STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T17-0006**
	:	**16406501195**
ROSA DIARBIAN	:	

DECISION

PER CURIAM: Before this Panel on September 20, 2017—Magistrate Goulart (Chair), Magistrate Abbate, and Judge Parker, sitting—is Rosa Diarbian's (Appellant) appeal from a decision of Magistrate Kruse Weller (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-16-1, "Care in starting from stop." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On December 26, 2016, Patrolman Jason Marquis of the Lincoln Police Department (Patrolman Maruquis) was dispatched to the scene of a reported motor vehicle accident at the intersection of Jenks Hill Road and Limerock Road in the Town of Lincoln. (Tr. at 2.) Upon arriving at the scene, Patrolman Marquis confirmed the reported two-vehicle accident and began conducting an investigation. *Id.* Based on that investigation, Patrolman Marquis issued Appellant, the operator of a vehicle involved in the collision, a citation for the above-referenced violation. *See* Summons No. 16406501195.

The Appellant contested the violation, and the matter proceeded to trial on February 27, 2017. *Id.* at 1. At trial, Patrolman Marquis was the first witness to testify. *Id.* Patrolman Marquis stated that on the day of the accident, he was on patrol when he was dispatched to the accident scene. *Id*. at 2. When Patrolman Marquis arrived, he observed Appellant in a white Mercedes Benz being treated by medical personnel. *Id.* The Appellant indicated to Patrolman Marquis that she had been "traveling [n]orthbound on Limerock Road . . . approaching the intersection of Jenks Hill Road. . . . [A]s she began to cross Jenks Hill Road toward Wilbur Road[,] she was suddenly struck by another vehicle and her vehicle began spinning. The rear of her vehicle subsequently hit a large tree." *Id*.

Patrolman Marquis also observed "a white Honda Fit in a stationary position several hundred feet eastbound on Jenks Hill Road from the original crash site. Both occupants of the vehicle were off to the side of the road being treated by paramedics." *Id.* He explained that the operator of the Honda Fit "did not have a stop sign" and "clearly had the right of way[,]" whereas Appellant had a stop sign. *Id.* at 3.

During cross-examination, Patrolman Marquis explained that he never spoke with the operator of the Honda Fit; rather, Officer Hannon, who assisted Patrolman Marquis with his investigation, spoke with her that day. *Id.* at 5. Patrolman Marquis testified that although the speed limit on that portion of the road is thirty-five miles per hour, he could not testify as to the Honda Fit's speed. *Id.* Moreover, he could not testify as to whether Appellant stopped at the stop sign before proceeding through the intersection because he never asked Appellant when speaking with her. *Id.* at 7.

Additionally, Patrolman Marquis described the damage that he observed to both vehicles: Appellant's vehicle sustained damage to the vehicle's left rear portion, and the Honda Fit

sustained damage to the front part of the vehicle. *Id.* at 7. Photographs of the damage were admitted as evidence at trial. *Id.* at 10-11. Admittedly, Patrolman Marquis testified that he was not a vehicle crash reconstructionist. *Id.* at 3. However, based on his observations of the stop sign's location, the accident site, and the portions of each vehicle that sustained damage, Patrolman Marquis concluded that because Appellant "had a stop sign, she was not allowed to proceed until traffic was clear. She clearly proceeded without traffic being clear." *Id.*

The Appellant also testified at trial. *Id.* at 9. Using photographs to depict her actions on the day of the accident, Appellant testified that prior to entering the intersection, she had stopped just before the white line at the stop sign. *Id.* at 11. She indicated that while she was stopped, she observed the Honda Fit, about 300 feet away, approaching from the left. *Id.* The Appellant testified that at the time, she felt that she could proceed through the intersection with reasonable safety. *Id.* at 13. Moreover, Appellant explained that she was unable to estimate the speed at which the Honda Fit was travelling. *Id.*

Having heard all of the testimony, the Trial Magistrate sustained the charged violation based on the evidence presented at trial. *Id.* at 14. The Trial Magistrate found Patrolman Marquis' testimony credible, and adopted it as her findings of fact. *Id.* The Trial Magistrate reasoned that while

> "the damage was caused by the other motor vehicle by the defendant's own testimony she saw the motor vehicle coming and whether it was at a high rate of speed or not she saw the vehicle coming and it was clear she was not able to proceed with reasonable safety because that car which did have the right of way in fact struck her vehicle." *Id.*

Thereafter, Appellant filed this timely appeal. Forthwith is this Panels 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:
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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 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 argues that the Trial Magistrate's decision to sustain the violation is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record" and "affected by other error of law." Sec. 31-41.1-8(f). Specifically, Appellant contends that (1) the evidence presented at trial was insufficient to support the Trial Magistrate's decision, and (2) the Trial Magistrate admitted improper expert opinion testimony from a non-expert witness, Patrolman Marquis.

A

Section 31-16-1, "Care in Starting from Stop"

To assess whether there is sufficient evidence in the record to support the charged violation, this Panel must first determine what actions constitute a violation of § 31-16-1. The Rhode Island Supreme Court has long held that "when the language of a statute is clear and unambiguous, [the] court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning." *Lehigh Cement Co. v. Quinn*, 173 A.3d 1272, 1276 (R.I. 2017) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). When interpreting a statute, this Panel must "determine and effectuate the Legislature's intent and [] attribute to the enactment the meaning most consistent with its policies or obvious purpose." *Id.* (quoting *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987)).

Here, Appellant was charged with violating § 31-16-1, which states that "[n]o person shall start a vehicle which is stopped, standing, or parked unless and until the movement can be made with reasonable safety." The Legislature clearly and unambiguously conveyed its intent to ensure that motorists, starting a vehicle from a stopped position, do so only when it is reasonably safe. *See* § 31-16-1; *Lehigh Cement Co.*, 173 A.3d at 1276. Therefore, this Panel must determine whether the evidence in the record supports the Trial Magistrate's finding that it was not reasonably safe for Appellant to start her vehicle from its stopped position at the stop sign, just before the accident occurred.

After reviewing the record, it is clear that the Trial Magistrate inferred from the testimony that Appellant "was not able to proceed with reasonable safety because th[e] car which [] ha[d] the right of way in fact struck [Appellant's] vehicle." (Tr. at 14); *see also State v. Golden*, 430 A.2d 433, 438 (R.I. 1981) ("An inference is a deduction that the trier of fact is entitled to make from a proven or admitted fact."). In this case, the Trial Magistrate reasonably inferred from Patrolman Marquis' credible testimony that the Appellant moved her vehicle in an unsafe manner and that movement caused the accident with the Honda Fit, which had the right of way. *Id.* Moreover, the Trial Magistrate relied upon the Appellant's own testimony during which she admitted to seeing the Honda Fit proceeding in her direction before the Appellant entered the intersection. *Id.* Despite the Appellant viewing the Honda Fit at an estimated distance of 300 feet, she entered the intersection, causing the accident. *Id.*

Based on the evidence describing the accident, the damage each vehicle sustained, and the distance at which the Honda Fit was located before the Appellant entered the intersection, the Appellant started her vehicle from stop and entered the intersection at a time which was not

reasonably safe. *See Golden*, 430 A.2d at 438 ("An inference must be based upon some evidence, direct or circumstantial[.]").

In light of the facts above, there is sufficient evidence in the record to establish that the Appellant did not start her vehicle from stop reasonably safely. Accordingly, this Panel finds that the Trial Magistrate's decision is not "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" Sec. 31-41.1-8(f).

B

Patrolman Marquis' Testimony

The Appellant further asserts that the Trial Magistrate improperly allowed Patrolman Marquis to give expert testimony without being qualified as an expert witness. Pursuant to Rule 15 of the Traffic Tribunal Rules of Procedure, the Rhode Island Rules of Evidence governs "all proceedings before the Traffic Tribunal." (Rule 15(b).) Rhode Island Rule of Evidence 701 provides that a lay witness' opinion testimony is limited to "opinions which are (A) rationally based on the perception of the witness and (B) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." The lay witness "must have had an opportunity to observe the person and to give concrete details on which the inference or description is founded." *State v. Gomes*, 604 A.2d 1249, 1259 (R.I. 1992) (quoting *State v. Fogarty*, 433 A.2d 972, 976 (R.I. 1981)). "The decision to permit opinion testimony by a lay witness is within the sound discretion of the trial court." *State v. Mallett*, 600 A.2d 273, 276 (R.I. 1991).

Here, Patrolman Marquis observed the scene of the accident, including the stop sign at which Appellant alleged she stopped, as well as the damage to both vehicles. Patrolman Marquis testified that he has seen a number of accidents in his fourteen years' experience on the job, and

that his "conclusions were based on physical evidence on the scene." (Tr. at 3; 8); *see also Mallett*, 600 A.2d at 276 (trial judge permitted a fire department lieutenant lay witness to give opinion testimony regarding victim's time of death based on witness' EMT training and observations at the scene).

Moreover, Patrolman Marquis testified as to the fact that there *was* a stop sign, not whether Appellant *stopped* at the stop sign. Patrolman Marquis specifically stated, "I did not write her up for proceeding through the stop sign as I did not witness that violation." (Tr. at 3.) From his observations, Patrolman Marquis concluded that because the Honda Fit—who did not have a stop sign—hit Appellant's vehicle, traffic could not have been clear when Appellant proceeded from the stop sign. *See State v. Tep*, 56 A.3d 942, 947 (R.I. 2012) ("It is unnecessary to require an expert to testify about what a lay individual could rationally conclude.").

Furthermore, the Trial Magistrate acknowledged that Patrolman Marquis testified that he was not an accident reconstruction expert. (Tr. at 3.) The Trial Magistrate stated that Patrolman Marquis was testifying as a lay witness, not an expert. *Id.* This Panel is not convinced that the Trial Magistrate considered Patrolman Marquis' testimony to be that of an expert witness; nor is this Panel of the opinion that the Trial Magistrate relied on Patrolman Marquis' assertions as to how the accident occurred in sustaining the violation. Therefore, this Panel finds that the Trial Magistrate's decision is not "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record" nor "affected by other error of law[,]" and that the Appeal should be denied and dismissed. Sec. 31-41.1-8(f).

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 neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, nor affected by other error of law. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

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Magistrate Alan R. Goulart (Chair)

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Administrative Magistrate Joseph A. Abbate

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Associate Judge Edward C. Parker

DATE: _____