

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-449

JUNE TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windham Circuit
	}	
William R. Ryan	}	DOCKET NO. 786-6-06 Wmcr

Trial Judge: Katherine A. Hayes

In the above-entitled cause, the Clerk will enter:

Defendant appeals a jury verdict convicting him of driving while intoxicated (DWI). We affirm.

Defendant was charged with DWI after he was stopped on an interstate highway on May 24, 2006, failed roadside dexterity tests, and then refused to submit a breath sample. On April 16, 2007, bad weather resulted in a mistrial being declared at his first scheduled jury trial. The retrial was held on October 19, 2007. Defendant represented himself at trial and has filed a brief, pro se, that raises a host of issues, but provides little analysis of his legal claims. Defendant appears to argue that he was subjected to prejudicial treatment from the time of his arrest to the time of his conviction, that his right to a speedy trial was violated, that the administrative judge erred in not disqualifying the trial judge, that the trial court made erroneous rulings on the admission of evidence, and that his right to confront the witnesses against him was violated. He also suggests, apparently for the first time, a necessity defense based on a heart condition. We find no merit to any of these arguments.

Upon review of the record, we find no evidence of any bias or prejudice against defendant. The Administrative Judge for the Trial Courts denied defendant's motion to disqualify the trial judge based on her determination that defendant presumed bias based solely on rulings that had gone against him. Noting that adverse rulings do not demonstrate bias in and of themselves, see State v. Streich, 163 Vt. 331, 354 (1995) (holding that adverse rulings, even if erroneous, do not by themselves demonstrate bias), the administrative judge determined that defendant had failed to meet his burden of proving actual personal bias on the part of the judge. We find no basis to overturn this decision. See State v. Putnam, 164 Vt. 558, 561 (1996) (holding that administrative judge has discretion in ruling on disqualification motions and will be

reversed only if no reasonable basis exists for decision). Moreover, with respect to defendant's claim that the trial court interfered with the presentation of his defense, we conclude the court acted properly in redirecting defendant's examination of witnesses at times during the trial to focus the case on the relevant issues and maintain control over the trial. See State v. Richards, 144 Vt. 16, 19 (1983) ("In matters of trial conduct and evidentiary rulings the trial court has wide discretion.").

Nor do we find any error with respect to the trial court's rulings on the admission or exclusion of evidence. Because defendant failed to lay a proper foundation for medical records he wished to admit, the court did not err in excluding the evidence. See State v. Lander, 155 Vt. 645, 645 (1990) (mem.) (affirming exclusion of evidence defendant sought to admit under hearsay exception where evidence lacked proper foundation). Similarly, insofar as the record reveals that defendant invoked his medical condition only in connection with his refusal to submit to the breathalyzer, defendant neither raised nor preserved for appeal a necessity defense to DWI.

Nor is there any merit to defendant's argument that his right to confront the witnesses against him was violated with respect to his sister-in-law, who was not even called by the State as a witness at the retrial. Finally, defendant's claim that he was deprived of his right to a speedy trial is baseless. Defendant, who was not incarcerated while awaiting trial, fails to demonstrate that any of the criteria for determining a speedy-trial violation favor him. See State v. Brillon, 2008 VT 35, ¶ 12 (citing speedy-trial criteria). Indeed, the trial court denied defendant's motions to continue in an effort to move the case to trial. No other statements in defendant's brief demonstrate any error justifying reversal of his conviction.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice