

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

C.A. No. T10-0071

RUSLAN OLKHOVETSKYY

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on January 26, 2011—Magistrate Goulart (Chair, presiding), Judge Almeida, and Judge Parker, sitting—is Ruslan Olkhovetsky’s (Appellant) appeal from a decision of Judge Ciullo, sustaining the charged following 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, June 29, 2010 a trooper from the Rhode Island State Police (“Trooper”) conducted a traffic stop on I-95 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.

The trial commenced with the trooper testifying that he “stopped a vehicle for not abiding by the traffic control device on Route 95 in the City of Pawtucket.” Id. The trooper stated that “the vehicle failed to exit at Exit 30 as directed by the signs.” Id. He then conducted a traffic stop of the vehicle, at which time he “issued [the Appellant] a citation for obedience to traffic control devices.” (Tr. at 4.)

On cross examination, the trooper informed the Court that based upon where the traffic stop was conducted, Appellant was on notice of the mandatory exit. (Tr. at 5.) Noted the trooper: “[traveling from where he did] would have necessitated in him seeing all of the signage in Massachusetts, as well as, at least, the first two signs in Rhode Island. Id.

After the trooper had completed his testimony, counsel for the Appellant motioned to dismiss the charge, arguing that the State had failed to provide “clear and convincing [evidence] that [Appellant] was continuously operating on Route 95 South without, the possibility of exiting and entering onto the highway between exits 27 and 30.” (Tr. at 6.) Further, Appellant’s counsel claimed that the trooper never even “testif[ied] as to what the sign says.” Tr. at 7. Accordingly, he argued that the State had failed to prove its case that the Appellant had failed to abide by posted traffic devices. Id.

The trial judge disagreed with Appellant’s argument. According to him “[the trooper] said the sign said the truck has to exit. That’s what he said. And the truck didn’t exit.” Id. Based upon that summation, the trial judge held that the State had, in fact, made a prima facie case and sustained the charge. 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 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.¹

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.

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.

¹ 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."

After reviewing the record, this Panel finds that the State failed to demonstrate that Appellant violated the §31-13-4 by clear and convincing evidence. Section 31-13-4 provides the following:

“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 an authorized emergency vehicle in those chapters.”

According to the testimony of the trooper, the device or devices allegedly disobeyed by the Appellant indicated that “commercial vehicles weighing over 18 tons and having two or more axles” were required to exit at some point before crossing the Pawtucket River Bridge. (Tr. at 3.) Nowhere in the record does the State present any evidence that Appellant’s vehicle met the description written on the relevant signage. In fact, the trooper failed to make any mention, or give any kind of description of Appellant’s vehicle.

As noted above, this Panel’s review is confined to the record. We will not look beyond the record are not at liberty to make any assumptions or piece together events in order to make conclusions. State v. Brouillard, 745 A.2d 759 (R.I. 2000) (holding that a reviewing court will not consider facts that were “not introduced or even mentioned” at a lower court proceeding). The State never mentioned or gave a description of the type of vehicle operated by the Appellant, thereby failing to prove an essential element of the offense charged to the requisite degree of proof. See Aetna Ins.Co.v. Paddock, 301 F.2d 807, 811 (5th Cir. App. 1963) (holding that clear and convincing evidence is such that it

“enable[s] you to come to a clear conviction without hesitancy of the truth of the precise facts in issue[.]”).

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: