

STATE OF RHODE ISLAND
RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	C.A. No. M24-0002
	:	23408507651
YHAIMARILIZ HERNANDEZ	:	

DECISION

PER CURIAM: Before this Panel on March 27, 2024—Magistrate Welch (Chair), Magistrate Noonan, and Magistrate DiChiro—is the appeal of Yhaimariliz Hernandez (Appellant) from a decision of Judge John Gannon, Associate Judge of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-17-2, “Vehicles Turning Left/Right – Failure to Yield Right of Way.” 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 denied.

I

Facts and Travel

On November 10, 2023, Officer Matthew Levasseur (“Officer Levasseur”) of the Pawtucket Police Department charged Appellant with violating General Laws 1956 § 31-17-2 “Vehicles Turning Left/Right – Failure to Yield Right of Way.” (Summons No. 23408507651.) Appellant appeared *pro se* before the Court on January 4, 2024 and pled not guilty to the charge. (02/02/2024 Judgment Card.) The matter proceeded to trial on February 2, 2024. *See* Docket.

At trial, Officer Levasseur testified that on November 10, 2023 at approximately 12:38 p.m. he responded to the intersection of Humes and Broad Streets for a motor vehicle accident. (02/02/2024 Tr. 6:19-21.) When Officer Levasseur arrived, he observed Mr. Eliud Jimenez (Mr.

Jimenez”), on the ground with obvious injuries. *Id.* at 6:22-23. He requested a rescue for Mr. Jimenez and, while waiting, obtained his statement regarding the accident. *Id.* at 6:23-26. According to Officer Levasseur, Mr. Jimenez stated that he had been “riding his scooter northbound in the bike lane on Broad Street during which time, uh, Miss Hernandez attempted to turn left from the southbound lane onto Humes resulting in the accident.” *Id.* at 6:26-7:1. Officer Levasseur was able to review the video surveillance footage from a nearby business which he asserts confirmed Mr. Jimenez’s account. *Id.* at 7:2-4. He also spoke with Ms. Hernandez who, he says, confirmed Mr. Jimenez’s statement. *Id.* at 7:5.

Mr. Jimenez testified that he was riding in the bike lane when Appellant attempted to turn down a side street and collided with him. *Id.* at 8:7-9. He stated that he did not see Appellant until it was “too late for [him] to do anything about it by that point.” *Id.* at 8:13-14. As a result of the accident, Mr. Jimenez suffered a fractured femur and his knee “took a beating.” *Id.* at 8:19. Appellant testified that she was already in the intersection to make a left turn when Mr. Jimenez came at her at “full speed” and hit her vehicle on the right side. *Id.* at 9:16-10:6.

The Trial Judge found Officer Levasseur’s testimony credible because he investigated the incident, found the pertinent video footage, and spoke to both drivers before issuing the citation. *Id.* at 12:25-28. The Trial Judge also found Mr. Jimenez’s testimony that he was in the proper lane on the bike path while Appellant was crossing over the lane credible *Id.* at 12:1-4. The Trial Judge further found all of the evidence from the prosecution credible. *Id.* at 12:28-13:1. As such, the Trial Judge found Appellant guilty of the charged offense of Failure to Yield Right of Way. *Id.* at 13:1-2. Appellant, aggrieved by the decision filed this appeal on February 15, 2024. *See* 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)

The Court would note that although the motorist’s appeal was filed outside of the ten (10) day period provided for in RITT Rule 21(a), in the interest of justice based certain conflicts with the dates involved, this court has decided to hear the appeal and decide it on the merits.

B

Failure to Yield Right of Way

As grounds for this appeal, Appellant argues that the cyclist was moving fast and though it was Appellant’s duty to yield, her car was “already fully in” the intersection to make the left turn. *See* Notice of Appeal. G.L. 1956 § 31-17-2 establishes the required actions a motorist must take when turning left or right at an intersection. *See* § 31-17-2. The statute provides:

“The driver of a vehicle within an intersection intended to turn to the left or right shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close to it as to constitute an immediate hazard . . . The driver, having so yielded and having given a signal . . . may make the left or right turn, and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right of way to the vehicle making the left or right turn.” *Id.*

In the instant case, the Trial Judge found Mr. Jimenez’s testimony credible that he was properly on the bike path, that he was in the right lane where he belonged, when Appellant crossed the lane of travel and struck Mr. Jimenez. (Tr. 12:1-5.) As the Trial Judge pointed out, “When you cross a lane [of] travel, you have to yield to any vehicles in that lane you’re crossing over . . . not

only to the automobiles but also to people in the bike lane.” *Id.* at 12:4-7. The Trial Judge also found Officer Levasseur’s testimony credible because he had conducted an investigation, found video footage of the accident from a nearby business, and watched the video on which facts he based his decision. *Id.* at 12:25-27. As such, the Trial Judge found Appellant responsible for failing to yield. *Id.* at 13:1-2

In *Link v. State*, cited supra, our Supreme Court made it clear 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). The Appeals Panel is “limited to a determination of whether the hearing justice’s decision is supported by legally competent evidence.” *Marran v. State*, 672 A.2d 875, 876 (R.I. 1996).

As the members of this Panel did not have an opportunity to view the live hearing testimony of Appellant, the Panel declines to second-guess the Trial Judge’s impressions as he was able to “appraise [the] witness[’s] 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) (internal quotations omitted). Therefore, this Panel will not disturb the Trial Judge’s credibility determinations or his assessment of the weight of the evidence in this case. *See Link*, 633 A.2d at 1348. As such, the Trial Judge found that because (a) Mr. Jimenez was on the bike path where he belonged, (b) that he was in the right spot, and (c) Appellant should have yielded to persons in the bike lane and did not; Appellant failed to yield the right of way to Mr. Jimenez. (Tr. 12:1-26.)

