that he issued Appellant a citation for the charged violation based upon his conversations with Mr. McKeon and Appellant and in light of the statutory language of §31-15-11. *Id.* at 4:11-19.

Mr. McKeon testified that on the day of the accident, he was “doing [his] daily job of checking recycling bins[.]” *Id.* at 6:4-5. Mr. McKeon then testified as to how the accident occurred:

“I was on North Main Street, and I was trying to go down Aldrich Street, so there was oncoming traffic, so I stopped in my lane of travel, put my directional on, . . . and I was waiting for the traffic to go by. Once the traffic went by, I proceeded to make the left-hand turn and I was struck by the vehicle that was in the left-hand lane.”

Id. at 6:5-14. In addition, Mr. McKeon clarified that although Patrolman Zinni's report indicates that Appellant struck the City Truck's rear tire, Appellant actually struck the driver's side front tire. *Id.* at 7:1-7. On cross examination, Mr. McKeon testified that the City Truck was not parked in the roadway; he was waiting in the lane for traffic to clear before he made a left-hand turn. *Id.* at 7:23-8:3. Mr. McKeon specifically recalled that "[t]here were three or four cars that went by" as he waited to turn left. *Id.* at 8:3-4. After the accident, Mr. McKeon parked the City Truck in the breakdown because vehicles "were blocking both lanes, and there were cars parked in the parking lane, so we would have blocked the whole road if we wouldn't have moved." *Id.* at 8:5-17.

Lastly, Appellant testified at trial on her behalf. *Id.* at 9:2-9. Appellant testified that on the morning of the accident, she was traveling straight on North Main Street to bring her children to school. *Id.* at 9:19-13; 12:8-9. The Appellant then testified as to her version of the accident:

"There was a City vehicle parked on the side of the road. I didn't even see anyone in it. I didn't think anybody was in there. I just kept going as my usual day, and I guess there was someone in there, because he decided to turn out, with no directional on, and hit me in the passenger side . . . fender area of my car."

Id. at 10:7-20. The Appellant also noted that North Main Street has "[o]ne lane, each way" and that she travels North Main Street often. *Id.* at 12:13-16; 10:4-6. Moreover, Appellant stated that if she had seen the City Truck's directional blinking, she "would have let him go." *Id.* at 11:15-19.

When the presentation of evidence concluded, the Trial Judge acknowledged, "[W]e have two very different stories from . . . the operators of the two vehicles[.]" and that "the evidence is fairly close here." *Id.* at 14:7-18. The Trial Judge specifically found "as a fact that [the City Truck] was stopped. That the collision occurred when [the City Truck] began to make a turn, and that in order for that to have happened, [] the [Appellant's] vehicle ha[d] to have been out of

its proper lane of travel.” *Id.* at 14:23-15:5. Therefore, “based on the physical evidence, which is the testimony that the damage to [the City Truck] was to the front driver’s side,” the Trial Judge concluded that clear and convincing evidence existed to sustain the charged violation. *Id.* at 14:18-23.

The Appellant subsequently filed a timely appeal of the Trial Judge’s decision. 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 Mutual Insurance Company 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 *Environmental Science Corporation 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 sustaining the charged violation is “[a]ffected by error of law;” “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record;” and “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted discretion.” Sec. 31-41.1-8(f)(4)-(6). Specifically, Appellant challenges the Trial Judge’s findings of fact, asserting that (1) there was insufficient evidence to sustain a violation of § 31-15-11, and (2) the Trial Judge did not properly credit Appellant’s testimony.

A

Weight of the Evidence

Appellant argues that there is insufficient evidence in the record supporting the Trial Judge’s decision finding Appellant guilty of violating § 31-22-31. Section 31-15-11 provides, in pertinent part:

“Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent with them shall apply:

“(1) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.”

Sec. 31-15-11(1). Thus, to sustain a violation under § 31-15-11, the evidence on the record must demonstrate that (1) the roadway is divided into two or more lanes; (2) the vehicle did not operate as nearly as practical entirely within a single lane; and (3) the vehicle moved from the lane at a time that the move could not be made with safety. *Id.*

Here, this Panel is satisfied that the Trial Judge’s decision sustaining the charged violation is supported by clear and convincing evidence. At trial, Appellant testified that North Main Street is divided into two lanes, one lane in each direction, which satisfies the first element of § 31-15-11(1). (Tr. at 12:13-16.) In addition, Mr. McKeon testified that Appellant’s vehicle “was in the left-hand lane” when it struck the City Truck. *Id.* at 6:12-14. Furthermore, Officer Zinni stated that he cited Appellant with a laned roadway violation because Appellant told him at the scene that “as [City Truck] began to take the left turn, when she proceeded to go around [the City Truck], that caused the collision.” *Id.* at 4:2-19. As the evidence establishes that Appellant’s vehicle crossed into the opposite direction of travel, the second element of § 31-15-11(1) is also satisfied.

Lastly, the evidence in the record demonstrates that Appellant moved from her lane of travel at a time when the move could not be made safely. *See* § 31-15-11. The Trial Judge found that for the collision to have occurred, Appellant’s vehicle “ha[d] to have been out of the proper lane of travel.” (Tr. at 15:23-15:5.) The Trial Judge also found as fact that the City Truck was stopped in the road waiting to make a left-hand turn. *Id.* at 14:23-24. Therefore,

considering these facts together, it may be reasonably inferred that it was not safe for Appellant to move out of the lane because doing so caused a collision. *See Notarantonio v. Notarantonio*, 941 A.2d 138, 147 (R.I. 2008) (a trial justice “need not categorically accept or reject each piece of evidence in his decision . . . because implicit in the trial justice’s decision are sufficient findings of fact to support his ruling”); *Link*, 633 A.2d at 1348 (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”). Accordingly, the Trial Judge’s decision sustaining the charged violation was neither clearly erroneous nor affected by error of law.

B

Witness Credibility

Appellant also maintains that the Trial Judge erred in crediting Mr. McKeon’s and Officer Zinni’s testimony over Appellant’s testimony. However, it is well-settled that “[t]he task of determining the credibility of witnesses is peculiarly the function of the trial justice when sitting without a jury.” *DeSimone Electric, Inc. v. CMG, Inc., et al.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walter v. Baird*, 433 A.2d 963, 964 (R.I. 1981)). This Panel is not permitted to second-guess the Trial Judge’s “impressions as he . . . observe[d] [the witnesses] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” *Environmental Scientific Corporation*, 621 A.2d at 206. Accordingly, this Panel will not disturb a trial judge’s decision to expressly accept the testimony of one witness, thereby, implicitly rejecting the testimony of another. *Turgeon v. Davis*, 120 R.I. 586, 592, 388 A.2d. 1172, 1175 (1978) (“Where the testimony of two witnesses is conflicting

and the trier of fact expressly accepts the testimony of one of the witnesses, he [or she] implicitly rejects that of the other”).

Based upon the record, it is clear that the Trial Judge accepted Mr. McKeon’s testimony that he was stopped in the roadway with his directional on when Appellant attempted to go around the City Truck. (Tr. at 14:17-15:7.) In accepting Ms. McKeon’s testimony, the Trial Judge implicitly rejected Appellant’s testimony that the City Truck was parked on the side of the road and pulled out in front of her without a directional signal. *See id.* at 5:7-8; *Turgeon*, 120 R.I. at 592, 388 A.2d. at 1175.

Appellant, through counsel, contends that the Trial Judge’s statements acknowledging that “we have two very different stories here from [] the operators of the two vehicles” and noting that “the evidence is fairly close here” reveals that the Trial Judge’s reliance on Mr. McKeon’s testimony is arbitrary. (Tr. at 14:7-18.) This reasoning is plainly illogical. It is the duty of the Trial Judge, as fact finder, to carefully parse the testimony, weighing the credibility of each witness to determine “what to accept and what to disregard.” *DeSimone Electric*, 901 A.2d at 621. Furthermore, the record reveals that the Trial Judge’s decision to accept Mr. McKeon and Officer Zinni’s testimony rather than Appellant’s was anything but arbitrary. Indeed, the Trial Judge based his decision upon the testimony—consistent among all three witnesses—describing the physical damage to the vehicles. (Tr. at 14:17-23.)

Given that this Panel can neither “assess witness credibility” nor “substitute its judgment for that of the hearing judge concerning the weight of evidence on questions of fact[,]” the Trial Judge’s findings will not be disturbed by the members of this Panel as such findings are supported by legally competent evidence. *Link*, 633 A.2d at 1348 (citing *Liberty Mutual Insurance Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). Therefore, this Panel concludes that the

Trial Judge's decision was not clearly erroneous or arbitrary or capricious or an abuse of discretion. 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 was not affected by error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or an abuse of discretion. *See* § 31-41.1-8(f)(4)-(6). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate William T. Noonan (Chair)

Administrative Magistrate Joseph A. Abbate

Magistrate Alan R. Goulart

DATE: _____