

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

BERT SALVA

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C.A. No. T09-0073

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on September 2, 2009—Chief Magistrate Guglietta (Chair, presiding) and Judge Almeida and Magistrate Noonan, sitting—is Bert Salva’s (Appellant) appeal from a decision of Judge Ciullo, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to devices.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On March 27, 2009, the Rhode Island State Trooper Number 195 (Trooper) was stationed just south of the Pawtucket River Bridge (Bridge) at exit twenty-seven (27) on Route 95 South. The Trooper watched as Appellant—operating an eighteen wheel tractor trailer with more than the permissible two axles—traveled over the Pawtucket River Bridge. (Tr. at 2-3.) Subsequently, Appellant was stopped by the Trooper and charged with violating § 31-13-4. Appellant contested the charge, and the matter proceeded to trial.

At trial, counsel for Appellant waived his appearance pursuant to Rule 23(b) of the Traffic Tribunal Rules of Procedure.¹ (Tr. at 2.) The trial commenced with the Trooper testifying that he was stationed on Route 95 South at exit 27. He was monitoring the commercial traffic

¹ Rule 23(b) of Traffic Tribunal Rules of Procedure reads: “[a] defendant who is represented by counsel may waive his or her right to be present by filing a waiver thereof.”

crossing over the Pawtucket River Bridge. (Tr. at 2.) The operation of commercial vehicles over the Bridge is restricted due to the structure's deteriorating condition. Therefore, if the commercial vehicle weighs more than eighteen tons per unit or has more than two axles per unit, then the operator must avoid the Bridge and follow the enumerated detour. (Tr. at 6.) The Trooper explained that the first Bridge sign on Route 95 South is posted at the state line, just prior to Roosevelt Avenue. There are also "sign[s] saying to use the detour at exit thirty (30) and . . . another detour sign at exit twenty-nine (29)." (Tr. at 5-6.)

On the afternoon of March 27, 2009, the Trooper observed an eighteen wheel tractor trailer operate across the Pawtucket River Bridge. (Tr. at 6.) After initiating a traffic stop, the Trooper identified the driver as Appellant. The Trooper did not weigh the tractor-trailer, but upon his observation of the vehicle found "three axles in the front [and] two axles in the back for the trailer." (Tr. at 9.) According to the Trooper's testimony, Appellant operated this tractor trailer past the axle-restriction sign at exit 30,² ignored the enumerated detour, and crossed over the Pawtucket River Bridge. (Tr. at 8-9.) Subsequently, the Trooper charged Appellant with violating § 31-13-4.

At the close of the prosecution's case, Appellant sought to dismiss the charged violation pursuant to Rule 16 of the Traffic Tribunal Rules of Procedure.³ As grounds for dismissal, counsel argued that the record was insufficient to prove to a standard of clear and convincing evidence that Appellant had, in fact, operated his tractor trailer past the posted signage at exit 30

² According to the testimony of the Trooper, the sign at exit 30 directs the motorist to follow the stated detour if the motorist's vehicle is "overweight, 18 tons per unit, or in violation of two axles per unit." (Tr. at 6.)

³ Rule 16 of the Traffic Tribunal Rules of Procedure reads:

"The court on motion of a defendant or of its own motion shall, at the close of the evidence offered by the prosecution, order the dismissal of one or more offenses charged in the summons if the evidence is insufficient to sustain a conviction of such offense or offenses to a standard of clear and convincing evidence. If a defendant's motion to dismiss is not granted, the defendant may offer evidence without having reserved the right."

on Route 95 South. Counsel for Appellant reasoned that to violate § 31-13-4, Appellant would have had to operate his vehicle past the posted sign at exit 30 and subsequently disobey the instructions thereon. Appellant stated that there was no direct evidence proffered by the Trooper that he had, in fact, operated his vehicle past the signage at exit 30. Appellant argued that the reliance of the trial judge on “an inference upon an inference,” as to which on-ramp Appellant used to enter Route 95 South, was improper. (Tr. at 10 - 11.)

The trial judge disagreed with Appellant’s argument finding that Route 95 South, from Massachusetts to the Pawtucket River Bridge, is sufficiently marked with signs depicting the weight limit and axle restrictions. (Tr. at 15.) Specifically, the trial judge relied on the Trooper’s testimony regarding his personal observation of Appellant’s tractor trailer crossing over the Pawtucket River Bridge. (Tr. at 3, 14.) The trial judge found that Appellant traveled past the signage at exit 30 and continued over the Bridge choosing not to “obey the instructions of [the] official traffic control device applicable to him placed in accordance with” § 31-25-30, thus violating § 31-13-4.

Following the trial, the judge sustained the charged violation of § 31-13-4. 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant argues that the trial judge's decision to sustain the charged violation is affected by an error of law and clearly erroneous due to the lack of probative evidence on the record. Appellant contends that the prosecution failed to prove the charged violation of § 31-13-4

to a standard of clear and convincing evidence, as required by Rule 17 of the Traffic Tribunal Rules of Procedure.⁴ According to Appellant, there is no evidence in the record that he failed to “obey the instructions of any official traffic control device applicable to him.” Specifically, Appellant argues that the record is devoid of direct evidence that he operated a tractor trailer past the Pawtucket River Bridge detour sign posted at exit 30. Additionally, Appellant asserts that the trial judge’s decision was affected by an error of law when he relied upon an inference drawn from another inference in making his decision to sustain the charged violation of § 31-13-4.

On June 12, 2008, the General Assembly made it “unlawful to transport or operate over or upon the Pawtucket River Bridge . . . any single vehicle equipped with more than two (2) axles or any combination vehicle equipped with more than two (2) axles per unit except those listed” in § 31-25-30. Pursuant to § 31-25-30, the Department of Transportation was “directed to post signs to limit access” to the Bridge due to its structural deficiencies. Section 31-13-4 provides in pertinent part that “[t]he driver of any vehicle shall obey the instructions of any official traffic control device applicable to him or her . . . unless otherwise directed by a traffic or police officer”

I

Clear and Convincing Evidence

During Appellant’s trial and subsequent appeal, he relied on the arguments set forth in State v. Wood, C.A. T09-0023 (R.I. Traffic Trib.) (filed April 27, 2009). Similarly to the appellant in Wood, Appellant contends that the prosecution failed to prove the charged violation of § 31-13-4 to a standard of clear and convincing evidence, as required by Rule 17 of the Traffic Tribunal Rules of Procedure. Although our Rules do not expressly define “clear and convincing

⁴ Rule 17 of Traffic Tribunal Rules of Procedure reads, in relevant part: “The burden of proof shall be on the prosecution to a standard of clear and convincing evidence.”

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.

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.

Thus this Panel’s task on appeal is to review the evidentiary record to determine whether the trial judge could have found it “highly probable” that Appellant operated his tractor trailer over the Pawtucket River Bridge in contravention of the signage posted at exit 30.

Having reviewed the record in its entirety, the members of this Panel are satisfied that the prosecution met the burden of proof set forth in Rule 17. This Panel concludes that there is direct testimonial evidence from the Trooper, found to be credible by the trial judge, that Appellant disobeyed posted signs when the Trooper watched him operate his tractor trailer over the Pawtucket River Bridge. (Tr. at 6.) Although the Trooper did not personally observe Appellant drive past the axle restriction sign posted at exit 30, he did witness Appellant travel southbound on Route 95 toward his stationary post at exit 27, which is past the Bridge. From these personal

observations, the Trooper reasonably inferred that Appellant must have traveled past the posted sign at exit 30, ignored the detour, and continued over the Bridge. Accordingly, after reviewing the evidentiary record, this Panel agrees with the trial judge that it is “highly probable” that Appellant operated his tractor trailer over the Pawtucket River Bridge in violation of the sign posted at exit 30. Thus the members of this Panel find the trial judge’s finding of a charged violation of §31-13-4 is not affected by error of law or clearly erroneous.

II

Inference upon inference

Counsel for Appellant argued that the trial judge incorrectly relied on an inference upon an inference when he sustained the charged violation of § 31-13-4. Appellant relied on the argument set forth by the Supreme Court in Tot v. United States that “a statutory presumption cannot be sustained if there [is] no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience.” 319 U.S. 463 (1943). Appellant attempts to use this language to prove the lack of connection between the Trooper’s observation of Appellant crossing the Bridge and the Trooper’s presumption that he drove past the subject signage at exit 30.

However, this Panel notes that the Supreme Court in Tot further stated:

“This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of the courts.” Id. at 468.

The Trooper inferred that Appellant operated the tractor trailer past the posted sign at exit 30 because he watched Appellant’s vehicle travel southbound on Route 95 and cross the Pawtucket

River Bridge.⁵ The members of this Panel agree that it is reasonable to infer that when an eighteen wheel tractor trailer is traveling from a northerly direction through Rhode Island, the vehicle would continue to solely operate on Route 95 South. It would be unreasonable to infer that the vehicle would exit the highway only to avoid Pawtucket River Bridge detour signs, drive through the city of Pawtucket and then re-enter the highway to cross over the Bridge. Id.

Additionally, Appellant did not submit any evidence to rebut the inference that he operated his tractor-trailer past the detour signs. According to the facts of this case, the Panel is of the opinion that it was reasonable for the trial judge, in the absence of any factual issue raised by the Appellant, to infer that his travel down Route 95 South led him past the posted detour signs. State ex rel Thompson v. DeNardo, 448 A.2d 739 (R.I. 1982); see United States v. Gainey, 380 U.S. 63, 66 (1965); Tot v. United States, 319 U.S. 463, 467. “Such an inference bears a rational relation between the facts proved and the ultimate fact inferred.” DeNardo, 448 A.2d at 741. No evidence was presented by Appellant to rebut this inference and the Panel can rely on an inference that is reasonable. See R.I. R. Evid. 301.

Furthermore, our Supreme Court made clear in Link that this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Trooper, it would be impermissible to second-guess the trial judge’s “impressions as he . . . observe[d] [the Trooper] [,] listened to [his] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206. The trial judge

⁵ According to Rule 301(b) of the Rhode Island Rules of Evidence, “[a]n inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action.”

found that the Trooper made a valid inference based upon a broad view of the circumstances, taking into account his knowledge of the location of the signs, his prior experience as an officer of the State Police and his assignment "to the Pawtucket River Bridge detail." (Tr. at 2 - 3.)

Accordingly, as there is legally competent evidence in the record that Appellant failed to "obey the instructions of any official traffic control device applicable to him . . . placed in accordance with the provisions of" § 31-25-30, the charged violation of § 31-13-4 is supported by the reliable, probative and substantial evidence of record.

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 is not affected by an error of law or erroneous in light of the reliable, probative, and substantial evidence on the record. The decision is not in violation of statutory provisions. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

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