

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF WESTERLY

v.

KATHERINE VANGORDER

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C.A. No. M19-0007
18504501233

DECISION

PER CURIAM: Before this Panel on May 29, 2019—Magistrate Noonan (Chair), Administrative Magistrate Abbate, and Magistrate Goulart, sitting—is Katherine VanGorder’s (Appellant) appeal from a decision of Judge Peter L. Lewiss (Trial Judge) of the Westerly Municipal Court, sustaining the charged violation of G.L. 1956 § 31-18-3, “Right-of-way in crosswalk.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On September 7, 2018, police officers from the Westerly Police Department conducted a traffic enforcement operation that targeted pedestrian safety in crosswalks. (Tr. at 1.) During that operation, Appellant received a citation for the above-mentioned violation. *Id.* at 7; *see also* Summons No. 18504501233. The Appellant contested the charged violation, and the matter proceeded to trial on November 1, 2018. (Tr. at 1.)

Sergeant Wayne Crocker (Sergeant Crocker) of the Westerly Police Department testified first at trial. *Id.* Sergeant Crocker testified that he has worked for Westerly Police Department for eighteen years. *Id.* Next, Sergeant Crocker explained that as part of the crosswalk safety

operation, one police officer would cross the street in the crosswalk as a pedestrian, a second officer observed the violations from an unmarked police vehicle, and a third officer in a marked police cruiser conducted traffic stops of vehicles determined to have committed violations. *Id.* On September 7, 2018, Sergeant Crocker acted as the pedestrian in plain clothes crossing the crosswalk. *Id.* Specifically, Sergeant Crocker utilized “[t]he crosswalk on Main Street [in Westerly] that goes from the Washington Trust crosswalk over to the Bridge road [sic] crosswalk.” *Id.* The crosswalk is “on a one-way street that is two lanes, [and] the south side lane comes from Connecticut, and the northbound lane comes from Westerly.” *Id.* In his role as a pedestrian, Sergeant Crocker “would wait for a vehicle . . . to approach from Connecticut or Westerly in [his] direction, and [he] would step two or three feet into the crosswalk and [he] would stop, waiting for the vehicle to proceed towards [him] to either stop or continue past [him].” *Id.* at 2. If a car failed to yield, Sergeant Crocker would alert the officer in the unmarked police cruiser and point to the car that committed the violation. *Id.* Approximately ten cars failed to yield to Sergeant Crocker in the crosswalk on September 7, 2018. *Id.*

Next, Officer Marshall Johnson (Officer Johnson), a ten-year veteran of the Westerly Police Department, testified at trial. *Id.* at 3. On September 7, 2018, Officer Johnson worked as the “observer,” watching Sgt. [sic] Crocker as he would cross through the crosswalk . . . and vehicles that would fail to yield to him.” *Id.* Officer Johnson observed from “an unmarked police vehicle and [he] was backed into [] a parking space by the Verizon building, which is right next to Washington Trust.” *Id.* From his vantage point, Officer Johnson could see the crosswalk that Sergeant Crocker was crossing at all times. *Id.* When a vehicle failed to yield, Sergeant Crocker indicated that a vehicle had committed a violation and Officer Johnson would

then communicate a description of the vehicle via radio to Officer Waterman, who was stationed down the street. *Id.*

Officer Dean Waterman (Officer Waterman) of the Westerly Police Department also testified at trial. *Id.* at 5. Worked for the Westerly Police Department for four years. *Id.* On September 7, 2018, Officer Waterman worked as part of the traffic enforcement operation as the uniformed officer in a marked patrol car conducting traffic stops of the vehicles that committed violations. *Id.* When Sergeant Crocker and Officer Johnson observed a violation, they would communicate to Officer Waterman “the color of the car, make, model of the car, possibly a plate if they could read it, and [Officer Waterman] would subsequently stop the car and issue a citation or a verbal warning.” *Id.* Officer Waterman further testified that he did not stop any vehicles during this operation that were not communicated to him by Sergeant Crocker and Officer Johnson. *Id.*

At approximately one o'clock in the afternoon on September 7, 2018, Officer Johnson communicated to Officer Waterman via radio that a gray Honda CRV driven by a blonde female committed a violation. *Id.* at 6. During this time, Officer Waterman was “parked perpendicular [] in the area of Main Street and Commerce Street facing the roadway . . . observing both lanes of travel.” *Id.* Officer Waterman testified that he observed Appellant’s gray Honda CRV pass through the crosswalk and fail to yield to Sergeant Crocker. *Id.* Although Officer Waterman could see Sergeant Crocker “walking back and forth,” Officer Waterman “didn’t know where [Sergeant Crocker] was in the roadway.” *Id.* at 7. Officer Waterman subsequently stopped Appellant’s vehicle on Union Street near the fire station, informed Appellant of the reason for the stop, and issued a citation to Appellant. *Id.* Appellant told Officer Waterman that she did not see anyone in the crosswalk. *Id.*

Lastly, Appellant testified on her behalf at trial. *Id.* at 9. Appellant explained that just prior to the traffic stop, she turned left onto the road from the Washington Trust ATM. *Id.* Appellant testified that she “didn’t go very far at all” before Officer Waterman stopped her vehicle, and that she had been “going super slow coming out of the Washington Trust[.]” *Id.* Additionally, Appellant stated, “I did not see anybody in the crosswalk or I would have stopped.” *Id.* In closing, Appellant argued that the distance between the Washington Trust and the crosswalk “was so short that [she] did not see somebody in that [crosswalk.]” *Id.* at 10.

After all the evidence had been presented at trial, the Trial Judge continued the matter pending a written decision. *Id.* at 10. In his written decision, the Trial Judge found the testimony of Sergeant Crocker, Officer Johnson, Officer Waterman, and Appellant to be credible. Moreover, after reviewing the applicable statute and case law, the Trial Judge determined that “there is no question that a driver must yield to a pedestrian in a crosswalk.” The Trial Judge further found that Officer Waterman properly issued a citation to Appellant pursuant to the collective knowledge doctrine. Therefore, the Trial Judge found Appellant guilty and sustained the charged violation.

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 Mutual Insurance Company 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 *Environmental Science Corporation 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 Judge's decision sustaining the charged violation was “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Sec. 31-41.1-8(f)(5). Specifically, Appellant maintains that the Trial Judge

erred because it was impossible for Appellant to yield as she did not see Sergeant Crocker in the crosswalk.

The Rhode Island Supreme Court has consistently held: “[W]hen the language of a statute is clear and unambiguous, [a] [c]ourt must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Iselin v. Ret. Bd. of Emps’ Ret. Sys. of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). Alternatively, the Court “must examine an ambiguous statute in its entirety and determine ‘the intent and purpose of the Legislature.’” *State v. Peterson*, 772 A.2d 259, 264 (R.I. 1998) (quoting *In re Advisory to the Governor*, 688 A.2d 1246, 1248 (R.I. 1996)).

Here, Appellant is charged with violating § 31-18-3, which provides, in relevant part:

“When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, 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, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.” Sec. 31-18-3(a).

It is undisputed that Appellant operated her vehicle when the alleged violation occurred, and that Appellant’s vehicle traveled through the crosswalk. (Tr. at 6-7.) However, the record lacks evidence proving that a pedestrian—Sergeant Crocker—was at a point in the crosswalk that would require Appellant to yield the right of way pursuant to the clear and unambiguous language of § 31-18-3(a). See *Iselin*, 943 A.2d at 1049 (quoting *Accent Store Design, Inc.*, 674 A.2d at 1226). While Officer Waterman testified that he saw Sergeant Crocker in the crosswalk and witnessed Appellant fail to yield, there is no evidence demonstrating where Sergeant

Crocker was located in the road when Appellant passed through the crosswalk. Therefore, the evidence in the record does not support a finding of guilt as there is no evidence that Sergeant Crocker was crossing the street “upon the half of the roadway upon which [Appellant’s] vehicle [was] traveling.” *See* § 31-18-3(a).

Based on a review of the record, this Panel finds that the Trial Judge’s decision is not supported by legally competent evidence. *See Link*, 633 A.2d at 1348 (*citing Env’tl. Sci. Corp.*, 621 A.2d at 208). Therefore, the Trial Judge erred by sustaining the charged violation because there was a lack of evidence showing Sergeant Crocker’s location in the roadway at the time Appellant’s vehicle approached the crosswalk. Such evidence would be determinative of whether Appellant’s duty to yield pursuant to § 31-18-3(a) was implicated. Accordingly, this Panel finds that the Trial Judge’s decision is clearly erroneous in view of the evidence within the record. *See* § 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 was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5). The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED:

Magistrate William T. Noonan (Chair)

Administrative Magistrate Joseph A. Abbate

Magistrate Alan R. Goulart

DATE: _____