

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T08-0043

KLYE LOSEK

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

AMENDED DECISION

PER CURIAM: Before this Panel on May 28, 2008, Judge Almeida (Chair), Judge Parker, and Judge Ciullo sitting, is the State of Rhode Island’s (State) appeal from Magistrate Noonan’s decision, dismissing the charged violation of G.L. 1956 § 31-27-2.1, “Refusal to submit to chemical test,” pursuant to Rule 27(a) of the Rules of Procedure of the Traffic Tribunal. The State appeared before this Panel by and through the Attorney General. The Appellee, Kyle Losek (Appellee), was represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 15, 2008, Appellee was charged with violating the aforementioned motor vehicle offense by Officer Alexander DeMolles of the Coventry Police Department.¹ In connection with plea negotiations in the District Court, the Town of Coventry agreed to dismiss the charged violation of § 31-27-2.1. Pursuant to Rule 27(a) of the Rules of Procedure of the Traffic Tribunal (Rule 27(a)),² the Coventry Town

¹ In addition to the charged violation of G.L. 1956 § 31-27-2.1, Appellee was also cited with a violation of G.L. 1956 § 31-27-2, “Driving under influence of liquor or drugs.” Ultimately, a plea agreement was reached in the District Court, wherein the Town of Coventry, by and through its solicitor, agreed to amend the charged violation of § 31-27-2 to a charged violation of § 31-27-4, “Reckless driving and other offenses against public safety,” in exchange for Appellee’s plea of *nolo contendere*.

² Rule 27(a) of the Rules of Procedure of the Traffic Tribunal reads:

Solicitor filed a writing with this Court recommending dismissal of the charged violation of § 31-27-2.1.

On March 19, 2008, the Town of Coventry's Rule 27(a) dismissal recommendation came before Magistrate Noonan. After hearing the State's arguments in opposition to the Town of Coventry's recommendation, Magistrate Noonan dismissed Appellee's violation of § 31-27-2.1 pursuant to Rule 27(a). The State has filed a timely appeal of Magistrate Noonan's decision. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may 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 following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

This Panel lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions

The prosecution officer or the attorney *for the state or municipality* may dismiss a summons and the prosecution shall thereupon terminate. The dismissal shall be in writing, either on the customary judgment form or on a separate writing. It shall be dated and signed; the name of the person dismissing the summons shall be printed legibly beneath the signature. A dismissal may not be filed during the trial without the consent of the defendant. (Emphasis added.)

of fact. Link v. State, 633 A.2d 1345 (R.I. 1993). The Appeals Panel is “limited to a determination of whether the hearing justice’s decision is supported by legally competent evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

Analysis

On appeal, the State argues that only the Attorney General may dismiss a charged violation of § 31-27-2.1, as the Attorney General is the only official with the statutory authority to prosecute refusal cases. It is the State’s contention that since G.L. 1956 § 42-9-4 vests the Attorney General with the sole authority to prosecute violations of the refusal statute,³ so does it vest in the Attorney General the sole—albeit implied—authority to dismiss such charges.

The courts of our State have long recognized that cities and towns have the authority to prosecute criminal misdemeanors, provided that this authority has been expressly granted to them by the General Assembly. See State v. Peabody, 25 R.I. 178, 55 A. 323 (1903) (holding that criminal non-support proceeding can be instituted by town authorities). Additionally, the General Assembly has conferred extensive authority on this State’s political subdivisions to prosecute most violations of the traffic code. See

³ G.L. 1956 § 42-9-4 reads, in pertinent part

(a) The attorney general shall draw and present *all informations and indictments*, or other legal or equitable process, against any offenders, as by law required, and diligently, by a due course of law or equity, prosecute them to final judgment and execution.

(b) The duty of the attorney general under this section shall include the duty to prosecute *all charges of violations of §§ 31-27-2.1. . . .* (Emphasis added.)

generally G.L. 1956 § 31-27-12 (allowing police officer observing any motor vehicle offense to issue written summons). In fact, the General Assembly has granted “local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power” considerable regulatory authority in such myriad areas as the standing or parking of vehicles; the designation of particular highways as one-way highways; the turning of vehicles at intersections; and the alteration of prima facie speed limits. § 31-12-12.

Before this Panel, the State argues that the broad authority of cities and towns to prosecute violations of the traffic code simply does not extend to the dismissal of refusal cases. The State posits that while cities and towns have the power to both commence and prosecute traffic violations and criminal misdemeanors, only the Attorney General is statutorily empowered to prosecute violations of § 31-27-2.1. Thus, because the Attorney General is the only state official with the authority to prosecute refusal cases, he or she is, by logical implication, the only state official with the authority to dismiss such cases.

It is well-settled that “[a] rule of court, if promulgated under a proper exercise of judicial power to make rules for practice and procedure within that court, is given the same force and effect as a statute.” Letendre v. Rhode Island Hosp. Trust. Co., 74 R.I. 276, 281, 60 A.2d 471, 474 (1948) (citing Smith v. William H. Haskell Mfg. Co., 28 R.I. 91, 65 A. 610 (1906)). See G.L. 1956 § 8-6-2.⁴ “[I]n situations in which a statute and a rule approved by the Rhode Island Supreme Court are in conflict, the court rule prevails.”

⁴ Section 8-6-2 reads, in pertinent part

The chief magistrate of the traffic tribunal shall have the power to make rules for regulating practice, procedure and business in the traffic tribunal. The rules of the . . . the traffic tribunal shall be subject to the approval of the supreme court. Such rules, when effective, shall supersede any statutory regulation in conflict therewith.

Heal v. Heal, 762 A.2d 463, 467 (R.I. 2000) (citing Berberian v. New England Telephone and Telegraph Co., 114 R.I. 197, 330 A.2d 813 (1975)). Accordingly, “[r]ules duly adopted by the [Traffic Tribunal] and approved by [the Supreme Court] (as occurred in respect to this rule) have the force and effect of a statute and supersede any statutory regulations with which they conflict,” including § 42-9-4. State v. Pacheco, 481 A.2d 1009, 1019 (R.I. 1984).

While this Panel fully acknowledges the inherent tension between the Attorney General’s prosecutorial role under § 42-9-4 and the role of cities and towns contemplated by Rule 27(a), we nevertheless conclude that Rule 27(a) controls our disposition of the State’s appeal. This Panel is satisfied that Rule 27(a) “is free of ambiguity and expresses a clear and definite meaning [;] [as] there is no room for interpretation or extension, [we] must give to the words of the rule their plain and obvious meaning.” Pacheco, 481 A.2d at 1019. Accordingly, the State’s appeal is dismissed.

CONCLUSION

Upon a review of the entire record, this Panel concludes that the trial magistrate’s decision was not clearly erroneous or affected by error of law. Substantial rights of the State have not been prejudiced. The State’s appeal is hereby dismissed.

ENTERED: