

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
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TOWN OF BRISTOL

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V.

:

C.A. No. T11-0016

:

JAMES R. MARCHAND

:

PER CURIAM: Before this Panel on June 29, 2011—Magistrate Noonan (Chair, presiding), Administrative Magistrate Cruise, and Judge Almeida, sitting—is James Marchand’s (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violations of G.L. 1956 §§ 31-15-1, “Right half of road” and 31-27-2.1, “Refusal to submit to a chemical test.” Both parties were represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 24, 2010, Officer Timothy Kearns of the Bristol Police Department was on routine patrol. While on patrol, Officer Kearns received a call from police dispatch of an erratic driver in the area of Hope Street. Officer Kearns traveled to the area and observed Appellant operating his vehicle on the wrong side of the road. Upon initiating a traffic stop, Officer Kearns approached the vehicle, and observed that Appellant’s eyes were bloodshot, watery, and glassy. (Tr. at 16.)

According to Officer Kearns, the Appellant fumbled with his license and registration while attempting to produce it. Additionally, Officer Kearns observed Appellant fall onto the car’s horn while retrieving his license and registration. (Tr. at 16.)

Officer Kearns asked Appellant to exit the vehicle and Officer Kearns conducted two pre-exit field-sobriety tests. (Tr. at 17.) Upon exiting the vehicle, Officer Kearns observed the Appellant to be unsteady on his feet and attempt to grasp at his vehicle for balance. (Tr. at 18.) After exiting the vehicle, Officer Kearns asked Appellant to submit to a series of field sobriety tests. (Tr. at 23.) Based on his training, Officer Kearns determined that the Appellant failed the tests. Id.

At this point, Officer Kearns contacted Patrolman Medeiros and requested that a portable Breathalyzer test be brought to the scene. (Tr. at 22.) The Appellant informed Officer Kearns that he did not drink alcohol but took his prescribed medications of Toprol and Trazadone. Id. Patrolman Medeiros arrived and administered the portable breath test, which did not detect the presence of alcohol on Appellant's breath. (Tr. at 23.) Regardless of the test results, Officer Kearns determined that Appellant could not safely operate a motor vehicle and suspected the Appellant was operating his vehicle while under the influence of alcohol or drugs. Then, Officer Kearns placed Appellant under arrest.

Officer Kearns transported the Appellant to the police station for processing. Upon arriving at the police station, Appellant was read his rights for use at the station. (Tr. at 27.) Officer Kearns afforded Appellant the opportunity to a private phone call, which Appellant denied. Id. After being read his rights, Appellant agreed to take a second chemical breath test. (Tr. at 29.) The results again did not detect the presence of alcohol on Appellant's breath. Id. Officer Kearns requested that Appellant submit to a blood test, which Appellant refused. (Tr. at 30.)

At the conclusion of Officer Kearns' testimony, the State rested. Appellant made a Motion to Dismiss pursuant to Rule 16 of our rules of procedure. (Tr. at 66.) Appellant's

counsel asserted that Officer Kearns lacked probable cause to make the initial arrest of Appellant. (Tr. at 66.) While evaluating Appellant's motion, the trial magistrate made multiple statements regarding the evidence presented and the credibility of Officer Kearns. The trial magistrate also noted that he had "resolved in my own mind the issue of probable cause. (Tr. at 87.) The trial magistrate then stated that Officer Kearns had been an "excellent witness," that "he was well prepared, knowledgeable, certainly credible." (Tr. at 94.) The trial magistrate went on to state that "I have no reason at all to disbelieve anything Officer Kearns said. As good as I've seen, quite frankly." (Tr. at 94.)

During his review of Officer Kearns' testimony, the trial magistrate made statements indicating he had already formed conclusions about the validity of the charges in question. (Tr. at 95-102.) The trial magistrate noted that Appellant had been operating his vehicle in "what I would consider a reckless fashion" and that Appellant had pulled over his vehicle in "what I would consider a fairly unusual fashion." (Tr. at 96.) Notably, the trial magistrate determined that the Appellant was guilty of both charged violations. (Tr. at 101.) However, the trial magistrate quickly recanted that determination before denying the Appellant's Motion to Dismiss. (Tr. at 102.)

After the Appellant's case in chief, the trial magistrate incorporated by reference his previous statements made during Appellant's Motion to Dismiss. (Tr. at 110.) The trial magistrate then sustained the violations of §§ 31-15-1 and 31-27-2.1, and imposed penalties. (Tr. at 102.) Appellant timely and properly filed this appeal.

Standard of Review

Pursuant to § 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:

- (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 other 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 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 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 magistrate's conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that the trial magistrate's decision is affected by error of law; erroneous based on the reliable, probative, and substantial evidence on the whole record; characterized by abuse of discretion; and in violation of constitutional and statutory provisions. Appellant asserts that he was denied the opportunity to meaningfully present his case-in-chief. Appellant suggests that by making findings before Appellant had an opportunity to present evidence, the trial magistrate denied Appellant his right to a fair and impartial trial. Specifically, the trial magistrate's finding that Appellant was guilty before Appellant had an opportunity to present his case in chief.

The State asserts, however, that the trial magistrate's credibility determinations were valid and based on clear and convincing evidence. The State claims the trial magistrate relied on the testimony of Officer Kearns in reaching his determinations, and that those determinations did not extend beyond the scope of the motion for dismissal. Furthermore, the State also argues that Appellant clearly stated he did not wish to present any more evidence immediately prior to the magistrate's ruling and that he was fully afforded the opportunity to present his case in chief. The state asserts that case law makes clear that the trial magistrate's evaluation of the evidence is given deference on appellate review.

Our Supreme Court has made clear that a defendant's right to "present his defense at a trial...should be carefully protected." Morris v. Curran, 179 A. 708, 711 (R.I. 1935). This Panel agrees with Appellant that his rights to present a meaningful defense were prejudiced by the trial magistrate's comments during his ruling on the Motion to Dismiss. In the instant matter, the trial

magistrate abused his discretion when he made numerous findings of fact and revealed his disposition regarding the charges at issue before the Appellant had presented his case in chief. (Tr. at 94.) The record reveals that the trial magistrate had already made numerous conclusions regarding the credibility of witnesses, and issues of law before Appellant was presented with an opportunity to call witnesses and present evidence. See id. (noting in pertinent part that “I have no reason at all to disbelieve anything Officer Kearns said. As good as I’ve seen, quite frankly”). Particularly telling was the trial magistrate’s decision that the Appellant was guilty during Appellant’s Motion to Dismiss. Based on that assertion by the trial magistrate, the Appellant’s right to present evidence in a meaningful manner was clearly prejudiced.

The trial magistrate is expected to facilitate the proper presentation of the defendant’s cause and the ascertainment of the truth. The trial magistrate exceeded his discretion when he made conclusory statements about the case before allowing Appellant to present his case in chief. For these reasons, the trial magistrate’s determination of guilt dissuaded Appellant from presenting his case in chief, and denied Appellant his right to meaningfully present a defense to the violations. As such, the trial magistrate abused his discretion, which resulted in Appellant’s case in chief being prejudiced.

Having determined that the Appellant’s ability to present its case in chief was prejudiced this Panel feels the appropriate remedy is to remand the matter to the trial magistrate. At which point, the Appellant will have the opportunity to present additional evidence to support their case in chief. A remand is appropriate in this particular situation because dismissal of the charged violation is too drastic a remedy. We feel that the Appellant will not be prejudiced any further by remanding the matter for further fact-finding.

Conclusion

Having reviewed the record before it, this Panel is satisfied that the trial magistrate's decision sustaining the charged violations of §§ 31-15-1 and 31-27-2.1 was an abuse of discretion. Substantial rights of Appellant have been prejudiced. Accordingly, the matter is to be remanded to Magistrate Goulart for further proceedings.

ENTERED: