STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF PAWTUCKET	**:**	
	:	
v.	**:**	**C.A. No. T13-0062**
	:	**13408502848**
MAREK KRZACZEK	**:**	

DECISION

PER CURIAM: Before this Panel on January 29, 2014—Magistrate Goulart (Chair, presiding), Judge Parker, and Magistrate DiSandro, sitting—is Marek Krzaczek's (Appellant) appeal from a decision of Judge Almeida (trial judge), sustaining the charged violation of G.L. 1956 § 31-27-2.1(b), "Refusal to Submit to a Chemical Test." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 9, 2013 Officer Emmanuel Mejia of the City of Pawtucket Police Department (Officer) charged the Appellant with the above violation of the motor vehicle code. (Tr. at 26.) Appellant contested the charge, and the matter was heard at trial on July 10, 2013 and September 26, 2013.

Before this trial commenced, the District Court held an evidentiary hearing on May 15, 2013, regarding Appellant's separate, driving under the influence (DUI) charge. After the State put on its case, the judge in the District Court found that Officer's testimony lacked credibility and dismissed the criminal charge against Appellant.

At the beginning of the Traffic Tribunal hearing, counsel for Appellant offered the transcript into the evidence and moved to dismiss the case based upon collateral estoppel. The motion was denied, and trial testimony was presented. (Tr. at 9-11.)

The first and only witness at the trial was Officer Mejia who testified on behalf of the State. He began his testimony by describing his training and experience as a police officer. (Tr. at 20-23.) Specifically, he explained his experience and training in DUI stops, and that he has conducted at least twenty stops related to suspected driving under the influence offenses. (Tr. at 20.) He further testified regarding the Standardized Field Sobriety Tests that he was trained to conduct and what clues of impairment he was trained to look for during the tests. (Tr. at 21.)

Thereafter, he explained that on March 9, 2013 at 6:30 P.M., he was dispatched to the intersection of Fountain Street at East Avenue in Pawtucket. (Tr. at 26.) When he reported to the scene, he observed a disturbance in which two motorists were pulled over on the side of the road and were arguing. (Tr. at 26, 28.) Officer positively identified the Appellant as one of the motorists involved in the dispute. (Tr. at 26.)

Upon arriving on the scene Officer stated that he first questioned the other motorist, before speaking with the Appellant. (Tr. at 28.) During the conversation Officer explained that Appellant described to him the events which led to the confrontation and that while the Appellant was speaking Officer observed a strong odor of alcohol on his breath, glossy eyes, and slurred speech. (Tr. at 29-30.) In response to these observations, Officer testified that he asked Appellant if he had been drinking, and Appellant responded that he had consumed two drinks an hour prior. (Tr. at 30.) Next, Appellant agreed to take the Standardized Field Sobriety Test, and Officer conducted the test on a flat roadway surface. (Tr. at 32.) Three tests were given: the Horizontal Gaze Nystagmus test, the walk and turn test, and the one-legged stand test. Id.

Officer testified that he observed multiple clues of intoxication during the tests. (Tr. at 34.) At the conclusion of the tests, Officer placed the Appellant under arrest. (Tr. at 37.) After the arrest, Officer testified that he read Appellant his "Rights For Use At Scene" card and that Appellant had responded verbally that he understood those rights. (Tr. at 38.) At the station, the "Rights For Use At Station" was also read to Appellant, and then he was offered and made a confidential phone call. (Tr. at 40.)

After the direct examination of Officer, he was cross-examined by Appellant's counsel. (Tr. at 48.) Officer admitted during his testimony that at the May 15, District Court hearing, he had been mistaken when he testified that the Appellant used his arms for balance during the walk-and-turn test. (Tr. at 54-55.) He explained that it was his mistake for not refreshing his memory on the case before he took the stand that day and that the Appellant raised his hands only during the instructional phase, which is not a recognized clue of intoxication. (Tr. at 54.)

The trial judge also questioned Officer in regards to some of the discrepancies and confusion between his testimony on May 15 in District Court and the testimony given before the Traffic Tribunal. (Tr. at 116-127.) Officer explained that he had more time to prepare for the current trial and look at his narrative. (Tr. at 122.) He testified that the Appellant had glossy eyes and slurred speech. (Tr. at 123-124.) Further, he explained that he made the arrest based upon not only the sobriety tests, but also on the admissions by the Appellant, the observation of Appellant's glossy eyes, the odor of alcohol emanating from Appellant's breath and Appellant's slurred speech. (Tr. at 127.)

After closing arguments, the trial judge decided to hold the decision and scheduled a date to render the decision. (Tr. at 147.) The hearing reconvened on September 26, 2013, and the trial judge rendered a decision. In her bench decision, the trial judge concluded that based on the

totality of the circumstances, Officer had reasonable grounds to ask the Appellant to take the chemical test. (Tr. at 174.) Accordingly, because it is undisputed that the Appellant refused to submit to the test, the trial judge sustained the charge for refusal. The Appellant filed a timely appeal of the 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 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

Appellant first argues that collateral estoppel should be used in order to dispose of the case. Specifically, Appellant contends that because he was acquitted of DUI in the District Court for the same incident.

It is well settled that collateral estoppel cannot be used in a civil case based on the outcome of a criminal case, even if the events surrounding both cases are the same. See Town of Barrington v. Layne Savage, T12-0063, April 12, 2013, R.I. Traffic Trib. Specifically, a dismissal in a criminal case does not determine that a defendant is innocent, but instead indicates that the prosecution failed to prove the offense beyond a reasonable doubt. State v. Smith, 721 A.2d 847, 848-49 (R.I. 1998). This standard differs from the burden of clear and convincing evidence, required in the Traffic Tribunal. See R.I. Traffic Trib. Rule 17.

Moreover, the decision of the District Court judge to dispose of the case does not have any binding impact on the traffic tribunal case, regardless of whether or not the violations in both cases stem from the same event. "[A]lthough the parties to the two cases are the same, the judgment in the criminal case does not make the issues in the present one res judicata, as is sufficiently explained in Stone v. United States, 167 U. S. 178, and Chantangco v. Abaroa, 218 U. S. 476." Murphy v. United States, 272 U.S. 630, 632-33 (1926). "[A]n acquittal at trial

would not automatically preclude a subsequent revocation proceeding because of the different burdens of proof required by each." Chase, 588 A.2d at 123–24; see State v. Studman, 121 R.I. 766, 767, 402 A.2d 1185, 1186 (1979). Accordingly, because the District Court and Traffic Tribunal require different burdens of proof, the trial judge's ruling that collateral estoppel was not an appropriate remedy available at the hearing was not affected by error of law. Jenkins, 673 A.2d at 109.

Appellant also contends that it was an error of law for the trial judge to refuse to take into account the District Court transcript, and its impeachment value, in determining the credibility of Officer. However, it is unnecessary for this Panel to address whether the trial judge was under a duty to allow the District Court transcript to be used for impeachment because it is clear from the record that the trial judge allowed it to be used for that purpose. Specifically, the trial judge explicitly stated to Appellant's counsel that the transcript could be used for impeachment purposes. See Tr. at 13-14 (The trial judge, in response to issues involving the transcript being used for impeachment said "Right. That's one thing you have every right to do that, I believe, court procedure, but strictly for this argument, okay?" ; see also Tr. at 67 (The trial judge said, in response to Appellant's Counsel's representation that he was going to use the District Court transcript as impeachment material, ". . . you will be allowed to do it").

Lastly, the trial judge found Officer's testimony credible and found that the discrepancies between the District Court transcript and the Officer's testimony at the Traffic Tribunal hearing could be explained. (Tr. at 30, 174.) The record indicates that the trial judge allowed Appellant's counsel to cross examine Officer using his testimony from the District Court. In her decision, the trial judge held that the Officer was credible and found that the differences in his testimony were explained—specifically, noting that Officer was more prepared to testify at the Traffic

Tribunal proceeding. (Tr. at 141-143.) In the end, the trial judge sustained the charge based upon his testimony, which is within her discretion to weigh the impeachment material. See Link, 633 A.2d at 1348. This ruling will not be disturbed because determinations of witness credibility are questions of fact to be made by the trial judge. Id. Accordingly, upon review of the record before it, this Panel refrains from disturbing the factual findings of the trial judge.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel conclude that the trial judge's decision was not affected by error of law, or in violation of constitutional provisions, and was supported by the reliable, probative, and substantial evidence of record. Substantial rights of the Appellant have not been prejudiced. Accordingly, the Appellant's appeal is denied.

ENTERED:

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Magistrate Alan R. Goulart (Chair)

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Associate Judge Edward C. Parker

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Magistrate Dominic A. DiSandro, III

DATE: _____