

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

L. F.

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**C.A. No. T16-0021
07409137711**

DECISION

PER CURIAM: Before this Panel on November 16, 2016—Chief Magistrate Guglietta (Chair), Magistrate Goulart, and Magistrate Noonan, sitting—is the Providence Police Department’s (Appellant) appeal from a decision of Judge Parker (Trial Judge) of the Rhode Island Traffic Tribunal, dismissing the Defendant’s, L.F. (Appellee or L.F.), charged violation of G.L. 1956 § 21-28-4.01(c)(iii), “Prohibited acts A—Penalties.” The Appellant and Appellee appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

Lieutenant Luis San Lucas (Lt. San Lucas), of the Providence Police Department, charged L.F. with the civil violation of possession of marijuana under one ounce on May 24, 2016. (Summons No. 07409137711.) L.F. appeared for arraignment at the Traffic Tribunal on June 14, 2016. He next appeared for trial on July 12, 2016 before the Trial Judge, at which point he requested a continuance to request the police report. See Tr. at 2:14-19. The Trial Judge granted the requested continuance and set the new trial date for September 13, 2016. See Tr. 1-7.

L.F., through his attorney, sent a discovery request to the Providence Police Department through regular mail on August 17, 2016. Id. at 5:19-23. L.F. and his attorney received no response from the Providence Police Department. Id. at 2:19.

Both L.F. and Lt. San Lucas appeared before the Trial Judge on September 13, 2016. See id. At trial, the Trial Judge found that the Providence Police Department had “enough time to supply an answer” to the discovery request. Id. at 6:13-15. The Trial Judge then dismissed the matter according to Traffic Tribunal Rule of Procedure 11. Id. at 6:10-19.

The City of Providence filed a timely appeal of the Trial Judge’s decision to this Appeals Panel. Forthwith is this Panel’s decision.

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

This Appeals Panel is required to determine whether the Trial Judge erred by dismissing this case because of the Providence Police Department’s failure to respond to a discovery request sent by mail. This question requires interpretation of the Rhode Island Traffic Tribunal Rules of Procedure (Rule or Rules of Procedure). Our Supreme Court has held that “[l]ike questions of statutory construction, the interpretation of court rules of procedure is a legal question for the court.” Rosano v. Mortg. Elec. Registration Sys., Inc., 91 A.3d 336, 339 (R.I. 2014) (quoting UAG West Bay AM, LLC v. Cambio, 987 A.2d 873, 877 (R.I. 2010) (internal citations omitted)). “It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226

(R.I. 1996) (internal citations omitted). As such, this Appeals Panel will literally interpret the plain meaning of the words of each pertinent rule if the words are clear and unambiguous. Id.

I

Rule 11

Rule 11(b) of the Rhode Island Traffic Tribunal Rules of Procedure states that:

(b) Other Books, Papers, Documents, Tangible Objects, or Places. **Upon motion of the defendant, the court may order the attorney for the state or prosecuting officer** to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the state, city, town or agency upon a showing of materiality to the preparation of the defendant's defense and that the request is reasonable. Traffic Trib. R. P. 11(b) (emphasis added).¹

This rule allows the court to “order the attorney for the state or prosecuting officer” to respond to requests for documentation. Id. The defendant must make “a showing of materiality to the preparation of the defendant’s defense and that the request is reasonable.” Id.

L.F. did request the police report, and while Rule 11(a) may appear applicable at first blush, it is not. Traffic Trib. R. P. 11(a). Rule 11(a) applies only to the statements given by a defendant. Id. This rule applies only to “[p]olice reports of examinations and tests and statements showing that the defendant has been advised of the defendant’s rights . . . upon written request.” Id. Instead, Rule 11(b) governs the instant request, as the police report is a document regarding the stop, but does not address the rights of the defendant. Traffic Trib. R. P. 11(b).

¹ Rule 11 of the Rhode Island Traffic Tribunal Rules of Procedure is titled “[d]iscovery and [i]nspection.” Traffic Trib. R. P. 11.

Additionally, Rule 11(f) prescribes what actions a trial judge may take if a party does not comply with any part of Rule 11. If a party does not comply with Rule 11, the Rule allows a trial judge to “permit the discovery,” “grant a continuance,” “prohibit the party from introducing in evidence the material not disclosed,” or “such other order as [the court] deems just under the circumstances.” Traffic Trib. R. P. 11(f)(2).

The Trial Judge, in the case at hand, dismissed the charges, saying “I’m going [to] dismiss the matter, for the fact that the motion for discovery and inspection filed [to] the police department . . . was not complied with.” Tr. at 6:15-17. However, Rule 11(b) requires that the court issue an order for discovery. In the case at hand, this Appeals Panel has no record of any such order issued by the Trial Judge. See Tr. at 1-7. Instead, the Trial Judge granted a continuance for requesting discovery. Traffic Trib. R. P. 11(b). Thereafter, L.F. sent a request for discovery to the Providence Police Department, but failed to make a motion before the Trial Judge to require a response from the Providence Police Department.

At trial, the Trial Judge found that there was a violation of Rule 11 and used the broad authority granted to him under Rule 11(f)(2) to dismiss the case. Traffic Trib. R. P. 11(f)(2); Tr. at 6:10-19. However, at trial the defendant did not seek an order for discovery or make a motion to compel discovery from the Providence Police Department. See generally, Tr. at 1-7. Without making a motion to compel discovery, the court could not determine whether at that stage, the Providence Police Department had willfully failed to comply with Rule 11 when they did not provide the requested discovery.

L.F. argues that Lt. San Lucas was “on notice” from the colloquy in court on July 12, 2016 where L.F. requested discovery and the trial was continued for requesting discovery.² However, this argument fails, because there is no contingency within Rule 11 for verbal notice of a discovery request. Rule 11 requires that there be a motion be granted³ before the court can consider dismissing a case or any other prescribed remedies on Rule 11(f)(2). Traffic Trib. R. P. 11(b); Traffic Trib. R. P. 11(f)(2).⁴

As an aside, it is also important to note that Rule 11(b) states plainly that a prosecuting department must only “permit the defendant to inspect and copy or photograph” documents that the defendant wishes to use in his or her trial. Traffic Trib. R. P. 11(b). In this case, there is no

² No transcript of the July 12, 2016 proceeding was provided to the Appeals Panel. At the hearing, both Appellant and Appellee’s attorneys addressed the first hearing at which the continuance was granted. Neither side has proffered an argument regarding what occurred at the first trial.

³ The Rhode Island Traffic Tribunal Rules of Procedure do not specifically create a “motion to compel.” See Traffic Trib. R. P. 11(b). Instead, the rule describes the motions only as on the “motion of the defendant, the court may order the attorney for the state or prosecuting officer to permit the defendant to inspect” documents regarding the case. Id.

⁴ In comparison to the procedure described in the Rhode Island Traffic Tribunal Rules of Procedure, Rhode Island Rule of Civil Procedure Rule 37 provides that:

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 and 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), **or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for production or inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling production or inspection in accordance with the request.** The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. Super. R. Civ. P. 37(a)(2) (emphasis added).

evidence in the record that the defendant—or his counsel—pursued the discovery request any further by visiting the Providence Police Department to inspect, copy or photograph the police report or any other relevant documents.

As such, the Trial Judge’s decision to dismiss the case was premature and “[m]ade upon unlawful procedure.” Sec. 31-41.1-8(f)(3). Without a defendant’s motion, granted by the court, to compel discovery of relevant documents, there is no violation of Rule 11. Dismissal of the case on these grounds was premature.

II

Rule 27

While we feel that dismissal was premature under Rule 11, we also feel compelled to discuss and opine on the issue of service of notice to opposing parties. Under Rhode Island Traffic Tribunal Rules, service must be made to the proper party to the litigation. Rule 27 prescribes guidelines for the “[s]ervice and [f]iling of [p]apers.” Traffic Trib. R. P. 27. Rule 27(b)(3) governs service to an unrepresented party by an attorney as follows:

- (3) For . . . self-represented litigants who do not elect to electronically file pursuant to Art. X, Rule 3(b), service under subdivision (a) is made by:
 - (A) Delivering a copy to the person served by:
 - (i) Handing it to the person;
 - (ii) Leaving it at the person's office with a clerk or other person in charge or if no one is in charge, leaving it in a conspicuous place in the office; or
 - (iii) Leaving it at the person's dwelling house or usual place of residence with someone of suitable age and discretion residing there. Id. at (b)(3).

Further, Rule 27 addresses how an attorney may serve an attorney-represented party, stating that whenever service is required it is only appropriate to serve the attorney. Id. at (b)(1).

This Appeals Panel must determine whether any counsel represented the Providence Police Department or if the Providence Police Department was self-represented at the time of trial. Before this panel, the City of Providence Solicitor, representing the Providence Police Department, stated that at the first and second trial dates, counsel did not represent the Providence Police Department.

In Rhode Island, “[t]he sine qua non which makes one an attorney of record is his execution of an entry of appearance.” Home Ins. Co. v. Sormanti Realty Corp., 102 R.I. 187, 192, 229 A.2d 296, 299 (1967). Our Supreme Court has held that “[a]n attorney is an agent employed by a party to a case to manage the same for him.” McLyman v. Miller, 52 R.I. 374, 161 A. 111, 112 (1932).

The transcript of the second trial date shows that Lt. San Lucas was the prosecuting officer at the trial. See Tr. at 1-7. No Providence City Solicitor—or any other attorney representing the prosecution—entered an appearance. At no point was there any evidence that the Providence City Solicitor was “employed by a party to a case to manage the same for him.” McLyman, 52 R.I. 374, 161 A. at 112. Instead, Lt. San Lucas represented the Providence Police Department. It was L.F.’s responsibility, under Rule 27, to serve the discovery request either by directly handing it to Lt. San Lucas or “[l]eaving it at [Lt. San Lucas’] office with a clerk or other person in charge or if no one [was] in charge, leaving it in a conspicuous place in the office.” Traffic Trib. R. P. 27(b)(3)(A)(i) – (ii). Instead, L.F. sent the request for discovery through regular mail to the Providence Police Department. As such, L.F. failed to properly comply with Rule 27. Mailing a request for discovery to the Providence Police Department is not a proper service method according to our rules.

Therefore, pursuant to Rule 11 and 27 of the Rhode Island Traffic Tribunal Rules of Procedure, until a prosecuting attorney has made an entry of appearance on the record, a defendant must serve a request for discovery to the prosecuting law enforcement officer. However, once an attorney has made an appearance on behalf of the prosecuting law enforcement agency, a defendant must serve his or her request for discovery to the attorney in accordance with Rule 27. By failing to serve Lt. San Lucas either in person or going in person to the Providence Police Department to serve him at the office, L.F. also violated Rule 27.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel find that the Trial Judge's decision was made upon unlawful procedure. The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and this case is remanded for trial. A new trial date will be set in accordance with this decision.

ENTERED:

Chief Magistrate William R. Guglietta (Chair)

Magistrate William T. Noonan

Magistrate Alan R. Goulart

DATE: _____