

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

C.A. No. T08-0061

SARAH ROCHON

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL

DECISION

PER CURIAM: Before this Panel on August 27, 2008, Judge Ciullo (Chair), Judge Parker, and Magistrate DiSandro sitting, is Sarah Rochon’s (Appellant) appeal from Judge Almeida’s decision, sustaining the charged violation of G.L. 1956 § 31-27-9, “Parties to Offenses.”¹ The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 7, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by Providence Police Officer John Sigillo (Officer). The Appellant contested the charge, and the matter proceeded to trial.

At trial, the Officer testified that at approximately 4:59 p.m. on January 7, 2008, a hit-and-run collision occurred at the intersection of Academy Avenue and Pomona Avenue in the City of Providence. (Tr. at 5.) The Officer testified that the fleeing vehicle was identified as a tan Toyota with a Rhode Island passenger registration of 774435, and that the vehicle was operated by a tall, dark-skinned Hispanic male with graying hair. Id.

¹ The Appellant was also charged with violating § 31-47-9, “Proof of Insurance.” However, this charge was dismissed at trial.

The Officer testified that he contacted the owner of the other vehicle involved in the collision, and that she corroborated the description of the fleeing vehicle and its operator. Id.

The Officer testified that he viewed Appellant's vehicle—a tan Toyota with Rhode Island passenger registration matching the earlier description of the hit-and-run vehicle—on the day of the trial. Id. at 8. The Officer noted during his inspection that the vehicle had front-end damage consistent with a collision with the rear end of another vehicle. Id. at 9-10.

The Appellant testified that she had arrived at her place of employment in North Attleboro, Massachusetts at approximately 5:20 p.m. on the day of the hit-and-run collision. Id. at 20-21. She then testified that she drove herself to work and that the vehicle was within her exclusive possession and control on the date of the accident. Id. at 22. The Appellant also testified that the front-end damage to her vehicle anteceded the accident and was caused by the previous owner. Id. at 23. She further testified that she did not know anyone matching the description of the hit-and-run driver that had been provided to the Providence Police Department. Id. at 24.

Following the trial, the trial judge sustained Appellant's violation of § 31-27-9. Appellant has filed a timely appeal of the trial court's decision. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may 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 following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

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 v. State, 633 A.2d 1345 (R.I. 1993). 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) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

Analysis

On appeal, Appellant argues that the trial judge’s decision was based on insufficient evidence. After reviewing the transcript of the trial, we agree. No evidence was adduced at trial that Appellant committed, attempted to commit, conspired to commit, or aided or abetted the commission of a criminal offense as a principal, agent, or accessory, as required by § 31-27-9. The only percipient witness to the accident, the

driver of the other vehicle involved in the collision, was not called as a witness and did not appear before the trial judge. (Tr. at 5.) Rather, it appears that the trial judge's decision to sustain the charged violation of § 31-27-9 rests on inferences drawn from multiple hearsay accounts of the hit-and run-accident. Id. at 14. Since there is no evidence in the record demonstrating that Appellant engaged in proscribed conduct, as required by the statute, we cannot sustain her violation of § 31-27-9. Accordingly, Appellant's appeal is hereby granted.

Conclusion

Upon a review of the entire record, this Panel concludes that the trial judge's decision was clearly erroneous and affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, this Panel grants Appellant's appeal.

ENTERED: