

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WARWICK

v.

SANDRA CERRITO

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C.A. No. T09-0002

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
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DECISION

ALMEIDA, J., DISANDRO, M.: Before this Panel on February 18, 2009—Magistrate Noonan (Chair, presiding) and Judge Almeida and Magistrate DiSandro sitting—is Sandra Cerrito’s (Appellant) appeal from a decision of Magistrate Cruise, sustaining the charged violation of G.L. 1956 § 31-17-5, “Entering from private road or driveway.”¹ The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On October 20, 2008, Officer Scott Robillard (Officer Robillard) of the Warwick Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Officer Robillard testified that on the date in question, at approximately 4:00 p.m., he responded to the scene of a two-car accident at 384 Atlantic Avenue, in the vicinity of the exit from the CVS/Pharmacy parking lot. (Tr. at 1.) Upon arriving at the scene, Officer Robillard spoke to the operator of one of the vehicles involved in the collision, Mr. Frank Genssoa Gnepa (Mr. Gnepa). Id. Mr. Gnepa informed Officer Robillard that he was traveling on Atlantic Avenue when a vehicle exited the CVS

¹ The Appellant was also charged with violating G.L. 1956 § 31-3-32, “Expiration of registration.” However, this charge was subsequently dismissed and is not presently before this Panel on appeal.

parking lot in front of his vehicle. Id. In order to avoid an imminent collision with the vehicle, Mr. Gnepa operated his vehicle left of the center dividing line of the roadway. Id. However, Mr. Gnepa's evasive maneuvers ultimately proved unsuccessful; the front passenger's side of Mr. Gnepa's vehicle collided with the front driver's side of the vehicle. Id. Mr. Gnepa did not testify before the trial magistrate to the circumstances surrounding the collision.

Officer Robillard then made contact with the driver of the second vehicle involved in the collision, later identified at trial as Appellant. Id. The Appellant informed Officer Robillard that, prior to exiting the parking lot of CVS/Pharmacy, she looked to the left and to the right and did not see any oncoming vehicles. Id. According to Appellant, her airbags deployed shortly after she entered Atlantic Avenue, an indication that, in her opinion, the other vehicle involved in the collision was operating at a high rate of speed. Id. Based on his observations of the scene, Officer Robillard concluded that Appellant did not enter the roadway in a safe manner. Id.

At the conclusion of Officer Robillard's trial testimony, Appellant testified on her own behalf. The Appellant testified that she "looked both ways" and then "looked a second time to the left" before exiting the parking lot of CVS/Pharmacy. (Tr. at 2.) The Appellant maintained that she did not see another vehicle approaching her location. Id.

Following the trial, the trial judge sustained the charged violation of § 31-17-5. Aggrieved by this decision, Appellant has filed a timely appeal to this Panel. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 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 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 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 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 magistrate’s decision is affected by error of law. Specifically, Appellant contends that Officer Robillard’s account of the circumstances surrounding the collision was hearsay, as Officer Robillard was not a percipient witness and Mr. Gnepa did not testify at trial and was not available for cross-examination. As the trial magistrate’s decision does not rest on a foundation of competent evidence, Appellant maintains that the charged violation must be dismissed.

Rule 15 of the Rules of Procedure for the Traffic Tribunal states that “[i]n all trials” before the Traffic Tribunal, “[a]ll evidence shall be admitted which is admissible . . . under the rules of evidence applied in the courts of this state.” Pursuant to Rule 802 of the Rhode Island Rules of Evidence, “[h]earsay is not admissible except as provided by these rules or by any statute or rule of the United States or Rhode Island prescribed pursuant to statute or constitutional authority.” The Rhode Island Rules of Evidence define “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.” R.I. R. Evid. 801.

Here, Officer Robillard’s trial testimony regarding his conversation with Mr. Gnepa immediately following the collision is hearsay, as it is “a statement, other than one

made by the declarant while testifying at the trial or hearing,” and was offered by Officer Robillard for its truth. In addition, Officer Robillard’s testimony does not fit into any of the recognized exceptions to the hearsay rule. The members of this Panel are satisfied that the trial magistrate’s decision to “bring[] into court [this] unreliable or confusing testimony without providing for clarification through examination of the declarant,” Powers v. Coccia, 861 A.2d 466, 469 (R.I. 2004) (citing Foster-Glocester Reg’l Sch. Comm. v. Bd. of Review, Dept. of Labor and Training, 854 A.2d 1008, 1018 (R.I. 2004)), constitutes an error of law—an error of law requiring reversal.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate’s decision is affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant’s appeal is granted, and the charged violation is dismissed.

CONCURRING IN PART, DISSENTING IN PART, NOONAN, M.: I agree with the two other members of this Panel that the trial magistrate’s decision to sustain the charged violation of § 31-17-5 based on the hearsay testimony of Officer Robillard constitutes an error of law. However, I write separately because I believe the charged violation could have been sustained if Officer Robillard had testified as to his observations of the physical damage to the vehicles involved in the collision and their location in the roadway, thereby allowing the trial magistrate to infer that Appellant caused the collision by failing to “yield the right-of-way to all vehicles approaching on the highway” Section 31-17-5.

Our Supreme Court gave its imprimatur to this use of inferences in cases involving motor vehicle collisions in Martino v. Leary, 739 A.2d 1181 (R.I. 1999). In Martino, the Court held that there was sufficient evidence from which a jury could have inferred that the defendant was negligent in “fail[ing] to exercise due care under the poor weather conditions that prevailed when he approached the intersection” where his vehicle collided with another vehicle. Id. at 1182. These inferences regarding the defendant’s lack of due care were permissible because “upon impact, plaintiff’s car spun around to face the opposite direction.” Id. As in Martino, the trial magistrate could have inferred—based on testimony adduced at trial by Officer Robillard regarding his observations of the accident scene—that Appellant’s “vehicle [was] about to enter or cross a highway from a private . . . driveway,” namely the exit from the CVS/Pharmacy, and that Appellant failed to “yield the right-of-way to all vehicles approaching on the highway.” Section 31-17-5. Thus, even if the hearsay testimony of Officer Robillard were completely disregarded, the

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charged violation could have been sustained based on inferences drawn by the trial magistrate.