STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T16-0030**
	:	**16203506232**
WILLIAM PEOTROWSKI	:	

DECISION

PER CURIAM: Before this Panel on April 12, 2017— Chief Magistrate Guglietta (Chair), Magistrate DiSandro, III, and Magistrate Goulart, sitting —is William Peotrowski's (Appellant) appeal from a decision of Associate Judge Edward C. Parker (Trial Judge) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-18-3, "Right-of-way in crosswalk." The Appellant filed his appeal *pro se* but did not appear before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On September 15, 2016, police officers from the Warwick Police Department conducted a traffic enforcement operation, which "specifically target[ed] pedestrian safety" while crossing in a crosswalk. (Tr. at 4, 12.) As a result of that operation, Appellant received the aforementioned summons for failing to yield for pedestrians in a crosswalk. *Id.* at 5, 12.

On November 18, 2016, Appellant appeared before the Rhode Island Traffic Tribunal for his trial on the charged violation. *Id.* at 1. At trial, Officer Hovsep Sarkisian (Officer Sarkisian) from the Warwick Police Department testified. *Id.* at 12.

Officer Sarkisian explained that the traffic operation worked by having two plain-clothed officers cross a roadway at a crosswalk—in strict compliance with the laws pertaining to pedestrian conduct—while officers monitored vehicles that passed through the crosswalk, citing those that did not yield for the plain-clothed officers. *Id.* at 13. "If [a] vehicle did not stop . . . while [the officers'] feet were in the actual portion of the travel lane . . . [the officers] would signal [] other officers down the road" to conduct a traffic stop of the vehicle. *Id.*

He continued explaining that at the time Appellant received the citation, he and Captain Andrew Tainsh (Captain Tainsh) were the two plain-clothed officers assigned to cross in the crosswalk. *Id.* at 12. Officer Sarkisian stated that while Captain Tainsh was "[p]ast the fog line into the actual crosswalk," he observed Appellant fail to stop at the crosswalk. *Id.* at 14, 16. Immediately after Appellant passed the officers, Captain Tainsh alerted Officer Charles Austin (Officer Austin)—who was stationed "about 150, maybe 200 feet away from where [Officer Sarkisian and Captain Tainsh] physically were"—that Appellant failed to stop at the crosswalk. *Id.* at 14, 27-28.

Officer Austin, who issued Appellant the citation, also testified. *Id.* at 3. Officer Austin testified that when a vehicle did not yield to allow Officer Sarkisian or Captain Tainsh to cross the crosswalk, one of the two officers would alert Officer Austin who would then conduct a traffic stop of that vehicle. *Id.* at 5-6. When Appellant did not yield at the crosswalk, Officer Austin "was signaled by one of the officers when a . . . silver sedan was traveling northbound." *Id.* at 5. He then stopped the vehicle and directed the driver—identified as the appellant in this matter—to a nearby CVS parking lot. *Id.* There Officer Austin "issued [Appellant] a ticket for failure to . . . yield to a pedestrian on a crosswalk." *Id.*

During his testimony, Officer Austin also indicated that he could not see the officer who signaled him to pull over Appellant, and that the officer "[was not] in the street." *Id.* at 11. Officer Sarkisian later addressed Officer Austin's statement, stating that Captain Tainsh was "[p]ast the fog line into the actual crosswalk" when Appellant passed him. *Id.* at 24.

Before testimony concluded, Appellant also questioned the fact that the observing officer must have issued him the citation, as a reason for the Trial Judge to dismiss the violation with which he was charged. *Id.* at 32. Officer Austin testified that he "was not in a position" to see the violation. *Id.* at 29. Officer Austin did state that he signed the ticket and that he "put it on [Appellant's] dashboard." *Id.* at 41.

After hearing all of the testimony, the Trial Judge found that "the captain who was on the detail stepped into the crosswalk and that the motorist did not stop to allow him to cross." *Id.* at 51. Accordingly, the Trial Judge sustained the charged violation. *Id.* The Appellant timely filed this 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 argues that the Trial Judge's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and affected by other error of law. Sec. 31-41.1-8(f)(5). As Appellant did not appear for oral argument, this Panel is left only with the argument asserted within his Notice of Appeal form, which states the Trial

Judge's "[d]ecision [is] against the facts, law and the weight thereof." (Appellant's Notice of Appeal at 3.)

This Panel will review the record and address the three foreseeable arguments arising from Appellant's assertion in his Notice of Appeal Form: (1) the sufficiency of the evidence; (2) witness credibility; and (3) whether the Trial Judge's decision misapplied the law.

A

Sufficiency of Evidence

The Appellant argues the Trial Judge's decision "was [made] against the facts." *Id.* Without further specification from Appellant,[1] this Panel will determine whether the record contains sufficient evidence supporting the Trial Judge's decision. *See Link,* 633 A.2d at 1348 (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). ("The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's decision is supported by legally competent evidence. . . .")

Section 31-18-3(a) states that

> "the driver of a vehicle shall yield the right of way . . . to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. . . ."

In this case, Appellant does not contest the fact that he was operating his vehicle at that time of the violation. *See* Tr. at 27-28. Moreover, there is sufficient evidence within the record showing that a pedestrian, Captain Tainsh, was in the crosswalk at the time Appellant's vehicle

[1] This Panel asses each of Appellant's arguments bearing in mind that "[s]imply stating an issue for appellant review, without a meaningful discussion thereof or legal briefing of the issues, does not assist the court in focusing on the legal questions raised, and therefore constitutes a waiver of that issue." *Wilkinson v. State Crime Lab. Comm'n*, 788 A.2d 1129, 1132 n.1 (R.I. 2002) (citations omitted).

drove through it. *Id.* at 24. The testimony provided by Officer Sarkisian indicates that Captain Tainsh was "[p]ast the fog line into the actual crosswalk." *Id.* Additionally, there is sufficient evidence that Appellant did not yield to Captain Tainsh as he was in the crosswalk. *Id.* at 26. Officer Sarkisian's uncontradicted testimony was that he observed Appellant drive past Captain Tainsh without stopping to allow him to cross. *Id*. When testimony concluded, the Trial Judge based his findings of fact on the facts asserted by Officer Sarkisian during his testimony. *Id.* at 51.

After its review of the record, this Panel finds that the Trial Judge's decision is supported by the legally competent testimony of Officer Sarkisian. *See Link,* 633 A.2d at 1348 (citing *Envtl. Sci. Corp. v. Durfee,* 621 A.2d 200, 208 (R.I. 1993)). As the Appeals Panel "lacks the authority . . . to substitute its judgement for that of the hearing judge concerning the weight of the evidence on questions of fact," this Panel concludes that the Trial Judge's decision is not clearly erroneous in view of the evidence within the record. *See* 31-41.1-8(f)(5); *Link*, 633 A.2d at 1348 (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536 537 (R.I. 1991)).

B

Witness Credibility

Furthermore, Appellant seemingly argues that the Trial Judge's decision is "clearly erroneous" because he based his decision on the facts asserted during Officer Sarkisian's testimony. Specifically, Appellant argues that the "[d]ecision [was] against the facts, law and the weight thereof." (Notice of Appeal at 3.)

As discussed, 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 *Janes*, 586 A.2d at 537). Being that the record

contains conflicting testimony—Appellant's testimony that Captain Tainsh was not in the crosswalk and Officer Sarkisian's testimony that his feet were past the fog line—it is clear that the Trial Judge's decision hinged on his credibility determination. (Tr. at 51.) In consideration of this Panel's lack of authority "to assess witness credibility," and its finding that all elements of the violation were "supported by legally competent evidence," this Panel finds that the Trial Judge's decision is not clearly erroneous. *Link*, 633 A.2d at 1348 (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)); *see also City of Cranston v. Krisel Baumet*, C.A. No. T08-0134 (2008) (commenting that trial judges have the unique opportunity to observe the actions of witnesses as they testify; the Appeals Panel cannot thereafter second-guess the firsthand knowledge upon which the trial judge relies when making a credibility determination).

C

Section 31-27-12

Finally, the Appellant argues that the Trial Judge's decision is affected by error of law. *See* Appellant's Notice of Appeal at 3 ("Decision [is] against the facts, law and the weight thereof.") Section 31-27-12(a) states, in pertinent part:

> "Any police officer observing the violation of any statute or ordinance relating to the operation, control, or maintenance of a motor vehicle . . . shall at the time or place of the violation or, if it is not possible to halt the alleged offender, as soon as possible after observing the violation, issue a written notice . . . signed by the police officer and constituting a summons to appear before the court having jurisdiction at a time and place designated in the notice." Sec. 31-27-12.

However, the Supreme Court has held that "[u]nder the collective knowledge doctrine—also called the 'fellow officer rule'—the knowledge of one officer supporting a search or seizure may be imputed to other law enforcement officers acting in conjunction with the knowledgeable officer." *U.S. v. Hensley*, 469 U.S. 221 (1985) (determining that an investigatory stop of the

defendant based on a flyer issued by another police department, which the department issued in reliance on articulable facts supporting reasonable suspicion, was reasonable under the fourth amendment); *see also Whiteley v. Warden*, 401 U.S. 560, 91 S. Ct. 1031 (1971) (asserting that the fellow-officer's rule allows a police officer to rely on communications from another police officer who claims to have sufficient probable cause for a search or arrest).

Moreover, the Rhode Island Supreme Court has similarly held that "a police officer is entitled to make a valid arrest on the basis of information obtained from another police officer" so long as the communicating officer had probable cause to support the arrest. *State v. Austin*, 641 A.2d 56, 58 (R.I. 1994) (citing *State v. Taylor*, 621 A.2d 1252, 1255 (R.I. 1993)); *see also State v. Ortiz*, 824 A.2d 473, 480–81 (R.I. 2003) (citing *State v. Guzman*, 752 A.2d 1, 4–5 (R.I. 2000)) ("The probable-cause inquiry should focus on the arresting officer's general knowledge and experience, as well as information received by the arresting officer through official channels and via the collective knowledge of the police department.")

In this case, Officer Sarkisian observed Appellant proceed through the crosswalk without yielding to Captain Tainsh, a pedestrian within the crosswalk. (Tr. at 26.) Officer Sarkisian then notified Officer Austin of Appellant's violation, which led to Officer Austin issuing Appellant the summons. *Id.* at 5. Even though Officer Austin did not observe the violation, pursuant to the fellow-officer rule, Officer Austin had a sufficient basis to issue the summons based on his communication with Officer Sarkisian. *See Austin*, 641 A.2d at 58 ("[I]n situation in which a fellow officer communicates that he or she has an outstanding arrest warrant and another officer arrests on the basis of that representation, the arrest is valid; however, in order to sustain the arrest in court, the state must prove the warrant to have been based on probable cause.")

Thus this Panel finds that there was a sufficient basis for Officer Austin to issue Appellant a summons as he relied on his communication with Officer Sarkisian's regarding Appellant's traffic violation, and the Trial Judge impliedly found that Appellant's traffic violation provided Officer Sarkisian with a valid basis for stopping Appellant and issuing the citation. *Id.*

Additionally, § 31-27-12.1(b), which establishes the content and form requirements for summonses, provides that "[t]he summons and related record shall include, when completed, the signature of the officer observing the alleged violation. . . ." Notwithstanding the language of the statute, our Rules of Procedure are clear. Rule 3 of the Traffic Tribunal Rule of Procedure states:

> **"**A summons which provides the defendant and the court with adequate notice of the violation being charged shall be sufficient if the violation is charged by using the name given to the violation by statute. The summons shall state for each count the official or customary citation of any statute that the defendant is alleged to have violated. **An error or omission in the summons shall not be grounds for a reduction in the fine 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**." Traffic Trib. R. P. 3(d) (emphasis added).

Pursuant to the language of Rule 3, this Panel must determine whether Officer Austin issuing the summons based on his communication with Officer Sarkisian misled Appellant to his prejudice. Traffic Trib. R. P. 3(d).

Based on a review of the record, it is clear that Appellant received proper notice of the violation. Pursuant to Rule 3, a summons provides sufficient notice "if the violation is charged by using the name given to the violation by statute." *See id*. The summons in this case clearly stated: "Violation Description[:] Right of Way in Crosswalk to Pedestrian" and "Statute[:] 31-18-3." (Summons No. 16203506232.) Moreover, the summons identified Appellant and stated the date, time, and place of his court date. *Id.* The Appellant was not prejudiced by Officer

Austin issuing the ticket because he was aware of the violation, and he had the ability to confront both Officer Austin and Officer Sarkisian at trial. Accordingly, this Panel will not dismiss the violation based on the fact that Officer Austin issued the citation, because it did not mislead Appellant to his prejudice. *See* Traffic Trib. R. P. 3(d). As such, this Panel finds that the Trial Judge's decision is not affected by error of law. *See* § 31-41.1-8(f).

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 not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

_____
Magistrate Domenic A. DiSandro III

_____
Magistrate Alan R. Goulart

DATE: _____

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.