

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T11-0021

JOANNA CARMINO LIZARDO

STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED  
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DECISION

PER CURIAM: Before this Panel on July 27, 2011—Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Noonan, sitting—is Joanna Carmino Lizardo’s (Appellant) appeal from a decision of Judge Almeida, sustaining the charged violation of G.L. 1956 § 31-11-20, “Permitting unauthorized person to drive prohibited.” Both parties were represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 23, 2011, while traveling on U.S. Route 6, headed east, in Providence, Franklin Lizardo (Lizardo) was involved in a motor vehicle accident with another vehicle. (Tr. at 31.) Trooper Stephen Brown (Trooper Brown), of the Rhode Island State Police responded to the accident. Id. Upon arriving at the scene, Trooper Brown ascertained from a registry report that Lizardo had a suspended license. Lizardo’s license had been suspended for four years. (Tr. at 37.) The registry report also revealed that the vehicle involved in the accident was registered to Lizardo’s wife, the Appellant. Id. Furthermore, at the scene of the accident, Lizardo was unable to produce proof of insurance for the vehicle he was operating. (Tr. at 36.) Based on this information and observations made at the scene, Trooper Brown charged Appellant, with

violating § 31-11-20, and § 31-47-9 “Penalties.” (Tr. at 37.) Appellant contested both charges, and the matter proceeded to trial.

Prior to trial, Appellant moved to dismiss both violations. Appellant argued that inadequate notice had been given regarding the violation of § 31-11-20. (Tr. at 4.) Appellant contended there was “unconstitutionally vague and ambiguous notice provided” because Appellant was “left to guess which provision of Title 31 [she violated], and therefore, [was] unable to articulate a reasonable defense.” (Tr. at 27.)

Trooper Brown provided background information regarding the incident in question. (Tr. at 10.) Trooper Brown noted that after placing Lizardo in the backseat of his police cruiser, Lizardo had a speaker-phone conversation with the Appellant. (Tr. at 15.) Trooper Brown overheard the Appellant tell Lizardo, “don’t let him arrest you; tell him you’re hurt, and he’s got to let you go by rescue.” (Tr. at 15.) Trooper Brown inferred from the two individuals’ marital relationship and the aforementioned phone conversation that Appellant knew Lizardo had a suspended license. (Tr. at 37.) Because of this information and the relationship between Appellant and Lizardo, Trooper Brown inferred that Appellant had knowingly allowed Lizardo to operate Appellant’s vehicle in violation of § 31-11-20. (Tr. at 37.)

After hearing additional arguments by Appellant, the trial judge denied the motion to dismiss. (Tr. at 30.) In denying the Motion to Dismiss, the trial judge inferred that because of the relationship between the two parties and the phone call that transpired, adequate notice of the underlying offense had been given to the Appellant.

The trial then began with Trooper Brown’s testimony regarding the traffic accident that took place on March 23, 2011. Trooper Brown testified that a registry record revealed that Lizardo’s license was suspended. (Tr. at 31.) Appellant objected to Trooper Brown’s testimony,

arguing that the registry report Trooper Brown relied on was inadmissible hearsay evidence and did not represent a properly authenticated public record. (Tr. at 32.) The trial judge disagreed, noting that to require all registry reports to be certified would place an unreasonable burden on police officers. (Tr. at 34.) Trooper Brown testified he had inferred that Appellant violated § 31-11-20 because of the marital relationship between them and due to the length of Appellant's suspension. (Tr. at 44.)

At the conclusion of the testimony, Appellant reasserted that any testimony Trooper Brown had proffered regarding the status of Lizardo's license or the status of the vehicle's registration, was inadmissible hearsay. Appellant reiterated that a certified record from the Department of Motor Vehicles was required, and that absent such a certified record, any reference to the registry record was improper. (Tr. at 50.)

Following Appellant's closing argument, the trial judge dismissed the violation of §31-47-9. However, the trial judge sustained the violation of § 31-11-20. The trial judge held that based on the totality of circumstances, there was adequate evidence to support the inference that the Appellant knew about her husband's suspended license and had permitted him to drive her vehicle. (Tr. at 67-69.) The trial judge found the phone conversation between the Appellant and Lizardo, the duration of Lizardo's suspended license, and a shared address for the Appellant and Lizardo on the date of the incident to be adequate evidence to support Trooper Brown's inferences. As such, finding that the State met its burden in proving all the elements of the offense under § 31-11-20. Appellant timely filed this appeal.

### Standard of Review

Pursuant to § 8-18-9, “[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8.”

Section 31-41.1-8 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’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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

### Analysis

On appeal, Appellant argues that the trial judge's decision was affected by an error of law and clearly erroneous in view of the reliable, substantive and probative record evidence. Specifically, Appellant contends that the summons issued to the Appellant provided insufficient notice. Additionally, Appellant argues the record evidence is insufficient to sustain the State's burden of proof regarding Appellant's knowledge of Lizardo's license suspension. Furthermore, Appellant contends that the trial judge's decision to allow Trooper Brown's testimony concerning the registry report constituted reversible error. Appellant asserts that certified copies of the Department of Motor Vehicle's records were required in order for the evidence to be properly admitted under the "public record" hearsay exception. Because such a certified copy was not provided, Appellant contends that any information proffered at trial regarding these records was inadmissible hearsay.

Appellant cites to G.L. 1956 § 9-19-40, which provides in relevant part that:

"In any administrative, civil, or criminal proceeding in which the status of the license of any person who drives a motor vehicle on any highway of this state is an issue, certified copies of relevant documents on file with the division of motor vehicles or with the official custodian of relevant documents of another state or subdivision thereof, and the certified statement of the administrator, his or her equivalent, or his or her duly appointed designee as to the status of the license, shall be admissible as evidence of the status of the license subject to the right of the defendant to subpoena the records in rebuttal. Upon request, copies shall be provided to the person or his or her counsel at least three days before the proceeding."

In the instant matter, where the status of Lizardo's license was clearly at issue as the underlying offense associated with § 31-11-20, a certified copy of the relevant documents on file with the

Department of Motor Vehicles would have been admissible at trial. However, in the instant matter, no certified copies of the relevant documents were provided. Absent such a certified copy, it must be determined whether or not references to the registry report by Trooper Brown constituted inadmissible hearsay.

Rhode Island Traffic Tribunal Rule 15(b) provides that “all 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.” As such, this Panel must analyze the Rhode Island Rules of Evidence to ascertain if Trooper Brown’s testimony regarding the registry report constituted hearsay. Rule 801(c) of 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.” In the instant matter, the testimony offered by Trooper Brown that he referenced the registry report in order to ascertain Lizardo’s status is clearly hearsay. The registry report was an out of court statement. Additionally, it was being offered to prove that the Lizardo’s license was, in fact, suspended, which in turn would bolster the prosecution’s case that Appellant allowed an unauthorized person to operate her vehicle.

The issue of Trooper Brown’s testimony regarding the registry report as hearsay is similar to other cases decided by our Supreme Court. For example, in State v. Mallett, our Supreme Court held that a FBI agent’s testimony regarding serology test results was inadmissible hearsay and the trial justice committed error allowing the testimony to be admitted. 600 A.2d 273, 276 (R.I. 1991). Additionally, in State v. Welch, our Supreme Court held that a police officer’s testimony regarding a state toxicology report was inadmissible hearsay. 114 R.I 187, 191, 330 A.2d 400, 402 (1975). In Welch, the officer that purchased marijuana from the defendant testified at the defendant’s probation violation hearing. Id. at 189, 401. The officer

testified that after the purchase, the officer transported the marijuana to the State Toxicologist's Office for identification. Id. The State Toxicologist's Office determined that the substance was, in fact, marijuana. Id. However, at the probation hearing, it was the officer and not a member of the State Toxicologist's Office that testified to the report regarding the presence of marijuana. Similarly, testimony regarding a registry report would be constituted as inadmissible hearsay. See Commonwealth v. Randall, 733 N.E. 2d 579 (Mass. App. Ct. 2000) (holding a police officer's testimony regarding a registry check was inadmissible hearsay and warranted a reversal of defendant's conviction).<sup>1</sup>

As such, the Rhode Island Rules of Evidence, case law and § 9-19-40 all provide a path for the introduction of registry records through proper authentication. However in the instant matter, there was no attempt on behalf of the State to prove and no evidence offered that the registry record had been properly authenticated. Furthermore, the State had the opportunity to obtain registry records and have them properly authenticated, but failed to do so.

Without properly conforming to the requirements of the Rhode Island Rules of Evidence, case law, or § 9-19-40, the information gleaned from the registry report by Trooper Brown is clearly inadmissible hearsay. Trooper Brown's testimony regarding the registry report was improperly admitted into evidence by the trial judge. The admission of evidence as to Trooper Brown's registry check, being the only credible evidence of Lizardo's license suspension, was substantially prejudicial to the Appellant. The trial judge undoubtedly relied on this evidence to sustain the violation against the Appellant. Therefore, the members of this Panel conclude that the trial judge's decision to sustain the charged violation is clearly affected by error of law.<sup>2</sup>

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<sup>1</sup> Furthermore, in each of these holdings the Court also determined that no hearsay exception applies. This Panel reaches the same conclusion regarding Trooper Brown's testimony.

<sup>2</sup> Having determined that the trial judge's decision should be reversed based on the hearsay issue, this Panel need not address Appellant's remaining assignments of error.

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find that the trial judge's decision is affected by an error of law and is erroneous in light of the lack of reliable, probative, and substantial record evidence. Substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.