

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF WESTERLY

v.

SHARLEEN RUSTICI

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C.A. No. M19-0006
18504501177

DECISION

PER CURIAM: Before this Panel on May 29, 2019—Magistrate Noonan (Chair), Administrative Magistrate Abbate, and Magistrate Goulart, sitting—is Sharleen Rustici’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 August 31, 2018, police officers from the Westerly Police Department conducted a traffic enforcement operation that targeted pedestrian safety in crosswalks. Tr. at 2. During that operation, Appellant received a citation for the above-mentioned violation. *Id.* at 9; *see also* Summons No. 18504501177. The Appellant contested the charged violation, and the matter proceeded to trial on November 1, 2018.

Officer Matthew John (Officer John) of the Westerly Police Department testified first at trial. (Tr. at 1.) Officer John explained that the traffic enforcement operation was executed by three police officers wherein one officer poses as a pedestrian in plain clothes who crosses a

crosswalk, the second officer is the “observer” who watches for a violation, and the third officer is in a marked police cruiser and conducts traffic stops of vehicles that commit violations. *Id.* On August 31, 2018, Officer John acted as the pedestrian in plain clothes crossing the crosswalk. *Id.* Specifically, Officer John was in “a marked crosswalk on Main Street in front of [] McQuades [sic].” *Id.* at 2. In his role as a pedestrian, Officer John would first make sure that traffic was clear and that it was safe for him to cross the crosswalk. *Id.* at 1-2. Officer John would also make sure that “the vehicles coming from either direction would have a reasonable time to stop safely for [him]” as he crossed the crosswalk. *Id.* at 2; 4. While crossing the crosswalk, Officer John walked “like a normal pedestrian.” *Id.* When Officer John felt that his safety was in jeopardy because it did not appear that a car would stop, he would stop and back up so that the vehicle could proceed through the crosswalk without hitting him if the vehicle failed to stop. *Id.* at 4. On the day in question, Officer John stated that they stopped six or seven vehicles. *Id.* In cases in which a citation was issued, Officer John had signaled to the to the observer that a violation had been committed. *Id.*

Next, Officer Marshall Johnson (Officer Johnson) of the Westerly Police Department testified at trial. *Id.* at 5. On August 31, 2018, Officer Johnson worked as “the observer in an unmarked police vehicle” parked in the state boat launch parking lot as part of the traffic enforcement operation. *Id.* Officer Johnson had a direct view of the crosswalk and observed Officer John as Officer John walked in the crosswalk. *Id.* When the cars failed to yield, Officer Johnson would “call out” the make, model, and direction of the vehicle as well as a description of the operator. *Id.* In determining whether a motorist failed to yield to Officer John, Officer Johnson would determine whether “the vehicle had enough opportunity to stop or slow down[.]” *Id.* However, Officer Johnson noted that “if [Officer John] had just entered the crosswalk and

there was a vehicle in the opposite lane that failed to yield, [] we wouldn't really act on that. . . . but if it was a vehicle that was traveling [] in the direction of travel that [Officer John] was closest to and [the vehicle] failed to yield, then we would act on that violation.” *Id.* at 6. On the day of the violation, Officer Johnson would communicate violations to Officer Leddy who was in a marked police car. *Id.* Lastly, Officer Johnson testified that approximately six to seven cars failed to yield to Officer John in the crosswalk that day. *Id.*

Officer Jonathan Leddy (Officer Leddy) of the Westerly Police Department also testified at trial. *Id.* at 7. On August 31, 2018, Officer Leddy worked as part of the traffic enforcement operation as “the officer in the marked patrol car assigned to stop the cars that committed the violations.” *Id.* While Officer Leddy testified that he did not observe all the violations, he knew which cars to stop based on Officer Johnson’s descriptions communicated via radio. *Id.* At approximately ten o’clock that morning, Officer Johnson communicated to Officer Leddy via radio that “a blue Chrysler . . . driven by a female, with dark hair, headed on Main Street towards Cross Street” committed a violation. *Id.* at 8. In response, Officer Leddy initiated the patrol vehicle’s emergency lights and sirens and conducted a motor vehicle stop of the vehicle matching Officer Johnson’s description. *Id.* Officer Leddy identified the driver of the blue Chrysler as Appellant. *Id.* After identifying Appellant, Officer Leddy informed her of the reason for the stop and issued Appellant a citation. *Id.* at 9. Officer Leddy further testified that Appellant “admitted to going through the crosswalk but she didn’t see the officer until the last minute.” *Id.* In addition, Officer Leddy informed Appellant that he did not observe the violation. *Id.*

Lastly, Appellant testified on her behalf at trial. *Id.* at 10. Appellant testified, “[Officer John] was not visible to me until it was too late to stop safely. The first time I saw him, he was

in the road on the west side of the crosswalk and I was already close to the crosswalk on the east side.” *Id.* at 11. Appellant further testified that she “deemed it to be physically impossible for [her] to stop the car safely [as] there was no danger of [her] hitting him and there would have been a risk of the car behind [her.]” *Id.* During her testimony, Appellant presented photos of the crosswalk taken on the day of the incident and stated that that the markings on the road “are a bit faded” and that the crosswalk is not marked with a posted sign indicating that there is a crosswalk. *Id.* at 10. Appellant also argued that under the statute, Officer John “had to be in the same lane as me, and he was not.” *Id.* at 15.

After all the evidence had been presented at trial, the Trial Judge continued the matter pending a written decision. *Id.* at 15. In his written decision, the Trial Judge found the testimony of Officer John, Officer Johnson, Officer Leddy, 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.” Considering the testimony presented at trial, the Trial Judge noted, “[Appellant] affirmatively testified to the fact that she was operating her vehicle at the time of the violation through the crosswalk. In essence, by this statement, [Appellant] admits that Officer Johns was in the crosswalk.” The Trial Judge further found that “simply because [Appellant’s] vision was blocked does not mean that the Officer was not in the crosswalk; it just means that she did not see him.” Therefore, the Trial Judge found Appellant guilty and sustained the charged violation. In doing so, the Trial Judge also concluded that Officer Leddy properly issued Appellant the citation pursuant to the collective knowledge doctrine.

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 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 avers that the Trial Judge’s decision was “[i]n violation of . . . statutory provisions[]” and “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” Sec. 31-41.1-8(f)(1), (5). Specifically, Appellant contends (1) that she did not see Officer John in the crosswalk until it was too late to stop safely, and (2) that Officer John was not in the half of the roadway upon which Appellant’s vehicle was traveling.

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 11.) However, the record lacks evidence proving that a pedestrian—Officer John—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). The only testimony on the record demonstrating that a pedestrian was in the crosswalk is that of Appellant who stated, “The first time I saw him [Officer John], he was in the road on the west side of the crosswalk and I was already close to the crosswalk on the east side.” (Tr. at 11.) While this testimony establishes that Officer John was in the crosswalk, it does not support a finding of guilt because Officer John was not crossing the street “upon the half of the roadway upon which [Appellant’s] vehicle [was] traveling.” *See* § 31-18-3(a).

Although Officer John, Officer Johnson, and Officer Leddy testified in detail as to the general crosswalk “operation” that they conducted that day, the officers did not testify as to the specific events that lead the officers to cite Appellant with a violation. Officer Leddy’s testimony reveals the most—and only—specific details about the officers’ encounter with Appellant. (Tr. at 8.) Officer Leddy testified that Officer Johnson communicated to Officer Leddy via radio that a blue Chrysler with a Connecticut registration operated by a female with dark hair traveling on Main Street toward Cross Street committed a violation. *Id.* This testimony is insufficient to sustain the charged violation because while there is legally competent evidence to support the conclusion that Appellant never yielded before she proceeded through the crosswalk, there is no indication that Officer John was so far into the roadway that Appellant was required to yield. *See* § 31-18-3.

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 *Envtl. Sci. Corp.*, 621 A.2d at 208). In his interpretation of the § 31-18-3, the Trial Judge incorrectly implied that pedestrians have an absolute right of way. *See Alessi v. Bowen Court Condo.*, 44 A.3d 736, 740 (R.I. 2012) (citing *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)) (“questions of statutory interpretation [are reviewed] de novo”). Therefore, the Trial Judge erred by sustaining the charged violation because there was a lack of evidence showing Officer John'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: _____