

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

CHIYU MUI

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**C.A. No. M19-0003
18412503071**

DECISION

PER CURIAM: Before this Panel on April 24, 2019—Administrative Magistrate Abbate (Chair), Associate Judge Almeida, and Chief Magistrate DiSandro, sitting—is Chiyu Mui’s (Appellant) appeal from a decision of Judge Thomas Dickerson (Trial Judge) of the Woonsocket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to traffic devices.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On November 21, 2018, Patrolman Michael Theroux (Patrolman Theroux) of the Woonsocket Police Department reported to the scene of a motor vehicle accident at the intersection of Diamond Hill Road and Rathbun Street in Woonsocket. (Tr. at 1.) After speaking with both operators involved in the accident and observing the scene, Patrolman Theroux issued Appellant a citation for the above-referenced violation. *Id.* at 1-2; *see also* Summons No. 18412503071.

The matter proceeded to trial on January 16, 2019. (Tr. at 1.) Patrolman Theroux explained at trial that the intersection where the accident occurs “typically has traffic signals.”

Id. However, Patrolman Theroux noted that one week prior to the accident in question, “there was an auto accident that disrupted the services.” *Id.* As a result, “the Traffic Highway Department had to affix 4 posted stop signs at all 4 corners of the intersection.” *Id.*

Patrolman Theroux then testified that when he arrived at the scene of the accident, both vehicles involved were parked on the side of the road. *Id.* First, Patrolman Theroux spoke with the driver of the other vehicle involved in the accident who informed Patrolman Theroux that “she was traveling eastbound on Diamond Hill Road. She stopped at the intersection. When it was safe to do so, she then proceeded through the intersection. In the midway of the intersection, [] she was struck on the passenger side of the vehicle.” *Id.* Moreover, Patrolman Theroux “observed damage to the side of [the other driver’s] vehicle, which was consistent with her statement.” *Id.*

Shortly thereafter, Patrolman Theroux spoke with Appellant at the scene of the accident. *Id.* The Appellant told Patrolman Theroux that “he was traveling northbound on Rathbun Street when trying to pass through the intersection on Diamond Hill Road.” *Id.* at 1-2. Furthermore, “[Appellant] claimed that the previously mentioned vehicle came out of nowhere.” *Id.* at 2. When Patrolman Theroux asked Appellant whether he stopped at the stop sign, Appellant “paused a few seconds, and said that ‘I am not sure’ followed by ‘I think so.’” *Id.* Based upon his conversations with both motorists as well as his observations at the scene, Patrolman Theroux issued Appellant a citation for failing to obey a traffic device. *Id.*; *see also* Summons No. 18412503071.

During Appellant’s cross-examination of Patrolman Theroux, Appellant asked Patrolman Theroux whether the other driver’s testimony was “the only reason that you determined that I did not stop at the stop sign?” *Id.* Patrolman Theroux testified:

“I took account of her statements as well as yours. I asked if you stopped, and again, you answered; I’m not sure’ followed by ‘I think so.’ Based upon my experiences with talking to motorist[s] who [were] involved in accidents, it is important that you were kind of thinking to yourself, you say you admitted that you were not sure if you have stopped. So that was the second factor. The third factor was that you said ‘I think so,’ which led me to believe that you were trying to back dragging [sic] and give me the notion that you may have stop[ped].”

Id. Patrolman Theroux also confirmed that he did not observe the accident; he responded to the scene of the accident after it occurred. *Id.*

Next, Breanna Northup (Ms. Northup), the other driver involved in the accident, testified as a witness. *Id.* at 3. Ms. Northup testified that on the day of the accident, while traveling on Diamond Hill Road, she “stopped at the stop sign, looked carefully, proceeded through the stop sign, [and] midway through, [Appellant] hit the passenger side messing [her] front passenger door.” *Id.* She further explained, “I pull[ed] over, asked him why he didn’t stop. He said that he did not see the stop sign.” *Id.*

On cross-examination, Ms. Northup testified that the impact of Appellant’s vehicle striking her vehicle “was not severe but it was not light either.” *Id.* Ms. Northup also stated, “No one was injured during the accident, but I did had [sic] issues while I was admitted into the hospital right after I left the scene” of the accident. *Id.* at 4.

Lastly, Appellant testified on his behalf at trial. *Id.* He testified that on November 21, 2018, he was involved in an automobile accident in which “the front bumper of [his] car hit the side of the other car.” *Id.* Appellant recalled, “I did not see [Ms. Northup’s] car coming when I tried to cross the intersection but, somehow, her car got right in front of mine.” *Id.* at 5. According to Appellant, Patrolman Theroux arrived at the scene approximately ten minutes after the accident and “had a long and friendly conversation with the other driver.” *Id.* at 4. Appellant further testified that he asked Patrolman Theroux at the scene how he determined that Appellant

did not stop at the stop sign and “Patrolman Theroux told [Appellant] that the other driver swore to him that [Appellant] did not stop.” *Id.*

In his defense, Appellant argued at trial that the charged violation should be dismissed because Patrolman Theroux did not observe the accident and therefore had no basis upon which to issue the citation. *Id.* at 4-5. Appellant also asserted that the charged violation cannot be sustained because Ms. Northup “does have [a] credibility issue” as the police report states that “the impact was minor, and nobody was injured[,]” but Ms. Northup testified that she went to the hospital for treatment. *Id.* at 5.

At the conclusion of testimony, the Trial Judge then stated his findings of fact on the record. *Id.* The Trial Judge found the testimony of both Patrolman Theroux and Ms. Northup to be credible. *Id.* Based upon the physical location of the damage to Ms. Northup’s vehicle, Ms. Northup’s testimony regarding where her vehicle was located in the intersection, and Appellant’s statement at the scene that he was not sure if he had stopped at the stop sign, the Trial Judge determined “it is more credible to conclude that the accident happened because [Appellant] did not come to a full stop.” *Id.* Therefore, the Trial Judge found Appellant guilty of the charged violation. *Id.*

The Appellant subsequently filed a timely appeal of the Trial Judge’s decision. Forthwith is the 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 asserts that the Trial Judge's decision sustaining the charged violation 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 Trial Judge erred in improperly crediting the testimonies of Patrolman Theroux and Ms. Northup. *See* Appellant's Notice of Appeal, at 2.

It is axiomatic 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)). Indeed, only 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 such, the Appeals Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of evidence on questions of fact." *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Therefore, this Panel will not disturb the Trial Judge's credibility determinations unless the Trial Judge "overlooked or misconceived material evidence or was otherwise clearly wrong." *Id.* (quoting *Brum v. Conley*, 572 A.2d 1332, 1335 (R.I. 1990)).

The record before this Panel indicates that the Trial Judge expressly credited the testimonies of Patrolman Theroux and Ms. Northup. (Tr. at 5.) In doing so, the Trial Judge implicitly rejected Appellant's conflicting testimony that he stopped at the stop sign. *See id.*;

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 implicitly rejects that of the other.”). Ms. Northup’s testimony that Appellant told her “he did not see the stop sign”—taken together with Patrolman Theroux’s testimony that Appellant stated he was “not sure” if he stopped and the damage to Ms. Northup’s vehicle—constituted a sufficient evidentiary basis for the Trial Judge to conclude that Appellant failed to obey the stop sign. *See Norton v. Courtemanche*, 798 A.2d 925, 932 (R.I. 2002) (a trial judge’s factual findings and credibility determinations are “entitled to great weight and will not be overturned unless the factual finding[s] [are] clearly wrong”).

Moreover, this Panel is not persuaded by Appellant’s argument that Ms. Northup’s testimony is inconsistent and therefore must be disregarded.¹ (Tr. at 4-5.) Appellant contends that because Ms. Northup first testified that she was not injured in the accident and then stated that she went to the hospital after the accident, her testimony is not credible. *Id.* However, this testimony is not inconsistent. Simply because Ms. Northup testified she was not seriously injured does not mean that Ms. Northup did not need to seek medical assistance after the accident to confirm she did not suffer any injury. Furthermore, even if Ms. Northup’s testimony is inconsistent, it does not render all her testimony unworthy of belief. *Russian v. Lipet*, 103 R.I. 461, 464, 238 A.2d 369, 371 (R.I. 1968) (While prior contradictory or inconsistent witness statements are “an important consideration in passing on the weight of [the] testimony,” they do “not necessarily destroy [the witness’s] credibility or render what [the witness] has said

¹ Equally unpersuasive is Appellant’s argument that Ms. Northup is not a credible witness because she testified that she could not remember “all the detail as to what happened.” *See* Tr. at 3; Appellant’s Notice of Appeal, at 2. *See generally State v. Lopez*, 583 A.2d 529 (1990) (trial judge did not abuse discretion where he found witness’s testimony to be credible despite witness’s history of memory lapses).

unworthy of belief.”). The Trial Judge, as trier of fact, “can pick and choose from the witness’s entire testimony that portion which he finds worthy of belief or reject all of his testimony as incredible.” *Madeira v. Pawtucket Housing Authority*, 105 R.I. 511, 515, 253 A.2d 237, 239 (1969).

As this Panel “lacks the authority to assess witness credibility,” it cannot substitute its judgment for that of the Trial Judge regarding Patrolman Theroux’s and Ms. Northup’s credibility. *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Accordingly, this Panel concludes that the Trial Judge’s determination was neither “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record;” nor “[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” *See* § 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 Judge'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. *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:

Administrative Magistrate Joseph A. Abbate (Chair)

Associate Judge Lillian M. Almeida

Chief Magistrate Domenic A. DiSandro, III

DATE: _____