STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF PAWTUCKET	:	
	:	
v.	:	**C.A. No. T12-0032**
	:	**12408502243**
JARRED LYNCH	:	

DECISION

PER CURIAM: Before this Panel on November 8, 2012—Judge Ciullo (Chair, presiding), Administrative Magistrate Cruise, and Magistrate Goulart sitting—is Jarred Lynch's (Appellant) appeal from a decision of Magistrate DiSandro, sustaining the charged violations of G.L. 1956 § 31-15-11, "Laned Roadways," and § 31-27-2.1, "Refusal to submit to chemical test." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

This matter arises from a motor vehicle accident that took place on October 13, 2011. The Panel will recite only the facts relevant to the issue on appeal.

Michael Feeney was hired by the City of Pawtucket as a special prosecutor to pursue the charges on originating from an incident that occurred on October 13, 2011, based upon the City's conflict of interest in prosecuting the case. Mr. Feeney, representing the City of Pawtucket as a special prosecutor, executed a dismissal, in accordance with Traffic Trib. R. P. 26(a)[1] on January 26, 2012 in order to terminate the prosecution of this case.

[1] Under Traffic Trib. R. P. 26(a), the prosecuting attorney for the city or town, the prosecuting officer or attorney for the State may dismiss a summons and the prosecution shall thereupon terminate.

However, soon after the dismissal, the Pawtucket Police Department re-filed the charges with the Rhode Island Traffic Tribunal on February 27, 2012, and the case proceeded forward. At the arraignment, on March 7, 2012, the Appellant moved to dismiss arguing that the charges could not be re-filed based on the fact that this case had been previously dismissed and a judgment had been entered by this court upon the filing of the Traffic Trib. R. P. 26(a) dismissal by Mr. Feeney on behalf of the City of Pawtucket.

Appellant's motion was heard before the hearing magistrate and was denied. In rendering his decision from the bench, the hearing magistrate gave a thorough analysis of the case law and presented the relevant facts of this case. (Motion Hearing at 61-79.) The hearing magistrate then denied the motion to dismiss. (Motion Hearing at 79.) Consequently, the matter proceeded to trial.

Following the trial, the trial magistrate sustained the charged violations of §§ 31-20-9 and 31-27-2.1. (Tr. at 68.) Appellant, aggrieved by the hearing magistrate's decision to deny his motion to dismiss, filed a timely appeal to this Panel.[2] The Panel's 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

[2] The Appellant, at argument before this Panel, confirmed that his appeal was limited to the hearing magistrate's decision to deny the motion to dismiss and that he was not challenging the trial magistrate's decision to sustain the charges.

> appellant have been prejudicial 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 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

The Appellant has limited his appeal to the hearing magistrate's decision to deny Appellant's motion to dismiss. On appeal, Appellant contends that the hearing magistrate's decision to deny Appellant's motion to dismiss the case was an error of law. Specifically, Appellant asserts that either the City or the State was required to move to vacate the initial

dismissal, pursuant to Rule 20 of our Rules of Civil Procedure, before either the City or State could re-file the charges against Appellant. In the alternative, Appellant avers that the charges could not be re-filed unless the City or the State filed a timely appeal pursuant to Rule 21 of our Rules of Procedure. In addition, Appellant argues that the Hearing magistrate's decision to deny Appellant's motion to dismiss the case was an abuse of discretion. In particular, Appellant argues that the trial magistrate should have invoked the doctrine of judicial estoppel or applied the law of the case doctrine to estop the City or the State from re-filing the charges against Appellant. Moreover, Appellant avers that the Pawtucket Police Department should have destroyed all police records that tied Appellant to the events underlying the instant charges because of a District Court order associated with the DUI prosecution of Appellant. As a result, Appellant argues that the charges could not be re-filed. Finally, Appellant asserts that various conflicts of interest present in the instant matter have amounted to violation of Appellant's due process rights and should result in a dismissal of the case.

I

Dismissal

A

With or Without Prejudice

A threshold issue confronting this Panel is whether the Rule Traffic Trib. R. P. 26(a)[3] dismissal filed in the instant matter is a dismissal with or without prejudice. We must note that

[3] Rule 26(a) states that

> "[t]he prosecuting officer or the attorney for the state, agency, or municipality may dismiss a summons and the prosecution shall thereupon terminate, however, a summons that charges a motorist under R.I.G.L. § 31-27-2.1 alone, or any count of a summons that charges a motorist under R.I.G.L. § 31-27-2.1 may be dismissed in accordance with § 42-9-4 only after notice to the attorney for the

there is no case law that gives direct guidance on the issue of re-filing a claim after a Traffic Trib. R. P. 26(a) dismissal has been effectuated by a prosecutor. Notwithstanding, this Panel has found case precedent from our Supreme Court and the Federal courts to be instructive.

It is worth noting at the outset, at common law, a prosecutor held "the absolute power to dismiss a [criminal] prosecution before a jury was impaneled unless congress otherwise provided." U.S. v. Smith, 55 F.3d 157, 158 (4th Cir. 1995). However, here, violations of the motor vehicle code and subsequent proceedings are civil in nature. The procedural equivalent of Rule 26(a) in civil proceedings in our Superior Court is Rule 41(a) of the Rhode Island Superior Court Rules of Civil Procedure. See Super. R. Civ. P. 41(a). Our Supreme Court has found that the preclusive effect of voluntary dismissals in Rhode Island is governed by Super. R. Civ. P. 41(a). Lennon v. Dacomed Corp., 901 A.2d 582, 590 (R.I. 2006). In particular, Super. R. Civ. P. 41(a) provides that a voluntary dismissal is without prejudice, unless otherwise stated in the notice or stipulation. See Super. R. Civ. P. 41(a). However, in Lennon, there were some stipulated facts[4] which led the court to ultimately conclude that there was a preclusive effect. 901 A.2d at 590-91.

While an adjudication of a motorist charged under the Refusal Statute is civil in nature, Rule Traffic Trib. R. P. 26(a)'s procedural equivalent in the criminal context is Rule 48(a) of the Superior Court Rules of Criminal Procedure. Specifically, Super. R. Crim. P. 48(a) governs the

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> state. The dismissal shall be in writing, either on the customary judgment form or on a separate writing. It shall be dated and signed; the name of the person dismissing the summons shall be printed legibly beneath the signature. A dismissal pursuant to this rule may not be filed during the trial without the consent of the defendant."

[4] On the trial level, a voluntary dismissal with prejudice was filed and granted. Lennon, 901 at 586.

prosecutor's ability to dispose of a criminal indictment by filing a dismissal. See Super. R. Crim. P. 48(a). Rule 48(a) Rhode Island Rule of Criminal Procedure 48(a) provides:

> "(a) . . . The Attorney for the State may file a dismissal of an Indictment, Information or Complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant."

Our Supreme Court has ruled that a dismissal under Super. R. Crim. P. 48(a) is without prejudice. State v. Reis, 815 A.2d 57, 65 (R.I. 2003). In particular, the Supreme Court stated that "a Rule 48(a) dismissal is not an acquittal . . . furthermore, by equating a voluntary dismissal of charges to an acquittal of those charges, we would be unwisely tying the hands of prosecuting attorneys." Id. Moreover, a justice of our Superior Court noted that a "determination to dismiss[, pursuant to Rule 48(a),] is made independently of the Court, it is not a determination on the merits." State v. Burke, C.A. No. PC-20004-2715, 2006 WL 2536707 (R.I. Super. Aug. 31, 2006). Thereafter, the trial justice held that the murder chargers before him could be re-filed by the State because there was no indication from the record that the dismissal was with prejudice. Id. (citing Reis, 815 A.2d at 65).

Here, there were neither stipulated facts nor a stipulated decision. But see Lennon, 901 A.2d at 590 (our Supreme Court found that the voluntary dismissal, pursuant to Super. R. Civ. P. 41(a), had preclusive effect because of stipulations entered into by the parties to the case). Therefore, the Traffic Trib. R. P. 26(a) dismissal filed in this case would not have a preclusive effect on re-filing, if this Panel were to analyze the instant matter like a voluntary dismissal in a Superior Court civil proceeding. See Super. R. Civ. P. 41(a). Additionally, like Super. R. Crim. P. 48(a), Traffic Trib. R. P. 26(a) allows for the termination of the prosecution by the state, by the city or town solicitor, or by the prosecuting officer. Moreover, like Super R. Crim. P. 48(a), there is nothing in the language of Traffic Trib. R. P. 26(a) or the relevant case law that prevents

the State or the City from re-filing a case that had been previously terminated pursuant to Traffic Trib. R. P. 26(a). The record before this Panel is devoid of any indication that the dismissal pursuant to Traffic Trib. R. P. 26(a) was a dismissal with prejudice.

For the reasons stated above, this Panel holds that there is a presumption that a dismissal pursuant to Traffic Trib. R. P. 26(a) is without prejudice unless there is a stipulation between the parties or an affirmative statement by the moving party that the dismissal is with prejudice. See Super. R. Crim. P. 48(a); Super. R. Civ. P. 41(a); Traffic Trib. R. P. 26(a); see also Lennon, 901 A.2d at 590; Reis, 815 A.2d at 65. Confining our review to its proper scope, this Panel is convinced that the hearing magistrate's finding that the dismissal was without prejudice was not based on an error of law.

B

Necessity of Motion to Vacate or File a Timely Appeal

Having established that the Rule Traffic Trib. R. P. 26(a) in this case was without prejudice, this Panel must now turn to Appellant's assertion that it was necessary for the City or State to file an appeal pursuant to Rule 21 of our Rules of Procedure. See Traffic Trib. R. P. 21 ("Any party *aggrieved by a judgment* of a municipal court or the traffic tribunal following the adjudication of a civil violation of the motor vehicle code or other applicable statute may appeal the judgment to the appeals panel of the traffic tribunal") (emphasis added). In addition, this Panel must confront Appellant's alternative theory—that the City or State had to file a motion to vacate the Traffic Trib. R. P. 26(a) dismissal executed in this case with this tribunal before re-filing the charges against Appellant pursuant to Rule 20 of our Rules of Procedure. See Traffic Trib. R. P. 20 ("The court may, upon motion or on its own initiative, relieve a party or a party's legal representative from a judgment or order").

Appellant's initial contention is that it was necessary for the City or State to file an appeal overlooks that plain language of Traffic Trib. R. P. 21. Specifically, Traffic Trib. R. P. 21 states that "[a]ny party *aggrieved by a judgment* of . . . the traffic tribunal" may appeal. See Traffic Trib. R. P. 21. Here, it is clear that the City was not an aggrieved party because it was the City who filed the motion to dismiss. It would be absurd for this Panel to find that the effective procedural mechanism for re-filing charges would be for the City to appeal their own determination to dismiss. Furthermore, for reasons discussed below, this Panel finds that the filing of an appeal by the City or the State was not appropriate because no judgment was entered by this Tribunal.

Appellant's argument that the City or State had to file a motion to vacate the Traffic Trib. R. P. 26(a) dismissal mischaracterizes this Tribunal's participation in a decision by a city, town, or the state in moving to dismiss a case pursuant to Traffic Trib. R. P. 26(a). In particular, Appellant characterizes the Traffic Trib. R. P. 26(a) dismissal as a judgment that must be entered by this Tribunal. However, the plain language of Traffic Trib. R. P. 26(a) indicates that the authority to dismiss rests with the State, an agency, or a municipality. See Traffic Trib. R. P. 26(a). Nothing within the language of Traffic Trib. R. P. 26(a) requires the approval or authorization by the Tribunal of the prosecution's decision to dismiss pursuant to Rule 26(a). See id. Rather, the dismissal is memorialized by the Tribunal in writing for the purposes of record keeping.

This interpretation is bolstered by returning to this Panel's analysis of Super. R. Crim. P. 48(a). Closer inspection of Super. R. Crim. P. 48(a) reveals a major difference to the rule's federal counterpart. Namely, compared to Super. R. Crim. P. 48(a), Federal Rule of Criminal Procedure 48(a) provides:

> "(a) . . . The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent."

The Federal Rule's distinctive "'*leave of court'* requirement has been interpreted to mean that if the defendant objects to dismissal without prejudice, the court should require the government to state its reasons for seeking dismissal, refuse the government's request, or dismiss with prejudice." 1 Criminal Practice. Manual § 14:12 (West. 2013) (emphasis added). In contrast, Traffic Trib. R. P. 26(a), like Super. R. Crim. P. 48(a), includes no language that is the equivalent of Federal Rule 48(a)'s "leave of court" requirement. Accordingly, this Panel is satisfied that the Tribunal's involvement in a Traffic Trib. R. P. 26(a) dismissal is solely administrative, in the nature of record keeping, and not a judgment from which an aggrieved party could have moved to vacate.

II

Equitable Considerations

Appellant argues that the hearing magistrate's decision to deny Appellant's motion to dismiss the case was an abuse of discretion. In particular, Appellant argues that the hearing magistrate should have invoked the doctrine of judicial estoppel or applied the law of the case doctrine to estopp the City from re-filing the charges against Appellant.

A

Judicial Estoppel

The doctrine of judicial estoppel prevents a party from asserting an argument or position in a legal proceeding that is contrary to the argument or position previously taken by him in the same or some earlier legal proceeding. Gaumond v. Trinity Repertory Co., 909 A.2d 512, 519 (R.I. 2006). If a party has taken a position before a court of law, whether in a pleading, motion, in a deposition, or in testimony, judicial estoppel may be raised to bar that party from contradicting his earlier position. D & H Therapy Associates v. Murray, 821 A.2d 691, 693 (R.I.

2003). Courts have described the purpose of this doctrine as "preventing intentional inconsistency," impeding a party from playing "fast and loose with the courts," and proscribing parties from "deliberately shifting positions to suit the exigencies of the moment." See, e.g. Gray v. Fitzhugh, 576 P.2d 88, 91 (Wyo. 1978); Yarber v. Pennell, 443 S.W.2d 382, 385 (Tex.Civ.App.1969); Behrens v. Baldenecker, 77 N.W.2d 917, 919 (S.D. 1956).

While equitable estoppel focuses on the relationship between the parties, judicial estoppel focuses on the relationship between the litigant and the judicial system. 28 Am.Jur.2d Estoppel and Waiver § 34 (2000)). The United States Supreme Court has held that "[b]ecause the rule is intended to prevent improper use of judicial machinery, […] judicial estoppel is an equitable doctrine invoked by a court at its discretion." New Hampshire v. Maine, 532 U.S. 742, 750 (2001). One of the principal considerations courts usually evaluate in determining whether to invoke the doctrine in a case is whether the "party seeking to assert an inconsistent position would derive an unfair advantage […] if not estopped." Scarano v. Central R. Co. of New Jersey, 203 F.2d 510, 513 (3rd Cir.1953)). The Paramount "concern is to avoid unfair results and unseemliness." Id.

Here, invoking the doctrine of judicial estoppel was within the sole discretion of the hearing magistrate. See New Hampshire v. Maine, 532 U.S. at 750; Gaumond, 909 A.2d at 519. While our review of the hearing magistrate's decision is strictly circumscribed, this Panel notes that Appellant has not provided this Panel with an example of any unfair advantage gained by the City or the State that was a result of Mr. Feeney's decision to dismiss and the City's decision to re-file. Moreover, Appellant does not contest or assign any error of law to the trial magistrate's decision to sustain the charged violation when it proceeded to trial. The fact that Appellant received a full trial on the merits and has failed to appeal that decision obviates any concerns that

Appellant was unfairly prejudiced or that the City gained some unfair advantage at trial by its earlier representations to this Tribunal.

B

Law of the Case

Appellant asserts that the hearing magistrate's decision to allow the City to re-file charges against Appellant was an error of law and made upon unlawful procedure. Specifically, Appellant asserts that hearing magistrate was bound by Mr. Feeney's decision to dismiss the case pursuant to Traffic Trib. R. P. 26(a).

Appellant's argument is misguided because application of the Law of the Case doctrine is not appropriate given the procedural facts of this case. The Law of the Case doctrine stands for the proposition that "after a judge has decided an interlocutory matter in a pending suit, a second judge confronted at a later stage of the suit with the same question in the identical manner should refrain from disturbing the first ruling." Commercial Union Ins. Co. v. Pelchat, 727 A.2d 676, 683 (R.I. 1999); Salvadore v. Major Elec. & Supply, Inc., 469 A.2d 353, 355–356 (R.I. 1983) (the law of the case doctrine gives the court legitimacy, bolsters the stability of decisions, and provides attorneys and their clients with consistency.) In addition, the doctrine is applicable when the same trial justice is confronted with the same issue on separate occasions. Lynch v. Spirit Rent-A Car, Inc., 965 A.2d 417, 424-25 (R.I. 2009). Moreover, "[t]his doctrine does not have the finality of the doctrine of res judicata." Salvadore v. Major Elec. & Supply, Inc., 469 A.2d 353, 356 (R.I. 1983). "It is more in the nature of a rule of policy and convenience." Id. (citing North American Planning Corp. v. Guido, 110 R.I. 22, 24, 289 A.2d 423, 424 (1972)).

Here, Special Prosecutor Mr. Feeney, made the decision to file a dismissal pursuant to Traffic Trib. R. P. 26(a). Traffic Trib. R. P. 26(a) allows for termination of the prosecution of a

defendant by the state, by the city or town solicitor, or by the prosecuting officer. See Traffic Trib. R. P. 26(a). At no time in this history of this case did the hearing magistrate or any magistrate of this Tribunal make any decision pertaining to dismissal or re-filing. Accordingly, this Panel finds that the Law of the Case doctrine is not applicable to the facts before it.

III

District Court Order

Appellant argues that the hearing magistrate's decision to deny Appellant's motion to dismiss the case was an abuse of discretion. Moreover, Appellant avers that the Pawtucket Police Department—pursuant to a District Court order associated with the DUI prosecution of Appellant—should have destroyed all police records that tied Appellant to the events underlying the charges before this Panel. As a result, Appellant argues that the charges could not be re-filed.

Section G.L. 1956 § 12-1-12(a)(1), "Destruction or sealing of records of persons acquitted or otherwise exonerated," reads, that

> "[a]ny fingerprint, photograph, physical measurements, or other record of identification, heretofore or hereafter taken by or under the direction of the attorney general, the superintendent of state police, the member or members of the police department of any city or town or any other officer authorized by this chapter to take them, of a person under arrest, prior to the final conviction of the person for the offense then charged, shall be destroyed by all offices or departments having the custody or possession within sixty (60) days after there has been an acquittal, dismissal, no true bill, no information, or the person has been otherwise exonerated from the offense with which he or she is charged, and the clerk of court where the exoneration has taken place shall, consistent with § 12-1-12.1, place under seal all records of the person in the case including all records of the division of criminal identification established by § 12-1-4."

"It is well settled that when the language of a statute is clear and unambiguous, this [Panel] must interpret the statute literally and must give the words of the statute their plain and ordinary

meanings." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996). Our obligation is to ascertain the legislative intent behind the enactment and give effect to that intent. Kaya v. Partington, 681 A.2d 256, 260 (R.I. 1996).

The plain and unambiguous language of § 12-1-12(a)(1), limits the records that must be destroyed to records of identification. See Marathon House, Inc., 674 A.2d at 1226. There is no indication from the record that Appellant challenges his identification as the operator of the motor vehicle in question. In addition, Appellant's identity as the operator of the motor vehicle was established solely through the testimony of the arresting officer. It is clear to this Panel that no record of identification was utilized by the State in order to establish Appellant as the operator of the vehicle. Therefore, Appellant's assertion that the State could not rely on records of identification ordered destroyed by District Court Order is immaterial to the instant matter.

Moreover, Appellant's attempt to distract the Tribunal by his focus on § 12-1-12(a)(1) overlooks the fact that this Tribunal has original jurisdiction of § 31-27-2.1 whereas the District Court has original jurisdiction over § 31-27-2, "Driving under influence of liquor or drugs." The violation before the Rhode Island Traffic Tribunal is a different charge with a different standard than the one dismissed in District Court. See State v. Quattrucci, 39 A.3d 1036, 1041 (R.I. 2012); State v. DiStefano, 764 A.2d 1156, 1162 (R.I.2000); see also Dunn v. Petit, 120 R.I. 486, 489-91, 388 A.2d 809, 811 (1978). A District Court order directing law enforcement officials to destroy records of identification associated with a DUI prosecution does not impede or otherwise restrict law enforcement from filing or re-filing a charge for a separate and distinct charge pursuant to § 31-27-2.1. Furthermore, a District Court order entered pursuant to § 12-1-12(a)(1), is limited to the destruction and sealing of records when an individual is somehow exonerated from a criminal offense. See § 12-1-12. Here, the Refusal Statute is civil in nature,

and any records in the possession of the Pawtucket Police Department were kept and utilized for the prosecution of the instant matter.

IV

Conflict of Interests

Appellant asserts that various conflicts of interest present in the instant matter have amounted to a violation of Appellant's due process rights and should result in a dismissal of the case. Specifically, Appellant asserts that the Pawtucket Police Department's employment relationship with Sergeant Wozny taints its decision to re-file the charges against Appellant. Moreover, Appellant asserts that any conflict of interest of the Pawtucket Police Department is imputed to the City of Pawtucket Solicitor's Office.

For purposes of discussion, this Panel finds that a case from the Supreme Court of Connecticut provides some guidance. In State v. Sinvil, 270 Conn. 516, 524-25, 853 A.2d 105, 111 (2004), the Supreme Court of Connecticut stated that "the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of the prosecutor." (internal quotation and citation omitted). Moreover, the Court opined that in order to

> "[t]o prove prosecutorial misconduct [rising to the level of a due process violation], the defendant must demonstrate substantial prejudice.... In order to demonstrate this, the defendant must establish that the trial as a whole was fundamentally unfair and that the misconduct so infected the trial with unfairness as to make the conviction a denial of due process...." Id. (internal quotation and citation omitted).

In summation, the Court explained that "it is not the prosecutor's conduct alone [however] that guides our inquiry, but, rather, the fairness of the trial as a whole." Id. (internal quotation and citation omitted). Similarly, our Supreme Court has consistently stated that the dismissal of an

indictment on the grounds of prosecutorial misconduct is an extraordinary sanction reserved for very limited and extreme circumstances. State v. Mainelli, 543 A.2d 1311, 1313 (R.I. 1988); State v. Chakouian, 537 A.2d 409, 413 (R.I. 1988); State v. Wilshire, 509 A.2d 444, 448 (R.I. 1986); State v. Romano, 456 A.2d 746, 750 (R.I. 1983).

Furthermore, Due Process within administrative procedures, like the Traffic Tribunal, requires the opportunity to be heard "at a meaningful time and in a meaningful manner." Millett v. Hoisting Engineers' Licensing Div. of Dept. of Labor, 119 R.I. 285, 296, 377 A.2d 229, 235-36 (1977)); see also Gimmicks, Inc. v. Dettore, 612 A.2d 655, 660 (R.I. 1992) (court held due process requires that an agency allow a person to present evidence and testimony). Moreover, it is beyond dispute that "[d]ue process requires a neutral, or unbiased, adjudicatory decisionmaker." 2 Pierce, Administrative Law Treatise §9.8; Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980) ("the Due Process Clause entitles a person to an impartial and disinterested tribunal"). In order to make out a claim of bias, one must "overcome a presumption of honesty and integrity" on the part of decision-makers. Withrow v. Larkin, 421 U.S. 35, 47 (1975).

In addition, as previously stated, it is well established that a defendant asserting a violation of his or her due process must show the unfair prejudice flowing from the violation of such rights. See Kentucky v. Stincer, 482 U.S. 730 (1987) (excluding the defendant from a competency hearing for a prosecution witness only violates due process if the defendant was prejudiced); Delaware v. Van Arsdall, 475 U.S. 673 (1986) (denying a defendant the opportunity to cross examine a witness to show bias should only violate the Confrontation Clause if the defendant was prejudiced); United States v. Bagley, 473 U.S. 667 (1985) (a prosecutor's withholding exculpatory evidence only violates due process if the defendant was prejudiced); United States v. Valenzuela-Bernal, 458 U.S. 858 (1982) (a prosecutor's deporting a potential

defense witness only violates due process if the defendant was prejudiced); United States v. Agurs, 427 U.S. 97 (1976) (a prosecutor's withholding exculpatory evidence only violates due process if the defendant was prejudiced); Chambers v. Mississippi, 410 U.S. 284 (1973) (denying a defendant the right to present exculpatory evidence only violates due process if the defendant was prejudiced); United States v. Marion, 404 U.S. 307 (1971) (preindictment delay only violates due process if the defendant was prejudiced); Snyder v. Massachusetts, 291 U.S. 97 (1934) (excluding the defendant from a view only violates due process if the defendant was prejudiced).

Here, Appellant makes general accusations of impropriety regarding the Pawtucket Police Department's involvement and investigation of this case. See Sinvil, 270 Conn. at 524-25, 853 A.2d at 111. However, Appellant fails to identify with specificity any misconduct, irregularity, or indiscretion committed by the Pawtucket Police Department during their investigation. See id. Moreover, Appellant attributes wrongdoing to the City of Pawtucket Solicitor's Office. See id. However, once again Appellant raises unformulated and imprecise accusations, which fail to describe with any certitude the misconduct that the Solicitor's Office affected. See id.

Accordingly, Appellant has failed to overcome the presumption that he received a full hearing before an "impartial and disinterested tribunal." See Withrow, 421 U.S. at 47; Marshall, 446 U.S. at 242; see also 2 Pierce, Administrative Law Treatise §9.8. In particular, Appellant's grounds for appeal relate only to the hearing magistrate's decision to deny Appellant's motion to dismiss. Appellant makes no assertion of error relating to the trial magistrate's decision to sustain the charged violation. Moreover, Appellant imputes no bias to the trial magistrate. See 2 Pierce, Administrative Law Treatise §9.8. As a result, Appellant has failed to show how he has

been unfairly prejudiced by the alleged improper motive or bias of the Pawtucket Police Department or the City of Pawtucket Solicitor's Office. See Bagley, 473 U.S. 667; Agurs, 427 U.S. 97; Marion, 404 U.S. 307. Despite Appellant's amorphous contentions of partiality and unfairness, this Panel is satisfied that the requirements of due process were met. See Sinvil, 270 Conn. at 524-25, 853 A.2d at 111. Specifically, this Panel finds that Appellant was allowed to cross-examine the State's witnesses and present his case in chief without interference. See Gimmicks, Inc., 612 A.2d at 660; Millett, 119 R.I. at 296, 377 A.2d at 235-36

For all these reasons, this Panel finds that Appellant's claims of bias and conflict, even if substantiated, were obviated by the full hearing before the trial magistrate. Confining our review to its proper scope, this Panel is satisfied that the hearing magistrate's decision to deny Appellant's motion to dismiss was not an error of law or an abuse of discretion.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the hearing magistrate's decision to sustain the charge was not in violation of statutory provisions, not made upon unlawful procedure, not affected by error of law, or an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:[5]

_____
Administrative Magistrate R. David Cruise

_____
Magistrate Alan R. Goulart

DATE: _____

[5] Judge Albert R. Ciullo (Ret.) participated in the instant decision, but retired prior to the decision's publication.