

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF MIDDLETOWN

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v.

C.A. No. M12-0011  
07302012536

THOMAS OLIVER

12 DEC 18 AM 8:35  
STATE OF RHODE ISLAND  
TRAFFIC TRIBUNAL  
FILED

**PER CURIAM:** Before this Panel on August 22, 2012—Magistrate DiSandro (Chair, presiding), Judge Ciullo, and Magistrate Noonan, sitting—is Thomas Oliver’s (Appellant) appeal from a decision of Judge Regan (trial judge), sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**Facts and Travel**

On January 5, 2012, Officer Anthony Porrazzo (Officer Porrazzo) of the Middletown Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on May 8, 2012.

Before the trial, Appellant filed a Motion to Dismiss the violation. Appellant argued that because the stop occurred in Newport, Officer Porrazzo, a member of the Middletown Police Department, did not have authority to issue the summons to Appellant. The trial judge denied the Appellant’s motion. Thereafter, the matter proceeded to trial.

At trial, Officer Porrazzo testified that on the night of the violation he was traveling northbound on West Main Road in Middletown. Officer Porrazzo observed a vehicle traveling at a high rate of speed southbound on West Main Road. The officer’s radar unit determined that

the vehicle was traveling forty-six (46) miles per hour (mph). (Tr. at 1.) The speed limit in the area was twenty-five (25) mph.

Officer Porrazzo reversed his direction and pursued the vehicle. At the conclusion of the stop, the officer cited the operator—identified as the Appellant at trial—for speeding. Id. Officer Porrazzo also testified that his radar unit was properly calibrated before and after his shift, and that the officer was trained in the use and operation of radar units at the Rhode Island Municipal Police Academy. Id.

Appellant then presented his case in chief. (Tr. at 2.) Appellant admitted into evidence the user's manual for the radar unit used by the Middletown Police Department. Specifically, Appellant cited to one section that stated "variations in the environment can cause situations and circumstances which can cause spurious, erratic, and unusually low or high speeds to display."<sup>1</sup> Appellant also maintained that the radar unit's user's manual stated that electromagnetic interference can disrupt a radar unit's proficiency. This interference can be caused by power seats or windshield wipers in cars or transformer's alongside the road.

However, the trial judge specifically rejected Appellant's argument that the radar unit was not accurate. The trial judge determined that the Appellant had failed to present sufficient evidence that Officer Porrazzo's radar unit was not working the day of the violation. In response, the Appellant stated that while he did not test that specific area, he had tested other surrounding areas and there were transformers in the area that gave off an electromagnetic interference. Thereafter, the trial judge issued his decision sustaining the charged violation. (Tr. at 4.) The trial judge found it significant that the Appellant did not present any expert testimony to support his theory of the case. Id. Also, in sustaining the violation, the trial judge determined that Officer Porrazzo's testimony regarding the operational efficiency of this radar unit went

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<sup>1</sup> The citation was intentionally omitted because the Panel was not provided with the exhibit.

uncontradicted by the Appellant. Then, the trial judge imposed sentence. Appellant timely filed this appeal

**Standard of Review**

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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:

- (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, Appellant contends that the trial judge’s decision was made in violation of statutory provisions and affected by error of law. Specifically, Appellant contends that the trial judge erred in denying his Motion to Dismiss. On appeal, Appellant contends, as he did at the municipal court, that Officer Porrazzo—a Middletown Police officer—was without authority to stop the Appellant in Newport.

By law, “an officer’s authority may not be readily extended beyond the limits of the municipality. . . .” State v. Hagen, 819 A.2d 1256, 1258 (R.I. 2003). This limitation, however, is considered by our Supreme Court to be “archaic,” and the “jurisdictional borders confining the authority of the state’s various police departments . . . have become blurred by time and necessity.” Id.

However, our General Assembly has only prescribed two circumstances when a police officer may leave his jurisdiction to pursue a suspect. These exceptions include the emergency police power, pursuant to G.L. 1956 § 45-42-1, and arrest after close pursuit by officers from cities or towns, pursuant to G.L. 1956 § 12-7-19. See State v. Ceraso, 812 A.2d 829, 833 (R.I. 2002) (“There are two exceptions to general rule that the authority of a local police department is limited to its own jurisdiction: first, when the police are in “hot pursuit” of a suspect, they may

cross into another jurisdiction pursuant . . .”). Neither of these statutes are invoked by the facts of this case.

Under the “emergency police power” exception established by § 45-42-1,<sup>2</sup> the police from one jurisdiction may exercise authority in another jurisdiction in 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.*

Rhode Island courts have also held that where an officer is in “close pursuit,” he or she is authorized to make an arrest outside of his or her jurisdiction, so long as the original

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<sup>2</sup> 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.

observations of violations leading to the pursuit arose within his own jurisdiction. Section 12-7-19 states that:

“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 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.” (Emphasis added).

Under the “hot pursuit” exception established by § 12-7-19,<sup>3</sup> the police may cross into another jurisdiction when in “hot pursuit” of a suspect. The Ceraso Court made clear that when a police officer leaves his or her jurisdiction, then that officer must obtain probable cause while in the officer’s jurisdiction and then subsequently arrest the fleeing person. Id.

Here, an emergency situation was not taking place and Appellant was never placed under arrest. Rather, Appellant was simply cited for a civil infraction of the motor vehicles code. As a result, Officer Porrazzo was without authority to enter Newport and cite the Appellant for the aforementioned violation. In so deciding, this Panel is mindful that in the absence of a statutory or judicially recognized exception, the authority of a local police department is limited to its own jurisdiction. Ceraso, 812 A.2d at 833 (citing Page v. Staples, 13 R.I. 306 (1881)).

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<sup>3</sup> 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.

### 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 was 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 violation dismissed.