STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T12-0036**
		12001506119
	:	
MICHAEL DELORY	:	

PER CURIAM: Before this Panel on June 27, 2012—Chief Magistrate Guglietta (Chair, presiding), Judge Ciullo, and Magistrate Noonan sitting—is Michael Delory's (Appellant) appeal from a decision of Magistrate DiSandro (trial magistrate), sustaining the charged violation of G.L. 1956 § 31-14-2, "Prima facie limits." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On February 5, 2012, Trooper Marc McGehe (Trooper McGehe) of the Rhode Island State Police charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on May 16, 2012.

At trial, Trooper McGehe stated he was on routine patrol during the early morning of February 5, 2012. The trooper was traveling north on Route 95 in Cranston when he observed a blue Volkswagen traveling at a high rate of speed. (Tr. at 3.) Trooper McGehe began following the vehicle and "initiated a clock of" the vehicle.[1]

Trooper McGehe then attempted to introduce a document demonstrating that the speedometer in the trooper's cruiser was properly calibrated at the time of the stop, which would

[1] Initiating a clock of a vehicle means to obtain a vehicle's speed by following it and using the speed of the trailing vehicle to determine the speed of the lead vehicle.

indicate that the speed obtained accurately reflected the speed of the Volkswagen. Appellant objected to the introduction of the document on the grounds that it was inadmissible hearsay. (Tr. at 4.) The trial magistrate overruled Appellant's objection and admitted the document into evidence. Id. Trooper McGehe also testified that he was trained how to clock a vehicle at both the Rhode Island State Police Academy and the Rhode Island Municipal Police Academy.

Returning to the facts of the Appellant's stop, Trooper McGehe stated he began clocking the vehicle in the vicinity of Jefferson Boulevard and continued clocking its speed until Park Avenue. Trooper McGehe estimated that he clocked the vehicle for two to three miles. (Tr. at 5.) During this time, the trooper's speedometer showed that he was traveling at a speed of eighty (80) miles per hour (mph), which led the trooper to conclude that the Volkswagen was also traveling 80 mph.. At this time, Trooper McGehe conducted a motor vehicle stop of the speeding car and identified the operator as the Appellant. At the conclusion of the stop, the trooper cited the Appellant for speeding.

After a short cross-examination, Trooper McGehe finished presenting his case in chief. (Tr. at 6-7). Appellant's counsel stated that he had "no other questions, Judge." (Tr. at 7.) At this time, the trial magistrate stated that the prosecution had met its burden of proof by clear and convincing evidence. Id. Consequently, the trial magistrate sustained the violation against the Appellant and recited the aforementioned facts to support his decision. (Tr. at 7-9.) The trial magistrate then imposed sentence. However, after completing his decision and sentencing, the Appellant stated that he wished to be heard. Appellant informed the trial magistrate that he was never given an opportunity to present his case in chief. In response, the trial magistrate stated, "I thought I heard you say, nothing further, Judge;" instead, Appellant's counsel had only stated that he had no further questions for the trooper. (Tr. at. 9.) The trial then offered the Appellant

the opportunity to either present his case in chief or to conduct a new trial; however, Appellant declined. (Tr. at 10.) Appellant timely filed this appeal.

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:
>
> (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

On appeal, Appellant argues that the trial magistrate's decision to sustain the violation was made in violation of statutory provisions and made upon unlawful procedure. Specifically, Appellant argues that he was not afforded a fair and impartial trial because he was not allowed to present his case in chief. Additionally, Appellant argues that the trial magistrate erred in allowing the calibration document into evidence because it was inadmissible hearsay.

Our Supreme Court has made clear that a defendant's right to "present his defense at a trial . . . should be carefully protected." Berick v. Curran, 179 A. 708, 711 (R.I. 1935). Under the Fourteenth Amendment, administrative tribunals must not be "biased or otherwise indisposed from rendering a fair and impartial decision." Davis v. Wood, 444 A.2d 190, 192 (R.I. 1982). Implicit in rendering a fair and impartial decision is the opportunity to be heard that conforms to the Due Process clause. It is well established that Due Process within administrative procedures requires the opportunity to be heard "at a meaningful time and in a meaningful manner." Millett v. Hoisting Engineers' Licensing Div. of Dept. of Labor, 119 R.I. 285, 296, 377 A.2d 229, 235-36 (1977)); see also Gimmicks, Inc. v. Dettore, 612 A.2d 655, 660 (R.I. 1992) (court held due process requires that an agency allow a person to present evidence and testimony).

Here, Appellant was not afforded an opportunity present his case in chief and was prejudiced by the trial magistrate's error. As our Supreme Court has explained, a defendant should be afforded a right to present a defense. Appellant was not afforded an opportunity to

present witnesses or any evidence that could disprove the prosecution's case in chief or impeach Trooper McGehe's testimony. With this in mind, this Panel feels that the appropriate remedy is to remand the matter to the trial calendar so that Appellant may present his case in chief. See 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 or reverse or modify the decision if the substantial rights of the appellant have been prejudic[ed]") (emphasis added)); see also Lemoine v. Department of Mental Health, Retardation and Hospitals, 113 R.I. 285, 290, 320 A.2d 611, 614 (1974) (affirming trial justice's order remanding the case to the agency "for the taking of additional evidence"). The Panel notes that a remand is appropriate in these circumstances because trial magistrate's error was simply the result of a misunderstanding between himself and Appellant's counsel.

In view of our holding, this Panel finds it unnecessary to review Appellant's remaining points of error. See Hazard v. E. Hills, Inc., 45 A.3d 1262 (R.I. 2012); In re Gabrielle D., 39 A.3d 655 (R.I. 2012) (court declined to reach points on appeal because it was decided on other grounds). The Panel specifically chooses not to address the Appellant's second point of contention—the hearsay issue—because we believe the trial should be completed in its entirety before passing judgment on the matter. Ruling on Appellant's second point would be to pass judgment on an incomplete record. Such a procedure has been employed by our Supreme Court in a similar situation. See Campanella Corp. v. Cowesett Estates, Inc., 437 A.2d 1367 (R.I. 1981) (Supreme Court remanded an appeal to receive further evidence and make further findings because trial judge had excluded certain evidence and such exclusion made the record insufficient to permit meaningful review.).

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision was in violation of statutory provisions and made upon unlawful procedure. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted for the sole purpose of remanding the matter to the trial calendar for further proceedings consistent with this opinion.

ENTERED: