

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

NICHOLAS RAMPONE

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**C.A. No. M18-0008
18408501161**

DECISION

PER CURIAM: Before this Panel on November 21, 2018—Magistrate Kruse Weller (Chair), Associate Judge Almeida, and Magistrate Goulart, sitting—is Nicholas Rampone’s (Appellant) appeal from a decision of Judge Jack T. Gannon (Trial Judge) of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant filed his appeal represented by counsel, but neither Appellant nor his attorney appeared before this Panel for oral argument. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On January 29, 2018, Officer Paul Trout (Officer Trout) of the Pawtucket Police Department conducted a traffic stop of Appellant’s vehicle on Prospect Street in Pawtucket. *See* Summons 18408501161. Subsequently, Officer Trout issued Appellant a citation for travelling at a speed of thirty-five miles per hour in a twenty-five miles per hour speed zone. *Id.* This violation is Appellant’s second offense. *See id.*

The Appellant pled not guilty to the charged violation, and the matter proceeded to trial on May 18, 2018. (Tr. at 1.) However, the Appellant did not appear at his trial. *Id.* at 2:6-8. Instead, when the Trial Judge inquired as to Appellant’s presence, Appellant’s attorney replied,

“I’m waiving his appearance.” *Id.* The Trial Judge did not permit counsel to waive Appellant’s appearance at trial, stating, “You can waive it at the arraignment, but not at trial.” *Id.* at 2:10. Appellant’s attorney contested that “[he] most certainly can” waive his client’s appearance. *Id.* at 2:20. The Trial Judge responded, “At the arraignment I would let you do it, but not at trial.” *Id.* at 2:21-22.

Appellant’s attorney maintained that if the Trial Judge would not permit him to waive Appellant’s appearance, “then [he’ll] just take an appeal.” *Id.* at 2:12-13. The Trial Judge stated, “If you want to take an appeal, go right ahead and we’ll just end this here.” *Id.* at 2:15-16. Thus, the Trial Judge entered a default judgment against Appellant. *Id.* at 3:8-10. The Appellant subsequently filed a timely appeal of the Trial Judge’s decision. Forthwith is this Panel’s decision.

II

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 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 asserts that the Trial Judge’s decision was made “[i]n violation of constitutional . . . provisions[,]” “[m]ade upon unlawful procedure,” and “[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 31-41.1-8(f)(1), (3), and (6).¹ Specifically, Appellant maintains that his due process rights

¹ This Panel assesses each of Appellant’s arguments bearing in mind that Appellant did not appear for oral argument and that “[s]imply stating an issue for appellate review, without a meaningful discussion thereof or legal briefing of the issues, does not assist the court in focusing on the legal questions raised, and therefore constitutes a waiver of that issue.” *Wilkinson v. State Crime Lab. Comm’n*, 788 A.2d 1129, 1132 n.1 (R.I. 2002) (citations omitted).

were violated because the Trial Judge did not allow counsel to waive Appellant's appearance at trial. *See* Appellant's Notice of Appeal at 2. In doing so, Appellant contends, the Trial Judge denied Appellant his right to a fair trial. *Id.*

The Rhode Island Supreme Court has held that the right to a hearing is the "opportunity to be heard at a meaningful time and in a meaningful manner." *State v. Oliveira*, 774 A.2d 893, 923 (R.I. 2001). The constitutional guarantee of procedural due process assures that there will be fair and adequate legal proceedings. *State v. Germane*, 971 A.2d 555, 574 (R.I. 2009). To ensure fairness and the adequacy of legal proceedings, procedural due process requires that a defendant be provided: (1) notice of the hearing and the alleged violation; (2) an opportunity to be heard by an impartial trial judge; (3) an opportunity to present evidence; (4) and the right to confront and cross-examine witnesses. *State v. Pompey*, 934 A.2d 210, 214 (R.I. 2007).

Rule 23 of the Rhode Island Traffic Tribunal Rules of Procedure addresses the requirements for the presence of a defendant. Specifically, Rule 23(a) provides:

“(a) Right to Presence. The defendant shall be present at the first appearance and at the imposition of sentence, except as otherwise provided by statute or by these rules. The defendant shall be present at every stage of the trial, except that the defendant may be excluded from the proceedings if, after appropriate warning, the defendant persists in conducting himself or herself in a manner so disorderly, disruptive, and disrespectful of the court that the trial cannot be carried on with the defendant in the courtroom.” (Rule 23(a).)

Part (b) specifically sets forth the procedure for requesting a waiver of the defendant's appearance:

“(b) Motion to Waive Presence. A defendant who is represented by an attorney may apply to the court for an order to waive the defendant's presence at the first appearance, at every stage of trial, and the imposition of sentence. A motion to relieve a defendant from the requirement that the defendant be present shall be in writing unless the court permits it to be made orally. Said motion

shall be filed no later than five (5) days prior to the first appearance, trial, or sentencing.”² (Rule 23(b).)

An attorney must request to waive his or her client’s presence at trial *in writing* at least *five days prior* to the trial. *Id.* While an attorney may orally request that the defendant’s presence be waived, such a request is nonetheless subject to the discretion of the trial judge. *Id.* Importantly, it is not the *attorney* who waives his client’s presence, but the *trial judge* who grants or denies the attorney’s motion to waive his client’s presence. *See id.* If a defendant’s appearance is not waived, “[a] default judgment may enter against the defendant upon the defendant’s failure to appear at trial[.]” (Rule 17(c).)

In the instant matter, it is undisputed that Appellant had notice of the hearing and alleged violation. *See* Summons No. 18408501161. The record reveals that the Appellant also had an opportunity to be heard by the Trial Judge, an opportunity to present evidence, and the right to confront and cross-examine witnesses. (Tr. at 2:1-2); *see also State v. Pompey*, 934 A.2d at 214. However, the Appellant did not appear at the trial and therefore did not take advantage of the opportunity to be heard that was afforded to him. (Tr. at 2:6-8); *see Gregson v. Superior Court*, 46 R.I. 362, 365 128 A. 221, 222 (1925) (“A defendant is in default if . . . he neglects to appear at the time fixed for trial[.]”).

While Appellant’s counsel is permitted to move to waive his client’s appearance at trial, Appellant’s counsel did not submit the request in writing in advance of the trial; and the Court, within its discretion, denied the motion made orally at the time of trial. (Tr. at 2:7-14); Rule 23(b). Based on the evidence contained within the record, this Panel finds that Appellant was afforded “an opportunity to be heard in a meaningful manner and at a meaningful time[.]” and

² Pursuant to Rule 1(a) of the Rhode Island Traffic Tribunal Rules of Procedure, “[t]hese rules govern the procedure in the traffic tribunal *and in the municipal courts* in all civil violations of the motor vehicle code and other violations assigned to those courts for adjudication pursuant to state law.” (Rule 1(a)) (emphasis added).

the Trial Judge did not err in denying Appellant's counsel's request to waive Appellant's appearance at trial. *See Oliveira*, 774 A.2d at 923. Accordingly, the Trial Judge's decision to sustain the charged violation neither violated Appellant's due process rights nor constituted an abuse of discretion.

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision was not made in violation of constitutional provisions; made upon unlawful procedure; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Sec. 31-41.1-8(f)(1), (3), and (6). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Erika L. Kruse Weller (Chair)

Associate Judge Lillian M. Almeida

Magistrate Alan R. Goulart

DATE: _____