STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT — RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF JOHNSTON	:	
	:	
v.	:	C.A. No. M11-0029
	:	
AMALIA BLINKHORN	:	

DECISION

PER CURIAM: Before this Panel on March 28, 2012—Chief Magistrate Guglietta (Chair, presiding), Judge Parker, and Magistrate Noonan, sitting—is Amalia Blinkhorn's (Appellant) appeal from a decision of Judge Dimitri (trial judge), sustaining the charged violation of G.L. 1956 § 31-13-4, "Obedience to devices." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 6, 2011, Patrolman Joseph McGinn (Officer McGinn) of the Johnston Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on December 20, 2012.

The facts that give rise to this appeal center on a motor vehicle accident between the Appellant and Sylvia Reis (Ms. Reis.) Ms. Reis testified that she was driving westbound on Route 6 in Johnston when she exited the highway at Atwood Avenue. According to Ms. Reis, she approached a traffic light at the end of the off-ramp from Route 6, which was red. (Tr. at 9.) Ms. Reis waited for the light to turn green, and she proceeded into the intersection and turn left on Atwood Avenue. Id. While she was turning south onto Atwood Avenue, Ms. Reis was struck

by the Appellant. Ms. Reis stated that her vehicle was damaged in the right front quarter. (Tr. at 10.)

Appellant testified to a different set of facts leading up to the accident. Appellant stated that she left a local grocery store and proceeded to head southbound on Atwood Avenue. (Tr. at 29.) While driving southbound, she approached a traffic signal at the off-ramp at Route 6. Appellant testified that the light was green as she approached, and it turned yellow as she proceeded through the intersection. (Tr. at 29-30.) Appellant maintained that she continued through the intersection and her car was side-swiped by Ms. Reis. Shortly after the accident, Appellant said a man—who was later identified as Dennis Poirier (Mr. Poirier)—approached both her and Ms. Reis. Appellant stated that she thought that Mr. Poirier knew Ms. Reis because they both live on Central Avenue. (Tr. at 30.)

Appellant stated that the damage to her vehicle was from the mirror all the way down to the hubcap. (Tr. at 32.) Appellant, then, tried to admit an affidavit from the owner of Hillview Auto Body. (Tr. at 33.) The affidavit stated that, in the affiant's opinion, the Appellant's vehicle was side-swiped, which, according to Appellant, indicated that Appellant did not drive through the red light. The affidavit was only marked for identification purposes. The Appellant did not enter the affidavit into evidence, and the trial judge never allowed the affidavit to be entered into evidence as a full exhibit. Id.

In addition, Mr. Poirier—a Johnston Firefighter—also testified at the trial. (Tr. at 17.) Mr. Poirier testified that he was also leaving the grocery store when he first saw the Appellant. (Tr. at 19.) Like the Appellant, Mr. Poirier proceeded southbound on Atwood Avenue. As he continued southbound, Mr. Poirier was behind the Appellant's vehicle as they approached the traffic signal. Mr. Poirier testified that he saw that the light was red as he approached it and also

saw the Appellant drive through the red light. (Tr. at 20.) Thereafter, Mr. Poirier witnessed the front of the Appellant's vehicle strike the front of Ms. Reis' vehicle. (Tr. at 24.) Then, Mr. Poirier checked both operators for injuries.

After the accident, Officer McGinn arrived on scene and spoke with both operators and Mr. Poirier. Based on these conversations, Officer McGinn cited the Appellant for failing to obey the traffic device.

After both sides presented the aforementioned evidence,[1] the trial judge issued his decision sustaining the charged violation. In sustaining the violation, the trial judge recounted the aforementioned testimony. He also assessed the credibility of the witnesses. The trial judge specifically found that the Appellant's version of events "doesn't make sense." (Tr. at 46.) The trial judge went on to determine that "there is compelling evidence that [Appellant] did, in fact, go through the red light. Id. The trial judge noted that Mr. Poirier—a disinterested party—testified consistently with Ms. Reis' version of the events. The trial judge also rejected any form of bias that Appellant tried to elicit because Mr. Poirier and Ms. Reis knew each other because they lived on the same street. In so determining, the trial judge pointed out that while the two did live on the same street, the street runs from Providence to Scituate. The trial judge concluded his analysis by stating that he was "satisfied by clear and convincing evidence that the Town has sustained its burden . . . ." (Tr. at 47.) Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-

[1] Appellant also called Dawn Conetta (Ms. Conetta) as a witness. Ms. Conetta stated that she was on the phone with the Appellant when the accident occurred. (Tr. at 26.) Ms. Conetta then attempted to testify to what she heard another person say in the background through the phone; however, this testimony was stricken after an objection by the prosecution. (Tr. at 27.)

41.1-8. Section 31-41.1-8 states that 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 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 [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 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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge's decision was affected by error of law because he did not admit the affidavit from the owner of the auto body shop into evidence. Appellant also argues that the trial judge abused his discretion in crediting the testimony of Ms. Reis and Mr. Poirier over the testimony of Appellant, Ms. Conetta, and the proffered affidavit.

In reviewing the admission of an affidavit, it is important to bear in mind that the affidavit must comport with the Rules of Evidence to be admitted into evidence. This requires that the affidavit be relevant. See R.I. R. Ev. 401 ("Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). It also requires that the affidavit be either non-hearsay or subject to one of the numerous exceptions to the hearsay rule. See R.I. R. Ev. 801, 803. Our Supreme Court has stated that a "party introducing [a] document into evidence [] bears the burden of laying a proper foundation." Fondedile, S.A. v. C.E. Maguire, Inc., 610 A.2d 87, 93 (R.I. 1992). Here, the Appellant bore the burden to lay a proper foundation to admit the affidavit, which requires a showing that the affidavit is both relevant and not subject to the restrictions of hearsay. See R.I. R. Ev. 401, 802.

Hearsay evidence is an out-of-court utterance that is being offered to prove the truth of the matter asserted therein. See R.I. R. Ev. 801; State v. Poulin, 415 A.2d 1307 (R.I. 1980); Manual J. Furtado, Inc. v. Sarkas, 118 R.I. 218, 373 A.2d 169 (1977); Allen v. D'Ercole Construction Co., 104 R.I. 362, 244 A.2d 864 (1968). "It is well [also] settled, with unanimity of authority, that the hearsay rule applies as forcibly to statements in writing as it does to those

verbally made." V. Woerner, Written recitals or statements as within rule excluding hearsay, 10 A.L.R.2d 1035 (1950). "The reasons most often cited for the need to exclude hearsay is the want of the normal safeguards of oath, confrontation and cross-examination for the credibility of the out-of court declarant." State v. Angell, 122 R.I. 160, 405 A.2d 10 (R.I. 1979); (citing McCormick on Evidence § 246 (2d ed. 1972)).

At trial, Appellant's counsel had the affidavit marked for identification while Appellant was testifying. Importantly, the declarant—the owner of the auto body shop—was not present to testify; thus, his statements made in the affidavit were made out-of-court. Furthermore, the substance of the affidavit was offered to prove that Appellant's vehicle was side-swiped. Such a statement is clearly hearsay under Rule 801 and 803, and Appellant did not articulate any exception to the hearsay rule that might apply under Rule 803. The trial judge then properly excluded the affidavit from being admitted into evidence. The trial judge noted that the affidavit was not going to be admitted because the declarant was not present to testify and not subject to cross-examination. (Tr. at 33); see McCormick, § 246. This Panel agrees with the trial judge's decision to exclude the affidavit because the affidavit was hearsay and not subject to an exception to the hearsay rule.

Next, Appellant contends that the affidavit, which was excluded, shows that the Appellant was side-swiped and could not have run through the red light. Appellant contends that based on the affidavit and the other evidence presented the trial judge abused his discretion in sustaining the violation. Having determined that the affidavit was properly excluded, this Panel is left to review the testimony elicited by the witnesses at trial.

In Link, our Supreme Court made clear that 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, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of Officer McGinn, Ms. Reis, Mr. Poirier, Ms. Conetta, or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [Officer McGinn, Ms. Reis, Mr. Poirier, Ms. Conetta, and Appellant.] [The trial judge] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

Here, the trial judge was faced with two conflicting stories, with each side claiming the other drove through a red light. It was the trial judge's job to determine which version of events was more compelling. The trial judge recounted Officer McGinn's testimony and Officer McGinn's investigation. The trial judge noted that after Officer McGinn conducted his investigation and he then decided to issue the Appellant a citation. (Tr. at 41.) The trial judge found it significant that Mr. Poirier, a disinterested party, supported Ms. Reis's version of events. (Tr. at 43.) The trial judge concluded by stating that there was compelling evidence against the Appellant to sustain the violation. (Tr. at 46.) Finally, the trial found that Appellant's contention regarding being side-swiped was "completely inconsistent with the other testimony. . . ." (Tr. at 47.) Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence.

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 not an abuse of discretion and was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.