STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF PROVIDENCE	:	
	:	
v.	:	**C.A. No. M16-0003**
	:	**16409645339**
STEPHEN GILL	:	

AMENDED DECISION

PER CURIAM: Before this Panel on August 3, 2016—Chief Magistrate Guglietta (Chair), Magistrate Abbate, and Judge Almeida, sitting—is Stephen Gill's (Appellant) appeal from a decision of Providence Municipal Court Judge McKiernan (Hearing Judge), sustaining the charged violation of G.L. 1956 § 31-13-4, "Obedience to devices." The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On May 7, 2016, an automated traffic camera photographed a vehicle travelling through an intersection after the traffic light signaled red. Thereafter, the City of Providence Police Department sent a traffic summons to Appellant, the registered owner of the photographed vehicle. The summons charged Appellant with the aforementioned violation. The Appellant contested the charge, and the matter proceeded to arraignment on June 20, 2016.

At arraignment, the Hearing Judge examined the images captured by the automated traffic camera. (Tr. at 1.) The Appellant informed the Hearing Judge that he wished to plead not guilty to the charged violation. *Id.* The Hearing Judge contested the plea, stating, "[b]y the moving picture you're guilty." *Id.* The Appellant replied, "[y]our Honor, § 31-13-4 states that

the driver can only be cited for the violation." *Id.* The Appellant continued, "I'm not going to incriminate myself, [y]our Honor, and I'm not required to." *Id.* The Hearing Judge responded, "[i]f that's going to be your argument I'm going to impose the $85.00." *Id.* After Appellant confirmed that was his argument, the Hearing Judge concluded, "[b]ased on what I just saw, it [sic] was guilty." *Id.*

The Hearing Judge entered a plea of guilty on Appellant's behalf and instructed Appellant to pay the eighty-five dollar fine. *Id.* The Appellant filed a timely appeal of the Hearing Judge's decision. Forthwith is this Panel's Decision.

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 Mutual 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." *Link*, 633 A.2d at 1348 (citing *Envtl. 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.

III

Analysis

On appeal, Appellant contends that the Hearing Judge's decision was affected by error of law and made upon unlawful procedure. Specifically, Appellant argues that (1) he was deprived of the opportunity to be heard and present evidence in his defense; (2) the hearing consisted of fatal procedural errors; and (3) he was not driving the vehicle when the violation occurred.

A

Due Process

First, Appellant asserts that the Hearing Judge erred by not accepting Appellant's not guilty plea. In doing so, the Hearing Judge deprived Appellant of his due process right to be heard and to present any defenses available.

The right to a hearing has been interpreted by our Supreme Court to include an "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *State v. Oliveira*, 774 A.2d 893, 923 (R.I. 2001) (internal citation omitted). A defendant must be afforded a "full opportunity to establish the best and fullest defense available to him [or her]." *State v. Lomba*, 37 A.3d 615, 621 (R.I. 2012). The ability of a defendant to "meaningfully cross-examine the state's witnesses is 'an essential element'" of the due process right to present a defense. *State v. Doctor*, 690 A.2d 321, 327 (R.I. 1997). This constitutional guarantee of procedural due process assures that there will be fair and adequate legal proceedings. *Germane*, 971 A.2d at 574.

Here, it is undisputed that Appellant received notice of the proceeding against him. (Tr. at 1.) However, the record lacks any indication that the Hearing Judge provided Appellant an opportunity to be heard "at a meaningful time and in a meaningful manner." *Oliveira*, 774 A.2d at 923. The record reveals that Appellant appeared at arraignment to contest the charge, but was not permitted to do so. (Tr. at 1.) The Appellant clearly expressed his intent to plead not guilty, which the Hearing Judge refused to accept, stating that based on "the moving picture, you're guilty." *Id.* Likewise, the Hearing Judge also declined to hear Appellant's defense—that he was not driving the vehicle when the violation occurred—when the Hearing Judge stated: "If that's going to be your argument I'm going to impose the $85.00." *Id.* Additionally, there were no witnesses from the Providence Police Department that appeared at the arraignment; therefore, Appellant had no opportunity for cross-examination. Without giving Appellant an opportunity to confront the Providence Police Department, present testimony, or assert a defense, the Hearing Judge concluded that "based on what [the Hearing Judge] just saw, it [sic] was guilty." *Id.*

After a review of the record, this Panel finds that Appellant did not received a fair and adequate legal proceeding that satisfied the guarantees of procedural due process. *See Germane*,

971 A.2d at 574. The record indicates that the Hearing Judge not only refused to accept Appellant's not guilty plea, but also that the Hearing Judge did not allow Appellant the opportunity to present witnesses or testimony in his defense. (Tr. at 1.) Accordingly, the Hearing Judge's decision was "made upon unlawful procedure" as it did not afford Appellant those procedural safeguards guaranteed by the right to due process. Sec. 31-41.1-8(f)(3); *see Oliveira*, 774 A.2d at 923; *Lomba*, 37 A.3d at 624.

B

Procedural Error

The Appellant also argues that the hearing employed fatal procedural errors. Specifically, Appellant contends that the City of Providence was not represented by a prosecutor or law enforcement officer at his arraignment and that he was not afforded the opportunity to enter a not guilty plea. This Panel's analysis of these arguments is governed by the Rhode Island Traffic Tribunal Rules of Procedure.

Under Rule 6(a) of the Traffic Tribunal Rules of Procedure, "all defendants shall appear before a judicial officer for the first appearance on the date and time and at the place indicated on the summons. The police department . . . which charged the summons shall be represented by a prosecutor or law enforcement officer." The first appearance "shall be conducted in open court, recorded, and shall consist of reading the summons to the defendant or stating to the defendant the substance of the charge(s) and calling on the defendant to plead thereto." Traffic Trib. R. P. 6(a). At the first appearance, a defendant "[m]ay plead 'guilty' or 'not guilty' or seek a dismissal based on a good driving record." Traffic Trib. R. P. 7(a).

The record in the instant matter indicates that the Hearing Judge failed to follow the aforementioned procedural requirements. The record is devoid of any indication that the

Providence Police Department was represented by a prosecutor or law enforcement officer at the arraignment. *See* Tr. at 1; *see also* Traffic Trib. R. P. 6(a). Although conducting an arraignment without the police department deviates from our rules of procedure that alone does not constitute fatal procedural error. *See* Traffic Trib. R. P. 6(b) ("[i]f the . . . prosecution shall fail to appear, a dismissal or a judgment by default may enter . . ."); *see also* Traffic Trib. R. P. 17(d) ("[i]f the prosecution fails to appear for trial and/or the first appearance, the matter *may* be dismissed") (emphasis added).

Furthermore, this Panel notes that nowhere in the record is there any evidence that the Hearing Judge read the summons to Appellant or that the Hearing Judge ever stated the substance of the charge. *See* Traffic. Trib. R. P. 6(a). At most, the Hearing Judge indicated that "[i]t's a red light." (Tr. at 1.) This statement does not satisfy the requirements of Rule 6(a) as it was not a reading of the summons, nor was it a statement of the substance of the charge.

Additionally, Rule 7(a) reads, in pertinent part: "The court may refuse to accept a plea of guilty and shall not accept such a plea without first addressing the defendant personally and determining that the plea has been made voluntarily and with understanding of the nature of the charge and the judgment to be imposed." *See* Traffic. Trib. R. P. 7(a). If a defendant pleads not guilty, then the case will be placed on the trial calendar. *Id.*

Rule 7(a) of the Traffic Tribunal Rules of Procedure mirrors Rule 11 of the Superior Court Rules of Criminal Procedure. *See* Super. Ct. R. Crim. P. 11. With respect to Rule 11, our Supreme Court has held that guilty pleas are valid only if the record affirmatively discloses that a defendant voluntarily and intelligently entered into it. *See State v. Figueroa*, 639 A.2d 495, 498 (R.I. 1994). A plea "will be vacated when it is shown to have been obtained from a defendant

unaware and uninformed as to its nature and its effect as a waiver of his fundamental rights." *Id.* (citing *Cole v. Langlois*, 99 R.I. 138, 141, 206 A.2d 216, 218 (1965)).

Here, Appellant's guilty plea was neither voluntarily nor intelligently entered into. The record reflects that Appellant intended to plead not guilty. (Tr. at 1.) In fact, Appellant explicitly stated: "Not guilty, your Honor." *Id.* The Hearing Judge disregarded this plea and replied: "Well, based on what I just saw, it [sic] was guilty." *Id.* Moreover, the Hearing Judge did not address Appellant personally to ensure that the guilty plea was voluntary and that Appellant understood the nature of the charge. *Id.* The Hearing Judge's sole reference to the charged violation was, "[i]t's a red light." *Id.*

As Appellant unequivocally expressed his intent to plead not guilty, the Hearing Judge should have entered the not guilty pela and placed Appellant's case on the trial calendar. *See* Traffic Trib. R. P. 7(a); *see also* Super. Ct. R. Crim. P. 11. His failure to do so violated Traffic Tribunal Rule of Procedure 7(a). *See id.* As a result, the Hearing Judge's decision to enter a plea of guilty on Appellant's behalf—at an arraignment where the City of Providence was not represented by a prosecutor or law enforcement officer—constituted an abuse of discretion and was made upon unlawful procedure. *See* 31-41.1-8(f).

C

Presumption of Operation Based on Ownership

Appellant further argues that he was not the driver of the vehicle at the time of the violation; therefore, Appellant maintains that he cannot be held liable for violation charged against him under § 31-13-4. Section 31-13-4 reads, in pertinent part, "[t]he driver of any vehicle shall obey the instructions of any official traffic control device applicable to him or her. . . ." *See* § 31-13-4.

However, it is the ATVMS statute, § 31-41.2-6(b), that enables the issuance of a traffic citation based on photographic evidence obtained by red light cameras. Unlike § 31-13-4—under which only the driver of a vehicle may be charged—the ATVMS statute permits the presumption that a citation may be issued against the owner of a vehicle that is photographed committing a traffic offense by a red light camera. *See* § 31-41.2-6(b) (stating that "[i]n all prosecutions of civil traffic violations based on evidence obtained from an automated traffic violation detection system, the registered owner of a vehicle which has been operated in violation of a civil traffic violation, may be liable for such violation").[1]

After reviewing the record, this Panel cannot conclude that Appellant was in fact the driver of the vehicle depicted violating § 31-13-4. The record merely reflects that Appellant was the owner of the vehicle. However, evidence of ownership cannot alone sustain a charge under § 31-13-4. Nevertheless, Appellant was not afforded a full hearing on the issue. Therefore, at this time, this Panel cannot properly address Appellant's argument of statutory ambiguity as it relates to the presumption of operation based on ownership. *See supra* n.1. This Panel will address such an issue when it is properly presented.

[1] This Panel pauses to note the latent ambiguity contained within the ATVMS statute. The ATVMS statute acts only as an evidentiary prosecution tool and not as a chargeable traffic violation. *See* § 31-41.2-5 ("Evidence from an automated traffic violation detection system shall be considered substantive evidence in the prosecution of all civil traffic violations.") Stated differently, the ATVMS statute is an enabling statute, the statue enables the issuance of a traffic summons based on a photograph captured by a red light camera. The substantive traffic violation under which a driver that is photographed violating the ATVMS statute may be charged, is § 31-13-4. The ambiguity arises from the fact that the ATVMS statute enables a police department to charge *the owner* of a vehicle with violating § 31-13-4, but to sustain a violation under § 31-13-4 the prosecution must establish by clear and convincing evidence that *the driver* of the vehicle failed to obey a traffic control device. *See* § 31-41.2-5.

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, it is this Panel's decision that the Hearing Judge's findings were clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted and the charged violation dismissed.

ENTERED:

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Magistrate Joseph A. Abbate

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Judge Lillian M. Almeida

DATE:_____

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.