

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. T18-0013
18202500186**

DEBRA DYER

DECISION

PER CURIAM: Before this Panel on October 31, 2018—Administrative Magistrate Abbate (Chair), Associate Judge Almeida, and Chief Magistrate DiSandro, sitting—is Debra Dyer’s (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-15-11, “Laned roadway violations.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On April 4, 2018, Officer Christopher Rafferty (Officer Rafferty) was dispatched to the scene of a reported motor vehicle accident on South County Trail in the Town of East Greenwich. (Tr. at 13.) Upon arriving at the scene, Officer Rafferty confirmed the reported two-vehicle accident and began conducting an investigation. *Id.* Based on this investigation, Officer Rafferty issued Appellant, the operator of a motor vehicle involved in the accident, a citation for the above-referenced violation. *See* Summons 18202500186.

The Appellant contested the violation, and the matter proceeded to trial on July 10, 2018. *Id.* at 1. At trial, Officer Rafferty presented two witnesses: Glen Pierce (Mr. Pierce) and

Raymond Gelinias (Mr. Gelinias). (Tr. at 1.) Mr. Pierce, a driver who witnessed the accident, testified first. *Id.* at 3. Mr. Pierce testified that his vehicle was stopped in the center turning lane on South County Trail, approximately thirty-five feet behind a Davey's tree-trimming truck (Davey's truck). *Id.* at 3-4; 8. Mr. Pierce's vehicle and the Davey's truck were facing northbound in the center turning lane, waiting to turn left into the Cumberland Farms parking lot on South County Trail. *Id.* Mr. Pierce further explained that he observed Appellant's vehicle approaching in the travel lane from the right hand mirror of the Davey's truck. *Id.* at 6. Mr. Pierce testified that Appellant's vehicle, travelling in the northbound lane, "swung in to turn . . . into Cumberland Farms in front of the truck[.]" and hit the truck's right front bumper near the corner. *Id.* at 4; 6. After witnessing the accident, Mr. Pierce provided his information to the driver of the Davey's truck, indicating that he would be a witness if necessary, and left before Officer Rafferty arrived. *Id.* at 6.

Mr. Gelinias, the driver of the Davey's truck, testified next. *Id.* at 9. Mr. Gelinias stated that his vehicle was stopped in the center turning lane, facing northbound, waiting for traffic to clear so that he could turn left into Cumberland Farms. *Id.* Mr. Gelinias testified that he "looked in the [Cumberland Farms] entrance and no one was coming and [] looked in the oncoming lane, and nobody was coming." *Id.* When Mr. Gelinias looked forward, he saw Appellant's vehicle "basically right in front of [him]." *Id.* Appellant's vehicle "came from the right, the travel lane[.]" and turned in front of [Mr. Gelinias] into the turn lane." *Id.* at 10. As Appellant turned in front of the Davey's truck, the rear side of Appellant's vehicle struck the front bumper of the Davey's truck. *Id.* When Appellant's vehicle struck the Davey's truck, the Davey's truck was stationary and had not yet moved. *Id.*

Next, the Trial Magistrate heard testimony from Officer Rafferty. *Id.* at 13. Officer Rafferty stated that he responded to 3328 South County Trail for a reported accident in the center turning lane. *Id.* When Officer Rafferty arrived, both vehicles involved in the accident were pulled off to the side of the road in the right breakdown lane. *Id.* Officer Rafferty spoke to Appellant and Mr. Gelinas at the scene of the accident. *Id.* The Appellant indicated to Officer Rafferty that she was “in the turning lane trying to make a left hand turn when she was rear-ended.” *Id.* However, Mr. Gelinas stated that “he was in the turning lane and [Appellant] pulled in front from the travel lane.” *Id.* Officer Rafferty also spoke with Mr. Pierce after being informed that there was a witness. *Id.*

At the scene, Officer Rafferty observed damage to Appellant’s vehicle “on the driver’s side rear but not on the rear bumper,” and damage to the front bumper on the passenger side of the Davey’s truck. *Id.* Officer Rafferty then offered photographs of the damage to both vehicles, which were admitted into evidence. *Id.* Although Officer Rafferty testified that he is not an accident reconstruction expert, he stated that based on his observations, the vehicle damage is consistent with Appellant’s vehicle striking the passenger side of the Davey’s truck. *Id.* at 14. Based on his conversation with Appellant and Mr. Gelinas at the scene, and his observation of the damage to both vehicles, Officer Rafferty mailed a citation to the Appellant later that day. *Id.*; see Summons 18202500186.

Lastly, Appellant testified on her behalf at trial. (Tr. at 15.) Contrary to Mr. Pierce’s and Mr. Gelinas’ testimony, Appellant stated that she was stopped in the center turning lane, and her vehicle faced “straight forward[.]” *Id.* Appellant testified that as she was waiting to turn left into Cumberland Farms, she “heard a crash” and “felt [her] car move slightly forward[.]” *Id.* at 15-16. Appellant asserted that while she was waiting to turn, the Davey’s truck behind her

“decided to take the turn because they have those big bumpers . . . which is what hit my car.” *Id.* at 16. At that point, Appellant and Mr. Gelinas moved their vehicles out of the road. *Id.*

The Appellant concluded her testimony, stating, “So I’m standing on the grounds that I was parked in the center lane, waiting to decide to turn with my directional on, knowing that there was a lot of confusion going on and, um, I was hit from behind. It was just a misjudging of them wanting to turn in and ended up skimming my car.” *Id.*

After hearing the testimony, the Trial Magistrate stated his findings of fact on the record. *Id.* at 16-17. The Trial Magistrate found both Mr. Pierce’s testimony and Mr. Gelinas’s testimony credible. *Id.* at 16. The Trial Magistrate expressly rejected Appellant’s testimony, finding that Appellant’s “testimony is not supported by the evidence at all and its [sic] certainly not supported by the independent witness, Mr. Pierce, at all.” *Id.* In doing so, the Trial Magistrate determined that Mr. Gelinas’s vehicle was stopped in the center turning lane, and that Appellant, traveling north and “hoping to avoid the congestion of the vehicles that were at [] Cumberland Farms[,] misjudged the . . . opportunity to make that turn and [she] struck the [] front part of the Davey tree truck being operated by Mr. Gelinas.” *Id.* at 17. Basing his determination on all the evidence in this case, the Trial Magistrate concluded:

“That’s what all the testimony that I find credible supports. It’s supported by the photographs, it’s supported by the witness’s testimony. [It’s] supported by all the evidence in this case. I reject [Appellant’s] testimony that [she] was rear-ended. That’s not supported by the facts whatsoever.” *Id.*

Thereafter, Appellant filed a timely appeal of the Trial Magistrate’s decision. Forthwith is this Panel’s decision.

II

Standard of Review

Pursuant to G.L. 1956 § 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 maintains that the Trial Magistrate’s decision to sustain the charged violation 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 contends that the Trial Magistrate erred in crediting Mr. Pierce’s testimony because Mr. Pierce’s testimony at trial was inconsistent with the witness statement he gave to police. *See* Appellant’s Notice of Appeal at 2. Appellant asserts that Mr. Pierce stated in his witness statement that he was driving behind Appellant’s car, but testified at trial that he was behind the Davey’s truck. *Id.*

Inconsistencies in a witness’s statement do not preclude a fact finder from accepting the testimony as credible. *Madeira v. Pawtucket Housing Authority*, 105 R.I. 511, 515, 253 A.2d 237, 239 (1969). Thus, “[s]ince credibility is a purely factual issue, the 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.” *Id.* (citing *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 unworthy of belief.” *Russian*, 103 R.I. at 464, 238 A.2d at 371. Indeed, “usually such inconsistencies are either susceptible of a reasonable explanation or are of such insignificant importance as not to compel rejection of the testimony as incredible.” *Russian*, 103 R.I. at 464-465, 238 A.2d at 371-372.

Furthermore, it is well-settled that 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 the evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). An Appeals Panel cannot review witness credibility determinations since 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)). Therefore, this Panel will not question the Trial Judge’s assessment of a witness’s veracity during trial.

Here, the Trial Magistrate was not required to find Mr. Pierce’s testimony incredible simply because it may have differed from the witness statement he gave to police. *See Madeira*, 105 R.I. at 515, 253 A.2d at 239. The record reveals that the Trial Magistrate properly heard and considered the Appellant’s testimony that the Davey’s truck rear-ended her vehicle, as well as Mr. Pierce’s witness statement that Appellant proffered as evidence. (Tr. at 15-16.) Moreover, the record clearly indicates that the Trial Magistrate credited Mr. Pierce’s and Mr. Gelinas’s testimony over the Appellant’s testimony, determining that Appellant’s testimony “[is] not supported by the facts whatsoever.” *Id.* at 17. In doing so, the Trial Magistrate found that the Appellant “did move [her] vehicle from one lane into the other lane . . . in a way that was not safely done[,]” which caused Appellant’s vehicle to “[strike] the vehicle being operated by Mr. Gelinas.” *Id.* at 17. The Trial Magistrate based his findings on the credible testimonies of Mr. Pierce and Mr. Gelinas, as well as on the photographs depicting the damage to both vehicles. *Id.* Therefore, based on a review of the record, this Panel finds that the Trial Magistrate’s decision is supported by legally competent evidence. *Link*, 633 A.2d at 1348.

As this Panel did not observe 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). Thus, this Panel cannot substitute its judgment for that of the Trial Magistrate regarding Mr. Pierce's testimony. Accordingly, this Panel concludes that the Trial Magistrate's decision was not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" See § 31-41.1-8(f)(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 Magistrate'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). 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: _____