

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WOONSOCKET

:

v.

:

C.A. No. M14-0013

YI LIN

:

07412018951

:

DECISION

PER CURIAM: Before this Panel on August 20, 2014—Judge Parker (Chair), Magistrate Noonan, and Administrative Magistrate DiSandro III, sitting—is Yi Lin’s (Appellant) appeal from a decision of Judge Howard Portney of the City of Woonsocket Municipal Court (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-18-3, “Right-of-way in crosswalk.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On January 28, 2014, Officer Patrick McGourty of the Woonsocket Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge and the matter proceeded to trial on May 5, 2014.

At trial, the Officer testified that he was on routine patrol in the area of Cumberland Street and Kendrick Avenue in Woonsocket when he observed a juvenile walking across Cumberland Street. (Tr. at 1.) The juvenile was within the boundary of the crosswalk, which crosses from the west side of Cumberland Street to the east side of Cumberland Street. Id. While waiting for the juvenile to cross the street, the Officer observed a red Honda, traveling south on Cumberland Street, approach the crosswalk. Id. By this point, the juvenile was directly in the middle of the road and the traffic traveling north bound had stopped to allow the juvenile

to cross. Id. at 2. The Officer watched as the operator of the Honda passed through the crosswalk, without yielding to the juvenile crossing the street. Id. The Officer recalled that the Honda “almost str[uck] the juvenile.” Id. The Officer stated that he immediately activated his emergency lights in order to stop the Honda.¹ Id. The Honda, however, proceeded traveling southbound. Id. The Officer activated his cruiser’s air horn, along with the sirens, and continued to follow the Honda. Id. The operator did not stop, and proceeded toward Cumberland Hill Road. At this point, the Honda was forced to stop because of traffic congestion. Id. The Officer stated that he “continu[ed] to hit [his] air horn and sirens” and eventually, the driver of the Honda pulled over. Id. The Officer approached the Honda, identified the operator as the Appellant, and charged Appellant with § 31-18-3, “Right-of-way in crosswalk.”

After the Officer’s testimony, the Appellant testified in his own defense. Id. The Appellant testified that he “didn’t see anybody crossing the road or even intending to cross the road.” Id. at 4. The Appellant stated that in his opinion, the Officer stopped him because he failed to display his “renewed decal” on his license plate. Id. He explained, generally, when a person is stopped the first question posed by an officer is “do you know why I stopped you?” However, in this case the Officer asked “your registration form?” and therefore, the stop was related to his registration and not his failure to yield. Id.

At this point, the Trial Judge interrupted the Appellant and explained “you are simply charged with a motor vehicle violation, which is that when a pedestrian [is] walking along a crosswalk[,] the driver[s] of the vehicle[s] that are near are required to stop.” Id. Appellant

¹ G.L. 1956 § 31-18-3, “Right-of-way in crosswalk,” reads in pertinent part: “[w]hen 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”

maintained that there was nobody crossing the street, stating “if there [was] anybody crossing the road or intend[ing] to cross the road . . . [i]t would be very clear and obvious . . . I wouldn’t ignore that.” Id. at 5. Appellant continued, “I even [sic] did not touch my brake pedal . . . [s]o I just didn’t see anybody crossing . . . [t]hat’s what I want to argue. That’s why I am here.” Id.

After hearing the testimony presented, the Trial Judge found the Officer’s testimony to be credible and sustained the charged violation. Specifically, the Trial Judge stated “the Officer has indicated that there was a visible crosswalk . . . that it was clear to other drivers [to] slow up . . . and that [Appellant] did go through the cross[walk] where he should slow up.” Id. at 7. Consequently, the Trial Judge sustained the charged violation, § 31-18-3. Id. Aggrieved by the Trial Judge’s decision, Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 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 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.” Link, 633 A.2d at 1348 (citing Environmental Scientific 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.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

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. Specifically, Appellant argues that he provided evidence establishing that the Officer stopped him because of his expired registration and not as a result of failing to yield to a pedestrian in a crosswalk. The Appellant stated that he presented demonstrative evidence to the Trial Judge, which included several maps, but that “the Judge did not show serious interest in those evidences [sic] as well as my argument.” Appellant concluded his argument stating, “I am a person who is very careful in doing things and I will not risk anybody’s life as well as the life of myself. Besides, my driving record in the U.S. is clean over the past two years”

It is well-settled that a pedestrian on a crosswalk has the right of way. See note 1, supra; see also Green v. Tingle, 92 R.I. 393, 395, 169 A.2d 373, 375 (1961) (stating “[g]enerally speaking a pedestrian on a crosswalk has the right of way, G.L.1956 § 31-18-3, but a pedestrian must still be watchful for his own safety). Moreover, a motorist approaching a street intersection is “particularly bound to observe due care, since it is common knowledge that [an] intersection, particularly in centers of population, is a place where greater danger than any other part of the highway is reasonably to be apprehended.” See Dembicer v. Pawtucket Cabinet & Builders Finish Co., 58 R.I. 451, 193 A. 622 (1937).

Indisputably, § 31-18-3 sets forth that “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.” See § 31-18-3; see also Downes v. United Elec. Rys. Co., 80 R.I. 382, 97 A.2d 107 (1953) (finding that the failure of a pedestrian to look before crossing a street in the path of oncoming traffic constitutes negligence as a matter of law). However, that provision in the statute is inapplicable here, where the record reflects that the pedestrian was half-way across the street when Appellant proceeded through the crosswalk. (Tr. at 2.)

After listening to the testimony, the Trial Judge found that Appellant failed to yield to a pedestrian crossing the roadway within a crosswalk. The Trial Judge determined that the Officer’s testimony was credible and adopted the Officer’s testimony that Appellant “almost hit a child” at the crosswalk. Id. at 4-5. Additionally, the Trial Judge stated that simply because Appellant “didn’t remember seeing this child, this young child crossing the walk, it doesn’t mean the child wasn’t there. It just means that at that time he didn’t see him.” Id. at 7. Based on the record before us, this Panel agrees, and determines that the Appellant failed to yield the right of way to a pedestrian.

This Panel is afforded no such opportunity to make credibility assessments; we are required to defer to the decision of the Trial Judge. See Cullen v. Tarini, 15 A.3d 968, 976 (R.I. 2011) (holding that great weight is accorded to credibility determinations made by the judge at trial). Confining our review of the record to its proper scope, this Panel is satisfied that the Trial Judge's decision to sustain the charged violation is supported by legally competent evidence and not affected by error of law. See Environmental Scientific Corp., 621 A.2d at 209 (appellate court should give great deference to the trial judge's findings and conclusions unless clearly wrong). Therefore, we find no reversible error.

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 supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the Trial Judge's decision was not clearly erroneous and not otherwise affected by error of law. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Judge Edward C. Parker (Chair)

Magistrate William T. Noonan

Magistrate Domenic A. DiSandro III

DATE: _____