STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. T08-0120**
	:	
RALPH MARDEN	:	

DECISION

PER CURIAM: Before this Panel on October 29, 2008, Magistrate Noonan (Chair), Judge Almeida, and Magistrate Goulart sitting,[1] is Ralph Marden's (Appellant) appeal from Judge Ciullo's decision, sustaining the charged violation of G.L. 1956 § 24-10-20, "Park and ride lots."[2] The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On August 18, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by Officer Joe Buben (Officer Buben) of the Rhode Island Environmental Police. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Officer Buben testified that on the date in question, at approximately 8:50 p.m., he was on patrol in his marked patrol vehicle when he observed a green Ford Taurus "loitering suspiciously" in the "park and ride" parking lot[3] located at the

[1] Magistrate Goulart sat for Judge Ciullo on this matter.
[2] The Appellant was also charged with violating G.L. 1956 § 31-47-9, "Penalties –verification of proof of financial security." However, this charged violation is not presently before this Panel.
[3] Section 24-10-20 describes "park and ride" lots as "facilities which are intended to be used for the temporary parking of passenger vehicles and which are located and designed so as to facilitate the safe and convenient transfer of persons traveling in passenger vehicles to and from high occupancy vehicles and/or public mass transportation systems . . . ."

intersection of New London Avenue and Route 95 in West Greenwich.[4] (Tr. at 4.) According to Officer Buben, the operator of the vehicle—later identified at trial as Appellant—sat behind the wheel of his vehicle for approximately five to ten minutes before Officer Buben exited his patrol vehicle and approached the suspect vehicle. (Tr. at 4, 12.)

Officer Buben testified that Appellant had been issued multiple verbal and written warnings for violating the rules and regulations of the "park and ride" lot. (Tr. at 5.) When asked by the trial judge to clarify what constitutes a "park and ride" violation for the purposes of § 24-10-20, Officer Buben testified that Appellant violated the "park and ride" statute by parking his vehicle in the "park and ride" lot without transferring to a high occupancy vehicle and/or public mass transportation. (Tr. at 8.)

At this point, Appellant, through counsel, moved to dismiss the charged violation on the ground that no evidence was adduced that Appellant was not using the "park and ride" lot for its intended purpose. Id. Before ruling on Appellant's dismissal motion, the trial judge engaged in the following colloquy with Appellant

> Well, this is a civil matter. . . A civil matter—a civil matter, all he has to do is give us a prima facie case. The prima facie case is that [Appellant] was seen on several occasions in the [park and ride] parking lot, not using the facilities. Consequently, that's sufficient for a prima facie case under the statute. It's up to [Appellant] now to present whatever mitigating factors you may have. Do you have any questions of [Officer Buben]? Id. (Emphasis added.)

At the conclusion of the trial, the trial judge sustained the charged violation of § 24-10-20, finding that Officer Buben had adduced "sufficient evidence for a prima facie

[4] Officer Buben testified that the "park and ride" lot in question is located in Big River State Management Area. (Tr. at 4.) Section 24-10-20 makes clear that "[s]tate . . . . law enforcement officials [such as Officer Buben] have authority to ticket and tow any vehicles under [the park and ride] statute."

case." (Tr. 16-17, 20.) The Appellant filed a timely appeal to this Panel. Forthwith is this Panel's decision.

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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may reverse or modify the decision if the substantial rights of the appellant have been prejudiced 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 following unlawful procedure;
> (4) Affected by another error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing a hearing judge'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 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 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 conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

Rule 17 of the Rules of Procedure for the Traffic Tribunal provides that "[t]he burden of proof shall be on the prosecution to a standard of clear and convincing evidence." Traffic Trib. R.P. 17. In sustaining the charged violation of § 24-10-20, the prosecution was required to prove by clear and convincing evidence that Appellant did not utilize the "park and ride" lot for its intended purpose: to facilitate access to and from our State's public transportation systems. Id.

Despite the obvious mandate of Rule 17, the trial judge did not apply the clear and convincing evidence standard. Rather, the trial judge sustained the charged violation upon finding that a prima facie violation of § 24-10-20 had been established and that Appellant failed to rebut it. Our cases make clear that "[t]he burden of proof rests upon the party who asserts the affirmative of an issue, and this burden never shifts." General Acc. Ins. Co. of America v. American Nat. Fireproofing, Inc., 716 A.2d 751 (R.I. 1998). Accordingly, the trial judge's decision to shift the burden of proof to Appellant on the essential elements of § 24-10-20 was improper.

Conclusion

This Panel has reviewed the entire record before it. Having done so, this Panel is satisfied that the trial judge's decision is affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.

ENTERED: