

**STATE OF RHODE ISLAND**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

v.

**BARRY COOK**

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**C.A. No. M24-0004  
23409510832**

**DECISION**

**PER CURIAM:** Before this Panel on July 31, 2024—Magistrate Abilheira (Chair), Magistrate Landroche, and Magistrate Welch—is the appeal of Barry Cook (Appellant) from a decision of Judge Daniel McKiernan (Trial Judge) of the Providence Municipal Court, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to Devices.” The Appellant appeared *pro se* before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For reasons set forth in this Decision, Appellant’s appeal is granted.

**I**

**Facts and Travel**

On January 22, 2024, Officer George C. Pereira (“Officer Pereira”) of the Providence Police Department charged Appellant with violating § 31-13-1, “Obedience to Devices.” (Summons No. 23409510832.)

At trial on February 20, 2024, Officer Pereira testified that he was traveling south on Hope Street when he saw Appellant, who was traveling east on Lloyd Avenue, cross over Brook Street and make a right-hand turn onto Hope Street. (04/10/2024 Tr. 8:19-28.) Officer Pereira’s traffic light turned green, and he proceeded through the intersection. *Id.* at 14:1-2. While Officer Pereira

drove through the green light, Appellant drove through the intersection without stopping for the red light, causing Officer Pereira to follow him. *Id.* at 14:15-18. Appellant testified that he was “just pulled over” a block away from a police substation and was issued a ticket for Obedience to Devices. *Id.* at 14:18-20.

Appellant did not present evidence at trial. *Id.* at 17:6-26. Instead Appellant argued that, because there was no dashboard or body camera footage or testimony to corroborate Officer Pereira’s testimony, Appellant could not be found guilty of the charged violations. *Id.* at 18:11-16. The Trial Judge noted that Appellant did not deny that he went through the red light. *Id.* at 20:27-28. As such, Appellant was found guilty and a fine plus court costs were imposed. *Id.* at 21:10.

Aggrieved by the decision, Appellant filed this appeal. *See* Docket; *see also* Notice of Appeal.

## 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. 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.” *Id.* (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 ‘[c]learly 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. *Id.*; *see Janes*, 586 A.2d at 537.

### III

#### Analysis

##### A

#### **Rule 21(a) – Appeal Filed Out of Time**

This Panel notes that the Appellant’s appeal was filed beyond the ten (10) day period provided by RITT Rule 21(a). Nevertheless, in the interest of justice, the Panel has elected to hear and decide the appeal on its merits.

## B

### Merits of the Appeal

Appellant argues that the trial judge erred in applying the burden of proof and asserts he was not required to testify or present evidence. (July 31, 2024 Mem.; Notice of Appeal.) Under G.L. § 31-41-1-6(a), in traffic violation hearings, “[t]he burden of proof be upon the state, city, or town and no charge may be established except by clear and convincing evidence.” *See also* Traffic Trib. R. P. 17(a). The term “clear and convincing evidence” is “more than a mere exercise in semantics,” being a higher burden than “preponderance of the evidence” but less than “beyond a reasonable doubt.” *Parker v. Parker*, 103 R.I. 435, 238 A.2d 57 (1968). Evidence meeting this standard must persuade the factfinder that the proposition is “highly probable” or produce a “firm belief or conviction” that the allegations are true. *Cahill v. Morrow*, 11 A.3d 82, 88 n.7 (R.I. 2011) (quoting 29 Am. Jur. 2d Evidence § 173 at 188-89 (2008)).

After due consideration of the evidence and arguments, a trial judge or magistrate shall determine whether the charges have been established, and appropriate findings of fact shall be made on the record. *See* § 31-41.1-6(b). In the instant case, although it appears the prosecution met its burden of proof and the officer testified professionally and reliably, it appears that the trial court did not make any findings of fact or holdings on the record for this panel to review. The trial court simply held that they conducted a “hearing without [the motorist] denying [he] went through the light...” and found the motorist “guilty of the infraction plus costs.” (04/10/2024 Tr. 21:18-20.)

When a judge fails to make findings of fact on the record, the charges cannot stand. A “reviewing court can only fulfill its obligations of careful review where the record before it is complete.” *Orche Point Ass’n v. Newport Zoning Board*, 1984 WL 559251, at \*2 (R.I. Super.

Sept. 10, 1984). If the record is deficient, it precludes a decision on the merits. Without the trial court making the appropriate findings of fact on the record, this Panel cannot uphold the decision.

#### IV

#### Conclusion

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel find that the Trial Magistrate's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Accordingly, Appellant's appeal is granted, and the decision is reversed.

ENTERED:

\_\_\_\_\_/S/  
Magistrate Allison C. Abilheira (Chair)

\_\_\_\_\_/S/  
Magistrate Norman Landroche, Jr.

\_\_\_\_\_/S/  
Magistrate Mark Welch

DATE: October 4, 2024