

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

C.A. No. T10 - 0040

JUDITH CROWELL

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
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DECISION

PER CURIAM: Before this Panel on July 14, 2010—Magistrate Noonan (Chair, presiding), Judge Parker, and Judge Ciullo, sitting—is Judith Crowell’s (Appellant) appeal from a decision of Magistrate DiSandro, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to devices.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On January 12, 2010, Trooper Jean Tondre of the Rhode Island State Police (Trooper Tondre), traveling in the city of North Kingstown, watched as Appellant traveled past his police cruiser and accelerated through a red light. Subsequently, the Trooper charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

At trial, counsel for Appellant began by asking the trial magistrate “whether or not the witness who is testifying is a lawyer,” referring to Trooper Tondre. (Tr. at 2.) Relying on § 11-27-2, Appellant argued that “the [Rhode Island] State Police . . . need an attorney licensed to practice [law] in the State of Rhode Island to proceed” and to prosecute their cases. (Tr. at 4.) The trial magistrate noted Appellant’s objection to the testifying of the Trooper but ruled that the Trooper’s “capacity today is [as] a witness, not

a prosecutor, not, not a, a representative of the judiciary” and the Rhode Island State Trooper is entitled to present his case. Id.

The trial continued with Trooper Tondre’s testimony. On January 12, 2010 at approximately 8:52 a.m., the Trooper was on a fixed post at the traffic signal located on Oak Hill Road and Route 4. Trooper Tondre “observed the traffic signal turn red and the cross signal governing traffic from Oak Hill Road onto Route 4 . . . turn[] green.” (Tr. at 4-5.) At this point, the Trooper “observed a silver BMW convertible . . . proceed through the light traveling on Route 4 north.” (Tr. at 5.) Trooper Tondre continued to explain that he “stopped the vehicle, identified the operator . . . through his Rhode Island license” and “subsequently[,] issued her a summons for obedience to a traffic control device.” (Tr. at 5.)

Next, counsel for Appellant began to question Trooper Tondre. In response to Appellant’s questions, the Trooper explained that he was positioned “on the northbound side of Oak Hill Road.” (Tr. at 5.) The Trooper made clear that from his vantage point he “can see where the traffic signal turns from red, from green to red, from green to yellow to red and then the cross light, which is obviously right in front of [him], had turned green when [he] observed [Appellant] go through the light.” (Tr. at 5-6.) Appellant continued by asking the Trooper the following: whether the traffic control light had been properly calibrated, to which he responded that he was unaware of any calibration; approximately how many vehicles were traveling through the intersection in question, he estimated about “50 to 100” vehicles; what his estimate of the average speed of the traffic flowing through the green light at the Route 4 north intersection would be, to which he answered in the vicinity of 50 to 55 miles per hour. (Tr. at 7.) Lastly, Appellant

asked the Trooper if he knew how long the yellow light was in operation on the date in question, to which he responded that he was not sure. (Tr. at 8.)

Following the completion of the Trooper's testimony, the Appellant took the stand. Appellant explained that she was familiar with Route 4 north because she travels that road every day on her way to Providence. (Tr. at 9.) Appellant continued to testify that there was a steady line of vehicles in front of her traveling at a speed of about 50 or 60 miles per hour. When Appellant first observed that the light was green, there were five cars between her and the intersection. (Tr. at 10.) Appellant explained that when there were three cars (about 50 feet) between her and the intersection, the traffic continued to move at a steady speed as the traffic control device turned yellow. According to Appellant, neither Appellant nor any of the surrounding vehicles slowed their speed as the light changed to yellow. (Tr. at 11-12.)

Specifically, Appellant explained that she considered her obligation of slowing down for a yellow light "but the traffic in front of [her] was moving at a steady speed and the traffic behind [her] was moving at the same speed and [she] did not feel that [she] would be able to stop safely." (Tr. at 12.) Therefore, Appellant "kept moving with the steady stream of traffic that was in front of [her] and proceeded through the light. . . ." *Id.* Appellant reiterated that she never saw the light change from yellow to red prior to her entering the intersection. (Tr. at 13.)

Following the trial, the magistrate sustained the charged violation of § 31-13-4. The Appellant, aggrieved by this decision, filed a timely appeal to this Panel. Our decision is rendered below.

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 prejudiced 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 is affected by an error of law. Specifically, she contends that the trial magistrate incorrectly allowed a Rhode Island State Trooper, who is not an attorney, to practice law during Appellant’s trial. It is Appellant’s position that the charge against her—of failing to “obey the instructions of [the] official traffic control device applicable to her”—must be dismissed because the Trooper’s testimony constituted the unauthorized practice of law. See section 31-13-4.

Specifically, § 11-27-2 of the Rhode Island General laws defines “practice of law” as

... the doing of any act for another person usually done by attorneys at law in the course of their profession, and, without limiting the generality of the definitions in this section, includes the following:

- (1) The appearance or acting as the attorney, solicitor or representative of another person before any court, referee, master, auditor, division, department, commission, board, judicial person, or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the court or other body;
- (2) The giving or tendering to another person for a consideration, direct or indirect, of any advice or counsel pertaining to a law question or a court

- action or judicial proceeding brought or to be brought;
- (3) The undertaking or acting as a representative or on behalf of another person to commence, settle, compromise, adjust or dispose of any civil or criminal case or cause of action;
 - (4) The preparation or drafting for another person of a will, codicil, corporation organization, amendment, or qualification papers, or any instrument which requires legal knowledge and capacity and is usually prepared by attorneys at law.

In essence, Appellant claims that the Rhode Island Traffic Tribunal's practice of swearing in Trooper Tondre to testify as to the details surrounding a motor vehicle infraction, without the assistance of an attorney at law, constitutes the unauthorized practice of law.

The members of this Panel agree that "[i]t has long been the law of this state that the definition of the practice of law and the determination concerning who may practice law is exclusively within the province of" the Rhode Island Supreme Court. Unauthorized Practice of Law Comm. v. Department of Workers' Compensation, 543 A.2d 662, 664 (R.I. 1988). Moreover, "[w]e must remember that the practice of law at a given time cannot be easily defined. Nor should it be subject to such rigid and traditional definition as to ignore the public interest." Id. at 665. Furthermore, for the purposes of this decision, the "practice of law" is defined by § 11-27-2. In short, Trooper Tondre's testimony before the trial court regarding his observations of the events in question did not constitute the practice of law.

According to the plain language of § 11-27-2, an individual must do or commit some action that determine[s] any question of law or fact or to exercise any judicial power; prepare pleadings or other legal papers incident to any action; give advice or

counsel pertain to a law question; represent another person to commence, settle, compromise, adjust or dispose of a case; prepare or draft any instrument which requires legal knowledge and capacity. See section 11-27-2. The act of testifying as to his or her observations of the circumstances surrounding the charged violation does not fall into any of the enumerated categories set forth in § 11-27-2. In fact, Trooper Tondre did not determine any questions of law; did not prepare any legal papers incident to the action; did not advise or counsel or represent Appellant; nor did he prepare or draft any type of legal instrument. The Trooper simply testified before the trial magistrate as to the events that took place on the night in question. Such testimony shows that knowledge of the law is not a prerequisite to recount the events leading up to the violation of the motor vehicle code.

As such, Trooper Tondre's testimony before the trial court does not require legal knowledge such that it constitutes the practice of law as defined by § 11-27-2. Accordingly, the Appellant's attempt to hold the State of Rhode Island responsible for Trooper Tondre's act of purportedly holding himself out as an attorney "competent, qualified, authorized, or entitled to practice law" in Rhode Island must fail because it cannot be shown that his actions constituted the practice of law. See Section 11-27-2.

Moreover, "the legislative design for prompt[] . . . hearings in respect to disputed claims [as the hearings are in the Rhode Island Traffic Tribunal] bears a strong resemblance to the unemployment-compensation hearings described" by the Supreme Court in Unauthorized Practice of Law Committee.¹ 543 A.2d at 666. In fact, the Traffic

¹ The Supreme Court in Unauthorized Practice of Law Comm. v. Department of Workers' Compensation sets forth an analysis of two similar cases presented to the Supreme Court of Ohio: Henize v. Giles, 22 Ohio St.3d 213, 490 N.E.2d 585 (1986), and the Supreme Court of Colorado, Unauthorized Practice of Law Committee v. Employers Unity, Inc., 716 P.2d 460 (Colo. 1986). Unauthorized Practice of Law Comm.

Tribunal Rules of Procedure explain that the rules “are intended to provide for the just determination of every civil traffic violation proceeding to which they apply. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. . . .” R.I. Traffic Trib. R.P. 2. The Rhode Island State Troopers are used as witnesses in the trial process of Traffic Tribunal. The Troopers are not cross-examining other witnesses; they are not giving advice or counsel pertaining to law; nor are they preparing or drafting any type of legal document(s). The State Troopers, such as Trooper Tondre, are simply assisting as witnesses in the presentation of the evidence regarding the charged traffic court violation. See Rhode Island Bar Ass’n v. Automobile Service Ass’n, 55 R.I. 122, 179 A. 139 (1935) (finding “[t]he practice of law is difficult to define. Perhaps it does not admit of exact definition That the practice of the law is a special field reserved to lawyers duly licensed by the court, no one denies. The lay respondents admit this, but claim that the acts performed by them lie without the boundaries of that field.”).

Accordingly, the members of this Panel are satisfied that the trial judge’s decision is not affected by error of law because law enforcement officers testifying during traffic court hearings are not partaking in the unauthorized practice of law. The purpose of prohibiting the unauthorized practice of law is to protect the public from incompetence in the preparation of legal documents and to prevent harm resulting from inaccurate legal advice. Rhode Island Bar Ass’n, 55 R.I. at 124, 179 A. at 146. It is not intended to

543 A.2d at 665, 666. In Henize, the Supreme Court of Ohio found “this court is the body which ultimately controls the practice of law in this state. With this authority is the concomitant responsibility to protect the public by preventing the unauthorized practice of law, while at the same time not exercising this authority so rigidly that the public good suffers.” 22 Ohio St. 3d at 217, 490 N.E.2d at 588-89. In Employers Unity, Inc., the Supreme Court of Colorado determined that “it was appropriate to grant permission in limited circumstances to lay persons to engage in activities that might be included within the definition of the practice of law “where there are few disputed legal principles and where the monetary amount in issue is too small to justify hiring an attorney.” 716 P.2d at 465.

reserve to attorneys activities that may safely be conducted by laypersons. The activity in question has not only been the established practice of the Traffic Tribunal for many years, but also importantly, constitutes an activity that can safely be conducted by the police officers who are present to testify as eye witnesses of the motor vehicle infraction. As the Appellant cannot point to a particular place in the transcript where the Trooper is acting as anything other than a witness and for the reasons above, this Panel is satisfied that Trooper Tondre did not commit the unauthorized practice of law in violation of § 11-27-2.

As such, Appellant's appeal is denied due to the long history of this practice, and without a contrary ruling from the Rhode Island Supreme Court. Furthermore, this Panel agrees to stay any fines associated with the charged violation until this decision is appealed to and decided by the Rhode Island District Court.

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 is not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained. However, this Panel at the request of counsel stays any fines associated with the charged violation until this decision is appealed to and decided by the Rhode Island District Court.

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