

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WOONSOCKET

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:
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v.

**C.A. No. M15-0005
14412504555**

PETER SCHRAM

DECISION

PER CURIAM: Before this Panel on August 5, 2015—Magistrate Noonan (Chair), Chief Magistrate Guglietta, and Magistrate Abbate, sitting—is Peter Schram’s (Appellant) appeal from a decision of Judge Lloyd Gariepy of Woonsocket Municipal Court (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-18-8, “Due care by drivers.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 13, 2014, Officer Joseph Wasilewski (Officer Wasilewski or Officer) of the Woonsocket Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge and the matter proceeded to trial on April 22, 2015.

At trial, Mr. Timothy King-Goddard (Mr. King-Goddard) testified on behalf of the City. (Tr. at 1.) Mr. King-Goddard testified that on December 13, 2014 at approximately 6:00 p.m., he and his girlfriend were involved in an accident on Park Avenue. Id. Mr. King-Goddard stated that they were walking on Park Avenue toward Hamlet Avenue—when they crossed the street and a silver car struck his girlfriend. Id. at 2-6. Mr. King-Goddard clarified that the passenger side bumper of the car hit his girlfriend when she was approximately three feet from the curb, causing

her to fall to the ground. Id. at 6-7. Mr. King-Goddard did not hear the car accelerate or attempt to stop. Id. at 7.

On cross-examination, Appellant questioned Mr. King-Goddard about a third person. Id. at 8. Mr. King-Goddard responded that only he and his girlfriend were present. Id. The Appellant also asked Mr. King-Goddard for medical records, and he replied that he did not have any records on him. Id.

After Mr. King-Goddard testified, his girlfriend, Ms. Lisa Derricks (Ms. Derricks), also testified on behalf of the City. Id. at 13. Ms. Derricks testified that on December 13, 2014, at approximately 6:30 p.m., she and Mr. King-Goddard were walking on Park Avenue to go to dinner. Id. at 14. They passed the intersection of Park Avenue and Willow Street when they decided to cross Park Avenue. Id. at 15. Ms. Derricks testified that they looked both ways and they saw a silver car approximately six or seven car lengths away, so they determined it was safe to cross the street. Id. at 16. She stated that she was about three feet from the curb when the passenger side of the silver car struck her knee. Id. at 17. Ms. Derricks stated that she was knocked down and unable to get up after the collision. Id. at 17-18. She stated that she was walking solely with Mr. King-Goddard but that others came out of their houses and gathered around after the accident. Id. at 18. On cross-examination, Ms. Derricks clarified that she went to the hospital that evening but only suffered a bruise on her knee and scrapes on her hands and knees. Id. at 18-19.

Next, Officer Wasilewski testified that he has been an officer for the Woonsocket Police Department for almost a year. Id. at 19. He stated that on December 13, 2014, he was on duty and called to the area on Park Avenue where the incident occurred. Id. at 20. When he arrived on scene, he testified that he observed a silver Pontiac parked across from 122 Park Avenue, he

identified the driver as the Appellant, and he added that the Appellant was talking to Sergeant Marcos (the first officer on the scene). Id. Officer Wasilewski stated that he took a statement from Ms. Derricks before she was transported to the hospital by ambulance. Id. He also spoke with Mr. King-Goddard and the Appellant, separately. Id. at 21. The Officer testified that Appellant told him that he did not see either pedestrian crossing the street and that he was driving at a normal rate of speed when he struck the pedestrian. Id. The Appellant told the Officer that he immediately stopped his car, contacted the police, and locked himself in his car to wait for the police because people had begun to come outside. Id. The Officer added that he did not observe brake marks or any indication that Appellant applied his brakes before the collision. Id. Consequently, the Officer testified that he charged the Appellant with violating “due care by drivers,” the statute that prohibits a driver from striking a pedestrian. Id. at 21. On cross-examination, the Officer explained that the main fact supporting the charge of “due care by drivers” was that the Appellant struck Ms. Derricks. Id. at 25.

In his defense, the Appellant testified that on December 13, 2014, at about 7:00 p.m., he was traveling down Park Avenue towards Hamilton Avenue. Id. at 26. When he approached Grove Street he saw three silhouettes on the side of the road and continued driving at about 15-20 miles per hour. Id. at 26. He saw them step on the curbstone when the third person decided to step back into the road. Id. The Appellant stated that Ms. Derricks was in front of the third person when the third person pushed her into his car. Id. The Appellant testified that he does not believe that he hit any of the pedestrians. Id. at 27. The Appellant reiterated that the third person pushed Ms. Derricks into his car. Id. Appellant stated that upon the collision, he picked up his phone and called 911, stating that he hit “three people . . . there’s just two [here now] . . .

something is going on here.” Id. at 28. The Appellant also added that he skidded approximately fifteen feet prior to stopping. Id. at 34.

After both parties were given an opportunity to present evidence, the Trial Judge issued a decision sustaining the charged violation. Id. at 35-38. The Trial Judge noted that all witnesses testified to a similar set of facts, which were corroborated by the police report. Id. at 36. However, Appellant testified that there were three people, which was not reflected in the police report. Id. The Trial Judge found that such a significant detail, if true, would have been mentioned in the witness statement that Officer Wasilewski took from the Appellant. Id. Thus, the Trial Judge determined that there were two individuals crossing Park Avenue and their silhouettes were seen by the Appellant. The Appellant slowed down and came to a stop upon hitting Ms. Derricks. Id. at 36-37. The Trial Judge added that there was no evidence of “a pushing of anyone.” Id. at 37. As a result, the Trial Judge found that Appellant was not exercising due care to avoid the collision, and the Trial Judge sustained the charge. Id. Aggrieved by the Trial Judge’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 Municipal Court. 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:

- (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 contends that the Trial Judge's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant argues that he was not heard or treated fairly because his testimony was inconsistent with the other witnesses. In support of the inconsistency, Appellant points to his own testimony, that a third person pushed Ms. Derricks into his car.

Rhode Island General Law governing the due care of drivers reads in pertinent part, “[e]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle upon any roadway, shall give an audible signal when necessary. . . [v]iolations of this section are subject to fines enumerated in § 31-41.1-4.” Sec. 31-18-8. This duty placed upon drivers to “exercise due care to avoid colliding with any pedestrian,” encompasses a driver’s duty to anticipate another person’s negligence. See Malinowski v. United Parcel Service, Inc., 727 A.2d 194, 197 (R.I. 1999) (stating “we disavow the principle that drivers are under no duty to anticipate another person's negligence”). Consequently, regardless of the inconsistency, or whether Ms. Derricks was pushed, Appellant had a duty to exercise due care and anticipate any potential negligence by the pedestrians. The Appellant failed to uphold this duty.

Moreover, Appellant’s argument that this Panel should reverse the Trial Judge’s decision because of the witness inconsistency exceeds the jurisdiction of this Panel. In Link, our Supreme Court made clear that 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, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the witnesses, it would be impermissible to second-guess the Trial Judge’s “impressions as he . . . observe[d] [the witnesses] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony provided, the Trial Judge determined that Appellant collided with Ms. Derricks, and, thus, did not exercise due care. See Tr. at 36-37. The Trial

Judge noted that the Appellant testified that a third person pushed Ms. Derricks into his car, but he did not find Appellant's testimony credible based on his prior statement in the police report. See id. at 37. Therefore, confining our review of the record to its proper scope, this Panel is satisfied that the Trial Judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (The [appellate court] should give great deference to the [trial magistrate's] findings and conclusions unless clearly wrong).

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 supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate William T. Noonan (Chair)

Chief Magistrate William R. Guglietta

Magistrate Joseph A. Abbate

DATE: _____