STATE OF RHODE ISLAND

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T21-0026**
	:	**21304501184**
AITOR ALDAZABAL	:	

DECISION

PER CURIAM: Before this Panel on February 2, 2022—Magistrate Goulart (Chair), Associate Judge Parker, and Magistrate Kruse Weller, sitting—is the appeal of Aitor Aldazabal (Appellant) from a decision of Magistrate DiChiro (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-15-12, "Interval Between Vehicles - Following too Close[.]" Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. Appellant was represented by counsel before this Panel. For the reasons set forth in this decision, Appellant's appeal is granted, and the matter is remanded for further proceedings consistent with this decision.

I

Facts and Travel

On September 10, 2021, Officer Ryan J. Czajka (Officer Czajka) of the Portsmouth Police Department charged Appellant with G.L. 1956 § 31-15-16, "Use of Breakdown Lane for Travel," and G.L. 1956 § 31-15-12, "Interval Between Vehicles - Following too Close[.]" *See* Summons No. 21304501184. Appellant contested the charges, and the matter proceeded to trial on November 5, 2021.

At trial, Officer Czajka testified that on the morning of September 10, 2021, at approximately 7:54 a.m., he was on a stationary traffic post in the area of Turnpike Avenue and

Memorial Drive. (Tr. at 2.) At this time, Officer Czajka was assisting with an undercover operation intended to educate the town of Portsmouth on the hazards of failing to yield at the crosswalk located at the intersection of Turnpike and Memorial. *Id.* The operation consisted of an undercover police officer, dressed as a student, stepping into the crosswalk to determine whether oncoming vehicles would stop. *Id.* at 4-6. Officer Czajka observed a vehicle stop and yield to the undercover police officer, who was about to cross the street at the crosswalk. *Id.* at 2. Officer Czajka testified that as the undercover police officer proceeded to cross, a 2007 Lexus RX 400 with the license plate UV-837 (Lexus) nearly struck the rear of the vehicle that had previously stopped at the crosswalk. *Id.* Officer Czajka testified that the Lexus "was following too close to the vehicle in front of it and did not leave enough space that was reasonable and prudent . . . ." *Id.* Officer Czajka explained that the Lexus pulled into the breakdown lane alongside the first vehicle that had stopped at the crosswalk. *Id.*

Next at trial, Appellant had the opportunity to cross-examine Officer Czajka. *Id.* Appellant's counsel asked a number of questions about the crosswalk and the surrounding area. *Id.* at 3-4. At the very end of Appellant's cross-examination of Officer Czajka, the following colloquy occurred:

> "[APPELLANT'S COUNSEL]: I have nothing further, Your Honor.
>
> "THE COURT: Ok, thank you. Do you wish to close? Oh you're going to present?
>
> "[APPELLANT'S COUNSEL]: Yeah, I'd like to make an argument but before . . .
>
> "THE COURT: Oh, is he going to testify?
>
> "[APPELLANT'S COUNSEL]: He may testify depending on how you rule on my Motion.

> "THE COURT: Yeah no, I would want to hear from him first.
>
> "[APPELLANT'S COUNSEL]: Oh, you would? Oh okay Your Honor, that's fine." *Id.* at 13.

In compliance with the Trial Magistrate's request, Appellant took the stand. *Id.* at 14. Appellant testified that on the morning of September 10, 2021, he had been traveling down Turnpike Avenue behind one vehicle and in front of another vehicle. *Id.* at 14-16. Appellant testified that the vehicle in front of him abruptly stopped, yielding to "a young slender gentleman . . . that had just entered on the road." *Id.* Appellant explained that after the car in front of him abruptly stopped, he took the opportunity to look at the vehicle behind him. *Id.* Appellant explained that he made a quick decision to pull into the break down lane instead of making an abrupt stop because he believed that the vehicle behind him would have struck him and caused a "chain reaction." *Id.* at 16-17. Appellant also explained that after he pulled into the breakdown lane, he noticed that the vehicle, which had been behind him, "had moved all the way up to the spot where [Appellant] would have been." *Id.* Appellant explained that he had been traveling behind the car in front of him at a length of about three vehicles, "where [he] certainly did think it was reasonable and prudent [and] certainly had time to make the decision [to] pull out of the way[.]" *Id.* Appellant also testified, "I never thought I couldn't have stopped before hitting the car in front of me but I sure do think that the vehicle behind me could have rear ended me and I communicated this to the officer." *Id.* at 18.

Subsequently, Appellant's counsel gave a closing argument. *Id.* at 19-21. Appellant's counsel argued that the State, through Officer Czajka, failed to meet its burden with respect to G.L. 1956 § 31-15-16, "Use of Breakdown Lane for Travel[.]" *Id.* at 20. In addition, Appellant's Counsel argued that there was not clear and convincing evidence demonstrating a violation of G.L.

1956 § 31-15-12, "Interval Between Vehicles - Following too Close[,]" because Appellant testified that there were three car lengths between Appellant and the car ahead of him. *Id*. at 21.

The Trial Magistrate found that Appellant was not guilty of G.L. 1956 § 31-15-16, "Use of Breakdown Lane for Travel[,]" because the Trial Magistrate believed that Appellant properly used the breakdown lane to avoid a collision. *Id*. at 23. However, the Trial Magistrate found that "the Town ha[d] proven that [Appellant] was following too closely based on Officer Czajka's testimony that [Appellant] was approximately a half of a car length [behind] the other . . . vehicle." *Id*. The Trial Magistrate found that both Appellant and Officer Czajka were credible, but stated, "I don't believe [Appellant] was three car lengths because if he was three car lengths, he would have been able to stop the vehicle." *Id*. at 22-23. After the Trial Magistrate found Appellant guilty of violating G.L. 1956 § 31-15-12, "Interval Between Vehicles - Following too Close[,]" the Trial Magistrate explained that the fine would be $85 with court costs. *Id*. at 23. Appellant timely filed the instant appeal.

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 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 Mut. Ins. 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." *Id.* (citing *Envtl. Sci. 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." *Id.* Otherwise, the Appeals Panel must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that the Trial Magistrate's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and characterized by an abuse of discretion. *See* Notice of Appeal. Specifically, Appellant argues that (1) the Trial Magistrate erred because he failed to permit Appellant to present a motion to dismiss after the State rested its case and (2) that Officer Czajka failed to identify Appellant as the operator of the motor vehicle. *See id.*

A

Raise-or-Waive Rule

As an initial matter, the Court must determine whether the Appellant is attempting to raise issues on appeal that were never fully examined by the Trial Magistrate. Appellant argues first that the Trial Magistrate failed to permit Appellant to present a motion to dismiss after the State rested its case, and further that the Appellant was not identified as the operator of the motor vehicle. (Appellant's Mem. 1-2.) Thus, the question before this Panel is whether it can consider, on appeal, issues that were not addressed at the trial level. The question of whether the raise-or-waive rule applies in an appeal brought pursuant to § 31-41.1-8, is one of first impression for this Panel.

Our Supreme Court provides guidance for this question through its decisions related to the "raise-or-waive" rule. Under this well-settled rule, the Rhode Island Supreme Court "'will not consider an issue raised for the first time on appeal that was not properly presented before the trial court.'" *Pollard v. Acer Group,* 870 A.2d 429 (R.I. 2005) (quoting *State v. Gatone,* 698 A.2d 230, 242 (R.I. 1997)).[1] Pursuant to the "raise-or-waive" rule, an issue that was not preserved by specific objection at trial may not be subsequently considered on appeal. *State v. Grant,* 840 A.2d 541, 546 (R.I. 2004) (citing *State v. Toole,* 640 A.2d 965, 972-73 (R.I. 1994)). The Rhode Island Supreme Court has cautioned that a general objection is not sufficient to preserve an issue for appellate review and that "assignments of error must be alleged with sufficient particularity so it will call the trial justice's attention to the basis of the objection." *Id.* at 546-47; *State v. Bettencourt*, 723

[1] *See also Chase v. Bouchard*, 671 A.2d 794, 795 (R.I. 1996) ("One of our most settled doctrines in this jurisdiction is that a matter not raised before the trial court may not be raised for the first time on appeal."); *Ferland Corp. v. Bouchard*, 626 A.2d 210, 217 (R.I. 1993) ("It is a well-settled rule of appellate practice that matters not brought to the attention of the trial justice may not be raised for the first time in this court on appeal."); *Union Station Associates v. Rossi,* 862 A.2d 185, 192 (R.I. 2004) ("It is an established rule in Rhode Island that this Court will not review issues that are raised for the first time on appeal.").

A.2d 1101, 1107-08 (R.I. 1999). Further, our Supreme Court has articulated the policy behind the "raise-or-waive" rule, stating:

> "The importance of the 'raise or waive' rule is not to be undervalued. Not only does the [raise-or-waive doctrine] serve judicial economy by encouraging resolution of issues at the trial level, it also promotes fairer and more efficient trial proceedings by providing opposing counsel with an opportunity to respond appropriately to claims raised." *State v. Burke*, 522 A.2d 725, 731 (R.I.1987).

The "well-settled 'raise-or-waive' rule precludes [this Panel] from considering at the appellate level issues not properly presented before the trial court."[2] *State v. Merida,* 960 A.2d 228, 236 (R.I. 2008); *accord State v. Gomes,* 881 A.2d 97, 113 (R.I. 2005); *State v. Mohapatra,* 880 A.2d 802, 810 (R.I. 2005). As a result, "[a] litigant must make a timely and appropriate objection during the lower court proceedings before this [Panel] will indulge the issue on appeal." *Grant,* 840 A.2d at 546 (citing *Toole,* 640 A.2d at 972-73).

In the present matter, the issue of Officer Czajka's failure to identify Appellant was never fully analyzed at trial, but Appellant contends that the blame for the lack of discussion on this issue falls on the Trial Magistrate. *See* Appellant's Mem. 2. Appellant argues that his attorney tried to present a motion to dismiss after the State's case-in-chief, but that the Trial Magistrate failed to permit this motion. *See id.*; *see also* Appellant's Supplemental Mem. 1-2. Appellant refers to the following colloquy:

> "[APPELLANT'S COUNSEL]: I have nothing further, Your Honor.

[2] The Rhode Island Supreme Court has recognized a narrow exception to the "raise-or-waive rule" when: "(1) the error complained of is not harmless, (2) the record is sufficient to permit a determination of the issue, (3) the mistake is one of constitutional import, and (4) counsel's failure to raise the issue is attributable to a novel rule of law that counsel could not reasonably have known about during the trial." *Grant,* 840 A.2d 541, 546 (R.I. 2004) (citing *State v. Rupert,* 649 A.2d 1013, 1016 (R.I. 1994)).

> "THE COURT: Ok, thank you. Do you wish to close? Oh you're going to present?
>
> "[APPELLANT'S COUNSEL]: Yeah, I'd like to make an argument but before . . .
>
> "THE COURT: Oh, is he going to testify?
>
> "[APPELLANT'S COUNSEL]: He may testify depending on how you rule on my Motion.
>
> "THE COURT: Yeah no, I would want to hear from him first.
>
> "[APPELLANT'S COUNSEL]: Oh, you would? Oh okay Your Honor, that's fine." *Id*. at 13.

From this colloquy, it is clear that Appellant's counsel had a legal argument to present. *See id.* More specifically, Appellant's counsel indicated that he was going to present a motion.[3] *See id.* Although Appellant's counsel should have been specific in identifying the nature of his motion, the timing of Appellant's unspecified motion, verbally made at the end of the prosecution's case-in-chief, suggests that he intended to argue a motion to dismiss, pursuant to Rule 16 of the Traffic Tribunal Rules of Procedure. Rule 16 of the Traffic Tribunal Rules of Procedure states:

> "[t]he court, on motion of a defendant or of its own initiative, shall at the close of the evidence offered by the prosecution order the dismissal of one (1) or more violations charged in the summons if the evidence is insufficient to sustain such violation or violations to a standard of clear and convincing evidence. If a defendant's motion to dismiss is not granted, the defendant may offer evidence without having reserved the right to offer such evidence." Traffic Trib. R. P., 16.

In addition to the timing of Appellant's motion, Appellant's counsel points to other testimony that should have alerted the Trial Magistrate that the intended motion was a motion to

[3] Because a trial judge may be presented with a variety of motions during trial (motions to strike, motions to suppress, ect.), this Panel notes that Appellant's counsel should have presented his motion with greater clarity by specifying that he was presenting a motion *to dismiss*, and identifying the basis for the motion.

dismiss pursuant to Rule 16. When the Trial Magistrate asked whether Appellant was going to testify, Appellant's counsel responded, "He may testify depending on how you rule on my Motion." (Tr. at 13.) The response of Appellant's counsel inferred that the Trial Magistrate's ruling on the motion could have prevented the need for Appellant to present evidence, which strongly suggested that Appellant's motion was a dispositive motion.

This Panel finds that Appellant said just enough to raise the issue for consideration on appeal. The timing and dispositive nature of Appellant's motion should have "call[ed] the [T]rial [Magistrate]'s attention to the basis of the objection." *See Grant,* 840 A.2d at 546-47. As such, Appellant preserved the motion to dismiss issue for consideration on appeal and did not waive this issue under the raise-or-waive rule. *See id.* Instead, the Trial Magistrate prevented further discussion of the issue by failing to consider Appellant's motion and requesting that Appellant testify.[4] *See* Tr. at 13.

B

Motion to Dismiss

Appellant argues that the Trial Magistrate's failure to permit Appellant to present a motion to dismiss after the State rested its case violated *State v. McKone*, 673 A.2d 1068 (R.I. 1996). (Appellant's Mem. 2-3.) As discussed in the previous section, Appellant's counsel's statements, "I'd like to make an argument" and "depending on how you rule on my Motion[,]" sufficed to alert the Trial Magistrate that Appellant was seeking to present a motion to dismiss. *See* Tr. at 13. As

[4] This Panel declines to examine Appellant's argument that Officer Czajka failed at trial to identify Appellant as the operator of the motor vehicle because Appellant never presented this issue at trial. Neither Appellant nor his counsel made any mention about identification at trial, despite presenting a thorough closing argument. *Id.* at 19-20. Because the identification issue was not preserved by specific objection at trial, the raise-or-waive rule precludes the issue from being subsequently considered in this appeal. *See State v. Grant,* 840 A.2d 541, 546 (R.I. 2004) (citing *State v. Toole,* 640 A.2d 965, 972-73 (R.I. 1994)).

such, the Trial Magistrate's expression of his desire for Appellant to testify instead of hearing argument or ruling on the motion operated as a denial of Appellant's motion to dismiss. *See id.* This Panel is now tasked with reviewing whether the Trial Magistrate's denial of Appellant's motion to dismiss was proper.

In *McKone,* the Supreme Court determined that an improper motion[5] had been presented in the lower court but nonetheless conducted a review of the record, assuming the motion to have been proper, to determine whether the trial justice erred in disposing of the case. *Id*. at 1073. The *McKone* court also held that when ruling on a motion to dismiss in a non-jury trial, a trial justice

> "is required to weigh and evaluate the trial evidence, pass upon the credibility of the trial witnesses, and engage in the inferential process, impartially, not being required to view the inferences in favor of the nonmoving party, and against the moving party. After so doing, if the trial justice in a criminal case setting concludes that the trial evidence is sufficient to establish guilt beyond a reasonable doubt, he or she denies the defendant's motion to dismiss and, if both sides have rested, enters decision and judgment of conviction thereon. If the evidence is not so sufficient, he or she grants the motion and dismisses the case."[6] *Id*. at 1072–73.

In this case, the Trial Magistrate denied Appellant's motion before Appellant's counsel had an opportunity to present argument on the motion. *See* Tr. at 13. Immediately after Appellant's counsel stated that Appellant "may testify depending on how [the Trial Magistrate] rule[d] on [the] Motion[,]" the Trial Magistrate stated, "Yeah no, I would want to hear from him first." *See id*. The

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[5] The defendant in *McKone* argued for a Motion for Judgment of Acquittal, pursuant to Rule 29 of the Superior Court Rules of Criminal Procedure, instead of a motion to dismiss. *McKone*, 673 A.2d at 1072-72.

[6] This Panel should point out that *McKone* is a criminal case, requiring the prosecution to meet a higher burden of proof. *Id*. The Rhode Island Traffic Tribunal Rules of Procedure dictate that "[t]he burden of proof shall be on the prosecution to a standard of clear and convincing evidence." Traffic Trib. R. P., 17(a). The phrase "clear and convincing evidence" is "more than a mere exercise in semantics. It is a degree of proof . . . different from proof 'beyond a reasonable doubt[,]' which is the required burden in criminal suits." *Parker v. Parker*, 103 R.I. 435, 442, 238 A.2d 57, 60-61 (1968) (internal citations omitted).

Trial Magistrate's requirement that Appellant testify is the equivalent of a denial of a motion to dismiss and violates *McKone* because there is no indication that the Trial Magistrate took any time "to weigh and evaluate the trial evidence, pass upon the credibility of the trial witnesses, and engage in the inferential process . . . " with regard to the motion to dismiss. *See* Tr. at 13; *McKone*, 673 A.2d at 1072–73. As such, the Trial Magistrate erred by failing to provide Appellant the opportunity to present an argument supporting his motion to dismiss.

Further, our Supreme Court has held that "a fair trial in a fair tribunal is a basic requirement of due process." *Davis v. Wood*, 427 A.2d 332, 336 (R.I. 1981). The Rhode Island Supreme Court has explained that "the foundation of due process rests on an opportunity to be heard in a meaningful manner at a meaningful time." *Leone v. Town of New Shoreham*, 534 A.2d 871, 874 (R.I.1987) (citing *Brock v. Roadway Express*, 481 U.S. 252 (1987)). Here, Appellant was not afforded the opportunity to present argument on his motion and was prejudiced by the Trial Magistrate's error.

In order to afford Appellant the opportunity to be heard on his motion, this Panel finds that the appropriate remedy is to remand the matter to the Trial Magistrate. Pursuant to G.L. 1956 § 31-41.1-8(f), "[t]he appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings." Sec. 31-41.1-8(f). In sum, this Panel concludes that the Trial Magistrate's failure to permit Appellant to argue his motion requires that this matter be remanded to for further proceedings consistent with this opinion.

IV

Conclusion

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel are satisfied that the Trial Magistrate erred by denying Appellant's motion to dismiss without weighing the evidence or providing Appellant the opportunity to develop his motion. The substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted for the purpose of remanding the matter to the trial calendar.

ENTERED:

_____
Magistrate Alan R. Goulart (Chair)

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Associate Judge Edward C. Parker

_____
Magistrate Erika Kruse Weller

DATE: _____