STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND :
:
v. : C.A. No. T11-0026
:
CHRISTOPHER BOSLEY :

DECISION

PER CURIAM: Before this Panel on June 1, 2011—Chief Magistrate Guglietta (Chair, presiding), Judge Ciullo and Magistrate Goulart, sitting—is Christopher Bosely's (Appellant) appeal from a decision of Judge Almeida, sustaining the charged violations of G.L. 1956 § 31-13-4, "Obedience to devices." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On February 16, 2011, Appellant, while operating his commercial vehicle on Route 95 North near Exit 27 in Pawtucket, Rhode Island, was cited for the aforementioned violation of the motor vehicle code. He contested the charges and the matter proceeded to trial before Judge Almeida at the Rhode Island Traffic Tribunal on April 11, 2011.

At trial, a member of the Rhode Island State Police, identified in the record by only her first name Julie (hereinafter, the trooper) testified that on February 16, 2011 at about 1:00 p.m. in the afternoon, "she observed [Appellant's vehicle], an international tractor-trailer. . . driving northbound on Route 95. . . ." (Tr. at 6.) The trooper testified that she issued the Appellant a citation "due to the five axle restriction with the

Pawtucket River Bridge." Id. The trooper presented the court with photographic evidence of the signage at Exits 25, 26, 27 that she alleged Appellant disobeyed when he decided to operate his truck over the Pawtucket River Bridge. Id.

Counsel for Appellant took an opportunity to cross examine the trooper. On cross-examination, the trooper indicated that she did not know for sure where the Appellant was coming from prior to the traffic stop. (Tr. at 10.) She testified that there was a possibility that he entered the highway from Exit 25 or 26. Id. Even if that were the case, the trooper claimed that "[Appellant] would have definitely seen the [sign] at Exit 27." (Tr. at 11.) When asked that had Appellant entered the highway from Lonsdale Avenue, would he have definitely seen the posted signage, the trooper responded that she could be sure if he physically saw the signs . Id.

After finishing his cross examination of the trooper, Appellant moved the court to dismiss the violation based upon the fact that the trooper's testimony was not conclusive of the fact that "the person would have been in a position to have noticed the sign." (Tr. at 12.) The trial judge rejected that argument, holding that regardless of the trooper's ability to testify definitively that Appellant saw the posted signs, there was clear and convincing evidence that the relevant signs were, in fact, posted and that he drove past those posted signs. (Tr. at 13-14.) The trial judge held, that regardless of where the Appellant entered the highway, ["t]he fact that. Mr. Bosley's tractor trailer was operating pas[t] her post indicates that he failed to obey the sign and the notice that was given prior to Exit 27." (Tr. at 17.) The trial judge subsequently sustained the charge against the Appellant, who then appealed that decision before this Panel.

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:
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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 affected by error of law and clearly erroneous in light of the reliable, probative, and substantial record evidence. Specifically, Appellant contends that the State 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 Rules of Procedure for the Traffic Tribunal.[1] Since the trooper could not conclusively state that Appellant was in a position to view the signs, there is no clear and convincing evidence in the record that Appellant ever saw the signs and therefore failed to "obey the instructions of any official traffic control device applicable to him . . . ."

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

[1] Rule 17 reads, in relevant part: "The burden of proof shall be on the prosecution to a standard of clear and convincing evidence."

> 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.

On Appeal Appellant relies on the fact that the trooper could not be certain that Appellant ever looked up and saw the posted signage. Such testimony is not necessary to sustain a violation. The record evidence is clear. The trooper testified that there were signs posted at three exits located essentially, in front of her fixed highway position from which she viewed Appellant's vehicle pass her by. Based upon that uncontradicted testimony it was reasonable for the trial judge to infer that Appellant, traveling north on Rout 95 passed by at the very least, one of those signs, and that, in turn, a violation had occurred. See Arden Engineering Co. v. E. Turgeon Const. Co., 97 R.I. 342, 347, 197 A.2d 743, 746 (1964) (holding that reviewing courts shall accept reasonable inferences drawn from the original trier of fact). Moreover, Defendant proffered no evidence or testimony. Rather he only offered a theory, both at trial and before this Panel, that a possibility remained, that somehow, Appellant did not see the posted signage. Such conclusory allegations are not ordinarily sufficient for this Panel to overturn the decision of the trial judge, let alone in this scenario, where we find reliable, probative and

substantial evidence to sustain the charge. See State v. LeBlanc, 100 R.I. 523, 527 217 A.2d 471, 474 (1966) (allegations that are conclusory and "not supported by an allegation of underlying facts and circumstances [are normally] [in]capable of persuading a [trier of fact]. . . ."

Conclusion

This Panel has reviewed the entire record before it. Having done so, this Panel is satisfied that the trial judge's decision sustaining the charged violation of § 31-13-4 was not affected by error of law, clearly erroneous based on the reliable, probative, and substantial record evidence, characterized by abuse of discretion, or in violation of constitutional provisions. Finding that substantial rights of Appellant have not been prejudiced, we hereby deny his appeal and sustain the violation charged against him.

ENTERED: