STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T17-0014**
	:	**17201500383**
DOUGLAS LECUIVRE	:	

DECISION

PER CURIAM: Before this Panel on July 19, 2017—Chief Magistrate Guglietta (Chair), Associate Judge Parker, and Magistrate Kruse Weller, sitting—is Douglas Lecuivre's (Appellant) appeal from a decision of Magistrate William T. Noonan (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-26-4, "Duty on collision with unattended vehicle." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On March 6, 2017, Officer Paul Rebello (Officer Rebello) of the Coventry Police Department issued Appellant a citation for the abovementioned violation. Tr. at 2; *see also* Summons No. 17201500383. Through an investigation, Officer Rebello determined that on March 4, 2017, Appellant had hit a parked vehicle in a parking lot and then left the scene. *Id.*

The matter proceeded to trial, on May 9, 2017. *Id.* at 1. At trial, Officer Rebello testified that on March 4, 2017, he responded to a reported accident. *Id.* at 3. After arriving at the scene, Officer Rebello spoke with Alisa Caron (Caron), who told him that she had parked in the Polish National Alliance parking lot across the street from her residence. *Id.* at 4. Caron continued

telling Officer Rebello that she had "parked very close to the [Appellant's] vehicle, and she stated that it was almost parallel and facing her front bumper." *Id.* Caron further stated that "she had suspicions . . . that her vehicle would be hit," and that she had taken a picture of the vehicle's front license plate due to her suspicion. *Id.* Later, when a friend went to retrieve items from her vehicle, the friend "noticed the damage to [her] car." *Id.* at 5. She then reported the accident to the Coventry Police Department. *Id.* at 4.

The next morning, Officer Rebello went to Appellant's home and "noticed fresh damage to his [vehicle's] driver[] side front bumper that coincided with the accident." *Id.* at 5. Officer Rebello also observed "a blue paint transfer," which was similar to the color of Caron's vehicle. *Id.* Officer Rebello testified that when he spoke with Appellant, Appellant asked if he had "hit that car" and then stated that he "got out to look to see if there was any damage." *Id.* The Appellant told Officer Rebello that when he checked and did not observe any damage, he left the parking lot. *Id.*

During cross-examination, Officer Rebello testified that he did not know "whether or not [Caron's] car hit [Appellant's] when she pulled in." *Id.* at 6. Officer Rebello also stated that based on his conversation with Caron, he did not believe that "[Caron's] car [could] have hit [Appellant's] car when she pulled in?" *Id.* He also described the Polish National Alliance Club's parking lot as a "fairly standard, big parking lot" that was not full when he arrived to the scene. *Id.* at 7.

Officer Rebello was the only testifying witness at trial. *Id.* After hearing his testimony, the Trial Magistrate stated his findings of fact on the record. *Id.* at 8. The Trial Magistrate stated that he found Officer Rebello's testimony "to be very credible, very professional, and I accept it." *Id.* He continued, stating that

> "[t]he absence of the witness is problematic, in that, normally the witness' live testimony would be required. However, police officers are able to draw inferences. In this case, the inference is drawn . . . it was fresh damage to the bumper and a paint transfer. Whether or not an accident occurred is unquestionable." *Id.*

The Trial Magistrate also explained that he relied on the statements Appellant made to Officer Rebello, which he believed were not hearsay as they were "statements against interest and statements by a party opponent." *Id.* He added that Appellant knew to check his vehicle for damage before he left the parking lot, "which means he [knew] he was in an accident, which means that he was under an obligation . . . to report that accident." *Id.* at 9. The Trial Magistrate ultimately sustained the charge, finding there was "clear and convincing evidence establish[ing] a violation of [section] 31-26-4." *Id.*

Appellant timely filed his appeal. Forthwith is this Panel's decision.

II

Standard of Review

Pursuant to § 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:
>
> "(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 Mut. Ins. 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." *Id.* (citing *Envtl. Sci. 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." *Id.* Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant asserts that the Trial Magistrate's decision was "affected by . . . error of law" and "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Sec. 31-41.1-8(f)(4)-(5). The Appellant asserts three distinct arguments to support his assertion: (1) The Trial Magistrate erred in finding that Officer Rebello properly identified Appellant as the motorist who committed the violation; (2) that the Trial Magistrate failed to make a finding that Appellant had knowledge of the damage sustained to either vehicle,

as required by § 31-26-4; and (3) the Trial Magistrate improperly relied on Officer Rebello's testimony as it constituted inadmissible hearsay.

A

Identification

In his first argument, Appellant suggests that Officer Rebello did not properly identify him as the motorist that committed the charged violation; therefore, the Trial Magistrate should have dismissed the charge. To support this contention, Appellant relies on the Appeals Panel's Decision in *City of Warwick v. Michael Murphy*. T06-0002 (R.I. Traff. Trib. 2006) (finding that the identification of a defendant was necessary foundation for the officer in that case to testify about the breathalyzer test that he conducted).

However, Appellant's reliance on that case is misguided as it does not address the same issue raised by Appellant in this matter—whether Officer Rebello provided sufficient evidence to prove that Appellant was in fact the operator of the vehicle that caused damage to Caron's vehicle.[1] Rule 17 of the Rhode Island Traffic Tribunal Rules of Procedure states: "The burden of proof is on the prosecution to a standard of clear and convincing evidence." Thus to sustain a charged violation of § 31-26-4, a trial judge or magistrate must find that there is clear and convincing evidence proving that a defendant was "[t]he driver of [a] vehicle which collide[d] with another vehicle which [was] unattended and damage result[ed] to either vehicle" and that the defendant failed to fulfill the duties outlined in § 31-26-4. *See* § 31-26-4.

[1] In Appellant's Memorandum of Law, filed in support of his arguments on appeal, the Appellant states: "There was no in court identification of [Appellant] during the hearing." *See* Appellant's Mem. at 2. However, the circumstances of this case are such that Officer Rebello could not have provided testimony identifying Appellant as the motorist who violated § 31-26-4 since such testimony requires "that the witness has personal knowledge of the matter." *See State v. Hall*, 940 A.2d 645, 654 (R.I. 2008). Officer Rebello testified about his investigation, which resulted in the issuance of Appellant's summons, Officer Rebello did not offer testimony that suggested he witnessed the accident occur; therefore, an in-court identification was not necessary.

The Rhode Island Supreme Court has held that "[t]he clear and convincing standard requires that the factfinder form 'a clear conviction without hesitancy of the truth of the precise facts." *In re Emilee K.* 153 A.3d 487, 497 (R.I. 2017) (quoting *In re Veronica T.*, 700 A.2d 1366, 1368 (R.I. 1997)). Moreover, our Supreme Court has stated that "[t]he testimony of a single witness, if believed, is sufficient to sustain a jury verdict in a criminal case and, thus, is certainly capable of supporting a finding of fact by clear and convincing evidence." *Id.*; *see also State v. Rieger*, 763 A.2d 997, 1001 (R.I. 2001) (declaring that "a victim's testimony alone is sufficient to sustain a conviction . . ."). "The factual findings of the trial justice concerning whether this clear and convincing evidence burden has been satisfied are entitled to great weight." *In re Veronica T.*, 700 A.2d at 1368. "[S]uch findings generally will not be disturbed on appeal unless they are clearly wrong or unless the trial justice misconceived or overlooked material evidence." *Id.*

The record in this matter reveals that Officer Rebello's testimony—regarding his observation of Appellant's vehicle and his conversation with Appellant—provided sufficient evidence to identify Appellant as the motorist who collided with Appellant's vehicle. Officer Rebello testified that he observed "fresh damage to his [vehicle's] driver[] side front bumper that coincided with the accident" and that he also observed "a blue paint transfer" on Appellant's vehicle. (Tr. at 5.) Additionally, when Officer Rebello spoke with Appellant about the alleged accident, Appellant stated that he exited his vehicle "to look to see if there was any damage" to his or Caron's vehicle. *Id.* Officer Rebello also testified that Appellant claimed that he did not observe any damage to either vehicle, and that he then left the parking lot. *Id.*

Ultimately, the Trial Magistrate stated that he found Officer Rebello's testimony credible and that he accepted it as his findings of fact. *Id.* at 8. In light of the fact that a "trial justice may

'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations,'" this Panel finds that there is legally competent evidence to support the Trial Magistrate's finding. *DeSimone Elec., Inc. v. CMG, Inc.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walton v. Baird*, 443 A.2d 963, 964 (R.I. 1981)). In relying on Officer Rebello's observations and Appellant's statements to Officer Rebello, the Trial Magistrate reasonably inferred that Appellant was aware an accident occurred and that Appellant subsequently left the scene without fulfilling the duties established in § 31-26-4. Therefore, the Trial Magistrate's decision was neither "affected by . . . error of law" nor "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Section 31-41.1-8(f)(4)-(5).

B

Elements of the Violation

Appellant further argues that the Trial Magistrate's misinterpreted § 31-26-4 by not considering Appellant's assertion that he lacked knowledge of any damage to either vehicle, which is a necessary element of the violation. Specifically, Appellant argues that the statute requires that a person must have knowledge of the damage before leaving the scene of an accident.

Section 31-26-4 seeks to impose duties on "[t]he driver of any vehicle which collides with another vehicle which is unattended and damage results to either vehicle . . . ." With respect to § 31-26-4, our Supreme Court has held that "knowledge is so essentially an element of the offense as to be necessarily implied if not expressed." *State v. Lemme*, 104 R.I. 416, 423, 244 A.2d 585, 589 (1968) (citing *People v. Bowlin*, 19 Cal.App.2d 397, 398-99, 65 P.2d 840, 841 (1937)). This Panel is bound by the Supreme Court's ruling in *Lemme* and, therefore, must

consider knowledge as an essential element of the violation. *See* 104 R.I. at 423, 244 A.2d at 589.

However, the record reveals that the Trial Magistrate accepted Officer Rebello's testimony in which he stated that he "noticed fresh damage to his driver's side front bumper that coincided with the accident" and that he also noticed "a blue paint transfer," which was the color of Caron's vehicle. (Tr. at 10.) In crediting Officer Rebello's testimony, the Trial Magistrate reasonably inferred that Appellant was aware of the noticeable damage to his own vehicle since he admitted to getting out of the car and looking for damage, despite his statements to the contrary. *Id.*

As previously stated, a "trial justice may 'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" *DeSimone Elec., Inc.*, 901 A.2d at 621 (quoting *Walton v. Baird*, 443 A.2d 963, 964 (R.I. 1981)). As a result, this Panel cannot substitute its judgment for that of the Trial Magistrate "concerning the weight of the evidence on questions of fact." *Link*, 633 A.2d at 1348. Based on that reasoning, this Panel concludes that the Trial Magistrate's properly inferred that Appellant had knowledge of the damage that resulted from his vehicle colliding with Caron's vehicle.

C

Hearsay

Finally, Appellant argues that the Trial Magistrate improperly admitted hearsay testimony and subsequently relied on that testimony in his decision. In particular, Appellant asserts that Officer Rebello's testimony regarding the statements Caron made to him on the day of the accident were inadmissible pursuant to the Rhode Island Rules of Evidence.

"Under Rule 801(c) of the Rhode Island Rules of Evidence, hearsay is '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.'" *Powers v. Coccia*, 861 A.2d 466, 469 (R.I. 2004) (citing R.I. R. Evid. 801(c)). Rule 801(d)(2), however, allows for the admission of statements made by a party-opponent. R.I. R. Evid. 801(d)(2). Rule 801(d)(2) states, when "[a] statement is offered against a party and is . . . the party's own statement, in either the party's individual or a representative capacity[,]" it is admissible. *Id.* The Rhode Island Supreme Court has interpreted Rule 801(d)(2) to mean that not every statement made by an opposing party qualify under the rule; the statements must also be offered as evidence against the opposing party. *State v. Chum*, 54 A.3d 455, 463 (R.I. 2012) (citing *State v. Harnois*, 638 A.2d 532, 535 (R.I. 1994)).

The record indicates that at the beginning of trial, the Trial Magistrate indicated that he would allow Officer Rebello's testimony regarding Caron's statements "as a predicate to action on this Officer's part . . . during the course and conduct of the investigation." (Tr. at 4.) Officer Rebello testified about the information Caron provided, which put him on notice of Appellant's involvement in the incident. *State v. Gomes*, 764 A.2d 125, 131 (R.I. 2001) ("It is well settled that reliable hearsay may be used in order to establish probable cause.")

After speaking with Appellant, Officer Rebello testified to the fact that

> "[he] noticed fresh damage to his driver's side front bumper that coincided with the accident, and [he] also noticed a blue paint transfer . . . which was the color of [Caron's vehicle]. . . . [Appellant] made . . . some statements while on scene; 'Why did I hit that car,' asking me the question, and 'I got out to look to see if there was any damage,' and [Appellant] [did not] observe any, so he left." (Tr. at 5.)

The Appellant's statements to Officer Rebello are considered statements by a party opponent since Appellant was the declarant and the statements are offered against him at trial. *See* R.I. R.

Evid. 801(d)(2)(a); *State v. Chum*, 54 A.3d at 463 (citing *State v. Harnois*, 638 A.2d 532, 535 (R.I. 1994)).

Based on a review of the record, this Panel finds that the Trial Magistrate's decision is supported by legally competent evidence. *Link*, 633 A.2d at 1348. Even if Officer Rebello's testimony regarding Caron's statements were not admitted as direct evidence of Appellant's involvement in the accident, but instead, for some other purpose—such as to identify the vehicle parked next to Caron's vehicle around the time of the accident—Officer Rebello's testimony still provides a sufficient basis for the Trial Magistrate to draw the reasonable inference that Appellant's vehicle was the vehicle that collided with Caron's vehicle. *See State v. Tweedie*, 444 A.2d 855, 858 (R.I. 1982) ("It is well settled that it is the duty of the factfinder to draw inferences.") (citations omitted).

As this Panel cannot substitute its judgment for that of the Trial Magistrate "concerning the weight of the evidence on questions of fact," or any reasonable inferences drawn by the Trial Magistrate sitting as the factfinder, this Panel will not disturb the Trial Magistrate's decision. *Link*, 633 A.2d at 1348; *see also DeSimone Elec., Inc.*, 901 A.2d at 621. In consideration of the reasoning stated above, this Panel concludes that the Trial Magistrate's decision was not "affected by . . . error of law" or "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *See* § 31-41.1-8(f)(4)-(5).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was not "affected by . . . error of law" or "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." See § 31-41.1-8(f)(4)-(5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

_____
Associate Judge Edward C. Parker

_____
Magistrate Erika Kruse Weller

DATE: _____

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.