

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
:

v.

C.A. No. T08-0049

ERIN LAWRENCE

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED
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DECISION

PER CURIAM: Before this Panel on April 23, 2008, Chief Magistrate Guglietta (Chair), Judge Parker, and Judge Ciullo sitting, is Erin Lawrence’s (Appellant) appeal from Magistrate Noonan’s decision, sustaining the charged violation of G.L. 1956 § 31-27-2.1, “Refusal To Submit to Chemical Test.” The Appellant appeared before this Panel represented by counsel. Counsel for the State also was present. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 30, 2008, at approximately 8:30 p.m., Appellant was charged with refusing to submit to a chemical breath test by Providence Police Officer Thomas Kane. The Appellant contested the charge, and the matter proceeded to trial.

At trial, Officer Kane testified that prior to arresting Appellant, he responded to the scene of a reported motor vehicle accident at the intersection of Narragansett Boulevard and Vermont Avenue in Providence. (Tr. at 20.) As he arrived on scene, Officer Kane observed a vehicle in the southbound lane of Narragansett Avenue with front-end damage and rescue personnel attending to Appellant. Id. Upon speaking with Appellant, she acknowledged that the vehicle with front-end damage belonged to her. (Tr. at 24.) As they spoke, Officer Kane observed her to be “confused,” and “she was

unable to definitively tell [him] what happened . . . [and] wasn't aware of where she was in the city." (Tr. at 25.) Officer Kane also "detected an odor of intoxicating type beverage on her breath." Id.

Officer Kane was then approached by an individual, Mr. Carreiro, who said he owned the parked vehicle that Appellant had struck with her vehicle. (Tr. at 28.) The Officer walked to the parked vehicle and noted damage to its rear bumper. Id. Officer Kane also noted that the passenger-side rear view mirror of Appellant's vehicle was located in the debris field behind Mr. Carreiro's car. (Tr. at 29.) Upon further questioning of Appellant, she admitted that she had been operating the vehicle at the time of the collision. (Tr. at 32.) Accordingly, Officer Kane requested her license and registration. (Tr. at 33.) As Appellant walked to her vehicle, "[s]he was unsteady on her feet [and] had difficulty trying to locate her license and registration." (Tr. at 33, 34.) Based on the "strong odor of intoxicating beverage on her breath [and] the unsteadiness on her feet," Officer Kane suspected that Appellant was impaired. (Tr. at 35.) The Officer then requested that Appellant submit to a series of field sobriety tests. Id. The Appellant consented. Id.

Before Officer Kane administered the field sobriety tests, he asked Appellant whether she had any physical conditions which would prevent her from completing the tests. (Tr. at 70, 71.) The Appellant responded that she did not. (Tr. at 70.) Officer Kane then verbally explained and physically demonstrated how to perform the field sobriety tests. (Tr. at 35-36.) Following the completion of the walk and turn test, Officer Kane determined that she failed the test. (Tr. at 39.) Officer Kane testified that during the test, she took too many steps, "was unsteady on her feet, . . . [and] stepped off the line

while taking the test.” (Tr. at 36.) The Appellant also failed to walk in a heel-to-toe fashion, which is another element needed to pass the test. (Tr. at 37.) Next, Officer Kane administered the one legged stand test after describing and demonstrating it. (Tr. at 39 - 40.) The Appellant attempted to take the test, but Officer Kane stopped her because he believed that she could not safely complete it. (Tr. at 40.) The Officer testified to Appellant’s “inability to keep her foot raised off the ground and [inability] to balance herself.” Id. Accordingly, Officer Kane arrested her on suspicion of driving under the influence of alcohol. Id. He then informed Appellant of her rights from a card entitled “Rights For Use At Scene” and transported her to the police station for processing. Id.

At the police station, Appellant was again informed of her rights from a card entitled “Rights For Use At Station” and was offered the use of a phone. (Tr. at 42.) The Appellant used the phone, and she was then placed in front of a breathalyzer machine and was requested to submit to a chemical breath test. (Tr. at 45.) The Appellant refused to submit to the test and was cited for violating § 31-27-2.1. Id.

Following trial, the trial magistrate sustained Appellant’s violation of § 31-27-2.1. The trial magistrate found the testimony of Officer Kane “credible,” and he adopted the Officer’s testimony as his findings of fact. (Tr. at 103.) The trial magistrate found that Appellant made “an admission of operation based on the credible testimony of the officer.” (Tr. at 105.) The trial magistrate also found that Officer Kane’s failure to include Appellant’s admission of operation from the accident report and sworn affidavit was not fatal to proving Appellant’s operation because the Officer credibly testified to the admission. (Tr. at 106-107.) Accordingly, the trial magistrate found that Officer Kane’s accident report and affidavit, although deficient, were superseded by his credible in-court

testimony. (Tr. at 107.) Furthermore, the trial magistrate found that Officer Kane formed “reasonable grounds [to believe] that she was operating under the influence of alcohol.” (Tr. at 108.) Ultimately, the trial magistrate found that Appellant “refused to submit to a chemical test at the request of an officer having reasonable grounds to believe she was operating under the influence of alcohol or drugs.” (Tr. at 111.)

The Appellant has filed a timely appeal of the trial magistrate’s decision. Forthwith is this Panel’s decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8(f), 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 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.”

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 (R.I. 1993). The Appeals Panel is “limited to a determination of whether the hearing justice’s decision is supported by legally competent

evidence.” Marran v. State, 672 A.2d 875, 876 (R.I. 1996) (citing Link, 633 A.2d at 1348). The Panel may reverse a decision of a hearing judge where the decision is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988).

Analysis

On appeal, Appellant argued that the trial magistrate’s decision was affected by error of law and constituted an abuse of discretion. The Appellant cited numerous assertions of error following trial. Accordingly, this Panel will address each issue in seriatim.

(1)

Proof of Operation and the Pyramiding of Inferences

The Appellant argued that the State did not carry its burden of proving her operation of a motor vehicle in violation of § 31-27-2.1. The Appellant claims that because there was no witness who testified to observing her operation, and because there was no credible admission that she operated the motor vehicle, there is a lack of evidence from which operation can be found. The Appellant also argued that the trial magistrate’s finding of operation violates the corpus delicti rule of criminal law, and that it pyramids inferences which do not support a finding of operation. The Appellant pressed her objection to Officer Kane’s testimony about Appellant’s admission of operation as non-responsive to a question, and she contends that it should have been stricken at trial.

This Panel is satisfied that it need not address the corpus delicti rule, which only applies to criminal cases (See State v. Angell, 405 A.2d 10 (R.I. 1979)), or the argument against the pyramiding of inferences because Officer Kane credibly testified that Appellant admitted operating her vehicle prior to the accident. (Tr. at 103-105.) This

Panel is also satisfied that Appellant's objection to Officer Kane's testimony about her admission of operation was properly overruled at trial. The Appellant's statement was admitted as an admission by party opponent pursuant to R.I.R. Evid. 801 (d)(2)(a). Accordingly, this Panel concludes that the Appellant's admission of operation was properly admitted at trial.

Regarding Appellant's admission about operating her vehicle prior to the accident, this Panel notes that the scope of review on appeal is "limited to a determination of whether the hearing justice's decision is supported by legally competent evidence." See Marran, 672 A.2d at 876. Accordingly, this Panel reviews whether the trial magistrate's decision was supported by the reliable, probative, and substantial evidence in the record in order to sustain the charge. Furthermore, this Panel cannot substitute its judgment for that of the trial magistrate with respect to credibility determinations. See Link v. State, 633 A.2d 1345 (R.I. 1993).

This Panel has reviewed the entire record before it. This Panel finds that the trial magistrate's decision was based on Officer Kane's "credible" testimony. (Tr. at 103-105.) Officer Kane testified that he "asked [Appellant] if she was operating the vehicle. She said, yes." (Tr. at 32.) Furthermore, it was apparent to Officer Kane that Appellant's vehicle collided with Mr. Carreiro's parked car. She was the registered owner of the vehicle with front-end damage, and she made no mention of another operator of her vehicle. Accordingly, this Panel concludes that the trial magistrate's finding of Appellant's operation is supported by the reliable, probative, and substantial evidence in the record. Because this Panel cannot substitute its judgment for that of the trial

magistrate with respect to credibility determinations, the Appellant's assertion of error based on Officer Kane's credibility is not reviewable by this Panel.

(2)

The Viability of the Sworn Report after the Suspension Hearing

At trial, Appellant urged the trial magistrate to consider Officer Kane's sworn reports as substantive evidence of prior inconsistent statements, pursuant to R.I.R. Evid. 801 (d)(1)(a), State v. Clark, 754 A.2d 73 (R.I. 2000), and other criminal cases. Instead, the trial magistrate admitted the sworn reports for the limited purpose of showing compliance with § 31-27-2.1.

On appeal, the Appellant argued that the trial magistrate erred as a matter of law when he found that the sworn reports of Officer Kane had no viability after the preliminary suspension hearing. See Link, 633 A.2d. 1345. The Appellant contended that the Officer's reports should have been considered substantively as evidence of his prior inconsistent statements because he testified at trial to facts that were not contained in the reports. To this end, Appellant stressed that Officer Kane's reports omitted critical details, such as his observations of the odor of alcohol on Appellant's breath, her admission of operating her vehicle prior to the accident, and whether or not Officer Kane inquired of her medical impairments. Because of these omitted facts, Appellant averred that Officer Kane's reports should have been considered substantively by the trial magistrate as evidence of his prior inconsistent statements pursuant to State v. Espinal, 943 A.2d 1052, 1060-1061 (R.I. 2008) (holding that a prior inconsistent statement can be admitted as substantive evidence, and, standing alone, can sustain a conviction, if the declarant testifies at trial and is available for cross-examination.). Additionally,

Appellant asserted that the sworn reports were more reliable and trustworthy than Officer Kane's in-court testimony because they were made closer to his investigation.

Regarding Appellant's argument that Officer Kane's sworn reports should have been admitted as substantive evidence of prior inconsistent statements, this Panel observes that a similar issue was addressed in State v. Bettencourt, 723 A.2d 1101 (R.I. 1999). In Bettencourt, a motorist was charged with two counts of driving so as to endanger, death resulting, in violation of G.L. 1956 § 31-27-1. At trial, the motorist tried to impeach an adverse witness by admitting her omission of a critical detail in a pre-trial police report as a prior inconsistent statement. The Court rejected the motorist's attempt to frame the omission as a prior inconsistent statement and ruled that the witness "gave no prior inconsistent statement that was contained in the police report. Consequently, the trial justice did not abuse her discretion in precluding the defendant's attempt to create a prior inconsistent statement that had never been made." Id. at 1111-1112. Similarly, in the instant case, this Panel will not assign error to the trial magistrate's denial of Appellant's attempt to characterize any omissions in Officer Kane's sworn reports as prior inconsistent statements. Accordingly, this Panel concludes that the trial magistrate's decision with respect to this issue is not affected by error of law and does not constitute an abuse of discretion.

Furthermore, this Panel is satisfied that the trial magistrate's decision is not affected by error of law because Officer Kane's reports were admitted for the limited evidentiary purpose of showing compliance with § 31-27-2.1, pursuant to Link. In Link, the issue of a defective police report was addressed by the Rhode Island Supreme Court. 633 A.2d. 1345. The Court heard the State's appeal after a hearing judge of the

Administrative Adjudication Court dismissed a motorist's refusal charge upon a minor defect in the police officer's report. The Court reversed the hearing judge and sustained the motorist's violation. The Court held that trial judge's "requisite findings may be made based upon whatever evidence is adduced *at the hearing* and are not dependant upon the validity of the sworn report." *Id.* at 1349. Therefore, in the instant matter, the minor defects and inconsistencies in Officer Kane's reports do not undermine the credible evidence adduced at trial. Accordingly, this Panel concludes that the trial magistrate's decision to not consider the police reports as substantive evidence was not affected by error of law and does not constitute an abuse of discretion.

(3)

Failure To Ask about Physical Impairments

On appeal, Appellant reiterated her trial argument that the field sobriety tests were inaccurate because Appellant could not have passed them due to significant medical impairments to her legs. Furthermore, Appellant contended that Officer Kane failed ask her whether she had any medical issues which would have impacted her performance on the field sobriety tests. Accordingly, Appellant maintains that Officer Kane's failure to inquire about her medical impairments renders the results of the field sobriety tests unreliable.

This Panel has searched the landscape of Rhode Island case and statutory law to find support for Appellant's argument that Officer Kane was required to inquire about her medical impairments. This Panel is unable to find any authority which requires such an inquiry by the Officer. Accordingly, the Appellant's assertion of error is without merit.

Nevertheless, upon a review of the entire record, this Panel is satisfied that Officer Kane did, in fact, ask Appellant whether she had any physical impairment.

Officer Kane testified as follows:

Officer Kane: When I administered the field sobriety test, I ask the subjects if they had any condition which would prevent them from taking the test. She said, no. (Tr. at 70.)

...

Officer Kane: [. . .] I ask the same questions every time I do a field sobriety test.

Appellant: Do you have a specific recollection that you did that in this case?

Officer Kane: Yes, because I administer the field sobriety test the same way. I ask the same questions and if someone indicates that they have an impairment or something that would prevent them from taking the test, we wouldn't conduct the test because as you pointed out, that can have an impact on the test. (Tr. at 71.)

Accordingly, this Panel concludes that the trial magistrate's decision was supported by the reliable, probative, and substantial evidence in the record. This Panel concludes that the trial magistrate's decision with respect to this issue is not affected by error of law and does not constitute an abuse of discretion.

(4)

Conflicting Accident Times

The Appellant next argued that Officer Kane's reports were inaccurate because they list different accident times. The Appellant asseverates that because the reports contain inconsistencies and omissions, they are not reliable evidence, and the case should be dismissed.

This Panel is satisfied that none of the claimed defects cited by Appellant rise to the level of reversible error. This Panel notes that the divergent accident times are likely

in the instant case because there was no third-party witness who actually observed the accident. The State's main witness, Officer Kane, came to the accident scene after he received a dispatch call and after emergency personnel had already arrived. Therefore, an exact determination of the time of the accident may have been difficult to discern. Furthermore, the exact time at which the accident occurred has little bearing on whether Officer Kane formed reasonable grounds to believe that Appellant operated her motor vehicle under the influence of alcohol and whether she subsequently refused to submit to a chemical breath test. Accordingly, this Panel concludes that the admission of the reports with minor inconsistencies into evidence was harmless error. See Link, 633 A.2d at 1349; State v. Palmigiano, 112 R. I. 348, 357, 309 A.2d 855, 860 (1973).

(5)

Lack of a Confidential Phone Call

The Appellant further contended that she was deprived of her right to make a confidential phone call immediately after her arrest. The Appellant argued that the confidentiality of her phone call was compromised by the presence of a female matron in the cell block of the Providence Police Station where the phone call was made.

This Panel is cognizant of the Rhode Island Supreme Court's holding in State v. Carcieri, 730 A.2d 11 (R.I. 1999). The Court held that a person suspected of DUI has the right to make a confidential phone call. 730 A.2d at 14-15. The Court also held that the remedy for police or prosecutorial misconduct relative to the confidentiality of a phone call is the dismissal of the charge only upon the showing to the defendant of "demonstrable prejudice, or a substantial threat thereof." 730 A.2d at 13 (quoting U.S. v. Morrison, 449 U.S. 361, 365 (1981)). The Court refused to dismiss the motorist's charge

because he tried to call a friend from the police station, and it observed that if the motorist's phone call was made to an attorney, or to the friend with the intent that the friend contact an attorney, demonstrable prejudice may have been shown by the lack of confidentiality. In Carcieri, the police officer stood approximately eight feet away from the Defendant. Id. at 17.

In State v. Veltri, 764 A.2d 163 (R.I. 2001), the defendant was convicted of driving while intoxicated. After the conviction, the Superior Court vacated the verdict and dismissed the charges when the defendant moved for a new trial on the grounds that the police had failed to provide him with access to a free phone call. In Veltri, the police had informed the defendant that he had the right to call an attorney and they directed him to a pay phone. However, the defendant did not have any change, and he did not wish to make a collect call or use a calling card from that telephone. As a result, he did not use a telephone to contact an attorney. In its analysis, the Rhode Island Supreme Court cited State v. Carcieri, which had been decided one week before the defendant's trial in Veltri. The Court, in its analysis of the requirements of a confidential phone call under R.I.G.L. 12-7-20, held that the suspect's right does not rise to the level of a constitutional right and that the sanction of dismissing the charges for failure to provide a defendant with a phone call were too extreme a measure. The Court concluded that in the absence of showing substantial prejudice, the defendant was not entitled to a dismissal of the charges against him.

This Panel has reviewed the entire record and observes that Appellant tried to call her brother from the police station. (Tr. at 83.) There is no evidence that Appellant intended her brother to contact an attorney. Accordingly, this Panel concludes that the

Appellant has failed to show “demonstrable prejudice” by the non-confidential phone call to her brother. The Appellant’s claimed deprivation of her right to a confidential phone call is not the “demonstrable prejudice” of an error law or abuse of discretion warranting reversal of the trial magistrate’s decision.

(6)

The Admission of Hearsay Evidence

The Appellant next asserted that the trial magistrate abused his discretion by admitting into evidence the hearsay statements of Mr. Carreiro. Mr. Carreiro was the owner of the vehicle into which Appellant’s vehicle collided. However, Mr. Carreiro neither witnessed the accident nor observed Appellant’s operation of her motor vehicle prior to the accident. He was inside a nearby store when the collision took place, and he subsequently learned of the accident from an unknown source. Accordingly, Appellant argued that the admission of Mr. Carreiro’s statement that Appellant collided with his car violated her constitutional right of confrontation and cross-examination.¹

It is well established that the admission of a statement under an exception to the hearsay rule is within the sound discretion of the trial justice and shall not be overturned unless clearly erroneous, State v. Ruffner, 911 A.2d 680, 689 (R.I. 2006).

In this case, the panel is mindful that the trial magistrate admitted Mr. Carreiro’s statements as an exception to the hearsay rule under Rhode Island Rules of Evidence 803(1). (Tr. at 25-26.) To qualify as a present sense impression, the statement must be made while the event is occurring or with only a slight lapse of time. State v. Bergevine,

¹ Determination of the constitutional issues raised by Appellant is not indispensable to the disposition of this case because the statements at issue were not necessary to proving a violation of § 31-27-2.1. Consequently, those issues will not be decided. See Whyte v. Sullivan, 119 R.I. 649, 653, 381 A.2d 186, 187 (1978).

942 A.2d 974, 978 (R.I. 2008). A present sense impression contains guarantees of trustworthiness because when a statement is made contemporaneously with the event, there is no time for reflection or deception and no question about the accuracy of the declarant's memory, State v. Mounplaisir, 815 A.2d 65, 70 (R.I. 2003).

While it appears from the transcript that some time had elapsed between the accident and Officer Kane's conversation with Mr. Carreiro, thus calling into question the application of 803(1), the Trial Magistrate also stated on several occasions that Mr. Carreiro's statements were not offered to prove the truth of the matter asserted (Tr. at 22, 26). Therefore, these statements did not meet the definition of hearsay under Rhode Island Rule of Evidence 801(c) and were admissible to prove facts used by officer Kane in the course and conduct of his investigation.

The Trial Magistrate's citation of Rhode Island Rule of Evidence 803(1) was harmless error and not clearly erroneous because the statement of Mr. Carreiro was admissible as a non-hearsay statement consistent with Rhode Island Rules of Evidence 801(c).

Furthermore, the record reveals that Mr. Carreiro's statements to Officer Kane were not necessary to the State's case. Every element of proving a violation of § 31-27-2.1 was satisfied by Officer Kane's testimony. Therefore, all elements of the charge were proven by testimony independent of Mr. Carreiro. Accordingly, the trial magistrate's decision was based on the reliable, probative, and substantial evidence in the record. This Panel concludes that the trial magistrate's decision with respect to this issue is not affected by error of law and does not constitute an abuse of discretion.

(7)

Failure to Give Advisement of Rights

The Appellant argued that her rights under the Rhode Island Constitution, Art. 1, §§ 6 and 10, were violated by Officer Kane's questioning at the scene of her accident.² The Appellant claims that she was detained at the time of this questioning and that she should have been informed of her rights.

This Panel is satisfied that Appellant's argument is without merit and unsupported by the record. As a threshold matter, this Panel notes that Appellant was not detained until she was handcuffed and placed in the police cruiser by Officer Kane, which took place some time after the questioning. Furthermore, in this case, Officer Kane did not conduct a traffic stop prior to the investigatory questioning. See State v. Casas, 900 A.2d 1120, 1133 (R.I. 2006) (holding that once a motorist is stopped and removed from a vehicle, the motorist is detained). Accordingly, no admonition of Appellant's rights was required until Appellant was actually detained. See Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

After Appellant's failure of the field sobriety tests, Officer Kane testified that he "advised Ms. Lawrence that [he] suspected her of being under the influence. [He] read her her Rights For Use at the Scene and she was placed in the back of [his] patrol vehicle." (Tr. at 40.) It was at that moment that Officer Kane detained Appellant, and, by then, he had already complied with the relevant sections of the Rhode Island Constitution, Art. 1, § 6 and G.L. 1956 § 31-27-3, "Right of Person Charged with

² This Panel declines to address Appellant's argument regarding a violation of Art. 1, § 10 because that section regulates criminal proceedings, and the Traffic Tribunal does not have jurisdiction over such offenses.

Operating Under Influence to Physical Examination.” Accordingly, Appellant was properly apprised of her rights upon her arrest for the suspicion of driving under the influence of alcohol. Therefore, this Panel concludes that Officer Kane did not violate Appellant’s rights when he questioned her before she was detained.

(8)

Clear and Convincing Evidence

Lastly, Appellant maintained that the trial magistrate’s decision is affected by error of law because there was no clear and convincing evidence produced at trial that she violated § 31-27-2.1.

This Panel has reviewed the record before it. This Panel notes that Officer Kane testified that he observed classic indicia of alcohol consumption from Appellant: the strong odor of intoxicating type beverage on her breath, confusion, unsteadiness on her feet, difficulty trying to locate her license and registration, and the failure of the field sobriety tests. (Tr. at 25, 33, 34, 35-40.) Mindful that the trial magistrate found Officer Kane’s testimony credible, this Panel concludes that the trial magistrate’s finding that Appellant violated § 31-27-2.1 is amply supported by clear and convincing evidence in the record.

(9)

Reservation of Rights Under Such

Since this appeal was argued, the Supreme Court has issued its decision in Theodore H. Such, Jr., et al. v. State of Rhode Island et al., No. 2007-21 (June 26, 2007), wherein a motorist who was charged with violating § 31-27-2.1 challenged his advisement of the incorrect penalties for refusing to submit to a chemical test. Mindful of

the holding of Such, this Panel will impose the sanctions for a violation of § 31-27-2.1 consistent with the Supreme Court's opinion.

CONCLUSION

Upon a review of the entire record, this Panel finds the trial magistrate's decision was not clearly erroneous and was not affected by error of law. Substantial rights of the Appellant have not been prejudiced. Accordingly, this Panel sustains the violation charged against the Appellant and dismisses her appeal.

ENTERED: