

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PAWTUCKET

v.

MARY E. WOLL

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C.A. No. M14-0022  
14408504920

**DECISION**

**PER CURIAM:** Before this Panel on November 25, 2014—Chief Magistrate Guglietta (Chair), Judge Parker, and Magistrate Goulart, sitting—is Mary E. Woll’s (Appellant) appeal from a decision of Judge Nesselbush of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-14-2(a), “Prima Facie Limits.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On April 16, 2014, Officer Letourneau of the Pawtucket Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on August 15, 2014.

At trial, the Officer testified that on April 16, 2014, he was working a Pawtucket traffic enforcement detail when he observed a red Toyota traveling at a speed that appeared to be over the posted 25 mile per hour (mph) speed limit. (Tr. at 3-4.) The Officer testified that he directed his laser on the license plate of the vehicle and recorded a speed of 38 mph. (Tr. at 5.) Thereafter, the Officer stated that he conducted a motor vehicle stop, positively identified Appellant as the motorist, and issued Appellant a citation for speeding. Id.

Subsequently, the trial judge asked the Officer whether or not he was trained in the use of the laser gun, and where he received that training. Id. The Officer responded that he was trained at the Rhode Island Police Academy. Id. The trial judge then questioned the Officer whether he calibrated his radar unit. Id. The Officer answered that the unit is self-calibrating, and he calibrated it before and after his shift. Id.

After the Officer testified, the trial judge asked Appellant if she had any questions for the Officer. (Tr. at 6.) The Appellant asked if her son, Christopher, could question the Officer because he was a witness. Id. The trial judge explained that Christopher could testify as a witness but could not cross-examine the Officer. Id. The Appellant then stated that she had a heart condition, and the circumstances made her nervous. Id. Subsequently, the trial judge told the Appellant that “we don’t want to make you nervous” and “I want to make sure you’ve had every opportunity to state your side of the story,” and the trial judge allowed Christopher to question the Officer. Id.

Thereafter, Christopher asked the Officer if his cruiser was visible to oncoming traffic. (Tr. at 7.) The Officer responded that he could not remember. Id. Next, Christopher questioned the Officer where he was standing when he actuated his laser unit. Id. The Officer replied that he would have been standing on the side of the street. Id. Christopher continued to ask the Officer specific questions about where he was standing. (Tr. at 8.) Again, the Officer responded that he could not remember specifics. Id. Thereafter, the trial judge questioned the purpose of Christopher’s inquiries. Id. Christopher apologized, and thereafter, the city rested. Id.

Next, the trial judge allowed Christopher to explain the purpose of his line of questions. (Tr. at 9.) Christopher argued that this is “basically a case of entrapment [because the Officer] was not visible to oncoming traffic.” Id. Christopher added, “it’s entrapment [i]f an officer is

not visible.” (Tr. at 10.) The judge explained that it’s not entrapment because there is no requirement for officers to be visible. Id.

Subsequently, the trial judge issued her decision sustaining the charged violation. (Tr. at 13.) In reaching her decision, the trial judge noted that she credited the Officer’s testimony that he had been trained and certified in the use of radar machines. Id. Additionally, the trial judge highlighted that the laser was self-calibrating, and the laser found Appellant traveling 38 mph in a posted 25 mph zone. Id. Thereafter, the trial judge imposed the minimum fine of 95 dollars and court costs. (Tr. at 14.) Aggrieved by the trial judge’s decision to sustain the charge, Appellant timely filed the instant 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 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.” Link, 633 A.2d at 1348 (citing Envtl. 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**

#### **Conduct at Trial**

On appeal, Appellant contends that the trial judge’s decision was affected by error of law. Specifically, Appellant asserts that the trial judge erred in her conduct at trial by interrupting Christopher’s cross-examination of the Officer.

The Rhode Island Rules of Evidence governs “all proceedings before the traffic tribunal.” RITT Rules of Procedure Rule 15(b). The Rhode Island Rules of Evidence states that “[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses

from harassment or undue embarrassment.” R.I. R. Evid. 611. Thus, it is in the trial court’s discretion to exercise control over the trial. See id.

In this case, the trial judge only interrupted Christopher<sup>1</sup> about his line of questions after Christopher continued asking the Officer questions on matters that he could not remember. See Tr. at 7. The trial judge properly exercised her discretion in questioning Christopher in order to ensure the effective presentation of evidence, avoid needless consumption of time, and to protect the Officer as the witness. See R.I. R. Evid. 611. Furthermore, in order to ensure Christopher had an opportunity to present the evidence, the trial judge permitted Christopher to explain the purpose of his questions. See Tr. at 9. Thus, the trial judge did not abuse her discretion in her control of the trial because the trial judge ensured the effective presentation of evidence while also protecting the Officer as a witness.

### **Interrogation by the Court<sup>2</sup>**

It is clear that the permissible scope of judicial inquiry allowed in a non-jury trial is broader than the judicial questioning of witnesses allowed in a jury case. See State v. Figueras, 644 A.2d 291, 293 (R.I. 1994); State v. Fenik, 45 R.I. 309, 316, 121 A. 218, 222 (1923). However, it is improper for the trial judge, sitting as the finder of fact in a non-jury trial, to

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<sup>1</sup> Although the issue of Christopher questioning the Officer is not raised on appeal, the Panel strongly discourages the practice of law without a license.

<sup>2</sup> The Panel is mindful that the trial judge’s questioning of the Officer is not an issue on appeal; however, in the interest of justice and the spirit of Nelson, this Panel will review the related law.

A trial judge or magistrate has the ability to directly question or cross-examine a witness before him. See R.I. R. Evidence 614(b), “Interrogation by Court” (“[t]he court may interrogate witnesses, whether called by itself or by a party”). In State v. Nelson, 982 A.2d 602, 615 (R.I. 2009), our Supreme Court noted that “[s]ince the adoption of Rule 614(B) in 1987, a trial justice’s prerogative to question witnesses . . . is limited to inquiry that will clarify a matter which he justifiably feels is a cause for confusion . . . .” Moreover, the Court opined that “even as to clarification, the trial justice should ‘first allow counsel every opportunity to refine the witness’s testimony.’” See id. (quoting State v. Giordano, 440 A.2d 742, 745 (R.I. 1982)). Additionally, our Supreme Court held that “judicial interrogation of witnesses must be conducted reluctantly, cautiously, and in limited circumstances. Id. This Court has routinely cautioned trial judges to limit interrogation of witnesses. See Town of North Smithfield v. Santo P. Mascena, C.A. No. M14-0002 (holding a trial judge exceeded the scope of Rule 614(b) by asking the Officer whether he was trained in the use of radar and whether the radar was properly calibrated).

exceed the boundaries of questioning for the function of clarification and to, instead, steer the course and content of the witness's testimony. See Nelson, 982 A.2d 602, 615.

In the present matter, the trial judge asked the Officer whether or not he calibrated his radar unit. See Tr. at 5. Additionally, the trial judge inquired whether the Officer was a certified radar operator. See id. The aforementioned questions were not asked for the purpose of clarifying confusing testimony or subject matter, but in order to ensure that the Officer's testimony met the requirements delineated in Sprague.<sup>3</sup> While this Panel is mindful that Nelson can be distinguished from the instant matter as Nelson was a jury case, we apply its wisdom to the case before the Panel in order to demarcate the boundaries of appropriate judicial inquiry. See Nelson, 982 A.2d at 615. Additionally, we reaffirm the right of a trial judge to ask questions of a witness for the purpose of clarification. See R.I. R. Evid. 614(b). In this case, based upon these facts, we feel that the trial judge went "too far" as her particular questioning exceeded both the scope of Rule 614(b) and the spirit of Nelson.

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<sup>3</sup> In Sprague, our Supreme Court held that for speedometer or radar evidence to support a charge of speeding, "the operational efficiency" of the device must be "tested within a reasonable time by an appropriate method," and the record must contain "testimony setting forth the [Officer's] training and experience" in the use of radar. 113 R.I. at 357, 322 A.2d at 39-40.

**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 made upon unlawful procedure. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

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Chief Magistrate William R. Guglietta (Chair)

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Judge Edward C. Parker

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Magistrate Alan R. Goulart

DATE: \_\_\_\_\_