

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF JOHNSTON

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:
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v.

C.A. No. M08-0022

JOHN O'BRIEN

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on February 25, 2009—Judge Almeida (Chair, presiding) and Magistrate DiSandro and Magistrate Cruise sitting—is John O'Brien's (Appellant) appeal from a decision of the Johnston Municipal Court, sustaining the charged violation of G.L. 1956 § 31-15-3, "Passing of vehicles proceeding in opposite directions." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On August 8, 2008, Officer Troy Maddocks (Officer Maddocks) of the Johnston Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At the outset of the trial, the police prosecutor for the City of Johnston informed the trial judge that she had a conflict of interest and would not be able to prosecute the case. (Tr. at 3.) The trial judge allowed the prosecutor to recuse herself, thereby assuming the prosecutorial role. The Court then proceeded to hear testimony from Officer Maddocks.

Officer Maddocks testified that on the date in question, he responded to the scene of a two-vehicle collision in the vicinity of George Waterman Road and Brayton Street. (Tr. at 5.) When he arrived at the scene, Officer Maddocks noticed that both of the vehicles involved in the

collision—a Rhode Island Public Transit Authority (RIPTA) bus and a late model Volvo—had been moved from the location of the initial impact to Serrel Sweet Road. (Tr. at 6.)

The operator of the Volvo, a Mr. Edward Diamonte (Mr. Diamonte), informed Officer Maddocks that he was traveling northbound on George Waterman Road and was approaching a bend in the roadway in the vicinity of Serrel Sweet Road and Brayton Street. (Tr. at 6-7.) As he was rounding the bend in the road, he noticed that the RIPTA bus was “occupying his lane.” (Tr. at 7.) Mr. Diamonte was unable to avoid the bus and collided with it. *Id.* On questioning from the trial judge, Officer Maddocks explained that there was “moderate” damage to the front bumper and front side fender of Mr. Diamonte’s vehicle. (Tr. at 7-8.) The bus had also sustained damage to its front bumper and to the bicycle rack attached to the bumper. (Tr. at 11.)

Officer Maddocks then made contact with the operator of the RIPTA bus, identified at trial as Appellant. (Tr. at 8.) The Appellant explained to Officer Maddocks that his vehicle was traveling southbound on George Waterman Road. *Id.* As the bus rounded the bend in the road, Mr. Diamonte’s vehicle was “occupying his lane”; as such, Appellant attempted to swerve to the right but made contact with Mr. Diamonte’s vehicle. (Tr. at 8-9.)

Based on the professional training that he received at the Rhode Island Municipal Police Training Academy, Officer Maddocks was able to determine the point of impact based on the “debris field.” (Tr. at 10.) As Officer Maddocks explained, because the glass and other debris from the collision was scattered across a twenty-foot-long stretch of the northbound lane of George Waterman Road, with no debris in the southbound lane, the collision occurred in the northbound lane approximately fifty feet north of Brayton Street. (Tr. at 7, 10.) Officer Maddocks indicated that the location of the “debris field” was evidence that the RIPTA bus had been operating in Mr. Diamonte’s travel lane. (Tr. at 11.)

On cross-examination, Officer Maddocks testified that he responded to the scene after the vehicles had been moved to Serrel Sweet Road and, as such, was unable to observe the location of the vehicles immediately following the collision. (Tr. at 13.) Officer Maddocks added that his conclusions were based solely on the location of the “debris field” in the roadway and that he was unable to conclusively determine whether the debris was from one or both of the vehicles. Id. Officer Maddocks further testified that he was not certified or trained in accident reconstruction. Id.

Following Officer Maddocks’ trial testimony, Mr. Diamonte took the witness stand. Mr. Diamonte testified that at approximately 4:00 p.m. on the date in question he was traveling on George Waterman Road towards Smith Street. (Tr. at 17.) As he approached a bend in the roadway, Mr. Diamonte noticed that the bus operated by Appellant was “coming around . . . the bend . . . [and] was in [his] lane” (Tr. at 18.) Mr. Diamonte attempted to swerve in order to avoid a collision with the bus, but his evasive maneuvers were unsuccessful. Id. On questioning by the trial judge, Mr. Diamonte indicated that “more than half” of the RIPTA bus had crossed into his travel lane. Id. According to Mr. Diamonte, the “whole front [of his vehicle was] just smashed . . . from the driver’s side back[,]” but that the bus had sustained “[v]ery little” damage. (Tr. at 19.)

At the conclusion of Mr. Diamonte’s trial testimony, Appellant testified that he was traveling southbound on George Waterman Road in the vicinity of the bend described by Mr. Diamonte, and that there were two cars parked on the right side of the roadway. (Tr. at 25.) According to Appellant, he maneuvered the bus into the northbound travel lane in order to pass these parked vehicles and that there was no oncoming traffic at the time. Id. The Appellant indicated that he successfully passed the two parked vehicles and was maneuvering the bus into

the southbound travel lane when he observed “a car coming on the outside of the two cars that were on the right side going northbound” (Tr. at 27.) According to Appellant, the collision did not occur in his travel lane because he swerved left in order to avoid Mr. Diamonte’s vehicle, which had entered Appellant’s travel lane. (Tr. at 29.)

Following the trial, the trial judge sustained the charged violation of § 31-15-3. Aggrieved by this decision, Appellant filed a timely appeal to this Panel. Our decision is rendered below.

Standard of Review

Pursuant to § 8-18-9, “[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8.”

Section 31-41.1-8 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’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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge’s decision is characterized by abuse of discretion. Specifically, Appellant contends that the trial judge erred in choosing to credit the trial testimony of Officer Maddocks regarding the circumstances surrounding the collision and by failing to credit the testimony of Appellant. However, the members of this Panel decline to reach the merits of Appellant’s argument because the record reflects that the trial judge, by allowing the City of Johnston’s police prosecutor to recuse herself, acted as both a prosecutor and a fact-finder in the same proceeding.

As a matter of due process, “a citizen is guaranteed a hearing before an administrative body that is not biased or whose members are ‘otherwise indisposed from rendering a fair and impartial decision.’” In re Commission on Judicial Tenure and Discipline, 916 A.2d 746, 750 (R.I. 2007) (quoting La Petite Auberge, Inc. v. Rhode Island Commission for Human Rights, 419 A.2d 274, 283 (R.I. 1980)). “However, the mere existence of a combination of ‘investigatory, inquisitorial, and adjudicative roles in a single administrative body’ does not amount to a denial

of due process or signify that the agency's structure or operations is subject to constitutional attack." Id. (quoting La Petite Auberge, Inc., 419 A.2d at 284). "To challenge an . . . adjudication based on an amalgamation of incompatible functions, a party "must show that the procedures 'pos[e] such a risk of actual bias or prejudice that the practice must be forbidden if the guarantee of due process is to be adequately implemented.'" Id. (quoting Withrow v. Larkin, 421 U.S. 35, 47 (1975)).

However, as for the individual members of such an administrative or adjudicative body, our Supreme Court "has never suggested that such members of a[] . . . body 'may involve themselves directly in either the preparation or the prosecution' of an . . . action because '[s]uch activities would raise constitutional issues of a wholly different order.'" Id. at 751 (quoting La Petite Auberge, Inc., 419 A.2d at 284). Although it has been held that "a combination of investigatory and judicial functions is not always prohibited, a combination of prosecutorial and judicial functions in the same individual is condemned." Davis, 427 A.2d at 337. "When the same individual who investigates and prosecutes the case . . . then becomes a fact-finder in the same proceeding, the adjudicatory stage of the proceeding has been unconstitutionally tainted. . . . This finding is based upon the fact that one who has buried himself in one side of an issue is disabled from later judging that issue in a dispassionate manner." Id.

Based on the record before this Panel, it is clear that the trial judge "attempt[ed] to establish proof to support the position of any party to the controversy," thereby "becom[ing] an advocate or participant, [and] ceasing to function as an impartial trier of fact." Id. As the trial judge explained on the record:

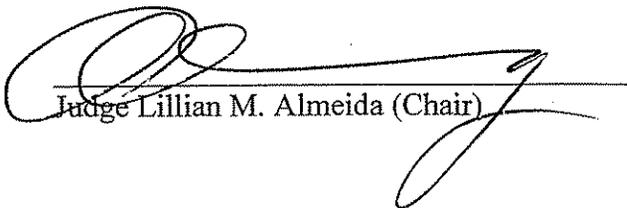
"I'll ask the questions. It's just going to be testimony . . . from both motorists involved in the case. And if there's questions on cross-examination, I'll ask them or the attorney for the motorist charged is . . . free to ask questions . . ." (Tr. at 3.)

While Rule 614 of the Rhode Island Rules of Evidence (Rule 614) allows the court to “interrogate witnesses, whether called by itself or by a party,” the judge “must proceed with caution in such an examination.” State v. Phommachak, 674 A.2d 382, 388 (R.I. 1996) (citing State v. Amaral, 47 R.I. 245, 249-250, 132 A. 547, 549-550 (1926)). The trial judge must, in exercising his or her question-asking prerogative pursuant to Rule 614, “guard against even the appearance of changing his [or her] position from that of a judicial officer impartially presiding at the trial to that of a partisan advocate interested in establishing the position of either party.” Id. Here, it is patently clear from our review of the trial judge’s statement and the record as a whole that the trial judge exceeded the limited judicial role contemplated by Rule 614, thereby violating Appellant’s due process right to a fair trial before a neutral and detached fact-finder. Accordingly, as the actions of the trial judge undermined “the fundamental fairness required by due process,” Davis, 427 A.2d at 337 (citing NLRB v. Air Flow Sheet Metal, Inc., 396 F.2d 506, 508 (7th Cir. 1968)), we conclude that this matter must be remanded to the Johnston Municipal Court for a new trial.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel conclude that this matter must be remanded to the Johnston Municipal Court for further proceedings consistent with this decision.

ENTERED:


Judge Lillian M. Almeida (Chair)

D. DiSandro

Magistrate Domenic A. DiSandro III

R. David Cruise

Magistrate R. David Cruise

DATE: 9-17-09

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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 is not affected by error of law or clearly erroneous in view of the reliable, probative, and substantial record evidence. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied.

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