

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

HAKEEM PELUMI

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**C.A. No. T18-0006
18412500124**

DECISION

PER CURIAM: Before this Panel on September 12, 2018—Chief Magistrate DiSandro (Chair), Administrative Magistrate Abbate, and Associate Judge Parker, sitting—is Hakeem Pelumi’s (Appellant) appeal from a decision of Magistrate William T. Noonan (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-18-8, “Due care by drivers.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On January 3, 2018, police dispatch sent Officer Alexander Simmons (Officer Simmons) of the Woonsocket Police Department to “a motor vehicle accident in the area of 14 Bernon Street in the city, involving a pedestrian with injuries.” (Tr. at 6:1-3.) Upon arriving at the scene, Officer Simmons identified the victim as fifteen-year-old Shaylah Wainwright (Ms. Wainwright), and observed that “[s]he was conscious and alert and had superficial, minor injuries to her facial area.” *Id.* at 6:7-8. At the scene of the accident, Officer Simmons noticed “fresh damage to the hood and headlight of Mr. Pelumi’s vehicle.” *Id.* at 6: 24-25. These observations led Officer Simmons to issue the above-mentioned citation. *Id.* at 7:1-3.

At Appellant’s trial for the charged violation, on April 11, 2018, Ms. Wainwright testified that as she took her “first step into the street” and “looked both ways to cross . . .[,] a car was driving fast and hit me from the back.” *Id.* at 9: 13-17. Ms. Wainwright also identified Appellant as the driver of the car that struck her. *Id.* at 10:5-6.

In contrast, Appellant testified that he did not hit Ms. Wainwright with his car. *Id.* at 12:11-18. Rather, Appellant testified that Ms. Wainwright and her friend “suddenly ran across” the street. *Id.* at 14:13. Appellant further testified that Ms. Wainwright fell not as a result of his striking her with his car, but because she slipped on melting snow and ice, and then “fell back . . . on the car.” *Id.* at 14:22-25; 15:2-7. Later in his testimony, Appellant offered another explanation for the incident, stating that Ms. Wainwright and her friend ran “[r]ight across, in front of my car, so I believe it was purposely done. I know kids play around[.]” *Id.* at 17:9-11.

After testimony concluded, the Trial Magistrate stated his findings of fact on the record. *Id.* at 20:3-7. The Trial Magistrate found that Appellant failed to exercise due care, and struck Ms. Wainwright as she walked in the crosswalk. *Id.* at 21:3-7. Thus, the Trial Magistrate concluded that there was sufficient evidence to sustain the violation. *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 contends that the Trial Magistrate erred in sustaining the charged violation. Specifically, Appellant asserts that (1) the Trial Magistrate erred in discrediting his

testimony, and finding Officer Simmons's and Ms. Wainwright's testimony credible; (2) there was an error on the citation; and (3) the Trial Magistrate erred in failing to apply the sudden emergency doctrine. (Appellant's Notice of Appeal, at 2).

A

Witness Credibility

The Appellant contends that the Trial Magistrate erred in crediting Officer Simmons's and Ms. Wainwright's testimony. Specifically, Appellant argues the Trial Magistrate improperly credited the Officer's testimony because the Officer did not observe the Appellant hit the witness with his car. Appellant also argues the Trial Magistrate erred in discrediting his testimony.

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)).

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. The record reveals that the Trial Magistrate heard and properly considered Appellant's testimony and Appellant's written witness statement from Appellant's insurance company. (Tr. at 13:7-9.) The record clearly indicates that the Trial Magistrate credited Officer Simmons and Ms. Wainwright's testimony

over the Appellant's testimony.¹ *Id.* at 20:17-19. In doing so, the Trial Magistrate found Appellant struck Ms. Wainwright as she traversed the crosswalk based upon "the consistency of the car damages with the described incident . . . corroborated by the defendant, who said in fact there was damage to his car, and that he had been in this crosswalk." *Id.* at 22-25.

As this Panel, "lacks the authority to assess witness credibility," it cannot substitute its judgment for that of the Trial Magistrate regarding Officer Simmons's and Ms. Wainwright's credibility. *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Therefore, The Trial Magistrate's decision is neither "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record," nor is it "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." *See* § 31-41.1-8(f).

B

Incorrect Information on the Citation

Appellant also asserts that the Trial Magistrate erred in sustaining the charged violation because the citation contained incorrect information. Specifically, Appellant contends that the citation listed the road conditions as "dry," but Appellant maintains that the roads were wet with melting ice.

Rhode Island Traffic Tribunal Rule of Procedure 3(b) provides that "[t]he summons shall be signed by the issuing officer alleging that the facts contained therein are true[.]"² Pursuant to Rule 3(d), "[a]n error or omission in the summons shall not be grounds for a reduction in the fine

¹ It is readily apparent that the Trial Magistrate discredited Appellant's version of events, even stating to Appellant, "I find your story to be preposterous, contradictory and unworthy of credibility." (Tr. at 20.)

² "For the purposes of these rules, the terms "ticket," "citation," "eCitation," and "summons" are synonymous and may be used interchangeably." (Rule 3(a)).

owed, for dismissal of the charged violation(s), or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.”

Whether the citation listing the road conditions as “dry” was an error is a question of fact to be determined by the Trial Magistrate based on the weight of the evidence. This Panel, however, “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*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537).

Here, while Appellant continually testified that melting snow and ice covered the road, neither Officer Simmons nor Ms. Wainwright testified as to the road conditions. In view of the fact that the Trial Magistrate found the testimony of Officer Simmons and Ms. Wainwright to be credible, and that Officer Simmons signed the citation pursuant to Rule 3(b), this Panel defers to the credibility findings of the Trial Magistrate. *See* Tr. at 20:3-7.

Furthermore, even if the citation did contain an error as to the road conditions, the error clearly did not “mislead the [Appellant] to his [] prejudice” because the Trial Magistrate explicitly discredited Appellant’s conflicting testimony that Ms. Wainwright fell on his car, irrespective of the road conditions. (Rule 3(d)); (Tr. at 14-19.)

Based on a review of the record, this Panel finds that there is legally competent evidence in the record to support the Trial Magistrate’s decision to sustain the charged violation. Accordingly, the Trial Magistrate’s decision to sustain the charged violation is neither “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record,” nor, is it “affected by other error of law.” *See* § 31-41.1-8(f).

C

Sudden Emergency Doctrine

Lastly, Appellant contends that the Trial Magistrate erred in failing to apply the sudden emergency doctrine. Specifically, Appellant argues that the sudden emergency doctrine is applicable because he could not have reasonably foreseen Ms. Wainwright's crossing the street.

The standard of care that motor vehicle operators owe to all pedestrians, including children who are near the roadway, is set out in § 31-18-8, which provides in pertinent part: "every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle upon any roadway, shall give an audible signal when necessary, and shall exercise proper precaution upon observing any child[.]" See *Malinowski v. United Parcel Service, Inc.*, 727 A.2d 194, 197 (R.I. 1999).

However, the sudden emergency doctrine "recognizes that individuals confronted with sudden and unexpected events demanding immediate action cannot be held to the same standard of care required of one in such predicament." *Pazienza v. Reader*, 717 A.2d 644, 645 (R.I. 1998) (quoting *Roth v. Hoxsie's Acro Service, Inc.*, 121 R.I. 428, 432, 399 A.2d 1226, 1228 (1979)) (internal quotation marks omitted). "Although a standard of reasonableness is still applicable, the exigent situation is one factor to be considered in evaluating the actor's conduct." *Roth*, 121 R.I. at 432, 399 A.2d at 1228.

The sudden emergency doctrine applies only "when one is confronted with an unforeseeable emergency not caused by his or her own negligence." *Malinowski*, 727 A.2d at 197. The doctrine "does not apply when the party anticipates the occurrence of an emergency condition." *Maglioli v. J.P. Noonan Transp., Inc.*, 869 A.2d 71, 77 (R.I. 2005). The Rhode Island Supreme Court has not applied the sudden emergency doctrine in situations where the

driver perceives the danger and attempts to avoid collision. See *Malinowski*, 727 A.2d at 197-198 (no sudden emergency where defendant-operator observed boys “horsing around” from 300 feet, slowed vehicle, and sounded horn); *Kolc v. Maratta*, 108 R.I. 623, 626, 278 A.2d 410, 411 (1971) (no sudden emergency where defendant-operator observed children from 200 feet and took her foot off the accelerator).

Whether the sudden emergency doctrine applies is a fact-intensive inquiry to be determined by the Trial Magistrate based on the weight of the evidence. 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*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537).

In the instant case, the Trial Magistrate found the testimonies of Officer Simmons and Ms. Wainwright to be credible, and adopted as his findings of fact that Appellant struck Ms. Wainwright while she traversed the crosswalk. (Tr. at 20:17-20.) It is clear that this situation is one that “lack[s] the spontaneity required to be termed a ‘sudden emergency’” because it is reasonably foreseeable that pedestrians will cross the street in a crosswalk. See, e.g., *Green v. Tingle*, 92 R.I. 393, 395, 169 A.2d 373 (1961) (pedestrian on a crosswalk has the right of way); *Downes v. United Elec. Rys. Co.*, 80 R.I. 382, 385 97 A.2d 107, 109 (1953) (pedestrian starting to cross street in crosswalk entitled to assume defendant-operator would yield to pedestrian “in accordance with the rules of the road”).

For the reasons stated above, this Panel finds that there is legally competent evidence in the record to support the Trial Magistrate’s decision to sustain the charged violation. Accordingly, this Panel concludes that the Trial Magistrate’s decision was not “in excess of the

statutory authority of the judge or magistrate,” or “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” *See* § 31-41.1-8(f)(2), (5).

V

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 is not clearly erroneous in view of the reliable, probative, and substantial evidence on the record, affected by error of law, or arbitrary or capricious or characterized by an abuse of discretion. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Chief Magistrate Domenic A. DiSandro, III (Chair)

Administrative Magistrate Joseph A. Abbate

Associate Judge Edward C. Parker

DATE: _____