STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF BRISTOL	:	
	:	
v.	:	**C.A. No. M12-0019**
	:	**07102016273**
REBECCA RAMOS	:	

DECISION

PER CURIAM: Before this Panel on January 16, 2013—Chief Magistrate Guglietta (Chair, presiding), Administrative Magistrate Cruise, and Magistrate Noonan, sitting—is Rebecca Ramos's (Appellant) appeal from a decision of the Municipal Court, sustaining the charged violation of G.L. 1956 § 31-17-4, "Vehicle entering stop or yield intersection." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

This violation arose from an automobile accident that occurred at the intersection of Franklin Street and Hope Street in Bristol. (Tr. at 4.) On the afternoon of July 11, 2012, a vehicle driven by Appellant made contact with a vehicle driven by Karen Ann Booth as the Appellant traveled east on Franklin Street. (Tr. at 3-5.) At the scene of the accident, the Appellant was cited by the Officer after the Officer had observed the damage to the vehicles and spoken to each person involved. (Tr. at 4.)

The trial commenced with the Officer testifying that he responded to the scene of the accident around 12:39 p.m. and began his investigation soon after he arrived. (Tr. at 3.) The Officer stated that he did not observe the accident but was able to see the damage to the vehicles

involved. (Tr. at 3-4.) In his investigation, he was able to speak with all of the interested parties, including an independent witness who was working at a construction cite on Hope Street. Id. The Officer continued his testimony by stating, ". . . according to the witness, Mrs. Ramos failed to stop at a stop sign as she traveled east on Franklin." (Tr. at 4.) After an objection by Appellant, the Officer proceeded by stating that he cited Appellant with violating the traffic law based on his investigation. (Tr. at 5.)

Next, the other driver involved in the accident, Karen Ann Booth, then testified that she did not see whether the Appellant stopped at the stop sign on Franklin Street. (Tr. at 6.) As she proceeded northbound on Hope Street, she explained, the traffic seemed normal and then suddenly her vehicle was hit by Appellant's vehicle. Id.

Subsequently, the Appellant testified that she came to a complete stop and waited thirty to thirty-five seconds when she reached the stop sign on Franklin Street before proceeding. (Tr. at 10.) She then proceeded through the intersection after looking both ways when she was struck by a vehicle traveling north on Hope Street. Id.

Following Appellant's testimony, the Officer then proceeded to question the Appellant about the accident after the trial judge asked the Officer if he had any questions for the Appellant. (Tr. at 13.) The Officer went on to present a series of questions to the Appellant regarding the incident. (Tr. at 13-14.)

At the close of evidence, the trial judge began to ponder over the evidence presented at trial in a quest to determine which vehicle hit the other. (Tr. at 15.) In rendering his decision, the trial judge cited the standard he used in coming to his conclusion as ". . . the preponderance of what's in front of me . . ." Id. The trial judge found significant that based on the evidence presented before him, it was difficult for him to accept the fact that Appellant's vehicle did not

hit the other vehicle. Id. In summation, the trial judge sustained the violation. Id. 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 decision made by the trial judge was arbitrary and capricious. In particular, Appellant contends that the judge allowed the Officer to testify to the statement of an independent witness who was not present during the trial and the judge applied an incorrect standard in sustaining the charge. The Appellant further argues that the record is devoid of specific findings of fact to satisfy the prevailing elements as set forth in § 31-17-4.

Rule 15 of the Traffic Tribunal Rules of Procedure makes clear that "[a]ll 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." Traffic Trib. R.P. 15. Thus, hearsay evidence is not admissible at the adjudication of a civil violation of the motor vehicle code unless it falls within one of the recognized exceptions to the hearsay rule. See R.I. R. Evid. 802, 803, 804.

The Officer testified at trial that Appellant failed to stop at a stop sign, but this testimony was based entirely on his conversations with an eyewitness. The Officer did not observe Appellant's vehicle prior to arriving at the scene and, as such, he could not testify from his personal knowledge as to whether the Appellant actually stopped at the stop sign. Thus, the out-of-court statement of the eyewitness, relayed to the officer and set forth in his trial testimony, constitutes hearsay because such statements were "other than one[s] made by the declarant while testifying at the trial or hearing, [and were being] offered in evidence to prove the truth of the

matter asserted," that Appellant failed to obey a stop sign. R.I. R. Evid. 801. Therefore, the out-of-court statement made by the witness was inadmissible at trial.[1]

Additionally, Rule 17 of Traffic Tribunal Rules of Procedure reads, in relevant part: "The burden of proof shall be on the prosecution to a standard of clear and convincing evidence." Therefore, in order for the charge to be sustained, there must be clear and convincing evidence in the record that Appellant operated her vehicle in violation of the statute. The Bristol Police Officer who responded to the accident relied on a statement made by a construction worker who was at the scene of the accident and supposedly witnessed the traffic violation committed by the Appellant. (Tr. at 4.)

It is true that our Rules do not expressly define "clear and convincing evidence." However, this Panel is guided by the definition utilized by our Supreme Court:

> "The standard of clear and convincing evidence means more than a mere exercise in semantics. It is a degree of proof different from a satisfaction by a 'preponderance of the evidence' which is the recognized burden in civil actions and from proof 'beyond a reasonable doubt' which is the required burden in criminal suits. "To verbalize the distinction between the differing degrees more precisely, proof by a preponderance of the evidence' means that a jury [or judge] must believe that the facts asserted by the proponent are more probably true than false; proof 'beyond a reasonable doubt' means the facts asserted by the prosecution are almost certainly true; and proof by 'clear and convincing evidence' means that the jury [or judge] must believe that the truth of the facts asserted by the proponent is highly probable." State v. Fuller-Balletta 996 A.2d 133, 142 (R.I. 2010) (quoting Parker v. Parker, 103 R.I. 435, 442 238 A.2d 57, 60-61 (1968)).

The testimony in this case falls short of qualifying as clear and convincing evidence that Appellant operated her vehicle in violation of the statute charged. More importantly, the trial

[1] It is important to note that the Appellant properly objected to the admission of the testimony at the appropriate time at trial.

judge came to his conclusion by reciting the standard as ". . . the preponderance of what's in front of me . . ." instead of the clear and convincing standard. (Tr. at 15.) In sum, the trial judge relied on the incorrect standard and failed to present any facts that "enable[d] [us] to come to a clear conviction without hesitancy of the truth of the [citation charged.]" See Aetna Ins.Co.v. Paddock, 301 F.2d 807, 811 (5th Cir. App. 1963). Accordingly, the charged violation of § 31-17-4 cannot be sustained.

Furthermore, as required by § 31-41.1-6(b),[2] the members of this Panel conclude that the trial judge failed to make any specific findings of fact. He came to the conclusion that "[Appellant's] vehicle struck the other one . . . ," but did not state the specific facts that led him to that conclusion. (Tr. at 15.) In the absence of such testimony, the trial judge's decision to sustain the charged violation of § 31-17-4 is affected by error of law and requires reversal. Accordingly, this Panel is satisfied that the trial judge's decision to sustain the charged violation of § 31-14-2 was clearly erroneous in light of the lack of record evidence.[3]

[2] Section 31-41.1-6(b) reads, "[a]fter due consideration of the evidence and arguments, the judge or magistrate shall determine whether the charges have been established, and appropriate findings of fact shall be made on the record. If the charges are not established, an order dismissing the charges shall be entered."

[3] While this issue was not raised by Appellant, this Panel has great concern for the manner in which the testimony in this case was received. Specifically, we are concerned when a police officer witness questions the Appellant. According to the plain language of § 11-27-2, the practice of law includes action that determines any question of law or fact or to exercise any judicial power; prepare pleadings or other legal papers incident to any action; give advice or counsel pertain to a law question; represent another person to commence, settle, compromise, adjust or dispose of a case; prepare or draft any instrument which requires legal knowledge and capacity. See § 11-27-2. The act taken by the Officer at trial of questioning the Appellant while she was on the stand to testify comes dangerously close to violating § 11-27-2. Due to the decision of this case on the issues of hearsay and burden of proof, we need not comment further other than to say such action should be cautiously avoided by persons who have not been admitted to the Bar.

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 affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

_____
Chief Magistrate William R. Guglietta (Chair)

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Administrative Magistrate R. David Cruise

_____
Magistrate William T. Noonan

DATE: _____