

STATE OF RHODE ISLAND
RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	C.A. No. T21-0024
	:	21302500949
ANNA BARGER	:	

DECISION

PER CURIAM: Before this Panel on March 23, 2022—Magistrate Noonan (Chair), Associate Judge Parker, and Magistrate Kruse Weller, sitting—is the appeal of Anna Barger (Appellant) from a decision of Magistrate DiChiro (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-34-3, “Operation by Person Other than Lessee[.]” Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For the reasons set forth in this Decision, Appellant’s appeal is granted.

I

Facts and Travel

On August 20, 2021, Detective Geoffrey Dellefratte (Detective Dellefratte) of the Middletown Police Department charged Appellant with the aforementioned violation of the motor vehicle code for actions that reportedly occurred on July 15, 2021. *See* Summons No. 21302500949. Appellant contested the charged violations, and the matter proceeded to trial on November 3, 2021.

At trial, Detective Dellefratte testified that on July 15, 2021 at approximately 1:00 a.m., officers of the Middletown Police Department arrested Micah Martin (Mr. Martin) for reckless driving. (Tr. at 8:2-12.) At the time Mr. Martin was arrested, the vehicle he had been operating

was a black Chevrolet Spark, with the Florida license plate AFGY94. *Id.* at 8:6-8. Detective Dellefratte explained that after further investigation, he determined that the vehicle was rented through Enterprise Rental Company (Enterprise) in Malden, Massachusetts. *Id.* at 8:8-10. Detective Dellefratte testified that he obtained a copy of the rental agreement for the vehicle. *Id.* at 8:10-12.

Next at trial, Detective Dellefratte attempted to introduce into evidence a copy of this rental agreement. *Id.* at 8:10-12. However, Appellant's counsel objected to the introduction of the rental agreement. *Id.* at 8:13-14, 9:2-7. Appellant's counsel argued that in order to introduce the rental agreement into evidence, the prosecution would have needed a witness from Enterprise or a keeper of the records to authenticate the document. *Id.* at 9:2-7. The Trial Magistrate agreed that without proper authentication, the rental agreement was not an original document that could be admitted into evidence at trial. *Id.* at 9:8-11. As such, Trial Magistrate sustained Appellant's counsel's objection. *Id.* at 9:8-11, 8:15-22.

The Trial Magistrate also asked whether Detective Dellefratte was the arresting officer in the case, to which Detective Dellefratte responded that he had not been the arresting officer. *Id.* at 9:15-18. The Trial Magistrate noted that this was problematic because Detective Dellefratte was not the one who ascertained that the vehicle was driven by someone other than the lessee. *Id.* at 9:22-10:2. However, because Detective Dellefratte testified that he had interviewed Appellant, the Trial Magistrate permitted Detective Dellefratte to continue his testimony. *Id.* at 9:22-10:9.

Detective Dellefratte testified that on July 23, 2021, at the Middletown Police Department, he interviewed Appellant about the incident. *Id.* at 10:13-15. Detective Dellefratte explained that prior to this interview, Appellant was read her *Miranda* rights, and she stated she understood those rights. *Id.* at 10:15-17. Detective Dellefratte testified that Appellant admitted both that she had

rented the vehicle and also that she permitted Mr. Martin to operate the rental vehicle. *Id.* at 10:17-22. Detective Dellefratte testified that Appellant had been under the impression that Mr. Martin was planning to drive to Providence, Rhode Island in the leased vehicle. *Id.* at 12:3-6. Detective Dellefratte said that based on Appellant's statements to him, he charged her with the aforementioned violation. *Id.* at 12:10-15. Detective Dellefratte also noted that Enterprise had not requested him to make the charge. *Id.* at 13:1-4.

During the cross-examination of Detective Dellefratte, Appellant's counsel elicited testimony from the detective clarifying some aspects of the incident. *See id.* at 13:13-16:3. During the course of the investigation, Detective Dellefratte learned that Appellant resided in Massachusetts and rented the vehicle in Massachusetts. *Id.* at 13:20-14:3. After further questioning by Appellant's counsel, Detective Dellefratte testified that he had discovered that Mr. Martin resided in Massachusetts, and that Appellant was not with Mr. Martin at the time of the incident. *Id.* at 14:12-15:2. Appellant's counsel also inquired as to whether Detective Dellefratte had spoken with Appellant about the rental agreement, and Detective Dellefratte responded affirmatively. *Id.* at 15:17-1.

Appellant was next to testify at trial on direct examination. *Id.* at 17:11. Appellant explained that she lives in Boston, Massachusetts and lived in Boston on the date of Mr. Martin's arrest. *Id.* at 17:12-18. Appellant testified that she allowed Mr. Martin to operate the rental vehicle on July 14, 2021, and that Mr. Martin had informed her that he had plans to drive to Providence. *Id.* at 18:10-12; 19:2-3.

The Trial Magistrate found that the prosecution proved Appellant violated § 31-34-3 by clear and convincing evidence. *Id.* at 21:17; 23:9-12. The Trial Magistrate incorporated Detective Dellefratte's testimony into his findings of fact but only because Detective Dellefratte spoke to

Appellant. *Id.* at 21:18-21. The Trial Magistrate noted, “[h]ad [the Middletown Police] not spoken to [Appellant], then they couldn’t prove their case, and she did what she had to do and what she should do, as a good citizen, which is cooperate with the police. She is being honest and credible. I believe her testimony.” *Id.* at 21:21-22:2. For a sentence, the Trial Magistrate imposed an \$85 fine but waived the court costs. *Id.* at 22:2-6.

After the Trial Magistrate imposed this sentence, Appellant’s counsel expressed concern with the decision. *Id.* at 22:10-20. Specifically, Appellant’s counsel argued there was not sufficient evidence to establish an element of the violation: that the leasing company did not give permission for individuals other than Appellant to operate the rented vehicle. *Id.* at 22:10-17. Despite Appellant’s counsel’s arguments, the Trial Magistrate still found that the State proved the charged violation by clear and convincing evidence. *Id.* at 23:9-12. Appellant timely filed this appeal.

II

Standard of Review

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 as follows, 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 ‘[c]learly 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 (quoting Sections 31-43-4(6)(d) and (e)). “Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions” on appeal. *Id.*; see *Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that the Trial Magistrate erred by finding that the prosecution proved the violation of § 31-34-3, “Operation by Person Other than Lessee[,]” by clear and convincing evidence because the prosecution failed to establish a necessary element of the offense. (Appellant’s Memorandum in Support of Appeal (Appellant’s Mem.) 6.) Appellant also argues that the Trial Magistrate erroneously shifted the burden of proving this offense to her, rather than properly placing the burden on the prosecution. *See id.* at 8.

A

Operation of a Vehicle by Person other than Lessee

Appellant argues that the prosecution failed to prove Appellant violated § 31-34-3 because the prosecution did not establish a necessary requirement of the offense, which the prosecution had the sole burden of proving. *See id.* at 6, 8. Section 31-34-3 provides as follows: “Whenever the owner of a motor vehicle rents a vehicle without a driver to another it shall be unlawful for the lessee to permit any other person to operate the vehicle without the permission of the owner.” Sec. 31-34-3. In order to sustain a violation of § 31-34-3, the Trial Magistrate is required to find by clear and convincing evidence that (1) the lessee gave another person permission to operate a rented vehicle, and (2) the lessee gave this permission without obtaining permission of the actual owner of the vehicle. *See id.*

The first element of the violation, that Appellant gave another person permission to operate the rented vehicle, was established at trial because Appellant admitted to giving Mr. Martin permission to operate the rented vehicle.¹ *See id.* at 10: 17-22; 18:10-12. Appellant does not dispute that there was sufficient evidence to prove this element. As such, Appellant conceded to the first element of the offense at trial. *See* Sec. 31-34-3.

However, Appellant argues that the prosecution failed to prove the second element, that Appellant allowed Mr. Martin to operate the vehicle without the permission of Enterprise Rental Company. (Appellant’s Mem. 6.) The prosecution attempted to introduce into evidence a rental agreement between Appellant and Enterprise as evidence that Enterprise did not permit Appellant

¹ Detective Dellefratte testified that at the Middletown Police Department on July 23, 2021, Appellant admitted she had rented a vehicle and permitted Mr. Martin to operate the vehicle. (Tr. at 10: 17-22.) Additionally, Appellant herself testified that she allowed Mr. Martin to operate the rental vehicle on July 14, 2021. *Id.* at 18:10-12.

to allow another individual to operate the vehicle, but the rental agreement was never admitted into evidence.² (Tr. at 8:10-22.) The prosecution did not attempt to introduce any other evidence on this element. Without any evidence that Enterprise prohibited Appellant from allowing others to use the rental vehicle, the prosecution could not prove the second element of the aforementioned violation by clear and convincing evidence. *See* Sec. 31-34-3. In light of the prosecution's inability to prove this element, the Trial Magistrate erred by sustaining the violation.

Having reviewed the record in its entirety, this Panel finds that the prosecution did not meet the burden of proof set forth in Rule 17. Evidence that satisfies the "clear and convincing evidence" standard "must persuade the [factfinder] that the proposition is highly probable, or must produce in the mind of the factfinder a firm belief or conviction that the allegations in question are true." *Cahill v. Morrow*, 11 A.3d 82, 88 n.7 (R.I. 2011) (quoting 29 Am. Jur. 2d *Evidence* § 173 at 188-89 (2008)). Based on the entire record, there was not any evidence for the Trial Magistrate to find that it was "highly probable" Appellant did not have permission to allow another individual to operate the rental vehicle. *See Cahill*, 11 A.3d at 88 n.7 (quoting 29 Am. Jur. 2d *Evidence* § 173 at 188-89 (2008)). The evidence in the record does not support the Trial Magistrate's determination that the prosecution established a *prima facie* case. As such, the charged violation of § 31-34-3 cannot be sustained as supported by clear and convincing evidence.

B

The Decision to Exclude the Rental Agreement

² At trial, Detective Dellefratte attempted to introduce into evidence a copy of the rental agreement, but Appellant's counsel objected to the introduction of the rental agreement document. *Id.* at 8:10-14. Appellant argued that in order for the prosecution to introduce the rental agreement into evidence, the prosecution would have needed a witness from Enterprise or a keeper of the records to authenticate the document. *Id.* at 9:2-7. The Trial Magistrate agreed that without proper authentication, the rental agreement was not admissible at trial. *Id.* at 9:8-11.

Because the Trial Magistrate’s decision to not admit the rental agreement into evidence could have had a significant impact on the outcome of this case, this Panel is inclined to ensure the Trial Magistrate’s decision to exclude the rental agreement was proper. A trial justice has wide discretion in determining the relevancy, materiality, and admissibility of offered evidence. *See State v. Houde*, 596 A.2d 330, 335 (R.I. 1991). The trial justice’s ruling will be upheld absent a clear abuse of discretion. *Id.* To reiterate, it is well-settled that “the admissibility of evidence is within the sound discretion of the trial justice.” *State v. Grayhurst*, 652 A.2d 491, 504 (R.I. 2004). When reviewing a trial justice’s or magistrate’s evidentiary determination, “we will not conclude that a trial justice abused his or her discretion as long as some grounds to support the decision appear in the record.” *Id.* at 505 (quoting *State v. Pena–Rojas*, 822 A.2d 921, 924 (R.I. 2003)). As such, this Panel can only examine whether the Trial Magistrate clearly abused his discretion in deciding not to admit the rental agreement document that the prosecution attempted to introduce into evidence at trial.

Pursuant to Rule 15 of the Traffic Tribunal Rules of Procedure, the Rhode Island Rules of Evidence govern “all proceedings before the Traffic Tribunal.” Traffic Trib. R. P. 15(b). Rhode Island Rule of Evidence 402 provides that “all *relevant* evidence is admissible, except as otherwise provided by the Constitution of the United States, by the [C]onstitution of Rhode Island, by act of [C]ongress, by the [G]eneral [L]aws of Rhode Island, by these rules, or by other rules applicable in the courts of this state.” R.I. R. Evid. 402 (emphasis added). Relevant evidence is defined as “evidence having any tendency to make any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” R.I. R. Evid. 401.

Based on a review of the record, it is clear that the Trial Magistrate did not err in excluding the rental agreement from evidence, because the prosecution did not provide an adequate

foundation establishing the authenticity of the document. *See* R.I. R. Evid. 901; *O'Connor v. Newport Hospital*, 111 A.3d 317, 323 (R.I. 2015) (“[A]uthentication and identification are regarded as a special aspect of relevancy; evidence is relevant only if it is in fact what the party seeking its admission claims it to be.”). Here, the prosecution sought to introduce into evidence a document, but failed to make any effort to authenticate this document. As such, the Trial Magistrate was unable to determine that the evidence was “in fact what [the prosecution] claimed it to be[.]” and so the evidence was not relevant. *See id.* On the record, the Trial Magistrate specifically said, “Counsel is correct. [The rental agreement] is not an original document. Enterprise would have to come in and authenticate it[.]” (Tr. at 9:9-11.) Therefore, the Trial Magistrate did not abuse his discretion by deciding to not admit the document that the prosecution proffered at trial. As mentioned previously, without this document, the prosecution could not prove the second element of the violation by clear and convincing evidence.

IV

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 was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5)-(6). Accordingly, Appellant’s appeal is granted, and the charged violation is dismissed.

ENTERED:

Magistrate William T. Noonan (Chair)

Magistrate Erika Kruse Weller

Associate Judge Edward C. Parker

DATE: _____