

No. 1-15-0173

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GORDON BRUMFIELD,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 14 M1 450358
)	
CITY OF CHICAGO DEPARTMENT OF)	
ADMINISTRATIVE HEARINGS and)	
CITY OF CHICAGO DEPARTMENT OF BUSINESS)	
AFFAIRS AND CONSUMER PROTECTION,)	Honorable
)	George Scully,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

O R D E R

¶ 1 *Held:* Plaintiff's municipal rule violation for engaging in unsafe driving by failing to wear his seatbelt affirmed over his contention the City of Chicago Department of Administrative Hearing's determination was in error.

¶ 2 Following a hearing, the City of Chicago Department of Administrative Hearings found that plaintiff, Gordon Brumfield, violated a municipal rule prohibiting unsafe driving when he drove without wearing his seatbelt. Brumfield sought administrative review in the circuit court of

Cook County, which affirmed the Department's decision. Brumfield now appeals *pro se*, contending (1) the defense of entrapment precludes his liability because the police officer who issued him the citation induced him to commit the violation and (2) the administrative law judge (ALJ) misapprehended the seatbelt law. We affirm.

¶ 3 Brumfield, a taxicab driver, received an administrative notice of violation after a police officer observed him driving without wearing his seatbelt in violation of Rule 5.08(d) of the City of Chicago's Public Chauffeurs Rules and Regulations (amended Dec. 3, 2012) (the Chauffeurs Rules).¹ On June 30, 2014, the Department held a hearing concerning the violation before an ALJ. Brumfield appeared *pro se* and was the only witness.

¶ 4 On May 20, 2014, at 1:50 p.m., Brumfield had just completed filling his taxicab with fuel at a gas station near 645 North LaSalle Street in Chicago. As he pulled up to the gas station's driveway, which led to North LaSalle Street, Brumfield observed a police officer in his squad car on the street. Brumfield wanted the officer to go ahead of him because the officer had the "right of way," but the officer waved Brumfield onto the street. Although Brumfield thought this was "bizarre," he turned onto North LaSalle Street and stopped at a red light. The officer pulled his vehicle next to Brumfield's taxicab and looked at Brumfield. Although there was no sign posted prohibiting right turns on red lights, Brumfield did not turn right on the red light. When the light

¹ Under the Chicago Municipal Code, a taxicab driver is a public chauffeur. Chicago Municipal Code § 9-112-010 (amended May 28, 2014). A public chauffeur violates Rule 5.08(d) of the Chauffeurs Rules when the chauffeur violates any provision of Articles 2 through 12 of the Rules of the Road of the Illinois Vehicle Code (625 ILCS 5/11-100 *et seq.* (West 2014)). Section 12-603.1 of the Illinois Vehicle Code (625 ILCS 5/12-603.1 (West 2014)) requires the driver "of a motor vehicle operated on a street or highway in this State" to wear a seatbelt unless an exception applies.

turned green, Brumfield turned right. The officer's vehicle then pulled up behind Brumfield with its sirens activated. Brumfield pulled over, the officer approached his taxicab and the officer issued him a citation for not wearing his seatbelt.

¶ 5 At the hearing, Brumfield admitted that he was not wearing his seatbelt but claimed he had been distracted by the officer waving him onto the street, as he did not know if there was an emergency. Brumfield asserted he therefore did not think about fastening his seatbelt and did not have time to do so because he wanted to comply with the officer's directive. Additionally, Brumfield posited that he did not have to wear his seatbelt because an exception to the seatbelt law for drivers of frequently stopping vehicles applied to him. He cited section 12-603.1(b)(1) of the Illinois Vehicle Code (625 ILCS 5/12-603.1(b)(1) (West 2014)), which states any "driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle, if the speed of the vehicle between stops does not exceed 15 miles per hour" does not have to wear a seatbelt. Brumfield asserted that the exception applied to taxicab drivers as they frequently stop their vehicles and exit to put fuel in their vehicles, eat, help customers with their bags, buy airport stamps, and clean their vehicles. Brumfield noted that during the course of these frequent stops, taxicab drivers "[o]ften" forget to fasten their seatbelts. He further observed that when he turned onto the street, it was "almost impossible" for his vehicle to have exceeded 15 miles per hour.

¶ 6 The City of Chicago argued that Brumfield admitted to not wearing his seatbelt, which was a clear violation of the applicable law, and the exception for drivers of frequently stopping vehicles did not apply to him.

¶ 7 At the conclusion of the hearing, the ALJ found that the City had met its burden of proof and established that the officer properly issued Brumfield an administrative notice of violation for driving his taxicab in an unsafe manner after the officer observed Brumfield driving without wearing his seatbelt, a fact Brumfield conceded at the hearing. The ALJ concluded that, regardless of the fact that the officer waved Brumfield onto the street, the law required him to fasten his seatbelt before his vehicle was "in motion." The ALJ further concluded that the exception for drivers of frequently stopping vehicles did not apply to him as a taxicab driver. The ALJ therefore found Brumfield liable for the violation and imposed a fine against him of \$75 plus \$20 in court costs, for a total of \$95.

¶ 8 Brumfield brought an action for administrative review in the circuit court of Cook County. On January 8, 2015, the circuit court entered a judgment affirming the ALJ's decision. This appeal followed.

¶ 9 We review the final decision of an administrative agency rather than the circuit court's judgment. *Wortham v. City of Chicago Department of Administrative Hearings*, 2015 IL App (1st) 131735, ¶ 13. We are limited to considering the evidence submitted to the administrative agency and may not consider evidence submitted to the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). The applicable standard of review depends on what issues are raised. *Wortham*, 2015 IL App (1st) 131735, ¶ 13. We review factual determinations under the manifest weight of the evidence standard and questions of law *de novo*. *Marconi*, 225 Ill. 2d at 532. Given that Brumfield admitted driving on a city street without fastening his seatbelt, the only issues presented concern the availability of the legal defenses he

raised. Therefore, we review the ALJ's decision *de novo*. *Zenith Electronics Corp. v. Department of Revenue*, 293 Ill. App. 3d 651, 654 (1997).

¶ 10 Brumfield first contends that he is not liable for the municipal violation because the police officer entrapped him by waving him onto the street, thus inducing him to commit the seatbelt violation. The City responds that Brumfield forfeited this argument by not raising it during the administrative hearing. We agree.

¶ 11 Entrapment is an affirmative defense that applies when the offense with which a person is charged "is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of the person." 720 ILCS 5/7-12, 7-14 (West 2014).

¶ 12 Assuming without deciding that the defense is available in an administrative hearing on a municipal violation, to invoke the defense, the individual asserting it must present evidence that (1) the State induced or incited him to commit the violation and (2) he lacked the predisposition to commit the violation. *People v. Anderson*, 2013 IL App (2d) 111183, ¶ 60. The inducement element "is met when the course of criminal conduct for which the defendant was convicted originated in the mind of a government agent who arbitrarily engaged in a relationship with the defendant and purposely encouraged its growth." *People v. Bonner*, 385 Ill. App. 3d 141, 145 (2008).

¶ 13 But "[a]s a general rule, issues or defenses not raised before the administrative agency will not be considered for the first time on administrative review." *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 396-97 (2002). Brumfield did not raise his entrapment defense to the ALJ. He argued during the administrative hearing that when

the police officer waved him onto the street, he thought there may have been an emergency, followed the officer's direction, was distracted by the officer and did not have time to fasten his seatbelt. Brumfield did not use the word entrapment and did not refer to the statute, let alone argue that the police officer consciously decided to induce him to drive without a seatbelt. Even liberally construed, this was not an argument that the officer legally entrapped him. Therefore, we find Brumfield forfeited his entrapment defense by not first raising it during his administrative hearing.

¶ 14 Brumfield's second contention is that the ALJ misstated the seatbelt law. He asserts that during the hearing, the ALJ stated Brumfield needed to wear his seatbelt while his taxicab was "in motion" whereas section 12-603.1(a) of the Illinois Vehicle Code requires a seatbelt to be worn when a driver operates a motor vehicle "on a street or highway." 625 ILCS 5/12-603.1(a) (West 2014). At the hearing, however, Brumfield admitted he drove his taxicab on the street without wearing his seatbelt. Brumfield further admitted that while he waiting for the light to turn green, he did not fasten his seatbelt, nor did he do so as he made a right turn. Therefore, we find any misstatement by the ALJ harmless as Brumfield admitted to violating the law and in turn, the municipal rule.

¶ 15 Lastly, in Brumfield's reply brief, he argues the exception to the seatbelt law for drivers of frequently stopping vehicles applies to him. We agree with the City that Brumfield has forfeited any argument concerning this exception because he raised the issue for the first time in his reply brief. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); see also *People v. Polk*, 2014 IL App (1st) 122017, ¶ 49. Nevertheless, because forfeiture is a limitation on the parties and not the

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court (*Cambridge Engineering v. Mercury Partners*, 378 Ill. App. 3d 437, 453 (2007)), and because the City, anticipating a belated assertion of this issue by Brumfield, has addressed its merits, we briefly address the issue. Quite simply, the statute does not apply to taxi drivers like Brumfield who make frequent stops to pick up and drop off passengers because they cannot satisfy the statute's requirement that the vehicle not exceed 15 miles per hour between stops. Thus, Brumfield was not excused from wearing his seatbelt.

¶ 16 Affirmed.