

**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. T19-0004  
19001500006**

**XING GUANG CUI**

**DECISION**

**PER CURIAM:** Before this Panel on May 8, 2019—Associate Judge Almeida (Chair), Associate Judge Parker, and Magistrate DiChiro, sitting—is Xing Guang Cui’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 § 31-13-4, “Obedience to traffic control devices.” 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 1, 2019, Trooper Michael Farias (Trooper Farias) of the Rhode Island State Police observed a vehicle proceed through a red light and make a left-hand turn. (Tr. at 2.) Thereafter, Trooper Farias conducted a traffic stop of the vehicle, identified the driver as Appellant, and issued Appellant a citation for failing to obey a traffic control device. *Id.*; *see* Summons No. 19001500006.

The matter proceeded to trial on February 28, 2019. (Tr. at 1.) At trial, Trooper Farias testified that while he was traveling southbound on Route 4, north of West Allenton Road, he observed Appellant take a left-hand turn onto West Allenton Avenue “while the traffic light was

a red arrow.” *Id.* at 2. After Trooper Farias presented his testimony, the Trial Magistrate asked Appellant whether he had any questions for Trooper Farias, any testimony Appellant would like to present, or both. *Id.* In response, Appellant asked the Trial Magistrate, “[A]re you saying like uh, my intention those kinda [sic] thing?” *Id.* The Trial Magistrate reiterated, “Whatever you like, if you have any questions for [Trooper Farias] about what happened you could ask him those questions now. When you’re done [ ] you can just present whatever testimony you would like.” *Id.* Appellant immediately began questioning Trooper Farias about the events of the night in question. *Id.* at 7.

During Appellant’s cross-examination of Trooper Farias, Appellant questioned whether Trooper Farias spoke to Appellant during the traffic stop. *Id.* at 3. Trooper Farias explained that he approached the passenger side of Appellant’s vehicle and spoke with Appellant who, at that time, denied committing the charged violation. *Id.* In addition, Trooper Farias testified that he and another trooper observed Appellant proceed through the red light from approximately two hundred yards away. *Id.* at 4. Although the cars in the two lanes to the right of Appellant’s vehicle had a green light, “the left hand turn[ing lane,] which was a red light with a red arrow pointing left, that was red the whole time.” *Id.* at 4.

After Appellant finished questioning Trooper Farias, the Trial Magistrate asked Appellant whether he had any testimony to present. *Id.* at 7. The Appellant stated, “[M]y intention today is not to testify. I would like to make a motion. I request dismissal.” *Id.* The Trial Magistrate denied Appellant’s motion and adopted Trooper Farias’s testimony, which he found to be credible, as his findings of fact. *Id.* In doing so, the Trial Magistrate concluded that Appellant made a left turn at a red light without stopping and sustained the charged violation. *Id.* at 7-8.

Thereafter, Appellant timely filed an appeal of the Trial Magistrate's decision. 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 asserts that the Trial Magistrate’s decision is “[i]n violation of constitutional or statutory provisions;” “[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. 31-4.1.-8(f)(1), (5)-(6). Specifically, Appellant contends (1) that Trooper Farias did not present any evidence demonstrating that Appellant drove through a red light, and (2) that Appellant should have had the opportunity to testify at trial. *See* Appellant’s Notice of Appeal, at 2.

#### **A**

##### **Sufficiency of the Evidence**

Appellant argues that Trooper Farias did not present any “solid evidence” demonstrating that Appellant committed the charged violation. Pursuant to Rhode Island Traffic Tribunal Rule of Procedure 17(a), the State must prove the charged violation “to a standard of clear and convincing evidence.” Traffic Trib. R. P. 17(a). This standard “requires that the factfinder form a clear conviction without hesitancy of the truth of the precise facts.” *In re Veronica T.*, 700 A.2d 1366, 1368 (R.I. 1997); *see also In re Emilee K.*, 153 A.3d 487, 497 (R.I. 2017) (noting, in the context of a criminal case, that “[t]he testimony of a single witness, if believed, is sufficient

to sustain a jury verdict in a criminal case and, thus, is certainly capable of supporting a finding of fact by clear and convincing evidence”).

On review, 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 evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Only a trial judge or magistrate observing live testimony “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. Dongen*, 132 A.3d 1070, 1076 (R.I. 2016)). As such, “[t]he factual findings of the trial justice concerning whether this clear and convincing evidence burden has been satisfied are entitled to great weight.” *In re Emilee K.*, 153 A.3d at 497 (quoting *In re Veronica T.*, 700 A.2d at 1368). Accordingly, “such findings will not be disturbed on appeal unless they are clearly wrong or unless the trial justice misconceived or overlooked material evidence.” *Id.*

Based on a review of the entire record before it, this Panel is satisfied that there is sufficient evidence from which the Trial Magistrate could form a “firm belief” that Appellant proceeded through a red light. *See Cahill v. Morrow*, 11 A.3d 82, 88 n.7 (quoting 29 Am. Jur. 2d *Evidence* § 173 at 188-89 (2008)). At trial, Trooper Farias’s credible and *uncontroverted* testimony revealed that the traffic light in Appellant’s lane of travel “was red the whole time[,]” but Appellant’s “vehicle continued to take a left with the red left arrow.” Tr. at 6; *see Norton v. Courtemanche*, 798 A.2d 925, 932 (R.I. 2002) (a trial judge or magistrate “may not arbitrarily disregard uncontradicted testimony” unless such testimony “contains inherent improbabilities or contradictions”). Since the “testimony of a single witness” is adequate to satisfy the clear and

convincing evidence standard, Trooper Farias's testimony constitutes sufficient evidence that Appellant failed to obey a traffic control device. *See In re Emilee K.*, 153 A.3d at 497.

As credibility determinations are the inherent responsibility of the factfinder, in this case that of the Trial Magistrate, this Panel will not question the Trial Magistrate's assessment of Trooper Farias's credibility. *Link*, 633 A.2d at 1348. Thus, the Trial Magistrate's decision is neither clearly erroneous nor characterized by abuse of discretion. Sec. 31-41.1-8(f)(5)-(6).

## **B**

### **Due Process**

Appellant also argues that the Trial Magistrate did not afford Appellant a proper opportunity to testify at trial. A defendant's right to a fair trial is guaranteed by the Sixth Amendment to the United States Constitution as incorporated through the Fourteenth Amendment, as well as Article 1, Section 10 of the Rhode Island Constitution. *See* U.S. CONST. amend. VI; R.I. CONST. art. 1, § 10.; *see also Davis v. Wood*, 427 A.2d 332, 336 (“[A] fair trial in a fair tribunal is a basic requirement of due process. This requirement is as applicable to administrative agencies as it is to the courts.”) (internal citations omitted). Thus, a defendant must be afforded an “opportunity to be heard at a meaningful time and in a meaningful manner.” *State v. Oliveira*, 774 A.2d 893, 923 (R.I. 2001). This procedural due process guarantee “assures that there will be fair and adequate legal proceedings.” *State v. Germane*, 971 A.2d 555, 574 (R.I. 2009). To ensure the fairness and adequacy of legal proceedings, procedural due process requires that a defendant be provided: (1) notice of the hearing and the alleged violation; (2) an opportunity to be heard by an impartial judge; (3) an opportunity to present evidence; and (4) the right to confront and cross-examine witnesses. *State v. Pompey*, 934 A.2d 201, 214 (R.I. 2007).

In the instant matter, Appellant does not dispute that he received proper notice of the hearing and the violation. *See* Summons No. 19001500006. A review of the record reveals that the Trial Magistrate offered Appellant the opportunity to confront and cross-examine Trooper Farias as well as to present evidence. *See* Tr. at 2; *see also State v. Lomba*, 37 A.3d 615, 621 (R.I. 2012) (recognizing that a defendant must have a “full opportunity to establish the best and fullest defense available to him”); *State v. Doctor*, 690 A.2d 321, 327 (R.I. 1997) (holding that the ability of a defendant to “meaningfully cross-examine the state’s witnesses is ‘an essential element’” of the due process right to present a defense). At trial, the Trial Magistrate explicitly asked Appellant, “[D]o you have any questions for the officer?” and “do you have any testimony you would like to present, or both?” (Tr. at 2.) Appellant immediately took full advantage of the opportunity to cross-examine Trooper Farias, asking Trooper Farias various questions regarding the events leading to the violation and Trooper Farias’s interaction with Appellant on that night. *Id.* at 3-7.

During Appellant’s cross-examination of Trooper Farias, the Trial Magistrate interjected to explain to Appellant that leading questions cannot be asked on cross-examination. *Id.* at 6. In doing so, the Trial Magistrate further explained:

“If there’s things you wanna [sic] say, you can just testify and say them . . . . The purpose at this stage would be if you have question about . . . the circumstances surrounding the event of January 1st at 1:40 am. If you could just focus your questions on that. Then again, you have the opportunity to say whatever you like.”

*Id.* After Appellant concluded his cross-examination of Trooper Farias, the Trial Magistrate asked Appellant once more, “[D]o you have any testimony sir?” *Id.* at 7. To clarify Appellant’s question as to what constitutes testimony, the Trial Magistrate stated, “If you don’t like to testify, you don’t have to. If you want to say something, you can say something. It’s your decision.”

*Id.* At that point, Appellant informed the Trial Magistrate, “[M]y intention today is not to testify.” *Id.*

In consideration of the foregoing, this Panel is satisfied that the Appellant was given the opportunity to testify at trial and to be heard in a meaningful manner. *See Pompey*, 934 A.2d at 214; *Oliveira*, 774 A.2d at 923. The record demonstrates that the Trial Magistrate provided Appellant multiple opportunities to testify and to present his defense, which Appellant explicitly denied. *See Tr.* at 2; 6-7. Accordingly, the Trial Magistrate’s decision was not made in violation of constitutional or statutory provisions because Appellant’s due process rights were not violated.



**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 in violation of constitutional or statutory provisions; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *See* § 31-4.1.-8(f)(1), (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:

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Associate Judge Lillian M. Almeida (Chair)

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Associate Judge Edward C. Parker

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Magistrate Michael DiChiro, Jr.

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