

People v. De La Paz

Supreme Court of New York, Clinton County

October 29, 2021, Decided

Appeal No. 01-A-2021

Reporter

2021 N.Y. Misc. LEXIS 5390 *

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent, -against- HECTOR COMPANIONI
DE LA PAZ, Defendant-Appellant.

Notice: THIS OPINION IS UNCORRECTED
AND WILL NOT BE PUBLISHED IN THE
PRINTED OFFICIAL REPORTS

Core Terms

speed, miles per hour, discovery, zone, per hour,
declaration, ticket, radar, thirty days, compliance,
infraction, estimate, includes, Traffic, appeals,
visual, amend

Counsel: [*1] THOMAS B. MAFRICI, Esq.,
Attorney for the Defendant-Appellant.

Judges: PRESENT: HONORABLE KEITH M.
BRUNO, County Court Judge.

Opinion by: KEITH M. BRUNO

Opinion

With respect to the above-referenced matter,
enclosed please find original Decision and Order
dated October 29, 2021 for filing with the Court
Clerk's Office.

By copy of this correspondence to the Clinton
County District Attorney's Office, defendant's
counsel, Thomas B. Mafriqi, Esq., and the Town of

Champlain Justice Court, I am forwarding a
courtesy copy this order to each of them
individually.

Very truly yours,

/s/ Keith M. Bruno

Keith M. Bruno

County Court Judge

DECISION AND ORDER

BRUNO, J.:

Pending before this Court is the appeal of the
defendant-appellant, Hector Companioni De La Paz
(hereinafter "the defendant"). He appeals from a
judgment and conviction out of the Town Court,
Town of Champlain (the Hon. John K. Triller,
presiding) dated November 4, 2020. The defendant
had been convicted after a trial of the traffic
infraction of speeding, in violation of Vehicle and
Traffic Law; §1180.

In connection with this appeal, the Court has
reviewed and considered the following: the
defendant's brief, including the attached record,
which, in turn, includes a transcript of [*2] the trial
before Judge Triller. The People took no position
on brief, as stated in their letter to the Court dated
September 1, 2021.

The relevant facts of this matter are not in dispute: the defendant was issued a speeding ticket in the Town of Champlain on August 3, 2020 for driving 47 miles per hour in a posted 30 mile per hour zone. The trooper who issued the ticket testified at trial that he had visually estimated the speed of the defendant's vehicle as 50 miles per hour in a 30 mile per hour zone. He first testified as to the training he had received from the New York State Police in making a visual estimate of speed and his qualification as a certified speed enforcement instructor. There was no other proof offered at trial and Judge Triller found the defendant guilty of the offense of speeding.

The crux of this appeal is what happened prior to the trial. The trooper did not turn over discovery in accordance with CPL Article 245. The discovery related to the documentation of the radar used by the trooper. As a result of this failure, Judge Triller imposed a sanction, in accordance with CPL 245.80, of precluding the trooper from testifying with regards to the radar. The trooper then moved to amend the ticket, [*3] which alleged the defendant had gone 47 miles per hour in a 30 mile per hour zone to 50 miles per hour. Over the defense's objection, Judge Triller granted that request.

The defendant appeals his conviction alleging: (1) Judge Triller put the burden on the defendant at trial to prove his innocence; (2) the prosecution failed to prove the defendant was in a 30-miler-per-hour zone; (3) the radar reading shows the defendant did not travel at 50 miles per hour in a 30 mile per hour zone; (4) the motion to amend the ticket ought the trooper did not turn over discovery, the prosecution could not and did not declare readiness for trial, in accordance with CPL 30.30(1) (d) and (e).

Given the speedy trial violation, the Court need not address any other of the defendant's arguments.

CPL 30.30(1)(d) states that the prosecution must state readiness for trial within "thirty days of the commencement of a criminal action wherein the

defendant is accused of one or more offenses, at least one of which is a violation". CPL 30.30(1)(e) states that "offense" includes infractions under the Vehicle and Traffic Law.

Therefore, in this case, the prosecution had thirty days from August 4, 2020 in which to declare readiness. In order to make a valid declaration [*4] of readiness, under CPL 30.30(5), the prosecution must either prior to or at the same time as the declaration of readiness file a certification of good faith compliance with the discovery required by CPL Article 245.

It is undisputed the discovery was not provided to the defendant in accordance with CPL Article 245. Thus, there could not have been any effective statement of readiness for trial made. Since the prosecution did not state readiness for trial, in compliance with CPL 30.30(1) (d), the charge must be and hereby is **DISMISSED**.

IT IS SO ORDERED.

ENTER:

/s/ Keith M. Bruno

KEITH M. BRUNO

County Court Judge

Dated: Plattsburgh, New York

October 29, 2021

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