

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF JAMESTOWN

v.

STEVEN WHITE

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C.A. No. T08-0141

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on December 17, 2008, Magistrate DiSandro (Chair) Judge Almeida,¹ and Magistrate Cruise presiding, is the State of Rhode Island's (State) appeal from a decision of Magistrate Noonan, granting Steven White's (Appellee) Motion to Dismiss the charged violations of G.L. 1956 §§ 31-27-2.1, "Refusal to submit to chemical test," and 31-27-2.3, "Revocation of license upon refusal to submit to preliminary breath test." The Appellee was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

The facts underlying the instant appeal were stipulated to prior to trial. On September 20, 2008, at approximately 11:45 p.m., Officer Scott Sullivan (Officer Sullivan) of the Jamestown Police Department was traveling westbound on Route 138 when he observed a vehicle approaching from behind at a high rate of speed. (State's Mem. at 1.) As the speeding vehicle overtook Officer Sullivan's location and headed towards the Jamestown Bridge, Officer Sullivan observed the following while both vehicles were located within the territorial jurisdiction of Jamestown: the suspect vehicle,

¹ Judge Almeida sat for Magistrate Noonan on this matter.

traveling at a speed in excess of the posted speed limit, drifted over the center dividing line on one occasion and over the fog line on two occasions. (State's Mem. at 1-2.)

Officer Sullivan waited until his cruiser and the speeding vehicle had reached the North Kingstown side of the Jamestown Bridge before activating his cruiser's emergency lights and attempting to initiate a traffic stop. (State's Mem. at 2.) The operator of the speeding vehicle, later identified as Appellee, was subsequently arrested on suspicion of driving while under the influence of intoxicating liquor and/or drugs. Id. Following his arrest, Appellee was charged with the aforementioned motor vehicle offenses as well as other offenses not relevant to the instant appeal. Id.

On October 16, 2008, the parties met with the trial magistrate for a brief in-chambers status conference. Id. At the conference, counsel for Appellee argued that the charged violations should be dismissed because Officer Sullivan's non-emergency arrest of Appellee occurred outside his territorial jurisdiction. Id. In support of his dismissal motion, Appellee focused the trial magistrate's attention on the parties' stipulation that the conduct giving rise to the traffic stop occurred entirely in Jamestown, while the pursuit of Appellee and traffic stop occurred in North Kingstown. Id. Following oral argument, the trial magistrate granted the motion and dismissed the charged violations of §§ 31-27-2.1 and 31-27-2.3. The trial magistrate's decision to dismiss the charged violations did not rest, in whole or in part, upon the so-called "mutual aid agreement" in effect between Jamestown and North Kingstown.² Id.

² Pursuant to G.L. 1956 § 45-42-2,

where the territories of one city or town lies adjacent to another city or town, the chiefs of police of the adjacent city or town may enter into an agreement, which is subject to approval by each city or town council by adoption of a resolution in support of it, by which the chief may request that the other city or town police force provide assistance in a non-

Aggrieved by the trial magistrate's decision, the State has filed a timely appeal to this Panel. Forthwith is this Panel's decision.

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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made following unlawful procedure;
- (4) Affected by another error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge'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 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 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

emergency situation for all those police services prescribed by law within any portion of the jurisdiction of the city or town of the chief granting the authority.

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, the State argues that the trial magistrate’s decision to dismiss the charged violations on jurisdictional grounds is affected by error of law. It is the State’s contention that where, as here, a mutual aid agreement is in effect between two adjacent jurisdictions with respect to the exercise of non-emergency police power, a law enforcement officer may, upon observing a motor vehicle offense within his or her territorial jurisdiction, pursue the suspect vehicle into an adjoining jurisdiction and effectuate an arrest there; notice to or permission from the chief of police of the city or town where the arrest occurs is not required. See G.L. 1956 § 45-42-2. To construe § 45-42-2 so as to require the pursuing officer to seek out a request for assistance from the chief of police of the neighboring jurisdiction prior to making an arrest there would, according to the State, frustrate the legislative purpose of “permit[ting] local government units to make the most efficient use of their [police] powers by enabling them to cooperate with other localities on the basis of mutual advantage” Section 45-40-1. In essence, the State argues that the “authority, powers, duties, privileges and immunities” vested in a law enforcement officer in his or her jurisdiction remain intact when the officer effectuates a arrest in an adjacent jurisdiction, so long as both jurisdictions are parties to the same mutual aid agreement.

Before reaching the merits of the State’s appeal, this Panel will review the controlling legal authority on the issue of extra-territorial traffic stops. In State v. Ceraso, 812 A.2d 829 (R.I. 2002), our Supreme Court considered whether “the trial justice erred in denying [the defendant’s] motion to suppress for lack of jurisdiction on the part of the Newport police to arrest him in neighboring Jamestown.” Id. at 831. Relying on well established precedent, the Court reiterated that in the absence of a statutory or judicially recognized exception, the authority of a local police department is limited to its own jurisdiction. Id. at 833 (citing Page v. Staples, 13 R.I. 306 (1881)). However, the Court made clear that there are only two recognized exceptions to the bright-line rule established by Page and its progeny: the so-called “hot pursuit” exception and the “emergency police power” exception. Id.

Under the “hot pursuit” exception established by G.L. 1956 § 12-7-19,³ a law enforcement officer may cross into another jurisdiction when in “hot pursuit” of a suspect. The Ceraso Court made clear that when a police officer is already outside his territorial jurisdiction at the time his or her suspicions concerning a motorist are aroused, the “hot pursuit” exception to the Page rule is inapplicable. Id.

³ Section 12-7-19 reads

Any 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 and hold in custody the person as members of a duly organized municipal peace unit of any city or town have to arrest and hold in custody a person on the ground that he or she has violated the motor vehicle code in any city or town.

Under the “emergency police power” exception established by G.L. 1956 § 45-42-1,⁴ a law enforcement officer from one jurisdiction may exercise authority in another jurisdiction during emergency situations. Id. (citing State v. Locke, 418 A.2d 843, 847 (R.I. 1980), and Cioci v. Santos, 99 R.I. 308, 315, 207 A.2d 300, 304 (1965)). Applying the tools of statutory construction to determine the precise meaning of § 45-42-1, the Ceraso Court explained that the “General Assembly [in passing § 45-42-1] clearly envisioned situations where one police department would need the assistance of another police department and would need the assistance for emergency situations” Id. at 834. The Court stressed that the conferral of jurisdiction upon a law enforcement officer from another municipality need not be formal, and that the officer upon whom jurisdiction is conferred need not “engage in some stylized ritual in order to officially accept” the “authority, powers, duties, privileges, and immunities” of the conferring police agency. Id. at 835. “[I]n handling emergency situations in the safest and most efficient manner possible,” it is sufficient that the officer upon whom jurisdiction is conferred expressed a willingness to “sav[e] lives and property” in the conferring jurisdiction, or that an officer of the conferring jurisdiction requested such assistance and assistance was rendered. Id.

Turning to the facts of the case at bar, it is clear that Officer Sullivan’s actions on the date in question do not fit neatly into either of the two recognized exceptions to Page,

⁴ Section 45-42-1 reads:

When the police chief of a city or town within the state or his or her designee 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, powers, duties, privileges, and immunities as a duly appointed police officer of the city or town making the request, until the requesting chief of police discharges and releases the assisting police officers to their own departments.

as set forth in Ceraso. The “hot pursuit” exception of § 12-7-19 is inapplicable, as Officer Sullivan did not enter the territorial jurisdiction North Kingstown “in close pursuit” of Appellee; rather, the record reflects that his pursuit of Appellee’s vehicle did not commence until both his vehicle and Appellee’s had already entered North Kingstown. Despite the fact that Officer Sullivan observed several motor vehicle offenses on the Jamestown side of the span, he “waited until [Appellee’s] vehicle [had] reached the [North Kingstown] end of the Jamestown Bridge before activating his emergency lights” and attempting to initiate a traffic stop of Appellee’s vehicle. (State’s Mem. at 2.) The “emergency police power” exception of § 45-42-1 is likewise inapplicable, as the record is devoid of evidence that would indicate that Officer Sullivan was responding to an emergency situation that posed a serious threat to life and property in North Kingstown. Further, the State concedes that Officer Sullivan’s stop of Appellee’s vehicle in North Kingstown was “non-emergency.” (State’s Mem. at 1.)

As our Supreme Court recently recognized in State ex rel. Town of Portsmouth v. Hagan, 819 A.2d 1256, 1259 (R.I. 2003), “the jurisdictional borders confining the authority of the state’s various police departments, as enunciated in Page, have become blurred by time and necessity.” However, these jurisdictional borders, already blurred, would disappear entirely were this Panel to adopt the State’s interpretation of § 45-42-2. While the members of this Panel “acknowledge the practical realities of police investigations into unlawful conduct,” we conclude that allowing law enforcement officers to make extra-territorial arrests in the absence of a “hot pursuit” or unfolding emergency situation in an adjacent jurisdiction would severely undermine “the strong public interest underlying jurisdictional restraints over law enforcement personnel and . .

. the Legislature['s] [intent] [to] . . .grant[] limited authority to an officer to arrest a suspect outside his or her jurisdiction.” Id. at 1261. To date, our Supreme Court has recognized only two statutory exceptions to Page; for the aforementioned reasons, we refuse to recognize a third statutory exception now. Accordingly, the trial magistrate’s decision to dismiss the charges on jurisdictional grounds was unaffected by error of law and will be upheld on appeal.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge’s decision to dismiss the charged violations of §§ 31-27-2.1 and 31-27-2.3 was unaffected by error of law. Substantial rights of the State have not been prejudiced. Accordingly, the State’s appeal is denied.

ENTERED: