STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T17-0019**
	:	**17001504619**
MATTHEW PICHI	:	

DECISION

PER CURIAM: Before this Panel on July 19, 2017—Chief Magistrate Guglietta (Chair), Judge Parker, and Magistrate Kruse Weller, sitting—is Matthew Pichi's (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Trial Magistrate) of the Rhode Island Traffic Tribunal, accepting Appellant's plea of guilty to the charged violation of G.L. 1956 § 31-26-5, "Duty in accident resulting in damage to highway fixtures." The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On February 19, 2017, Appellant's vehicle collided with a highway mile marker sign while travelling on Route 95 North in Pawtucket. (Tr. at 3.) Rhode Island State Trooper Robert Bentsen (Trooper Bentsen) issued Appellant a citation for the accident, charging Appellant with the abovementioned violation. *See* Summons no. 17001504619.

The matter proceeded to trial on April 26, 2017. (Tr. at 1.) Before the trial began, the Trial Magistrate inquired as to whether the parties had reached an agreed upon resolution. *Id.* Trooper Bentsen indicated that Appellant was going to plead guilty to the violation. *Id.* The Trial Magistrate then asked Appellant, "[a]re you prepared to plead guilty to the violation?" *Id.*

The Appellant responded, "[w]ell, it was an accident and I hit the sign." *Id.* Once again, the Trial Magistrate asked if Appellant intended to plead guilty, to which Appellant stated: "I mean, I guess I hit the sign." *Id.* After the Trial Magistrate asked Appellant whether he left the scene of the accident, Appellant indicated that he did not leave the scene, and then stated: "That's why I'm not sure about this." *Id.* at 2.

Following Appellant's remarks, the Trial Magistrate stated:

> "Trial Magistrate: I thought this was an agree[ment] what did you understand the agreement to be, Officer?"
>
> "Trooper Bentsen: [Appellant] [s]aid he was going to plead guilty and the insurance was going to pay for the sign."
>
> "Trial Magistrate: He's going to plead guilty and the insurance is going to pay for the sign. Is that your understanding? Is that true?"
>
> "Appellant: … Yes Your Honor, I'm just confused as to how this all works…." *Id.*

The Appellant indicated that his confusion regarding the plea agreement arose from his discussions with Trooper Bentsen: "I talked about that [a guilty plea] with the trooper. He said that there wouldn't be a fine…." *Id.* The Trial Magistrate then explained to Appellant that "[t]here has to be a fine if you plead guilty to the violation. Unless it's being dismissed, if you plead guilty to the violation, there's a statutory fine that's imposed." *Id.*

After numerous attempts to explain to Appellant that a guilty plea would result in a fine, the Trial Magistrate dismissed Appellant and Trooper Bentsen to further discuss the agreement.[1]

[1] The Trial Magistrate made numerous other attempts to inform Appellant of the consequences of entering a guilty plea:

> "You plead guilty and I fine you…. It's a violation…. If you plead guilty to the violation, I impose a fine…. You can plead guilty and I'm going to impose a fine or I'm going to swear both you and the trooper in and I'm going to have a trial."

See Tr. at 2-3.

See id. at 2-3. Several minutes later Appellant and Trooper Bentsen again addressed the Trial Magistrate:

> "Appellant: I guess I hit the sign in the accident, so I plead guilty to that."
>
> "Trial Magistrate: So you're pleading guilty to the violation. Is that right?"
>
> "Appellant: Yes, I hit the sign Your Honor." *Id.* at 3.

Thereafter, the Trial Magistrate accepted Appellant's plea and imposed a $200 fine. *Id.* at 4.

On May 5, 2017, Appellant filed a Notice of Appeal to this Appeals Panel in connection with the aforementioned facts. This Panel heard argument on July 19, 2017. 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 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, 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 argues that the Trial Magistrate's decision to accept Appellant's guilty plea was "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record" and "arbitrary or capricious." *See* §§ 31-41.1-8(f)(5), (6). Specifically, Appellant contends that he was not made aware of the nature of the charged violation, and that his conduct did not constitute a violation of § 31-26-5.

Pursuant to Rule 7(a) of the Traffic Tribunal Rules of Procedure,

> "[t]he court may refuse to accept a plea of guilty and shall not accept such 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 . . . . The court shall not enter a judgement upon a plea of guilty unless it is satisfied that there is a factual basis for the plea." *See* Traffic Trib. R. P. 7(a).

Rule 7(a) is synonymous with Rule 11 of the Superior Court Rules of Criminal Procedure; thus this Panel may look to the court's interpretation of Rule 11 for guidance. The Rhode Island Supreme Court has held that guilty pleas are valid only if the record affirmatively discloses that a defendant entered into the plea voluntarily and intelligently. *See State v. Figueroa*, 639 A.2d 495, 498 (R.I. 1994); *see also State v. Feng*, 421 A.2d 1258, 1266 (R.I. 1980) ("Guilty pleas are valid only if voluntarily and intelligently entered, and the record must so affirmatively disclose."). 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)).

In *Camacho v. State*, our Supreme Court stated: "'[A]t the conclusion of a plea hearing, the trial justice should be able to say with assurance that the accused is fully aware of the nature of the charge and the consequences of the plea.'" 58 A.3d 182, 186 (R.I. 2013) (quoting *State v. Williams*, 122 R.I. 32, 40, 404 A.2d 814, 819 (1979)). In that case, the court explained that such assurance may come from "(1) an explanation of the essential elements by the judge at the guilty plea hearing; (2) a representation that counsel had explained to the defendant the elements he admits by his plea[]; (3) defendants statement admitting to facts constituting the unexplained element or stipulations to such facts." *Id.* (citing *Williams*, 122 R.I. at 41, 404 A.2d at 819.)) However, "the standard is not whether the trial court sufficiently made a detailed explanation of the charges, element by element, and fact by fact, but, more importantly, whether the defendant understood them." *Id.* (citing *Henderson v. Morgan*, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 49

L.Ed.2d 108 (1976)). A court may find that a plea satisfies this standard "based on the 'record viewed in its totality." *Id.* (quoting *State v. Frazar*, 822 A.2d 931, 936 (R.I. 2003)).

In this case, Appellant plead guilty to a violation of § 31-26-5, "Duty in accident resulting in damage to highway fixtures." Section 31-26-5 provides,

> "[t]he driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property . . . . The driver shall upon request exhibit his or her operator's or chauffeur's license and shall immediately give notice of the accident to a nearby office of local or state police." *See* 31-26-5.

Therefore, a violation of the statute occurs when the driver of a vehicle, involved in an accident that causes damage to a highway fixture, fails to take reasonable steps to locate and notify the owner or person in charge of the property, and does not immediately give notice of the accident to local or state police. *Id.*

Here, the record does not contain affirmative evidence showing that Appellant had sufficient knowledge of the nature of the charged violation, prior to the Trial Magistrate's acceptance of Appellant's plea. *See Camacho*, 58 A.3d 182, 186; *Figueroa*, 639 A.2d at 498. Based on our Supreme Court's precedent, "the trial justice should be able to say with assurance that the accused is fully aware of the nature of the charge and the consequences of the plea.'" *Camacho*, 58 A.3d at 186 (R.I. 2013) (quoting *Williams*, 122 R.I. at 40, 404 A.2d at 819). However, the record in the instant matter does not clearly indicate that Appellant was fully aware of the elements that must be met in order to sustain a violation of § 31-26-5; specifically, the violation could be sustained only if, after the accident, Appellant did not take reasonable steps to inform the owner of the mile marker sign, and did not immediately inform local or state police. *See* Traffic Trib. R. P. 7(a); *see also Camacho*, 58 A.3d at 186 (R.I. 2013).

The record clearly conveys that Appellant was aware that § 31-26-5 implicates a "driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway," based on his own admissions indicating that his vehicle hit the sign. *See* Tr. at 1; § 31-26-5. Nevertheless, there is no indication that the Trial Magistrate could have been assured that Appellant was aware that a violation of § 31-26-5 requires proof that Appellant failed to "take reasonable steps to locate and notify the owner or person in charge of the property . . ." and "immediately give notice of the accident to a nearby office of local or state police." Sec. 31-26-5. Based on the record: (1) The Trial Magistrate did not provide "an explanation of the essential elements . . . at the guilty plea hearing;" (2) Appellant was not represented by counsel, therefore, there was no "representation that counsel had explained to [Appellant] the elements he admits by his plea[];" and (3) Appellant's statement admitting to facts did not "constitute[e] the unexplained element or stipulations to such facts." *Id.* (citing *Williams*, 122 R.I. at 41, 404 A.2d at 819.)) As such, this Panel finds that there is no evidence in the record to support a conclusion that Appellant was "fully aware of the nature of the charge and the consequences of the plea." 58 A.3d at 186.

Additionally, the record is unclear as to whether there was a sufficient factual basis for Appellant's plea as required by Rule 7(a) of our Rules of Procedure. During the Trial Magistrate's conversation with Appellant, the Trial Magistrate asked Appellant, "did you leave the scene?" (Tr. at 1.) The Appellant indicated that he did not leave the scene. *Id.* at 2. Furthermore, The Trial Magistrate asked Trooper Bentsen,

> "[w]here was Mr. Pichi's vehicle after the sign was struck . . . ?" *Id.* at 3.
>
> [Trooper Bentsen]: "It was uh, Your Honor, it was 95 North, uh, just past exit 29." *Id.*

> [Trial Magistrate]: "And then where did [] his car come to rest right after[,] immediately after striking the sign?" *Id.*
>
> [Trooper Bentsen]: "Uh, Your Honor, it went through the grass embankment, uh came to rest facing south against the jersey barrier, in the low speed break down lane." *Id.*

Trooper Bentsen's statements, in conjunction with Appellant's statement that he did not leave the scene of the accident, render the timing and the circumstances unclear under which Appellant may or may not have had an opportunity to inform the police. Regardless, the issue before this Panel is not whether Appellant took the necessary reasonable steps after striking the highway fixture; rather, the issue is that there is no evidence in the record to support the Trial Magistrate's finding that there was a sufficient factual basis to accept Appellant's plea. After considering the entire record, this Panel finds that there was an insufficient factual basis to accept Appellant's plea.

In consideration of the evidence within the record, this Panel finds that there is no affirmative evidence indicating that Appellant was fully aware of the nature of the violation when he plead guilty, and that there was an insufficient factual basis for the Trial Magistrate to accept Appellant's plea. Accordingly, this Panel further finds that the Trial Magistrate erred when he accepted Appellant's guilty plea.

IV

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 "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record," and "arbitrary and capricious." Secs. 31-41.1-8(f)(5), (6). The substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted. The Appellant's guilty plea is vacated, and the matter is remanded for further proceedings.

ENTERED:

_____
Judge Edward C. Parker

_____
Magistrate Erika Kruse Weller

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.