STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T10-0085**
	:	
RODNEY LAMBERT	:	

DECISION

PER CURIAM: Before this Panel on January 26, 2011—Magistrate Goulart (Chair presiding), Judge Almeida, and Judge Parker, sitting—is Rodney Lambert (Appellant) appeal from a decision of Magistrate DiSandro, sustaining the charged following violation of G.L. 1956 § 31-14-2, "Prima facie limits." The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On August 15, 2010, Trooper Nicholas P. Ravello of the Rhode Island State Police (Trooper Ravello), while on patrol on Route 295 in Lincoln, Rhode Island, cited Appellant for the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial.

The trial began with Trooper Ravello testifying to the pertinent events of August 15, 2010. He testified that "at approximately 10:43 a.m. [he] was at a fixed radar post on Route 295. . . just south of Route 146." (Tr. at 2.) At that point, he witnessed two motorcycles traveling "faster than the normal flow of traffic" on Route 295.[1] Id. He

[1] The other motorcycle referenced was operated by Francesco Florio, who was also cited by Trooper Ravello for the same violation. The charge against Florio was also sustained at trial and he too filed an appeal to this Panel. That appeal is addressed in C.A. No. 10-0086

went on to testify that he obtained radar readings for both motorcycles. Id. Appellant's motorcycle was clocked at 83 miles per hour in a 65 mile per hour zone. Id. The trooper concluded his direct testimony by informing the court that the radar unit was calibrated both internally and externally prior to the commencement of his shift, and that he had been trained in the use of radar in 2005 when he was a recruit at the Rhode Island State Police Training Academy. Id.

The Appellant then took an opportunity to cross examine Trooper Ravello. He insisted that Trooper Ravello's true motive for the traffic stop was not the speed at which he was traveling, but really Appellant's involvement in a motorcycle club.[2] [You] pulled me over cuz [sic] I'm a member of a motorcycle club?" (Tr. at 3.) The trooper acknowledged due to Appellant's and the other motorist's outerwear, he did conduct a field interview regarding Appellant's involvement in a motorcycle club.[3] The field interview included questioning; however, the initial traffic stop was based solely on the reading from the trooper's radar unit Id.

Following the trial, the judge sustained the charged violation of § 31-14-2. Aggrieved by this decision, Appellant filed a timely appeal to this Panel. Our decision is rendered below.

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:

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[2] Appellant considers himself to be a member of the Kryptmen Motorcycle Club.

[3] The details of what exactly transpired during this field interview are unclear. The record does indicate that troopers questioned both Appellant and his riding companion concerning their involvement in the motorcycle club. The two were frisked, and their photographs were taken.

> "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:
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> (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 Insurance 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 Environmental 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge's decision is affected by error of law and clearly erroneous in view of the lack of reliable, probative, and substantial evidence on the record. Specifically, he maintains that he was the target of police harassment, and that he was pulled over merely because of his affiliation with the "Kryptmen" motorcycle club. Appellant also asserts that he was prejudiced due to the fact that an officer present during the incident was absent from the trial. Forthwith is this Panel's decision.

Traffic Stop

As he did at trial, Appellant once again maintains that the stop was pretextual and that he was pulled over because he was a member of a motorcycle club. In support of this claim, Appellant again points to the subsequent field interview conducted by Trooper Ravello concerning his involvement with the motorcycle club.

It is important to note from the outset that the trial magistrate's resolution regarding this issue was based in large part on a credibility determination. Whereas Appellant insisted the stop was motivated to harass or at the very least, investigate him, the trooper denied these allegations and insisted that it was based on evidence obtained from the radar unit. As noted above, our review is of a limited scope, and we are not to reassess credibility determinations made by the trial magistrate. See Link supra. As the members of this Panel did not have an opportunity to view the live trial testimony of [Appellant and Trooper Ravello], it would be impermissible to second-guess the trial

judge's "impressions as he . . . observe[d] [them] [,] listened to [their] testimony [and] . . .determine[ed] . . .what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

Assuming arguendo, that Appellants' affiliation with the Kryptmen Motorcycle Club did, in fact, play a part in Trooper Ravello's motivation to conduct the traffic stop, the speeding charge would not necessarily be invalid. A "profiled" or pretextual stop is "the practice of making [a] seemingly valid arrest [or in our case, traffic stop] for the sole purpose of carrying out an otherwise invalid search and seizure." State v. Scurry, 636 A.2d 719, 723 (R.I. 1994) (collecting cases). However, an arrest or a search "is not fatally pretextual merely because the police officers have a dual motive for making the arrest." Id. (citing Hines v. State, 709 S.W. 2d 65, 68 (Ark. 1986)). What can make an arrest or search fatally pretextual is if the initial portion of the police's action constitutes "only a sham or a front being used as an excuse for making a search. . . ." Taglavore v. United States, 291 F.2d 262, 265 (9th Cir.1961)[4]; see also Whren v. U.S., 517 U.S. 812, 813 (1996) ("flatly dismiss[ing] the idea that an ulterior motive might serve to strip [police] of their legal justification[]").

In the facts before us, it is clear that Trooper Ravello was acting well within his authority to conduct the traffic stop. His testimony reflects that all of the elements required to sustain a charge under § 31-14-2 were met. See State v. Sprague, 113 R.I. 351, 322 A.2d 36 (1974); see contra McKnight v. United States,183 F.2d 977, 978 (D.C. Cir. 1950.) (determining police action to be unconstitutionally pretextual where

[4] This Panel understands that Constitutional claims alleging profiling and other forms of pretextual police action usually aim to suppress evidence obtained by police once a motorist is detained and searched. See. United States v. Lefkowitz, 285 U.S. 452 (1932). Here, it almost seems reversed, as although Appellant takes umbrage with the pat down and field investigation, his aim here is to the penalty stemming from the speeding charge.

detectives purposely delayed arrest so that the target, an alleged bookmaker, could enter a house suspected of being a hub of illegal gambling activity only to provide detectives an opportunity to conduct a warrantless search). Accordingly, here, substantial rights of the Appellant have not been prejudiced.

Witnesses

Appellant also maintains that he suffered prejudice because a trooper, present at the traffic stop involved stop was not present in the court room on the day of the trial. We hold that if Appellant wished to cross examine the other trooper in an attempt to plea his case, he should have made procured his attendance pursuant to Rule 12 of Traffic Tribunal Rules of Procedure. Along with that, we note that Appellant failed to make any motion or objection at trial concerning the other trooper. The only time this issue of the other trooper was ever mentioned on the record is when Appellant uttered "[w]ait, there's supposed to be a second officer. I wasn't pulled over alone." (Tr. at 1.)

As noted above, Trooper Ravello testified that he was the one who calibrated the radar gun, initiated the traffic stop, and issued the citation. This testimony alone established prima facie case pursuant to Sprague. Secondly, we note here that Appellant failed to demonstrate in any way how this other trooper could be material in refuting the State's claim. Pursuant to the 'raise-or-waive' rule articulated by our Supreme Court, "[i]t is axiomatic that [this Panel] will not consider an issue raised for the first time on appeal that was not properly presented before the trial court.'" Pollard v. Acer Group, 870 A.2d 429 (R.I. 2005) (quoting State v. Gatone, 698 A.2d 230, 242 (R.I. 1997)). See also Chase v. Bouchard, 671 A.2d 794, 795 (R.I. 1996) ("One of our most settled doctrines in this jurisdiction is that a matter not raised before the trial court may not be

raised for the first time on appeal."); Ferland Corp. v. Bouchard, 626 A.2d 210, 217 (R.I. 1993) ("It is a well-settled rule of appellate practice that matters not brought to the attention of the trial justice may not be raised for the first time in this court on appeal."); Bouchard v. Clark, 581 A.2d 715, 716 (R.I. 1990) ("It is well established rule of law in Rhode Island that this court will not consider an issue raised for the first time on appeal that was not properly presented before the trial court."). As it was not raised at trial, the issue is hereby foreclosed.

Conclusion

This Panel has reviewed the entire record before it. Having done so, this Panel is satisfied that the trial judge's decision sustaining the charged violation of § 31-14-2 was not affected by error of law, clearly erroneous based on the reliable, probative, and substantial record evidence, characterized by abuse of discretion, or in violation of constitutional provisions. Finding that substantial rights of Appellant have not been prejudiced, we hereby deny his appeal and sustain the violation charged against him.

DATE: 3-17-11