STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Carol Brown	:	
	:	
v.	:	**A.A. No. 2018 – 143**
	:	
State of Rhode Island	:	
(RITT Appeals Panel)	:	

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings and Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED

that the Findings and Recommendations of the Magistrate are adopted by reference as the decision of the Court and the decision rendered by the Appeals Panel in this case is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 25th day of March, 2019.

By Order:

___/s/_____
Stephen C. Waluk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Carol Brown	:	
	:	**A.A. No. 2018 – 143**
v.	:	**(C.A. No. T17-0031)**
	:	**(17-304-501897)**
State of Rhode Island	:	
(RITT Appeals Panel)	:	

F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this proceeding, Ms. Carol Brown urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a trial magistrate's verdict adjudicating her guilty of a moving violation: "Duty in Accident Resulting in Damage to Highway Fixtures" in violation of G.L. 1956 § 31-26-5. Jurisdiction for the instant appeal is vested in the District Court by G.L. 1956 § 31-41.1-9 and the applicable standard of review is found in subsection 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. After a review of the entire record I find, for the reasons I shall explain, that the decision of the panel is neither clearly erroneous nor contrary to law —

and should therefore be AFFIRMED; I so recommend.

I

Facts and Travel of the Case

A

The Citation and the Trial

The facts of the incident in which Ms. Brown was cited by Officer Kimberly DaSilva of the Portsmouth Police Department on July 18, 2017 are stated in the decision of the panel. The core of the incident is described as follows:

> … Officer DaSilva testified that on July 18, 2017, she "was dispatched to the intersection of Bristol Ferry Road and the Mount Hope Bridge for the report of a vehicle that had driven up a curb on the median and struck a sign, [and] continued driving." [*Trial Transcript,* at 6]. She was notified by dispatch that a caller reported that the suspect's vehicle, an older-model red pickup truck, had hit a large green sign and continued traveling onto Bristol Ferry Road. *Id.*
>
> As Officer DaSilva was traveling on West Main Road towards the scene of the reported accident, she observed a red pickup truck — matching the dispatched description of the suspect's vehicle — driving in the opposite direction. *Id.* After passing the pickup truck, a motorist traveling behind the truck, pointed to the vehicle "as if he knew what [Officer DaSilva] was looking for." *Id.* Officer DaSilva then turned around and conducted a traffic stop of the pickup truck, which was operated by Appellant. *Id.* at 7.
>
> During the stop, Officer DaSilva "advised [Appellant] of the reason [for] the stop, asked [Appellant] if she was okay, asked [Appellant] if she had anything to drink . . . [and] [a]sked [Appellant] if she hit a sign." *Id.* Appellant

> responded that she did not have anything to drink, and that she did not hit a sign. *Id*.

Decision of Appeals Panel, at 1-2. We may also note that, during her testimony, Officer DaSilva identified a photograph of the damaged sign, which was admitted into evidence. *Decision of Appeals Panel,* at 2 (citing *Trial Transcript,* at 8-9).

Ms. Brown was cited for damaging a highway fixture and entered a plea of not guilty at her arraignment on September 1, 2017. *See Docket Sheet* (in Electronic Record attached to this case, at 66). The matter proceeded to trial before a trial magistrate of the Tribunal on October 27, 2017. *See Docket Sheet* (in Electronic Record, at 63); *see also Trial Transcript,* at 1 (found within the Electronic Record, at 31).

At trial, Officer DaSilva testified as to the salient facts of the traffic stop in a manner consistent with the foregoing narrative. In addition, she explained her rationale for citing Ms. Brown:

> Despite Appellant's response, Officer DaSilva issued her a citation for damaging a highway fixture. *Id*. Officer DaSilva explained that she issued Appellant the citation "[b]ased on the damage to the front bumper of [Appellant's] vehicle that seemed to be fresh damage, as well as the vehicle that was behind [Appellant] pointing towards [Appellant's] vehicle, and the fact that her vehicle matched a description called in by one of the witnesses …." [*Trial Transcript,* at 7].

Decision of Appeals Panel, at 2.

The Town's next witness was Detective Lee Trott. *Id*. (citing *Trial Transcript,* at 10). He testified that he located and photographed the damaged sign. *Id*. (citing *Trial Transcript,* at 11).

As its third and final witness, the Town called Mr. Sean Carroll, the individual who reported the accident to the Portsmouth Police. *Decision of Appeals Panel,* at 3 (citing *Trial Transcript,* at 12). The Appeals Panel summarized his testimony thusly:

> Mr. Carroll testified that he was traveling "onto the Mt. Hope Bridge via Bristol Ferry Road when [he] noticed a vehicle … taking a left instead of going straight or [] right which is indicated by a sign on that road." [*Trial Transcript,* at 12]. Mr. Carroll further stated that the vehicle "[t]ook a left and jumped over the median, struck the sign and then proceeded to accelerate over the median and go down … Bristol Ferry Road in the right-hand lane." *Id*. at 12-13. After seeing this, Mr. Carroll pulled over and contacted the Portsmouth Police Department. *Id*. at 13.

Decision of Appeals Panel, at 3.

Finally, Appellant Brown gave testimony. *See Trial Transcript,* at 13 *et seq*. She testified that she did not hit the sign, nor was the issue raised with her by Officer DaSilva. *Decision of Appeals Panel,* at 3 (citing *Trial Transcript,* at 15). Ms. Brown also denied that there was a car behind her. *Id*. Moreover, Officer DaSilva never mentioned a sign. *Id*.

Appellant also presented a notarized statement from her neighbor, a Ms. Jody Bush, stating that the damage to the front end of Ms. Brown's vehicle was inflicted about two years earlier when Ms. Brown jump-started Ms. Bush's car. *Decision of Appeals Panel,* at 3 (citing *Trial Transcript,* at 13-14); *see also* Defendant's Exhibit No. 1 (Notarized Statement of Jody Bush, dated October 18, 2017 (in Electronic Record, at 61)).

At the close of all evidence, the trial magistrate found that the prosecution's witnesses testified credibly and that Appellant did, in fact, hit and damage the sign. *Decision of Appeals Panel,* at 3 (citing *Trial Transcript,* at 15). He therefore found Ms. Brown guilty of the civil violation with which she was charged. *Id.* (citing *Trial Transcript,* at 18). A fine of $250.00 (plus costs) was imposed. *Trial Transcript,* at 19 and *See Docket Sheet* (in Electronic Record, at 63).

B

Proceedings Before the Appeals Panel

Aggrieved by this decision, Ms. Brown filed an immediate appeal. On January 31, 2018 her appeal was heard by an RITT appeals panel composed of Magistrate Kruse Weller (Chair), Judge Almeida, and Magistrate Noonan. In a decision dated August 3, 2018, the appeals panel rejected all three of Ms. Brown's arguments — (1) that the summons

violated her right to due process because it did not specify the amount of the fine which could be imposed (*Decision of Appeals Panel,* at 5-6), (2) that the trial magistrate improperly *failed to credit* the letter she presented (because it was hearsay) and *improperly admitted* the testimony of Officer DaSilva and Mr. Carroll regarding the contents of his phone call (because it was hearsay) (*Id*. at 6-8), and (3), that the trial magistrate improperly sustained the violation because Mr. Carroll only identified her vehicle, not her; as such, the Town's case could not meet the clear and convincing evidence standard.

1

Due Process — Sufficiency of the Summons

The appeals panel began its analysis of Ms. Brown's argument regarding the inadequacy of the summons by citing (and quoting from) Rule 3 of the Traffic Tribunal Rules of Procedure, particularly subsections (c) and (d), which we present here in their entirety:

> **Rule 3. The Summons. —**
>
> **…**
>
> **(c) Mandatory Hearing and Administrative Payments.** The issuing officer shall note on the summons whether the violation requires a hearing or is one which may be eligible to be paid administratively pursuant to law. If eligible for administrative payment, the officer shall also note on the summons the full amount of the fine[s] required to be paid.

> **(d) Notice of Violation.** A summons which provides the defendant and the court with adequate notice of the violation being charged shall be sufficient if the violation is charged by using the name given to the violation by statute. The summons shall state for each count the official or customary citation of any statute that the defendant is alleged to have violated. An error or omission in the summons shall not be grounds for a reduction in the fine owed, for dismissal of the charged violation(s), or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.

From these provisions the panel discerned the following pertinent principles: *first*, adequate notice of the charge is given if the summons references the name given to the charge in the statute (Rule 3(d)); *second*, the summons must indicate whether the fine can be paid administratively — and, if it can, the full amount of the fine must be stated (Rule 3(c)); *and third,* a summons is subject to dismissal only if its error or omission misled the defendant to his or her prejudice (Rule 3(d)). *Decision of Appeals Panel,* at 5-6.

Applying these principles, the panel found the summons issued to Ms. Brown was not defective, since it clearly conveyed the statute which she was charged with violating. *Id*. at 6. Moreover, it was not necessary to list the fine, since she could not pay administratively. *Id*. And so, the panel held that Ms. Brown "could not have been prejudicially misled by the summons." *Id*.

2

Hearsay

Under this second heading the Appeals Panel addressed two claims of error raised by Ms. Brown relating to the rules governing the admission of hearsay evidence and testimony.

The first concerned a letter submitted by Ms. Brown which was received into evidence as Defendant's Exhibit No. 1. *See Electronic Record,* at 61. This letter, written by a neighbor of Ms. Brown, purported to explain that the damage visible on the front end of Ms. Brown's vehicle was the result of a previous incident in which Ms. Brown was assisting her with a jump-start. *Id.* If fully credited, this letter would negate any inference that the damage was the result of hitting the road sign. Appellant alleged that the trial magistrate erred by not "considering" the letter. *Decision of Appeals Panel,* at 6-7. The appeals panel made short work of Appellant's argument that the trial magistrate should have given the letter more weight; instead, it simply held that the letter should not have been admitted. *Id.* at 7 (citing *Powers v. Coccia,* 861 A.2d 466, 469 (R.I. 2004) (citing R.I. R. Evid. 801(c))).

The second hearsay issue presented by Appellant concerned the fact that the trial magistrate allowed both Officer DaSilva and Mr. Carroll to testify about the latter's call to the police. The panel held that it was not

hearsay because the testimony was not offered to prove Appellant's Guilt, but only "to establish that Officer DaSilva was on notice of the accident and the suspect vehicle's description." *Id*. at 8 (citing *State v. Gomes,* 764 A.2d 125, 131 (R.I. 2001) (quoting *State v. Palmigiano,* 112 R.I. 348, 359, 309 A.2d 855, 862 (1973))).

In sum, the panel found that both of these evidentiary rulings were neither clearly erroneous nor an unwanted abuse of discretion. *Id*. at 8 (citing G.L. 1956 § 31-41.1-8(f)(5)-(6).

3

Witness Identification

Finally, the appeals panel addressed Ms. Brown's claim that the trial magistrate erred in sustaining the violation, because there was insufficient proof that she was the operator of the vehicle which hit the sign.

The panel began its discussion of this issue by pointing out that the standard of proof in cases before the Tribunal is clear and convincing evidence. *Decision of Appeals Panel,* at 8-10 (citing Rule 17 of the Traffic Tribunal Rules of Procedure). The panel then observed that Officer DaSilva's testimony, together with that of Mr. Carroll, constituted competent evidence upon which the trial magistrate could infer that Ms. Brown was the driver who damaged the sign. *Id*. at 10.

C
Proceedings before the District Court

On August 10, 2018, Ms. Brown filed a claim for judicial review by the Sixth Division District Court pursuant to G.L. 1956 § 31-41.1-9. The Court set a briefing schedule. Concise memoranda have been received from both parties. We shall summarize the arguments made in each, *post*.

II
Standard of Review

The standard of review which this Court must employ is enumerated in G.L. 1956 § 31-41.1.-9(d), which provides as follows:

> (d) *Standard of review.* The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or 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 appeals panel's findings, inferences, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the appeals panel;
> (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.

This standard is akin to the standard of review found in G.L. 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, the District Court "* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.' " *Guarino v. Department of Social Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980) (citing G.L. 1956 § 42-35-15(g)(5)).Thus, the Court will not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact. *Cahoone v. Board of Review of the Department of Employment Security,* 104 R.I. 503, 246 A.2d 213 (1968). Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result. *Id*. at 506-507, 246 A.2d at 215.

However, when reviewing the factual determinations of the appeals panel, this Court's role is limited; indeed, it is *doubly* limited — our duty in this case is to decide whether the panel was "clearly erroneous" when it found Judge Lombardi's adjudication of Mr. Smith was not "clearly erroneous" — a limited review of a limited review. *See* G.L. 1956 § 31-41.1-8(f) *and* G.L. 1956 § 31-41.1-9(d) (quoted *ante* at 8). *Also Link v. State,* 633 A.2d 1345, 1348 (R.I. 1993) (opining, construing prior law, which was also "substantively identical" to the APA procedure, that the District Court's role

was to review the trial record to determine if the decision was supported by competent evidence).

III
Applicable Law

In the instant matter the Appellant was charged with violating section 31-26-5 of the General Laws which states in pertinent part:

> **31-26-5. Duty in accident resulting in damage to highway fixtures. —** The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property of the fact and of his or her name and address and of the registration number of the vehicle the driver is driving. The driver shall upon request exhibit his or her operator's or chauffeur's license and shall immediately give notice of the accident to a nearby office of local or state police. In the event the office so notified does not have jurisdiction of the locale of the accident, it shall be the duty of the officer receiving the notice to immediately give notice of the accident to the office having jurisdiction.

IV
ANALYSIS
A
The Evidence of Record

Since it is the role of this Court to determine whether the verdict rendered by the trial magistrate was supported by competent evidence of record, we must make our own determination of the evidence of record.

As we learned in the decision of the appeals panel, related *ante* at 2-5, Officer DaSilva did not see the accident involving the road sign. If she had seen it, the trial in this case would have proceeded in a completely different manner. No, her first involvement in the incident came when she was directed by dispatch to the intersection of Bristol Ferry Road and the Mt. Hope Bridge for a report of an older model red pickup truck which had driven onto a median, struck a large green sign, and kept going onto Bristol Ferry Road. *Trial Transcript,* at 6. Proceeding toward the scene on West Main Road, she saw a red pickup matching the description traveling in the opposite direction. *Id.* She stopped the vehicle, bearing Rhode Island Commercial registration 52586, and identified the operator as the defendant, Carol Brown. *Id.* at 6-7.

At this juncture, Officer DaSilva told Ms. Brown why she had been stopped. *Trial Transcript,* at 7. Then, in response to the officer's questions, Ms. Brown denied that she had anything to drink or that she hit a sign. *Id.* Nevertheless, because (1) she observed (what appeared to be) fresh damage to the pickup's front bumper, (2) the vehicle matched the description of the witness who called in the initial report, and (3) the driver of a sedan behind Ms. Brown's vehicle pointed to the vehicle, she issued a citation for damaging the sign to Ms. Brown. *Id.* Finally, she presented to the Court a

photograph of the sign in question, which was admitted as an exhibit. *Id*. at 8-9. On cross-examination, the officer insisted that she told Ms. Brown about the sign. *Id*. at 9. And, she clarified that she did not issue the citation at the scene of the stop, but sent it in the mail later the same day. *Id*. at 10.

The next witness was Detective Lee Trott. *Trial Transcript,* at 10. He testified that he too was dispatched to the Mt. Hope Bridge area. *Id*. Specifically, he was directed by Lieutenant Arnold to search for the downed sign, which he found on the sidewalk; he noted that it had been broken-off six to twelve inches above the ground. *Id.,* at 11. He stated that he took the photograph of the sign which had been entered into evidence. *Id*. at 11.

The third and final witness for the prosecution was Mr. Sean Carroll. *Id*. at 12. He testified that he observed a vehicle jump over a median and strike a sign and then accelerate over the median and head off. *Id*. at 12-13. Mr. Carroll stated that he contacted the Portsmouth Police after he crossed over the Mt. Hope Bridge. *Id*. at 13.

At this juncture Ms. Brown was recognized. *Trial Transcript,* at 13. She began her defense by presenting a notarized statement from a neighbor which indicated that the damage to her vehicle's bumper had occurred one or two years ago when she drove into her neighbor's yard to jump start her neighbor's car. *Id*. at 14.

Ms. Brown also testified. Id. at 15. She said she had left Route 24 at Exit 1, and took a left. *Id*. She was lost. *Id*. And, at the next corner, she took another left. Id. After that, she saw a police car coming in the opposite direction; but she saw no other cars. *Id*. She insisted that, during the stop, Officer DaSilva never discussed the sign. *Id*.

B

Positions of the Parties

1

Ms. Brown

In her four-page Memorandum of Law, Appellant Brown adamantly maintains her innocence and generally argues that the evidence against her was insufficient. In particular, the "Argument" page of her Memorandum conveys the following points, all of which are factual in nature:

> 1) The witness, Sean Carroll, never identified the driver of the vehicle or state if the driver was male or female.
>
> 2) The witness, Sean Carroll, did not describe the alleged vehicle at the trial.
>
> 3) Probationary Officer DaSilva did not bring the alleged damaged highway fixture to the trial.
>
> 4) The witness, Sean Carroll, did not identify the alleged damaged highway fixture at the trial.

Appellant's Memorandum, at 3. Even at first glance, we may note that most

of the points presented by Appellant refer to the testimony of Mr. Carroll.

2

The Town

The Appellee's (the Town's) Memorandum, also four pages in length, began by setting forth: (a) the applicable standard of review; (b) the statute Ms. Brown was accused of violating, and (c) Ms. Brown's arguments. *Appellee's Memorandum,* at 3. The Town then proceeds to analyze each of Appellant's points in turn.

a

Appellant's First Point: Mr. Carroll Did Not Identify the Driver

The Town concedes the truth of Ms. Brown's assertion (*i.e.,* that Mr. Carroll did not identify the driver) and admits that it is logical to assume that he could not. *Appellee's Memorandum of Law,* at 2. However, it notes that Mr. Carroll did call in to report an older-model red pickup heading south on Bristol Ferry Road had crossed the median and hit a sign, that officers were dispatched, and that when they responded they found a vehicle matching the description. *Id.* at 2-3.

b

Appellant's Second Point: Mr. Carroll Did Not Identify the Vehicle

The Town also concedes the accuracy of Ms. Brown's second argument — *i.e.,* that Mr. Carroll did not identify the vehicle which hit the

sign. *Id*. at 3. But, the Town reminds us that Mr. Carroll described the accident and the vehicle he saw. *Id*.

c

Appellant's Third Point: Officer DaSilva Did Not Bring the Broken Sign into Court

Again, the Town did not dispute that Officer DaSilva did not bring physical evidence of the damaged sign into court. *Id*. Nevertheless, it was revealed through the testimony of the second officer that a sign was "snapped off" above the ground. *Id*. The officer photographed this object and the picture was introduced into evidence. *Id*.

d

Appellant's Fourth Point: Mr. Carroll Did Not Identify the Damaged Fixture

Conceding this point, the Town reminds us that Mr. Carroll testified that it was the sign in the median which was damaged — as the officer confirmed. *Appellee's Memorandum of Law,* at 3.

B

Discussion

1

Generally

At the outset, it must be noted that Ms. Brown's arguments, as presented in her Memorandum, were *skeletal*, at best.

In performing its appellate duties, the Rhode Island Supreme Court has declined to rule on arguments "… that a party has failed to develop lucidly on its own." *Tworog v. Tworog,* 140 A.3d 159, 160 (R.I. 2016) (Mem.) (holding that the appellant failed to preserve issues for appellate review because "the assignments of error were muddled and difficult to untangle" and "the papers contained multiple passing references to purported error that were not developed in any meaningful way."). Further, the Supreme Court will neither search the record to "substantiate that which a party alleges" nor will it provide appellate review of legal questions which only state an issue without "a meaningful discussion thereof." *McMahon v. Deutsche Bank Nat. Trust Co.,* 131 A.3d 175, 176 (R.I. 2016) (Mem.) (citation omitted).

Likewise, it is not the responsibility of this Court to restate Ms. Brown's arguments in a form which is likely to be more effective. To the contrary, with regard to factual matters, this Court's sole function is to decide whether the trial magistrate's verdict was supported by competent evidence. And so, we must ask — did the evidence of record support Ms. Brown's conviction under § 31-26-5? Did it show, to the standard of clear and convincing evidence, that she was involved in an accident causing damage to a highway sign and that she failed to notify the person in charge of the sign

of her name, address, and registration number?

2

Ms. Brown's Factual Arguments

The four arguments of Ms. Brown are all *factual*. Appellant identifies what may fairly be described as weak points in the Town's case. Undoubtedly, the Town's case would have been stronger if, at trial, Mr. Carroll had identified the sign, the vehicle which damaged the sign, and Ms. Brown as the driver of the vehicle which damaged the sign. On the other hand, I do not see how presenting the sign in Court would have been more effective than the photograph. But the foregoing questions are immaterial. The issue is not whether the Town could have presented a *stronger* case, the issue is whether it presented a *sufficient* case. In my view, there is no doubt that the Town presented evidence which may be found to have proven that Ms. Brown hit the sign to the standard of clear and convincing evidence.

The following evidence and testimony was presented at trial by the Town: on the date and time in question, the Portsmouth Police received a call stating that an older model red pickup hit a road sign and kept going. The police responded. One officer found the sign, which had been broken-off above the ground, which established the *corpus delicti* of the charge.

Then, the *identity* of the offender was established when a different

officer found a red pickup matching the description given traveling away from the scene of the accident; in fact, a motorist pointed out the vehicle to the officer. The motorist was stopped and the officer noted damage to vehicle's front bumper which was consistent with striking a sign. Through this evidence and testimony, the Town proved to the statutory standard of clear and convincing evidence that Ms. Brown hit the sign and left the scene.

The foregoing evidence, which was presented and received *without objection,* was competent evidence of the charge being tried, which the trial magistrate, exercising his judgment, found to be credible; accordingly, the trial magistrate concluded that this evidence satisfied the Town's burden of proving its case to the standard of clear and convincing evidence, as provided in G.L. 1956 § 41-41.1-6(a).[1] And so, it is my view that the appeals panel's

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[1] In *Parker v. Parker,* 103 R.I. 435, 238 A.2d 57 (1968), our Court defined this standard of proof in two ways. First, in a shorthand manner, the Court stated that "[p]roof by 'clear and convincing evidence' means that the jury must believe that the truth of the fact asserted by the proponent is highly probable." *Parker,* 103 R.I. at 442, 238 A.2d at 61 (1968) (citing *Cook v. Michael,* 214 Or. 513, 330 P.2d 1026 (1958)). It then provided us with a more generous definition:

> "* * * by that term is meant the witnesses to a fact must be found to be credible and that the facts to which they have testified are distinctly remembered and the details thereof narrated exactly and in due order and that the testimony be clear, direct and weighty and convincing, so as to enable you to come to a clear conviction without hesitancy of the truth of the precise facts in issue."

Parker, id (quoting *Aetna Ins. Co. v. Paddock,* 301 F.2d 807, 811 (5th Cir. 1962).

ruling upholding the trial magistrate's decision (that the Town's proof met the clear-and-convincing-evidence standard) was supported by the reliable, probative, and substantial evidence of record.

V
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appeals panel was made upon lawful procedure and was not affected by error of law. G.L. 1956 § 31-41.1-9. Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. *Id*.

Accordingly, I recommend that the decision of the appeals panel be AFFIRMED.

/s/
Joseph P. Ippolito
Magistrate

March 25, 2019