

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.**

**DISTRICT COURT
SIXTH DIVISION**

Roark Malloy

v.

**Brown University Police Department
(RITT Appeals Panel)**

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:

A.A. No. 15 - 100

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings and Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED that the Findings and Recommendations of the Magistrate are adopted by reference as the decision of the Court and the instant appeal is granted and the judgment of acquittal shall enter if favor of Mr. Malloy.

Entered as an Order of this Court at Providence on this 28th day of April, 2016.

By Order:

_____/s/
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Roark Malloy :
 :
v. : A.A. No. 2015 – 100
 : (C.A. No. T15-013)
 : (13-423-500156)
Brown University Police Department :
(RITT Appeals Panel) :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Mr. Roark Malloy urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed Magistrate Abbate’s verdict adjudicating her guilty of three moving violations — “Obedience to stop sign,” in violation of Gen. Laws 1956 § 31-20-9; “No seat belt, Operator,” in violation of Gen. Laws 1956 § 31-22-22(g); and, “No seat belt, passenger over 13,” in violation of Gen. Laws 1956 § 31-22-22(f). 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 Gen. Laws 1956 § 8-8-8.1.

Unfortunately, this Court will be unable to evaluate the merit of the issues raised by Appellant Malloy, because of a procedural problem. This Court has been informed by the Brown University Law Department that it would not be filing a memorandum in defense of the verdict of guilty rendered on the citation issued by one of its officers. Accordingly, I recommend that Appellant Malloy's appeal be GRANTED based on the prosecuting department's failure to defend the instant appeal and that the judgment below be vacated.

I

FACTS & TRAVEL OF THE CASE

In light of our recommended disposition of the matter, the facts of the incident in which Mr. Malloy was cited for three moving violations may be briefly stated.

On October 31, 2014, at approximately 8:15 p.m., Officer Cunningham of the Brown University Police Department saw a Toyota traveling northbound on Hope Street proceed through the intersection with Power Street without stopping or slowing. Decision of Panel, September 11, 2015, at 1 citing Trial Transcript, at 3. She (the officer) followed the vehicle and observed it travel through the intersection with George Street without stopping or slowing. Decision of Panel, September 11, 2015, at 1-2 citing Trial Transcript, at 3. As a

result, Officer Cunningham initiated a traffic stop of the vehicle at the intersection of Hope Street and Manning Street. Decision of Panel, September 11, 2015, at 2 citing Trial Transcript, at 4. She cited Mr. Malloy for the three charges enumerated above. Id.

At the trial conducted in this case by Magistrate Joseph Abbatte on February 24, 2015, the officer testified in a manner consistent with the foregoing narrative. Mr. Malloy then informed the Court that he had not received a police report he had requested. Decision of Panel, September 11, 2015, at 2 citing Trial Transcript, at 5.

At this juncture, Mrs. Laurie Malloy, who had been the passenger in the vehicle during the incident, testified that their vehicle was pulled over after her husband had stopped at the stop sign on Hope Street. Decision of Panel, September 11, 2015, at 2 citing Trial Transcript, at 6-7.

Mr. Malloy then stated that he was pulled over at Young Orchard Street, not at Manning Street. Decision of Panel, September 11, 2015, at 3 citing Trial Transcript, at 9. He testified that the officer accused him of going through the stop sign at Hope Street and George Street, which is after Young Orchard (going northbound). Decision of Panel, September 11, 2015, at 3 citing Trial Transcript, at 9-11. Appellant pointed out that he was not cited for going

through a stop sign at George Street. Decision of Panel, September 11, 2015, at 3 citing Trial Transcript, at 11.

At the conclusion of the evidence, the trial magistrate found that the officer was credible and sustained all three violations. Trial Transcript, at 12-14. Mr. Malloy was fined \$85 on the stop sign charge and \$40 on each of the seat belt charges. Trial Transcript, at 14

Aggrieved by this decision, Mr. Malloy filed a timely appeal. On May 20, 2015, his appeal was heard by an RITT appeals panel composed of: Judge Almeida (Chair), Judge Parker, and Magistrate Goulart.

In a decision dated September 11, 2015, the appeals panel found that the verdicts of the trial judge were neither arbitrary nor capricious. Decision of Panel, September 11, 2015, at 6. With regard to the Appellant's request for production, the panel noted that he never filed a motion for discovery pursuant to Traffic Tribunal Rule of Procedure 11. Decision of Panel, September 11, 2015, at 5. Neither did he request a subpoena to obtain the testimony of witnesses. Id. Accordingly, the verdicts of the trial magistrate on the instant summons were affirmed. Decision of Panel, September 11, 2015, at 6-7.

On October 19, 2015, Mr. Malloy filed a further appeal to the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9. As is its

practice in pro-se appeals from decisions of the RITT appeals panel, this Court did not set a conference date, but set a briefing schedule. Appellant Malloy filed his brief on November 23, 2015. The Brown University Law Department, after requesting (and receiving) an extension of time in which to file its response, informed the Court that it would not be filing a memorandum, believing it would be inappropriate for it to do so. When the Department of the Attorney General was informed of this predicament, it too declined to enter its appearance.

II ANALYSIS

As stated above, this Court will not be able to address the merits of Mr. Malloy's appeal because of a procedural issue with the Appellee prosecuting agency: quite simply, the prosecuting agency has declined to defend its citation on appeal before this Court.

I need not decide (and will not comment upon) whose duty it is to advocate for the affirmance of convictions which have been entered on citations issued by officers of the Brown University Police Department. It is the custom that convictions on non-refusal traffic citations issued by a municipal police department are defended by their city or town solicitors. All state police summonses are defended on appeal by the Department of the

Attorney General. In any event, this question must be resolved within the law enforcement community.¹ I do know it is not this Court's duty to do so and this Court will not compromise its neutrality by searching out infirmities in the Appellant's arguments sua sponte.

III CONCLUSION

For the reasons stated above, I recommend that the instant appeal be GRANTED based on the prosecution's failure to defend the decision of the appeals panel before this Court; the decision below shall be vacated and judgment of acquittal shall enter in favor of Mr. Malloy.

/s/
Joseph P. Ippolito
MAGISTRATE

April 28, 2016

¹ Until this issue can be resolved, it might be wise for the Brown Police to refrain from issuing further citations — for, if they are not going to be defended when a motorist invokes his statutory rights to appellate review — one might well question whether they can be prosecuted in good faith.