STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PAWTUCKET	:	
	:	
v.	:	C.A. No. M10-0018
	:	
ANSELMO DEPINA	:	

DECISION

PARKER, J., DISANDRO, M.: Before this Panel on November 23, 2010—Magistrate Noonan (Chair, presiding) and Judge Parker and Magistrate DiSandro, sitting—is Anselmo DePina's (Appellant) appeal from a decision the Pawtucket Municipal Court, sustaining the charged violation of § G.L. 1956 31-14-1, "Reasonable and prudent speeds." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On May 13, 2010, Officer Hormanski of the Pawtucket Police Department (Officer Hormanski), based upon witness information, cited Appellant for the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial.

The trial began with the testimony of Michael Heaney. Heaney testified that on May 13, 2010, he was walking on Main Street in Pawtucket when he observed a traffic accident involving a motorcycle having the right of way, and an automobile. (Tr. at 6.) According to Heaney, the motorcycle was "accelerating" on Main Street, performing a

"wheelie" just prior to the point in time when it collided with the driver's side of a vehicle which had entered Main Street from intersecting Dudley Street. Id.

Officer Hormanski then took the stand and testified that she arrived at the intersection of Main and Dudley shortly after the accident had occurred. (Tr. at 12.) She testified that she and another officer cleared the scene, took photographs, and secured the proper medical attention for the Appellant. (Tr. at 13.) Officer Hormanski went on to testify that both she and the other officer identified in the record as Officer Camella—based upon witness statements and the "scene evidence"—decided to charge Appellant with § 31-14-1, "Reasonable and prudent speeds." Id.

On cross examination, Officer Hormanski admitted that the charge came in spite of the fact that neither she nor Officer Camella made any attempts at any measurement or any sort of accident reconstruction that is sometimes used to determine things such as point of impact and speeds of the vehicles involved. (Tr. at 14.) In fact, speed of the motorcycle was never determined. Officer Hormanski stated that the citation was issued "[b]ased on information collected by [herself] and other officers on the scene [and] as the independent witness had stated, the motorcyclist was operating at high velocity." Id.

At the conclusion of testimony, the trial judge held that the City of Pawtucket had met its burden in proving the elements of the violation with clear and convincing evidence. Aggrieved by this decision, Appellant filed this 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 Appellee have been prejudiced 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 judge's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Specifically, he claims that City failed to provide any substantial evidence that he operated his motorcycle in violation of the statute. We agree.

Section 31-14-1 reads as follows:

> "No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care."

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." Therefore, in order for the charge to be sustained, there must be clear and convincing evidence in the record that Appellant operated his vehicle at an unreasonable or imprudent speed. The Pawtucket Police officers who responded to the accident, and in turn, the City at trial, relied on two portions of Mr. Healey's testimony to prove its case.

The first was his testimony that Appellant accelerated his motorcycle, and the other was that he performed a "wheelie" prior to the accident taking place.

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 [or judge] 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 [or judge] 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)).

One witness' testimony that the motorcycle was "accelerating" and performing a "wheelie" falls short of qualifying as clear and convincing evidence that Appellant operated his motorcycle in violation of the statute charged. Acceleration is vague term. One can accelerate from any speed; in fact, even a vehicle coming out of a complete stop is an accelerating vehicle. Second, while a performing a "wheelie" may be a violation of some portion of the motor vehicle code, it is not clear and convincing evidence that Appellant operated his motorcycle at an imprudent speed. In sum, the City relied on inferences and speculation to support the charge, and failed to present any facts that "enable[d] [us] to come to a clear conviction without hesitancy of the truth of the

[citation charged.]" See Aetna Ins.Co.v. Paddock, 301 F.2d 807, 811 (5th Cir. App. 1963).

Our review of the record reveals no legally competent evidence to support the trial judge's determination that Appellant operated his vehicle on "a highway at a speed greater than is reasonable and prudent under the conditions. . . ." Accordingly, the charged violation of § 31-14-1 is not supported by clear and convincing evidence and cannot be sustained.

ENTERED:

Date: 1-25-11

NOONAN M. (dissenting).

I write separately to express my dissent with the holding of the majority Decision. A definitive number is not necessary to the prima facie case. Section 31-14-1 requires that "speed shall be so controlled as may be necessary to avoid colliding with any person,

vehicle, or other conveyance on or entering the highway. . . ." I believe that in this case where the testimony shows that the motorist accelerated and "pulled a wheelie," then was unable to stop before colliding with a car having the legal right of way, clearly establishes that his speed was not " so controlled so as [might have been] necessary to avoid [a collision]. . . ." (Tr. at 6.) Furthermore, I feel that it is an error for this Panel to determine that the trial judge—based on uncontradicted eyewitness testimony—could not draw a reasonable inference that Appellant was operating his vehicle at an imprudent speed. I believe that such an inference is reasonable and should be accepted by this Panel. 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). For those reasons I dissent.