

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

ANTOINE EL HOSRI

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**C.A. No. T14-0029
07427000853**

DECISION

DiSANDRO III, Adm. M., and PARKER, J.: Before this Panel on May 28, 2014—Administrative Magistrate DiSandro III (Chair), Judge Parker, and Magistrate Noonan sitting—is Antoine El Hosri’s (Appellant) appeal from a decision of Magistrate Abbate (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to devices.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8

Facts and Travel

On February 27, 2014 Officer Michael Dennis Charbonneau of the Rhode Island Capitol Police (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on April 29, 2014.

At trial, the Officer testified that on February 27, 2014, at approximately 5:00 pm, he received a call that a vehicle was unable to leave its parking space at the Department of Transportation (DOT) parking lot at Capitol Hill because Appellant’s vehicle was parked outside the clearly demarcated parking space lines, partially blocking adjacent vehicles. (Tr. at 8.) Moreover, the Officer testified that despite the fact that it had snowed that day, the lines designating parking spaces were still visible. Id. Additionally, the Officer described that the

entrance and the exit of the parking lot had clearly posted signs that read motor vehicles must be “Parked in lined spaces only.” Id. The Officer determined Appellant was the registered owner of the vehicle and cited Appellant for the aforementioned violation by leaving the summons on Appellant’s vehicle. Id.

Subsequently, the Trial Magistrate issued his decision sustaining the charged violation. Id. at 21-22. In particular, the Trial Magistrate highlighted the Officer’s testimony that Appellant’s vehicle was not parked within a properly designated parking space. Id. at 21. Aggrieved by the Trial Magistrate’s decision to sustain the charge, Appellant timely filed the instant appeal.

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 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 [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 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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that the Trial Magistrate's decision to sustain the charged violation was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In particular, Appellant asserts that the Trial Magistrate failed to consider his testimony that fallen snow had made it impossible for Appellant to determine whether or not he was in a marked parking space. This panel disagrees with Appellant's assertion the Trial Magistrate failed to consider his testimony that fallen snow had made it impossible for Appellant to determine whether he was properly in a designated marked parking space. After listening to the evidence, the Trial Magistrate appropriately found that Appellant, prior to parking his vehicle, had physically removed a traffic cone and intentionally parked his vehicle outside the marked parking space as delineated by said traffic cone. In addition, Appellant asserts that he

was improperly charged with violating § 31-13-4 and that the appropriate charge should have been a parking violation.

This Panel agrees with Appellant that he was improperly charged with violating § 31-13-4 because we find that it was improper for the Officer to issue Appellant a citation for a moving violation of § 31-13-4 under the facts of this case. Section 31-13-4, reads, in relevant part, that “[t]he *driver* of any vehicle shall obey the instructions of any official *traffic* control device” See § 31-13-4 (emphasis added). The unambiguous language of section 31-13-4 makes clear that the statute encompasses moving violations that occur during the operation of the vehicle within the flow of traffic on a public road or highway. See § 31-13-4; see also Chambers v. Ormiston, 935 A.2d 956, 961 (R.I. 2007) (reaffirming that when a statute has a plain, clear, and unambiguous meaning, courts apply that plain meaning to the case at hand).

Here, Appellant was not operating his vehicle at the time the citation was issued. Moreover, Appellant was not on a public road or highway, and thus, each and every element of the instant charge could not be proved by the prosecution. Accordingly, it was an error of law for the Trial Magistrate to determine that the prosecution had proven the requisite elements of the charge by clear and convincing evidence.

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 was made upon an error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED:

Administrative Magistrate Domenic A. DiSandro, III (Chair)

Judge Edward C. Parker

Noonan, William T., M. dissenting: The Appellant in this case was charged with violating § 31-13-4. This statute reads 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 placed in accordance with the provisions of chapters 12 -- 27 of this title. . . .” Sec. 31-13-4. Section 13-12-1 provides that the chapter is applicable on all state public property. See § 13-12-1. Furthermore, “[r]egulating the standing or parking of vehicles” is plainly and unambiguously listed within the power of local authorities pursuant to § 31-12-12. See Chambers, 935 A.2d at 961 (reaffirming that courts apply the plain, clear, and unambiguous meaning of a statute).

At the time of the citation, Appellant's vehicle was improperly parked, outside the clearly demarcated parking space lines, in the DOT parking lot—a public parking lot—on Capitol Hill. See Tr. at 8; see also § 13-12-1 (stating the chapter is applicable on public state property); § 13-12-12 (stating the chapter includes regulating the parking of vehicles). In this case, Appellant was clearly disobeying the parking lot lines, in violation of § 31-13-4. Thus, I disagree with the majority, and believe the charged violation should be sustained.

Magistrate William T. Noonan

DATE: _____