

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

v.

EMILIANO GIRON

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C.A. No. T08-0125

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on October 22, 2008, Chief Magistrate Guglietta (Chair), Judge Almeida, and Magistrate Noonan sitting, is Emiliano Giron's (Appellant) appeal from Judge Ciullo's decision, sustaining the charged violation of G.L. 1956 § 31-47-9, "Penalties – verification of proof of financial security." 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 17, 2008, Appellant was charged with violating the aforementioned motor vehicle offense by an officer of the Providence Police Department (Officer). The Appellant contested the charge, and the matter proceeded to trial.

At trial, the Officer testified that on the date in question he responded to the scene of an accident on Huntington Avenue. (Tr. at 3.) When he reached the scene, the Officer asked Appellant whether his vehicle had proof of financial security, as defined by Chapter 47 of the General Laws. (Tr. at 4.) The Appellant responded that he had financial security "in full force and effect" and would present proof of such security in court. Id. However, Appellant failed to adduce proof of financial security on his scheduled trial date. Id.

At the conclusion of the Officer's trial testimony, counsel for Appellant moved to dismiss the charged violation. Id. As grounds for his Motion to Dismiss, Appellant argued that the prosecution failed to prove the charge to a standard of clear and convincing evidence, as required by Rule 17 of the Rules of Procedure for the Traffic Tribunal (Rule 17). (Tr. at 4-5.) Before denying Appellant's dismissal motion, the trial judge engaged in the following colloquy:

"This is a civil matter. If you ask them if they have insurance and they say, 'No, I don't have insurance,' or if they say, 'Yes, I have it and I'm going to bring proof of the insurance [to court],' because he can require proof under the statute, and they don't bring it; in a civil case, that's a prima facie case." (Tr. at 6.)

The trial judge then denied Appellant's dismissal motion and sustained the charged violation upon finding that Appellant indicated to the Officer that he had financial security in effect on August 17, 2008 and that he would bring proof of the required financial security to court, and that Appellant failed to adduce proof of financial security when his case proceeded to trial. (Tr. at 7.) It is from this decision that Appellant now appeals. 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 reads, 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

On appeal to this Panel, Appellant asserts that the trial judge’s decision is affected by error of law and warrants reversal. It is Appellant’s contention that the trial judge, in sustaining the charged violation of § 31-47-9, did not hold the prosecution to its burden of proving the charge to a standard of clear and convincing evidence. Rather, Appellant

maintains that the trial judge applied the civil prima facie evidence standard and, in doing so, shifted the burden of proof to Appellant.

Rule 17 provides that “[t]he burden of proof shall be on the prosecution to a standard of clear and convincing evidence.” In sustaining the charged violation of § 31-47-9, the prosecution was required to prove by clear and convincing evidence that Appellant’s vehicle was registered in Rhode Island and that he knowingly operated or knowingly permitted his vehicle to be operated in Rhode Island “without having in full force and effect the financial security required by” Section 31-47-9.

Despite the 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 § 31-47-9 had been established and that Appellant failed to rebut it. (Tr. at 6-7.) 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 § 31-47-9 was improper.

Conclusion

Having reviewed the entire record, this Panel concludes that the trial judge's decision to sustain the charged violation of § 31-47-9 is affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.