

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

**v.**

**NATHALIE FISKE**

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**C.A. No. M17-0002  
16201501059**

**DECISION**

**PER CURIAM:** Before this Panel on June 14, 2017—Magistrate DiSandro, III (Chair), Judge Almeida, and Magistrate Abbate, sitting—is Nathalie Fiske’s (Appellant) appeal from a decision of Judge Arthur G. Capaldi (Trial Judge) of the Coventry Municipal Court, sustaining the charged violation of G.L. 1956 § 31-15-16, “Use of emergency break-down lane for travel.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On August 30, 2016, Officer Erica C. Novak (Officer Novak) of the Coventry Police Department responded to a report of a motor vehicle accident on Arnold Road. (Tr. at 1.) After arriving at the scene, Officer Novak conducted an investigation of the two-car accident, which resulted in the issuance of Appellant’s summons for the aforementioned violation. *Id.* at 2.

A trial for Appellant’s violation was held before the Coventry Municipal Court, on January 10, 2017. *Id.* at 1. At trial, Officer Novak testified that “[t]he area where the accident occurred is a single lane of travel[;]” although, just beyond the accident site, the roadway widens and then splits into two lanes. *Id.* at 2. Officer Novak further described that “[t]here is one lane of travel for vehicles that are passing and then there is a breakdown lane.” *Id.*

Officer Novak went on to testify that she spoke with Appellant at the accident scene. *Id.* She testified that during their exchange, Appellant stated that “[s]he noticed a few vehicles that were stopped in the roadway and then she also saw a few vehicles that were heading straight.” *Id.* The Appellant explained that a car in front of her had stopped to allow another vehicle to turn into the gas station parking lot. *Id.* As Appellant passed the stopped vehicle, her vehicle collided with the vehicle entering the gas station parking lot. *Id.* at 3. Officer Novak further stated that she “didn’t see anyone operating in the breakdown lane,” because at the time she arrived on scene, “the accident already occurred and the vehicles were stopped.” *Id.* at 4.

The Appellant also testified briefly during trial. *Id.* at 6. She testified simply that just before the accident occurred, she was traveling southbound on Arnold Road and going to turn right. *Id.*

After hearing the testimony, the Trial Judge stated his findings of fact on the record. *Id.* at 6. The Trial Judge found that Appellant’s vehicle “was in the breakdown lane at the time the police officer arrived at the accident.” *Id.* He further stated that this fact indicated “where [Appellant] was driving at the time.” *Id.* Based on that finding, the Trial Judge concluded that there was “clear and convincing evidence of the violation,” which was ultimately sustained. *Id.*

Thereafter, Appellant filed a timely appeal. 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 contends that the Trial Judge's decision 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 argues that there was insufficient evidence presented at trial to prove that she violated § 31-15-16, and that the Trial Judge improperly credited Officer Novak's testimony.

#### A

##### Sufficiency of Evidence

With regards to Appellant's insufficient evidence argument, § 31-15-16 requires that "[n]o person shall operate a motor vehicle for travel on the emergency break-down lane of any highway." Therefore, to establish that Appellant violated that section, the Trial Judge must find by clear and convincing evidence that Appellant operated a vehicle, and that Appellant did so, on the emergency break-down lane of a highway. *See* § 31-15-16.

The Definitions and General Codes provision of the Motor Vehicle Code defines a "highway" as "the entire width between boundary lines of everyway when any part of it is open to the use of the public for purposes of vehicular traffic." Sec. 31-1-23(k); *see also O'Gara v. Ferrante*, 690 A.2d 1354, 1357 (R.I. 1997) (restating that any road "open to the use of the public for purposes of vehicular traffic" is a highway).

Based on the evidence within the record, it is undisputed that Appellant operated the vehicle involved in the accident on a highway. *See* (Tr. at 1, 6.) During her testimony, Appellant admitted that she was driving southbound on Arnold Road just before the collision

occurred. *Id.* at 6. Moreover, Arnold Road is “open to the use of the public for purposes of vehicular traffic;” therefore, it meets the statutory definition of a highway. Sec. 31-1-23(k); *see also O’Gara*, 690 A.2d at 1357.

The contested issue is whether there was sufficient evidence offered to show that Appellant was traveling in the emergency break-down lane prior to the accident. The record indicates that Officer Novak testified about the location of the accident and the positioning of the vehicle after she arrived. (Tr. at 2.) She stated that the accident occurred where “[t]here is one lane of travel for vehicles that are passing and then there is a breakdown lane;” therefore, the collision could not have occurred unless Appellant’s vehicle was travelling in the breakdown lane. *Id.* Officer Novak also testified that while speaking with Appellant at the scene, Appellant explained that a vehicle in front of her had stopped to let another vehicle turn into a gas station’s parking lot and that Appellant collided with the vehicle turning into the parking lot. *Id.* at 1, 3.

“During his or her 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.’” *DeSimone Elec., Inc. v. CMG, Inc.*, 901 A.2d 613, 621 (R.I. 2006) (citing *Walton v. Baird*, 433 A.2d 963, 964 (R.I. 1981)). The record in this matter reveals that the Trial Judge inferred from Officer Novak’s testimony that Appellant’s vehicle was driving in the emergency break-down lane when the collision occurred. *See* Tr. at 6. In light of the fact that Office Novak’s testimony detailed the location of the accident and the position of the vehicles involved, the Trial Judge drew a permissible and reasonable inference therefrom. *DeSimone Elec., Inc.*, 901 A.2d at 621 (citing *Walton v. Baird*, 433 A.2d 963, 964 (R.I. 1981)); *see also Link*, 633 A.2d at 1348. As such, this Panel will not disturb the Trial Judge’s Decision as it is properly supported by sufficient evidence contained within the record.

## B

### Witness Credibility

The Appellant also contends that the Trial Judge erred by crediting the Officer's testimony. Particularly, Appellant argues that the Trial Judge improperly credited Officer Novak's testimony based on the fact that the officer did not observe the accident occur.

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)).

At trial, the Trial Judge impliedly found Officer Novak's testimony more credible based on the Trial Judge's statement adopting that testimony. (Tr. at 6.) After properly weighing the evidence provided by Officer Novak's testimony against Appellant's testimony—which provided no evidence contradicting the facts asserted by Officer Novak—the Trial Judge found that "defendant's automobile was in the breakdown lane at the time the police officer arrived" and "that indicate[d] to the [C]ourt [] where the defendant was driving . . . ." *Id.*

Being that credibility determinations are the inherent responsibility of the factfinder, in this case the Trial Judge, this Panel will not question the Trial Judge's assessment of the weight of the evidence or his determination of witness credibility. *Link*, 633 A.2d at 1348. Thus the Trial Judge's decision is neither clearly erroneous, nor is it characterized by 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 Judge's decision is not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record" or "[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 31-41.1-8(f). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

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Magistrate Domenic A. DiSandro III (Chair)

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Associate Judge Lillian M. Almeida

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Magistrate Joseph A. Abbate

DATE: \_\_\_\_\_