STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.		**RHODE ISLAND TRAFFIC TRIBUNAL**
CITY OF PROVIDENCE	:	
	:	
v.	:	**C.A. No. T10-0017**
	:	
RAMON PEREZ	:	

DECISION

GUGLIETTA, C.M., and PARKER, J.: Before this Panel on June 23, 2010—Chief Magistrate Guglietta (Chair, presiding), Judge Parker, and Magistrate Noonan, sitting—is Ramon Perez's (Appellant) appeal from Judge Ciullo's decision, sustaining the charged violations of G.L. 1956 § 31-22-22(a), "Safety belt use—child restraint." Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On December 27, 2009 at approximately 1:59 p.m., Trooper Brian Macera (Trooper Macera) of the Rhode Island State Police was traveling on Dexter Street in the City of Providence. While Trooper Macera was driving on Dexter Street, he observed a grey Oldsmobile with tinted rear windows. Trooper Macera pulled the vehicle over to issue a citation for a violation of § 31-23.3-2, "Windshields and windows obscured by nontransparent material."[1] Trooper Macera testified that after he pulled the grey Oldsmobile over, he observed five passengers in the rear seat—two which were children, who were not secured by safety belts. (Tr. at 4). Trooper Macera charged Appellant with violating the aforementioned motor vehicle

[1] Section 31-23.3-2 reads, "[n]o person shall own or operate any motor vehicle upon any public highway, road or street with nontransparent or sunscreen material, window application, reflective film or nonreflective film used in any way to cover or treat the front windshield, the side windows immediately adjacent to the right and left of the operator's seat, the side windows immediately to the rear of the operator's seat and the front passenger seat and the rear window unless this vehicle meets one of the criteria set forth in § 31-23.3-3."

offenses but in his discretion chose not to issue the citation for the window tint. Appellant contested the charge, and the matter proceeded to trial.

At the start of the trial, Trooper Macera described his observations of December 27, 2009, when he observed Appellant driving the grey Oldsmobile. Trooper Macera testified that he signaled for the grey Oldsmobile to pull to the side of the road. Subsequently, the Trooper observed five passengers in the rear seat, including two children who were not properly secured. Trooper Macera asked Appellant, who was the driver of the motor vehicle, if the children were under seven years old.[2] Appellant replied that they were under seven years old. (Tr. at 4). On cross-examination, Trooper Macera stated that he did not confirm the age of the children; he simply asked Appellant if the children were under seven years old, and Appellant replied that they were. (Tr. at 4.) The trial court held that Appellant's statement was admissible testimony as it was an admission against the interest of the party-opponent. (Tr. at 6-7.) The trial court then explained that if Appellant submitted proof of purchase of a federally approved child restraint within seven days, the violation would be void. (Tr. at 6-7.) Appellant did not have a child restraint at trial, and the trial judge responded that the "burden" shifted to Appellant to prove the children were over seven to rebut Trooper Macera's testimony. (Tr. at 7-8.)

At this time, Appellant was called to testify. (Tr. at 8.) Appellant admitted that there were passengers in his vehicle when he was pulled over. (Tr. at 9.) Appellant testified that he did not recall telling the Trooper the age of the children, and he further stated that he did not know the ages of the children. (Tr. at 9.) Appellant explained that he picked the children up

[2] Section 31-22-22(a) states "[a]ny person transporting a child under the age of eight (8), less than fifty-seven (57) inches in height and less than eighty (80) pounds in a motor vehicle operated on the roadways, streets, or highways of this state, shall transport the child in any rear seating position of the motor vehicle properly restrained in a child restraint system approved by the United States Department of Transportation . . . . If the child is under eight (8) years old but at least fifty-seven (57) inches in height, or at least eighty (80) pounds the child shall be properly wearing a safety belt and/or shoulder harness . . . ."

from church to give them a ride home, but he did not know the children well enough to know their age. (Tr. at 9-10.) Appellant testified that he only knew the first names of the children; he knew the children's parents for about two years, but he had only known the children for about one year. (Tr. at 10.)

The trial judge then asked Trooper Macera what Appellant told to him during the motor vehicle stop. (Tr. at 10.) Trooper Macera reiterated that he observed five passengers in the rear seat, two of which were children. (Tr. at 10.) Trooper Macera explained that he asked Appellant if the children were under seven, and Appellant said they were. (Tr. at 10-11.) Trooper Macera testified that he then issued the citation based on Appellant's statement.

The trial judge asked Appellant's attorney if she had anything else to present during the trial. Appellant's attorney explained that she believed it was the duty of the officer to get the name and date of birth of the children. (Tr. at 11.) Appellant's attorney argued that she should get this information to cross-examine the children since the children were not Appellant's children. (Tr. at 11.) The trial judge responded that § 31-22-22 only provides that if an individual is in violation of the passenger restraint law, the operator of the vehicle is liable. (Tr. at 12.) In this case, the operator of the vehicle admitted to Trooper Macera that the children were under seven years old. This evidence was admissible to support that Appellant violated the statute. (Tr. at 12.) The Trooper did not have a duty to ask for the name and date of birth of the children. Based on the admission by Appellant, the trial judge sustained the charged violation. (Tr. at 13.) Appellant filed a timely appeal of the trial court's decision. 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 other 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, Appellant argues that the trial judge's decision is clearly erroneous based on the reliable, probative, and substantial record evidence and also affected by error of law. Specifically, Appellant contends that the trial judge's decision to credit the testimony of the Trooper over his own testimony when there was no other evidence to show the actual age of the children is clearly erroneous. Appellant argues the State failed to prove the essential elements of a §31-22-22(a) violation, and therefore, the trial judge made an error in fact and law in finding Appellant guilty of the violation. The members of this Panel disagree.

In Link, our Supreme Court made clear that 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, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co., 586 A.2d at 537). As the members of this Panel did not have an opportunity to view the life trial testimony of the Trooper or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [them,] listened to [their] testimony [and] . . . determin[ed] . . . what to accept and what to disregard[,] . . . and what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206. "[W]hen credibility evaluations are implicated . . . the standard of review [imposed upon this Panel] requires [us] to defer to the evidentiary findings of the trial judge." Id.

It is outside the scope of this Panel's review to assess the credibility of either the Trooper or Appellant's testimony. The trial judge found the testimony of the Trooper to be more credible than that of Appellant. Specifically, the trial judge found the admission of Appellant that the children were under the age of seven was credible evidence of the violation. It is impermissible

for this Panel to second-guess the trial judge's determinations and substitute our judgment for that of the trial judge.

Additionally, this Panel must affirm the trial judge's decision if it is supported by the reliable, probative, and substantial evidence of record. Link, 633 A.2d at 1348; see Environmental Scientific Corp., 621 A.2d at 208. At trial, the Trooper testified that Appellant admitted that the children were under the age of seven years old. The Trooper cited Appellant for a violation of § 31-22-22 based on this admission by the operator of the vehicle that the children were under seven years old. Based on the testimonial evidence before this Panel, we agree with the trial judge's finding that Appellant was operating a motor vehicle with children under the age of seven that were not properly restrained. See § 31-22-22. The State proved its case and the elements of the violation. Relying on the record before this Panel, we are satisfied that the trial judge's decision is not erroneous in view of the reliable, probative and substantial testimonial evidence on the record.

The dissent contends that the trial judge erred as a matter of law when the trial judge allocated the burden of proving the children were not under the age of seven years old to Apellant. The trial judge explained that after the State presented evidence that the children were under seven, "[t]he burden goes to [Appellant] to prove that [the children] were, in fact, over seven." (Tr. at 8.) However, we believe the dissent misconstrued the trial judge's statement regarding the burden to dispute evidence. The trial judge was merely placing the burden of going forward on Appellant, which is where it properly belongs once the trial judge determines

that the State made out a prima facie case.[3] The Court's explanation of burden shifting in this context provides that

> The trial justice simply referred to the burden of going forward with this evidence. This is quite different from shifting the burden of proof. Although the burden of proof never shifts from the state, "the burden of going forward with the evidence may indeed shift from side to side, and this same burden may properly devolve upon a defendant once the state has developed a prima facie case and has adduced evidence sufficient to make it just that the defendant be required to challenge the proof with excuse or explanation." In re Jarvis R., 766 A.2d 395, 399 (R.I. 2001) (quoting State v. Neary, 133 R.I. 506, 511-12, 409 A.2d 551, 555 (1979)).

This Panel is satisfied that the State has made a prima facie case pursuant to § 31-22-22(a) by the admission of Appellant. Under the Rhode Island Rule of Evidence 801(d)(2)(A), a statement is admissible non-hearsay where "[t]he statement is offered against a party and is the party's own statement." R.I.R. Evid. 801(d)(2)(A). We find no error in the trial judge's shifting to Appellant the burden of presenting his own evidence concerning the age of the children.

[3] Black's Law Dictionary defines prima facie case as "1. [t]he establishment of a legally required rebuttal presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor." (8th ed. 2004).

Conclusion

Upon a review of the entire record, this Panel concludes that the trial judge's decision was not clearly erroneous and was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, this Panel sustains Appellant's violations of § 31-22-22 and dismisses the appeal.

DISSENTING, NOONAN, M.: I disagree with the decision of other members of this Panel to dismiss the appeal. I conclude that the trial judge's decision to sustain the charged violation of § 31-22-22(A) does constitute an error of law. I believe the trial judge inaccurately stated the law when discussing that the burden shifted to Appellant. The law in Rhode Island is established that

> "[a]lthough the burden of proof never shifts from the state, the burden on going forward with the evidence may indeed shift from side to side, and this burden may properly devolve upon a [respondent] once the state has developed a prima facie case and had adduced evidence sufficient to make it just that the [respondent] be required to challenge the proof with excuse or explanation." In re Corryn B., 914 A.2d 978, 982 (R.I. 2007) (internal quotations omitted).

A defendant "never bears the burden of satisfying the factfinder of his innocence or justification, and the prosecution always bears the burden of proving the guilt of an accused beyond a reasonable doubt in a criminal prosecution." State v. Brown, 97 R.I. 95, 196 A.2d 138 (1963). "[T]he burden going forward with the evidence may indeed shift from side to side, and this same burden may properly devolve upon a defendant once the defendant be required to challenge the proof with excuse or explanation." Patterson v. New York, 432 U.S. 197, 203 n.9 (1977) (cited in Neary, 122 R.I. at 512, 409 A.2d at 555).

Here, I believe it was improper for the trial judge to state that the burden shifted to Appellant. Specifically, the trial judge explained that after the State presented evidence that the children were under seven years old, "[t]he burden goes to [Appellant] to prove that [the children] were, in fact, over seven." (Tr. at 8.) The trial judge clarified that "[b]ased on [the admission by Appellant that the children were under seven], . . . the trooper wrote a ticket. . . . That's his entire burden right there, that is a prima facie case. . . . [Mr. Perez] already declared against his interest. Any further burden is Mr. Perez's burden." (Tr. at 12-13.)

In the instant case, the trial judge misapplied the law in stating that Mr. Perez had a burden to provide evidence that the children were over the age of seven after the Trooper's

testimony. (Tr. at 13.) The burden of proof did not shift to Appellant to prove the children were over seven years of age. A defendant "never has the burden of proving his innocence." State v. Stallman, 78 R.I. 90, 79 A.2d 611 (1951). Appellant may challenge the proof by the Trooper with an excuse or explanation. In this case, Appellant testified that he forgot whether or not he told the Trooper the age of the children. (Tr. at 9.) Appellant further explained that the children were not his own children and that he only had known the children for about a year. (Tr. at 10.) Appellant was not required to provide evidence that the children were over seven years old. Accordingly, the trial judge's decision to sustain the charged violation of § 31-22-22(a) constitutes an error of law by shifting the burden to Appellant to prove that the children were over seven years old. Therefore, I would grant the appeal and dismiss the charged violation.

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