

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF PAWTUCKET**

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v.

**C.A. No. M13-0012  
13408503816**

**PATRICK FINNEGAN**

**DECISION**

**PER CURIAM:** Before this Panel on September 18, 2013—Chief Magistrate Guglietta (Chair, presiding), Magistrate DiSandro III, and Magistrate Abbate, sitting—is Patrick Finnegan’s (Appellant) appeal from a decision of Judge Nesselbush of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-16-1, “Care in starting from stop.” The Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On March 27, 2013, police officer Mario Comella of the Pawtucket Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter was set down for arraignment on April 26, 2013. However, Appellant failed to appear for his scheduled court date, and the Court entered a default judgment against him. On May 10, 2013, following the entry of the default judgment, Appellant filed a Motion to Vacate pursuant to Rule 20 of the Traffic Tribunal Rules of Procedure (Rule 20).<sup>1</sup> On June 10, 2013, Appellant’s Motion to Vacate was granted by Judge Gannon of Pawtucket Municipal Court. Thereafter, the matter proceeded to trial on August 2, 2013.

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<sup>1</sup> Rule 20 of the Rules of Procedure for the Traffic Tribunal reads, in relevant part: “On motion and upon such terms as are just the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for . . . excusable neglect.” Traffic Trib. R.P. 20.

At trial, the Officer testified that shortly before the stop he was at a fixed traffic at the Shell gas station at the intersection of Cedar Street and Pine Street in the city of Pawtucket. (Tr. at 2.) The Officer noted that he had a clear view of the intersection from his vantage point. Id. The Officer indicated that the Appellant stopped at the red traffic light heading north on Pine Street and then the light proceeded to green. Id. Subsequently, the Officer testified that he observed the Appellant's "vehicle's engine racing and the tires screeching." Id. Thereafter, the Officer described that the vehicle continued north on Pine Street, that he stopped the vehicle on Hill Street and issued a citation. Id.

During cross-examination, the Appellant asked the Officer, "[d]id you see my vehicle, my front tires smoke and were my front-of-the-vehicle tires actually screeching through the intersection?" Id. The Officer responded, "[t]he tires were screeching through the intersection, and what I mean by smoke it's more like smoke from, like not smoking like a fire, or anything like that, but you could see the debris and everything else coming up from where the tires spin." (Tr. at 1-2.) In addition, the Appellant inquired, "[s]o, it was not smoke, it was dirt you saw?" The Officer retorted, "[o]kay, yes, it was dirt then." (Tr. at 2.)

After further testimony, the trial judge determined that she found the Officer's testimony to be credible. (Tr. at 9.) Specifically, the trial judge noted that the Officer had a clear unobstructed view of the intersection, that Officer heard the loud noise of a revving engine, and that he observed the car "catapult" into the intersection at a high-rate of speed. Id. Moreover, the trial judge highlighted that gravel was being thrown from the tires and that a screeching sound was emanating from the tires. Id. In addition, the trial judge emphasized that there was no other vehicle in the intersection. Id. The trial judge concluded by expressing that she found

the Officer's testimony to be more credible than the Appellant's testimony and sustained the charge. (Tr. at 9-10.) The Appellant timely filed this appeal.

### **Standard of Review**

Pursuant to § 8-18-9, “[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8.”

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 as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial 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 upon 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 or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate'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 [or magistrate] 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 [or magistrate'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 [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

### **Analysis**

On Appeal, the Appellant contends that the trial judge’s decision to sustain the charge was an error of law. In particular, the Appellant asserts that the trial judge erred by crediting the testimony of the Officer over the Appellant’s testimony. In addition, the Appellant avers that the trial judge erred by failing to make the requisite finds of fact in sustaining the charge. For the reasons set forth below, this Panel grants Appellant’s appeal.

Appellant’s assertion that the trial judge erred by crediting the testimony of the Officer over the Appellant’s need not be addressed in the instant matter because the trial judge failed to make findings of fact regarding whether the Appellant operated his vehicle with “reasonable safety” when starting his vehicle from the stop position. See R.I.G.L. § 31-16-1. Section 31-16-1 of the Rhode Island General law reads, in relevant part, “[n]o person shall start a vehicle which is stopped, standing, or parked unless and until the movement can be made with reasonable safety.” In this case, the trial judge’s findings of fact on the issue of “reasonable safety” are absent. See Tr. at 9. In reaching her decision, the trial judge found that the Officer was on routine patrol in the area of Pine at Cedar Street, that his testimony was credible, the he had a clear unobstructed view of the intersection, and that

“he heard a loud noise of a revving engine and that he observed . . . [the Appellant’s] car sort of catapult out into the intersection at a high-rate of speed, throwing up what initially . . . may had been termed smoke . . . [the Officer] now says was gravel and other things . . . from the road, and that essentially the tires were screeching.” Id.

Thereafter, the trial judge sustained the charged violation. The record is clearly devoid of any findings of fact related to whether or not the Appellant acted with or without “reasonable safety” as required by the statute. Moreover, the record reveals that no findings were made regarding the nature of the traffic flow at the time of the Appellant’s alleged violation other than there were no other vehicles in the intersection. See Tr. at 2. Confining our review of the record to its proper scope, this Panel finds that the trial judge’s decision is based on an error of law and her decision to sustain the charged violation is not supported by legally competent evidence.

**Conclusion**

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

ENTERED:

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Chief Magistrate William R. Guglietta

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Magistrate Domenic A. DiSandro, III

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Magistrate Joseph A. Abbate

DATE: \_\_\_\_\_