

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF  
WOONSOCKET**

v.

**TRISTAN R. FRASER**

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**C.A. No. T13-0027  
12412505815**

**DECISION**

**PER CURIAM:** Before this Panel on June 19, 2013—Magistrate DiSandro (Chair, presiding), Administrative Magistrate Cruise, and Magistrate Noonan, sitting—is Tristan Fraser’s (Appellant) appeal from a decision of Magistrate Goulart (trial magistrate), sustaining the charged violation of G.L. 1956 § 31-27-2.1(b), “Refusal to submit to a chemical test.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On December 24, 2012, Officer Jason Berthelette (Officer Berthelette) of the Woonsocket Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on April 18, 2013.

At the beginning of the trial on April 18, 2013, Appellant requested that the trial magistrate review the audio from his motion to dismiss hearing in District Court. At that hearing, Appellant alleged that his constitutional rights were violated when the Woonsocket Police Department neglected to produce the booking and rights video from the night of Appellant’s arrest, despite the fact that Appellant had made several requests for the video. (Tr. at 4.) The District Court granted the Appellant’s motion to dismiss, finding that the destruction of

the booking and rights video by the Woonsocket Police Department prejudiced the Appellant, as the video contained potential exculpatory evidence. Id.

Per Appellant's request at the Rhode Island Traffic Tribunal (RITT), the trial magistrate reviewed the audio of the motion to dismiss from the District Court. However, as Appellant failed to make discovery requests prior to his trial at the Traffic Tribunal, the trial magistrate found there was no evidence to suggest that the video was exculpatory. (Tr. at 5.)

At trial, Officer Berthelette began his testimony by describing his professional training and experience as a police officer in Woonsocket, as well as in the Commonwealth of Massachusetts. (Tr. at 7-11.) Officer Berthelette then testified that on the evening of the arrest, after receiving a dispatch call of a possible erratic driver, he responded to the scene. (Tr. at 12-13.) Officer Berthelette testified that when he arrived, the vehicle in question was stopped in the middle of the road, just before an intersection. Id. Another police officer and a witness were also at the scene. (Tr. at 12.) Officer Berthelette testified that he exited his police cruiser and approached the still running, but parked vehicle in question. (Tr. at 13.) Officer Berthelette identified Appellant as the operator of that vehicle. Id.

Officer Berthelette further testified that he inquired as to where Appellant was coming from, to which Appellant responded that he was "going home coming from his sister's house." (Tr. at 14.) Officer Berthelette then asked Appellant if he had consumed any alcoholic beverages, and Appellant responded that he "had a couple drinks." Id. Officer Berthelette testified that when he first came into contact with Appellant, he observed that Appellant had "bloodshot, watery" eyes and there was "an odor of an alcoholic beverage about his breath." Id. Officer Berthelette continued that he asked Appellant a number of "simple, basic questions" and noted that Appellant's speech was slurred. Id. Moreover, Officer Berthelette also observed that

Appellant appeared to be in a daze and his responses were irregular. (Tr. at 15.) Officer Berthelette testified that Appellant took a few minutes to respond to each question—as if he did not hear the questions being directed at him—and explained that Appellant “stared off whether it be straight ahead or while he was looking at me.” Id.

Officer Berthelette testified that he then asked Appellant to exit his vehicle and requested that he perform a series of standardized field sobriety tests. (Tr. at 15.) Officer Berthelette noted that Appellant agreed to submit to the tests. Id. Officer Berthelette explained that Appellant was then removed to an area off the side of the road that was flat, free of debris, and quite well lit. Id. Officer Berthelette testified that he explained the walk and turn test to Appellant and inquired as to whether Appellant could follow those instructions, to which Appellant replied that he was “fine.” (Tr. at 16.) Officer Berthelette testified that Appellant exhibited signs of impairment during the walk and turn test. (Tr. at 17.) After a review of his police report, Officer Berthelette explained that Appellant exhibited four clues indicating impairment: “he started the test too soon, executed an improper turn, used his arms for balance, and failed to touch heel to toe.” Id.

Officer Berthelette then testified that after the walk and turn test, he administered the one leg stand test to Appellant. (Tr. at 18.) Officer Berthelette explained that he again instructed Appellant on how to complete the test and then inquired as to whether he understood the instructions, to which Appellant again responded that he was “fine.” (Tr. at 18.) However, Officer Berthelette noted that Appellant also exhibited signs of impairment during the one leg stand test. (Tr. at 19.) Officer Berthelette required the assistance of his police report to refresh his recollection, but then testified that Appellant exhibited three clues indicating impairment: “he swayed, used his hands for balance, and put his foot down.” Id.

Officer Berthelette testified that he is certified in the operation of preliminary breathalyzer tests (PBTs) and utilizes a PBT machine inspected and certified by the department of health. (Tr. at 20.) After administering the standardized field sobriety tests, he offered Appellant the use of a PBT. Id. Officer Berthelette testified that Appellant refused to submit to the PBT, at which point he was placed into custody and read his “Rights to Refuse at the Scene.” Id. Officer Berthelette noted that he asked Appellant if he understood those rights, to which Appellant responded that he did. (Tr. at 21.)

Officer Berthelette described how Appellant was then transported to the police station and read his “Rights to Refuse at the Station.” Id. Officer Berthelette explained that Appellant indicated he understood his rights and declined the chance to make a confidential phone call. (Tr. at 22-23.) Officer Berthelette determined that Appellant refused to submit to a second chemical breath test at the police station and subsequently signed the refusal form. (Tr. at 23.)

Following the conclusion of Officer Berthelette’s testimony, Appellant, appearing before the Court pro se, testified on his own behalf. Appellant testified that he was never asked to take the second chemical breath test at the police station. (Tr. at 31.) Appellant explained that when he signed the refusal form, he thought it was in regards to his refusal to submit to a chemical breath test at the scene, not the second test at the police station to which Officer Berthelette testified. Id. Appellant concedes that he signed the refusal form while in a jail cell in the Woonsocket Police Department, but contends that the time on the refusal form, indicating the time he signed the form, was incorrect. (Tr. at 33.) Appellant further testified that he did not read the form before he signed it and that he did not “strike out the time and put the right time down” because he was nervous. Id. Appellant explained that he signed the refusal form because Officer Berthelette told him that if he did not sign the form, he was “never leaving.” (Tr. at 34.)

The trial magistrate found that—based on Officer Berthelette’s observations of Appellant at the scene—Officer Berthelette did have reasonable grounds to believe Appellant had been operating a motor vehicle under the influence. (Tr. at 37.) The trial magistrate rejected Appellant’s testimony, stating that he found it to be “nonsensical.” Id. As such, the trial judge sustained the violation of § 31-27-2.1. (Tr. at 38.) Appellant timely filed this appeal.

### **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 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 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 A.2d at 1348. Otherwise, it must affirm the hearing judge’s conclusions on appeal. See Janes, 586 A.2d at 537.

### **Analysis**

On appeal, Appellant argues that the trial magistrate’s decision to sustain the charged violation was erroneous as the trial magistrate failed to take the dismissal of Appellant’s case in District Court into consideration. Appellant argues—as he did at trial—that his constitutional rights were violated, as the Woonsocket Police Department failed to adhere to the seven requests Appellant made for his booking and rights video in preparation for his trial in District Court. Appellant concedes, however, that he made no formal requests for the booking and rights video in anticipation of his trial at the Rhode Island Traffic Tribunal. Despite his failure to request the video prior to trial at the Rhode Island Traffic Tribunal, Appellant maintains that the decision of the District Court judge to dismiss his case, in order to avoid potential prejudice, should have been considered by the trial magistrate at the Rhode Island Traffic Tribunal.

The RITT observes the Traffic Tribunal Rules of Procedure. Rule 1 of the rules provides in pertinent part, “these rules govern the procedure in the Traffic Tribunal and in the municipal courts in all civil traffic violations.” Traffic Trib. R.P. 1. The Traffic Tribunal Rules of Procedure differ from the rules of procedure in other courts, including District Court. See Traffic Trib. R.P. 11; see also Dist. Ct. R. Crim. P. 16. As such, parties litigating before the Rhode Island Traffic Tribunal are required to follow its specific rules. Rule 11 of the Traffic

Tribunal Rules of Procedure provides the method for making formal requests for evidence from opposing counsel. Rule 11(b) provides that the state can be compelled to turn over relevant evidence upon a motion or written request from the defendant. Traffic Trib. R.P. 11(b). The time constraint on the parties to file motions or written requests for discovery is set out in Rule 11(e). Rule 11(e) provides:

“A motion or written request under this rule may be made only within fourteen (14) days after arraignment or at such reasonable later time as the court may permit. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.”

Here, Appellant maintains that the booking and rights video is the sole piece of evidence that is capable of supporting his case. Appellant, however, neglected to request the booking and rights video from the Woonsocket Police Department in accordance with Traffic Trib. R.P. 11. Appellant states that his failure to request the booking and rights video for his trial at the RITT was because his “exhausting attempts” were not satisfied in District Court. See Dis. Ct. R. Crim. P. 16. The trial magistrate reiterated to Appellant that the Rhode Island Traffic Tribunal has a rule that would have allowed him to obtain discovery. (Tr. at 4.) The trial magistrate concluded that as neither Appellant, nor anyone acting on his behalf, filed a motion to request the booking and rights video in accordance with Traffic Trib. R.P. 11. In addition, the trial magistrate found that there was no evidence whatsoever to suggest that the booking and rights video was exculpatory. (Tr. at 5.) This Panel agrees.<sup>1</sup> It is axiomatic that the Appellant’s failure to request

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<sup>1</sup> District Court in Rhode Island observes the District Court Civil Rules. Rule 1 of said rules provides in applicable part, “these rules govern the procedure in the District Court of the State of Rhode Island in all suits of a civil nature . . . .” D.C.R. 1. Similar to Rule 11 of the Traffic Tribunal Rules of Procedure, Rules 16(b) and 16(e) of the District Court Civil Rules dictate that upon a motion or written request from the defendant, the District Court can order the State to

the booking and rights video pursuant to Rule 11 relieved the Woonsocket Police of the obligation to produce said evidence. See Traffic Trib. R.P. 11.

Moreover, Appellant contends that the trial magistrate at the Rhode Island Traffic Tribunal erred in refusing to consider the District Court's decision in order to dismiss his case at the Rhode Island Traffic Tribunal. Specifically, Appellant argues that the District Court judge's dismissal of the matter should have been given "weight" with respect to the trial magistrate's handling of the within matter. Appellant cites no relevant case law in support of his contention. However, in McCann v. McCann, our Supreme Court stated that it makes the laws that the other tribunals in Rhode Island are obliged to follow. 121 R.I. 173, 176, 396 A.2d 942, 944 (1979). As set out under McCann, the decisions that emerge from District Court are not binding on other courts in Rhode Island. The trial magistrate at the Rhode Island Traffic Tribunal, therefore, was not statutorily required to follow the ruling of the District Court judge to dismiss the case.

Furthermore, the law-of-the-case doctrine is inapplicable here. In Richardson v. Smith, the defendants entered into a settlement agreement with the plaintiffs, but failed to fulfill their agreed upon obligations. 691 A.2d 543, 545 (1997). As a result, a trial judge sitting on the Superior Court vacated the settlement order and arranged for the matter to be reinstated on the trial calendar. Id. However, a second trial judge sitting on the Superior Court, assigned to hear the case at trial, halted the trial proceedings and reinstated the original settlement agreement. Id. On appeal, the Supreme Court held that after one judge has decided a matter in a pending suit, "a

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permit the defendant to review evidence relevant to the issue at hand, so long as the motion is made within fifteen days after an arraignment or within a reasonable later time, if the court so permits. D.R.C. 16(b); D.R.C. 16(e). In anticipation of his trial in District Court, Appellant made a request for the booking and rights video from the Woonsocket Police Department in accordance with the time limitations set out in the District Court Civil Rules, as well as several follow up requests. The trial magistrate at the RITT concluded that the dismissal of Appellant's case in District Court turned on Appellant's numerous, but unsuccessful attempts to retrieve the booking and rights video from the Woonsocket Police Department.



second judge on that same court, when confronted at a later stage of the suit with the same question in the identical manner should avoid disturbing the first ruling.” Id. at 546.

Here, the Rhode Island Traffic Tribunal and the District Court are different courts having different jurisdiction and different rules. The violation before the Rhode Island Traffic Tribunal is a different charge with a different standard than the one dismissed in District Court. See State v. Quattrucci, 39 A.3d 1036, 1041 (R.I. 2012); State v. DiStefano, 764 A.2d 1156, 1162 (R.I.2000); see also Dunn v. Petit, 120 R.I. 486, 489-91, 388 A.2d 809, 811 (1978). In addition, the mechanism for requesting the booking and rights video tape at RITT and in District court are different. See Traffic Trib. R.P. 11; see also Dis. Ct. R. Crim. P. 16. Thus, the law-of-the-case doctrine would not apply here.

### **Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel conclude that the trial magistrate’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 Domenic A. DiSandro, III (Chair)

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Administrative Magistrate R. David Cruise

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Magistrate William T. Noonan

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