

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

v.

SHANE LEE

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**C.A. No. T13-0002
07409099040**

DECISION

PER CURIAM: Before this Panel on March 27, 2013—Administrative Magistrate Cruise (Chair, presiding), Judge Almeida, and Magistrate Noonan, sitting—is Shane Lee’s (Appellant) appeal from a decision of Magistrate DiSandro (trial judge), sustaining the charged violations of G.L. 1956 § 31-3-32, “Expiration of registration;” § 31-26-4, “Duty on collision with unattended vehicle;” and § 31-47-9, “Penalties – owner operating without insurance.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 14, 2012, at approximately 12:59 a.m., Officer Field of the Providence Police Department was dispatched to Amsterdam Street to investigate a motor vehicle accident. (Tr. at 1.) Subsequently, the Appellant was issued a citation for violating §§ 31-3-32, “Expiration of registration;” § 31-26-4, “Duty on collision with unattended vehicle;” and § 31-47-9, “Penalties – owner operating without insurance.”

At Appellant's trial, on January 15, 2013, Officer Field testified that on the night in question, he responded to an accident on Amsterdam Street in Providence. Id. He further testified that upon arrival at the scene, he observed a damaged unattended parked vehicle. Id.

Officer Field then reported the description of the vehicle that fled the scene of the accident to the other officers. Id. Soon after, the vehicle that fled the scene of the accident was stopped on Valley Street by another Providence police officer. Id. Officer Field indicated that when he arrived at the scene where the vehicle was stopped, he observed that the vehicle had significant rear end damage. (Tr. at 2.) Officer Field then indicated that he issued the Appellant a summons based on the statements provided to him by the operator of the vehicle, Appellant, and the visible damage to both vehicles involved in the accident. (Tr. at 11-12.)

After Officer Field's testimony, Appellant then testified that on the night in question, he was driving the vehicle to his girlfriend's house so that it could be ". . . junked from her house." (Tr. at 3-4.) The Appellant then testified that the wrecked unattended vehicle was owned by his cousin. (Tr. at 3.)

After hearing all of the testimony presented, the trial judge found the testimony of Officer Field to be more credible than the testimony of the Appellant. (Tr. at 4-5.) Based on Officer Field's testimony, the trial judge found that the Appellant caused significant damage to an unattended vehicle, fled the scene of the accident, and that the vehicle operated by Appellant was not registered and did not have insurance. Id. Accordingly, based on the officer's testimony, the trial judge sustained the charged violations. (Tr. at 5.) It is from this decision that the Appellant now appeals.

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 Mutual 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." 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 argues that the trial judge's decision is clearly erroneous in light of the reliable, probative, and substantial evidence on the record. Specifically, the Appellant argues that the trial judge made an error of law when he sustained the violation of section 31-47-9 "Penalties – owner operating without insurance," because it was not established at trial that he knowingly operated the vehicle without insurance as required by section 31-47-9.

Section 31-47-9 states in relevant part,

"any . . . person who shall operate in this state any motor vehicle registered in this state with the knowledge that the owner of it does not have in full force and effect financial security . . . may be subject to a mandatory suspension of license and registration." (Emphasis added.)

In the instant matter, the record is devoid of evidence to indicate that the Appellant was operating the vehicle with knowledge that the owner did not have insurance on the vehicle. In rendering his decision in regards to the insurance charge, the trial judge stated, ". . . no evidence of insurance [has] been submitted." (Tr. at 5.) This finding by the trial judge lacks the requisite element of knowledge to sustain the charge. Therefore, after a review of the entire record, it is the finding of this Panel that the trial judge made an error of law when he sustained the violation of section 31-47-9 without reliable, probative, and substantial evidence on the record that the Appellant had knowledge that the vehicle was uninsured. See Albanese v. Providence Police Department, 711 A.2d 651, 652 (R.I. 1998) (holding that the State had to prove by clear and convincing evidence that the driver knew his car was uninsured to be in violation of section 31-47-9); see also Augusto Tiguila v. Rhode Island Traffic Tribunal, A.A. No. 05-04 Summons No. 01-0010129239 and State of Rhode Island v. Gilbert Dalomba, A.A. 05-43 Summons No. 01-001-103833. Accordingly,

because the element of knowledge was not established as required by section 31-47-9, the Appellant's appeal is granted on this particular charge, and the charge is dismissed.

Having reviewed the record in its entirety, it is clear that there was sufficient evidence presented by the Officer to satisfy the elements of both the expiration of registration charge and the duty on collision with unattended vehicle charge. The trial judge specifically found in rendering his decision that the vehicle driven by the Appellant was determined as unregistered after the officer checked the status of the vehicle in his computer system. (Tr. at 5.) Additionally, the trial judge found that Appellant was the operator of the vehicle that fled after hitting and damaging an unattended parked vehicle. (Tr. at 4.) Furthermore, the passenger of Appellant's vehicle confirmed that the vehicle was involved in an accident by the Appellant. (Tr. at 5.) Based on the testimony provided by the Officer to the trial judge, the members of this Panel find that the trial judge's decision was not an abuse of his discretion nor did he make any errors of law.

Conclusion

After a review of the record and the oral arguments presented to this Court, this Panel finds that trial judge did not abuse his discretion or make any errors of law when he sustained the violations of §§ 31-3-32, “Expiration of registration,” and 31-26-4, “Duty on collision with unattended vehicle.” Therefore, this Panel denies the Appellant's appeal as to the aforementioned violations. However, because the State did not prove that the Appellant was driving his vehicle with knowledge that the vehicle was uninsured, this Panel grants the Appellant's appeal and dismisses the penalties for violating § 31-47-9, “Penalties – owner operating without insurance.” Accordingly, this Panel denies the Appellant's appeal in part and grants the Appellant's appeal in part.

ENTERED:

Administrative Magistrate R. David Cruise (Chair)

Judge Lillian M. Almeida

Magistrate William T. Noonan

DATE: _____