

Body Type Appeal

The original judge made mistakes of law and fact when reaching his guilty verdict. The verdict should be reversed.

I raised the following defense at my original hearing:

" Dear Honorable Judge,

I hereby certify as follows:

I plead not guilty to this parking violation because:

-The Body Type was misdescribed.

My car was a Station Wagon and not a 4DSD

According to the court in *Critchlow v NYC Dept. of Fin. Adjudication Div.*, 2011 NY Slip Op 50765(U) Decided on April 28, 2011, Supreme Court, Queens County McDonald, J., NYC is required to dismiss a parking ticket issued to a vehicle if the warrior inserts 2DSD instead of 4DSD regardless of the state of registry (in this case, the vehicle was registered in the great state of Virginia):

"With respect to Violation No. 7324225871, this court finds that although the description of the body of the vehicle as a sedan was correct, it is not disputed that the vehicle was a two-door sedan and not a four-door sedan. Thus, the summons which described the body type as "4DSD" contained a misdescription of the vehicle. In the respondent's memorandum of law, they concede that the two-door vehicle was misdescribed. However,

the respondent contends that "the identification of the two-door sedan as a four-door sedan on a parking ticket is not a fatal mistake, because it does not reach the level of misdescription of the body type as required by "VTL §238."

"The Court of Appeals held in *Matter of Wheels, Inc., v Parking Violations Bureau*, 80 NY2d 1014 [1992] that a misdescription of any of the five mandatory identification elements mandates dismissal. Contrary to the respondent's contention, the Court of Appeals ruling in *Matter of Wheels, Inc, supra.*, does not provide for levels of misdescription and it does not provide for an exception for small errors. Here, because the body type of the car was clearly misdescribed, the Adjudication Bureau was mandated to dismiss the summons pursuant to VTL§ 238(2-b) (a)."

The correct standard to apply regardless of whether a car was registered in the NY State or out-of-state is an exact match of the body type listed on the vehicle's registration with the body type entered on the parking ticket. Above all, there is no rational basis in law or fact to create a lesser standard ("reasonably accurate") for out-of-state vehicles.

On the other hand, even if this court applied the reasonably accurate standard, a Station Wagon, SUV, Suburban, or Hatchback cannot be reasonably mistaken for a 4DSD, nor do the definitions of each body type match.

My car was a Hyundai Station Wagon, not a 4DSD as misdescribed on the parking ticket.

I have submitted a series of exhibits in support of my defense.

Due to these circumstances, please dismiss this parking ticket.

Thank you.

-I hereby certify that my testimony is the truth to the best of my knowledge. I fully understand that if my testimony is willfully false, I am subject to punishment.

-I hereby certify that the photographs and images in my exhibits are true and accurate reproductions of the originals as they existed on the date/time this parking ticket was issued.

Respectfully submitted,

Ann"

The original judge found me guilty because:

"The respondent has been charged with violating Traffic Rule 4-08(e)(2) prohibiting stopping, standing or parking a vehicle within fifteen feet of a fire hydrant.

Respondent testifies that the summons should be dismissed because it was improperly written for this out-of-state registration, as the body type is misdescribed and submits photos of the vehicle, a copy of the registration card, the DMV's definition of a suburban, a Google definition of station wagon and sedan, and a portion of an article regarding body types by Car & Driver magazine.

Respondent's claim is not a persuasive defense, as this out-of-state registered vehicle has no windshield sticker stating how the body type is described on the registration,

as would a NYS registered vehicle. Respondent presents no testimony or other evidence that this information is visible anywhere on the vehicle.

Sustained."

Argument

I offered my:

- Certified testimony
- Exhibits

The original judge exhibited a prejudice against the Petitioner by his failure to engage in a thoughtful, fair-minded weighing of all the credible, evidence. And, by doing so, he made mistakes of law and fact.

It is well settled that the body type of a vehicle is a required element and must be described correctly on a parking summons. However, NYC applies a lesser standard of "reasonably accurate" to out-of-state vehicles.

In my case, the body type that appeared on the registration was "SW" or station wagon. The TEA entered 4DSD."

The sole reason the judge denied my defense was:

"Respondent's claim is not a persuasive defense, as this out-of-state registered vehicle has no windshield sticker stating how the body type is described on the registration, as would a NYS

registered vehicle. Respondent presents no testimony or other evidence that this information is visible anywhere on the vehicle."

That was a mistake.

The judge did not claim that the TEA's description of my vehicle was correct or even reasonably accurate. Instead, the judge applied a standard that did not exist.

There is no precedent in case law or otherwise to judge the accuracy of the body type of an out-of-state vehicle based on the existence or non-existence of a window sticker. Or, the correct body type appearing somewhere on the vehicle.

In the same vein, if the judge's standard was correct, the TEA should have entered, "NS," rather than guessing that my car was a 4DSD. A 4DSD has an enclosed trunk. My station wagon did not have an enclosed trunk, which was plainly visible from the outside of the vehicle. The TEA's guess was neither correct nor reasonably accurate.

I presented substantial, certified evidence that cannot be characterized as patently incredible in support of my defenses. (See, *Young v City of New York Dept. of Fin. Parking Violations Adjudications* 2007 NY Slip Op 51460(U) [16 Misc 3d 1117(A)] Decided on June 13, 2007 Supreme Court, New York County Goodman).

Please right this wrong and dismiss the parking ticket.

Respectfully submitted,

Ann