STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T10-0086**
	:	
FRANCESCO FLORIO	:	

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on January 26, 2011—Magistrate Goulart (Chair, presiding), Judge Almeida, and Judge Parker, sitting—is Francesco Florio's (Appellant) appeal from a decision of Judge 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 "at approximately 10:43 a.m. [he] was at a fixed radar post on . . .Route 295 just south of Route 146." (Tr. at 1.) At that point, he witnessed two motorcycles traveling "faster than the normal flow of traffic" on Route 295.[1] Id. Trooper

[1] The other motorcycle referenced was operated by Rodney Lambert, who was also cited by Trooper Ravello for the same violation. The charge against Lambert was also sustained at trial and he too filed an appeal to this Panel. That appeal is addressed in C.A. No. 10-0085.

Ravello went on to testify that he obtained radar readings for both motorcycles. Id. Appellant's motorcycle was clocked at 87 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. At the outset of his questioning, he informed the trial magistrate that his "questions were the same as Rodney." (Tr. at 1.) Essentially, he incorporated the argument of the other stopped motorcyclist, Rodney Lambert. During Lambert's trial which occurred just prior to Appellant's, Lambert insisted that the Trooper Ravello used the speeding violation as a front so that he could investigate, and in his opinion, harass both men due to their alleged involvement in a club known as the Kryptmen Motorcycle Club. At Appellant's trial Trooper Ravello again acknowledged that due to the outerwear donned by both men, he did, in fact, conduct a field interview regarding Appellant's involvement in a motorcycle club.[2] The field interview included questioning and taking photographs. Id. However, the Trooper insisted the traffic stop itself was precipitated solely from the reading from his radar unit and that the notion to further investigate their involvement in the motorcycle club came after the stop had taken place. Id.

Appellant also questioned the trooper as to why he pulled the two men over on 146, if the he obtained a radar reading on Route 295. (Tr. at 3.) To this question, Trooper Ravello explained; "[b]y the time I caught up to them they were already at [the]

[2] The details of what exactly was 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.

Route 146 exit and at that time I don't think at that interchange that's a safe spot. . . ." Id. Therefore, out of safety concern, the trooper waited until they exited onto Route 146 to conduct the traffic stop. Id.

The judge, finding the testimony of Trooper Ravello to be credible, 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:

> "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.

Traffic Stop

Appellant 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

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 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 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 when the initial portion of the police's action is "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).[3]

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. 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 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). Substantial rights of the Appellant have not been prejudiced.

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.

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[3] This Panel understands that Constitutional claims alleging 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 Appellant's claim of pretext is not aimed at the search or pat down, but rather at dismissing the penalty stemming from the alleged pretextual action.

Finding that substantial rights of Appellant have not been prejudiced, we hereby deny his appeal and sustain the violation charged against him.

ENTERED:

DATE: 3/14/11