STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF NORTH SMITHFIELD	:	
v.	:	C.A. No. T11-0010
ERIC WILCOX	:	

DECISION

PER CURIAM: Before this Panel on May 11, 2011—Chief Magistrate Guglietta (Chair, presiding), Magistrate DiSandro, and Magistrate Noonan, sitting—is Eric Wilcox's (Appellant) appeal from a decision of Judge Ciullo, sustaining the charged violations of G.L. 1956 § 31-14-2, "Prima facie limits"; G.L. 1956 § 31-15-16, "Use of breakdown lane for travel"; G.L. 1956 § 31-16-5, "Turn signal required"; and G.L. 1956 § 31-16-2, "Manner of turning at intersection." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 17, 2010, Sergeant William Merchant of the North Smithfield Police Department (Sergeant Merchant), after a high speed chase, issued Appellant citations for the above violations of the motor vehicle code. Appellant contested the charges, and the matter proceeded to trial before Judge Ciullo on February 17, 2011.

At trial, Sergeant Merchant testified that on March 17, 2010, North Smithfield Police Department's dispatch received a call of a suspicious vehicle in the area of Old Smithfield Road. The vehicle was described, generally, as a dark Subaru wagon. (Tr. at 4.) Sergeant Merchant responded to the area. When Sergeant Merchant approached the area, he began to follow a black Subaru. The vehicle proceeded on to Route 146 North. (Tr. at 5.) Sergeant Merchant observed

the vehicle "cut off two cars which forced them to hit their brakes and almost get rear ended by two other cars." Id. Sergeant Merchant activated his emergency lights and pursued the vehicle. Id.

The vehicle did not pull over, and a chase ensued. During the chase, Sergeant Merchant testified that he recorded the vehicle's speed at "110 miles [per] hour in a properly posted 55 miles [per] hour zone." (Tr. at 6.) Sergeant Merchant noted that his speedometer and radar were calibrated properly and that he had received training on speed detection. (Tr. at 8.) During the chase, Sergeant Merchant observed the vehicle overtake two other vehicles on the right by way of the breakdown lane. (Tr. at 6.) The chase continued into Massachusetts. The chase ultimately ended in Massachusetts when the vehicle's "engine blew." (Tr. at 7.)

Sergeant Merchant approached the vehicle and identified the driver as the Appellant, whom he detained. Sergeant Merchant issued the Appellant citations for the aforementioned violations of the motor vehicle code. Members of the Uxbridge, Massachusetts police department responded to the scene as well. Id.

At the close of the prosecution's case in chief, Appellant's counsel made a motion to dismiss the violations contending Appellant was illegally seized and detained by Sergeant Merchant, a Rhode Island police officer, in Massachusetts. Appellant's counsel further contended that Sergeant Merchant was not authorized to enter Massachusetts and arrest suspects. Appellant characterized the motor vehicle stop as a violation of Appellant's Fourth Amendment rights. Additionally, Appellant argued that Sergeant Merchant's on scene identification of Appellant was tainted and should be suppressed under the fruit of the poisonous tree doctrine. Without an identification, Appellant argued, the prosecution could not meet its burden that Appellant was the driver who committed the violations. The trial judge disagreed,

holding that the identification was not a product of the arrest, and denied the motion. Subsequently, the trial judge sustained the charges. Appellant timely filed the instant appeal.

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:

> 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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, the Appellant argues the trial judge's decision is characterized by abuse of discretion and error of law. First, Appellant argues that the trial judge employed unlawful procedure by basing his findings of fact on testimony from Sergeant Merchant that was elicited by the trial judge after the prosecution had presented its case in chief. Additionally, Appellant argues that since Sergeant Merchant's identification of the Appellant resulted from an unlawful traffic stop outside Sergeant Merchant's jurisdiction, the identification should be suppressed, thereby negating the Town's ability to sustain its burden in proving the violations.

I. Trial Judge's Questioning of Sergeant Merchant

Rule 614 of the Rhode Island Rules of Evidence reads in pertinent part: "[t]he Court may interrogate witnesses, whether called by itself or by a party." There is no condition on when a presiding judge may ask questions or seek clarification; in fact, "[i]t is not only the right, but it is the duty of the judge presiding in the trial of a case to lend his aid in the elicitation of the truth from witnesses. . . ." Beebe v. Greene, 34 R.I. 171, 188 A. 796 (1912).

Our Supreme Court has since amended that holding in subsequent cases. See State v. Nelson, 982 A.2d 602, 617 (R.I. 2009) ("As we repeatedly have emphasized, the parameters of judicial interrogation are narrowly confined to clarification of justifiably confusing matters for the jury.")(citing State v. Figueras, 644 A.2d 291, 294 (R.I. 1994); State v. Evans, 618 A.2d 1283, 1284 (R.I. 1993); State v. Giordano, 440 A.2d 742, 745 (R.I. 1982)). The instant case is

distinguishable from Nelson. It is important to note that the case at bar had no jury. Instead, a judge was the sole trier of fact. While Nelson did not address trials by judge alone, this Panel feels the questions posed by the trial judge in this case are not in conflict with the holding of Nelson.[1] After a careful review of the record, it appears that the trial judge was exercising his discretion under Rule 614 and interrogating the witness for clarification purposes.[2] Therefore, trial judge was well within the confines of Rule 614 when he posed questions to Sergeant Merchant.

Additionally, the Appellant's contention that "the Town had rested its case" and therefore the trial judge was precluded from asking questions is without merit. Moreover, though we find nothing objectionable in the trial judge's timing or line of questioning, we note parenthetically that Rule 614 goes on to hold: "[o]bjections to the calling of witnesses by the court or the interrogation by it may be made at the time or at the next available opportunity when the jury is not present." Expounding on that portion of the rule, our Supreme Court has held, that a judge's "examination is to be governed by the same rules as those which govern counsel, and his questions are equally open to exception." State v. Amaral, R.I. 245, 250, 132 A. 547, 550 (1926). Our review of the record fails to indicate any objection made by Appellant's counsel regarding the trial judge's decision to question Sergeant Merchant. Therefore, Appellant has failed to properly preserve his rights for this appeal. See State v. Hazard, 785 A.2d 1111, 1115 (R.I. 2001) ("Under our well-settled raise-or-waive rule, failure to make an argument to a trial justice waives the right to raise that argument on appeal.")

[1] We do not need to address the issue of whether the Nelson ruling applies to non-jury cases and purposefully decline to address the issue at this time.

[2] Regardless of the fact that trial judge's actions were procedurally correct, the testimony elicited by his questioning was essentially a reiteration of his own narrative that he provided in the Town's case in chief.

II. Unlawful Seizure

Appellant argues that the trial judge erred in sustaining the violations of the motor vehicle code because Sergeant Merchant's identification was made during an unlawful seizure of the Appellant. Appellant contends that Sergeant Merchant's arrest of the Appellant in Massachusetts constituted a violation of Appellant's Fourth Amendment rights. As a result of the violation, Appellant notes, Sergeant Merchant's identification should not have been admitted under the Fourth Amendment's exclusionary rule.[3]

As a general rule, the Fourth Amendment's exclusionary rule does not apply to civil hearings. State v. Campbell, 833 A.2d 1228, 1232 (R.I. 2003) (citing State v. Spratt, 120 R.I. 192, 194, 386 A.2d 1094, 1095-96 (1978)). In Campbell, our Supreme Court declined to apply the exclusionary rule to probation violation hearings. Id.; see I.N.S. v. Lopez-Mendoza, 468 U.S. 1032, 1050 (1984) (holding that exclusionary rule does not apply to civil deportation proceedings.) "Consequently, the defendant is not entitled to 'the full panoply of rights' inherent in a criminal trial," including the suppression of evidence under the exclusionary rule. Campbell, 833 A.2d at 1233 (quoting State v. Mendez, 788 A.2d 1145, 1147-1148 (R.I. 2002)). Finally, this Panel has previously refused to apply the Fourth Amendment's exclusionary rule, and we do not believe that the facts before us warrant a divergence from that approach. See Town of Warren v. Quatrrucci, T-08-0057 (June 17, 2009).

However, even assuming arguendo that the exclusionary rule does apply, the identification by Sergeant Merchant would not be subject to the rule. Faced with a petitioner attempting to exclude testimony identifying him as an assailant, the D.C. Court of Appeals held:

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[3] The exclusionary rule acts as a safeguard and excludes evidence obtained in violation of the Fourth Amendment. The rule's purpose it to act as "a prophylactic device designed to deter constitutional transgressions by law enforcement." State v. Casas, 900 A.2d 1120, 1135 (R.I. 2006).

> "[h]ere, it would seem that appellant would have us hold that he himself is the 'fruit' and accordingly he should have been excluded but we have ruled on more than one occasion that a court will not inquire into the manner in which an accused is brought before it, and that the legality or illegality of an arrest is material only on the question of suppressing evidence obtained by the arrest." Bond v. U.S., 310 A.2d 221, 225. (D.C. Cir. 1973) (citations omitted).

We feel that the rule espoused by the D.C. Court of Appeals is well-reasoned and persuasive authority for the case at bar. Illegal arrests leave open the possibility of suppressing tainted evidence, but it does not necessarily result in an automatic dismissal of all charges. See 1 LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 1.6 at 186 (4th Ed. 2004) ("In the typical case, the impact of the Fourth Amendment exclusionary rule is to bar from use at trial evidence obtained by an unreasonable search or seizure.") (Emphasis added.) We therefore conclude that even if it were determined that the Fourth Amendment was applicable in this matter; Sergeant Merchant's testimony regarding Appellant's identity is not "fruit" of the poisonous tree and therefore is not capable of being suppressed under the Fourth Amendment. This Panel can find no case to support the Appellant's position that his identity is protected under the Fourth Amendment. This Panel will not extend this crucial protection to the Appellant's identity in a civil case. Therefore, Appellant is afforded no Fourth Amendment protection from being identified by Sergeant Merchant.

III. Rhode Island Law on Interstate Pursuit

We next turn to the issue of whether Rhode Island law would allow the issuance of motor vehicle citations in light of the fact that while the infractions occurred in Rhode Island; the seizure of Appellant and the issuance of the citations occurred in a foreign jurisdiction, Massachusetts.

It is important to note, "[i]n the absence of a statutory or judicially recognized exception, the authority of a local police department is limited to its own jurisdiction." State v. Ceraso, 812 A.2d 829, 833 (R.I. 2003) (citing Page v. Staples, 13 R.I. 306 (1881)). Our General Assembly has outlined two such statutory exceptions contained in G.L. 1956 § 45-42-1 and G.L. 1956 § 12-7-19.[4] However, neither of those exceptions applies to the facts of this case or to the issue at bar regarding interstate police pursuit of traffic violations where there is no felony committed.

Failing to find justification or jurisdiction under Rhode Island statutes or common law, we next look to Massachusetts law to see if their law would allow this practice. See generally U.S. v. Di Re, 332 U.S. 581, 589 (1949) ("the law of the state where an arrest without warrant takes place determines its validity.") Massachusetts does have a statute authorizing out of state police departments the power to make arrests made within the Commonwealth. However, that statute, Mass. Gen. Laws ch. 276 § 10A, only vests such authority when the police officer is pursing a person "in order to arrest him on the ground that he has committed a felony in such other state. . . ." That statute provides no assistance to this Panel because no felony was alleged to have been committed.

We also note, and as Appellant pointed out in his brief, this very issue has previously come before the Massachusetts Supreme Judicial Court. In Commonwealth v. Savage, 719 N.E. 2d 473 (Mass. 1999), the Supreme Judicial Court declared a detainment by a Vermont state trooper illegal when he crossed over into Massachusetts and stopped a motorist suspected of drunken driving. Not only did the Vermont trooper not make any observations in his own

[4] Section 45-42-1 of the Rhode Island General laws states, in pertinent part, that "[w]hen the police chief of a city or town within the state . . . requests emergency police assistance from another police department within the state, the officers responding to the request shall be subject to the authority of the requesting chief and have the same authority . . . as a duly appointed police officer of the city or town making the request. . . ." Section 12-7-19 of the Rhode Island General laws states, in pertinent part, that "[a]ny member of a duly organized municipal peace unit of another city or town of the state who enters any city or town in close pursuit and continues within any city or town in such close pursuit of a person in order to arrest him or her on the ground that he or she has violated the motor vehicle code in the other city or town shall have the same authority to arrest" as members of that jurisdiction.

jurisdiction that would necessitate a hot pursuit, but his actions were also void ab initio, as he was in pursuit of a potential drunk driver, a misdemeanor not a felony. Id. at 477. After a careful review of Rhode Island and Massachusetts statutes on the point of law raised in this appeal, we can only hold that Sergeant Merchant was not permitted to enter Massachusetts and issue citations for traffic violations that occurred in Rhode Island and were not felonies.

IV. Public Policy on Interstate Pursuit

Furthermore, the second challenge before this Panel is to determine whether the police pursuit in this case violates the public policy of the State of Rhode Island on this specific issue. At the outset, this Panel wants to state unequivocally that Sergeant Merchant acted professionally and his actions were that of a reasonable police officer performing a public safety function. The main question is whether Rhode Island policy allows a police officer to go into another state to pursue and cite a motorist for a motor vehicle violation.

To answer this question, we follow one of the fundamental principles of separation of powers. The role of the judiciary is not to make the law, "but simply to determine the legislative intent as expressed in statutes enacted by the General Assembly." Chambers v. Ormiston, 935 A.2d 956, 965 (R.I. 2007) (citations omitted). Absent a statute to guide this Panel on this specific point raised by the Appellant in this case, we are left to address the public policy of allowing police officers the ability to enter a foreign jurisdiction and cite motorists. See Sindelar v. Leguia, 750 A.2d 967, 972 (R.I. 2000) ("Our assigned task is simply to interpret the [law], not to redraft it. . . ."); see also Caminetti v. United States, 242 U.S. 470, 485 (1917) ("It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and it that is plain, . . . the sole function of the courts is to enforce it

according to its terms.") Thus, it will be public policy concerns that drive this Panel and its decision.

We understand that dismissing the violations could be perceived as a signal to reckless motorists to "run for the border" when being pursued by the police for violations of the motor vehicle code. However, we must determine whether the actions of the officer are proper under Rhode Island law or policy. We have discussed Rhode Island law on this issue. We must now conclude from the limitations placed on police officers by the relevant statutes that it is the policy of the State not to allow the issuance of citations by police officers in foreign jurisdictions without the facts of the case fitting into the statutory exceptions previously discussed. We interpret the policy of Rhode Island is to prohibit the inter-state issuance of citations for violations of the motor vehicle code. More succinctly stated, if the General Assembly wanted Rhode Island law enforcement officials to have the authority to issue citations in other states they would have statutorily provided such a measure.

It is also important to note that Sergeant Merchant had a remedy available to him. Sergeant Merchant could have notified Massachusetts authorities when he realized Appellant had crossed into Massachusetts. Sergeant Merchant could then have received the proper driver identification information, and then mailed the ticket to the registered owner of the vehicle, who, as it turned out, was the Appellant and/or the driver. Any problems the prosecution could have faced with identification at trial could easily have been solved by utilizing corroborating evidence from the Uxbridge Police.

It is nonetheless with regret that we reverse the trial judge's decision in this matter. We have no doubt that Appellant committed the alleged violations. Appellant's decision to drive recklessly and then lead a dutiful police officer on a high-speed chase six miles into

Massachusetts put himself, the officer, and everyone else on the road in grave danger. However, for the limited purposes of evaluating the propriety of these violations, our reading of the relevant statutes and common law leave us no choice but to find error in the trial judge's decision to sustain the charges. The law in Rhode Island on this issue provides us with no other result. As a result, the trial judge's decision is hereby reversed and the charges against the Appellant dismissed.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision is in violation of statutory provisions and affected by other error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violations dismissed.