

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF WOONSOCKET

:

v.

:

C.A. No. M12-0020

:

12412503359

:

RONALD RIBERO

:

DECISION

PER CURIAM: Before this Panel on February 20, 2013—Magistrate Goulart (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Noonan sitting—is Ronald Ribero’s (Appellant) appeal from a decision of the Municipal Court, sustaining the charged violation of G.L. 1956 § 31-22-22(g), “Safety belt use - operator.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On August 11, 2012, Officer Oliver of the Woonsocket Police Department charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on October 17, 2012.

On the day Appellant was cited, the Appellant was traveling on Clinton Street in Woonsocket. (Tr. at 4.) Shortly before the stop, the officer was on a fixed traffic post in the parking lot of Citizens Bank near Clinton Street in Woonsocket. Id. As the Appellant drove down Clinton Street, Officer Oliver observed that the Appellant was not wearing a seat belt. Id. Officer Oliver testified that on the evening of the violation, he had a clear and unobstructed view

of the operator traveling in his vehicle without his seatbelt. Id. Thereafter, the officer conducted a traffic stop and cited the Appellant for the aforementioned safety belt violation. (Tr. at 5.)

After Appellant asked the officer a number of questions, Appellant then attempted to admit into evidence video footage from nearby surveillance cameras showing that he was wearing his seatbelt. (Tr. at 8.) However, Appellant did not have the footage with him at trial because “[he] didn’t know how to go about it” (Tr. at 9.) The trial judge then questioned the Appellant as to whether he raised the issue during his pretrial conference, and Appellant answered in the negative. Id. Appellant then moved for a continuance in order to obtain copies of the footage. Id. In response, the trial judge stated “. . . you’ve had two month, really, to do it . . . and there are [sic] serious doubt as to whether or not – there would still be tape in existence or if they existed. . . were there even . . . tapes that would show the inside of your vehicle from as far away. Id. The judge then denied the Appellant’s request for a continuance. (Tr. at 9-10.)

Following the trooper’s testimony, Appellant testified that he was wearing his seat belt. (Tr. at 11.) Appellant further testified that, as a professional driver, he always wears his seatbelt. Id.

After hearing both parties, the trial judge issued his decision sustaining the charged violation. (Tr. at 12.) The trial judge stated that the officer’s testimony was sufficient to sustain the charged violation. Aggrieved by the trial judge’s decision, the Appellant timely filed an appeal.

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that 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 argues that he was prejudiced by the judge's decision to move forward with the trial despite his request for a continuance. Specifically, Appellant argues that he should have been given an opportunity to present the video recording from the surveillance cameras at trial. Appellant further claims that the surveillance video would clearly show that he was wearing his seat belt at the time of the traffic stop.

“[A] motion for a continuance is addressed to the sound discretion of the trial judge. State v. Lanagan, 528 A.2d 310, 316 (R.I. 1987). “In reviewing the denial of a motion for a continuance [reviewing courts] look to the circumstances of each case to determine whether or not an abuse of discretion has taken place.” State v. Ucero 450 A.2d 809, 814 (R.I. 1982).

In reviewing the record before us, we fail to find any indication that trial judge abused his discretion when he denied Appellant's request for a continuance. First, Appellant's motion can hardly be classified as timely, as it was not made until after the City had rested its case. (Tr. at 7.) Second, Appellant had two months to retrieve copies of the videos and failed to do so. We must also note that Appellant did not have copies of the videos at the time of this hearing. Lastly, Appellant has not shown that it is certain that the videos would show that he was wearing his seatbelt. Therefore, we conclude that it was well within the trial judge's discretion to deny the motion and proceed with the trial. See State v. Allan, 433 A.2d 222, 225 (R.I. 1981) (“Discretion is the option that a trial justice has in doing or not doing a thing that cannot be demanded by a litigant as an absolute right.”).

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 to deny Appellant's request for a continuance did not prejudice Appellant. Substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Chief Magistrate William R. Guglietta

Magistrate William T. Noonan

DATE: _____