STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF WOONSOCKET	:	
	:	
v.	:	**C.A. No. T13-0017**
	:	**12412503505**
ALAN DEBLOIS	:	

DECISION

PER CURIAM: Before this Panel on July 31, 2013—Magistrate Goulart (Chair), Chief Magistrate Guglietta, and Administrative Magistrate DiSandro III, sitting—is the City of Woonsocket's (City or Appellant) appeal from a decision of Magistrate Noonan, dismissing Alan Deblois's (Appellee) charged violation of G.L. 1956 § 31-27-2.1, "Refusal to submit to chemical test." The City was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On August 19, 2012, Patrol Officer Zachary Bienkiewicz of the Woonsocket Police Department charged Appellee with the aforementioned violation of the motor vehicle code. Responding to a report of a motor vehicle accident, police found Appellee standing outside an unoccupied vehicle parked in the road in front of 458 River Avenue. (Ex. A, Arrest Report, at 1.) The Officer arrested Appellee and charged him with "Driving Under the Influence" pursuant to § 31-27-2; "Refusal to Submit to a Chemical Test" pursuant to § 31-27-2.1; and a "Right Half of Road" violation pursuant to § 31-15-1. Id.

As noted in Appellee's arrest report, a video recording was made of both the advisement of his rights and the booking procedure. Id. According to the Woonsocket Police Department, it is department policy that videos are automatically recorded over fifteen to twenty days following

an arrest. Thus, pursuant to policy, Appellee's video was automatically recorded over fifteen to twenty days following the arrest.

Prior to trial, Appellee brought a motion to dismiss the charges on the ground that the City had destroyed exculpatory evidence—namely, the video recording of Appellee's arrest and booking rights. The matter proceeded to a hearing on February 28, 2013.

At the hearing, Counsel for Appellee (Counsel) stated that a public defender initially assigned to the case first made a discovery request for the booking rights video on September 5, 2012, seventeen days after Appellee's arrest. (Tr. at 1.) Thereafter, the Roger Williams University Defense Clinic undertook representation of Appellee and made three subsequent discovery requests for the video on October 10, 2012; November 7, 2012; and February 1, 2013. Id. On February 4, 2013, the Woonsocket Police Department sent a letter to Counsel, stating that it could not provide the requested recordings "due to the length of time which has passed since [Appellee's] arrest." Id. at 5.

Appellee moved to dismiss the case on the grounds that the City had improperly destroyed the booking video in violation of his due process rights and Rhode Island discovery rules. Id. at 1. In granting the motion to dismiss, the Trial Magistrate found that the City had destroyed exculpatory evidence and committed discovery violations by failing to provide the video once it had been requested on September 5, 2012. Id. at 14-23. It is from the grant of this motion that the City now appeals to this Panel.

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 prejudiced 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 Ins. Co. v. James, 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." Id. (citing Envtl. Sci. 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." Id.

Otherwise, it must affirm the hearing judge's or magistrate's conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that the Trial Magistrate's decision was not supported by reliable, probative, and substantial evidence on the whole record. Appellant bases its argument on the alleged failure of Appellee to meet his burden in establishing a due process violation under State v. Garcia, 643 A.2d 180 (R.I. 1994), which addresses destruction of evidence in criminal cases. Specifically, the Appellant contends that the Appellee failed to meet his burden of proving that the Appellant destroyed the video in bad faith. In response, Appellee contends that the Trial Magistrate determined that the Appellant had acted in bad faith, and this decision was supported by the evidence presented at the hearing.

A

State v. Garcia

Both parties relied on the three-prong test laid out by the U.S. Supreme Court in U.S. v. Youngblood, 488 U.S. 51 (1988) and U.S. v. Trombetta, 467 U.S. 479 (1984), in analyzing whether Appellee's due process rights had been violated by the failure of the Woonsocket Police to preserve evidence. The tripartite test, adopted by Rhode Island in Garcia, requires

> "a defendant to establish that the proposed evidence possesses, first, an exculpatory value that was apparent before evidence was destroyed, and second, is of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. Third, a defendant also must demonstrate that the failure to preserve the exculpatory evidence amounted to bad faith on the part of the state." Garcia, 643 A.2d at 185 (internal quotations omitted).

In Garcia, the defendant was charged in a criminal proceeding with two counts of felony arson and two counts of felony murder. Id. at 182. During the pendency of the case, it was revealed that the fire investigator reviewed his own notes, extracted what he believed to be relevant, and destroyed the rest of the notes. Id. at 184. On appeal from a conviction of the two felony murder counts, the Rhode Island Supreme Court applied the tripartite test and held that the defendant's due process rights had not been violated through the fire inspector's destruction of the notes. Id. In its decision, the Court emphasized the significance between state actions taken in good faith and those taken in bad faith. Id. at 185. The Court stated, "[w]hen evidence is missing or destroyed, 'unless a criminal defendant can show bad faith on the part of the [state], failure to preserve potentially useful evidence does not constitute a denial of due process of law.'" Id. (citing Youngblood, 488 U.S. at 58) (emphasis added).

B

Applicability of State v. Garcia to Civil Cases

This Panel has applied the Garcia tripartite test to civil violations in the past. See State of Rhode Island v. Brian Priest, T08-0048 (2006). In Priest, this Panel used the test to determine whether the Burrillville Police Department acted in bad faith by negligently recycling a video tape of defendant at the police station. The videotape was recycled pursuant to departmental policy. In its decision, this Panel found that the Trial Magistrate misapplied the prevailing legal standard for "bad faith" and subsequently cited the standard adopted by our Supreme Court in State v. Werner, 851 A.2d 1093, 1106 (R.I. 2004) (stating "bad faith destruction of evidence occurs when the police know [the evidence] could form a basis for exonerating the defendant but destroy it anyway").

Here, this Panel is again faced with the same circumstance of a police department recycling a videotape of the Appellee and thus destroying potentially exonerating evidence. However, in his findings, the Trial Magistrate stated that he was "not entirely sure" that the Garcia test should apply here, as it may be "too high a standard for a civil violation." (Tr. at 16.) This Panel agrees.

In civil cases in Rhode Island, the spoliation of evidence by a party to litigation "may give rise to an inference that the destroyed evidence was unfavorable to that party," but does not rise to the level of a due process violation requiring dismissal of the case. See Tancrelle v. Friendly Ice Cream Corp., 756 A.2d 744, 748 (R.I. 2000); see also Black's Law Dictionary (10th ed. 2014) (defining spoliation as "the intentional destruction, mutilation, alteration, or concealment of evidence"). Notably, in a civil case, a showing of bad faith is not "essential" in order for evidence regarding spoliation to be admitted against the destroying party, but if bad faith is proven, "dismissal of the plaintiff's case . . . may be appropriate." Farrell v. Connetti Trailer Sales, Inc., 727 A.2d 183, 186-187 (R.I. 1999) (stating "[t]his Court has held that although a showing of bad faith may strengthen the inference of spoliation, such a showing is not essential") (emphasis added); see also McGarry v. Pielech, 47 A.3d 271, n.7 (R.I. 2012) ("The plaintiff is not required to show that the defendant destroyed or lost the documents in bad faith. Spoliation of evidence may be innocent or intentional or somewhere in between.")

While this Panel has relied on the Garcia test in the past, we now find that the civil law analysis set forth by the Rhode Island Supreme Court in Farrell and Tancrelle, applies to civil chemical test violation cases, where appropriate. This Panel's departure from the criminal law analysis now places the question before us of whether the Appellant could satisfy either the past criminal analysis or the new civil analysis. We now turn to that discussion.

C

Inadequacy of Findings

Under the civil law analysis set forth in Farrell and Tancrelle, the deliberate or negligent destruction of relevant evidence by a party to litigation may give rise to an inference that the destroyed evidence would have been unfavorable to the despoiler. A showing of bad faith on the part of the despoiler is not necessary to permit the spoliation inference; however, it may strengthen the inference. Farrell, 727 A.2d at 186. This is a departure from the Garcia requirement that bad faith must be directly attributable to the despoiler.

Here, pursuant to the Garcia criminal law analysis, Appellee claimed there was bad faith on the part of the City; however, Appellee offered virtually no evidence of the City's alleged bad faith in destroying the booking video. Regardless, the Trial Magistrate found that "[t]he bad faith in this action appears . . . to be self-evident." (Tr. at 20.) Specifically, the Trial Magistrate noted that

> "once the request is made from the public defender, once the request is ignored by the police department, once the tape is destroyed by the police department, and once the city prosecutor does nothing to impede this destruction, I believe that there's been . . . bad faith on the part of the State." Id. at 21.

The City argued that the destruction was not in bad faith, as booking videos are automatically destroyed after fifteen to twenty days, the deletion was inadvertent. The Trial Magistrate rejected this argument on the grounds that the City has the ability to and has in the past copied the videos before their destruction and thus not copying the video here was in bad faith. Id.

Despite the Trial Magistrate's decision, our review of the record is devoid of evidence indicating any findings of fact to show that Appellant destroyed the booking video in "bad faith." The record demonstrates that Appellee did not provide any testimony or any facts relating to his

burden of proving that the City destroyed the video in bad faith beyond one affidavit provided by the initial public defender regarding her initial discovery request. Id. at 13-14. Appellee's argument relied on the contention that the City destroyed the video after receiving the Appellee's discovery request; nowhere in the record did Appellee present evidence supporting this conclusion. Id. at 21. Without testimony or facts indicating whether or not the video was even still in existence at the time of the request, and whether or not anybody at the station had viewed the video, the request alone is not enough. See e.g., State v. Werner, 851 A.2d 1093, 1105 (R.I. 2004) (rejecting defendant's bad faith claim because he "fail[ed] to demonstrate that the alleged exculpatory value was known to the police before the original tape was destroyed"); Farrell, 727 A.2d at 187 (finding that the trial court abused its discretion in remedying a spoliation of evidence claim "because defendants introduced no evidence of bad faith or willful destruction of [the] evidence"). The simple fact that Appellee requested a copy of the booking video on September 5th, while potentially relevant, is insufficient by itself to conclusively show bad faith.

Moreover, the Trial Magistrate's findings were impermissibly based on generalized statements that were not supported by the evidence of record. The Trial Magistrate relied on the conclusion that since "we know from other departments, and this department included, [that] in the past, they have presented videotapes," the destruction of the video could not have been inadvertent. Id. at 17. Again, Appellee did not present any evidence or testimony as a foundation for this conclusion. Therefore, under the Garcia criminal analysis, Appellee did not meet his burden of establishing bad faith on the part of the Appellant.

Under the civil law analysis, if bad faith is proven, "dismissal of the plaintiff's case . . . may be appropriate." Farrell, 727 A.2d at 186-187. This Panel finds that the City did not act in bad faith in recycling the videotape. Therefore, the spoliation of the videotape by the City "may

give rise to an inference that the destroyed evidence was unfavorable to [the City]," but does not rise to the level of a due process violation requiring dismissal of the case. Tancrelle, 756 A.2d at 748.

Since this Panel finds that Appellee did not adequately prove that the City acted in bad faith, and because under a civil law analysis the spoliation of evidence does not give rise to the level of a due process violation requiring dismissal, Appellee's motion to dismiss under criminal or civil law grounds fails. See Garcia, 643 A.2d at 185; Farrell, 717 A.2d at 187. Though this Panel has relied on a criminal law analysis for guidance in the past, this Panel now finds that following civil standards, as cited in Tancrelle and Farrell, are the appropriate standards for this Panel in a civil law context. We find these cases appropriate and persuasive.

Conclusion

This Panel has reviewed the entire record before it. Having done so, it is this Panel's decision that the Trial Magistrate's findings were clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and this matter is remanded to the trial calendar for a hearing on the underlying charges to determine whether the Appellee is, in fact, guilty or innocent of the violation regarding § 31-27-2.1.

ENTERED:

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Chief Magistrate William R. Guglietta

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Administrative Magistrate Domenic A. DiSandro III

DATE: _____

Goulart, Alan R., M., concurring in the judgment: I concur in the judgment of the majority that the City did not act in bad faith by recycling the videotape. However, I write separately to express my belief that the Garcia criminal analysis is the appropriate standard for this Panel to follow when faced with a spoliation of evidence claim. See State v. Garcia, 643 A.2d 180, 184 (R.I. 1994).

The majority relied solely on the fact that Traffic Tribunal adjudications are civil proceedings in determining that the civil standard announced in Tancrelle and Farrell is the appropriate standard for this Panel to follow in spoliation of evidence cases. See Traffic Trib. R. P. 2; see also Farrell v. Connetti Trailer Sales, Inc., 727 A.2d 183, 186 (R.I. 1999); Tancrelle v. Friendly Ice Cream Corp., 756 A.2d 744, 748 (R.I. 2000). However, this reliance seemingly disregards the fact that Traffic Tribunal proceedings are in substance and effect quasi-criminal.

A civil proceeding is in substance and effect quasi-criminal if its "object is to penalize for the commission of an offense against the law." See Board of License Com'rs of Town of Tiverton v. Pastore, 463 A.2d 161, 165 (R.I. 1983) (finding a civil license revocation proceeding to be in substance and effect a quasi-criminal proceeding because its object "is to penalize for the commission of an offense against the law"); see also State v. One 1990 Chevrolet Corvette VIN: 1G1YY3388L5111488, 695 A.2d 502 (R.I. 1997) (examining in a civil in rem proceeding whether the proceeding is "so punitive in either purpose or effect" as to be equivalent to a criminal proceeding). Traffic Tribunal proceedings are in substance and effect quasi-criminal because the object is to "penalize for the commission of an offense against the law"—that offense being non-compliance with the motor vehicle code. See Levesque v. R.I. Dept. of Transportation, 626 A.2d 1286 (R.I. 1993) ("Section 31–27–2.1 imposes several penalties upon persons who refuse to submit to chemical tests . . ."); Lopes v. Phillips, 680 A.2d 65 (R.I. 1996) (addressing the penalties for violations of chapter 47 of the motor vehicle code in order "to protect the interests of the public when driving upon the roadways of the state of Rhode Island"); State v. Sabetta, 672 A.2d 451 (R.I. 1996) (addressing the penalties for any person convicted of violating chapter 26 section 1 of the motor vehicle code, § 31-26-1). Therefore, while I recognize that Traffic Tribunal proceedings are civil in nature, these proceedings are in substance

and effect quasi-criminal, and thus, the Garcia criminal analysis is the appropriate standard for this Panel to follow when faced with a spoliation of evidence claim.

Following the Garcia criminal analysis harmonizes with the purpose of the spoliation of evidence doctrine. The doctrine arises from the constitutional underpinning that a defendant has a guaranteed right to a fair hearing, and in extension, the opportunity to present a full defense. See Garcia, 643 A.2d at 184 (quoting California v. Trombetta, 467 U.S. 479, 485 (1984) ("in order to safeguard a criminal defendant's due process right to a fair trial, the Supreme Court 'has developed what might loosely be called the area of constitutionally guaranteed access to evidence'")). This opportunity calls for "the delivery of exculpatory evidence to a defendant [in order to] protect the innocent from erroneous conviction and ensure the integrity of our criminal justice system." Trombetta, 467 U.S. at 484.

Of critical distinction when faced with the spoliation of evidence is the difference between "material exculpatory evidence and evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." Arizona v. Youngblood, 488 U.S. 51, 58 (1988). The distinction, made by the United States Supreme Court in Youngblood, stemmed from the Court's unwillingness to read the "fundamental fairness" requirement of the Due Process Clause, as "imposing on the police an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution." Id. Therefore, in an attempt to limit the extent of the police's obligation to preserve evidence to reasonable bounds, the Court determined that the failure to preserve potentially useful evidence does not constitute a denial of due process of law unless a criminal defendant can show bad faith on the part of the police. Id.

Today, the majority has chosen to follow a civil standard which does not require a bad faith showing in order to "permit the inference that the destroyed evidence would have been unfavorable to the spoliating party." See Farrell, 727 A.2d at 186. In doing so, the majority has, essentially, erased the reasonable bounds erected by the Court in Youngblood, and adopted by our Supreme Court in Garcia, 643 A.2d at 180. Perhaps unintentionally, the majority has imposed upon police a duty to retain and to preserve all material that might potentially be of conceivable evidentiary significance in a prosecution for a violation of the motor vehicle code. The rippling effects of this imposition are extensive.

For instance, at hand, this Panel is faced with the destruction of a video tape which depicted the advisement of Appellant's rights and the booking procedure at the Woonsocket Police Department. It is the Department's policy that videos are automatically recorded over fifteen to twenty days following an arrest. (Tr. at 1.) Similar policies are in effect in departments across Rhode Island. See State of Rhode Island v. Brian Priest, T08-0048 (2006) (This Panel reviewed whether the Burrillville Police Department acted in bad faith by negligently recycling a video tape of defendant at the police station.) However, as a result of the majority's decision today, this automatic destruction and corresponding inability to produce the tape at a later traffic violation proceeding permits the inference that the destroyed evidence was unfavorable to that police department. See Tancrelle, 756 A.2d at 748 (citing Black's Law Dictionary 1086 (6th ed. 1990) (stating "[u]nder the doctrine omnia praesumuntur contra spoliatorem, '[a]ll things are presumed against a despoiler or wrongdoer,' the deliberate or negligent destruction of relevant evidence by a party to litigation may give rise to an inference that the destroyed evidence was unfavorable to that party"). To avoid this inference would assumingly require a tremendous amount of department resources and consistent preservation of

potentially useful evidence for an undetermined amount of time. The majority, in reaching its conclusion, seemingly fails to appreciate and to consider this significant impact.

Moreover, the spoliation of evidence claim at hand is wholly distinct from the claims presented to the Court in Farrell and Tancrelle. In both Farrell and Tancrelle, the destruction of potentially relevant evidence was done by individual private parties to litigation, and the evidence was only relevant in a civil context and could not subsequently be used in a criminal prosecution. See Farrell, 727 A.2d at 187 (in a damages action against a manufacturer of a motor home for defective repairs the owners of the motor home disposed of the motor home prior to trial); Tancrelle, 756 A.2d at 748-49 (in a personal injury action against Friendly's Ice Cream Corp., Friendly's should have retained possession of the stairs, where the injury occurred, rather than replacing the stairs prior to trial). Here, the potentially relevant evidence is similar to the evidence spoliated in Garcia and Youngblood in that a police department is the spoliating party, and the evidence weighs on Appellant's guilt or innocence of a violation of the law. See Garcia, 643 A.2d at 184 (whether in a criminal prosecution, the fire investigator's destruction of notes was done in bad faith); Youngblood, 488 U.S. 51 (whether the failure of police to preserve the potentially useful evidence of clothing and semen samples was done in bad faith). The destroyed material in Youngblood, Garcia, and Appellant's case is potentially exonerating evidence. In all three cases the potentially useful evidence bore directly upon the defendant's fundamental right to a fair hearing. In Farrell and Tancrelle the destruction of potentially relevant evidence harmed, at most, the amount of recovery. Farrell, 727 A.2d at 187; Tancrelle, 756 A.2d at 748-49. For these reasons, relying on the disparate cases of Farrell and Tancrelle for guidance is misplaced.

Utilizing the Garcia criminal analysis effectuates this Tribunal's duty to provide for the fair and just determination of every traffic violation while simultaneously refraining from placing an undue burden on police departments, a burden that the Court in Youngblood was conscious to avoid. In the past, this Panel has consistently followed the Garcia framework when faced with a spoliation of evidence claim and should not now depart from this precedent. Accordingly, while I have no hesitation concurring with the majority's judgment, I do not join its opinion.

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Magistrate Alan R. Goulart (Chair)

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Date