

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF TIVERTON

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:
:

v.

C.A. No. M17-0029
17305501452

JACOB CARVALHO

AMENDED DECISION

PER CURIAM: Before this Panel on April 4, 2018—Magistrate Abbate (Chair), Magistrate Kruse Weller, and Magistrate Goulart, sitting—is Jacob Carvalho’s (Appellant) appeal from a decision of Judge Richard D’Addario (Trial Judge) of the Tiverton Municipal Court, sustaining the charged violation of G.L. 1956 § 31-20-9, “Obedience to stop signs.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On September 7, 2017, Patrol Officer Florio (Officer Florio) of the Tiverton Police Department conducted a traffic stop of Appellant’s vehicle, which resulted in the issuance of the aforementioned violation. *See* Tr. at 1; Summons No. 17305501452. The Appellant contested the charged violation, and the matter proceeded to trial on December 1, 2017. (Tr. at 1.)

Officer Florio was the first witness to testify at trial. *Id.* Officer Florio testified that on September 7, 2017, he was “at a stationary post[,] . . . when [he] observed [a] vehicle [] roll through the stop sign.” *Id.* Due to his observation, Officer Florio conducted a traffic stop of that vehicle, which was operated by Appellant. *Id.* Officer Florio further testified that during the traffic stop, Appellant “jumped out of the vehicle and approached [Officer Florio’s] cruiser in a manner that made [Officer Florio] feel unsafe.” *Id.* Officer Florio ordered Appellant to return to

his vehicle, but Appellant refused. *Id.* The Appellant eventually returned to his vehicle after being told multiple times. *Id.* Thereafter, Officer Florio issued Appellant a citation for violating § 31-20-9, “Obedience to a stop sign.” *Id.*

Following Officer Florio’s testimony, Appellant testified that he “did stop at the stop sign.” *Id.* at 2. The Appellant also testified that he “[had] pictures of where [Officer Florio] was parked[,]” and that “[Officer Florio] ripped up someone’s lawn [and] started flying after [him].” *Id.* The Appellant added that he always stops at stop signs. *Id.* The Trial Judge did not allow Appellant’s photographs to be admitted into evidence. *Id.*

Ultimately, the Trial Judge concluded that there was clear and convincing evidence to sustain the violation. *Id.* The Appellant subsequently filed a timely appeal of the Trial Judge’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 contends that the Trial Judge’s decision was “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record,” and “a clearly unwarranted abuse of discretion.” Sec. 31-41.1-8(f)(5)-(6). Specifically, Appellant asserts that (1) the Trial Judge erred by finding Officer Florio’s testimony credible, and (2) the Trial Judge erred by not admitting the photographs into evidence.

A

Witness Credibility

It is well established that this 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). An appeals panel cannot review witness credibility as a trial judge may, since 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)). 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. *Id.*; *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Therefore, this Panel will not question the Trial Judge’s assessment of the witness’s veracity during trial.

Based on a review of the record, this Panel finds that the Trial Judge heard and properly considered Officer Florio’s testimony that he observed Appellant’s vehicle roll through the stop sign. (Tr. at 1.) As this Panel, “lacks the authority to assess witness credibility,” it cannot substitute its judgment for that of the Trial Judge regarding Officer Florio’s credibility. *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Accordingly, this Panel concludes that there is legally competent evidence in the record to support the Trial Judge’s determination that Officer Florio testified credibly.

B

Admissibility of Evidence

Pursuant to Rule 15 of the Traffic Tribunal Rules and Procedures, the Rhode Island Rules of Evidence governs “all proceedings before the Traffic Tribunal.” Traff. Trib. R. P. 15(b), Rhode Island Rule of Evidence 402 states that “all relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the constitution of Rhode Island, by act of [C]ongress, by the [G]eneral [L]aws of Rhode Island, by these rules, or by other rules applicable in the courts of this state.” R.I. R. Evid. 402. Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” R.I. R. Evid. 401. “It is well settled law in this state that ‘decisions about the admissibility of evidence on relevancy grounds are left to the sound discretion of the trial justice; [a court] will not disturb those decisions on appeal absent an abuse of discretion.’” *State v. Carvalho*, 892 A.2d 140, 148 (R.I. 2006) (*quoting State v. Grayhurst*, 852 A.2d 491, 505 (R.I.2004)).

The record in the instant matter reveals that the Trial Judge did not allow Appellant to admit photographs that depicted the area where the stop occurred. (Tr. at 2.) At trial, Appellant attempted to introduce photographs showing “where [Officer Florio] was parked” when he observed Appellant at the stop sign. *Id.* The Trial Judge did not provide any reasoning as to why the photographs were excluded from evidence. *Id.* Even though, generally, “decisions about the admissibility of evidence on relevancy grounds are left to the sound discretion of the trial justice,” this Panel finds that the Trial Judge abused his discretion by failing to address Appellant’s attempt to admit the photographs completely. *Carvalho*, 892 A.2d at 148 (*quoting*

Grayhurst, 852 A.2d at 505). As such, the Trial Judge’s decision is a “clearly unwarranted exercise of discretion.” Sec. 31-41.1-8(f)(6).

C

Findings of Fact

This Panel must also address the fact that the record is devoid of any findings of fact. When a trial judge sits as the fact finder, he or she must make findings of fact and conclusions of law on the record so that a reviewing court may “pass upon the appropriateness of the order and the grounds upon which it rests.” *Now Courier, LLC v. Better Carrier Corp.*, 965 A.2d 429, 434 (R.I. 2009) (quoting *Chiaradio v. Falck*, 794 A.2d 494, 496 (R.I. 2002)). “A trial justice need not ‘categorically accept or reject each piece of evidence in his [or her] decision [to be] [upheld] [] because implicit in the trial justice’s decision are sufficient findings of fact to support his rulings.’” *Notarantonio v. Notarantonio*, 941 A.2d 138, 147 (R.I. 2008) (quoting *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 102 (R.I. 2006)).

At a minimum, a trial judge’s findings “must contain . . . a factual finding and a conclusion of law on each cause of action adjudicated.” *Cathay Cathay, Inc. v. Vindalu, LLC*, 136 A.3d 1113, 1119 (R.I. 2016) (citing *Cathay Cathay, Inc. v. Vindalu, LLC*, 962 A.2d 740, 747-48 (R.I. 2009)). Moreover, “‘if [a] decision reasonably indicates that [a trial judge] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses it will not be disturbed on appeal unless it is clearly wrong or otherwise incorrect as a matter of law.’” *V. George Rustigian Rugs, Inc. v. Renaissance Gallery, Inc.*, 853 A.2d 1220, 1225 (R.I. 2004) (quoting *Connor v. Sullivan*, 826 A.2d 953, 960 (R.I. 2003) (*per curiam*)) (citations omitted). According to Rhode Island General Laws § 31-41.1-6(b), “[a]fter due consideration of the evidence and arguments, the judge or magistrate shall

determine whether the charges have been established, and appropriate findings of fact shall be made on the record.”

Here, the Trial Judge stated: “I’m going to find [Appellant] guilty after trial” (Tr. at 2.) The record is wholly devoid of any factual findings, credibility determinations, or evidentiary considerations. *Id.*; *Cathay Cathay, Inc.*, 136 A.3d at 1119 (determining that findings of fact “must contain, at the very minimum, a factual finding and a conclusion of law on each cause of action adjudicated”). Moreover, the Trial Judge did not “exercise[] [his] independent judgment in passing on the weight of the testimony and the credibility of the witnesses” by acknowledging the testimony that he found credible in his ruling. *Id.*; *V. George Rustigian Rugs, Inc.*, 853 A.2d at 1225. Without any indication as to the facts or testimony that the Trial Judge relied upon to render a decision, this Panel finds that the Trial Judge’s decision is clearly erroneous. Sec. 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 determine that the Trial Judge's decision is clearly erroneous in view of the whole record and a clearly unwarranted exercise of discretion. The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the adjudicated violation is reversed.

ENTERED:

Magistrate Joseph A. Abbate (Chair)

Magistrate Erika Kruse Weller

Magistrate Alan R. Goulart

DATE: _____