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Supreme Court

No. 2016-57-C.A.

(P2/14-3481A)

Dissent begins on Page 10

State :
v. :
Benjamin D. Minior. :

Present: Suttell, C.J., Goldberg, Flaherty,
and Indeglia, JJ.

OPINION

(Filed Jan. 11, 2018)

Justice Indeglia, for the Court. Today, we are called upon to embark on the “journey we reserve[d] for another day.” *State v. Pacheco*, 161 A.3d 1166, 1177 (R.I. 2017). Less than a year ago in that case, we “deem[ed] it unnecessary to decide whether collateral estoppel is applicable to issues determined in the [Rhode Island] Traffic Tribunal when all of the elements of the doctrine are met.” *Id.* With that issue once again before us, we conclude that the time has come to decide it.

Benjamin D. Minior (Minior or defendant) was cited with the civil violation of reasonable and prudent speeds¹ in the Rhode Island Traffic Tribunal (Traffic Tribunal) and charged criminally in Superior Court

¹ General Laws 1956 § 31-14-1.

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with the driving-related counts of driving under the influence, serious bodily injury resulting² and reckless driving.³ Before a Superior Court magistrate, defendant sought to dismiss his criminal charges, arguing that the Traffic Tribunal magistrate determined that he was not operating the vehicle and thus the issue could not be relitigated based on collateral estoppel. The Superior Court magistrate granted the motion to dismiss and the state appealed. A Superior Court justice reversed the dismissal. On appeal, defendant argues that the trial justice erred in denying his motion to dismiss based on collateral estoppel. The state counters that the present appeal from the denial of a motion to dismiss is not properly before us.

For the reasons set forth herein, we affirm the judgment of the Superior Court.

I

Facts and Travel

The facts in this case are straightforward and largely undisputed. On February 17, 2014 at 1:24 a.m., the Town of Bristol (the town) police were dispatched to a motor vehicle accident near 85 Broad Common Road. The vehicle – a 2004 Volvo – had veered off the road and severed a telephone pole, then continued until it hit a tree approximately fifteen feet away. A front-seat passenger suffered injuries to his head and legs,

² General Laws 1956 § 31-27-2.6.

³ Section § 31-27-4.

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while the suspected operator – identified by the passenger as Minior – had a head laceration. Minior was arrested and taken to Rhode Island Hospital on suspicion of driving under the influence, where a blood test revealed a blood-alcohol content of 0.153 mg/dl. That night, Bristol police cited him with the civil violation of reasonable and prudent speeds. He was also issued a summons to appear at an arraignment for a driving under the influence, serious bodily injury resulting charge, to which he entered no plea and was released on bail.

The defendant appeared before the Traffic Tribunal to answer his civil violation on April 28, 2014. There, Bristol Officer Kevin Kitchen, who was dispatched to the accident, testified as to his observations at the scene. After Officer Kitchen concluded his testimony, Bristol Officer Timothy Gallison, who was also dispatched to the scene, testified as well. Officer Gallison recalled that upon approaching the vehicle, he witnessed a male sitting in the driver's seat.

After both officers testified, defendant's attorney moved to dismiss the violation. The defendant asserted that, based on a lack of evidence as to both the posted speed limit and defendant's operation of the vehicle, the town failed to satisfy the requisite clear and convincing standard. Significant to Minior's argument before us is the magistrate's admonition to one of the officers that "there was no testimony as to observation of the motor vehicle at the time of the accident, as to who was driving it. You're indicating and coming to the presumption as to who was operating the vehicle." In

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conclusion, the magistrate said “there was no observation of who was operating the vehicle * * *, so the [c]ourt finds that the [t]own has not sustained the violation for reasonable and prudent speed[s].”

On December 5, 2014, the state filed a criminal information charging defendant with two driving-related counts: (1) driving under the influence, serious bodily injury resulting; and (2) reckless driving. On August 4, 2015, Minior moved pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure to dismiss the criminal charges, arguing that the Traffic Tribunal’s dismissal collaterally estopped the criminal charges from proceeding. The motion to dismiss was heard by a Superior Court magistrate on September 14, 2015. The Superior Court magistrate granted the motion based primarily on a decision he had rendered in a previous case.

Soon after, the state appealed the Superior Court magistrate’s decision per G.L. 1956 § 8-2-11.1(d) and a Superior Court justice heard the matter on December 15, 2015. The justice reversed the Superior Court magistrate’s decision, emphasizing the distinction between “what the Traffic Tribunal [magistrate] did and [what he] did not do when he rendered his decision.” Continuing, she noted that “a careful review of the transcript” revealed that the Traffic Tribunal magistrate did not make a specific finding about whether defendant was operating the vehicle at the time of the accident. Instead, the Traffic Tribunal magistrate “merely found that the [t]own had not sustained the violation,” and did not decide whether defendant was operating the

vehicle. “[The Traffic Tribunal magistrate] merely commented on the absence of evidence and found only that the [t]own had not sustained its burden.” The justice ultimately determined that collateral estoppel did not apply, reversed the Superior Court magistrate’s decision, and reinstated the charges. The defendant appealed the following day, bringing the case before us.

II

Standard of Review

“The determination of whether collateral estoppel should be applied presents a question of law[.]” *Kenlin Properties, LLC v. City of East Providence*, 139 A.3d 491, 497 (R.I. 2016) (quoting *Casco Indemnity Co. v. O’Connor*, 755 A.2d 779, 782 (R.I. 2000)). Accordingly, “[w]e conduct a *de novo* review when confronted with a motion to dismiss on collateral[-]estoppel grounds.” *Pacheco*, 161 A.3d at 1174.

III

Discussion

A. Interlocutory Appeal

We begin by addressing the state’s argument that this appeal is not properly before us because it is interlocutory and thus unreviewable. “It is well settled in this jurisdiction that appeals from interlocutory orders are not permitted unless they fall within certain well-defined exceptions.” *Boranian v. Richer*, 983 A.2d 834, 837 (R.I. 2009). “Ordinarily a denial of a motion to

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dismiss a criminal action is not a final judgment from which an appeal may be taken. However, when the motion to dismiss is based upon double-jeopardy and collateral-estoppel grounds, we allow an immediate appeal.” *State v. Wiggs*, 635 A.2d 272, 275 (R.I. 1993), *abrogated on other grounds by State v. Gautier*, 871 A.2d 347 (R.I. 2005); *see also State v. Godette*, 751 A.2d 742, 745 (R.I. 2000). Because the sole issue is whether collateral estoppel bars the state from prosecuting defendant based on a finding that he was not operating the vehicle, we hold that the appeal is properly before us based on the aforementioned exception.⁴ *See Wiggs*, 635 A.2d at 275.

B. Collateral Estoppel

We now turn to defendant’s claim that the state is estopped from prosecuting him based on the Traffic Tribunal’s resolution of his civil violation. At the outset, we pause to recall that in *Pacheco*, 161 A.3d at 1176, we distinguished a Traffic Tribunal proceeding from a criminal trial. There, a defendant sought to dismiss a criminal charge of chemical refusal second offense based on collateral estoppel after the Traffic Tribunal had dismissed his civil violation for refusing

⁴ The defendant argues that the state’s appeal of the Superior Court magistrate’s order was improper because it should have been appealed not to the Superior Court, but instead directly to this Court pursuant to G.L. 1956 § 8-2-39(f). Because defendant failed to raise this argument below, we do not address its merits and instead consider it waived. *See State v. Barros*, 148 A.3d 168, 172 (R.I. 2016).

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to submit to a preliminary breath test. *Id.* at 1169-70. We held that there was not an identity of issues as required for collateral estoppel, and the Traffic Tribunal's dismissal therefore did not prevent the state from prosecuting the criminal charge. *Id.* at 1175. In dicta, we also addressed the state's argument that collateral estoppel should not apply to Traffic Tribunal decisions; specifically, we remarked that the standard of prosecution, the discovery mechanisms, and right-to-counsel guarantees differ in the Traffic Tribunal as compared to criminal trials. *Id.* at 1176, 1177. Nevertheless, we ultimately reserved decision on whether collateral estoppel should apply to such proceedings. *Id.* at 1177.

The *Pacheco* majority was met by a dissent, which declared that "[a]lthough what transpires in the Traffic Tribunal is in some respects less formal than what usually occurs in the Superior Court, it is, nonetheless, a legislatively created court of competent jurisdiction. * * * The hearings are recorded and presided over by a full-time magistrate, and the decisions are binding upon the parties." *Pacheco*, 161 A.3d at 1182 (Flaherty, J., dissenting). With that context in mind, we begin our analysis.

"The doctrine of collateral estoppel provides that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Pacheco*, 161 A.3d at 1172 (quoting *Gautier*, 871 A.2d at 358). Collateral estoppel applies where there exists "(1) an identity of issues, (2) the previous proceeding must have resulted in a *final judgment on*

the merits, and (3) the party against whom collateral estoppel is asserted must be the same or in privity with a party in the previous proceeding.” *Id.* (quoting *Gautier*, 871 A.2d at 358). Since we deem the time ripe for a determination of the issue left hanging in *Pacheco*, we will assume without deciding that the necessary elements for collateral estoppel exist.⁵

1. Inequitable Results

With these collateral estoppel factors assumed, we address an overarching principle that loosens our fixed analysis in the interest of equity. We remember that “we will not apply the doctrine mechanically in situations in which it would lead to inequitable results.” *Pacheco*, 161 A.3d at 1172 (quoting *Gautier*, 871 A.2d at 358). “The United States Supreme Court has noted that ‘collateral estoppel in criminal cases is not to be applied with the hypertechnical and archaic approach of a 19th century pleading book, but with realism and rationality.’ * * * ‘The inquiry must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings.’” *State v. Hie*, 688 A.2d 283, 284-85 (R.I. 1996) (quoting *Ashe v. Swenson*, 397 U.S. 436, 444 (1970)). “To avoid unfairness, courts have declined to

⁵ The Superior Court justice, emphasizing that the Traffic Tribunal magistrate only determined the issue based on the lack of evidence, found that the Traffic Tribunal magistrate did not make a final judgment on the merits. We decide our opinion on a different basis. See *Sobanski v. Donahue*, 792 A.2d 57, 59 (R.I. 2002) (“[I]n rendering our decisions we are free to decide the case on grounds other than those relied upon by the lower-court judge.”).

apply collateral estoppel” where its application would be inequitable. *Casco Indemnity Co.*, 755 A.2d at 782; *see also Foster-Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1017 (R.I. 2004).

We have had occasion to apply this principle before. In *Gautier*, we held that collateral estoppel did not apply to a probation-violation hearing because “further application of the doctrine of collateral estoppel to bar relitigation of a criminal charge, following a determination during a [civil] probation-revocation hearing that is adverse to the state, inequitably overlooks and misconceives the inherent and important differences between those proceedings and criminal trials.” *Gautier*, 871 A.2d at 358. One of the referenced differences in that case was the applicable due-process standard, which we articulated as “considerably less * * * than that to which they are constitutionally entitled in a full-blown criminal trial” “[d]ue to the less formal nature of such proceedings.” *Id.* at 359. We also noted the differing evidentiary rules, where the rules are applied “less stringently” in a probation-revocation hearing. *Id.* Moreover, “[b]ecause the state need not prove a probation violation beyond a reasonable doubt, but only by reasonably satisfactory evidence, * * * probation-violation hearings are frequently held without the benefit of preparation that precedes a criminal trial, * * * and thus are properly conducted in a more informal manner than a trial * * *.” *Id.* Ultimately, we determined that “it is neither the purpose nor the intended function of probation-revocation hearings to ‘serve as a final arbiter of an individual’s guilt or

innocence of criminal charges’” and it would therefore be inequitable to estop the state from pursuing a criminal charge based on an unfavorable probation-revocation decision. *Id.* at 360 (quoting *Commonwealth v. Cosgrove*, 629 A.2d 1007, 1011 (Pa. Super. Ct. 1993)).

We perceive several similarities between *Gautier* and this case. As we prophetically delineated in *Pacheco*, 161 A.3d at 1176, there are numerous differences between a Traffic Tribunal proceeding and a criminal trial. For instance, those appearing before the Traffic Tribunal are not guaranteed the right to counsel. *Id.* Neither are they afforded the same latitude in conducting discovery. *Id.* Though the distinctions are plentiful, perhaps the most persuasive is the overall formality of a Traffic Tribunal proceeding versus a criminal trial. Like probation-violation hearings, which are “more informal * * * than a trial” because of the lower standard required to prove a violation, Traffic Tribunal proceedings are similarly informal where the burden of proof on the prosecution is one of “clear and convincing evidence.” *Gautier*, 871 A.2d at 359; Rule 17(a) of the Traffic Tribunal Rules of Procedure. The defendant argues that our holding in *Gautier* rested on reasoning that a probation-revocation hearing is less formal than a trial on the merits, whereas a Traffic Tribunal proceeding is formal. We respond that in *Gautier*, 871 A.2d at 359, we focused not on a superficial distinction between trials and probation-revocation hearings, but instead remained “[m]indful of the critical differences in both the purposes of and procedures employed during probation-revocation hearings

and criminal trials.” With an eye to such “critical differences” between criminal trials and Traffic Tribunal proceedings, our reasoning today is in accordance with *Gautier. Id.*

Moreover, the following resonates:

“‘[T]he government is not statutorily or constitutionally obligated to put forth all its evidence at a probation[-]revocation hearing * * *.’ However, application of collateral estoppel to probation-revocation hearings inevitably thwarts this principle of criminal jurisprudence by forcing the state to expedite discovery and present any and all of its evidence and witnesses well in advance of trial. This is especially problematic when, as in some complicated cases, the charges raised at a revocation hearing are *only a small part of a larger, ongoing criminal investigation.*” *Gautier*, 871 A.2d at 360 (quoting *United States v. Miller*, 797 F.2d 336, 342 (6th Cir. 1986)) (emphasis added).

We believe that the same can be said of the Traffic Tribunal. The present case is an example of a traffic violation that is “only a small part of a larger, ongoing criminal investigation.” *Id.* To require the state to “complete its entire investigation” before resolving the violation “can effectively hinder its ability to carefully strategize the prosecution of criminal suspects and, consequently, provide for public safety.” *Id.* Estopping the state from pursuing criminal charges against defendant, or anyone accused similarly, based on the resolve of a non-criminal traffic citation would

compromise public safety and undeniably be an inequity to the community. *See id.*

In *Pacheco*, 161 A.3d at 1176-77, we also acknowledged that various jurisdictions have decided the issue as we do today. For example, in *State v. Walker*, 768 P.2d 668 (Ariz. Ct. App. 1989), the Court of Appeals in Arizona recognized that “[c]ollateral estoppel effect is generally denied to traffic convictions and minor offenses under accepted common law principles * * * [,] [therefore,] because of the relative insignificance of the charges, [the] defendants have no constitutional right to a jury trial in traffic cases, as they would in a true criminal prosecution, and cannot reasonably be expected to defend with the same vigor.” *Id.* at 671; *cf. Briggeman v. Albert*, 586 A.2d 15, 18 (Md. 1991) (considering whether to admit a traffic violation in a subsequent criminal proceeding, noting that “it is common experience that people plead guilty to traffic charges for reasons of expediency even though they may believe themselves innocent”).

In the Traffic Tribunal, there is a lesser level of formality with which cases are both tried and defended, which is one reason of many convincing us that applying collateral estoppel to the present situation would be inequitable. *See Walker*, 768 P.2d at 672-73 (holding that collateral estoppel is not available to a criminal defendant for a judgment of acquittal following a civil traffic hearing). We are careful to stress, however, that we are not “attempt[ing] to discredit the validity of the Traffic Tribunal judgment,” *Pacheco*, 161 A.3d at 1182 (Flaherty, J., dissenting), and rather only

say that in matters that are “only a small part of a larger, ongoing criminal investigation,” the Traffic Tribunal’s process is insufficient to estop a later criminal proceeding. *Gautier*, 871 A.2d at 360.

IV

Conclusion

For the reasons stated herein, we affirm the judgment of the Superior Court. The record shall be returned to that tribunal.

Justice Robinson did not participate.

Justice Flaherty, dissenting. I respectfully dissent from the holding of the majority in this case. Although the majority avoids the issue of whether the elements of collateral estoppel were met, for the reasons I previously set forth in dissent in *State v. Pacheco*, 161 A.3d 1166, 1177 (R.I. 2017) (Flaherty, J., dissenting), reasons that I incorporate in this dissent, I am firmly of the opinion that those elements were satisfied in this case and that, as a result, collateral estoppel applies.¹ Moreover, I respectfully disagree

¹ Although not a live issue in *State v. Pacheco*, 161 A.3d 1166 (R.I. 2017), I am of the opinion that privity – the third element of collateral estoppel – has been established in this case. In my view, there was a sufficient mutuality of interest between the town of Bristol and the state when the town prosecuted defendant for exceeding reasonable and prudent speeds, a violation of a state statute, G.L. 1956 § 31-14-1. See *Duffy v. Milder*, 896 A.2d 27, 36 (R.I.

with the majority’s conclusion that applying collateral estoppel to the facts of this case would be inequitable. In my opinion, the balance of equities tilts decidedly in the defendant’s favor. Where, as here, collateral estoppel is tinged by double jeopardy, equity demands its application.²

In this case, after hearing testimony from two Bristol police officers, a magistrate of the Traffic Tribunal dismissed the charge of exceeding reasonable and prudent speeds that had been brought against defendant. In doing so, the magistrate found as a fact that there was insufficient evidence to prove that defendant had been driving. In my view, it is significant that the state had prior notice of the hearing that was to take place on that charge.³ It is also significant to

2006) (“Parties are in privity when ‘there is a commonality of interest between the two entities’ and when they ‘sufficiently represent’ each other’s interests.” (quoting *Commercial Union Insurance Co. v. Pelchat*, 727 A.2d 676, 680 (R.I. 1999)); see also Black’s Law Dictionary 1394 (10th ed. 2014) (defining privity as “[t]he connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interest”).

² “It is * * * apparent that the doctrine of collateral estoppel is a subdoctrine of double jeopardy but would apply in both civil and criminal cases. When a court of competent jurisdiction has decided an issue of ultimate fact, that fact may not be relitigated between the same parties.” *State v. Pineda*, 712 A.2d 858, 864 (R.I. 1998) (Weisberger, C.J., dissenting).

³ The record reveals that the state had notice that defendant had been charged with exceeding reasonable and prudent speeds. In an exchange at a pretrial hearing with a police detective from Bristol – one of the police officers who later prosecuted defendant

me that there was no appeal of the magistrate's finding that there was insufficient evidence that defendant had been operating a motor vehicle – an essential element of both speeding and driving under the influence, serious bodily injury resulting. I can reach no other conclusion than that, at that point, a judgment had been rendered that defendant was not driving on the night of February 14, 2014, and that the preclusive effect of collateral estoppel had attached.

According to the majority, even assuming that collateral estoppel applies, the application of the doctrine in this scenario would create an inequitable result. Respectfully, I cannot agree. There may be cases where the application of collateral estoppel to a judgment of the Traffic Tribunal may create an inequitable result, but this is not that case. Indeed, it seems to me to be far more inequitable to require a defendant to defend twice for essentially the same conduct than to apply collateral estoppel to a final judgment of a court of

for the traffic offense – the hearing magistrate – the Traffic Tribunal's chief magistrate – said: "Detective, this matter involves a reasonable and prudent speed, and there was an accident, and I am under the understanding that there may be a felony attached to it and so the [Attorney General] might be involved." The detective responded: "That's correct." Indeed, in addition to that colloquy, the chief magistrate, after hearing of the severity of the accident and confirming that the state planned to charge defendant with a felony, directed that a telephone call be placed to a representative of the Attorney General's office. The fact that the state had notice of the traffic offense and intended to charge defendant with the more serious offense of driving under the influence, serious bodily injury resulting, further cements my view that collateral estoppel should be applied as a bar against further litigation of the same facts.

competent jurisdiction. For those reasons, it is my opinion that the state's opportunity to contest whether defendant was operating the motor vehicle had closed. Because "an issue of ultimate fact" – that is, whether defendant was driving – was "determined by a *valid and final judgment*, that issue cannot again be litigated * * * ." *State v. Gautier*, 871 A.2d 347, 358 (R.I. 2005) (quoting *State v. Werner*, 865 A.2d 1049, 1055 (R.I. 2005)). The elements of collateral estoppel were satisfied and the doctrine should have been applied. When weighing the equities at issue in this case, it is better, I respectfully conclude, that we apply collateral estoppel than require defendant to defend himself a second time on a charge arising from an identical fact pattern.

For those reasons, I would vacate the judgment of the Superior Court.

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STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. SUPERIOR COURT

STATE OF RHODE ISLAND)
)
 V. P2/14-3481A
)
BENJAMIN MINIOR)
)

HEARD BEFORE
THE HONORABLE MAGISTRATE
JOHN F. MCBURNEY III

SEPTEMBER 14, 2015

APPEARANCES:

 SPECIAL ASSISTANT
 ATTORNEY GENERAL
JOHN PERROTTA.....FOR THE STATE OF
 OF RHODE ISLAND

RICHARD HUMPHREY,
ESQUIRE.....FOR THE DEFENDANT

[1] **SEPTEMBER 14, 2015**

A.M. SESSION

THE CLERK: Your Honor, the matter before
the court is State v. Benjamin Minior, P2/14-3481A on
for a motion to dismiss.

THE COURT: Will the parties identify
themselves, please.

MR. PERROTTA: John Perrotta on behalf of the State of Rhode Island, Your Honor.

MR. HUMPHREY: Good morning, Your Honor. Richard Humphrey on behalf of Benjamin Minior who is standing beside me.

THE COURT: Be seated, please. This matter is before the Court on the defendant's motion to dismiss based on a collateral estoppel issue. I have reviewed the defendant's motion, the State's response.

Would the parties like to add anything? Gentlemen, would you like to add anything?

MR. PERROTTA: Your Honor, I would just like to reiterate what the State included in its memo that for collateral estoppel to apply, three elements must be proven and, in this, case, Your Honor, the element of privity is obviously not there.

The Town of Bristol was prosecuting a reasonable and prudent speed traffic violation at the RITT which was a [2] \$95 monetary penalty. The Attorney General's Office had nothing to do with that prosecution, was not involved in that prosecution, and the standard to show privity is not whether the Town of Bristol is a political subdivision, which Mr. Humphrey included, the Town of Bristol is a subdivision of the State of Rhode Island. That's not what the issue is.

The issue is whether the two entities, being Bristol and the Attorney General's Office, had such distinct functions and responsibilities that applying preclusion

would interfere with proper allocation of authority between such entities.

Your Honor, the –

THE COURT: General, Mr. Humphrey has attached a copy of my decision in the *Stephen Day* matter. You reviewed that, I hope.

MR. PERROTTA: Yes, Your Honor.

THE COURT: And my decision, in that matter, found that that privity issue between the State's prosecution and the locals had no bearing whatsoever in this Court's opinion on the issue of collateral estoppel.

I found for *Mr. Day* on a completely different issue, that is, that one of the elements of the refusal was included in the drunk driving, that is, the form for consent, and that's the basis of my decision in the *Day* [3] case. Go ahead.

MR. PERROTTA: Your Honor, from the case law, the standard that I just stated on the record and included in my memo is that the two entities have to have such distinct functions and responsibilities. Distinguishing your *Day* decision, the Attorney General prosecuted the refusal case. They prosecuted the refusal case at the RITT. There was an issue that was decided, and then the AG was prosecuting a DUI. That's totally different in this case, Your Honor.

The Town of Bristol was prosecuting a traffic violation, a \$95 penalty. To preclude the State from

proceeding on a DUI resulting in serious bodily injury and reckless driving case is against the interest of justice, Your Honor, and using the words from the *Werner* case from our Rhode Island Supreme Court, which I included in our memo, Your Honor, “Courts apply the Doctrine of Collateral Estoppel to preclude relitigation of an issue that has already been decided while allowing for exceptions in situations in which application of the doctrine would lead to inequitable results.”

Your Honor, the State would submit that this is exactly the exception that I think our Supreme Court and the criminal justice system has in mind. To preclude the State from going forward because a traffic violation was [4] dismissed by Magistrate Abbate, in the traffic tribunal, goes against the interest of justice, Your Honor.

This traffic violation, the incident happened on February 17, 2014. The RITT hearing on the reasonable hearing speed was heard on April 28, 2014 at the RITT. And another factor that I included in my memo, Your Honor, the commencement of a criminal prosecution begins with the filing of a criminal information by the Attorney General’s Office. The case hadn’t even been informed yet. So to say that the Town of Bristol has the Attorney General’s interest in mind, which is the standard, the Attorney General had nothing to do with that prosecution.

The Town of Bristol obviously wasn’t concerned or had any interest in the DUI prosecution. The case

hadn't been informed yet. The maximum penalty on the DUI serious injury is up to 10 years, Your Honor.

To preclude the State from going forward because a traffic fine in the RITT was dismissed, I think, goes against the reasoning in *State v. Werner* and, in the interest of justice, Your Honor. Basically, if you rule that an RITT decision will preclude the State from going forward, you're basically forcing the State and the towns to commence a trial, to produce all their evidence at a RITT traffic violation or a traffic violation that's heard in a town municipal court.

[5] I think if the defendant's motion is granted, you're basically forcing the State and the towns to produce a trial at these traffic violations. They're two totally different proceedings, Your Honor, and I included some case law of the difference in these proceedings, and the reasoning that I used in my memo is the case of *Gautier* where a Superior Court had a probation-violation hearing trying to violate the defendant on a new murder case, and the Superior Court Judge found that the State hadn't met its burden. The Judge wasn't reasonably satisfied that he committed this murder, and the defense attorney tried to stop the State from going forward on the murder charge, and the Supreme Court stated that they're not going to bother the State from going forward on a murder charge because the proceedings are so different, Your Honor, and the same reasoning applies here.

In a violation hearing, there's a lesser burden of proof. The standards of evidence are different. The

Rules of Evidence of due process are relaxed, and it's even more at the traffic tribunal, Your Honor. That proceeding that occurred before Judge Abbate was one or two Bristol officers. There was no prosecutor from the Attorney General's Office. There was no direct examination, as you can see from the transcript. Judge Abbate, as the fact-finder, does have the discretion of [6] acting as a fact-finder. There was no questions presented to the witnesses.

So the State would submit, Your Honor, that based on the rulings of our Supreme Court, that, first, there is no privity in this case, Your Honor. The Town of Bristol was not acting in the Attorney General's interest, which is required on the third element to establish collateral estoppel, and the State would also argue that, in the interest of justice, Your Honor, to preclude the State from proceeding on a Superior Court driving, DUI resulting in serious injury would, in the last line in my memo, Your Honor, "The purpose of a trial is to determine guilt, the guilt or innocence of the accused." To stop the State from going forward on this, Your Honor, the case hadn't even been informed yet, there is other evidence that is discovered before trial, trials aren't commenced within years, a year or two years after the offense, so to stop the State from precluding because a traffic violation at RITT was dismissed, Your Honor, goes against the reasoning in *Gautier* and goes against public policy, Your Honor, in the interest of justice, and I would ask that this defendant's motion be denied.

THE COURT: Mr. Humphrey, what about that issue that the burden of proof on the reckless driving in the RITT is less than the standard of beyond a reasonable doubt [7] for the Superior Court charge? What about that issue?

MR. HUMPHREY: That's absolutely true. But if they can't prove it at the low standard then they certainly can't prove it at a high standard. That's the first thing.

May I go on?

THE COURT: Go ahead.

MR. HUMPHREY: The State goes on about *State v. Day*, which is your case. Why didn't they appeal it? They had every opportunity to address all of those issues several years ago. They didn't. They made a calculated decision.

The Attorney General's Office is the only prosecutor in the State of Rhode Island. Now, is that true, practically speaking? No. We have town solicitors, like myself, that go there to the traffic court on occasion. Sometimes I've prosecuted actually minor league, if you will, traffic infractions, but often times the police go. The Attorney General's Office could go. They have an Attorney General at the Traffic Court every day. In fact, they have their own office there. There is no office for defense lawyers. There's only an office for the Department of Attorney General. They could have gone there.

Now, this is a serious case where a fellow is [8] alleged to have a serious injury. We've reached out to his lawyers who are Pannone Lopes & Devereaux in this particular case. The Attorney General's Office must have been notified of a serious charge like this well in advance. Why they didn't bring their criminal information, I don't know.

I can surmise because I know, in fact, that the other party is uncooperative. He doesn't want to talk to the Attorney General's Office. The only thing the other party has done so far is to sign a medical release but, according to his lawyers, they're not cooperating with the Department of Attorney General.

In this particular case, the Attorney General did not appear. They did not raise any issues, and now they say too bad.

What could have happened is this, this was a reasonable and prudent speed charge, something to that effect, they could have dismissed the case because they don't want to face collateral estoppel. Years ago when Magistrate Gill was a prosecutor for the Department Of Attorney General, he would do that quite regularly. I don't want to hear about collateral estoppel. They chose not to do that.

So, in so doing, they waived it, and I rely on *State v. Day*. Thank you.

[9] THE COURT: All right. Approach please, Gentlemen.

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(BENCH CONFERENCE HELD OUT OF THE
HEARING OF THE COURT REPORTER)

THE COURT: One week for decision, Mr.
Clerk.

THE CLERK: Okay, Your Honor. 9-21.

(PAUSE)

MR. PERROTTA: Your Honor, with reference
to the Minior case, it's on for the 22nd in Courtroom 4.
Can we have the 22nd instead of the 21st?

THE COURT: On the matter I just heard?

MR. PERROTTA: Yes. It's on in Courtroom
4 on the 22nd.

THE COURT: 9-22.

MR. PERROTTA: Thank you, Your Honor.

(RECESS)

[10] SEPTEMBER 14, 2015

A.M. SESSION

THE CLERK: Your Honor, the matter before
the court is State v. Benjamin Minior, P2/14-3481A.

THE CLERK: Earlier when the parties were
arguing, it came to my attention that the law firm of
Lopes Pannone represents the passenger in Mr.

Minior's vehicle, and that there is currently pending a civil action in that matter.

I conferenced this matter at the bench with the parties and indicated that my son, Patrick McBurney, is an attorney in that firm handling civil litigation for that office.

Based on that, I had indicated that I was going to reserve any further consideration of this based on that potential conflict.

Gentlemen, I understand that you are prepared to indicate to the Court that you will waive any potential conflict; is that correct?

MR. HUMPHREY: Your Honor, Richard Humphrey on behalf of Mr. Minior. Yes, I have discussed it with Ben, and we have full authority to waive any potential conflict. I also conferred with his mother who is sitting behind us in the courtroom.

MR. PERROTTA: Your Honor, John Perrotta on behalf [11] of the State. Mr. Humphrey also advised us that there is another attorney in that firm who is handling the civil aspects so the State will waive any conflict.

THE COURT: Fine. This matter is before the Court on the defendant's motion to dismiss based on the issue of collateral estoppel. I have reviewed the memos submitted by the State and by the defendant. I have reviewed the case law, and I have, again, read my decision in the *Day* matter.

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I am satisfied that each and every element in the *Day* case is presented to me again in this matter. The issues as to privity and the other issues necessary for collateral estoppel I find exist in this case.

Based on that, the defendant's motion to dismiss is granted. Present an order.

MR. HUMPHREY: Thank you.

MR. PERROTTA: Thank you, Your Honor.

THE COURT: All right. We will again recess for conferences.

(RECESS)

**STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC SUPERIOR COURT**

STATE OF RHODE ISLAND :

vs.

**BENJAMIN MINIOR
Alias, John Doe.**

**: C.A. No. P2-2014-
: 3481A
:
:**

ORDER

State's appeal from Magistrate McBurney's decision granting defendant's Motion to Dismiss on collateral estoppels [sic] grounds came to be heard before Justice Patricia A. Hurst of the Superior Court on December 15, 2015 and after de novo review of the record, it is hereby:

ORDERED, ADJUDGED, AND DECREED

For the reasons stated by the Court in its bench decision of December 15, 2015 State's appeal from Magistrate McBurney's granting of defendant's Motion to Dismiss is sustained. Magistrate McBurney's decision is reversed and counts 1 and 2 of the criminal information are reinstated.

ENTERED:

/s/ Patricia A. Hurst, J.
**JUSTICE OF THE
SUPERIOR COURT**

PER ORDER:

/s/ Robert Quirk
CLERK

DATED: 12-16-15

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Submitted by:
John Perrotta, Special Asst. Attorney General

[Certification Omitted]

App. 30

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

PROVIDENCE, SC. SUPERIOR COURT

STATE OF RHODE ISLAND)
)
Vs.) P2-2014-3481A
)
BENJAMIN MINIOR)

DECISION
OF THE
HONORABLE JUSTICE PATRICIA A. HURST
DECEMBER 15, 2015

APPEARANCES

JOHN F. PERROTTA, ESQUIRE FOR THE STATE
DEPT. OF THE ATTORNEY GENERAL
RICHARD S. HUMPHREY,
ESQUIRE.....FOR THE DEFENDANT

[1] **DECEMBER 15, 2015, A.M. SESSION**

THE COURT: Good morning, everyone. The
matter before the Court is State of Rhode Island vs.
Minior, P2-14-3481A.

Would counsel identify themselves for the record?

MR. HUMPHREY: Richard Humphrey on
behalf of Benjamin Minior, your Honor.

MR. PERROTTA: John Perrotta on behalf of the State, your Honor.

MR. HUMPHREY: For the record, your Honor, my client is beside me.

THE COURT: You can be seated, and I see Mr. Minior is here.

This matter is before the Court on an appeal of a September 14, 2015 ruling or order of a general master of the Superior Court in the matter of State of Rhode Island vs. Minior, P2-14-3481A. The general master granted the defendant, Mr. Minior's, motion to dismiss Counts 1 and 2 of the criminal information filed on December 5, 2014 in this case. Count 1 charges Mr. Minior with Driving Under the Influence of Intoxicating Liquor Resulting in Serious Bodily Injury. Count 2 charges him with Driving to Endanger. The State has appealed.

The travel and history is not complicated.

The Town of Bristol cited Mr. Minior for a violation [2] of the Town's ordinances, more specifically, Failure to Drive With Reasonable and Prudent Speeds. However, on April 28, 2014, after that case was tried, the Traffic Tribunal judge determined that the Town had failed to sustain its burden of proving that Mr. Minior was driving the vehicle. Mr. Minior was acquitted of the violation. Mr. Minior then moved to dismiss Counts 1 and 2 of the indictment in the instant case on the grounds of collateral estoppel. The magistrate granted his motion on September 14, 2015. The State filed its notice of appeal on September 16, 2015.

This Court conducts its review pursuant to Superior Court Rule of Practice 2.9 and General Laws 8-2-39.

In order to decide this appeal, it's important to understand precisely what the Traffic Tribunal judge did and did not do when he rendered his decision. Although Mr. Minior's motion papers suggest that the judge made specific findings in connection with whether or not Mr. Minior was operating a vehicle, a careful review of the transcript reveals that the judge did not. After observing that the Town had not come forward with evidence that Mr. Minior was operating the vehicle, the judge merely found that the Town had not sustained the violation. In other words, the ultimate fact – did Mr. Minior fail to drive with reasonable and prudent speeds – [3] was litigated. However, the mediate evidentiary fact, i.e., was Mr. Minior in fact operating the vehicle, was not actually decided. The judge made no finding either way. He merely commented on the absence of evidence and found only that the Town had not sustained its burden. There is nothing in the record of the proceedings before the Traffic Tribunal judge to suggest that he affirmatively determined that Mr. Minior in fact was not driving the vehicle. Just as importantly, given his comments one cannot infer that the judge actually made such a determination and that his decision rested on it.

The law of collateral estoppel is well settled.

In *U.S. vs. Dray*, 901 F.2d 1132, the First Circuit Court of Appeals held that the burden is on the

defendant to demonstrate that the issue whose relitigation he seeks to foreclose was actually decided in the first proceeding. The Court also held that where it is impossible to discern whether a particular issue was previously resolved in a defendant's favor, preclusive effect must be denied. In *Hoult vs. Hoult*, 157 F.3d 29, the First Circuit reminded that an estoppel must be certain to every intent. The threshold issue is how clear it must be that the factfinder found the fact in question. Telling a party that it cannot prove or contest a fact of importance in a case at hand is a [4] severe measure. Courts have been willing to take that step only where it is certain that the issue has already been decided and even then there are numerous escape hatches.

The Restatement (Second) of Judgments, Section 27, Comment (d) requires that the issue not only must be submitted for determination but it also must actually be determined in order for collateral estoppel to operate. Similarly, 47 AmJur 2d, Judgments, Section 495, tells us that collateral estoppel does not apply to issues or matters that were not expressly adjudicated or decided by the Court. It also states that "Issue preclusion is not available where there is ambiguity concerning the issues, the basis of the decision and what was deliberately left open by the judge. A judgment is not res judicata as to any matters which a court expressly refused to determine."

In *Day vs. Kerkorian*, 814 NE 2d 745, the Massachusetts Supreme Court held that to defend successfully on the ground of issue preclusion, the defendant

must establish that the issue of fact sought to be foreclosed actually was litigated and determined in a prior action between the parties. Where an issue has not been adjudicated, issue preclusion is inapplicable.

In *Sab vs. Kostorizos*, 212 WL 5907075, the Court [5] held that where the trial judge had observed that he was unable to determine a particular fact, the issue cannot be said to have been determined by the Court. Therefore, the principles of issue preclusion have not been sustained.

For all of these reasons, the magistrate's decision to grant the motion to dismiss in this case was based upon error of law and it must be reversed. Collateral estoppel simply is not applicable in this case. The State's appeal is sustained and the charges in Count 1 and 2 are reinstated.

Mr. Quirk, if you would make a note of the order, okay?

THE COURT: Thank you, everybody.

MR. PERROTTA: Thank you, your Honor.

THE SHERIFF: Please rise.

* * * * *

**TRANSCRIPTION FROM AUDIOTAPE
IN RE: STATE V. BENJAMIN MINIOR**

4-28-2014

ORIGINAL

* * *

[11] JUDGE ABBATE: Yeah, well, see, the problem is once you rest, you can't now try to recover from what wasn't presented. A couple of issues with regard to this hearing. You know, part of the problem here is – well, not part of the problem is, but I can't act as a prosecutor here. I cannot start, you know, going to the point where I'm cross-examining the witnesses or have you bring out testimony that may be needed to be brought out with regard to a violation. You know, with regard to some preliminary facts, if the Court has questions, I can do that. With regard to this document that's been, you know, presented, you know, there has been some testimony as to the accident, the – what actually occurred, and that photographs were taken. I think you really needed to present these photographs stating a foundation for the photographs, who took them, when they took them, what they depict, the actual photographs, not just, you know, saying we took photographs on [12] the part of the accident report. The other part of the problem with regard to this case is that there was no testimony as to observation of the motor vehicle at the time of the accident, as to who was driving it. You're indicating and coming to the presumption as to who was operating the vehicle. There was no testimony as to acknowledgement as to the operator of the motor

vehicle, and there was no testimony as to expert reconstruction, crash reconstruction qualifications. If there was testimony as to either one of you being expert accident reconstructionists, I would have taken that into consideration. What's fatal here is that, you know, there's no observation, and this is not untypical of an accident like this here, that you respond to; that there is no observation of the vehicle operating, and the conditions requiring the control of the speed of the vehicle under this particular section of the law. There are other sections that, you know, may have been cited, but there was no observation of who was operating the vehicle either, so the Court finds that the Town has not [13] sustained the violation for reasonable and prudent speed. The matter is dismissed.

MS. ROSSI: Thank you, your Honor.

OFFICER: Thank you, your Honor.

JUDGE ABBATE: You're welcome.

(FILE ENDS)
