

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Christopher Cartwright

v.

State of Rhode Island
ex rel. Town of Lincoln
(RITT Appeals Panel)

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A.A. No. 13 - 200

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 decision of the Appeals Panel is REVERSED.

Entered as an Order of this Court at Providence on this 19th day of August, 2014.

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

Christopher Cartwright :
 :
 v. : A.A. No. 2013 – 200
 : (C.A. No. T13-0032)
 : (07-406-08955)
 State of Rhode Island :
 ex rel. Town of Lincoln :
 (RITT Appeals Panel) :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In the instant complaint, Mr. Christopher Cartwright urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a judge’s verdict finding him guilty of a moving violation: “Stopping For School Bus Required,” which is set forth in Gen. Laws 1956 § 31-20-12. Jurisdiction for this appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9 and the applicable standard of review is found in § 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. After a review of the entire record I find the decision of the appeals panel is clearly erroneous and contrary to law; and so, I recommend that it be REVERSED.

I

FACTS AND TRAVEL OF THE CASE

On March 4, 2013, Officer Brandon Fox of the Lincoln Police Department cited Mr. Christopher Cartwright for passing a school bus and two other civil offenses. At his arraignment at the Traffic Tribunal on April 1, 2013, Mr. Cartwright entered a plea of not guilty and the matter was set for trial.

The trial began on April 22, 2013 before Judge Lillian Almeida. The first witness was Officer Brandon Fox of the Lincoln Police Department.¹ He testified that on March 4, 2013 at approximately one in the afternoon he was traveling east on Cobble Hill Road when he saw a school bus stopped ahead of his position at an intersection.² The bus had its stop lights flashing and a stop sign extended from the side of the bus.³ The bus monitor was helping children

¹ Trial Transcript I, at 1. The narrative which follows is drawn from the trial transcripts found in the record forwarded to the District Court by the RITT.

² Trial Transcript I, at 1. According to the Officer, there were 10-12 cars between him and the school bus. Trial Transcript I, at 2.

³ Trial Transcript I, at 1.

cross the street.⁴ He then saw a car — a gold Lexus bearing Rhode Island registration 434 647 — pass the school bus and proceed through the intersection without stopping for the bus’s stop sign.⁵

Because the parents clustered about at the bus stop looked at him in anticipation, Officer Fox activated his emergency lights, made a U-turn, and stopped the Lexus “... at the bottom of Cobble Hill Road.”⁶ The driver reported that he did not have his license on his person; he also failed to produce proof of insurance.⁷ The motorist, who owned the vehicle, was identified as Christopher Cartwright.⁸

Now, Officer Fox had volunteered that the scene of the infraction was close to the Lincoln-Pawtucket line and, in fact, he was in Pawtucket when it occurred.⁹ And to clarify the scene of the violation, he drew a diagram to show the relative positions of himself, Mr. Cartwright and the school bus.¹⁰

⁴ Trial Transcript I, at 1.

⁵ Trial Transcript I, at 1.

⁶ Trial Transcript I, at 1.

⁷ Trial Transcript I, at 1.

⁸ Trial Transcript I, at 2. This was accomplished by accessing his computer, which allowed him to see a photograph of Mr. Cartwright. Trial Transcript I, at 1.

⁹ Trial Transcript I, at 2.

¹⁰ Trial Transcript I, at 2.

Mr. Cartwright also added to the diagram, and testified that he was coming from the side street that leads to Whitford Avenue, where he had dropped his friend off.¹¹ He stated that when he passed the bus — which he said was a Pawtucket bus — it was still moving, coming towards him, with its yellow lights flashing.¹² He denied that the monitor was out in the street helping the children cross the street.¹³ He denied that he had ever crossed into the Town of Lincoln, saying instead that he had gotten to the scene of the citation by taking a left from Smithfield Avenue onto Weeden Street.¹⁴ He said that he was only halfway past the bus when the officer activated his lights.¹⁵ The trial then adjourned for the day.¹⁶

When the trial resumed on May 6, 2013, Officer Fox retook the stand, and restated his previous testimony, emphasizing once more that, from Cobble Hill Road, he saw the violation occur on Weeden Street.¹⁷

¹¹ Trial Transcript I, at 3.

¹² Trial Transcript I, at 3, 6.

¹³ Trial Transcript I, at 4, 5.

¹⁴ Trial Transcript I, at 4.

¹⁵ Trial Transcript I, at 4.

¹⁶ Trial Transcript I, at 7.

¹⁷ Trial Transcript II, at 1-2. To wit, that he was travelling east on Cobble Hill Road when he saw a school bus, four to seven vehicles ahead of him, with its stop sign extended from its side, flashing lights, and the monitor outside

The next witness was Bernadette Smaldone, the operator of the school bus.¹⁸ Employed by First Student, she has been a licensed school bus driver since 1995.¹⁹ She began her testimony by describing her general practice: as she approaches a stop she puts her flashing yellow lights on with 250 feet to go, she announces she's coming to a stop (over a public address system) with 150-100 feet to go, and when she stops and puts the bus in park the stop sign comes out and the red flashers start.²⁰

With regard to the circumstances of this case, she stated that she had been proceeding east on Weeden Street when she made her stop to discharge students.²¹ After she stopped, she had her monitor get off the bus to assist a special-needs little boy.²² At this point she was checking around the bus — she found that there were no cars in front of her but there were five or six cars behind her.²³ She then saw a tannish vehicle traveling west on Weeden Street (from the general direction of Smithfield Avenue) proceed toward her and

the bus attempting to assist children crossing the road. Trial Transcript II, at 1.

¹⁸ Trial Transcript II, at 2.

¹⁹ Trial Transcript II, at 3.

²⁰ Trial Transcript II, at 4.

²¹ Trial Transcript II, at 6.

²² Trial Transcript II, at 5.

²³ Trial Transcript II, at 5.

through her stop sign, so she put her hands on the horn and “whaled.”²⁴ And just after she observed that the boy was safe with his dad, she saw — behind her — that the officer had put on his lights.²⁵

On cross-examination, she reiterated that she was at a complete stop when the motorist proceeded to pass her.²⁶ And when Mr. Cartwright suggested that only her yellow lights were on when he went by, she insisted the only yellow light on was her directional.²⁷

Mr. Cartwright was then invited to give his point of view. He said that, after a stop on Whitford Avenue, he took a left onto Weeden Street.²⁸ He said that when the front of his car reached the front of the bus — coming the opposite way — the bus was still moving slowly, its yellow lights were flashing and the stop sign was not out, and neither was the monitor.²⁹

At the conclusion of the trial, Mr. Cartwright was found guilty of the

²⁴ Trial Transcript II, at 6.

²⁵ Trial Transcript II, at 6.

²⁶ Trial Transcript II, at 7.

²⁷ Trial Transcript II, at 7.

²⁸ Trial Transcript II, at 8. He turned onto Weeden from a street whose name he did not know. Id.

²⁹ Trial Transcript II, at 9, 11.

school bus violation and fined \$300.00, plus court costs.³⁰

Mr. Cartwright filed an immediate appeal which, on June 26, 2013, was heard by an RITT appeals panel composed of: Administrative Magistrate David Cruise (Chair), Chief Magistrate William Guglietta, and Magistrate Alan Goulart. In an order dated November 14, 2013, the appeals panel announced its findings of fact and conclusions of law —

The Officer observed the violation of the motor vehicle code from the city of Pawtucket at the intersection of Cobble Hill Road in the town of Lincoln, Weeden Street in the City of Pawtucket, and Smithfield Avenue in the City of Providence. (Tr. 1 at 1-2.) The bus was stopped in the town of Lincoln on Cobble Hill Road. (Tr. 1 at 2.) The Appellant violated the aforementioned motor vehicle code in the town of Lincoln on Cobble Hill Road. Id. The Appellant was issued the citation in the town of Lincoln on Cobble Hill Road. Id. The location of the Officer's vantage point is immaterial. Therefore, there is no jurisdictional issue in the present controversy.³¹

Because the appeals panel found that the offense was committed in Lincoln, it did not have to reach the issue of whether Officer Fox would have been empowered to issue a traffic citation for an offense committed in Pawtucket. It therefore affirmed his conviction for passing a stopped school bus.³²

On November 25, 2013, Mr. Cartwright filed a complaint for judicial

³⁰ Trial Transcript II, at 12.

³¹ Order of Appeals Panel, November 14, 2013, at 2.

³² Order of Appeals Panel, November 14, 2013, at 2.

review in the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9. On December 16, 2013, a briefing schedule was established. Memoranda have been submitted by both parties.

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 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 subsection is very similar 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.’ ”³³ Thus, the Court will not substitute its judgment for that of the appeals panel as to the weight of the evidence on questions of fact.³⁴ Stated differently, the panel’s findings will be upheld even though a reasonable mind might have reached a contrary result.³⁵

III APPLICABLE LAW — THE EXTRA-TERRITORIAL AUTHORITY OF MUNICIPAL POLICE OFFICERS

In this appeal Mr. Cartwright raises no special issues of interpretation with regard to the civil traffic offense for which he is charged — “Stopping For School Bus Required,” in a violation of Gen. Laws 1956 § 31-20-12. Rather, he raises two assertions of error: (1) he is innocent, because when he passed the school bus it had not yet stopped; and, (2) the citation against him must be stricken because he passed the school bus (whether moving or stopped) in Pawtucket, and Officer Fox, an officer of the Lincoln Police Department, had no authority to cite him for an offense committed in Pawtucket.

Now, each of these arguments had been considered and rejected —

³³ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

³⁴ Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

³⁵ Id., at 506-507, 246 A.2d at 215.

initially by the trial judge and later by the appeals panel. The first argument is factual, requiring no discussion of any particular law or theory. But the second issue requires us to set out the law in Rhode Island regarding the extra-territorial authority of municipal police officers so that, later in this opinion, we may expeditiously address the merit of Mr. Cartwright's claim that Officer Fox cited him illegally. To this end we shall examine those statutes and case decisions that are plausibly germane to the issue.

Of course, in any discussion of a Rhode Island municipal police officer's authority to act outside his city or town of appointment, we begin from a legal premise that such an officer has no extra-territorial authority. As our Supreme Court stated in State v. Ceraso³⁶ —

In the absence of a statutory or judicially recognized exception, the authority of a local police department is limited to its own jurisdiction. See Page v. Staples, 13 R.I. 306 (1881).³⁷

And, when the cited case — Page v. Staples — was decided in 1881 the list of exceptions to this rule was brief.³⁸ However, in the last forty years, that list has

³⁶ 812 A.2d 829 (R.I. 2002).

³⁷ Ceraso, 812 A.2d at 833.

³⁸ See Page v. Staples, 13 R.I. 306, 307-08 (1881). The Court in Page cites two such exceptions to the rule then recognized: [1] an officer with custody of a prisoner under a writ of habeas corpus may travel through other jurisdictions to get to the place where the writ is returnable, and [2] an officer whose prisoner has escaped may retake the prisoner in another

been expanded by the General Assembly on several occasions.

In 1971,³⁹ Rhode Island’s police chiefs were granted the authority to transfer their officers to another municipal force on an ad hoc basis in times of emergency.⁴⁰ Then, in 1974,⁴¹ the legislature gave municipal officers the authority to enter another city or town if in close pursuit of a suspect they are already empowered to arrest.⁴² Finally, in 2002,⁴³ the General Assembly empowered our Rhode Island municipalities to execute agreements with adjacent cities and towns authorizing their officers to act in each other’s

jurisdiction if in “fresh pursuit.” Id.

³⁹ See P.L. 1971, ch. 284, § 1.

⁴⁰ See Gen. Laws 1956 § 45-42-1.

⁴¹ See P.L. 1974, ch. 191, § 1.

⁴² See Gen. Laws 1956 § 12-7-19. And the centrality of the last prerequisite — i.e., that the officer pursuing the motorist must have gained the right to arrest the motorist before they exited the officer’s “home” city or town — has been recognized by our Supreme Court, in State ex rel. Town of Middletown v. Kinder, 769 A.2d 614, 616 (R.I. 2001), a case in which the Court considered the legality of an arrest for reckless driving made by a Middletown officer in Newport. We applied this principle earlier this year in Town of Middletown v. Thomas Oliver, A.A. No. 13-026, at 21-43 (Dist. Ct. 03/13/13), finding that a Middletown officer did not have the authority to cite a motorist in Newport for a civil traffic violation that was allegedly committed in Middletown, because the commission of the offense did not render the motorist subject to arrest.

⁴³ See P.L. 2002, ch. 142, § 1.

towns.⁴⁴

Let us note that the powers extended by these statutes work in fundamentally different ways.

To begin, we see that the authority vested by the 1974 “close-pursuit” statute⁴⁵ — i.e., to pursue a suspect into another municipality in order to arrest him or her for an offense committed in the community which the officer serves — is really quite limited. The officer has acquired no expansion of the offenses he can investigate and charge; only his power to effectuate an arrest (which the officer already has a right to make) and to detain the arrestee, is broadened.

Conversely, under the 1971 statute, a municipal officer who has been assigned to another municipality’s police department in an emergency is vested with all the “same authority, powers, duties, privileges, and immunities as a duly appointed police officer” of the city or town suffering the emergency.⁴⁶

So too, under the 2002 statute, officers performing duties in an

⁴⁴ See Gen. Laws 1956 § 45-42-2.

⁴⁵ See Gen. Laws 1956 § 12-7-19.

⁴⁶ See Gen. Laws 1956 § 45-42-1. The check on the possibility (however implausible) of mischief resulting from the application of the statute (such as a usurpation of a town’s indigenous police force) is that the receiving police chief must request the assistance of officers from other municipalities. So too, the police chief receiving the officer’s services may exercise the discretion of command in assigning the transferred officer(s) to certain duties and tasks.

adjacent⁴⁷ city or town pursuant to a previously executed and adopted agreement, are vested with the “same authority, powers, duties, privileges, and immunities as a duly appointed police officer” of the other signatory municipality.⁴⁸

IV ANALYSIS

We may now consider Mr. Cartwright’s two arguments.

A THE ELEMENTS OF THE OFFENSE WERE PROVEN

Appellant’s first argument merits little attention. Mr. Cartwright adamantly denied the allegation that he passed a stopped school bus; instead, he testified the bus was still moving when he passed it. But both Officer Fox and the bus driver, Ms. Smaldone, testified with equal vigor that Appellant passed the bus while the bus’s stop sign was displayed. The trial judge acted well within her sound discretion to find Mr. Cartwright passed the school bus while it was stopped on the basis of substantial, reliable, and probative evidence in crediting their testimony and not Mr. Cartwright’s.

⁴⁷ See Gen. Laws 1956 § 45-42-2(a). Note that this restriction (to adjacent municipalities) is not present in the emergency transfer statute, which can be made under Gen. Laws 1956 § 45-42-1 on a statewide basis.

⁴⁸ See Gen. Laws 1956 § 45-42-2(b).

B
THE LOCATION WHERE THE OFFENSE WAS COMMITTED

1

The Applicable Law

The citation given to Mr. Cartwright by Officer Fox stated that the offense was committed on Cobble Hill Road in Lincoln. But we shall now consider whether, if Mr. Cartwright was correct and this event occurred in Pawtucket, Officer Fox had the authority to cite him. Or, did the fundamental rule apply — that a municipal officer cannot act outside his town? I believe the general rule applies, for the reasons I shall now state.

Both §§ 45-42-1 and 45-42-2 are clearly immaterial. There is no suggestion that Officer Fox was transferred to Pawtucket by his Chief because of an emergency and there is no evidence that Lincoln and Pawtucket have executed an agreement allowing their police officers to act in the other municipality.

This leaves us to focus our attention on § 12-7-19, the close pursuit law.⁴⁹ The statute may be divided into three elements — (1) a municipal officer

⁴⁹ This is the provision relied upon by the Town in support of its argument that Officer Fox had the legal authority to cite Mr. Cartwright in Pawtucket for an offense that occurred in Lincoln. See Town's Memorandum of Law, at 3-4. I believe this argument is incorrect — in my opinion § 12-7-19 does not vest municipal police officers with the authority to travel into another

who has acquired the right to arrest a suspect for violating the motor vehicle code in the officer's own municipality, (2) whom the officer is pursuing closely, (3) is empowered to make that arrest in a second municipality into which the suspect has traveled.

The legal reason why § 12-7-19 cannot provide a safe harbor for the Town is that the commission of a civil traffic offense (such as passing a school bus) does not render the perpetrator subject to arrest.⁵⁰ And in fact, Mr. Cartwright was not arrested. Therefore, § 12-7-19 is irrelevant to the issue before the Court.

In conclusion, I find that Officer Fox had no authority to cite Mr. Cartwright for an offense that was committed in Pawtucket. Moreover, even if the offense did occur in Lincoln, Officer Fox had no authority to cite him in

municipality to issue a civil traffic violation. See Town of Middletown v. Thomas Oliver, A.A. No. 13-026, at 21-43 (Dist. Ct. 03/13/14). In any event, this argument is immaterial since it is founded on a factual premise embraced by neither Mr. Cartwright nor the Town.

⁵⁰ Earlier this year this Court ruled that § 12-7-19 does not vest municipal police officers with the authority to travel into another municipality to issue a civil traffic violation; in doing so the Court rejected the Town of Middletown's argument that the term "arrest" in § 12-7-19 not only encompasses full seizures of a citizen's person but also includes within its ambit more modest detentions — such as traffic stops made for the sole purpose of citing a motorist for a civil traffic violation. See Town of Middletown v. Thomas Oliver, A.A. No. 13-026, at 21-43 (Dist. Ct. 03/13/14).

Pawtucket. So we must answer the questions — was the offense committed in Lincoln and was Mr. Cartwright cited in Lincoln?

2

The Facts of Record Regarding the Location of the School Bus

I began my analysis of this question by reading and re-reading the two trial transcripts⁵¹ transmitted to this Court by the RITT. Doing so, I could not deduce the precise location of the school bus when Mr. Cartwright's vehicle passed it.⁵² And this lack of clarity occurred despite the best efforts of the trial judge, who repeatedly tried — through perfectly proper clarification questions — to pin down the exact location of the bus during the incident.

But, to be fair, this ambiguity caused by the text may not have existed at the trial, for it appears that a map of the streets was drawn — perhaps on a large sheet of paper on an easel⁵³ — and considered by the trial judge as illustrative evidence. That map may well have clarified the positions of the

⁵¹ As is the custom in the RITT, the transcripts were prepared, not by court personnel, but at the behest of the Appellant — Mr. Cartwright. While I shall indicate *infra* that the transcripts presented by the Appellant (and used by the appeals panel) are deeply flawed, I discern no bias in this — since the errors and omissions seem to have favored the Town and not Mr. Cartwright.

⁵² To reiterate, Appellant does not deny that he passed the school bus; he merely indicates he did so when the bus was still moving.

⁵³ This inference is drawn from a sound I heard on the recording of the trial.

vehicles for the trial judge. Unfortunately, it has not been forwarded to the District Court in the record transmitted by the RITT.

And so, I re-read the transcripts with a street map of the area in hand.⁵⁴ Now, without doubt, the map I used helped me to understand how the streets in the area are configured.⁵⁵

And, what does the map, attached as “Appendix 1,” tell us about the location of the incident? It reveals that Smithfield Avenue (a north-south road) and Weeden Street (an east-west road) intersect in perpendicular fashion in the City of Pawtucket. From this intersection Weeden Street proceeds west for about 600 feet to a second major intersection, from which Weeden Street proceeds, roughly, north by northwest to the Lincoln town line — where it becomes Cobble Hill Road.⁵⁶ Proceeding southwest from this second intersection is Power Road. And is this configuration significant to our

⁵⁴ I used a plat map of the area (attached as Appendix 1) which I found, along with other plat maps, on the City of Pawtucket tax assessor’s web site at — <http://www.pawtucketri.com/documents/taxassessor/plat%2049b.pdf>.

⁵⁵ Since I have relied on the map in making my analysis, I must state the legal basis for consulting an item not within the record certified to this Court by the RITT. Accordingly, I hereby state that I have taken judicial notice of the plat map pursuant to Rule 201 of the Rhode Island Rules of Evidence.

⁵⁶ This is not confirmed by the Pawtucket plat map (Appendix 1) which I used. But it can be confirmed by a multitude of map sources, including the American Map Rhode Island Street Atlas (Sixth Edition, 2010), at 65 (Pertinent portion of page attached as Appendix 2).

analysis? It is indeed.

It shows us that the Appeals Panel's Order was incorrect when it said that Officer Fox observed the violation at the intersection of Cobble Hill Road, Weeden Street, and Smithfield Avenue.⁵⁷ There is no such intersection. Cobble Hill Road does not go near Smithfield Avenue; and Cobble Hill does not intersect with Weeden Street, it becomes Weeden Street at the Pawtucket line. In sum, the Appeals Panel misapprehended the lay-out of the streets in the area of the incident, which — given the cryptic state of the record on this point — is not surprising. But, even when using both the transcripts and the map, I still could not divine the precise location of the incident.

And so, in frustration, I turned to the audio record of the trial. Comparing it with the transcripts forwarded from the RIT, I found that the April 22, 2014 transcript was deeply flawed, omitting much pertinent material — particularly testimony concerning the positions of the parties at the moment when the incident took place. For instance, from Officer Fox's testimony were omitted his descriptions of the street configurations.⁵⁸ Most significantly, he

⁵⁷ See Order of Appeals Panel, quoted supra at 6-7.

⁵⁸ The following portion may be substituted for the bottom third of page 2, beginning with Officer's response marked "(audio can't pick up words)" —

Fox: ... This line right back here is the bottom of Cobble Hill Road. ... It's approximately 10-12 vehicles to the school bus with the arm out. The operator was turning from ... this is

described Cobble Hill Road as ending where it intersects with Weeden Street and Power Road.⁵⁹ As we noted above, the map shows it does not. Moreover, the officer seems to have described the junction of these three streets as being split-in-half by the Lincoln-Pawtucket line.⁶⁰ This is also not true.

Similarly, Mr. Cartwright's testimony was also abridged significantly.⁶¹

Smithfield Avenue, right here. He's turning, heading into my direction. This is before the intersection. This is all Pawtucket right here. This plaza right here. I would say just about like that ... it's split. Lincoln, Pawtucket. It literally splits the plaza in half, splits the intersection in half. So right here is Lincoln, right here is Pawtucket. So, that's why I wanted to definitely have that, that it's right at the intersection. And, I felt obligated to stop the vehicle.

Court: And where was the bus parked, at that bus stop?

Fox: The bus was parked right here, he made a left hand turn, through the stop sign. The kids were crossing the street that way.

Court: Oh, so they were going into the road where he was making the turn?

Fox: Yup — the arm was out, the stop was out, he was coming this way. The bus monitor was standing, you know, escorting the kids across the street. Like I said, it was a tough spot, just due to the fact that it's right on the Pawtucket, Lincoln line. I just wanted to at least have that brought to your attention.

Court: Well, where was the bus parked? Was that Lincoln or Pawtucket?

Fox: This right here, this road right here, is Pawtucket. Cobble Hill stops, and right where it stops, it turns into — I believe — it's the intersection of Power and Weeden Street, Power Road and Weeden Street. It just pretty much, as you head straight, it turns into Power Road I believe.

⁵⁹ See footnote 58, *supra*.

⁶⁰ See footnote 58, *supra*.

⁶¹ The following portion of Mr. Cartwright's testimony should be substituted for, roughly, the top half of page 3, beginning with the Court's statement on the second line —

Court: Alright, Mr. Cartwright, what do you have to say about that?

Motorist: Where I was I actually never took a left. I came from the side street where Whitford Avenue is. I had just dropped my friend off.

Court: Take the red pen and tell, show me where you were coming from. Or, you can turn the

As we can see, the transcript omits Mr. Cartwright's testimony that he traveled from Smithfield Avenue, onto Weeden Street, and then Power Road.⁶² It also omits his testimony that the continuation of Cobble Hill Road (at the bottom of the hill) is not in Lincoln, but in Pawtucket — where we know, from the map in Appendix 1, it's called Weeden Street.⁶³

page over. I know we are on a tight budget but not that tight. You can turn it right over and do your own diagram.

Motorist: I was ... so right here.

Court: The bus was where the officer has the bus on the bottom area there?

Motorist: Where I was coming, right here

Court: The bus!

Motorist: The bus was right here — after the stop sign, before my stop sign. They went through a stop sign on this side and traveled through it. I was at the stop sign. I was before ... there's a stop sign about right here before the intersection. I was coming this way from Smithfield Avenue ...

Court: Alright, there's a stop sign in the street. And the bus was over there on that opposite side of the street?

Motorist: Yes, a little bit after the stop sign, on this side. But there's a stop sign right here after the ..., so you can take the left. The bus travelled through the stop sign and I had my stop sign on this side. When I came from Smithfield Avenue I took the left onto Weeden Street and to where it turned onto Power Road, I didn't take any left. He was saying the bus was over here. This would have been Whitford Ave. This is Cobble Hill.

Court: I guess it's however you want to turn the diagram around.

Motorist: This is Cobble Hill up here. And this would be Lincoln more towards up here, 'cause even the houses on the bottom of the hill — I used to live there when I was a kid — it's not in Lincoln. So right here would be Lincoln. When I took the left right here I was pulling up to the bus and it started putting them yellow lights on. So me and the car ahead of me were slowing down. The bus came to the front bumper of my Lexus. So, I was, if they were to cross the street, I would be in their way, now. So, I slowly inched forward to my stop sign, which was right here. I got the front of my car was about right here. So if I was to stop right there

Court: So was the front of your car facing more or less the direction of the bus?

Motorist: Um, yes the bus was coming this way, I was going this way.

⁶² See footnote 61, *supra*.

⁶³ See footnote 61, *supra*.

Discussion and Conclusion Regarding the Location of the Offense

So, how should this Court respond to this record? Well, the easiest and most expeditious way to dispose of this case would be to remand it to the Traffic Tribunal for further proceedings, including a new trial, in light of the RITT's failure to transmit the entire record of the trial. What was omitted? Nothing less than what appears to have been the keystone to the Town's proof on the issue of locality — the diagram drawn by Officer Fox. But I have endeavored to avoid this result, in recognition of the time, expense, and effort already invested in this civil traffic violation by the motorist, the Town, and the RITT. And so, for the reasons I shall now state, I shall recommend a ruling on the merits.

Now, after comparing Officer Fox's testimony with the map, we must conclude he misunderstood the boundaries of his town, at least in this one area. Generally, one can reasonably rely on the testimony of an experienced officer regarding the lay-out of the streets they patrol. This case may be viewed as the exception that proves that rule.

In sum, without further belaboring the officer's apparent misunderstanding of his Town's borders (in this area), I believe the Town did not prove, to a standard of clear and convincing evidence, that Mr. Cartwright

passed the school bus in Lincoln.⁶⁴ To the contrary, despite the vagueness of the transcripts (even as supplemented), I believe the evidence shows, at least to the standard of a fair preponderance, that the violation occurred in Pawtucket.

Let us assemble the evidence. The officer stated he was traveling east on Cobble Hill Road.⁶⁵ He conceded he had gotten to a point in the City of Pawtucket when he saw the violation.⁶⁶ We can surmise, from the testimony and the map, that this was the intersection of Weeden Street and Power Road. But the exact location is not important, for if, from Cobble Hill Road in Lincoln, he had passed into Pawtucket, any point up ahead of him must have

⁶⁴ Two points — First, if Officer Fox’s understanding of the Lincoln-Pawtucket line was correct — that it bisected the Weeden Street-Power Road intersection — we might have been required to confront a most intriguing question: If a driver of a vehicle in Town 1 passes a stopped school bus in Town 2, where is the offense committed? Luckily, the line is some distance away and we need not address this issue.

Second, Officer Fox’s testimony seems to have changed between the first and second trial days. On April 22, 2013, he said the bus was stopped at the intersection at the end of Cobble Hill Road. Trial Transcript I, at 1. But then, On May 6, 2013, he testified that he said that the violation occurred on Weeden Street, which means it happened in Pawtucket, since Weeden Street, in Lincoln, is known as Cobble Hill Road. Trial Transcript II, at 1.

⁶⁵ From the map we know that at its eastern end Cobble Hill Road turns to the southeast, a direction it maintains when it becomes Weeden Street in Pawtucket.

⁶⁶ I agree with the appeals panel that this fact has no effect on the legality of the citation; his location does not affect the legality of the citation. The question only has relevance insofar as it helps this Court determine the locations of the school bus and Mr. Cartwright’s vehicle.

also been in Pawtucket.

And this syllogism is buttressed by the testimony of the bus driver, Ms. Smaldone. She indicated that — at the time of the incident — her school bus was heading east on Weeden Street and the other vehicle was proceeding west on Weeden Street (from the area of Smithfield Avenue). And as we know, Weeden Street is entirely in Pawtucket. Based on this credible testimony, which was never contradicted, except by ambiguity, we must find that the officer was therefore without authority to cite Mr. Cartwright, because the offense was committed in Pawtucket.

C

THE LOCATION WHERE THE CITATION WAS ISSUED

As explained above in Part IV-B-1 of this opinion, an officer is authorized to arrest a motorist outside his town after he has pursued him or her from his town. This rule does not apply to civil traffic citations because such offenses do not subject a motorist to arrest, as we explained at length in the Middletown decision.⁶⁷ Neither does it appear that there is a compact between the City of Pawtucket and the Town of Lincoln allowing their respective officers to enforce traffic violations in the other municipality. And so, even if

⁶⁷ See Town of Middletown v. Thomas Oliver, A.A. No. 13-026, at 21-43 (Dist. Ct. 03/13/14), cited and discussed herein at 14-15, nn. 49 and 50.

the violation was committed in Lincoln, a citation issued for it in Pawtucket is void.

And I believe the officer's testimony is clear — Officer Fox's citation to Mr. Cartwright was issued in Pawtucket.⁶⁸ The citation was apparently given at the intersection of Weeden Street and Power Road. How can we be sure? Well, we know this because Officer Fox testified that a friend of Mr. Cartwright tried to cross Power Road to bring him his license, but — for “officer safety” — he did not allow it. He kept the motorist's friend across the intersection. Since all points of that intersection are in Pawtucket, Officer Fox must have been in Pawtucket when writing the citation.

The testimony of the bus driver, Ms. Smaldone, is also helpful on this question. She testified that as she started the bus out into traffic (after Mr. Cartwright passed her bus), she saw — in her rearview mirror — the officer's lights flashing. Since her bus was on Weeden Street heading east, the rear of her bus would also have been on Weeden Street (or at the beginning of Power

⁶⁸ In this section we are focusing on the place where Officer Fox cited Mr. Cartwright. It is also an issue where he stopped the motorist — which will usually be the same but not always. Recall that he testified he stopped him at the bottom of Cobble Hill Road. I take this to be what he thought to be its endpoint — the intersection of Power and Weeden. But it could also mean the flat area after the road descends a hill (perhaps the road's namesake) and becomes Weeden Street in the flat area, and which is in Pawtucket.

Road), in Pawtucket. Therefore, for this second reason, the citation Officer Fox issued to Mr. Cartwright must be dismissed.

V
CONCLUSION

Upon careful review of the evidence of record, I recommend that this Court find that the decision of the appeals panel is contrary to law and clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

Accordingly, I recommend that the decision of the appeals panel be REVERSED.

_____/s/_____
Joseph P. Ippolito
Magistrate
August 19, 2014



