

January 19, 2012

Donald Bucklin, Esquire
Deputy Attorney General
114 E. Market Street
Georgetown, DE 19947

Vincent H. Vickers II, Esquire
8 West Market Street
Georgetown, DE 19947

Re: Appeal of State v. Drew G. Layton; JP #1105002814
Submitted: January 12, 2012

Gentlemen:

Defendant Drew G. Layton filed this appeal *de novo* of the Justice of the Peace Court's decision finding him in violation of Delaware's motor vehicle "cell phone" law, 21 *Del. C.* § 4176C. Effective in 2011, § 4176C prohibits drivers from operating electronic communications devices while the vehicle is in motion, and provides that violators shall be subject to a "civil penalty" of \$50.00 for the first offense, and \$100.00 to \$200.00 for subsequent offenses. The Justice of the Peace found Defendant "responsible" for violating the statute and assessed a civil penalty of \$50.00.

Upon receipt of this appeal, the Court requested counsel to brief the issues of whether the Court has jurisdiction to hear the appeal, and if so, whether it

should proceed as a civil appeal or a criminal appeal.¹ The Court concludes that it does not have jurisdiction to hear this appeal.

As noted above, § 4176C (d) provides that “whoever violates this section shall for the first offense be subject to a civil penalty of \$50.” In conjunction with the past adoption in the Motor Vehicle Code of civil, rather than criminal, penalties for red-light camera violations² and seat belt violations³, Chapter 8 of the Motor Vehicle Code was adopted, establishing specific provisions regarding “civil traffic offenses.” Section 801 states that the provisions of Chapter 8 apply not only to red-light camera and seat belt violations, but also “to other civil penalties provided for in this title.” According to section 811, “[a]ny appeals of civil penalties assessed under this chapter shall be taken in the manner as provided in § 708 of this title.”

The relevant portion of § 708 states:

[A]ny person convicted under this title shall have the right of an appeal to the Court of Common Pleas only in those cases in which the sentence imposed was imprisonment, or a fine exceeding \$100, upon giving bond with surety satisfactory to the alderman, justice of the peace or a judge before whom such person was convicted, such appeal to be taken and bond given with 15 days from the time of conviction. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court.

The Court notes some problems reconciling the language of the relevant statutes. A “civil penalty” is a civil judgment, and results from a finding of “responsibility” for a civil traffic offense, under the scheme of Chapter 8 of the

¹ The State filed its reply brief a month late. On January 12, 2012, Defendant moved the Court to disallow the State’s submission for tardiness. Inasmuch as the Court finds it lacks jurisdiction to hear this appeal, Defendant’s motion is moot; no remedy or benefit could inure to Defendant by disallowing the submission.

² 21 *Del.C.* § 4101(d)

³ 21 *Del.C.* § 4802 (g) (2) (c)

Motor Vehicle Code, and is appealed under the pre-existing § 708. Section 708, however, plainly refers to appeals for persons “convicted” with a “sentence” exceeding \$100 or imprisonment. Although a defendant is neither “convicted” of a civil offense nor “sentenced” for it, it is clear that the General Assembly intended, in § 811, that civil penalty appeals be addressed by this Court in the same manner, and with the same jurisdictional limitations, as criminal Motor Vehicle Code appeals.

The Court therefore concludes that, if it had jurisdiction to hear this particular civil penalty appeal, it would not proceed under our Civil Rules; it would be accepted, arraigned upon Information filed by the Attorney General, and tried *de novo*, in the same manner as a criminal appeal from the Justice of the Peace Court. However, inasmuch as the civil penalty appealed from is less than \$100, the Defendant does not have a right of appeal in this case, and this Court lacks subject matter jurisdiction.

The appeal is **DISMISSED**. The civil judgment and civil penalty assessment of the Justice of the Peace Court are reinstated.

IT IS SO ORDERED.

Kenneth S. Clark, Jr., Judge