

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

LESLIE COSTA

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**C.A. No. M19-0019
19404503001**

DECISION

PER CURIAM: Before this Panel on February 12, 2020—Magistrate Goulart (Chair), Administrative Magistrate Abbate, and Magistrate Noonan, sitting—is Leslie Costa’s (Appellant) appeal from a decision of Judge Lisette M. Gomes (Trial Judge) of the East Providence Municipal Court, sustaining the charged violation of G.L. 1956 § 31-20-9, “Obedience to stop signs.” Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8. For the reasons set forth in this decision, this Panel denies the appeal.

I

Facts and Travel

On September 6, 2019, Captain Bruce Kidman (Captain Kidman) of the East Providence Police Department observed a motor vehicle approach and pass through a stop sign without coming to a complete stop. Tr. at 3:7-10; 8:12-14, Nov. 14, 2019. Captain Kidman conducted a motor vehicle stop and identified the driver of the vehicle as Appellant. *Id.* at 3:10-18. Captain Kidman then issued Appellant a citation for the above-referenced violation. *Id.* at 3:17-18; *see also* Summons No. 19404503001.

Appellant contested the charged violation, and the matter proceeded to trial on November 14, 2019. Tr. at 1, Nov. 14, 2019. Captain Kidman testified first. *Id.* at 2:19. Captain Kidman

testified that he was observing a stop sign located at the intersection of North Brow Street and Valley Street in the City of East Providence as part of a traffic enforcement detail. *Id.* at 2:19-24. Captain Kidman testified that he was situated in an entrance to a driveway of a building on the corner of North Brow Street and Valley Street and was able to clearly view the area approximately fifteen to twenty feet in front of the stop sign. *Id.* at 2:24-3:5. Captain Kidman observed a black Ford vehicle approach the stop sign, slow down, and execute a right-hand turn onto Valley Street. *Id.* at 3:8-10; 8:12-14. However, Captain Kidman observed that the vehicle did not come to a complete stop and continued through the stop sign into the intersection. *Id.* at 3:6-8; 8:12-14.

Next, Appellant testified. *Id.* at 4:20. Appellant testified that she came to a complete stop at the stop sign. *Id.* at 5:3. Appellant further testified that she did not pass through the stop sign in the manner described by the Captain. *Id.* Appellant stated that she had stopped to point her finger first at the stop sign, and then to a motorist traveling in the opposite direction, to alert the motorist that he did not have a stop sign to obey and was not required to come to a stop. *Id.* at 5:3-8. Appellant testified that at this particular stop sign, she often attempts to visually signal to motorists travelling in the opposite direction to alert them of the stop sign. *Id.* at 6:18-23. Appellant testified that after stopping and attempting to alert the other motorist, she proceeded through the stop sign and executed the right-hand turn onto Valley Street. *Id.* at 6:3-4. Appellant further testified that the stop sign is visually obstructed by the building at which Captain Kidman was situated at the time of the incident. *Id.* at 9:22-24

In response to subsequent questioning by the Trial Judge, Captain Kidman stated that the location at which he was situated did not allow him to observe whether a motorist conveyed hand gestures inside a vehicle, and he was not able to observe Appellant doing so. *Id.* at 9:9-19; 7:23-

8:3. However, Captain Kidman stated that he was still able to observe any vehicles as they approached the stop sign, and clearly observed Appellant's vehicle approach the stop sign and execute a right-hand turn through the intersection without coming to a complete stop. *Id.* at 8:7-14.

After testimony concluded, the Trial Judge rendered her decision. *Id.* at 12:14. The Trial Judge accepted Captain Kidman's testimony regarding Appellant's charged violation as credible. *Id.* at 13:17-18. Specifically, the Trial Judge determined that Captain Kidman had a clear and unobstructed view of the stop sign prior to and during the incident, and that he observed Appellant approach the stop sign and fail to come to a complete stop before executing the right-hand turn. *Id.* at 13:2-8. Furthermore, the Trial Judge did not find Appellant's testimony regarding her hand gestures directed to the other motorist to be credible. *Id.* at 13:22-14:1. Accordingly, the Trial Judge sustained the charged violation against Appellant and imposed a fine of \$85, as well as \$46 in court costs. *Id.* at 14:6-9.

Appellant subsequently filed a timely appeal of the Trial Judge's decision. *See* Appellant's Notice of Appeal at 1. Forthwith is the 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 relevant 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 prejudiced 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 argues that the Trial Judge's decision to sustain 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 reiterated that she came to a

complete stop at the stop sign because she gestured to the other motorist that she had a stop sign to obey, while he did not. *See* Appellant’s Notice of Appeal at 1.

Section 31-20-9 states:

“Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection. In the event there is no crosswalk, the driver shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway before entering the intersection, except when directed to proceed by a police officer or traffic control signal. Violations of this section are subject to fines enumerated in § 31-41.1-4.”

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 witnesses’ veracity during trial.

Based on a review of the record, this Panel finds that the Trial Judge’s decision is supported by legally competent evidence. *Link*, 633 A.2d at 1348. The record reveals that the Trial Judge heard and properly considered the testimony of both Captain Kidman and Appellant before rendering her decision. Tr. at 12:14, Nov. 14, 2019. In rendering her decision, the Trial

Judge determined that Captain Kidman had an unobstructed view of vehicles approaching the stop sign, and further determined that he clearly observed Appellant fail to come to a complete stop after approaching the stop sign and before entering the intersection, as required by § 31-20-9. *Id.* at 13:2-8. The Trial Judge also determined that Appellant’s testimony, specifically regarding the hand gestures directed at other motorists, not to be credible. *Id.* at 13:22-14:1. As this Panel “lacks the authority to assess witness credibility,” it cannot substitute its judgment for that of the Trial Judge regarding the credibility of either Captain Kidman or Appellant. *Link*, 633 A.2d at 1348 (*citing Janes*, 586 A.2d at 537).

After thoroughly reviewing the record, this Panel finds that the evidence offered at trial was sufficient to support the Trial Judge’s decision. *See Link*, 633 A.2d at 1348 (*citing Env’tl. Sci. Corp.*, 621 A.2d at 208). Accordingly, this Panel finds the Trial Judge’s decision was not “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” 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 are satisfied that the Trial Judge's decision was not 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 not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Administrative Magistrate Joseph A. Abbate

Magistrate William T. Noonan

DATE: _____