

WINNING YOUR TICKET CASE

2024 HIGHWAY SAFETY CONFERENCE
KILLINGTON

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Traffic Safety Resource Prosecutors

Objectives

1. Overview of court process
2. Trial strategy
3. Common issues in ticket cases

What tools do you need?

1. Title 23
2. Published copy of State or Federal Regulation
 - a. V.R.C.P. 80.6(d)(6)
3. Vermont Rules of Civil Procedure
 - a. Rule 80.6 - - Traffic and Municipal Ordinance Bureau Procedures
 - b. Rule 45 - Subpoena
4. Vermont Rules of Small Claims Procedure
 - a. Rule 6 - Trial procedure
5. Copies of Certified Municipal Ordinances
6. Certified Copies of DMV or Agency of Natural Resource Records
 - a. 4 V.S.A. § 1106(b)
7. Calibration certificates
8. Recordings?

Pretrial

1. Discovery and motion practice prohibited
 - a. Unless by permission of court
 - i. V.R.C.P. 80.6(d)(1)&(3)
 - ii. Subpoenas – Rule 45
 1. Issued by court, clerk, or state’s attorney

Trial Procedure

1. Summary hearings
 - a. Informal and quick
2. Rules of Evidence don't apply (except privileged communications)
 - a. V.R.S.C.P. 6(b)
 - i. Of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs
 - b. Hearsay is admissible
 - i. Indicia of reliability
3. Testimony under oath
 - a. V.R.S.C.P. 6(a)(3)
4. Burden
 - a. 4 V.S.A. § 1106(b) - Clear and convincing evidence
 - i. Highly Probable

Trial Strategy

1. Continuance
 - a. 80.6(d)(2)
 - b. May be issued as late as the time of the hearing
 - c. Good cause
2. Speak to defendant beforehand
 - a. Cost
 - i. No contest
 1. Bonus = waiver of appeal
 - b. Time
 - c. Points
 - i. Move hearing officer to be heard on waiver of points without full hearing
3. Know your facts
 - a. Review your video and/or report
 - b. Do not reference your video
4. Know your elements
 - a. Print it out beforehand
 - b. Create a checklist of what evidence proves each element

Sample Elements

1. Date of offense
2. Identify defendant
3. Operated
4. Motor vehicle
 - a. Farm tractor?
 - i. 23 V.S.A. § 602
 1. When operated on a public highway to and from farming lands
 - ii. State v. Haselton
 1. Unreported, but 3 Justices
 2. When used as a means of transportation as opposed to farming
 - b. Even a boom lift – State v. Smith, 2011 VT 83
5. Public Highway
 - a. 23 V.S.A. § 4(13)
 - i. Bridges, culverts, fairgrounds – any way laid out by law

Public Highways?

1. Frozen waterway?
 - a. State v. Hallock, 114 Vt. 292 (1945)
2. Parking lot?
 - a. Public – State v. Bromley, 117 Vt. 228 (1952)
3. Pull Off?
 - a. State v. Trucott, 145 Vt. 274 (1984)

ENTERING EVIDENCE

Was discovery permitted and provided.

1. I would like to enter into evidence what has been marked as State's Exhibit [number]
2. On the date in question, I was issued a [body worn camera, cruiser equipped with a video recording device, camera, photo app on phone] and it was operating properly
3. The device recorded the event at issue; I took a photograph; etc.
4. I have reviewed that recording; photograph; etc.
5. The recording [photograph, etc] is a fair and accurate copy of the events, object of photo, etc.
6. Please admit into evidence State's Exhibit [number]

COMMON PROBLEMS

Hearing Officer inquires about the video.

1. Discovery generally prohibited
 - a. Unless by permission of court
 - i. V.R.C.P. 80.6(d)(1)&(3)
2. No motion for discovery was filed
3. No permission was granted by the court
4. No discovery was provided to defendant
 - a. Prejudice to defendant as they have not had opportunity to review
5. Violates the summary nature of the proceeding

COMMON PROBLEMS

The ordinance is problematic.

1. Proper ordinance should include:

- a. The portion of the municipal charter and/or the statute that empowers the municipality to set its own speed limits (Section “X” of the “town name” municipal charter and Title 23, Sections 1007 & 1008)
- b. The selectboard (or other municipal legislative body) held a public hearing on “date”
- c. Adopted without (or “with”) amendment the following ordinance (or “amendment to the following ordinance”)
- d. We advise that it include “on the basis of an engineering and traffic study” or “on the basis that it is an unpaved road and having considered neighborhood character, abutting land use, bicycle and pedestrian use, and physical characteristics of the highway”
- e. Section of highway where the lower limit applies
 - i. Should be something anyone would recognize
 - ii. Street addresses suffice but the post office can change them
 - iii. Local landmarks have been upheld – State v. Page, 142 Vt. 522 (1983)
 - iv. We suggest latitude and longitude from Google earth or similar
- f. The speed limit
- g. Certified as genuine
 - i. Legible with date of certification
 - ii. We advise that the clerk print or type their name as well as their title

Ordinance's (Continued)

23 V.S.A. § 1007 – Local Speed Limits

1. Must be based on engineering and traffic investigation
 - a. Unless after considering neighborhood character, abutting land use, bicycle and pedestrian use, and physical characteristics of the highway
 - i. If so, then no more than 50 MPH and no less than 35 MPH
 - I. Unless within a designated downtown development district
 - b. Lack of evidence of engineering and traffic investigation does not invalidate lower speed limits so long as at least five years has lapsed since the limit took effect
2. If speed limit on all unpaved town highways set to 35 MPH, then signs must be posted at points of change in speed limits
3. If based on engineering and traffic investigation not less than 25 MPH

COMMON PROBLEMS

Hearing officer will not recognize violations of local limit of 50 MPH under § 1007

1. Point out that § 1007 permits local speed limits of 50 MPH
2. Move to amend the ticket as Basic Rule violation under 23 V.S.A. § 1081
 - a. Permitted under V.R.C.P. 80.6(c) for defect of wrong violation code

COMMON PROBLEMS

Dismissal by hearing officer prior to hearing

1. V.R.C.P. 80.6(c) - Can only dismiss if:
 - a. Issuing officer's signature is omitted;
 - b. Violation conduct is omitted;
 - c. Inconsistency between:
 - i. Violation code and statute;
 - ii. Violation code and waiver penalty;
 - iii. Violation code and point assessment;
 - iv. Statute and waiver penalty;
 - v. Statute and point assessment; or
 - vi. Waiver penalty and point assessment.
 - d. Other omission rendering complaint defective
2. Without prejudice
 - a. First time – amend ticket and serve and refile
 - b. Second time for same defect = with prejudice

COMMON PROBLEMS

Hearing officer asks questions.

1. V.R.S.C.P. 6(a)(3)
 - a. Hearing officer may examine witnesses with objective of laying out the evidence pertaining to the contentions reasonably available to the parties
2. Be patient
3. Listen closely
4. Present rebuttal or rehabilitative evidence

QUESTIONS AND COMMENTS

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