STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND :
:
v. : C.A. No. T09-0035
:
EVELYN'S TRANSPORTATION :

DECISION

PER CURIAM: Before this Panel on June 10, 2009—Magistrate Goulart (Chair, presiding) and Judge Parker and Magistrate Noonan sitting—is Evelyn's Transportation's (Appellant) appeal from a decision of Chief Magistrate Guglietta, sustaining the two charged violations of G.L. 1956 § 31-23-1, "Driving of unsafe vehicle – Disobedience of requirements – Inspections of motor carriers." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 11, 2009, Trooper Edward Pendergast (Trooper Pendergast) of the Rhode Island State Police charged Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charges, and the matter proceeded to trial.

At trial, Trooper Pendergast testified that on the date in question, at approximately 9:15 a.m., he observed a passenger van traveling northbound on Route 95 at a high rate of speed in what he described as snowy and icy conditions. (Tr. 3/5/09 at 12-13.) Trooper Pendergast initiated a traffic stop of the vehicle and made contact with the operator, Francisco Monteiro (Mr. Monteiro). (Tr. 3/5/09 at 13.) Trooper Pendergast then conducted a commercial vehicle

inspection in accordance with § 31-23-1.[1] (Tr. 3/5/09 at 13.) In addition to traveling at 70 m.p.h. in a posted 50 m.p.h. zone, Trooper Pendergast determined that there was no logbook in the vehicle[2] and that Mr. Monteiro could not speak English.[3] (Tr. 3/5/09 at 14-15.) The speeding charge was dealt with separately, and this matter was heard in Court with regard to the logbook and the English-language violations. (Tr. 3/5/09 at 15-16.)

At trial, counsel for Appellant argued that the logbook and English language requirements, applicable to "carriers," should be considered under the definition of "commercial

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[1] Section 31-23-1(b)(1) reads, in pertinent part:

> "For the purpose of reducing the number and severity of accidents, all commercial motor vehicles must meet applicable standards set forth in this chapter and chapter 24 of this title and in the federal motor carrier safety regulations (FMCSR) contained in 49 CFR Parts 387 and 390-399. . . . Part 391.11(b)(1) of FMCSR, 49 CFR 391.11(b)(1) shall not apply to intrastate drivers of commercial motor vehicles except for drivers of school buses and vehicles placarded under 49 CFR Part 172, Subpart F. Rules and Regulations shall be promulgated by the director of the department of revenue for the administration and enforcement of motor carrier safety."

Section 31-23-1(d) reads, in pertinent part:

> "Authorized examiners, investigators, officers, or regulatory inspectors from the department of revenue with proper identification issued by the director of the department of revenue, the state police, and local law enforcement officials with proper identification certifying they are qualified motor carrier enforcement personnel trained according to subsection (f) of this section, shall have a right of entry and authority to examine all equipment of motor carriers and lessors and enter upon and perform inspections of motor carrier vehicles in operation. They shall have authority to inspect, examine, and copy all accounts, books, records, memoranda, correspondence and other documents of the motor carriers and or lessors and the documents, accounts, books, records, correspondence, and memoranda of any person controlling, controlled by, or under common control of any carrier which relate to the enforcement of this chapter."

[2] 49 C.F.R. § 395.8(a) reads, in pertinent part: "Every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period." 49 C.F.R. § 395.8(k)(2) reads, in pertinent part: "The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his/her possession and available for inspection while on duty."

[3] Pursuant to 49 C.F.R. § 391.11, "a person is qualified to drive a [commercial] motor vehicle if he/she . . . [c]an read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records . . ."

motor vehicle" contained in G.L. 1956 § 31-10.3-3,[4] and not under the federal definition of that term contained in 49 C.F.R. § 390.5.[5] (Tr. 3/5/09 at 17-19.) Counsel for Appellant moved to dismiss the charged violations on the grounds that it was not proven that the vehicle operated by Mr. Monteiro was a "commercial motor vehicle" under the state statute, which requires 16 or more passengers instead of the more than eight passengers required under the federal definition. (Tr. 3/5/09 at 27.)

Evelyn Gonzalez (Ms. Gonzalez), the owner of the Appellant business, testified that the van driven by Mr. Monteiro was used to transport passengers between Rhode Island and New York, and that the van could carry a maximum of fifteen passengers, including the driver. (Tr. 3/5/09 at 27-28.) Trooper Pendergast reiterated that under the Federal Motor Carrier Safety Regulations, any vehicle used on a highway in interstate commerce to transport more than eight passengers including the driver fits the definition of a "carrier." (Tr. 3/5/09 at 29.) However, under the state statute definition, there must be sixteen or more passengers.

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[4] Section 31-10.3-3 defines "commercial motor vehicle" as:

> "a motor vehicle or combination of vehicles used to transport passengers or property if the motor vehicle: (i) Has a gross combination weight rating of twenty-six thousand one (26,001) or more pounds, of a towed unit with a gross vehicle rating of more than ten thousand pounds (10,000 lbs.), or has a gross vehicle weight rating of twenty-six thousand one (26,001) or more pounds; (ii) Is designed to transport sixteen (16) or more passengers including the driver . . ."

[5] 49 C.F.R. § 390.5 defines "commercial motor vehicle" as:

> "any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle . . . (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation . . ."

At the conclusion of the trial, the trial magistrate took the matter under advisement in order to consider the competing definitions of "carrier" and "commercial motor vehicle." (Tr. 3/5/09 at 30-31.) On April 1, 2009, Court reconvened for a decision on Appellant's motion to dismiss. (Tr. 4/1/09 at 2-3.) At that time, counsel for Appellant and Trooper Pendergast agreed to dismiss the charges pursuant to Rule 27(a) of the Rules of Procedure for the Traffic Tribunal, but the trial magistrate refused to allow a Rule 27(a) dismissal following a trial on the merits. (Tr. 4/1/09 at 4-5.)

In rendering his decision from the bench, the trial magistrate set forth the two issues before the Court: whether the prosecution had established that Appellant's vehicle was a "commercial motor vehicle" as defined in G.L. 1956 § 31-10.3-3 and incorporated in § 31-23-1(b) by failing to introduce evidence on the gross vehicle weight or minimum sixteen-seat capacity necessary; and whether the penalty portion of § 31-23-1(b) applies only to a "carrier" as defined in § 31-23-1. (Tr. 4/1/09 at 7-8.)

From the testimony adduced at trial, the trial magistrate found that Trooper Pendergast believed the vehicle to be a "commercial motor vehicle." (Tr. 4/1/09 at 10, 13) He also found, based on the testimony of Ms. Gonzalez, that the vehicle operated by Mr. Monteiro weighed less than the statutory amount of 10,001 pounds, the smallest of the federal and state statutes. (Tr. 4/1/09 at 11-12.) Further, the trial magistrate found that the vehicle had been used to transport passengers from Rhode Island to New York and could carry up to fifteen passengers, including the driver. (Tr. 4/1/09 at 12.)

In reaching his decision, the trial magistrate found that § 31-23-1 and the definitional statute § 31-10.3-3 must be read in conjunction. (Tr. 4/1/09 at 15.) The trial magistrate reached this conclusion because both statutes had, as a matter of historical fact, been introduced and

amended at the same time. (Tr. 4/1/09 at 15-16.) The trial magistrate explained that § 31-23-1(b) was enacted "for the purpose of reducing the number and severity of accidents," and "all commercial vehicles" must meet the standards in § 31-23 and in the Federal Motor Carrier Safety Regulations, 49 C.F.R. § 387, 390-399. (Tr. 4/1/09 at 16-17.) The trial magistrate added that according to § 31-23-1(b), "the rules and regulation shall be promulgated to insure uniformity in motor carrier . . . safety enforcement activities and to increase the likelihood that safety defects, driver deficiencies and unsafe carrier practices will be detected and corrected." (Tr. 4/1/09 at 17.)

The main discrepancy between the federal and state regulations, as explained by the trial magistrate, was that § 31-10.3-3 defines a "commercial motor vehicle" as one designed to transport sixteen or more passengers, while the definitional section of the Federal Motor Carrier Safety Regulations, 49 C.F.R. § 390.5, defines a "commercial motor vehicle" as one designed to transport more than eight passengers. (Tr. 4/1/09 at 18-20.) The trial magistrate admitted that because of this conflict between the laws and because Appellant's vehicle held fifteen passengers, "if [the Court were to] accept the state statute . . . then in fact the State Police have failed to prove by clear and convincing evidence that this . . . is the commercial vehicle that caused the violation." (Tr. 4/1/09 at 20.) The trial magistrate acknowledged that the issue became whether the state statute or federal statute would take precedence. (Tr. 4/1/09 at 21.)

The trial magistrate focused on the purposes of both the state and federal statutes in determining which should control. Id. The trial magistrate found that the purpose of the state statute is to reduce the number and severity of accidents by ensuring that all commercial vehicles meet the standards of the state statute as well as the standards of the Federal Motor Carrier Safety Regulations. (Tr. 4/1/09 at 21-22.) The trial magistrate found that § 31-23-1 was

promulgated to follow federal law, as there is significant federal involvement in this area of regulation. (Tr. 4/1/09 at 22-23.) For instance, the trial magistrate explained that many violations of § 31-23-1 are ordered by that state statute to be reported to the federal government. (Tr. 4/1/09 at 23-24.) Additionally, the purpose of the state definitional section, § 31-10.3-3, is:

> "to implement the Federal Commercial Motor Vehicle Safety Act of 1986 as may be amended from time to time to reduce or prevent commercial motor vehicle accidents, fatalities and injuries by permitting drivers to hold only one license, disqualifying drivers who have committed offenses and strengthening licensing and testing standards." (Tr. 4/1/09 at 24.)

The trial magistrate reasoned that the state statutes in question were enacted in relation to the Federal Motor Carrier Safety Act; specifically, they were enacted to supplement the federal regulations. (Tr. 4/1/09 at 25.) While recognizing that well-settled principles of statutory construction require statutes relating to the same subject to be considered together and harmonized, when possible, the trial magistrate could not discern whether the state and federal statutes should be read together or if one should control. (Tr. 4/1/09 at 28.)

However, the trial magistrate felt that the more substantive issue involved the Supremacy Clause of the United States Constitution and the preemption doctrine. (Tr. 4/1/09 at 29-30.) The trial magistrate then expounded upon Verizon New England v. Rhode Island Public Utilities Comm'n, 822 A.2d 187 (R.I. 2003), a case in which our Supreme Court discussed the three types of preemption: express preemption, field preemption, and conflict preemption. (Tr. 4/1/09 at 35-36.) Here, the trial magistrate was satisfied that this was not a case of express preemption or field preemption.[6] Id. However, the trial magistrate believed that the case was properly analyzed under the conflict preemption doctrine.[7] (Tr. 4/1/09 at 37.)

[6] Expressed preemption, according to the trial magistrate, would be when the federal regulation explicitly states that it will supersede state law, and field preemption would be when the regulation is in an area mainly under federal

Addressing the issue of conflict preemption, the trial magistrate examined the purposes of both the state and federal regulations, which were admittedly similar. (Tr. 4/1/09 at 38.) The trial magistrate then cited the U.S. Supreme Court decision in City of Columbus v. Our Garage and Wrecker Service, Inc., 536 U.S. 424 (2002), wherein Justice Ginsburg set forth that states possess their own safety regulatory authority, even when there is a federal statutory scheme in that area. (Tr. 4/1/09 at 39-40.) Justice Ginsburg's opinion emphasized that the traditional police powers of the states were not to be superseded by a federal act unless that was the "clear and manifest purpose of Congress." (Tr. 4/1/09 at 40.) The trial magistrate concluded that in this case, there is no clear and manifest purpose to prevent states from enacting their own safety regulatory scheme. (Tr. 4/1/09 at 41.) He analogized this to the state regulations regarding the weight limits on the Pawtucket River Bridge on Route 95, where the highway is funded and regulated under federal interstate commerce authority, but the State of Rhode Island has added additional regulations to protect the health and safety of its citizens. (Tr. 4/1/09 at 41-42.)

With the question of whether the State of Rhode Island could regulate in the area of health and safety where there are federal regulations answered in the affirmative, the trial magistrate proceeded to consider whether § 31-23-1 actually did regulate more than the federal standards. (Tr. 4/1/09 at 43.) Citing to Gade v. National Solid Wastes Management Ass'n, 505 U.S. 88 (1992), the trial magistrate explained that where "state law stands as an obstacle to the accomplishment [of] the full purposes and the objectives of Congress, then the state law must in fact fail." (Tr. 4/1/09 at 44-45.) Applying the holding and reasoning of Gade to the present case, the trial magistrate stated that "while the State [of Rhode Island] clearly has the ability to protect

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control. (Tr. 4/1/09 at 35-36.) Although the trial magistrate indicated that he did not find language rising to the level of express preemption, this Panel in fact did find such language. This shall be addressed.

[7] According to the trial magistrate, conflict preemption arises when federal and state regulations are in direct conflict and compliance with both would be impossible. (Tr. 4/1/09 at 37.)

the health and safety of its citizens," he was "not convinced by looking at the state statute and the statute that's in conflict . . . that [the state statute] does provide for additional safety." (Tr. 4/1/09 at 46.) The trial magistrate reasoned that the state statute could, consistent with the preemption doctrine, be more restrictive than the federal statute by mandating a passenger number that was lower than the federal statute, but it could not be less restrictive. (Tr. 4/1/09 at 46-47.) Here, the state statute's definition, which applies to vehicles transporting sixteen passengers (as opposed to the eight in the federal), is less restrictive, thus decreasing the number of commercial vehicles that could be regulated for safety. (Tr. 4/1/09 at 48.) The sixteen passenger state standard, by increasing the number of passengers that are required before a vehicle will qualify as a "commercial motor vehicle," provides for fewer regulations of such vehicles on the road, thereby "making Rhode Island less safe." (Tr. 4/1/09 at 49.)

The trial magistrate concluded that he attempted to give due deference to the state statute and the traditional police powers under which it was enacted. However, in this case and limited to these specific facts, the trial magistrate was satisfied that the Federal Motor Carrier Safety Regulations preempts the Rhode Island statute as to the number of passengers used in determining the classification of a commercial motor vehicle. (Tr. 4/1/09 at 49-50.) Accordingly, the trial magistrate was satisfied to a standard of clear and convincing evidence that the two violations of § 31-23-1 could be sustained. (Tr. 4/1/09 50-51.)

Next, the trial magistrate considered Appellant's second argument: that the penalties under § 31-41.1-4, according to § 31-23-1(b)(2), only apply to "carriers," which are defined as "any company or person who furthers their commercial or private enterprise by use of a vehicle that has the gross vehicle weight of 10,001 or more pounds or that transports hazardous material." (Tr. 4/1/09 at 51.) According to the trial magistrate, under § 31-23-1(a) it is a civil

violation to drive in violation of any of the requirements of chapter 23 or 24, and the trial magistrate found that there was such a violation. (Tr. 4/1/09 at 52.) Because of § 31-23-1(b)(2), the specified penalties in the statute apply only to "carriers." (Tr. 4/1/09 at 53.) However, there is a general penalty provision in § 31-27-13 for all violations, which would subject the violator to up to a $500 fine. Id. The trial magistrate held that the carrier provision penalties did not apply here, but the general penalty provision was applicable and Appellant properly could be charged under that. Id.

The trial magistrate sustained the charged violations of § 31-23-1. The Appellant, aggrieved by this decision, 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 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 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 in violation of constitutional provisions and affected by error of law. The Appellant has advanced several arguments in support of its appeal, each of which will be addressed in seriatim.

Appellant asserts that the Supremacy Clause does apply and, therefore, the entire state statute § 31-23-1 is invalid under the preemption doctrine and that Appellant cannot be charged under it. Next, Appellant contends that the trial magistrate, in relying on the federal definition of "commercial motor vehicle" to sustain the charged violations of § 31-23-1, violated the separation of powers doctrine because he impermissibly re-drafted the statute rather than applying its definition as written. As its third argument on appeal, Appellant argues that § 31-23-1 is void for vagueness in the manner in which it was construed by the trial magistrate.

Finally, Appellant contends that the charged violation cannot be sustained because it was found not to be a "carrier" under § 31-23-1(b)(2).

I.

Appellant contends that the trial magistrate's decision is affected by error of law. He argues that in applying a federal definition of commercial motor vehicle he invalidated the entire statutory scheme. As such, Appellant maintains the trial magistrate's decision to sustain the charged violation under an invalid statutory scheme is affected by error of law.

At the outset we note that Appellant has apparently failed to take note of the severability clause found in § 31-1-32, which, in the General Assembly's own language, refutes Appellant's exact assertion of an invalidated statutory scheme. Section 31-1-32 reads, "If any part or parts of this title are held to be unconstitutional that unconstitutionality shall not affect the validity of the remaining parts of this title." The trial magistrate correctly deemed the definition of a commercial motor vehicle contained in § 31-10.3-3 to be preempted by federal regulations contained in the FMCSR. Then, pursuant to the clear mandate of § 31-1-32, he enforced the remaining applicable, constitutional portions of Title 31.[8]

[8] Even without the severability clause contained in § § 31-1-32, the trial magistrate would still have been acting within his authority in enforcing the statute. See Landrigan v. McElroy, 457 A.2d 1056, 1061 (R.I. 1983) (quoting 2A Sutherland, Statutes and Statutory Construction § 57.24 at 456 (4th ed. 1973)) ("This principle applies despite the absence of a savings [or severability] clause in the statute because the authority of a court to eliminate invalid elements of an act and yet sustain the valid elements is not derived from the legislature, but rather flows from the power inherent in the Judiciary[]"). Furthermore, as a general principle, it is well-settled that it is the responsibility of the court to construe a duly-enacted statute as constitutional if that holding is reasonably possible. Members of Jamestown School Comm. v. Schmidt, 405 A.2d 16, 19 (R.I. 1979). The court should go as far as to "attach 'every reasonable intendment in favor of . . . constitutionality' in order to preserve the statute." Gem Plumbing & Heating Co. v. Rossi, 867 A.2d 796, 808 (R.I. 2005) (quoting Lynch v. King, 391 A.2d 117, 121 (R.I. 1978)).

Furthermore, by redacting or eliminating only the preempted portion of Title 31, the trial magistrate was acting in accordance with the United State's Supreme Court's Supremacy Clause jurisprudence. In cases of preemption pursuant to the Supremacy Clause, the United States Supreme Court has held that "state law is displaced only 'to the extent that it actually conflicts with federal law.'" Dalton v. Little Rock Family Planning Services, 516 U.S. 474, 476 (1996) (quoting Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190, 204 (1983)); see also Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-143 (1963) (holding that a state law was properly deemed preempted where "compliance with both federal and state regulations is a physical impossibility[]").

In Dalton, for example, the Court upheld a lower court's ruling that an Arkansas law—which permitted state funding for abortions only in instances where the mother's life was in danger—was preempted by an amendment to the Federal Social Security Act, which mandated state funding to abortions in all cases of rape and incest. Id. at 475. However, the Court disagreed with the lower court's decision to completely invalidate and enjoin enforcement of all other portions of the Arkansas law. Id. at 477. The Court posited many envisionable scenarios in which the Arkansas law could be enforced without "conflict to any federal statute." Id. at 477.

Here, the trial magistrate correctly recognized that the definition a commercial motor vehicle found in § 31-10.3-3 was preempted by federal regulations. To argue that because one definition is preempted by federal law, other relevant chapters of Rhode Island State law are no longer valid or enforceable is contrary to this country's Supremacy Clause jurisprudence. It is apparent that "the remainder of the statute retains its effectiveness as a regulation [pertaining to highway safety]." Brockett v. Spokane Arcades 472 U.S. 491, 506 (1985) (upholding the

highway safety]." Brockett v. Spokane Arcades 472 U.S. 491, 506 (1985) (upholding the enforcement of a Washington obscenity law even where one of its definition was deemed unconstitutional); see also Allen v. Louisiana, 103 U.S. 80, 83-84 (1880) (if a statute is constitutional in one part and unconstitutional in another and "if the parts are wholly independent of each other, that which is unconstitutional may stand while that which in unconstitutional will be rejected[]").

We note here, solely for the purposes of discussion, our disagreement with the trial magistrate's holding that this is not a case of express preemption. However, that disagreement only fortifies the trial magistrate's decision to implement the federal definition. In our findings, 49 C.F.R. § 392.2 is a clear mandate to enforce the federal definition where the State law conflicts. Section 392.2 states:

> "Applicable operating rules. Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with." (Emphasis added.)

By promulgating a statutory definition of "commercial motor vehicle" that is less strict than that of the federal Act, the General Assembly enacted a less stringent standard in that its definition requires fewer vehicles operating commercially to meet the standards and operating requirements listed in the FMCSR. Federal regulations may be a floor but not a ceiling. In other words, states seeking to further their police powers and regulate the health and safety of their citizens may set more stringent regulations, but they may not set standards below those set by the federal regulations. Chemerinsky § 5.2.4.

Abiding by the guidelines enunciated by Our Supreme Court, § 392.2 expressly preempts the conflicting Rhode Island definition. Section 392.2 "expressly provide[s] that the [FMCSR shall] supersede state law, and that [Rhode Island' definition of a commercial motor vehicle] falls within the class congress intended to preempt." Verizon 822 A.2d at 1929 (defining express preemption). Therefore, not only was implementing the definition found in the FMCSR not an abuse of discretion, but it was in accordance with a direct mandate of federal law. Accordingly, this Panel is satisfied that the magistrate's decision to sustain the charged violations is not affected by error of law.

II.

Appellant's next argument is that the trial magistrate impermissibly redrafted § 31-23-1 when he adopted the federal definition of a commercial motor vehicle contained in 49 C.F.R. § 390.5., thereby violating the separation of powers doctrine embodied in the Rhode Island constitution. Appellant claims that the trial magistrate was without authority to redraft a statute with a definition borrowed from federal regulations. We fail to see how any redrafting or borrowing was necessary to implement the federal definition. A close reading of both the federal regulations and state statutes reveals that the trial magistrate merely enforced the law as written by the General Assembly.

In reviewing a statutory provision, the judges and magistrates of this Tribunal must "examine[] the statute[s] as a whole, making every effort to effectuate the legislative intent." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (citing State v. Grayhurst, 852 A.2d 491, 516 (R.I. 2004)). As we previously noted, the severability clause in § 31-1-32 indicates that the intent of the legislature was for the remaining, constitutional portions of Title 31 to be enforced in a situation where one portion of the Title was deemed unconstitutional. Turning then to the

remaining portion is § 31-23-1, we find an explicit mandate of compliance with the FMCSR. Again, § 31-23-1 reads in pertinent part: "[f]or the purpose of reducing the number and severity of accidents, all commercial motor vehicles must meet applicable standards set forth in this chapter and chapter 24 of this title and in the federal motor carrier safety regulations (FMCSR) contained in 49 CFR Parts 387 and 390-399[]. . . "(emphasis added). Most notably amongst 49 CFR Parts 387 and 390-399 is § 390.5.

Section 390.5 contains the definition applied by the trial magistrate. Nothing was redrafted. Put simply, the trial magistrate redacted the unconstitutional state definition, then, per the General Assembly's explicit mandate to comply with the FMCSR applied the only valid, constitutional definition referenced anywhere the statute. See Lacey v. Reitsma, 899 A.2d 455, 458 (R.I. 2006) (courts should interpret and apply statutes with deference to the language as it appears). As such, we find no violation of the Separation of Powers clause and hold that the trial magistrate acted within his authority in interpreting the statute.

III.

As its third appellate argument, Appellant asserts that § 31-23-1 is invalid under the "void for vagueness" doctrine. As such, the trial magistrate's decision to sustain the charged violations is in violation of constitutional provisions.

In its most common application, the "void for vagueness" doctrine applies to penal and not civil violations. "A criminal law may be void for vagueness if it 'fails to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits.'" State ex rel. Town of Westerly v. Bradley, 877 A.2d 601, 603 (R.I. 2005) (quoting City of Chicago v. Morales, 527 U.S. 41, 56 (1999) (Emphasis added). "In a penal statute, the notice requirement is intended to provide an ordinary citizen with the information necessary 'to conform his or her

conduct to the law.'" Id.; see also Posters 'N' Things v. United States, 511 U.S. 513, 525 (1994) ("void-for-vagueness doctrine requires that a *penal* statute define the *criminal* offense with sufficient definiteness") (Emphasis added). The doctrine arises from the Due Process Clause of the 14th Amendment and generally "requires that a criminal statute be declared void when it is 'so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.'" State v. Alegria, 449 A.2d 131, 133 (R.I. 1982) (quoting Connally v. General Construction Co., 269 U.S. 385, 391 (1926)).

Here, Appellant was charged under § 31-23-1 with a civil violation of the motor vehicle code. According to the language of that statute:

> "[i]t is a civil violation for any person to drive or move, or for the owner, employer or employee to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such an unsafe condition as to endanger any person . . . ." G.L. 1956 § 31-23-1 (Emphasis added).

By the plain and clear language of the statute, Appellant was charged with violating a civil, not penal, statute. Although our Supreme Court has never reversed a conviction for a civil violation by use of the void for vagueness doctrine, it has considered its applicability to the civil context in D'Agostino v. D'Agostino, 463 A.2d 200 (R.I. 1983).[9] The issue for the court to decide in applying the doctrine to the civil context is "whether the statute sets forth guidelines of sufficient clarity and objectivity to guard against an arbitrary or ad hominem result." Id. at 201. In D'Agostino, the Court applied the vagueness doctrine to Rhode Island's equitable distribution statute for marital property. Id. The statute set forth criteria for the Court to consider in

[9] The United States Supreme Court has also considered the doctrine's application to civil violations in Boutilier v. Immigration and Naturalization Service, 387 U.S. 118 (1967). In Boutilier, the Court held that the void for vagueness doctrine applies to civil as well as criminal violations, "where 'the exaction of obedience to a rule or standard . . . was so vague and indefinite as really to be no rule or standard at all.'" Id. at 123. The Court, however, found that particular case not to meet the stricter standard for civil compared to criminal applications of the void for vagueness doctrine. Id.; see also 16B Am. Jur. 2d Constitutional Law § 920 (2009) ("courts demand less precision of statutes that impose only civil penalties than of criminal statutes because their consequences are less severe").

assigning marital property, but the plaintiff argued that the statutory guidelines were broad and vague because other jurisdictions follow more enumerated guidelines. Id. However, the Court held that while the vagueness analysis was not entirely inappropriate, the statute in question was constitutional, despite the fact that other jurisdictions may use more specific versions of a similar law. Id. at 201-02.

It is not the role of this Appeals Panel to extend the application of the vagueness doctrine in the State. Rather, the Panel's function is to ensure that the trial magistrate's decision in this case was not in violation of constitutional provisions, such as the void for vagueness doctrine. Rhode Island courts have declined to extend the use of that doctrine as applied to civil law, and thus it does not appear that the trial magistrate made any error of law. See D'Agostino, 463 A.2d at 201-02.

Moreover, this result is less than "arbitrary or ad hominem" and is based on the unambiguous federal definition of "commercial motor vehicle" which preempted the state definition. The alleged "vagueness" in the statute as construed by the trial magistrate fails to meet the heightened standard of review when applying the doctrine to civil regulations. It is a stretch to claim that the result reached by the trial magistrate was either arbitrary or ad hominem. In this area of law where conflict preemption arises under the Supremacy Clause of the Constitution, it is necessary that the federal law take precedence in order to maintain constitutionality of the statute. As previously stated, the trial magistrate had no meaningful choice but to apply the federal definition of "commercial motor vehicle." Further, there is no allegation that definition is unconstitutionally vague, as it clearly proscribes that a motor vehicle carrying eight or more passengers for compensation is a "commercial motor vehicle." 49 C.F.R. § 390.5. Together, the state and federal statutes regulating this area of law do not force the

common man to guess the meaning of "commercial motor vehicle." It is clearly set forth and defined in the Federal Motor Vehicle Safety Act, and that is the only definition that can be constitutionally applied. Accordingly, the trial magistrate's decision to sustain the charged violations of § 31-23-1 is not in violation of constitutional provisions.

IV

Finally, Appellant maintains that the trial magistrate's decision is affected by error of law because Appellant's vehicle is not a "carrier," as that term is defined in § 31-23-1(c). Thus, Appellant argues, it cannot be penalized under that statute.

Title 31, Chapter 27 of the Rhode Island General Laws contains a general penalty provision in addition to the specified penalties listed in various sections.[10] That general provision provides for a fine of up to $500 for any civil violation of the chapters, unless another penalty is provided. § 31-27-13. Here, the trial magistrate found that Appellant did not meet the definition of "carrier" as listed in § 31-23-1(c), as it was not disputed that the vehicle did not meet the weight or hazardous material requirement.[11] Because Appellant was found not be a carrier, that specific penalty did not apply. Therefore, as properly found by the trial magistrate,

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[10] Section 31-27-13 reads, in pertinent part:

> (a) It is a civil violation for any person to violate any of the provisions of chapters 1 - 27 or chapter 34 of this title, unless the violation is by these chapters or other law of this state declared to be a felony or a misdemeanor, or unless the offense is punishable by a fine of more than five hundred dollars ($500) or by imprisonment.
>
> (b) Unless another penalty is provided by chapters 1 - 27 or chapter 34 of this title, or by the laws of this state, every person convicted of a civil violation of the chapters shall be punished by a fine of not more than five hundred dollars ($500).

[11] Section 31-23-1(c) defines "carrier" as "any company or person who furthers their commercial or private enterprise by use of a vehicle that has a gross vehicle weight rating (GVWR) of ten thousand and one (10,001) or more pounds, or that transports hazardous material."

Appellant may be charged under the general penalty provision with a fine of up to $500 because no other penalty is provided for the Appellant's civil violation of the Motor Vehicle Offenses chapter.

Appellant's argument that § 31-23-1(b) as a whole, rather than just the specified penalty, applies only to "carriers" is also without merit. The statute states plainly that "all commercial motor vehicles must meet applicable standards set forth in this chapter." (Emphasis added). As Appellant was found to be operating a "commercial motor vehicle," the trial magistrate made no error of law in applying the general penalty provision to this violation when the Appellant did not fit within the more specific "carrier" penalty.

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 not in violation of constitutional provisions or otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced.

Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED: