

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**TOWN OF BARRINGTON**

v.

**LAYNE SAVAGE**

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**C.A. No. T12-0063  
12101500332**

**DECISION**

**PER CURIAM:** Before this Panel on December 19, 2012—Administrative Magistrate Cruise (Chair, presiding), Judge Almeida, and Magistrate DiSandro sitting—is Layne Savage’s (Appellant) appeal from a decision of Chief Magistrate Guglietta, sustaining the charged violations of G.L. 1956 § 31-22-21.1, “Presence of alcoholic beverages while operating or riding in a motor vehicle,” and § 31-27-2.1, “Refusal to submit to a chemical test.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On March 10, 2012, Officer Timothy L. Oser (Officer Oser) of the Barrington Police Department charged Appellant with the aforementioned violations of the motor vehicle code. Appellant contested the charges, and the matter proceeded to trial on June 12, 2012. The trial judge sustained the charged violations, and the Appellant filed this appeal.

Before this trial commenced, the District Court held an evidentiary hearing on Ms. Savage’s driving under the influence (DUI) charge. After the State presented its case, Ms. Savage moved to dismiss the charge based on lack of probable cause to arrest her for DUI.

Thereafter, the District Court issued an order dismissing the DUI charge reasoning that the Barrington Police Department lacked probable cause to arrest Ms. Savage for the charged crime.

The trial at the Traffic Tribunal commenced with Officer Oser's testimony that he had been an officer with the Barrington Police Department for nine years. (Vol. I Tr. at 10.) Officer Oser continued his trial testimony by describing his professional training and experience in conducting DUI-related traffic stops and administering standardized field sobriety tests. Id. at 10-13. Officer Oser then testified that on March 10, 2012, at approximately 6:26 p.m., he received a call from Barrington police dispatch reporting a white sports utility vehicle ("SUV") driving erratically traveling southbound on the Wampanoag Trail near the Barrington Congressional Church. (Vol. I Tr. at 13-14.) The dispatch officer had received a 911 emergency call from motorist Jason Arnone, advising that a white SUV was operating erratically, drifting between lanes. (Vol. VI Tr. at 53.) Mr. Arnone reported that the SUV was traveling "anywhere between 40 miles and dipping down to 20 miles per hour on Route 114." (Vol. III Tr. at 48.) He witnessed the driver of the SUV change "lanes without using a signal" and "go from the left lane to the right lane and the right lane to the left lane." Id. at 52.

Officer Oser activated his emergency lights and siren and within one minute responded to the location where the traffic violations were witnessed. (Vol. I Tr. at 14.) As he was traveling southbound on County Road in Barrington, he observed a male operator of a silver minivan near a Shell Gasoline station with the vehicle's hazard lights activated. Id. at 15. The male operator flagged Officer Oser down and identified himself as Jason Arnone, the person who had placed the 911 call to report the white sports utility vehicle that was "operating all over the road." Id. He then gave the officer a brief description of the vehicle and told him that the vehicle was

headed southbound. Id. Officer Oser further testified that he noticed that Mr. Arnone, “. . . had some excitement in his voice . . .” when he spoke with the officer about the incident. Id. at 16.

After speaking with Mr. Arnone, Officer Oser then continued southbound on County Road, where he eventually spotted a white 2004 Ford Explorer, bearing Rhode Island license plate “TV267.” Id. at 18-19. Oser was then informed by dispatch that a second witness arrived at police headquarters to advise the same information as Arnone’s complaint. (Vol. VI Tr. at 60.) Officer Oser immediately pulled the vehicle over after he determined that the vehicle matched the description given by Mr. Arnone. Id. at 19. The white Ford Explorer drove into the parking lot at the Barrington Early Learning Center. Id. at 20. Officer Oser then approached the vehicle and requested the operator to produce her license and registration. Id. at 21. Officer Oser then identified the operator as the Appellant, Layne Savage. Id. at 20.

After exchanging some words with Appellant, the Officer observed that she had bloodshot eyes and slurred speech. Id. He also detected a strong odor of a fragrance emanating from inside the vehicle which seemed to be utilized by the motorist to mask an odor. Id. at 20, 55. In addition to these observations, Officer Oser witnessed that “both front passenger and front driver’s side windows were down[.]” and the outside temperature was in the thirty degree range. Id. After conducting a National Crime Information Center (“NCIC”) check and running Appellant’s driver’s license through the system, Officer Oser discovered that the Division of Motor Vehicles had previously suspended her driver’s license. Id. at 21. Officer Oser asked Appellant whether she had consumed any alcohol that evening, to which she admitted she had consumed two glasses of wine. Id. He then asked the Appellant to exit the vehicle, which Appellant did. Id. at 22. Officer Oser requested the Appellant to submit to a series of field sobriety tests; however, Appellant refused. Id. at 23.

Officer Oser testified that he placed Appellant under arrest, read her her “Rights for Use at Scene,” and transported her to the Barrington Police Station. Id. at 24. Before transporting her to the station, Officer Oser conducted an inventory search of Appellant’s vehicle. Id. at 25. On the floor of the front passenger side of the vehicle, he found two bottles of Bacardi Gold and two small bottles of Pinot Grigio Barefoot wine. Id. at 26. Two of the bottles were partially consumed while the other bottles were full of liquid. Id. at 26-27. He then found a very small bottle of alcohol “commonly referred to as a nip.” Id. at 27. In addition to the alcohol, Officer Oser seized two bottles of prescription amphetamine salts. Id. at 29.

At the station, Officer Gaffney advised Appellant of her “Rights for Use at Station” and offered Appellant the opportunity to make a confidential phone call. Id. at 31. Officer Oser testified that Appellant made her phone call while he stepped out of the room. Id. The officer then requested Appellant to submit to a chemical breath test, which the Appellant refused. Id.

After Officer Oser’s detailed and extensive testimony, assisting Officer Greg Koungros also gave extensive testimony regarding the night Appellant was stopped. Officer Koungros testified that he reported to the scene of Appellant’s stop after he received a dispatch call about Appellant’s erratic driving. (Vol. II Tr. at 4.) At the scene, Officer Koungros observed Appellant’s open window and smelled the scent of perfume emanating from her vehicle. Id. at 5. Officer Koungros also testified to the items found in the vehicle after conducting an inventory search of the vehicle. Id. at 7.

Subsequent to assisting Officer Koungros’s testimony, Regina Coffey, employed as a forensic scientist with the Department of Health for the State of Rhode Island testified to the tests performed on the evidence seized from Appellant’s vehicle. Coffey commenced her trial testimony by describing her professional training, experience, and qualifications as a forensic

scientist in the Forensic Toxicology Laboratory. (Vol. III Tr. at 8-14.) She then went through a step-by-step explanation of actions she performed once she received the liquid found in Appellant's vehicle. Id. at 19-31. Coffey testified that all of the samples tested positive for alcohol. Id. at 36.

Next, civilian witness Jason Arnone testified that on March 10, 2012, at approximately 6:20 p.m., he and his family were driving in their minivan traveling south on Route 114 entering into Barrington. (Vol. III Tr. at 42.) He testified that as he neared Forbes Street, he spotted a white SUV drifting between lanes. Id. at 45-46. He testified that he followed the vehicle down Route 114. Id. at 58. After he witnessed the vehicle nearly hit the sidewalk and drive through a red light, he called 911. Id. at 58, 62. Mr. Arnone further testified that after the 911 call, he made contact with Officer Oser and gave the officer information in order to locate the white SUV. Id. at 68-75.

Dispatcher Glenn Maciel provided testimony at trial about his role on the night of this incident. Dispatcher Maciel testified that he immediately made a radio dispatch to the police officers in the vicinity once he received a call about a person operating her vehicle erratically. (Vol. VI. Tr. at 53.)

Detective Lieutenant Dino DeCrescenzo of the Barrington Police Department testified to his involvement with this matter. In accordance with his duties, he reported to the evidence locker located at the Police Department, retrieved the samples taken from Appellant's vehicle, and delivered them to the Department of Health. (Vol. VII. Tr. at 4-6.)

Detective Benjamin Ferreira of the Barrington Police Department testified that he assisted Detective DeCrescenzo by preparing the samples retrieved from Appellant's vehicle for laboratory analysis. (Vol. VI. Tr. at 80.) At trial, he stated that he marked the bottles and

entered them into the system according to protocol. Id. at 86. Detective Ferreira then proceeded by explaining the process he took in order to prepare the samples for the Department of Health. Id. at 86-93.

The trial magistrate concluded that based on Officer Oser's observations, there were articulable facts and reasonable grounds to conclude that Appellant was operating her motor vehicle under the influence of alcohol. (Vol. X Tr. at 73.) Finding that the State had met its burden in proving all the elements of §§ 31-27-2.1 and 31-22-21.1, the trial judge then imposed penalties. Id. at 84. Aggrieved by the trial magistrate's decision, the Appellant timely filed an appeal.

### **Standard of Review**

Pursuant to § 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 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 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 magistrate's decision is affected by reversible error. Appellant's argument on appeal is that the doctrine of collateral estoppel bars the re-litigation as to whether the police had reasonable grounds to ask Appellant to submit to a chemical test after a judge in District Court found reasonable suspicion to stop lacking in Ms. Savage's DUI trial. Appellant also contends that the trial magistrate erred in determining that Officer Oser had reasonable suspicion to conduct an investigatory stop of Appellant's vehicle. Lastly, Appellant argues that the evidence presented at trial does not meet the clear and convincing evidentiary standard needed in order to sustain a refusal charge.

### A. Collateral Estoppel

Collateral estoppel applies when an issue of ultimate fact has once been determined by a valid and final judgment and that issue cannot again be litigated between the same parties in any future lawsuit. State v. Jenkins, 673 A.2d 1094, 1096 (R.I. 1996). Our Supreme Court has consistently held that “. . . the DUI and the refusal statutes are two separate and distinct offenses . . . ,” and the Court has acknowledged the existence of “an important temporal distinction between the two.” State v. Quattrucci, 39 A.3d 1036, 1041 (R.I. 2012). These type of cases involve a possibility of both civil and criminal proceedings determined by whether the arrestee decides to submit to the test or to refuse, and the implications of the arrestee's decision may result in both civil and criminal proceedings and penalties. Id. (citing Dunn v. Petit, 120 R.I. 486, 490, 388 A.2d 809,811 (1978)). Our Supreme Court has clearly stated:

The offense of refusal under [G.L.1956] § 31-27-2.1 can arise only after a driver has been arrested, informed of his or her rights, asked to submit to a chemical test, and refused, whereas DUI cases begin with an arrest based upon probable cause to believe that the driver had been driving while under the influence of alcohol or drugs . . . Although the offense of DUI . . . already has been committed, unless and until the suspect actually refuses to submit to a test, he or she has not committed the additional offense of refusal . . . . Id. (quoting State v. DiStefano, 764 A.2d 1156, 1162 (R.I. 2000)).

The criminal charge in District Court and the civil charge in the Traffic Tribunal (RITT) are “two separate statutes, each having distinct elements.” Jenkins, 673 A.2d at 1094. Accordingly, Appellant’s collateral estoppel argument must fail since she was charged under two separate statutes, each having distinct elements. Id. at 1097. Even though the District Court trial judge made a determination of no probable cause, that issue was unrelated and irrelevant in the RITT trial and would therefore not operate to preclude the state from prosecuting the Appellant under § 31-27-2.1. Id.

Similarly, the burden of proof in each proceeding differs greatly from one another. In order for a charge of refusal to be sustained, the four elements under § 31-27-2.1 must be proven by clear and convincing evidence, while the charge heard in the District Court requires proof beyond a reasonable doubt. See State v. Rooks, 62 R.I. 251, 4 A.2d 905 (R.I. 1939). Therefore, the trial magistrate's finding that the District Court's probable cause determination did not form the basis of a collateral estoppel claim was not affected by error of law. Jenkins, 673 A.2d at 1097.

### **B. Reasonable Suspicion**

Appellant argues that the Officer did not have reasonable suspicion to conduct an investigatory stop of Appellant's car. When an individual is detained by law enforcement officers, "the Fourth Amendment is implicated and the detention must be in conformance with the strictures of that amendment." State v. Bjerke, 697 A.2d 1069, 1071 (R.I. 1997); see Terry v. Ohio, 392 U.S. 1, 18 (1968). In cases involving a warrantless stop and detention, "reasonableness is the touchstone for distinguishing lawful from unlawful seizures." Bjerke, 697 A.2d at 1071; see Jenkins, 673 A.2d at 1097. For a lesser intrusive detention to be reasonable, the state must establish reasonable suspicion by pointing to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry, 392 U.S. at 21; see Bjerke, 697 A.2d at 1071.

In determining sufficient reasonableness to justify an investigatory stop, the "totality of the circumstances" is taken into account, allowing the officers to "draw on their own experience and specialized training." United States v. Arvizu, 534 U.S. 266, 273-74 (2002); see State v. DeMasi, 448 A.2d 1210 (R.I. 1982). Some factors that may contribute to reasonable suspicion include: "the location in which the conduct occurred, the time at which the incident occurred, the

suspicious conduct or unusual appearance of the suspect, and the personal knowledge and experience of the police officer.” State v. Halstead, 414 A.2d 1138, 1148 (R.I. 1980) (citations omitted). A traffic stop is not permitted based on an anonymous tip without sufficient detail or corroboration. Bjerke, 697 A.2d at 1072; see Alabama v. White, 496 U.S. 332, 329-30 (1990).

Particularly, instructional on this issue is Adams v. Williams, 407 U.S. 143, 145 (1972). In this case, a Connecticut police officer approached a parked vehicle after an informant came forward and told the officer that “an individual seated in a nearby vehicle was carrying narcotics and had a gun in his waistband.” Id. Upon approaching the defendant, the officer saw a gun sticking out of his waistband. Id. Subsequently, the officer detained the man and conducted a search which resulted in obtaining incriminating evidence. Id. Against arguments by the defendant that the uncorroborated tip did not provide the officer with enough reasonable suspicion to approach the vehicle and conduct what amounted to an investigatory stop, the Court held that in light of the circumstances, the officer’s actions were justified. Id.

Although Adams was a criminal matter in which defendant sought the suppression of narcotics and an unregistered firearm, its reasoning concerning the validity of the traffic stop is highly relevant to the facts before us. The Adams Court noted that information provided by a real time, face-to-face, witness informant is “stronger. . . than in the case of an anonymous telephone tip.” Id. For one thing, the Court noted that “under Connecticut law, the informant might have been subject to immediate arrest for making a false complaint.” Id. at 146. Also, the veracity of the tip was bolstered by events and circumstances “just witnessed” by the informant. Id. This Panel understands that the lesson from Adams is not that every citizen informant’s tip justifies immediate police action. In fact, the Court noted that in these situations, “[i]nformants’

tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability. One simple rule will not cover every situation.” Id. at 147.

Taking note of this approach, we look to the specific facts before us in an effort to determine the propriety of the officer’s actions in light of the information provided to him from the informant, coupled with a potential need for swift action. First, like the informant in Adams, here Mr. Arnone, the informant, flagged down the officer’s vehicle and informed the officer in a face-to-face encounter that he was the 911 caller. (Tr. Vol. II at 72.) As in the Connecticut statute, Rhode Island General Law 1956 § 11-32-2, “False report of crime,” subjected Mr. Arnone to possible fines and imprisonment for providing false information and allegations to Officer Oser. We also recognize that Officer Oser understood that the man claiming to have witnessed the Appellant violate numerous motor vehicle violations was more than likely in the area where he claimed it had happened. Moreover, Mr. Arnone provided more than a detailed description actually informing the officer of the direction in which Appellant’s vehicle was headed, as well as describing the specific alarming behavior exhibited by the Appellant. See United States v. Zayas-Dias 95 F.3d 105, 111 (1st. Cir. 1996) (noting that an informant’s tip can be bolstered with detail and specificity of facts alleged); see also Commonwealth v. Allen, 549 N.E. 2d 430, 433 (Mass. 1990) (more credence is given to the basis of knowledge of an informant if he himself is an eyewitness).

Most importantly, the face-to-face encounter the officer was able to have with the informant in this case contributes to the reliability of the informant’s allegations. In-person communications tend to be more reliable because after the revelation of one’s identity, the informant is on notice that he or she can be tracked down and held accountable if his or her assertions are inaccurate. United States v. Romain, 393 F.3d 63, 73 (1st Cir. 2004) (citing

Florida v. J.L., 529 U.S. 266, 270-271 (2000)). These types of communications also help to determine whether the information given by the informant is sufficiently reliable to warrant police action because “it provides police officers the opportunity to perceive and evaluate personally an informant’s mannerisms, expressions, and tone of voice . . . and provides a window into an informant’s represented basis of knowledge.” Id. at 74.

Here, soon after Officer Oser received the dispatch of the erratic driver, he was flagged down by Mr. Arnone, who identified himself as the 911 caller. Officer Oser was able to speak with Mr. Arnone for approximately ten seconds, which gave the officer enough time to hear the tone in Mr. Arnone’s voice and come to the conclusion that he appeared to have “. . . some excitement in his voice” at that moment. (Vol. I Tr. at 16.) Additionally, Officer Oser was informed by dispatch that a second witness presented themselves at headquarters advising of identical information reported by Mr. Arnone. (Vol. VI Tr. at 60.)

Lastly, we must take note of the exigency of the circumstances that required Officer Oser to act with urgency. As the Court held in Adams, “the Fourth Amendment does not require a policeman . . . to simply shrug his shoulders and allow a crime to occur or a criminal to escape.” Adams 407 U.S. at 145. A possible dangerous driver could have disappeared into the night had Officer Oser not sought to act on the informant’s tip. We conclude that it was “a legitimate investigative function [Officer Oser] was discharging when he decided to approach [Appellant’s vehicle]” and conduct the investigatory traffic stop.” Terry, 392 U.S. at 23.

Upon conducting the stop, Officer Oser was able to quickly ascertain two major facts. First, Appellant’s vehicle matched the description given by the informant. Secondly, through various clues—bloodshot eyes, slurred speech, an odor of alcohol, and that Appellant’s windows were open in approximately thirty degree weather—the officer realized that she may have been

operating her vehicle while intoxicated. We conclude that Officer Oser's swift action was proper in light of the reliable tip and the fear of a person operating a vehicle while intoxicated potentially destined to injure an innocent driver on the road that evening. See State v. Werner, 615 A.2d 1010, 1014 (1992) (the need to protect or preserve life or avoid serious injury creates the exigency and justifies a search by an officer). Therefore, the trial magistrate's finding that the Officer had reasonable suspicion to conduct the investigatory stop of Appellant's vehicle was not in violation of constitutional provisions or affected by error of law.

### **C. Reasonable Grounds**

Appellant further argues that Officer Oser lacked reasonable grounds to believe that Appellant had operated a motor vehicle under the influence of alcohol. Appellant contends that the officer did not personally observe the Appellant operate her motor vehicle erratically, and therefore, Officer Oser did not have reasonable grounds to believe that Appellant had been operating the vehicle under the influence of alcohol.

Law enforcement officers must possess reasonable grounds to suspect that an individual has been driving under the influence of alcohol. Section 31-27-2.1 requires that the police officer have a reasonable suspicion that a person operating a vehicle is intoxicated. Our Supreme Court has stated that the reasonable grounds standard is the same as the reasonable suspicion standard. See Jenkins, 673 A.2d at 1097. "[R]easonable suspicion [is] based on articulable facts that the person is engaged in criminal activity." State v. Keohane, 814 A.2d 327, 330 (R.I. 2003); see also State v. Bjerke, 697 A.2d 1069, 1071 (R.I. 1997) (upholding the reasonable suspicion standard in the context of a refusal to submit to a chemical test). Furthermore, the court must take into account the totality of the circumstances to determine whether an officer's suspicions are reasonable. State v. Taveras, 39 A.3d 638, 647 (R.I. 2012) cert. denied, 133 U.S.

249 (2012). Indeed, in determining reasonable suspicion, the fact finder may make permissive inferences when there exists “a rational connection between the fact proven and the inference to be drawn.” State v. Lusi, 625 A.2d 1350, 1356 (R.I. 1993). Such inferences have been described by the Supreme Court as a “staple of our adversary system of factfinding.” County Court of Ulster County v. Allen, 442 U.S. 140, 1156 (1979).

In sustaining the violation, the trial magistrate noted the following—the officer’s observation of Appellant’s car windows rolled all the way down in thirty degree weather, Appellant’s slurred speech, bloodshot eyes, admission of having had two glasses of wine, Appellant’s defiant behavior, and the overwhelming smell of fragrance coming from her vehicle—constituted reasonable grounds for Officer Oser to believe that Appellant had driven her vehicle under the influence of alcohol. (Vol. X Tr. at 50.); See Jenkins, 673 A.2d at 1097. Additionally, the testimony given by Mr. Arnone, which indicated that Appellant was operating her motor vehicle in such an erratic manner that she violated numerous motor vehicle violations, is competent evidence to conclude that Appellant was, in fact operating a motor vehicle under the influence of alcohol that evening. Lusi, 625 A.2d at 1356. Lastly, the trial magistrate noted that Officer Oser was trained in DUI investigation and familiar with the characteristics of intoxication, indicating Officer Oser’s ability to properly identify Appellant as intoxicated. (Vol. X Tr. at 51, 56.) Therefore, the record demonstrates that Officer Oser did have reasonable grounds to believe that Appellant had operated a motor vehicle under the influence of alcohol.

This Panel finds the trial magistrate’s findings were not affected by error of law or clearly erroneous. The trial magistrate’s decision—taking into account the totality of the circumstances—was supported by Officer Oser’s testimony, Mr. Arnone’s testimony, and the

exhibits entered into evidence at trial. Therefore, the trial magistrate's decision was supported by the reliable, probative, and substantial evidence of record.

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel conclude that the trial magistrate's decision was not affected by error of law, or in violation of constitutional provisions, and was supported by the reliable, probative, and substantial evidence on record. Substantial rights of the Appellant have not been prejudiced. Accordingly, the Appellant's appeal is denied.

ENTERED:

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Administrative Magistrate R. David Cruise (Chair)

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Judge Lillian M. Almeida

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Magistrate Domenic A. DiSandro, III

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