STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.		**RHODE ISLAND TRAFFIC TRIBUNAL**
CITY OF CRANSTON	:	
	:	
v.	:	**C.A. No. T15-0017**
	:	**07402051458**
HELEN PIRRI	:	

DECISION

PER CURIAM: Before this Panel on June 10, 2015—Magistrate Noonan (Chair), Chief Magistrate Guglietta, and Magistrate Abbate, sitting—is Helen Pirri's (Appellant) appeal from a decision of Administrative Magistrate DiSandro III (Trial Magistrate), 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.

Facts and Travel

On December 2, 2014, Officer Eric Leclerc (Officer Leclerc) of the Cranston Police Department charged Appellant with § 31-27-9, "Parties to offenses" and § 31-26-3, "Duty to give information and render aid." The Appellant contested the charges, and the matter proceeded to trial on March 17, 2014.

At trial, Officer Leclerc testified that on December 2, 2014, he was investigating a hit and run accident on Comstock Parkway. (Tr. at 1.) Officer Leclerc spoke with Mr. Hollis Dolin (Mr. Dolin) who was involved in the accident. Id. Officer Leclerc testified that Mr. Dolin stated a "dark colored SUV left the scene." Id. Officer Leclerc explained that approximately a week later, Mr. Dolin contacted him stating that he saw the SUV parked in the driveway of 108 Tomahawk Trail. Id. Officer Leclerc accompanied Mr. Dolin to the residence where Mr. Dolin

identified the parked vehicle as the one that struck his vehicle. Id. Officer Leclerc then contacted the homeowner (Appellant) who stated that she was not involved in a motor vehicle accident. Id. Officer Leclerc testified that the homeowner added "her son took the vehicle and was involved in a motor vehicle accident the night before." Id. At that time, Officer Leclerc contacted his supervisor and issued a citation. Id. Officer Leclerc added that there was "front end damage on the vehicle that was parked at 108 Tomahawk [T]rail that was consistent with the damage that was reported on Comstock Parkway." Id. at 2.

On cross-examination by counsel for Appellant, Officer Leclerc testified that he was first notified of the accident on November, 25, 2014. Id. Officer Leclerc added that aside from the investigation and Mr. Dolin's statements, he had no independent knowledge that Appellant's vehicle was the vehicle in the accident. Id.

Subsequently, Mr. Dolin testified. Id. at 3. Mr. Dolin stated that on November 25, 2014, he was driving south on Onlyon Road around 7pm, and was approaching the intersection of Collingwood Drive, which has a stop sign. At that time, Mr. Dolin noticed a dark colored SUV speeding, and observed as it went "right through the stop sign." Id. Mr. Dolin described "a bend in the road" and "a large boulder in someone's yard" after the stop sign. Id. Mr. Dolin stated that "the vehicle was heading straight for that boulder." Id. He pulled over and stopped his car because he "knew there was going to be an accident." Id. Thereafter, the vehicle was turning to the left quickly and it broad sided [Mr. Dolin]. Id. After hitting Mr. Dolin, "the vehicle sped up on Onlyon Road and left the area." Id. Thereafter, Mr. Dolin noticed a Jeep emblem left in the road. Id. Mr. Dolin stated that he was unable to identify the operator of the vehicle at the time of the accident. Id. However, on December 2, 2014, he was on his way home

and saw the vehicle in a neighbor's driveway. Id. Thereafter, he contacted the Cranston Police Department. Id.

On cross-examination, Mr. Dolin clarified that he never saw the operator of the vehicle. Id. However, Mr. Dolin stated that he recognized the vehicle in Appellant's driveway by the "shape of the vehicle, color, [J]eep, [and] there was an emblem in the street. . . ." Id. at 4.

Thereafter, Appellant's counsel motioned the court to dismiss the charges, arguing there is no evidence that Appellant was the driver. Id. at 4-5. The Trial Magistrate stated that he would rule on the motion at the close of all evidence. Id. at 5.

Subsequently, Appellant testified that on December 2, 2014, an officer came to her house and "he wanted to know what happened to the [J]eep." Id. The Appellant told the officer that she was not driving it and there was a hit and run accident the night before on Broad Street. Id. The Appellant testified that she was not driving the vehicle on November 25, 2014 when Mr. Dolin's car was hit, and she does not know if the vehicle was involved in that accident. Id. Appellant stated she is the registered owner of the Jeep, but it is an extra vehicle for the household. Id. at 5-6. She added that she has "no clue where [the damage on the Jeep] came from." Id. at 6.

After hearing the testimony provided, the Trial Magistrate found that on December 2, 2014, Officer Leclerc investigated a hit and run accident that involved Mr. Dolin. Id. at 7. Officer Leclerc and Mr. Dolin responded to Appellant's address, and Officer Leclerc spoke with Appellant, the registered owner of the vehicle. Id. at 8. The Appellant indicated that she was aware of the damages to the vehicle, and that it had been involved in a motor vehicle accident the night before. Id. Officer Leclerc observed that the damages to Appellant's vehicle were consistent to the damages reported by Mr. Dolin. Id. Furthermore, the Trial Magistrate found

that Appellant stated that she was not the driver of the vehicle on November 25, 2014, and that no one in her household knows how the vehicle was damaged. Id. Thereafter, the Trial Magistrate found there was insufficient evidence to sustain the "duty to give information" violation because there was "no evidence that [Appellant] was in fact the operator of the vehicle." Id. at 9. However, the Trial Magistrate sustained the "parties to offense" violation. Id. Aggrieved by the Trial Magistrate's decision, Appellant timely filed the instant appeal.

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 prejudicial 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 Magistrate's decision is affected by error of law. Specifically, Appellant contends that the Trial Magistrate erred in sustaining the charged violation of § 31-27-9, "Parties to offenses" as that statute does not constitute a substantive offense under the motor vehicle code.

Section 31-27-9 reads,

> "Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of, any act declared in chapters 1 - 27 or chapter 34 of this title to be a crime, whether individually or in connection with one or more other persons, or as a principal, agent, or accessory, shall be guilty of that offense, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate any provision of those chapters is similarly guilty of the offense."

The Rhode Island Supreme Court has held that "when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Iselin v. Ret. Bd. of the Emps.' Ret. Sys. of RI, 943 A.2d 1045, 1049 (R.I. 2008); Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226

(R.I. 1996). Moreover, when the Court examines an unambiguous statute, "there is no room for statutory construction and we must apply the statute as written." In re Denisewich, 643 A.2d 1194, 1197 (R.I. 1994).

The language of § 31-27-9, "Parties to offenses" statute lends itself to only one interpretation: it provides for liability when a motorist 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. See § 31-27-9; see also City of Providence v. Patrick McCracken, C.A. No. T09-0029, Aug. 18, 2009, R.I. Traffic Trib. (finding § 31-27-9 does not serve as grounds for the imposition of civil liability unless the motorist is found to be a party to an offense under the motor vehicle code). Based on the plain and clear language of the statute, a motorist 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." Sec. 31-27-9 (emphasis added).

Here, if the Trial Magistrate found "no evidence that [Appellant] was . . . the operator of the vehicle." (Tr. at 9.) Thus, the Trial Magistrate dismissed the "duty to give information" violation. Consequently, the Trial Magistrate erred in sustaining the "parties to offense" violation because Appellant was not found guilty under another substantive section of the motor vehicle code. Thus, the Trial Magistrate'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.

Conclusion

This Panel has reviewed the entire record before it. Having done so, members of this Panel conclude 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.

ENTERED:

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Magistrate William T. Noonan (Chair)

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Chief Magistrate William R. Guglietta

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Magistrate Joseph A. Abbate

DATE: _____