

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. T16-0002
15001527691**

VERNON S. LAWRENCE

DECISION

PER CURIAM: Before this Panel on March 9, 2016—Magistrate Goulart (Chair), Administrative Magistrate DiSandro III, and Judge Almeida, sitting—is Vernon S. Lawrence’s (Appellant) appeal from a decision of Chief Magistrate Guglietta (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-15-4, “Overtaking on the left.” Appellant proceeded pro se before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On September 30, 2015, Trooper Brendon Palmer (Trooper Palmer) of the Rhode Island State Police (State Police) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on January 19, 2016.

At trial, the Trooper testified that at approximately 12:04 p.m., he was dispatched to a motor vehicle accident on Widow Street, in Exeter, Rhode Island. (Tr. at 1.) One vehicle was a black Honda; the other was a white Freightliner. (Tr. at 1.) Appellant operated the Honda. (Tr. at 1.) Trooper Palmer observed damage to the “right rear quarter” of Appellant’s vehicle. (Tr. at 1.) After speaking with the Appellant and the driver of the Freightliner, Trooper Palmer determined that Appellant unlawfully overtook on the left, causing the accident and subsequent

damage to the right-side of his vehicle. (Tr. at 3.) Appellant was charged with overtaking on the left under § 31-15-4.

Appellant testified at trial that the Freightliner was traveling at a slow speed. (Tr. at 3-5.) As a result, Appellant transitioned his vehicle into the left lane in order to pass the Freightliner. (Tr. at 3-5.) Appellant maintained that he safely transitioned back into the right lane, after clearing the Freightliner. (Tr. at 4-5.) He then claimed that the Freightliner rear-ended his vehicle some three-quarters of a mile down the road. (Tr. at 5.) Thus, Appellant argued that his passing and the accident were isolated incidents. (Tr. at 6.) In addition, Appellant entered an “operator report” (the Report) as an exhibit. (Tr. at 8.) He claimed that the Report dictated that the Freightliner was traveling at a speed of six miles per an hour; the Appellant passed the Freightliner and returned to the right lane; and “at some point” the driver of the Freightliner slammed on his breaks and hit the rear of Appellant’s vehicle. (Tr. at 8.)

When prompted to describe the damage to Appellant’s vehicle, Trooper Palmer stated: “It’s on the right rear fender, right at the corner, right where the – the light was also damaged, the rear taillight, the right taillight was damaged and there was a large dent in the right fend[er]” (Tr. at 3.) Trooper Palmer also provided the Trial Magistrate with a photograph that depicted the Appellant’s vehicle and confirmed Trooper Palmer’s description. (Tr. at 6-7.)

After hearing the testimony presented, the Trial Magistrate found that the Appellant passed the Freightliner on the left side and proceeded back into the right-hand lane. (Tr. at 10.) The Trial Magistrate also found that the right bumper and right-hand passenger side of Appellant’s vehicle were damaged. (Tr. at 10.) In acknowledging that he had to determine whether the accident occurred as a result of the passing or shortly thereafter, the Trial Magistrate found Trooper Palmer to be “truthful and credible.” (Tr. at 10.) As a result, the Trial Magistrate

adopted Trooper Palmer's observations that the Appellant passed the Freightliner on the left side but failed to safely clear the Freightliner when returning to the right-hand lane, causing the accident. (Tr. at 11.) The Trial Magistrate also acknowledged that Appellant's own exhibit supported this rendition of events. (Tr. at 11.) The Report stated that the Appellant "misjudged his lane change and hit [the Freightliner's] rear front." (Tr. at 11.) In light of the above, the Trial Magistrate explicitly found that the Appellant did not safely pass the Freightliner, and sustained the charged violation, § 31-15-4, "Overtaking on the left." (Tr. at 11.) Aggrieved by the Trial Magistrate's decision, Appellant timely filed this 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:

- (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.” Link, 633 A.2d at 1348 (citing Envtl. 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.” Id. 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 Magistrate’s decision was in excess of his authority, made upon unlawful procedure, affected by error of law, not supported by reliable, probative, and substantial evidence on the whole record, arbitrary or capricious, and characterized as an abuse of discretion. Specifically, Appellant claims that: (1) the Trial Magistrate improperly admitted and relied on hearsay testimony; (2) the charge was not sustained by clear and convincing evidence or sufficient findings of fact on the whole record; (3) it was improper for the Trial Magistrate to admit the photograph of Appellant’s vehicle; and (4) the Trial Magistrate exceeded his authority by facilitating Trooper Palmer’s.

I. Hearsay Evidence

Appellant argues that the Trial Magistrate improperly admitted hearsay evidence by allowing Trooper Palmer to testify as to the driver of the Freightliner’s recollection of events. Appellant objected to such evidence at trial but the objection was overruled. See Tr. at 2.

Hearsay is defined in Rule 801(c) of the Rhode Island Rules of Evidence as “a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.” More importantly, out of court statements are not hearsay unless they are offered for the truth of the matter asserted. See State v. Gomes, 764 A.2d 124, 131 (R.I. 2001). “When a statement is offered for reasons other than proving the truth of the matter asserted, it is not necessary to attempt to invoke an applicable hearsay exception to the hearsay rule for that statement to be admissible.” State v. Crow, 871 A.2d 930, 936 (R.I. 2005).

Here, in overruling the objection, the Trial Magistrate stated: “Your objection is overruled. I’m using this for the purposes, not for the truth of the matter asserted but to merely get this officer to the scene to establish the facts for this case. So it’s part of his investigation . . .” Tr. at 2. See also Crow, 871 A.2d at 936-37 (finding that out of court statements offered “to demonstrate how [a detective] became involved in the continuing investigation” were not hearsay because such were not offered to prove the truth of the matter asserted). Additionally, even if the Trial Magistrate erred in admitting the statements, the error was harmless as the record is devoid of any evidence that indicates that the Trial Magistrate relied on these witness statements in making his ruling. See Tr. at 9-12. Consequently, this Panel finds that the Trial Magistrate did not err by allowing Trooper Palmer to testify as to the driver of the Freightliner’s recollection of events.

II. Sufficiency of Evidence

Appellant claims that the charge was not sustained by clear and convincing evidence or sufficient findings of fact on the whole record. Specifically, Appellant claims that without the hearsay testimony, there is insufficient evidence to find that Appellant unlawfully overtook on the left as Trooper Palmer did not witness the maneuver or accident. In essence, Appellant

claims that the Trial Magistrate's decision was "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." We disagree.

Appellant admitted at trial that he maneuvered his vehicle into the left lane, passed the Freightliner, and transitioned back into the right lane. See Tr. at 3-5. The question before the Trial Magistrate was whether the Appellant did so lawfully and safely. Rule 17(a) of the Rhode Island Traffic Tribunal Rules of Procedure states: "The burden of proof shall be on the prosecution to a standard of clear and convincing evidence." However, this burden may be satisfied with circumstantial evidence as well as direct evidence. See State v. Brown, 97 R.I. 95, 99, 196 A.2d 138, 141 (1963); State v. Kozukonis, 71 R.I. 456, 462, 46 A.2d 865, 868 (1946). As a result, it not necessary that the State provide a witness that perceived the overtaking first hand.

The Trial Magistrate was provided with a photograph that depicts the exact angle and placement of the damage to Appellant's vehicle. See Tr. at 6-8, 10. Furthermore, Appellant submitted a report by the driver of the Freightliner which indicates that the Appellant misjudged when transitioning back into the right lane. See Tr. at 11. Based on the above, as well as Trooper Palmer's credible testimony, the Trial Magistrate adopted Trooper Palmer's conclusion that Appellant unlawfully and unsafely overtook the Freightliner on the left. See Tr. at 11.

The Appellate 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, 633 A.2d at 1348. In summary, the record contains sufficient evidence to find that Appellant unsafely overtook the Freightliner on the left. Therefore, the Trial Magistrate's decision was supported by reliable, probative, and substantial evidence.

III. Photograph of Appellant's Vehicle

Appellant posits that the Trial Magistrate viewed a photograph of his vehicle without admitting the photograph as an exhibit. Appellant additionally contends that he was not afforded the opportunity to view the photograph during trial and that the photograph is not relevant. When the photograph was presented at trial, Appellant objected on the basis that Trooper Palmer did not have a photograph of the Freightliner. (Tr. at 7.) Appellant continued to press that he felt that the photograph “biases [his] testimony of the accounts of what happened.” (Tr. at 7.) The objection was overruled. (Tr. at 7.)

This Panel recognizes the well-settled raise or waive rule. When “the introduction of evidence is objected to for a specific reason, other grounds for objection are waived and may not be raised for the first time on appeal.” Bettencourt, 723 A.2d at 1107 (quoting State v. Neri, 593 A.2d 953, 956 (R.I. 1991)) (internal quotation marks omitted). Therefore, “issues that were not preserved by specific objection at trial, ‘sufficiently focused so as to call the trial justice’s attention to the basis for said objection, may not be considered on appeal.’” Id. (quoting State v. Toole, 640 A.2d 965, 972-73 (R.I. 1994)) (internal quotation marks omitted). At trial, Appellant objected to the photograph only on that ground that it favored the opposing party and that a photograph of the Freightliner was not available. See Tr. at 7. Appellant did not object on foundation or relevancy grounds.¹ The above arguments are, therefore, waived as the objection was not properly preserved on appeal.

¹ However, even if the Appellate Panel overlooked the fatal procedural flaw, “[i]t is within the trial court’s discretion to determine the materiality or relevance of photographs.” State v. Rivera, 640 A.2d 524, 526 (R.I. 1994). “A photograph is relevant if it has the tendency to prove or disprove some material fact in issue.” State v. Bettencourt, 723 A.2d 1101, 1108 (R.I. 1999) (quoting Rivera, 640 A.2d at 526) (internal quotation marks omitted). The Trial Magistrate used the photograph to determine the exact point of damage to Appellant’s vehicle. See Tr. at 6-8, 10. As a result, the photograph was relevant as it had the tendency to prove how the vehicle and

IV. Magistrates Authority

Appellant argues that the Trial Magistrate exceeded his role as a neutral fact finder by facilitating the testimony of Trooper Palmer. Specifically, Appellant argues that the Trial Magistrate “guided” Trooper Palmer in order to arrive at the conclusion of what the Trial Magistrate believed transpired. (Notice of Appeal, Summons No. 15001527691, at 2.)

It is well settled that a judge does not become an advocate by merely posing questions to witnesses in a “meticulous, impartial manner.” State v. LaRoche, 683 A.2d 989, 1001 (R.I. 1996) (citing State v. McKenna, 512 A.2d 113 (R.I. 1986)); R.I. R. Ev. 614(b)). The trial justice has the discretion to elicit testimony that will clarify any confusion caused by prior examination. See State v. Figueras, 644 A.2d 291, 293 (R.I. 1994) (citing State v. Giordano, 440 A.2d 742, 745 (R.I. 1982)); see also State v. Jimenez, 882 A.2d 549, 554 n.8 (R.I. 2005). In addition, even if a trial justice exceeds his or her authority, the error is harmless if the justice’s overall demeanor is neutral and impartial. See id. at 294.

Upon a detailed review of the trial transcript, the record reveals that the Trial Magistrate posed questions to both Trooper Palmer and Appellant. However, these questions were asked in an attempt to clarify the Trooper and Appellant’s testimony. In addition, any questions that were posed by the Trial Magistrate were not directed and merely an attempt to gather more information from each side. See, e.g., Tr. at 2 (“And what did [Appellant] tell you happened?”); id. at 3 (“Did you have an opportunity to observe the damage on the [Appellant’s] vehicle?”); id. (“Did you make any conclusions based upon where you saw the damage?”); id. at 5 (“So how far was it from the time that you went back in?”); id. at 6 (“I need to be extremely specific on where

Freightliner collided. Furthermore, Appellant reviewed the photograph immediately prior to the commencement of the trial. See Tr. at 6-7.

the damage on the [Appellant's] car took place. Was it on the back or on the side?"). These questions were asked in a neutral and impartial manner.

The Trial Magistrate found Trooper Palmer credible and truthful. See Tr. at 9-10. He also reviewed the depiction of the Appellant's vehicle and the submitted Report. See Tr. at 9-10. There is no evidence that the questions posed by the Trial Magistrate improperly influenced his decision or exceeded his authority as a neutral fact finder. Substantial rights of the Appellant have not been prejudiced.

Conclusion

This Panel has reviewed the entire record before it. For the reasons stated above, the members of this Panel are satisfied that the Trial Magistrate's decision was not in excess of his authority, made upon unlawful procedure, affected by error of law, arbitrary or capricious, or characterized as an abuse of discretion. Also, the decision was supported by reliable, probative, and substantial evidence on the whole record. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Administrative Magistrate Dominic A. DiSandro III

Judge Lillian M. Almeida

DATE: _____