



STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc.

DISTRICT COURT  
SIXTH DIVISION

Mark F. Medeiros :  
 :  
 v. : A.A. No. 2013 – 193  
 : (C.A. No. M13-005)  
 : (07-407-0021930)  
Town of North Providence :  
(RITT Appeals Panel) :

**FINDINGS & RECOMMENDATIONS**

**Ippolito, M.** In this appeal, Mr. Mark Medeiros urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a municipal court judge’s verdict adjudicating him guilty of a moving violation: “Obedience to Traffic Control Devices” (i.e., running a red light) in violation of Gen. Laws 1956 § 31-13-4. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9 and the applicable standard of review is found in subsection 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1.

On December 9, 2013, a briefing schedule was issued by the Court, in

response to which both the Appellant and the Town of North Providence have submitted memoranda for our review. And, after a review of the entire record I find that — for the reasons explained below — the decision of the appeals panel should be affirmed.

## I

### FACTS & TRAVEL OF THE CASE

The facts of the incident in which Mr. Medeiros was cited for a red light violation are succinctly described in the decision of the appellate panel:

On January 10, 2013, Officer Gannon of the North Providence Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on March 25, 2013.

At trial, Officer Gannon stated that he and Officer Mark Noregian were on a fixed traffic post at the intersection of Smith Street and High Service Avenue. (Tr. at 9.) This intersection has a traffic control device; specifically, a three way light facing east and west on Smith Street and north on High Service Avenue. (Tr. at 10.) While at the traffic post, Officer Noregian and Officer Gannon observed the light rotate several times. *Id.* Officer Gannon testified that the light in question was operating in good working order. *Id.* At approximately 6:35 p.m., Officer Gannon stated that he observed a silver Honda, traveling southbound on Smith Street, operate through the light while it was clearly red. (Tr. at 11.) Officer Gannon testified that he had a clear and unobstructed view of the Honda. (Tr. at 12.) Upon seeing the vehicle operate through a red light, both Officer Gannon and Officer Noregian initiated a motor vehicle stop in front 1373 Smith Street. *Id.* The Officers made contact with the operator who was identified from his driver's license as a Mark Medeiros (Appellant). *Id.* The Officers issued two summonses: one for obedience to traffic control device and one for operating a motor vehicle with a suspended license. (Tr. at 13.) ...

Decision of Panel, November 4, 2013, at 1-2. Claimant was cited for failing to stop in obedience to traffic speeding and entered a plea of not guilty at his arraignment on February 25, 2013; the matter proceeded to trial before Judge DeQuattro of the North Providence Municipal Court on March 25, 2013.

At the trial, Officer Nicholas Gannon testified as to the underlying facts of the traffic stop.<sup>1</sup> He described how a silver Honda traveling westbound on Smith Street went through a red light at the corner of High Service Avenue.<sup>2</sup> Finally, Officer Gannon identified Mr. Medeiros as the motorist who ran the red light.<sup>3</sup>

Mr. Medeiros began his cross-examination by asking the officer — “Can you provide any evidence that the traffic rules apply to me?”<sup>4</sup> After the judge advised him that the traffic rules apply to all citizens who drive motor vehicles in this state, he announced his intention to appeal.<sup>5</sup> Then, after attempting to press the issue again, Mr. Medeiros testified.<sup>6</sup> He admitted he was driving the

---

<sup>1</sup> See Trial Transcript, at 9 et seq.

<sup>2</sup> See Trial Transcript, at 10-12.

<sup>3</sup> See Trial Transcript, at 13.

<sup>4</sup> See Trial Transcript, at 14.

<sup>5</sup> See Trial Transcript, at 15.

<sup>6</sup> See Trial Transcript, at 16-17.

vehicle that was stopped.<sup>7</sup> At the conclusion of the evidence, the trial judge found that the Town had proven the red light citation to the standard of clear and convincing evidence.<sup>8</sup> Mr. Medeiros was fined \$85.00 on the charge.<sup>9</sup>

Aggrieved by this decision, Mr. Medeiros filed a timely appeal. On June 5, 2013, his appeal was heard by an RITT appellate panel composed of: Magistrate William Noonan (Chair), Administrative Magistrate David Cruise, and Magistrate Alan Goulart. In a decision dated November 4, 2013, the appeals panel affirmed the decision of the trial judge. The appeals panel rejected each of his arguments and affirmed the appellant's conviction for running a red light. On November 7, 2013, Mr. Medeiros filed a further appeal to the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9.

## II STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in Gen. Laws 1956 § 31-41.1-9(d), which provides as follows:

(d) Standard of review. The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or may

---

<sup>7</sup> See Trial Transcript, at 18.

<sup>8</sup> See Trial Transcript, at 19-20.

<sup>9</sup> See Trial Transcript, at 20.

remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the appeals panel's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the appeals panel;
- (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.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, the District Court “\* \* \* may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’”<sup>10</sup> Thus, the Court will not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.<sup>11</sup> Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.<sup>12</sup>

---

<sup>10</sup> Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws § 42-35-15(g)(5).

<sup>11</sup> Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

<sup>12</sup> Id., at 506-507, 246 A.2d at 215.

### III APPLICABLE LAW

In the instant matter the Appellant was charged with violating section 31-13-4 of the Rhode Island General Laws which states in pertinent part:

**31-13-4 Obedience to devices.** — The driver of any vehicle shall obey the instructions of any traffic control devices applicable to him or her placed in accordance with the provisions of chapters 12 — 27 of this title, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in those chapters. Violations of this section are subject to fines enumerated in § 31-41.1-4.

The charge is a civil violation.<sup>13</sup>

### IV ISSUE

The issue before the Court is whether the decision of the appeals panel was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law. More precisely, was the appellant properly convicted of failure to obey a traffic device in violation of Gen. Laws 1956 § 31-13-4?

---

<sup>13</sup> See Gen. Laws 1956 § 31-27-13.

V  
ANALYSIS

A  
**Sufficiency of the Record**

In upholding Mr. Medeiros’s conviction on this charge the appeals panel relied on the findings made by the trial judge based on the testimony of Officer Nicholas Gannon, who described the events in his testimony.<sup>14</sup> Moreover, Appellant admitted he was the person who was stopped. Therefore, his conviction was not clearly erroneous in light of the probative, reliable and substantial evidence of record.

However, he has also raised, at different levels, a variety of legal challenges to his prosecution on the citation.

B  
**Insufficiency of the Charging Instrument**

However, he urges that he cannot be adjudicated on this charge because this Court does not have subject matter jurisdiction because, *inter alia*, “there is no complaint attached to the information.”<sup>15</sup> He cites, on this point, Holland v.

---

<sup>14</sup> See Trial Transcript, at 9-17, 19.

<sup>15</sup> Appellant’s Motion For Judicial Notice, at 1. Recently, the Supreme Court reminded us that subject matter jurisdiction is not dependent on compliance with procedural formalities. In Rivera v. Employees’ Retirement System of Rhode Island (2013) the Supreme Court of Rhode Island declared that a



State,<sup>16</sup> and various other Texas cases, which discuss the formalities necessary to charge a criminal case in Texas. For two reasons, they are of no precedential value in the instant appeal.

First, the procedures for making a criminal charge — issues such as the nature of the charging instruments used and the court of jurisdiction — fall within the province of the law of criminal procedure, which arises from state law; accordingly, case precedents are generally not transferable from state to state. In Rhode Island, the issue of the proper charging instrument in a criminal case is governed by statute.<sup>17</sup> Therefore, the Texas cases cited by Appellant are of no assistance in evaluating the requirements for a Rhode Island criminal charge.

Second, the charge lodged against Mr. Medeiros is not criminal. It is a civil traffic violation.<sup>18</sup> For this reason as well, the Texas cases cited by

---

trial court vested with subject-matter jurisdiction over administrative appeals does not lose it because a particular appeal is filed tardily; instead the issue presented is whether or not the Court “should have exercised that jurisdiction.” Trainor v. Grieder, 23 A.3d 1171, 1174 (R.I. 2011) as quoted in Rivera, 70 A.3d 905, 912 (R.I. 2013).

<sup>16</sup> 623 S.W. 2d 651 (Tex. Cr. App. 1981).

<sup>17</sup> See Gen. Laws 1956 § 12-12-1.1 (Charging capital offenses by indictment), Gen. Laws 1956 § 12-12-1.2 (Charging non-capital felonies by information), Gen. Laws 1956 § 12-12-1.3 (Charging lesser offenses by complaint).

<sup>18</sup> Gen. Laws 1956 § 31-13-4 and Gen. Laws 1956 § 31-27-13.

Appellant have no precedential value in the instant case.

In Rhode Island, the charging instrument for a civil traffic violation is known as a “summons.”<sup>19</sup> Its purpose is to inform the motorist of the charge and the date upon which he or she must appear at the Traffic Tribunal to answer the charge.<sup>20</sup> The form of the summons is that approved by the Chief Magistrate of the Traffic Tribunal. Municipal courts which hear and decide civil traffic violations, like the North Providence Municipal Court, must follow the procedures adopted by the Traffic Tribunal.<sup>21</sup>

Mr. Medeiros was charged by summons. This was the correct procedure. Therefore, the appeals panel committed no error by rejecting this argument.

## C

### **Immunity From Prosecution for a Traffic Citation**

Before this Court, Mr. Medeiros has only raised the issue of the charging instrument.<sup>22</sup> But since, at trial, he raised an issue of immunity from being cited under the Rules of the Road,<sup>23</sup> and since it was addressed by the appeals panel, I shall revisit it here. I refer to Mr. Medeiros’ main argument at trial —that he

---

<sup>19</sup> Gen. Laws 1956 § 31-41.1-1.

<sup>20</sup> Id.

<sup>21</sup> See Gen. Laws 1956 § 8-18-11.

<sup>22</sup> See Appellant’s memorandum, styled “Motion For Judicial Notice.”

<sup>23</sup> See Trial Transcript, at 4, 14.

was not subject to prosecution of this citation because he is a “sovereign citizen.”

And when he makes this plea, he is not just arguing that this officer could not cite him for this charge, he is asserting that he is entirely immune from prosecution under Rhode Island’s traffic laws. But in support of his claim of immunity, Appellant does not urge he is a member of a special group — based on race, gender, ethnicity or other inherent qualities. Nor does he urge that he is exempted based on membership in a group based on merit; for instance, he does not urge that he entitled to special treatment because he is a recipient of the Congressional Medal of Honor, holds a Phi Beta Kappa key, is a Nobel Laureate, or won the Heisman trophy. To the contrary, his argument would appear to be entirely democratic — that all citizens are immune from these laws. And so, he is really denying the authority of the General Assembly to enact laws which subject the citizenry to such penalties.

In the United States, the general power to create penalties for proscribed conduct, which emanates from what is known as the “police power,”<sup>24</sup> is vested

---

<sup>24</sup> 16A AM. JUR. 2d, Constitutional Law, § 313 et seq. (1998). The “police power” is said to be not at all amenable to a precise definition, but it is said to encompass a sovereign’s right to legislate to promote “the peace, security, safety, morals, health, and general welfare of the community[.]” 16A American Jurisprudence 2d, Constitutional Law, §§ 315-16 at 251-52. And, in National

in the state legislatures, but not in the Congress, whose power (in theory) is limited.<sup>25</sup> As a result, it has written that the states hold the “primary authority for defining and enforcing criminal law.”<sup>26</sup> And the Rhode Island Supreme Court has repeatedly and expressly acknowledged that our legislature is cloaked with the police power, particularly on issues relating to highway safety. Let us cite a few examples —

In Berberian v. Lussier,<sup>27</sup> (1958), the Supreme Court considered the denial of a bill in equity which sought to enjoin the registrar of motor vehicles from suspending the petitioner’s operator’s license based on non-compliance

---

Federation of Independent Business v. Sebelius, -- U.S. --, 132 S.Ct. 2566, 2578, 183 L.Ed. 2d 450 (2012), Chief Justice Roberts referred to it as the “general power of governing.”

<sup>25</sup> 21 American Jurisprudence 2d, Criminal Law, § 12 at 124 (2008). As stated in Clark & Marshall, A Treatise of the Law of Crimes, (7th ed. 1967):

The power of the state legislatures or general assemblies is limited only by the Constitution of the United States, or of the state. Congressional power is such only as is expressly or impliedly conferred upon it by the Constitution of the United States.

Clark & Marshall, *supra*, § 1.05 at 29. See also Justin Miller, Handbook of Criminal Law (1934), § 11(e) at 35. See also National Federation of Independent Business v. Sebelius, *supra*, 132 S.Ct. 2566 at 2578.

<sup>26</sup> United States v. Lopez, 514 U.S. 549, 561, 115 S.Ct. 1624, 1631 (1995) citing Brecht v. Abrahamson, 507 U.S. 619, 635, 113 S.Ct. 1710, 1720, 123 L.Ed. 2d 353 (1993) quoting Engle v. Isaac, 456 U.S. 107, 128, 102 S.Ct. 1558, 1572, 71 L.Ed.2d 782 (1982). See also 21 AM. JUR. 2d, Criminal Law, § 14 at 125.

<sup>27</sup> 87 R.I. 226, 139 A.2d 869 (1958).

with the financial responsibility statutes.<sup>28</sup> The Court began by overruling a 1926 case which held that a license to drive was neither a contract nor a property right; the Court ruled that, whatever its status, it was not a privilege that could be terminated arbitrarily.<sup>29</sup> The Court then turned to the constitutionality of the financial responsibility laws. It began by declaring —

Whatever may be its nature, the right to use the public highways for travel by motor vehicles is one which properly can be regulated by the legislature in the valid exercise of the police power of the state. ...<sup>30</sup>

It then stated that the “... [police] power is inherent in sovereignty and permits the enactment of laws, within constitutional limits, to promote the general welfare of the citizens.”<sup>31</sup> Finding that the purpose of the financial responsibility laws was to protect the motoring public from financially irresponsible persons involved in accidents, the Court found the statute not violative of due process.<sup>32</sup>

---

<sup>28</sup> Berberian, 87 R.I. at 229, 139 A.2d 871.

<sup>29</sup> Berberian, 87 R.I. at 231, 139 A.2d 872.

<sup>30</sup> Berberian, 87 R.I. at 231-32, 139 A.2d 872.

<sup>31</sup> Berberian, 87 R.I. at 232, 139 A.2d 873.

<sup>32</sup> Berberian, 87 R.I. at 232, 139 A.2d 872-73.

Twenty-two years later, in State v. Locke,<sup>33</sup> our Supreme Court held that the statute that criminalizes drunk driving is also a valid exercise of the police power, since it outlaws conduct that “affects the lives, conduct, and general welfare of the people of the state.”<sup>34</sup> The goal of the legislation is to reduce the “carnage”<sup>35</sup> perpetrated on our highways by “drivers who in drinking become a menace to themselves and to the public.”<sup>36</sup> In sum, like the charge of reckless driving, it proscribes dangerous conduct on the highways.

Finally, we may consider the Supreme Court’s recent opinion (at least relatively) in State v. Garvin (2008).<sup>37</sup> In Garvin the Court considered Mr. Grant Garvin’s argument that he was not subject to the law which requires drivers to have licenses because he was a “sovereign state citizen.”<sup>38</sup> The Supreme Court made short work of this argument. First, it cited Allard v. Department of Transportation (1992) for the principle that the right to drive

---

<sup>33</sup> 418 A.2d 843, 849 (R.I. 1980).

<sup>34</sup> Locke, 418 A.2d at 849 citing People v. Brown, 174 Colo. 513, 522-23, 485 P.2d 500, 505 (1971).

<sup>35</sup> Locke, 418 A.2d at 850 citing DiSalvo v. Williamson, 106 R.I. 303, 305-06, 259 A.2d 671, 673 (1963).

<sup>36</sup> Locke, 418 A.2d at 850 citing Campbell v. Superior Court, 106 Ariz. 542, 546, 479 P.2d 685, 689 (1971).

<sup>37</sup> 945 A.2d 821 (R.I. 1980).

<sup>38</sup> Garvin, 945 A.2d at 822-23.

on the public highways is not a fundamental right.<sup>39</sup> Then, citing Berberian v. Lussier, the Court stated that it had long recognized that “... the right to use the public highways for travel by motor vehicles is one which properly can be regulated by the [L]egislature in the valid exercise of the police power.”<sup>40</sup> It rejected as “without merit” Mr. Garvin’s notion that, because he was a sovereign state citizen, any infringement on his right to travel must be subjected to a “strict scrutiny” analysis.<sup>41</sup> Instead, it announced that it would apply the “rational relationship” test.<sup>42</sup> Applying this test, the Court found that the state law prohibiting unlicensed drivers from operating on Rhode Island’s highways was rationally related to the legitimate state interest of maintaining safety on our highways.<sup>43</sup>

Applying this test to the statute requiring obedience to traffic signals requires no profound analysis. If anything, drivers who run red lights are theoretically a greater danger to the public (both drivers and pedestrians) than

---

<sup>39</sup> Garvin, 945 A.2d 823 citing Allard v. Department of Transportation, 609 A.2d 930, 937 (R.I. 1992).

<sup>40</sup> Garvin, 945 A.2d 823-24 citing Berberian v. Lussier, 87 R.I. at 232-32, 139 A.2d at 872 — as quoted supra at 12.

<sup>41</sup> Garvin, 945 A.2d 824.

<sup>42</sup> Garvin, 945 A.2d 824 citing Rhode Island Department of Environmental Management, 941 A.2d 198, 206 (R.I. 2008).

<sup>43</sup> Garvin, 945 A.2d 824.

those who drive without licenses. The latter group may at least be attempting to adhere to the rules of the road, the former are not. Therefore, § 31-13-4 must be viewed as rationally connected to the goal of highway safety and generally promoting the public welfare; it must therefore be determined to be a constitutional use of the police power. Accordingly, applying the teaching of the Rhode Island Supreme Court in Garvin, supra, Mr. Medeiros' argument that he is not subject to the law requiring prohibiting disobedience traffic must be rejected.

## VI CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appellate panel was made upon lawful procedure and was not affected by error of law. Gen. Laws 1956 § 31-41.1-9. Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Id. Accordingly, I recommend that the decision of the appeals panel be AFFIRMED.

\_\_\_\_\_  
/s/  
Joseph P. Ippolito  
MAGISTRATE

March 20, 2014