

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

CAROLE KUS

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**C.A. No. T19-0007
18504501548**

DECISION

PER CURIAM: Before this Panel on May 8, 2019—Associate Judge Almeida (Chair), Associate Judge Parker, and Magistrate DiChiro, sitting—is Carole Kus’s (Appellant) appeal from a decision of Magistrate Erika L. Kruse Weller (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-26-5, “Duty in accident resulting in damage to highway fixtures.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On November 15, 2018, Patrolman Matthew Hayden (Patrolman Hayden) of the Westerly Police Department responded to the intersection of High Street and Lewis Lane for the report of a vehicle striking a wall. (Tr. at 4:3-9.) Based upon his observations at the scene, Patrolman Hayden issued Appellant a citation for the above-referenced violation. *Id.* at 4:9-5:5; *see also* Summons No. 1850450154.

The Appellant contested the charged violation, and the matter proceeded to trial on March 19, 2019. (Tr. at 1:4-19.) During trial, Patrolman Hayden testified as to the events that led him to issue the citation to Appellant. Patrolman Hayden testified that on November 15,

2019, he was dispatched to 234 High Street “for a report of a vehicle striking a wall.” *Id.* at 4:3-9. Patrolman Hayden noted that night marked “the first snow of the season” and there were “a couple of inches of significant snowfall.” *Id.* Upon arriving at the scene, Patrolman Hayden observed “fresh tire tracks up onto a lawn” and noticed a stop sign knocked down. *Id.* at 4:9-11. The tire tracks “went over the sidewalk [] and into a yard[,]” but “the vehicle missed the stone wall.” *Id.* at 8:18-23. Patrolman Hayden “followed the tracks to 1 Elizabeth Court, which is the [Appellant’s] home address and looked at the vehicle in the driveway with damage to the front of the vehicle, consistent with that of striking something. It was fresh damage.” *Id.* at 4:12-17. The tire tracks were approximately “100 feet” from the stop sign to Appellant’s driveway. *Id.* at 5:18-22.

As Patrolman Hayden followed the tracks to Elizabeth Court, he spoke with two witnesses—Appellant’s neighbors—who “positively identified [Appellant] as driving the vehicle.” *Id.* at 4:18-21. In addition, the witness who notified dispatch of the incident “was out on the porch” and told Patrolman Hayden that “[Appellant] struck the sign,” and when the witness approached Appellant “to see if she was okay . . . [Appellant] was rude to [the witness].” *Id.* at 7:24-8:6. Patrolman Hayden also noted that “the neighbors don’t get along. There is history between the neighbors.” *Id.* at 4:23-5:1.

Patrolman Hayden then made contact with Appellant “within five to ten minutes” after responding to the scene. *Id.* at 7:14-19. Patrolman Hayden “attempted to talk to [Appellant],” but Appellant “denied driving the vehicle” and “she was extremely rude.” *Id.* at 4:17-5:5. Based upon the witnesses’ statements and the tire tracks leading to Appellant’s driveway, Patrolman Hayden issued Appellant a citation for the charged violation. *Id.* at 5:3-5; 10:9-14.

Next, Appellant testified on her behalf at trial. *Id.* at 11:12. Appellant testified that on the day of the incident, she went “to work, stopped at the store[,] and went home.” *Id.* at 11:21-24. Appellant also testified that she did not strike anything with her vehicle and that her vehicle did not have any damage. *Id.* at 12:18-23. Moreover, Appellant noted that she took photographs of the front of her vehicle, but Appellant neither presented these photographs as exhibits nor moved the photographs into evidence at trial. *Id.* at 13:13-22. Lastly, Appellant testified that her neighbors could not have seen the stop sign from their houses because the houses are approximately “500 to 750 feet away” from the stop sign. *Id.* at 14:8-18; 15:18-24.

At the conclusion of testimony, the Trial Magistrate stated her findings of fact on the record. The Trial Magistrate found “the testimony of [Patrolman Hayden] to be credible.” *Id.* at 21:23-24. In addition, the Trial Magistrate stated, “I don’t find the testimony of the [Appellant] necessarily to be credible, so I am adopting the testimony of [Patrolman Hayden] as my findings of fact.” *Id.* at 21:24-22:3. The Trial Magistrate determined that “whether or not the [Appellant] recalls hitting the sign or not; . . . I can make a reasonable inference that the [Appellant’s] vehicle struck the sign and she pulled into the driveway.” *Id.* at 22:8-12. Furthermore, the Trial Magistrate concluded that even if she did not consider the statements the witnesses made to Patrolman Hayden, there is sufficient evidence to find that Appellant “was the driver in an accident that resulted to damage to the stop sign, and that she did not take reasonable steps to notify the police department, thereafter.” *Id.* at 22:12-19. Therefore, the Trial Magistrate sustained the charged violation. *Id.* at 23:9-18.

Subsequently, Appellant timely filed an appeal of the Trial Magistrate’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 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 challenges the Trial Magistrate’s decision sustaining the charged violation on the grounds that it is “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record;” and “[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 31-41.1-8(f)(5)-(6). Specifically, Appellant avers that the evidence presented at trial, including the lack of testimony from the independent witnesses, is insufficient to demonstrate that Appellant’s vehicle struck the stop sign. *See* Appellant’s Notice of Appeal, at 2.

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 [or magistrate] concerning the weight of evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Since witness credibility determinations are “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), this Panel is not permitted to second-guess the Trial Magistrate’s impressions as she observed the witnesses, listened to their testimony, and determined what to accept and what to disregard. *Environmental Scientific Corp.*, 621 A.2d at 206. In addition, 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.’” *Id.* Therefore, this Panel will not disturb a trial judge’s or magistrate’s credibility determinations or findings of fact unless he or she “overlooked or misconceived material evidence or was

otherwise clearly wrong.” *Norton v. Courtemanche*, 798 A.2d 925, 932 (R.I. 2002) (quoting *Walsh v. Cappuccio*, 602 A.2d 927, 930 (R.I. 1992)).

Here, the record contains legally competent evidence upon which the Trial Magistrate could conclude that Appellant’s vehicle struck the stop sign. Patrolman Hayden’s testimony—which the Trial Magistrate found to be credible—that the tire tracks leading from the knocked-down stop sign “backed out and went directly to [Appellant’s] driveway” as well as his testimony that there was “fresh damage” to Appellant’s vehicle “consistent with that of striking something” provides a sufficient evidentiary basis for the Trial Magistrate to find that Appellant’s vehicle struck the stop sign. (Tr. at 10:20-23; 4:12-17.) Even though Patrolman Hayden did not witness the accident, the Trial Magistrate can reasonably infer—based upon Patrolman Hayden’s observations at the scene—that Appellant struck the stop sign and subsequently failed to report the accident. *State v. Golden*, 430 A.2d 433, 438 (R.I. 1981) (“[A]n ‘inference’ is a deduction that the trier of fact is entitled to make from a proven or admitted fact . . . based upon some evidence, direct or circumstantial[.]”). Likewise, it is immaterial that the independent witnesses did not testify at trial because Patrolman Hayden’s testimony regarding his observations alone allowed the Trial Magistrate to “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)) (internal quotations omitted).

Furthermore, the Trial Magistrate expressly found Appellant’s conflicting testimony that she did not strike anything with her vehicle not to be credible. (Tr. at 21:24-22:3.) As 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 Magistrate’s credibility determinations and factual findings will not be disturbed by the members of this Panel.

Therefore, based upon the evidence contained within the record, this Panel is satisfied that the Trial Magistrate's decision is neither erroneous nor an abuse of discretion. Sec. 31-41.1-8(f)(5)-(6).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *See* § 31-41.1-8(f)(5)-(6). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Associate Judge Lillian M. Almeida (Chair)

Associate Judge Edward C. Parker

Magistrate Michael DiChiro, Jr.

DATE: _____