STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF MIDDLETOWN	:	
	:	
v.	:	**C.A. No. T11-0049**
	:	
SVETLANA SEMENOVA	:	

DECISION

PER CURIAM: Before this Panel on October 19, 2011—Chief Magistrate Guglietta (Chair, presiding), Judge Almeida, and Magistrate DiSandro, sitting—is Svetlana Semenova's (Appellant) appeal from a decision of Magistrate Noonan, sustaining the charged violations of G.L. 1956 § 31-27-2.1, "Refusal to Submit to a chemical test," and G.L. 1956 § 31-15-11, "Laned roadways."[1] Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On April 22, 2011, Lieutenant Lema (Lieutenant Lema) of the Middletown Police Department charged Appellant with the aforementioned violations of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on July 27, 2011.

At trial, Lieutenant Lema testified that he was on routine patrol on the night of April 22, 2011. Lieutenant Lema was in a marked police cruiser acting as the patrol supervisor. (Tr. at 11.) While performing his duties, Lieutenant Lema was parked on lower Aquidneck Avenue. Id. When parked, Lieutenant Lema saw a vehicle operating at a high rate of speed traveling

[1] Appellant was also cited for violating G.L. 1956 § 31-14-2, "Prima facie limits." However, that violation was not sustained after trial and is not presently before this Panel.

northbound. (Tr. at 12.) Lieutenant obtained a radar reading of the vehicle as it passed. Id. At the time, Lieutenant Lema's radar unit was calibrated properly. (Tr. at 13.)

Lieutenant Lema observed the vehicle pass his vehicle and swerve into the breakdown lane and back into the lane of travel. Id. After perceiving possible violations of the motor vehicle code, Lieutenant Lema pursued the vehicle. (Tr. at 16.) Initially, the vehicle did not pull over, and when it did, it stopped abruptly. Id. Lieutenant Lema approached the vehicle and identified the operator as the Appellant. Lieutenant Lema initially observed that the Appellant's eyes were glassy, red, and bloodshot. (Tr. at 17.) Lieutenant Lema also smelled an odor of alcohol coming from the Appellant's breath. Id. When asked, Appellant had difficulty producing her license and registration. Id.

The Appellant told Lieutenant Lema that she was traveling home from Newport. (Tr. at 19.) Appellant admitted to Lieutenant Lema that she had been drinking that evening. Id. Lieutenant Lema then asked the Appellant to submit to a series of field sobriety tests. According to Lieutenant Lema, the Appellant failed both the walk and turn test and the one-legged stand test. (Tr. at 22-24.) However, Lieutenant Lema also admitted that he deviated from his training and did not administer the tests as he was trained to do so. Additionally, Lieutenant Lema admitted that he did not administer the tests according to the National Highway Traffic and Safety Administration (NHTSA) standards. Also during the stop, Lieutenant Lema asked, and Appellant agreed, to perform a preliminary breath test. (Tr. at 92.)

Based on the foregoing observations, Lieutenant Lema placed Appellant under arrest and read the Appellant her "Rights for Use at the Scene." (Tr. at 25.) Lieutenant Lema transported the Appellant back to the police station and read the Appellant the "Rights for Use at the Station." (Tr. at 27.) Lieutenant Lema asked the Appellant to sign the form, but the Appellant

responded that she did not understand the rights listed on the form. (Tr. at 51.) Then, Lieutenant Lema allowed the Appellant to make a confidential phone call. (Tr. at 28.) Lieutenant Lema showed the Appellant into a room and closed the door after he left the room to ensure that Appellant had a confidential phone call. Id. While on the phone, Appellant called Lieutenant Lema into the room because the Appellant had questions. (Tr. at 30.) At the time, the Appellant was on the phone with her attorney.[2] (Tr. at 31.) Appellant's attorney testified that the presence of police inhibited the attorney's ability to meaningfully discuss Appellant's situation. (Tr. at 100.) However, neither the Appellant nor Appellant's attorney asked Lieutenant Lema to exit the room. While on the phone, the Appellant asked Lieutenant Lema about the results of the initial breath test. Id. Lieutenant Lema informed the Appellant of the results and left the room. Id.

After the phone call, Lieutenant Lema asked Appellant to submit to a chemical test, which Appellant refused to take. (Tr. at 32.) At trial, the aforementioned facts were recounted by Lieutenant Lema and the attorney the Appellant contacted that evening. Also at trial, a videotape was viewed by the Court. Appellant used the videotape to highlight the deviations Lieutenant Lema made when administering the field sobriety tests.

After both sides finished presenting evidence, the trial magistrate issued a bench decision. In his decision, the trial magistrate found Lieutenant Lema's testimony as credible and adopted Lieutenant Lema's findings as part of the trial magistrate's decision. (Tr. at 139.) However, the trial magistrate declined to sustain the charge of § 31-14-2. The trial magistrate did, in fact, sustain the remaining violations of §§ 31-27-2.1 and 31-15-11. The trial magistrate determined that Lieutenant Lema's observation of Appellant swerve into the breakdown lane was sufficient to sustain a violation of § 31-15-11. (Tr. at 140.)

[2] The attorney the Appellant called was a different attorney than the one used to represent her in these proceedings.

For the violation of § 31-27-2.1, the trial magistrate determined that Lieutenant Lema's observations of the Appellant—including her red, watery eyes, her difficulty obtaining her information, the Appellant's admission of consuming alcohol, and Appellant's performance on the field sobriety tests—constituted reasonable grounds for Lieutenant Lema to ask the Appellant to submit to a chemical test. (Tr. at 145.) Additionally, the trial magistrate held that Appellant's right to a confidential was not violated because it was the Appellant who caused the breach in confidentiality by inviting Lieutenant Lema into the room. (Tr. at 153.) The trial magistrate imposed the minimum sanctions for the violation of § 31-27-2.1. Aggrieved by the trial magistrate's decision, the Appellant timely filed an appeal.

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 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, Appellant contends that the trial magistrate's decision was characterized by an abuse of discretion and was not supported by the reliable, probative, and substantial evidence on the whole record. Appellant advances several arguments in support of her position. This Panel will address each in seriatim.

A. Laned Roadway Violation

Appellant contends that the trial magistrate's decision to sustain the violation of § 31-15-11 was not supported by the reliable, probative, and substantial evidence on the whole record. This Panel agrees. Lieutenant Lema observed the Appellant "swerve" into the breakdown lane and back into the lane of travel. No additional testimony was elicited regarding the violation, and the trial magistrate based his decision on that assertion.

Section 31-15-11 of the Rhode Island General Laws states:

> "[w]henever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to all others consistent with them shall apply: (1) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.

Here, Lieutenant Lema's testimony was devoid of any facts relating to whether the movement could be made with safety. Additionally, Lieutenant Lema never testified as to how far the Appellant's vehicle traveled into the breakdown lane and for how long. Such information bolsters any findings regarding the safety of the motorist's movement. Finally, it should be noted, § 31-15-11 includes the showing of safety to be made because requiring all motorists to stay within one lane at all times with even the slightest of movements outside one lane would lead to absurd results. The simple fact that the Appellant swerved into the breakdown lane, while relevant to forming reasonable suspicion to stop the Appellant, is insufficient to sustain a violation of § 31-15-11. Therefore, the decision to sustain this violation was affected by error of law and was not supported by the reliable, probative, and substantial evidence on the whole record.

B. Reasonable Suspicion To Cause Appellant To Submit to Field Sobriety Tests

Next, Appellant contends that Lieutenant Lema lacked reasonable suspicion to ask the Appellant to submit to a series of field sobriety tests. Appellant directs this Panel to our Supreme Court's decision in State v. Jenkins, 673 A.2d 1094 (R.I. 1996). In Jenkins, our Supreme Court determined that "the proper standard for evaluating the lawfulness of a stop" for a violation of § 31-27-2.1 is reasonable suspicion. Id. at 1097.

It is well settled that the police may stop a person for investigatory purposes if the police have "a reasonable suspicion based on articulable facts that the person is engaged in criminal

activity." State v. Keohane, 814 A.2d 327, 330 (R.I. 2003). "An investigatory stop is defined as [a] brief stop of a suspicious individual, in order to determine his [or her] identity or to maintain the status quo momentarily while obtaining more information, [such a stop] may be most reasonable in light of the facts known to the officer at the time." State v. Gomes, 764 A.2d 125, 132 -133 (R.I. 2001) (quoting State v. Abdullah, 730 A.2d 1074, 1076 (R.I. 1999)) (internal quotations omitted). "To determine whether an officer's suspicions are sufficiently reasonable to justify an investigatory stop, the Court must take into account the totality of the circumstances." Id. (citing United States v. Cortez, 449 U.S. 411, 417 (1981) and State v. Tavarez, 572 A.2d 276, 278 (R.I. 1990)).

Here, Lieutenant Lema was a twenty-two year veteran of the Middletown Police Department. Lieutenant Lema had conducted several DUI stops and effectuated several arrests for drunken driving. Lieutenant Lema was also trained in drunken driving detection. Lieutenant Lema observed the Appellant swerving in the breakdown lane and observed the Appellant traveling at a high rate of speed. After Appellant stopped, Lieutenant Lema saw the Appellant have difficulty retrieving her license and registration. Lieutenant Lema observed the Appellant with red, watery eyes, and smelled alcohol emanating from the Appellant. Finally, Appellant admitted that she had consumed alcohol that evening. Taken in the totality of the circumstances, this Panel holds that Lieutenant Lema did, in fact, have reasonable suspicion to stop the Appellant initially. Additionally, after the initial stop, Lieutenant Lema had grounds to continue his investigation regarding Appellant's intoxication and ask Appellant to submit to field sobriety tests.

The facts in the case at bar are similar to those of Jenkins. In Jenkins, our Supreme Court determined that the arresting officer had reasonable suspicion to stop the motorist because the

officer witnessed the motorist driving erratically and taking wide turns. Jenkins, 673 A.2d at 1097. The traffic violations Lieutenant Lema observed were similar to those observed in Jenkins. This Panel concludes that Lieutenant Lema had reasonable suspicion to stop the Appellant and then ask Appellant to submit to a series of field sobriety tests. Consequently, the trial magistrate's decision was not an abuse of discretion or unsupported in view of the reliable, probative, and substantial evidence on the whole record.

C. NHTSA Deviations

Appellant argues on appeal that Lieutenant Lema's failure to comply with the NHSTA standards regarding field sobriety tests renders the tests and any results gleaned as unreliable. As such, the Appellant maintains, the trial magistrate's decision to sustain the violation of § 31-27-2.1 was unsupported in view of the reliable, probative, and substantial evidence on the whole record.

During the trial, Appellant spent significant time questioning Lieutenant Lema and his administration of the field sobriety tests. Lieutenant Lema candidly admitted that he did not administer the tests as he was trained and in accordance with NHSTA standards. The trial magistrate determined "that the deviation from the NHSTA standards has a relative affect [sic] on the diminution of the impact of the results." (Tr. at 144.) The trial magistrate instead looked at the administration of the tests in their totality and adopted Lieutenant Lema's findings. Lieutenant Lema had testified that he observed four clues of intoxication for both the one-legged stand and the walk and turn test. Based on these observations, Lieutenant Lema determined the Appellant had failed the tests. The trial magistrate adopted this finding in his decision.

In Link, our Supreme Court stated this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing [magistrate] concerning the weight

of the evidence on questions of fact." With that provision in mind, this Panel will not deviate here from the trial magistrate's decision. NHSTA provides standards in the administration of field sobriety tests. Those tests should be administered as closely to NHSTA standards as possible to ensure reliability. However, we agree with the trial magistrate's decision and determine that the failure to follow NHSTA standards is relative. For instance, if a police officer asks a motorist to take ten steps on the walk and turn and NHSTA requires nine steps, and then motorist falls down on the second step, the test should not be deemed unreliable because of an improper instruction. Here, the Appellant exhibited four clues of intoxication on two tests and in Lieutenant Lema's estimate failed the two tests.

Appellant cites to State v Scalisi, C.A. No. N3-2007-0180A (R.I. Super. 2009) in support of her position that failure to follow NHSTA standards is fatal. In Scalisi, a Superior Court justice held that deviation from NHSTA "compromises the validity of the results." This Panel is mindful that while this may be true, we are without authority to weigh the credibility of the evidence adduced at trial. The trial magistrate determined that the Lieutenant Lema's deviations from NHSTA standards were minimal and sustained the charge. The trial magistrate correctly pointed out that deviations were relative in effect. With this in mind, this Panel is confident that had the deviations been substantial or prejudicial, the trial magistrate's decision would have been different. As such, the trial magistrate's decision was not an abuse of discretion and was not unsupported in view of the reliable, probative, and substantial evidence on the whole record. Thus, substantial rights of the Appellant were not prejudiced.

D. De Facto Arrest

Appellant contends she was subject to a de facto arrest and Lieutenant Lema did not have probable cause to subject Appellant to de facto arrest. "It is well-settled that when the police

temporarily detain a motorist for a traffic stop, 'even if only for a brief period and for a limited purpose,' such a detention constitutes a seizure of the person 'within the meaning of the [Fourth Amendment.]'" State v. Casas, 900 A.2d 1120, 1133 (R.I. 2006) (quoting Whren v. United States, 517 U.S. 806, 809-810 (1986)). "An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." Id. at 810. "[T]he ensuing investigation must be reasonably related in scope and duration to the circumstances that justified the stop in the fist instance, so as to be minimally intrusive of the individual's Fourth Amendment interests." United States v. Glover, 957 F.2d 1004, 1011 (2d Cir. 1992). "A motor vehicle stop must be reasonable in purpose and duration." Casas, 900 A.2d at 1133. "If an investigative stop based on reasonable suspicion continues too long or becomes unreasonably intrusive, it will ripen into a de facto arrest that must be based on probable cause." Glover, 957 F.2d at 1011.

As previously stated, Lieutenant Lema had reasonable suspicion to stop the Appellant. After stopping the Appellant, Lieutenant Lema made several observations consistent with drunken driving. Based on these observations, Lieutenant Lema asked the Appellant to exit her vehicle to perform a series of field sobriety tests. This Panel's review of the record indicates that Lieutenant Lema's detention of the Appellant was entirely appropriate. The detention was limited in time and scope to investigate drunken driving. See U.S. v. Sharpe, 470 U.S. 675, 685 (1985) ("the brevity of the invasion of the individual's Fourth Amendment interests is an important factor in determining whether the seizure is so minimally intrusive as to be justifiable on reasonable suspicion, we have emphasized the need to consider the law enforcement purposes to be served by the stop as well as the time reasonably needed to effectuate those purposes.") (internal quotations and citations omitted). Lieutenant Lema only asked the Appellant to submit

to field sobriety tests. There is no evidence in the record that this detention was abnormally long in duration. Lieutenant Lema was properly performing his duties and would have been negligent if he did not ask the Appellant to submit to the field sobriety tests.

E. Knowing, Intelligent, and Voluntary Submission to a Chemical Test

Next, Appellant argues that her refusal to submit to a chemical test was not made knowingly, intelligently, and voluntarily. Appellant's argument is premised on the fact that Appellant is unfamiliar with the English language and the American legal system.

At trial, the trial magistrate had the opportunity to review a videotape of Lieutenant Lema reading the Rights for Use at the Station form to the Appellant. During Lieutenant Lema's recitation of the form, Appellant interrupted Lieutenant Lema several times to ask questions. Lieutenant Lema read the form in full to the Appellant as he is required to do so under § 31-27-2.1. Appellant also spoke with counsel before she refused to take the chemical test. Based on the foregoing, the trial magistrate determined that Appellant was properly apprised of her rights and made a voluntary, knowing, and intelligent waiver of her right to submit to a chemical test.

This Panel agrees with the trial magistrate. A motorist's bare assertion that he or she does not understand cannot warrant a violation of § 31-27-2.1 to be dismissed. If the Appellant's contention were adopted by this Court, § 31-27-2.1 would be completely undermined by motorists who use English as a second language. See State v. Leuthavone, 640 A.2d 515 (R.I. 1994) (court rejected defendant's argument that waiver of his Miranda rights was not done voluntarily, knowingly, and intelligently due to his lack of familiarity with English); State v. Garcia, 643 A.2d 180 (R.I. 1994) (The State's interest in prosecuting defendants "would be circumvented were we to permit defendant and others similarly situated, despite being sufficiently fluent in the English language."). Here, the Appellant was read the Rights for Use at

the Station form in its entirety. Appellant had the opportunity to consult with counsel. Then, Appellant chose not to submit to a chemical test. Therefore, it is this Panel's decision that Appellant's refusal to submit to a chemical test was done voluntarily, knowingly, and intelligently.

F. Confidential Phone Call

Next, Appellant argues that her statutory right to a confidential phone call was violated by Lieutenant Lema entering the room while Appellant was on the phone with her attorney. Section 12-7-20 of the Rhode Island General Laws states, in pertinent part, that "[t]he telephone calls afforded by this section shall be carried out in such a manner as to provide confidentiality between the arrestee and the recipient of the call." Our Supreme Court has recently held that the § 12-7-20 extends not only to criminal offenses, but also to violations of § 31-27-2.1, which are civil in nature. See State v. Quattrucci, 2012 WL 758921 (R.I. 2012). The Quattrucci court also noted that § 12-7-20 is limited to phone calls that are made for contacting an attorney or for arranging bail. Id. Since the Appellant's phone call was made to an attorney, the protections afforded by § 12-7-20 apply. This Panel can now turn its attention to whether Lieutenant Lema violated the Appellant's right to a confidential phone call.

Here, Lieutenant Lema provided Appellant with the opportunity to make a confidential phone call. Lieutenant Lema then left the room so that Appellant could make the phone call. (Tr. at 28.) Appellant was in the room for fifteen minutes on the phone. (Tr. at 30.) Significantly, Appellant then summoned Lieutenant Lema into the room.[3] Id. Lieutenant Lema testified that Appellant summoned him into the room while Appellant was on the phone. The trial magistrate determined that Lieutenant Lema was a credible witness and that Appellant did summon him into

[3] While there was a videotape of this interaction, it did not capture if the Appellant did, in fact, summon Lieutenant Lema into the room.

the room to ask him questions. (Tr. at 151.) After answering the Appellant's questions, Lieutenant Lema left the room, and the confidential phone call resumed. (Tr. at 31.)

Quattrucci stood for the proposition that a confidential phone call must be afforded to drivers suspected of operating under the influence of drugs or alcohol. Quattrucci was premised on fairness, specifically, fairness to the motorists to be able to make a confidential phone call free from interference by the police as our General Assembly intended. However, the right to a confidential phone call is not absolute. This Panel also acknowledged in its own Quattrucci decision that a motorist may waive the right to a confidential phone call. Accepting Appellant's argument, that a motorist waiving a police officer into the room where the confidential phone call was taking place results in dismissal of the violation, would lead to inequitable results. Motorists would be empowered to deceive the police into breaching their confidential phone call, which would lead to a dismissal of their charges. Neither § 12-7-20 nor Quattrucci were meant to empower motorists in that way. In the case at bar, it is clear that the Appellant invited Lieutenant Lema in the room during her phone call. Therefore, Appellant's right to a confidential phone call cannot be deemed violated because it was the Appellant that was the cause of the breach of confidentiality.

G. Preliminary Breath Test

Appellant next argues that because she submitted to the preliminary breath test (PBT), it was an improper violation of her statutory rights for Lieutenant Lema to request that she submit to a breath test at the police station. The statutory language relied upon by Appellant reads: "[i]f a person having been placed under arrest refuses upon the request of a law enforcement officer to submit to the tests as provided in § 31-27-2, none shall be given. . . ." § 31-27-2.1. Appellant contends that a PBT is, in fact, a "test" for these purposes, and since she submitted to a PBT, she

should not have been offered another test.[4] Additionally, the Appellant maintains, because Appellant submitted to a breath rest, Appellant could not have violated § 31-27-2.1.

This Panel's "responsibility in interpreting [§ 31-27.2.1 and G.L. 1956 § 31-27.2.3] is to determine and effectuate the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes." Brendan v. Kirby, 529 A.2d 633, 637 (1987) (citing Gryguc v. Bendick, 510 A.2d 937, 939 (1986)). With that in mind, this Panel does not agree with an interpretation of the relevant statutes that a request to submit to a breath test, in accordance with § 31-27-2.1, is a violation of a motorist's rights simply because a person has submitted to a PBT. The "none shall be given" language of § 31-27.2.1 is clearly in contemplation of a refusal of an actual breath test. The entire section is dedicated to regulations concerning an actual, "station" refusal; the independent medical exam, refusing upon religious grounds. There is nothing in the statute to indicate that the legislature contemplated a preliminary breath test. See Almeida v. United States Rubber Co., 82 R.I. 264, 268, 107 A.2d 330, 332 (1954) ("a liberal interpretation of the provisions of the statute should be given to effectuate its particular purposes. But that does not mean that by construction we should completely nullify a clearly-expressed basic provision.")

Furthermore, § 31-27.2.3 states "When a driver is arrested following a preliminary breath analysis, tests may be taken pursuant to § 31-27.2.1." Reading that statute in light of Kirby, we determine that it is clear that the only test intended by the legislature in drafting § 31-27.2.1 is the "official" breath test conducted at a police station. If the legislature deems it appropriate for police to administer a test at the station after one has been administered at the scene, it would make little sense to hold that police cannot request for a motorist to submit to a second test,

[4] To support of her contention, Appellant relies on Superior Court decision, State v. Cote, N3 -2008-120A. Such a decision is not binding on this Panel. See Impulse Packing Inc. v. Sicajan, 862 A.2d 593, 600 n.14 (R.I. 2005).

simply because he or she has taken a PBT. As such, the trial magistrate's decision was not an abuse of discretion.

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 decisions regarding the violation of § 31-27-2.1 were not an abuse of discretion and were supported by the reliable, probative, and substantial evidence on the whole record. Substantial rights of Appellant have not been prejudiced. However, the trial magistrate's decision regarding § 31-15-11 was not supported by the reliable, probative, and substantial evidence on the whole record. Substantial rights of the Appellant have been prejudiced.

Accordingly, Appellant's appeal is denied in part and granted in part. The charged violation of § 31-27-2.1 is sustained, and the charged violation of § 31-15-11 is dismissed.

ENTERED: