

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

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CITY OF PROVIDENCE

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v.

C.A. No. T08-0149

RAYMOND BEAUSEJOUR

DECISION

PER CURIAM: Before this Panel on January 28, 2009, Judge Ciullo (Chair), Magistrate Goulart, and Magistrate Cruise presiding, is Raymond Beausejour’s (Appellant) appeal from a decision of Magistrate Noonan, sustaining the charged violations of G.L. 1956 §§ 31-15-6, “Clearance for overtaking,” 31-15-12, “Interval between vehicles,” and 31-16-1, “Care in starting from stop.”¹ The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On September 25, 2008, Patrol Officer John Sirgilio (Officer Sirgilio) of the Providence Police Department charged Appellant with violating the aforementioned sections of the motor vehicle code. The Appellant contested the charges, and the matter proceeded to trial. Prior to trial, Appellant’s counsel filed a written waiver of Appellant’s right to be present at trial pursuant to Rule 23 of the Rules of Procedure for the Traffic Tribunal.² (Tr. at 2.)

¹ The Appellant was also charged with violating G.L. 1956 §§ 31-16-5, “Turn signal required,” and 31-27.1-4, “Penalties – aggressive driving.” However, these charges were dismissed at trial and are not presently before this Panel on appeal.

² Rule 23 of the Rules of Procedure for the Traffic Tribunal reads, in pertinent part: “The defendant shall be present at every stage of the trial A defendant who is represented by counsel may waive his or her right to be present by filing a waiver thereof.”

At trial, Officer Sirgilio testified that on the date in question, at approximately 6:20 p.m., he was on a private construction detail with Cardi Corporation at the intersection of Chalkstone Avenue and Mount Pleasant Avenue. (Tr. at 4.) Officer Sirgilio indicated that he was standing at the northwest corner of the intersection when he heard a “screech” to his left. (Tr. at 5.) Officer Sirgilio turned to face the intersection and observed a silver Dodge Caravan “up against the curb,” attempting to pass a mini-van that was proceeding through the intersection on a green traffic signal. Id. According to Officer Sirgilio, the silver Dodge attempted to pass the mini-van on the right and, when it was unable to do so, came to a “screeching halt.” Id.

Officer Sirgilio further testified that the silver Dodge pulled behind the mini-van and began to follow it southbound on Mount Pleasant Avenue from a distance of approximately six to seven feet. Id. Officer Sirgilio characterized the distance between the silver Dodge and the mini-van as “very close.” Id. The silver Dodge then proceeded to pass the mini-van on the left at a high rate of speed, “screeching [its] tires as [it] accelerated[.]” Id. As the silver Dodge passed the mini-man, it crossed over the center dividing line between “the traffic cones and orange traffic barrels that were part of the [Cardi Corporation] construction site,” forcing an oncoming vehicle to “slam on its brakes to avoid being struck head-on” by the Dodge. (Tr. at 5-6.) The silver Dodge “cut back into the right lane in front of the other mini-van,” forcing the operator of the mini-van to brake quickly in order to avoid an imminent collision with the Dodge. (Tr. at 6.)

Officer Sirgilio then observed the Dodge turn left onto Roanoke Avenue without utilizing a turn signal. Id. At this time, Officer Sirgilio noted that the operator of the vehicle was a male with “grayish hair, salt and pepper hair, [who] looked to be

approximately forties, fifties.” Id. The trial magistrate then indicated that Appellant, by waiving his presence at the trial, acknowledged that he was the operator of the silver Dodge. Id. When counsel for Appellant objected, the trial magistrate indicated that he would no longer accept the waiver and that Appellant was required to appear for trial. (Tr. at 7.)

As the trial magistrate explained, “[t]he waiver was placed into evidence with the understanding that it was the admission that [Appellant] was the person operating the vehicle [T]he first paragraph is, ‘I am the Defendant in this matter.’” (Tr. at 8.) The trial magistrate reasoned that it was “very untoward and unseemly . . . to try to use the waiver of appearance . . . as a way of circumventing the identification process.” (Tr. at 9.) The trial magistrate made clear that if counsel for Appellant did not present Appellant for trial, he was prepared to enter a default judgment in his absence. (Tr. at 10.) The trial magistrate then engaged in the following colloquy with Appellant:

“Trial magistrate: This is Raymond Beausejour, date of birth 6-28-27?”

Appellant: Yes, your Honor.”

The trial magistrate then asked Officer Sirgilio how long he had been employed as a law enforcement officer; he responded that he had been a police officer for approximately nineteen years. (Tr. at 14.)

Following this brief exchange, counsel for Appellant argued that the charged violation of § 31-16-1 could not be sustained because Officer Sirgilio’s testimony that he heard “screeching” tires was insufficient to prove to a standard of clear and convincing evidence that the movement of Appellant’s vehicle was not made with reasonable safety. (Tr. at 15.) The trial magistrate rejected this reading of the statute, stating that “if in

order to start a car from a fixed position, you operate it in such a way so that the tires are screeching or smoking or spinning, that by definition can't be made with reasonable safety" (Tr. at 16-17.) While counsel for Appellant asserted that there was no testimony by Officer Sirgilio that Appellant had "start[ed] a vehicle which [wa]s stopped, standing, or parked," Section 31-16-1, Officer Sirgilio made clear that he had not completed his trial testimony and that Appellant's vehicle had been started from a stationary position. (Tr. at 20.)

With respect to the charged violation of § 31-15-12, counsel for Appellant argued that there was no testimony from Officer Sirgilio on the issue of "the speed of the vehicles and the traffic upon and the condition of" Mount Pleasant Avenue when Appellant was allegedly "follow[ing] another vehicle more closely than [wa]s reasonable and prudent[.]" Section 31-15-12. However, the trial magistrate stated that there was testimony from Officer Sirgilio that Appellant was traveling at "a high rate of speed." (Tr. at 18.) The trial magistrate added that he found the testimony of Officer Sirgilio with respect to the speed of Appellant's vehicle "credible" and "more than adequate" to sustain the charge, based on Officer Sirgilio's nineteen years of professional experience as a law enforcement officer. (Tr. at 18-19.)

Following the trial, the trial magistrate sustained the charged violations of §§ 31-15-6, 31-15-12, and 31-16-1. Aggrieved by this decision, Appellant 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 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 argues that the trial magistrate’s decision is affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. Specifically, Appellant contends that the prosecution failed to prove the charged violations to a standard of clear and convincing evidence, as there was no in-court identification of Appellant as the operator of the silver Dodge Caravan. See Rule 17 of the Rules of Procedure for the Traffic Tribunal.³

Although our Rules do not expressly define “clear and convincing evidence,” this Panel is guided by the definition that appears in the 1968 case of Parker v. Parker, 103 R.I. 435, 238 A.2d 57 (1968). In Parker, our Supreme Court stated:

“The phrase ‘clear and convincing evidence’ is more than a mere exercise in semantics. It is a degree of proof different from a satisfaction by a ‘preponderance of the evidence’ which is the recognized burden in civil actions and from proof ‘beyond a reasonable doubt’ which is the required burden in criminal suits. If we could erect a graduated scale which measured the comparative degrees of proof, the ‘preponderance’ burden would be at the lowest extreme of our scale; ‘beyond a reasonable doubt’ would be situated at the highest point; and somewhere in between the two extremes would be ‘clear and convincing evidence.’” Parker, 103 R.I. at 442, 238 A.2d at 60-61.

³ Rule 17 of the Rules of Procedure for the Traffic Tribunal reads, in pertinent part: “The burden of proof shall be on the prosecution to a standard of clear and convincing evidence.”

The Parker Court went on to state:

“To verbalize the distinction between the differing degrees more precisely, proof by a ‘preponderance of the evidence’ means that a jury must believe that the facts asserted by the proponent are more probably true than false; proof ‘beyond a reasonable doubt’ means the facts asserted by the prosecution are almost certainly true; and proof by ‘clear and convincing evidence’ means that the jury must believe that the truth of the facts asserted by the proponent is highly probable.” Id.

Having reviewed the record evidence to determine whether it is “highly probable” that Appellant was the operator of the silver Dodge, this Panel is satisfied that the prosecution proved the charged violations to a standard of clear and convincing evidence—even in the absence of an in-court identification of Appellant by Officer Sirgilio. On September 25, 2008, Officer Sirgilio issued a citation to the operator of the silver Dodge Caravan, a man that Officer Sirgilio described as in his forties or fifties and with graying hair. (Tr. at 6.) When the trial magistrate asked Appellant on the record whether his name and date of birth corresponded to the information listed on the citation issued to this individual, Appellant answered in the affirmative. (Tr. at 14.) Thus, when this on-the-record admission is considered in conjunction with the language employed in Appellant’s “Waiver of Appearance” that he is “the Defendant in the above-entitled action,” it becomes “highly probable” that Appellant and the operator of the silver Dodge are one and the same. Accordingly, this Panel concludes that there was “clear and convincing evidence” on the issue of Appellant’s identity.

The members of this Panel are also satisfied that there is reliable, probative, and substantial evidence in the record to sustain the charged violations. Turning first to the charged violation of § 31-15-6, the trial magistrate heard testimony from Officer Sirgilio

that Appellant's vehicle was "driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction" on Mount Pleasant Avenue, and that "the left side [wa]s [not] clearly visible and . . . free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the safe operation of . . . vehicle[s] approaching from the opposite direction" (Tr. at 5-6.) The members of this Panel are likewise satisfied that the prosecution established the charged violation of § 31-15-12 to a standard of clear and convincing evidence. The trial magistrate heard testimony from Officer Sirgilio that Appellant was following the mini-van from a distance of six to seven feet, a distance that was "more close[] than [wa]s reasonable prudent, having due regard for" the fact that Appellant's vehicle was traveling at a high rate of speed and through an active construction site. (Tr. at 5-6.) Finally, with respect to the charged violation of § 31-16-1, there is reliable, probative, and substantial record evidence that Appellant "start[ed] a vehicle which [wa]s stopped," and that this movement was not "made with reasonable safety," as Officer Sirgilio heard the distinct sound of "screeching" tires. (Tr. at 4-5.) Accordingly, this Panel concludes that the charged violations of §§ 31-15-6, 31-15-12, and 31-16-1 were proven to a standard of clear and convincing evidence, as required by Rule 17.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision is unaffected by error of law and is not clearly erroneous in view of the reliable, probative, and substantial record

evidence. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations sustained.

ENTERED: