Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-062

SEPTEMBER TERM, 2009

Nine1165084 Quebec, Inc.	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
State of Vermont	}	DOCKET NO. 52-11-08 Cnta
		Trial Judge: Geoffrey W. Crawford

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a district court order affirming a decision by the judicial bureau to impose a $4500 fine for operating a motor vehicle in excess of the statutory weight limit on a town highway. We affirm.

The material facts are largely undisputed. On the morning of June 12, 2008, a police officer stopped a tractor-trailer traveling on Falls Road in the Town of Shelburne and issued a ticket for operating a motor vehicle on a town highway in excess of the statutory weight limit of 24,000 pounds. The officer determined that the total weight of the vehicle, registered to defendant, was 62,500 pounds, resulting in an excess weight of 38,500 pounds. Relying on 23 V.S.A. § 1391a(b)(1), which provides a maximum fine of $150 for every thousand pounds when the gross overweight is more than 25,000 pounds, the officer imposed a fine of $5726. Following an appeal and hearing before the judicial bureau, a hearing officer upheld the violation, but reduced the fine to $4500. Defendant then appealed to the district court, which held a hearing in December 2008, and issued a written decision in January 2009, affirming the decision of the judicial bureau. The court denied defendant's subsequent motions to correct and set aside the judgment. We granted defendant's motion for permission to appeal.

Defendant's principal claim rests on the fact that Falls Road is posted by the Town for a "load limit [of] 24,000 pounds." Defendant argues, in essence, that "load" refers to a vehicle's cargo rather than its gross weight; that the tractor-trailer weighed—as the district court found—30,000 to 35,000 pounds, so that the cargo or "load" weighed between 27,500 and 32,500 pounds, and therefore exceeded the 24,000-pound "load" limit by no more than 3500 to 8500 pounds; and that the fine was therefore excessive. The argument is unpersuasive. Defendant was charged with violating a State statute prohibiting the operation of a motor vehicle "in excess of the total weight, including vehicle, object or contrivance and load" of 24,000 pounds on a class 2, 3, or 4 town highway. 23 V.S.A. § 1392(2) (Emphasis added). Accordingly, the district court here correctly concluded that the relevant weight for purposes of applying the statute was the vehicle's "total weight," including its cargo or "load," which totaled 62,500 pounds.

Although defendant relies on a district court ruling, State v. Giroux, Docket No. 93-11-06 Cnta (Vt. Dist. Ct. Feb. 9, 2007), in which the trial court concluded that the defendant there was not adequately apprised of a vehicle weight limit by a sign which referred to the "legal load limit," it is unclear whether the defendant there had violated the statutory limit or a local ordinance, and the decision is not binding on this Court in any event. As noted, the language of § 1392 is clear and unambiguous, and plainly applies to a motor vehicle's "total weight," including its "load."

"We have generally applied the maxim 'Ignorantia legis non excusat' with the corresponding rule that everyone must be conclusively presumed to know the law." State v. Dann, 167 Vt. 119, 139 (1997) (rejecting claim that court erred in failing to instruct that defendant must have known that the sale of fireworks was illegal). Thus, defendant here was conclusively on notice of the statutory weight limits applicable to town highways in Vermont, and was responsible for ensuring compliance therewith. Defendant has offered no evidence that the Town's road sign misled or confused it into believing that a local provision had somehow trumped the State statute and imposed a lower limit applicable solely to a vehicle's cargo exclusive of the vehicle's weight. Accordingly, we find no error.

Defendant raises several additional claims. Defendant questions whether the road had appropriate signs. The officer testified before the traffic court hearing officer that the signs were posted, and the court so found. The district court properly relied upon this finding.

Defendant makes a related argument that a Town ordinance making specified roads subject to the 24,000 weight limit had expired prior to the date of the violation. The argument is based on a State website that provides information on town load limits and indicated that its information on Shelburne limits had expired. The trial court found that the website did not mean that the ordinance had expired. Moreover, the State statute imposed a 24,000 weight limit on class 2, 3, and 4 town highways, even in the absence of the ordinance. We find no error on this point.

Defendant makes an additional argument in this Court that the town ordinance had been repealed, submitting proof from town records. This evidence was not before the district court, and we cannot consider it for the first time on appeal. We also reiterate that the prosecution was based on the state statute and not the ordinance.

Defendant also claims that the ticket issued by the officer cited the wrong statute. The claim was not raised below and therefore was not preserved for review on appeal. See State v. White, 172 Vt. 493, 499 (2001) (declining to address issue that was not raised before the trial court). The record shows, moreover, that the officer identified the violation as "excess of weight total 62,500 lbs on a posted 24,000 lb. [road] over by 38,500." The ticket thus adequately apprised defendant of the charge, and defendant has not claimed or demonstrated otherwise. Although the ticket mistakenly cited 23 V.S.A. § "1391(a)" rather than 23 V.S.A. § 1391a for the penalty to be imposed, again defendant has not alleged or shown that it was prejudiced by the mistake.

Defendant further claims that he was denied due process by the district court's failure to hold a full evidentiary hearing and to provide defendant the opportunity to call and examine witnesses and introduce other evidence. The applicable statute provides that appeals from a

hearing officer may proceed "on the record, or at the option of the defendant, de novo." 4 V.S.A. § 1107(a). Defendant's representative sought a "trial on the merits" in the notice of appeal, but offered only argument and supplementary evidence in the district court, which the court accepted. Defendant made no objection to the proceedings in the district court, and the claim accordingly was not preserved for review on appeal. See Garilli v. Town of Waitsfield, 2008 VT 91, ¶ 7 (failure to allege due process violations at hearing resulted in waiver of claims on appeal). As the trial court correctly observed in denying defendant's post-judgment motion, the court afforded defendant the opportunity to present its case in any manner it wished. Accordingly, we find no error. Although defendant asserts that the court "hast[ily] close[d] . . . the case," "effectively shut down" its argument, and precluded defendant from introducing evidence, the record does not support the claims.

We find, therefore, no basis to disturb the judgment. Defendant's request for an award of court costs is denied.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice