

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF PROVIDENCE**

v.

**GIANNO CREIGHTON**

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**C.A. No. T14-0020  
07409113861**

**DECISION**

**PER CURIAM:** Before this Panel on May 28, 2014—Magistrate DiSandro III (Chair), Judge Parker, and Magistrate Noonan sitting—is —is Gianni Creighton’s (Appellant) appeal from a decision of Administrative Magistrate Cruise, sustaining the charged violation of G.L. 1956 § 31-14-3, “Conditions requiring reduced speed.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On December 15, 2013, Officer Michael Clary of the Providence Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on March 25, 2014. This Panel will recite only the facts relevant to the instant appeal.

At trial, the Officer testified that on December 15, 2013, he responded to a motor vehicle accident involving three motor vehicles and a pedestrian on the Route 6 East on ramp at Plainfield Street. (Tr. at 1.) Moreover, the Officer testified that the road conditions in the area of the accident were icy that day. Id. The Officer also testified that upon arriving at the scene he spoke to Appellant and Appellant stated that he had slid into the car in front of his car as a result

of hitting an ice patch. Id. Thereafter, the Officer cited Appellant for § 31-14-3, “Conditions requiring reduced speed.”

### **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 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 Ins. 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 Envtl. 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, Appellant contends that the trial magistrate committed an error of law. Specifically, Appellant argues that the Officer’s testimony failed to provide any evidence of Appellant’s speed prior to the accident and that as a result the case must be dismissed.

Section 31-14-3 reads, in relevant part, that a motorist must “drive at an appropriate reduced speed when . . . [a] special hazard exists with respect to . . . weather or highway conditions . . . .” See § 31-14-3. In order for the prosecution to meet its evidentiary burden under § 31-14-3, the prosecution must present some evidence of the motorist’s speed to prove that the motorist failed to reduce speed appropriately. See id. A witness that provides testimony concerning Appellant’s rate of speed must have personal knowledge of the occurrence of the accident at heart of this matter. See R.I. R. Evid. 602 (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter”).

Here, the record discloses that the trial magistrate was presented with no evidence or testimony from the Officer regarding Appellant’s approximated speed. Additionally, the Officer’s arrival after the accident had already occurred makes it evident that the Officer did not have personal knowledge as required for his testimony to be deemed competent by this Tribunal. See R.I. R. Evid. 602. Without such competent information, it was impossible for the trial magistrate to determine that the motorist had not “appropriate[ly] reduced” his speed based on

the icy roadway conditions present at the time of the accident. See § 31-14-3. In short, this Panel agrees with Appellant that it was necessary for the Officer to provide testimony that established Appellant's approximate speed at the time immediately prior to the accident. See § 31-14-3. Therefore, this Panel finds that the trial magistrate committed an error of law in determining that the prosecution had proven each and every element of the charge by clear and convincing evidence. See Traffic Trib. R. P. 17 ("The burden of proof shall be on the prosecution to a standard of clear and convincing evidence").

### **Conclusion**

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

ENTERED:

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Magistrate Domenic A. DiSandro, III (Chair)

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Judge Edward C. Parker

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Magistrate William T. Noonan

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