STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF PROVIDENCE	:	
	:	
v.	:	**C.A. No. T08-0097**
	:	
EMILIO TAYLOR	:	

DECISION

PER CURIAM: Before this Panel on November 5, 2008, Judge Almeida (Chair), Chief Magistrate Guglietta, and Magistrate Goulart sitting, is Emilio Taylor's (Appellant) appeal from Judge Parker's decision, sustaining the charged violations of G.L. 1956 § 31-16-5, "Turn signal required," and G.L. 1956 § 31-22-22, "Safety belt use." The Appellant was represented by counsel before this Panel.[1] Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On May 22, 2008, Appellant was charged with violating the aforementioned motor vehicle offenses by Patrol Officer Matthew Greely (Officer Greely) of the Providence Police Department. The Appellant contested the charges, and the matter proceeded to trial.

At trial, Officer Greely testified that at approximately 8:30 p.m. on the date in question, he was on routine patrol on Manton Avenue. (Tr. at 2.) At this time, Officer Greely observed a late model blue Toyota operating with extensive rear end damage; he noted that the rear bumper of the vehicle had become completely detached. (Tr. at 3.) Officer Greely testified that he activated his cruiser's overhead lights and sirens in order

[1] The Appellant appeared pro se before the trial judge.

to initiate a traffic stop of the vehicle. Id. Upon doing so, the damaged vehicle accelerated to a high rate of speed before making an "abrupt" left turn onto Edgemere Avenue without the use of a turn signal. Id. As the vehicle turned onto Edgemere Avenue, Officer Greely noticed that the operator of the vehicle—later identified at trial as Appellant—was not wearing a safety belt. Id. Officer Greely testified that the vehicle proceeded down Edgemere Avenue before pulling into the driveway of 29 Edgemere Avenue. Id.

Before Appellant testified on his own behalf, the trial judge engaged in the following colloquy with Officer Greely:

> Judge: "This is the operator?"
>
> Officer Greely: "Yes, your Honor."
>
> Judge: "When you saw [Appellant] driving the car, he didn't have his seatbelt on?"
>
> Officer Greely: "Yes, your Honor."
>
> Judge: "And you followed him and he took a left without using his turn signal; is that your testimony?"
>
> Officer Greely: "Yes, your Honor." (Tr. at 3-4.)

At the conclusion of Officer Greely's trial testimony, the Appellant testified that he utilized his turn signal when turning onto Edgemere Avenue. (Tr. at 4.) However, Appellant did not cross-examine Officer regarding the safety belt violation.

Following the trial, the trial judge sustained the charged violations of § 31-16-5 and § 31-22-22. It is from this decision that Appellant now appeals. Forthwith is this Panel's decision.

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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced 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 following unlawful procedure;
> (4) Affected by another error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary, 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, in violation of constitutional provisions, in excess of his statutory authority, affected by errors of law, and clearly erroneous in light of the reliable, probative, and substantial record evidence.

The Appellant has advanced several arguments in support of his appeal. First, Appellant argues that the trial judge's decision not to dismiss the charged violations pursuant to Rule 17 of the Rules of Procedure for the Traffic Tribunal[2] (Rule 17) was characterized by abuse of discretion. Specifically, Appellant contends that as a prosecuting attorney for the City of Providence failed to appear for Appellant's trial, substantial rights of Appellant were prejudiced by the trial that occurred. Next, Appellant asserts that the trial judge's decision is violative of his procedural due process rights, as Appellant maintains that he was denied a meaningful opportunity to cross-examine Officer Greely. Furthermore, Appellant argues that the trial judge acted in excess of his statutorily-prescribed jurisdiction, assuming the dual role of prosecutor and judge. Finally, Appellant contends that the trial judge's decision with respect to the charged violation of § 31-16-5 is clearly erroneous, as no testimony was adduced by Officer Greely that "any other traffic [was] affected by the movement] of Appellant's vehicle. Section 31-16-5. The arguments raised by Appellant will be addressed in seriatim.

[2] Rule 17 of the Rules of Procedure for the Traffic Tribunal reads: "If the prosecution fails to appear for trial and/or arraignment, the matter may be dismissed." Traffic Trib. R.P. 17. (Emphasis added.)

A

The Appellant's first argument on appeal is that the trial judge should have dismissed the matter based on the failure of the prosecution to appear for Appellant's trial. According to Appellant, the trial judge's failure to do so constitutes an abuse of his discretionary powers under Rule 17.

It is well-settled that a trial judge's exercise of discretion is reviewed to determine whether it "has been soundly and judicially exercised, . . . with just regard to what is right and equitable under the circumstances . . . ." Connecticut Valley Homes of East Lyme, Inc. v. Bardsley, 867 A.2d 788, 795 (R.I. 2005) (citing Geloso v. Kenny, 812 A.2d 814, 817 (R.I. 2002)). When circumstances require the trial judge to exercise discretion,

> "it is the duty of the court to consider and determine that question so that the rights of the parties may be fairly protected in an orderly manner. It is as much an abuse of judicial discretion in refusing to exercise such discretion when warranted by the facts before the court as it is to exercise that discretion improperly by means of a decision that is clearly erroneous on the facts or under the law." Id. (quoting Strezbinska v. Jary, 58 R.I. 496, 500, 193 A. 747, 749 (1937)).

Here, the trial judge's decision not to dismiss the charged violations was made in the exercise of his discretionary power under Rule 17. This decision will not be disturbed on appeal, as there is no evidence in the record before this Panel that his "discretion [was] improperly exercised or that there [was] an abuse thereof." Keystone Elevator Co., Inc. v. Johnson & Wales University, 850 A.2d 912 (R.I. 2004) (quoting Frank N. Gustafson & Sons, Inc. v. Walek, 599 A.2d 730, 733 (R.I. 1991)). Although Appellant asserts that the trial that resulted upon the judge's exercise of his Rule 17 discretion was a case study in procedural irregularity, he has adduced no evidence to support this assertion.

Accordingly, the trial judge's decision not to dismiss the charges based upon the failure of Providence's prosecution attorney to appear was not characterized by abuse of his discretion.

B

Next, Appellant contends that he was entitled, by virtue of his pro se status, to the assistance of the trial judge at critical stages of the proceeding, and that the failure of the trial judge to render such assistance amounts to a violation of his due process rights. Specifically, Appellant argues that the trial judge erred in failing to advise him of his right to cross-examine Officer Greely with respect to the safety belt violation.

It is well-established in Rhode Island that pro se litigants are often granted greater latitude by the court, although they "are not entitled to greater rights than those represented by counsel." Jacksonbay Builders, Inc. v. Azarmi, 869 A.2d 580, 585 (R.I. 2005) (quoting Gray v. Stillman White Co., 522 A.2d 737, 741 (R.I. 1987)). The decision to proceed pro se does not excuse a litigant from compliance with court processes, Sentas v. Sentas, 911 A.2d 266, 271 (R.I. 2006), or require the court to overlook the litigant's failure to prove his or her case. Shorrock v. Scott, 944 A.2d 861, 863-864 (R.I. 2008) (citing Berard v. Ryder Student Transportation Services, Inc., 767 A.2d 81, 84 (R.I. 2001)). "Even if a litigant is acting pro se, he or she is expected to familiarize himself or herself with the law as well as the rules of procedure." Faerber v. Cavanagh, 568 A.2d 326, 330 (R.I. 1990).

In the instant case, Appellant, after making a conscious decision to represent himself, failed to familiarize himself with the Rules of Procedure for the Traffic Tribunal and the Rhode Island Rules of Evidence, "adherence to which is necessary [so] that

parties may know their rights, that the real issues in controversy may be presented and determined, and that the business of the court[] may be carried on with reasonable dispatch." Berard, 767 A.2d at 84. Had he done so, he would have realized that he was entitled—pursuant to Rule 15 of the Rules of Procedure for the Traffic Tribunal[3] and Rule 611 of the Rhode Island Rules of Evidence[4]—to cross-examine Officer Greely and to inquire into matters affecting Officer Greely's credibility.

It is well-established in Rhode Island that vigorous cross-examination is "the keystone of the fact-finding process . . . ." Watmough v. Watmough, 430 A.2d 1059, 1060 (R.I. 1981). Here, however, Appellant was deprived of "a vital element of the fact-finding process," Marcotte v. Harrison, 443 A.2d 1225, 1233 (R.I. 1982), as he was not afforded a meaningful opportunity to engage in cross-examination of Officer Greely, as provided by our procedural rules. This Panel reiterates that we "cannot and will not entirely overlook our established rules of procedure." Berard, 767 A.2d at 84. We are satisfied that this matter—at least with respect to the charged violation of § 31-22-22—must be remanded to the trial judge in order to allow Appellant an opportunity to engage in cross-examination of Officer Greely.

C

In addition to the due process argument previously advanced, Appellant argues that he was denied "a fair trial in a fair tribunal[,] a basic requirement of due process," because the trial judge acted as both a prosecutor and fact-finder in the same proceeding.

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[3] Rule 15 of the Rules of Procedure for the Traffic Tribunal reads, in pertinent part: "All evidence shall be admitted which is admissible under the statutes of this State, or under the rules of evidence applied in the courts of this State."

[4] Rule 611 of the Rhode Island Rules of Evidence reads, in relevant part: "Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination."

Davis v. Wood, 427 A.2d 332, 336-337 (R.I. 1981) (citing In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625 (1955)). The Appellant focuses this Panel's attention on the colloquy between the trial judge and Officer Greely in order to argue that the trial judge impermissibly combined the prosecutorial and judicial functions, thereby assisting Officer Greely to prove the charged violations to a standard of clear and convincing evidence.

It is well-established that "[w]hen the same individual who . . . prosecutes [a] case . . . then becomes a fact-finder in the same proceeding, the adjudicatory stage of the proceeding has been unconstitutionally tainted." Davis, 427 A.2d at 337. "This finding is based upon the fact that one who has buried himself in one side of an issue is disabled from . . . judging that issue in a dispassionate manner." Id.

Based on the record before this Panel, there is no evidence 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. The record reflects that the trial judge, rather than "assume a wholly passive role[,] [chose to] participate in the proceeding whenever necessary to the end that the hearing proceed in an orderly, expeditious fashion. He [wa]s free to interrupt [Officer Greely] and [did] so on those occasions when it [wa]s necessary to seek a clarification of" Officer Greely's trial testimony. Id. Thus, this Panel is satisfied that the trial judge's questioning of Officer Greely and reference to facts already in evidence represents nothing more than an attempt at clarification of Officer Greely's testimony and not partiality to the prosecution. Substantial due process rights of Appellant have not been violated.

D

As his final argument on appeal, Appellant argues that the trial judge's decision to sustain the charged violation of 31-16-5 was clearly erroneous in light of the reliable, probative, and substantial record evidence. It is Appellant's contention that the charged violation was not proved to a standard of clear and convincing evidence, as no evidence was adduced that "any other traffic [was] affected by the movement" of his vehicle. Section 31-16-5.

In order for the charged violation of § 31-16-5 to be sustained, the prosecution was required to prove to a standard of clear and convincing evidence that "the movement [of Appellant's vehicle] [was not] made with reasonable safety," that Appellant "turn[ed] [his] vehicle without giving an appropriate signal," and that "other traffic [was] affected by the movement." Section 31-16-5. Having reviewed the entire record before it, this Panel is satisfied that the prosecution failed to meet this burden. While Officer Greely testified that Appellant turned onto Edgemere Avenue from Manton Avenue without utilizing his turn signal, the record is silent on the issue of whether the movement of Appellant's vehicle was "made with reasonable safety" and whether other vehicles were affected by his "abrupt" movement. (Tr. at 3.) Without such testimony, the turn signal charge cannot be sustained.

Conclusion

Upon a review of the entire record, this Panel concludes that the trial judge's decision with respect to the charged violation of § 31-22-22 is in violation of constitutional provisions and affected by error of law. The charge is hereby remanded to the trial judge in order to afford Appellant a meaningful opportunity to cross-examine

Officer Greely. With respect to the charged violation of § 31-16-5, this Panel concludes that the trial judge's decision is clearly erroneous in view of the reliable, probative, and substantial record evidence. Accordingly, Appellant's appeal with respect to the turn signal charge is granted, and the charged violation of § 31-16-5 dismissed.

ENTERED: