

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PAWTUCKET

v.

MARK DALUK

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**C.A. No. M12-0022
12408507627**

DECISION

PER CURIAM: Before this Panel on February 20, 2013—Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Noonan sitting—is Mark Daluk’s (Appellant) appeal from a decision of the Municipal Court, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to traffic control devices.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

This violation arose from an automobile accident that occurred at the intersection of Pine Street and Church Street in Pawtucket. (Tr. at 6.) On the morning of July 2, 2012, a vehicle driven by Appellant crashed into Migalena DosSantos’s vehicle as DosSantos entered into the intersection. (Tr. at 7.) At the scene of the accident, the Appellant was cited by Officer Pendergrass after the Officer had observed the damage to the vehicles and spoken to each person involved in the accident. (Tr. at 14.)

The trial commenced with Migalena DosSantos, the other party involved in the car accident, testifying that she was driving on Church Street towards the downtown area in Pawtucket. (Tr. at 6.) She further testified that as she approached the intersection of Church

Street and Pine Street, the traffic light changed to green. (Tr. at 7.) As she proceeded through the intersection, she explained a vehicle driven by the Appellant came into contact with DosSantos's vehicle. Id. As a result of the impact, Appellant said her vehicle flipped upside down and skidded down the street. Id. DosSantos testified that she was very familiar with this intersection because she would pass through the intersection every morning to take her grandchildren to school. (Tr. at 13.)

Next, Officer Pendergrass testified that he responded to the scene of the accident around 10:02 a.m. (Tr. at 14.) The officer stated that he did not observe the accident but was able to see the damage to the vehicles involved. Id. In his investigation, he was able to speak with all of the interested parties, including an independent witness. Id. Before Officer Pendergrass had an opportunity to testify as to the independent witness's statement, Appellant objected arguing that the testimony was hearsay and therefore inadmissible. (Tr. at 15.) The judge ruled by stating, "I'll allow the testimony, then, at the end, I'll decide whether I let it in and actually give it any weight." Id.

Thereafter, Appellant testified that as he approached the intersection of Pine Street and Church Street, the traffic light was green. (Tr. at 17.) He then proceeded through the intersection. Id. As he proceeded through the intersection, a vehicle driven by DosSantos hit his rear wheel on the right side of his vehicle. Id. Appellant further testified that he was traveling at thirty miles per hour when he entered the intersection. (Tr. at 20.) On redirect examination, Officer Pendergrass testified that the speed limit in the intersection was twenty-five miles per hour. (Tr. at 21.)

At the close of evidence, the trial judge recounted the aforementioned facts in her decision. In rendering her decision, the trial judge determined that DosSantos's testimony was

more credible than Appellant's. (Tr. at 24.) The trial judge found significant DosSantos's testimony that it was clear she had a green light, she was familiar with the intersection, and Appellant was driving above the speed limit. (Tr. at 25.) In regards to the hearsay testimony from the independent witness, the judge later ruled by stating "I'm not going to let it in" Id. Aggrieved by the trial judge's decision, the Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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 argues that the trial judge’s decision is affected by error of law. In particular, Appellant argues that the trial judge employed unlawful procedure by allowing in hearsay evidence during the officer’s testimony.

Rhode Island Traffic Tribunal Rule 15(b) provides that “[a]ll evidence shall be admitted which is admissible under the statutes of this state, or under the rules of evidence applied in the courts of this state.” Traffic Trib. R.P. 15. Thus, the “normal rules of evidence” are applicable to cases that involve violations of our traffic code. Rule 801(c) of the Rhode Island Rules of Evidence defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

In this case, the declarant—the independent witness—was not present to testify; thus, his statements made to the officer at the scene of the accident were made out-of-court. Furthermore, the substance of the independent witness’s statements was offered to prove the events that led to the accident. Such a statement is clearly hearsay under Rule 801 and 802, and the City did not

articulate any exception to the hearsay rule that might apply under Rule 803. However, in this case, the admittance of the hearsay evidence was harmless because the trial judge did not rely on the statement to render her decision. The trial judge made clear when rendering her decision that she did not consider the hearsay testimony when ruling on the issue. She specifically stated, “I’m not going to let it in” (Tr. at 25.) The trial judge came to her conclusion by citing testimony given by DosSantos, not the hearsay testimony. Id. The judge’s decision came down to “. . . two people’s credibility”[;] namely, DosSantos and Appellant. Id. The judge then stated, “I do find [DoSsantos’s] testimony to be more credible than yours.” (Tr. at 26.)

The record before this Panel reflects that the trial judge’s decision to sustain the charged violation of § 31-13-4 is amply supported by other legally competent evidence, such as the testimony from DosSantos. Accordingly, as the members of this Panel are satisfied that the trial judge based her decision on testimony other than the inadmissible hearsay, we conclude that the trial judge’s decision to allow hearsay evidence in contravention of our evidentiary rules does not require dismissal of the charged violation of § 31-13-4. State v. Lynch, 854 A.2d 1022, 1032 (2004) (holding that the admission of hearsay evidence is not prejudicial when the evidence is merely cumulative¹ and when defendant’s guilt is sufficiently established by proper evidence).

¹ Cumulative evidence is defined as evidence that proves the same point to which other evidence has been offered. Lynch, 854 A.2d at 1032.

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 is not affected by error of law or clearly erroneous in light of the reliable, probative, and substantial record evidence. It was not an abuse of discretion. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Chief Magistrate William R. Guglietta

Magistrate William T. Noonan

DATE: _____