

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF EAST PROVIDENCE

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:
:

v.

**C.A. No. M13-0016
13404500064**

JAMES FOLAN

DECISION

PER CURIAM: Before this Panel on December 18, 2013—Magistrate Goulart (Chair, presiding), Magistrate DiSandro, and Magistrate Abbate, sitting—is James Folan’s (Appellant) appeal from a decision of the East Providence Municipal Court (trial judge), sustaining the charged violation of G.L. 1956 § 31-22-22, “Safety belt use.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to R.I.G.L. 1956 § 31-41.1-8.

Facts and Travel

On January 5, 2013, Captain Kidman of the East Providence Police Department (Captain) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on September 9, 2013.

At trial, the Captain testified that on January 5, 2013, he was posted in the area of Six Corner within the Copy World parking lot. (Tr. at 1.) The Captain indicated that at that time, he was observing traffic traveling westbound on Taunton Avenue onto Waterman Avenue. Id. In addition, the Captain testified that he observed a blue Chevrolet approaching his location. Id. Thereafter, the Captain further described that he had a clear unobstructed view of the Appellant operating his vehicle with no seat belt. Id. Subsequently, the Appellant was issued a citation for the aforementioned violation. Id.

Next, the Appellant moved to dismiss the case on due process grounds. Id. Specifically, the Appellant stated that his due process rights had been violated because he had been inconvenienced by his court date being continued on four separate occasions. (Tr. at 1-2). Moreover, the Appellant questioned the Captain's memory of the instant matter and averred that he had been wearing his seat belt. (Tr. at 2.)

At the close of the evidence, the trial judge issued his decision sustaining the charged violation. (Tr. at 4-5.) The trial judge determined that the prosecution had proven each element of the charge. Id. Specifically, the trial judge noted that the Captain's testimony was credible and that the Captain had identified Appellant as the operator. Id. Aggrieved by the trial judge's decision to sustain the charge, the Appellant timely filed this 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 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

I. Credibility

The first issue raised by the Appellant is the credibility of the Captain’s testimony. Appellant disputes the veracity of the Captain’s testimony and claims that the trial judge’s decision to credit the Captain’s testimony over that of the Appellant’s testimony was an abuse of discretion. Specifically, the Appellant alleges that he was wearing his seat belt and that the Captain did not have sufficient memory of the Appellant’s violation of the motor vehicle code.

In Link, our Supreme Court made clear that 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, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not

have an opportunity to view the live trial testimony of the Captain or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [the Captain and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony in this case, the trial judge determined that the Captain's testimony was not only credible, but the testimony was also sufficient to sustain the charged violation. (Tr. at 4-5.) "[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact." Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). In his decision, the trial judge credited the Captain's testimony that the Appellant was not wearing his seat belt. (Tr. at 1.) Furthermore, the trial judge found that the Captain had testified credibly when he stated that he had a clear and unobstructed view of the Appellant. Id. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (the [appellate court] should give great deference to the [trial judge's] findings and conclusions unless clearly wrong).

II. Due Process

Appellant additionally contends that the trial judge violated his due process rights. In particular, Appellant avers that he was not afforded his right to a speedy trial and he was not allowed to effectively cross-examine the Captain.

In regards to Appellant's due process argument, Appellant's reliance on due process is misguided and not applicable to the facts presented in instant matter. Due Process within [a tribunal] requires the opportunity to be heard "at a meaningful time and in a meaningful manner." Millett v. Hoisting Engineers' Licensing Div. of Dept. of Labor, 119 R.I. 285, 296, 377 A.2d 229, 235-36 (1977)); see also Gimmicks, Inc. v. Dettore, 612 A.2d 655, 660 (R.I. 1992) (court held due process requires that a person be allowed to present evidence and testimony). In addition, our Supreme Court has repeatedly held that the right to a speedy trial is applicable only to criminal prosecutions. Kane v. Lapre, 69 R.I. 330, 33 A.2d 218, 221 (1943); Thayer Amusement Corp. v. Moulton, 63 R.I. 182, 7 A.2d 682, 689 (1939) (finding that the section of Constitution giving an accused the right to a speedy trial only applies in criminal prosecutions). Here, a violation of the motor vehicle code is civil in nature. Accordingly, the Constitutional right to a speedy trial has no application in the instant civil proceeding.

Most importantly, Appellant was afforded the opportunity to present his case in chief at trial, and the record fails to show that Appellant's Constitutional rights were substantially prejudiced by the trial judge's conduct. The trial judge allowed the Appellant to cross-examine the Captain. See Tr. at 2. On appeal, the Appellant contends he had additional avenues of inquiry to direct at the Captain. However, these questions were not raised or asked at trial. Our Supreme Court has continually stated that "an issue that has not been raised and articulated previously at trial is not properly preserved for appellate review." State v. Donato, 592 A.2d 140, 141 (R.I. 1991). Accordingly, our Supreme Court's "well settled 'raise-or-waive' rule precludes us from considering at the appellate level issues not properly presented before the trial court." State v. Forand, 958 A.2d 134, 141 (R.I. 2008); see also State v. Moreno, 996 A.2d 673, 684 (R.I. 2010); State v. McManus, 990 A.2d 1229, 1237 (R.I. 2010); State v. Gomez, 848 A.2d 221,

237-38 (R.I. 2004); State v. Grant, 840 A.2d 541, 546 (R.I. 2004); State v. Pacheco, 763 A.2d 971, 976 (R.I. 2001).

The review of the Appeal 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 at 208 (R.I. 1993)). The record makes it clear to this Panel that the trial justice did not interfere with the Appellant's ability to question the Captain. In addition, the record indicates that questions proposed by the Appellant to this Panel were not asked at trial. Therefore, the due process rights of the Appellant were not substantially prejudiced and the Appellant waived the ability to further question the Captain when he concluded the presentation of his case.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision was supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the trial judge did not abuse his discretion and his decision was not made upon unlawful procedure. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate Alan R. Goulart

Magistrate Domenic A. DiSandro, III

Magistrate Joseph A. Abbate

DATE: _____