

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

v.

KENNETH RIBEIRO

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:

C.A. No. T11-0036

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on September 21, 2011—Magistrate Noonan (Chair, presiding), Judge Parker, and Judge Ciullo, sitting—is Kenneth Ribeiro’s (Appellant) appeal from a decision of Magistrate DiSandro, denying the Appellant’s Motion to Dismiss¹ the charged violation of G.L. 1956 § 31-27-2.1, “Refusal to submit to a chemical test.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 21, 2011, Officer James Grennan (Officer Grennan) of the Providence Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant was scheduled to be arraigned on May 10, 2011. (Arr. Tr. at 1.) However, the Appellant was not arraigned and the matter was transferred to the Refusal calendar for status conference. Id.

On May 17, 2011, the Appellant appeared before Magistrate DiSandro for arraignment and for argument on Appellant’s Motion to Dismiss. Id. The Appellant entered a plea of not

¹ The Appellant also filed an appeal from Magistrate DiSandro’s decision to sustain the charged violation § 31-27-2.1 after trial. The appeal was docketed as T11-0043. The two appeals were consolidated for argument on September 21, 2011. However, the Appellant failed to provide this Panel with a complete transcript of the trial sustaining the charged violation. As such, the Appellant’s appeal of the decision to sustain the charged violations is dismissed pursuant to G.L. 1956 § 31-41.1-8.

guilty regarding all the violations.² (Arr. Tr. at 2.) After entering the plea, the Appellant argued the Motion to Dismiss the charged violation of § 31-27-2.1. Id.

The crux of the Appellant's argument was that the Appellant's original arraignment date, May 10, 2011, was not within two weeks as prescribed by our rules of procedure for a violation of § 31-27-2.1. See Traffic Trib. R.P. 33. Appellant argued that the two week arraignment window expired on May 5, 2011. Thus, Appellant's original arraignment date of May 10, 2011, he contends, was in violation of our rules. As such, Appellant argued that he was entitled to a dismissal of the violation of § 31-27-2.1.

At argument, the hearing magistrate questioned the Appellant regarding where in Rule 33 it said that a dismissal was mandated if the two-week time period was violated. (Arr. Tr. at 3-4.) Appellant failed to demonstrate where it stated in the rules that a dismissal was warranted. The hearing magistrate concluded that a showing of prejudice on the part of the Appellant was required to warrant a dismissal. The magistrate determined that even though there was a violation of Rule 33, it was still within the magistrate's discretion to determine whether a dismissal was warranted. Id. At the close of argument, the Appellant's motion was denied because the Appellant was not prejudiced by the violation of Rule 33.³ The Appellant timely filed this appeal.

² The Appellant was charged with several other violations of the motor vehicle code in connection with this incident. None of these violations is pertinent to this Panel.

³ Additionally, this Panel does not hear interlocutory appeals. See Traffic Trib. R.P. 21. As such, the Appellant decided to have the matter heard for trial immediately to expedite the appeal of the hearing magistrate's decision. The matter was assigned to trial for May 19, 2011. After trial, the Appellant was found guilty of the charged violation.

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 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 contends that the hearing magistrate’s decision was made in violation of statutory provisions and an abuse of discretion. Appellant argues that the hearing magistrate was bound to dismiss the charged violation of § 31-27-2.1 because Rule 33 of our rules of procedure was not complied with by Officer Grennan.

Rule 33 states, in pertinent part, “that arraignment in refusal cases shall be scheduled two (2) calendar weeks after the date the citation was issued.” Traffic Trib. R.P. 33. Appellant contends because of the mandatory language “shall,” the hearing magistrate should have dismissed the charged violation. This Panel disagrees.

This Panel is mindful that our rules do, in fact, state that an arraignment shall take place within in two weeks. Refusal cases present interesting problems for this Court. Section 31-27-2.1 of the Rhode Island General Laws empowers this tribunal with the responsibility of enforcing laws related to impaired driving. Public policy concerns are inherent in each impaired driving case. See State v. Locke, 418 A.2d 843, 847 (R.I. 1980); see also DiSalvo v. Williamson, 106 R.I. 303, 305-306, 259 A.2d 671, 673 (R.I. 1969) (“goal of reducing the carnage occurring on our highways which is attributable to the persons who imbibe alcohol and then drive.”) One important public policy consideration in the law is the suspension of the license of motorists who choose to operate their vehicle while under the influence of drugs or alcohol. In evaluating Rule 33, the purpose of the two-week arraignment time frame is to provide this Court with an expedited time frame to review the facts of each case and determine whether a preliminary order of suspension is warranted. Rule 33’s two-week limitation ensures that the motorist is given a

fair opportunity to be presented before this Court to contest the charges, and it provides this Court with an opportunity to remove a potentially dangerous driver from the road while their case is pending.

It is with these policy concerns that this Panel and this Court have consistently held that a showing of prejudice is required when arguing a summons is defective and dismissal is warranted. According to our rules “[a]n error or omission in the summons shall not be grounds for dismissal of the complaint . . . if the error or omission did not mislead the defendant to his or her prejudice.” Traffic Trib. R.P. 3(d). Appellant’s contention that the charged violation should be dismissed because Officer Grennan put an arraignment date on the summons outside the two-week limitation is misguided. As the hearing magistrate noted, a dismissal is an extreme remedy that should be applied cautiously. (Arr. Tr. at 10.) Thus, there is a required showing that the Appellant was prejudiced by the delay in arraignment.

Here, the Appellant cannot point to any prejudice that he suffered as a result in the delay of the arraignment. Appellant’s original arraignment date was scheduled three business days after the two-week time frame had expired. Such a delay can be seen as marginal at best. Clearly, the arraignment date given to the Appellant was an excusable mistake on the part of Officer Grennan.

Finally, Appellant directs this Panel to our decision in State of Rhode Island v. Ladieu, T10-0022 (filed September 1, 2010.) In Ladieu, this Panel affirmed the hearing magistrate’s decision to dismiss the charged violation of § 31-27-2.1 for the prosecution’s failure to arraign within the two-week time frame. In Ladieu, the arraignment took place six weeks after the defendant’s arrest. During that time, the arresting agency had destroyed evidence in connection

with the defendant's case. There, the hearing magistrate determined that the defendant was prejudiced by the delay in arraignment and dismissed the violation.

The facts in Ladieu are clearly distinguishable from the case at bar. A six-week delay compared to a delay of only three days is substantially different. Additionally, evidence was not destroyed in the case at bar as was the case in Ladieu. When asked by the hearing magistrate how he was prejudiced in the case at bar, Appellant could not point to any facts or circumstances demonstrating any amount of prejudice by the delay. (Arr. Tr. at 6.) Ladieu stands for the proposition that prejudice is required when the two-week time limit is not complied. Here, the Appellant has not shown such prejudice.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the hearing magistrate's decision is not in violation of statutory provisions or an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED: