

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

V.

:

Appeal No. T11-0031

:

GEORGE KORNI TZER

:

11 AUG 17 PM 1:42

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

PER CURIAM: Before this Panel on June 22, 2011 – Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, Magistrate Noonan, sitting – is George Kornitzer’s (Appellant) appeal from a decision of Judge Parker, sustaining the charged violations of G.L 1956 § 31-15-11 “Laned Roadway Violation,” brought by the State of Rhode Island (Appellee). Appellant appeared pro se before this Panel. Jurisdiction is pursuant to §31-41.1-8.

I

Facts and Travel

On February 12, 2011 at 9:07 P.M., after observing Appellant’s vehicle swerving in its lane on the highway, Trooper Michael Brock (Trooper Brock) conducted a traffic stop. (Tr. at 3.) Trooper Brock approached the vehicle, and explained that he had stopped Appellant’s vehicle because he suspected that Appellant was intoxicated. (Tr. at 3.) At this time, Trooper Brock administered a Portable Breath Test which indicated Appellant was not intoxicated. (Tr. at 3.) After Appellant passed further field sobriety tests, Trooper Brock issued Appellant a summons for violating § 31-15-11. Appellant contested the charge, and the matter proceeded to trial.

The trial began with Trooper Brock stating that he received a call from State Police that a vehicle was reported to be driving recklessly. Trooper Brock then located and followed Appellant's vehicle for "a mile, mile and a half." (Tr. at 4.) Trooper Brock confirmed that Appellant was operating this vehicle, and that it was weaving back and forth in its lane. (Tr. at 5.) Trooper Brock specifically stated that he saw the tires of Appellant's vehicle cross both the dotted white lines on the left, and the solid white lines on the right. (Tr. at 5.) Trooper Brock stated that upon stopping Appellant's vehicle, Appellant admitted to having previously consumed a couple of drinks. (Tr. at 5.)

Appellant, representing himself pro se, argued that Trooper Brock remembered the incident incorrectly, and that Appellant never claimed to have had a couple of drinks. (Tr. at 5.) Appellant further explained that he had not been weaving in and out of the lane, and that he did not believe Trooper Brock had followed him for a mile. (Tr. at 5-6.) Appellant then expressed a desire to "go and find" the two other troopers who were at the traffic stop. (Tr. at 6.) The trial judge acknowledged Appellant's denial of Trooper Brock's claims but did not allow Appellant to cross-examine Trooper. Instead, the trial judge found Trooper Brock's testimony credible. As such, finding that the State had met its burden under § 31-15-11, the trial judge imposed penalties. (Tr. at 8.)

Appellant appealed this Decision. The Decision of the majority of the Appeals Panel is rendered below.

II

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 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

Otherwise, it must affirm the hearing judge's conclusions on appeal. See Janes, 586 A.2d at 537.

III

Analysis

On Appeal, Appellant contends that the trial judge's decision is affected by error of law, clearly erroneous based on the reliable, probative, and substantial record evidence, characterized by abuse of discretion, and in violation of constitutional and statutory provisions. Appellant asserts that the trial judge made an error of law when he failed to provide Appellant with an opportunity to cross-examine Trooper Brock. Appellant cites discrepancies between Trooper Brock's testimony and Appellant's prior conversations with Trooper Brock as support for this proposition.

The United States Supreme Court has determined that a defendant's right to cross-examine his accusers is a "bedrock procedural guarantee." Crawford v. Washington, 541 U.S. 36, 42 (2004). The Supreme Court has further held that cross-examination is "the greatest legal engine ever invented for the discovery of truth." Kentucky v. Stincer, 482 U.S. 730, 736 (1987). Article 1, section 10 of the Rhode Island Constitution guarantees individuals accused of crimes the right to confront and cross-examine any adverse witnesses who testify against them. State v. Manning, 973 A.2d 524, 531 (2009).

Cross-examination provides the accused a "critical vehicle for testing the credibility and veracity of a witness's testimony. Id. at 531. The denial of Appellant's right to cross-examine Trooper Brock was beyond the parameters of the judge's discretion. While sometimes it may be appropriate to limit the cross-examination of a

witness, in the instant matter the trial judge did not give the Appellant any opportunity to cross-examine Trooper Brock. By essentially denying Appellant his right to cross-examine the witness, the trial judge's conduct prejudiced the defendant and constituted reversible error. Despite expressing an interest in questioning the accuracy of Trooper Brock's testimony, Appellant was given no opportunity to cross-examine the witness.¹ (Tr. at 8.) When Appellant expressed disagreement with Trooper Brock's statements, the trial judge told Appellant that the Trooper's statements were made under oath and that Appellant could appeal the verdict if he wished. (Tr. at 8.) Appellant has the right to a full and vigorous cross-examination of the state's witnesses and, as a pro se litigant, he should have been afforded a greater opportunity to conduct the cross-examination. Therefore, the trial judge's decision is hereby reversed and the charges against the Appellant dismissed.

¹ Furthermore, Appellant appeared in the trial court pro se and as such he should have been given "greater latitude when presenting his case." Bryant v. Wall, 896 A.2d 704, 709 (2006). In the interest of attaining a just result the court relaxes its formal procedural requirements with a pro se litigant. Id. at 709.

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 clearly erroneous in light of the reliable, probative, and substantial record evidence and affected by other error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violations dismissed.

ENTERED:

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

11 AUG 17 PM 1:42