

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

C.A. No. T10-0053

DARREL KING

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DECISION

PER CURIAM: Before this Panel on December 8, 2010—Judge Ciullo (Chair presiding), Administrative Magistrate Cruise, and Magistrate Goulart, sitting—is Darrell King’s (Appellant) appeal from a decision of Judge Parker, 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 § 31-41.1-8.

Facts and Travel

On March 9, 2010, Trooper Younkin of the Rhode Island State Police (Trooper) conducted a traffic stop on I-95 North near the Pawtucket River Bridge. Appellant was issued a citation for the aforementioned motor vehicle offense. Appellant contested the charge, and the matter proceeded to trial.

At trial, the Trooper testified that she witnessed Appellant’s vehicle, a five axle tractor trailer, cross over the Pawtucket River Bridge at Exit 28. (Tr. at 1.) The Trooper conducted a traffic stop of Appellant’s vehicle and issued him a citation pursuant to §31-13-4 “Obedience to devices.” When asked by the trial judge what devices were

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disobeyed, the Trooper responded, “[t]he signs, the detour signs for the Pawtucket River Bridge.” Id.

Appellant’ counsel moved to dismiss the count pursuant to Rule 16 of the Traffic Tribunal Rules of Procedure, claiming that the Trooper failed to present clear and convincing evidence that Appellant had violated the statute. (Tr. at 4.) Specifically, he argued that the Trooper failed to articulate what specific instructional language was disobeyed by the Appellant. (Tr. at 6.) Denying the motion, and sustaining the charge based upon the trooper testimony, the trial judge noted, “[the trooper] testified [as to] obedience to a sign, and I can take notice of the signs; that we’ve had five million cases here involving the signs.” (Tr. at 7.) Subsequently, Appellant’s counsel objected to the judge taking notice of an element of the offense charged.” (Tr. at 8.)

Following the trial, Appellant 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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may 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:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made following unlawful procedure;
- (4) Affected by another error of law;

- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge'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 concerning the weight of the evidence on questions of fact.” Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mut. Ins. 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 decision is supported by legally competent evidence or is affected by an error of law.” Link, 633 A.2d at 1348 (citing Envtl. 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 maintains that the record indicates that the State failed to meet its burden of proof in proving the elements of the offense and that the trial judge abused his discretion in taking judicial notice of the signage in question. We agree.

Burden of Proof

Section 31-13-4 reads as follows:

“The driver of any vehicle shall obey the instructions of any official traffic control device applicable to him or her placed in accordance with the provisions of chapters 12-27 of this title, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of authorized emergency vehicle in those chapters.”

Pursuant to Rule 17 of the Traffic Tribunal Rules of Procedure, the State was required to prove that Appellant *disobeyed instructions* on a specific device by clear and convincing evidence. It is true that our rules do not expressly define “clear and convincing evidence.” However, this Panel is guided by the definition utilized by our Supreme Court:

“The standard of clear and convincing evidence means 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. “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.” State v. Fuller-Balletta 996 A.2d 133, 142 (R.I. 2010) (quoting Parker v. Parker, 103 R.I. 435, 442 238 A.2d 57, 60-61 (1968)).

We note that regarding the specifics of the alleged violation, the trooper merely stated that she “observed the [truck] cross over the [bridge] and subsequently stopped the

vehicle.” (Tr. at 3.) When prodded by the trial judge to indicate what device was disobeyed, the trooper replied, “[t]he signs, the detour signs for the Pawtucket River Bridge.” Id. Never did the Trooper state with any particularity the particular sign or any directional language Appellant allegedly disobeyed. We conclude that despite the trial judge’s ruling, the Trooper Younkin’s testimony fell short of “enabl[ing] [the court] to come to a clear conviction without hesitancy of the truth of the precise facts in issue[.]” Aetna Ins.Co.v. Paddock, 301 F.2d 807, 811 (5th Cir. App. 1963) (explaining the “clear and convincing” evidentiary standard).

Judicial Notice

As mentioned above, 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.” Such rules are in place to protect the integrity of the hearings and afford motorists a fair and due procedure.

Here, the language on the sign was a central issue to the dispute, and therefore, the onus was on the State to prove, by clear and convincing evidence, that there was, in fact, language indicating alternate routes. Rule 201 of the Rhode Island Rules of Evidence states: “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” R.I.R. Evid. 201. In this case the trial judge’s decision in taking judicial notice of such a central piece of evidence, “deprive[d] [the] [Appellant] of the right of cross-examination regarding a contested fact []” State v. Silva, 926 A.2d 382, 385 (N.J. Super, Ct. App. Div. 2007); see also Commonwealth v. Brose, 194 A.2d 322, 323 (Pa. 1963) (holding that a

trial judge presiding over a speeding trial erred in taking judicial notice of speed limits on a eastern Pennsylvania highway when (1) the relevant statute tasked the Commonwealth with proving the existence of the speed limit; (2) the Commonwealth could have done so with minimal effort).

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 clearly erroneous in light of the reliable, probative, and substantial record evidence and affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

DATE: 1-25-11