STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL



CITY OF PROVIDENCE :
:
v. : C.A. No. T09-0029
:
PATRICK McCRACKEN :

## DECISION

**PARKER, J., GOULART, M.:** Before this Panel on May 27, 2009—Judge Ciullo (Chair, presiding) and Judge Parker and Magistrate Goulart sitting—is Patrick McCracken's (Appellant) appeal from a decision of Judge Almeida, sustaining the charged violation of G.L. 1956 § 31-27-9, "Parties to offenses." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. Judge Ciullo has filed a separate opinion concurring in the judgment.

## Facts and Travel

On December 1, 2008, Officer Mark DeCreco (Officer DeCreco) of the Providence 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 DeCreco testified that on the date in question, at approximately 2:30 a.m., he was dispatched to the vicinity of number 204 Federal Street. (Tr. at 2.) Upon arriving at the residence located at that address, he was informed by the home's owner that a "dark-color SUV with New Jersey registration . . . [had] hit the house [and] then fled . . . on Federal Street." Id. Approximately two minutes after making contact with the owner of number 204 Federal

Street, Officer DeCreco located the suspect vehicle in the vicinity of number 236 Federal Street. Id. Officer DeCreco indicated that the vehicle had sustained "heavy" front-end damage. Id.

Officer DeCreco testified that he and Lieutenant Gannon entered the residence located at number 246 Federal Street in an attempt to locate the operator of the SUV. (Tr. at 3.) Upon reaching the third floor of the residence, Officer DeCreco asked the occupants of the apartment if they knew an individual with Appellant's last name.[1] (Tr. at 2-3.) When it became clear that the occupants of the apartment would not cooperate with his investigation, Officer DeCreco asked all of the occupants to present identification. (Tr. at 3.) Lieutenant Gannon eventually located Appellant in a bedroom and asked him who had been driving the SUV involved in the collision. (Tr. at 4.) According to Officer DeCreco, Appellant was unsure who had been driving the vehicle at the time of the collision. Id. The Appellant also informed Officer DeCreco that a set of car keys was "missing" from his bedroom. Id. As Officer DeCreco was unable to determine conclusively who had been operating the vehicle on the date in question, he charged Appellant with violating § 31-27-9.

On cross-examination by counsel for Appellant, Officer DeCreco testified that he asked Appellant whether it was his routine practice to allow others to utilize his vehicle. (Tr. at 16.) According to Officer DeCreco, Appellant answered this inquiry in the affirmative. (Tr. at 17.)

The Court next heard testimony from Appellant. The Appellant testified that on November 30, 2008, at approximately 6:00 p.m., he arrived at his apartment on Federal Street and remained there until making contact with Officer DeCreco and Lieutenant Gannon at approximately 2:30 a.m. on December 1, 2008. (Tr. at 18.) When counsel inquired as to whether Appellant has a "personal policy" with respect to allowing others to operate his vehicle, Appellant testified that he "[doesn't] allow anybody [to] drive [his] car." (Tr. at 19.)

[1] Officer DeCreco was able to determine Appellant's last name based on the vehicle's registration. (Tr. at 3.)

With respect to the number and location of Appellant's car keys, Appellant testified that, prior to the date in question, he possessed three sets of keys for the SUV. (Tr. at 26.) After the incident, however, Appellant was left with only two sets of keys for the vehicle. Id. The Appellant indicated that, as of the date of trial, the third set of keys had not been located. Id.

At the conclusion of Appellant's trial testimony, the Court heard testimony from Janet Jones (Ms. Jones) and Alvin Catalan (Mr. Catalan), two of Appellant's three roommates. Ms. Jones testified that she arrived at the apartment that she shares with Appellant at approximately 1:00 p.m. on the date in question. (Tr. at 36.) Ms. Jones indicated that she was at the apartment when Appellant arrived at approximately 6:00 p.m. and that Appellant did not leave at any time. Id. With respect to Appellant's "personal policy" regarding usage of his vehicle, Ms. Jones testified that Appellant did not allow others to borrow his vehicle. (Tr. at 37.) In addition, Ms. Jones indicated that she was aware of at least two individuals who had requested the use of the vehicle and had been declined by Appellant. Id.

Mr. Catalan testified that Appellant did not leave their apartment at any time prior to the arrival of Officer DeCreco and Lieutenant Gannon. (Tr. at 45.) Like Ms. Jones, Mr. Catalan testified that "nobody drives [Appellant's] car." Id. When asked by counsel for Appellant whether he overheard Appellant's discussion with Officer DeCreco and Lieutenant Gannon, Mr. Catalan testified that Appellant, upon being informed that his car had been involved in a collision, responded to the effect of, "No, my car is in the [apartment's] parking lot. I have the key in my pocket." (Tr. at 48.)

Following the trial, the trial judge sustained the charged violation of § 31-27-9. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

## 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:
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> (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. Specifically, Appellant contends that the trial judge erred in sustaining the charged violation of § 31-27-9, as that statute does not constitute a substantive offense under the motor vehicle code. It is Appellant's position that the prosecution was required to prove to a standard of clear and convincing evidence that Appellant "commit[ed], attempt[ed] to commit, conspire[d] to commit, or aid[ed] or abet[ted] in the commission" of "any act declared in chapters 1-27 or chapter 34 of [the motor vehicle code] to be a crime"—namely, the hit-and-run collision that occurred at number 204 Federal Street. Once the State had satisfied its burden of proving that Appellant was a party to the hit-and-run offense "as a principal, agent, or accessory," the trial judge was required to find Appellant "guilty of that offense." See id. (Emphasis added.) As the prosecution did not charge Appellant with a hit-and-run and the trial judge did not find Appellant guilty of that offense, Appellant maintains that the trial judge's decision to sustain the "violation" of § 31-27-9 is affected by error of law.

Having reviewed the language of § 31-27-9, two members of this Panel are satisfied that the "parties to offenses" statute lends itself to only one interpretation: it provides for liability when a defendant has been adjudicated a "party to" another substantive offense under the motor vehicle code but does not, in and of itself, serve as a grounds for the imposition of civil liability. Based on the plain and clear language of the statute, a defendant who is a "party to" a substantive offense under the motor vehicle code—whether as principal, agent, or accessory—"shall be guilty of that offense." See § 31-27-9. Here, if the trial judge found, based on the reliable,

probative, and substantial evidence adduced at trial, that Appellant was a "party to" the hit-and-run collision that occurred at number 204 Federal Street, she was required to find Appellant guilty of that offense. For example, the trial judge could have found Appellant guilty of leaving the scene of an accident resulting in damage to his vehicle pursuant to § 31-26-2 or, in the alternative, guilty of leaving the scene of an accident resulting in "damage to fixtures legally upon or adjacent to" number 204 Federal Street pursuant to § 31-26-5. The trial judge erred, however, in treating participation in a violation of the motor vehicle code as a violation in and of itself. Thus, the trial judge's decision to impose liability under § 31-27-9 and not under another substantive section of the motor vehicle code constitutes an error of law and requires reversal.

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, two members of this Panel conclude that the trial judge'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.

ENTERED:

Judge Goulart

DATE: 8-18-09

**CONCURRING IN THE JUDGMENT, CIULLO, J.:** While I agree with the two other members of this Panel that substantial rights of Appellant were prejudiced by the trial judge's decision, I write separately because I believe that the trial judge's decision is defective for another reason: namely, it is not supported by the reliable, probative, and substantial evidence in the record. Based on my reading of the "parties to offenses" statute, § 31-27-9, I am convinced that it does indeed constitute a separate, substantive offense under the motor vehicle code. Participating in a violation of the motor vehicle code "as a principal, agent, or accessory" is the substantive offense. Accordingly, the burden was on the State to prove to a standard of clear and convincing evidence that Appellant was a "party to" the offense of hit-and-run in one of the aforementioned capacities. My review of the record reveals that the State failed to meet its burden, as there was insufficient legally competent evidence in the record before the trial judge that Appellant participated in the hit-and-run collision as a principal, agent, or accessory. Thus, while I believe that the trial judge's reasoning for imposing liability under § 31-27-9 is sound, I ultimately conclude that her decision to sustain the charge is clearly erroneous in light of the reliable, probative, and substantial evidence.

DATE: 7/31/09