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AT \_\_\_\_\_ O'clock \_\_\_\_ M  
CLERK, DISTRICT COURT

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Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**STATE OF IDAHO,** )  
 )  
 *Plaintiff,* )  
 )  
 vs. )  
 )  
 **RACHEL CALTON,** )  
 )  
 *Defendant.* )

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Case No. **CRF 2011 19282**  
**MEMORANDUM DECISION AND  
ORDER ON APPEAL**

This case is before this Court on appeal from a sentencing decision from the Magistrate Division.

**I. PROCEDURAL HISTORY AND BACKGROUND.**

On October 27, 2011, Defendant Rachel Calton (Calton) was given an infraction citation by Officer Greear (Greear) for failure to stop at a railroad crossing in Rathdrum, Idaho. A court trial was held on March 14, 2012, at the conclusion of which, Magistrate Judge Scott Wayman found the State had met its burden of proof and imposed an \$85.00 penalty on Calton. During the court trial, Greear testified that she observed Calton approaching a crossing at Highway 41, with a train approaching. Tr., p. 4, Ll. 2-3. Greear testified that as Calton was approaching the crossing the warning sign's activated lights were on and the bells were sounding at the crossing. Tr., p. 4, Ll. 3-5. Greear also testified that Calton slowed down when she approached the crossing, but did not stop and

that when Calton crossed the tracks, she estimated the train to be about 400 feet away and that the train was blowing its horn. Tr., p. 4, LI. 7-10. Greear testified that she could see the railroad crossing clearly and that Calton did not stop. Tr., p. 5, LI. 17-22. On cross-examination, Calton (appearing *pro se*) asked Greear if Greear had brought video from her police vehicle. Tr., p. 7, LI. 6-8. Greear stated that she did not bring the video to court as she was not requested to. Tr., p. 7, LI. 9-10. On redirect, Greer testified that Calton had told her Calton had stopped and that she had seen the train coming, but thought it was far away. Tr., p. 9, LI. 5-7. After the State rested, Calton got on the stand and testified that she saw the lights flashing at the railroad crossing and indeed had stopped. Tr., p. 11, LI. 2-4. Calton also testified that she had seen a small train, but had heard no horn, and estimating the train to be far enough away, proceeded to cross the tracks. Tr., p. 11, LI. 5-17. Calton testified that she felt that the State had failed to present evidence pursuant to statute that 1) the train had emitted a signal and 2) that the train was an immediate hazard. Tr., p. 12, LI. 19-23. The Court held that pursuant to I.C. § 49-648(b), there was a railroad crossing in this case with a clearly visible electric mechanical signal device giving warning of the immediate approach of a railroad train. Tr., p. 15, LI. 19-22. The Court also found Greear's testimony to be factually accurate and held that Calton failed to stop in violation of that statute. Tr., p. 16, LI. 8-12. As such, the Court found that the State had proven its case beyond a reasonable doubt. Tr., p. 17, LI. 2-3. On April 25, 2012, Calton filed an appeal with this Court.

On April 26, 2012, Calton filed a letter to the Court, addressed to Judge Wayman requesting a new court trial, stating that she had been surprised at trial by Greear's testimony, specifically that Greear had seen Calton fail to stop. Calton Letter, p. 1. Calton stated that this was not what Greear had told her on that day and that Calton had obtained

the video from the dashcam on that day and that it was “immediately evident” that Greear could not have seen what was happening due to a water tower blocking the view. *Id.* Calton requested a new trial on that basis that this new evidence contradicts the statements of Greear made at the court trial. *Id.*

On May 7, 2012, Calton filed her “Appellant’s Brief” in which she argued that based on her discovery that the upon viewing the video from the dashcam shows that Greear was unable to view her vehicle or any other vehicle had stopped prior to crossing the railroad tracks, Greear’s testimony is “lacking integrity” and thus “should not have been allowed to be entered as evidence for the State.” Appellant’s Brief, p. 3. Furthermore, Calton argues that without this testimony, there is not sufficient evidence to enter judgment against her. *Id.*

The plaintiff State of Idaho has not filed any briefing in this matter. This Court’s Notice of Settling Transcript on Appeal and Briefing Schedule, filed September 17, 2012, required the State of Idaho, as the respondent in this appeal, to file its brief no later than November 19, 2012. The State of Idaho failed to do so.

The defendant/appellant Calton appeared at oral argument on January 29, 2013, as did a deputy prosecuting attorney. Calton presented no additional argument beyond what she had previously submitted in her Appellant’s Brief. The State of Idaho, represented by a deputy prosecuting attorney was not given an opportunity to argue as the State of Idaho had disregarded this Court’s order regarding briefing, and any oral argument presented by the State of Idaho at this late juncture would amount to a surprise to Calton.

It should also be noted that at this point, the alleged video from Greear’s dashcam is not in the record before this Court. Apparently, Calton came into possession of that video after the March 14, 2012, trial, but it is obvious from the transcript that Calton knew

of the existence of the video prior to the trial, as Calton asked Greear about such at the trial. Calton did not at any time file a motion to augment the record pursuant to I.C.R. 54.11.

## II. STANDARD OF REVIEW.

Reviewing courts examine the record of the magistrate court independently of, but with due regard for the district court's intermediate appellate decision. *State v. Bowman*, 124 Idaho 936, 939, 866 P.2d 193, 196 (Ct.App. 1993). "The standard of review applicable to questions of law is one of deference to factual findings, but we freely examine whether statutory and constitutional requirements have been met in light of the facts found." *State v. Hedges*, 143 Idaho 884, 886, 154 P.3d 1074, 1076 (Ct.App. 2007); *see also State v. Cantrell*, 139 Idaho 409, 411, 80 P.3d 345, 347 (Ct.App. 2003).

## III. ANALYSIS ON APPEAL.

*State v. Estes*, 148 Idaho 345, 223 P.3d 287 (Ct.App. 2009) sets forth the trial process and burden of proof involved in a traffic infraction:

In Idaho, although a traffic infraction is denominated a "civil public offense" and carries no right to a trial by jury, it is otherwise treated like a criminal offense for the purpose of trial and is subject to the same burden of proof. Idaho Code § 49-1502; Idaho Infraction Rules 1 and 7. Thus, the State must prove the elements of an infraction beyond a reasonable doubt. I.I.R. 7(e). Our review of the sufficiency of evidence is limited to ascertaining whether there is substantial evidence upon which the trial court could have found that the prosecution met its burden of proving the essential elements of the infraction beyond a reasonable doubt. *State v. Bettweiser*, 143 Idaho 582, 588, 149 P.3d 857, 863 (Ct.App. 2006); *State v. Thompson*, 130 Idaho 819, 821, 948 P.2d 174, 176 (Ct.App. 1997); *State v. Reyes*, 121 Idaho 570, 572, 826 P.2d 919, 921 (Ct.App. 1992).

148 Idaho 345, 347, 223 P.3d 287, 289. A trial court's guilty finding will not be overturned on appeal if there is substantial evidence from which the trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101

(Ct.App. 1998). Reviewing courts do not substitute their view of the credibility of testimony, weight of the evidence, or reasonable inferences to be drawn from the evidence for that of the trier of fact. *State v. Decker*, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct.App. 1985). “Moreover, we will consider the evidence in the light most favorable to the prosecution.” *State v. Williamson*, 144 Idaho 597, 601, 166 P.3d 387, 391 (Ct.App. 2007).

Idaho Code § 49-648 reads in pertinent part:

**Obedience to signal indicating approach of train.** – (1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver shall stop within fifty (5) feet but not less than fifteen (15) feet from the nearest rail of the railroad, and shall not proceed until he can do so safely. These requirements shall apply when:

(a) A stop sign is in place and there is an absence of any mechanical warning signals;  
(b) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

\* \* \*

(d) A railroad train approaching within approximately fifteen hundred (1,500) feet of the highway crossing emits a signal audible from that distance and the railroad train, by reason of its speed or nearness to the crossing, is an immediate hazard;

(e) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

Thus, under the statute, Calton had a duty to not only “stop”, but also to remain stopped, “...and shall not proceed until he (she) can do so safely.”

There is no dispute as to the predicate facts requiring Calton to stop and remain in place, as Calton herself testified at trial that she saw the lights flashing so she stopped (Grear disputes that Calton stopped), and Calton testified that since the train was going slowly she proceeded. T. p. 11, LI. 1-19. Even if the train was not by reason of its speed or nearness a hazard (I.C. § 49-648(1)(d)) and was not in hazardous proximity (I.C. § 49-648(1)(e)), Calton admits she saw the flashing lights, so the predicate fact that “A clearly

visible electric or mechanical signal device gives warning of the immediate approach of a railroad train” (I.C. § 49-648(1)(b)) has conclusively been established.

Idaho Infraction Rule 15 states that “an appeal to the district from a judgment for an infraction violation may be taken and processed in the manner prescribed for criminal appeals from the magistrates division to the district court by the Idaho Criminal Rules.”

I.F.R. 15. Idaho Code § 19-2406 states the grounds for a new trial, including “when new evidence is discovered material to the defendant, and which he could not with reasonable diligence have discovered and produced at trial.” I.C. § 19-2406. Newly discovered evidence will warrant a new trial *only* if it satisfies a four-part test: 1) the evidence is newly discovered and was unknown to the defendant at the time of trial, 2) the evidence is material, not merely cumulative or impeaching, 3) it will probably produce an acquittal and 4) failure to learn of the evidence was not due to a lack of diligence on the part of the defendant. *State v. Hayes*, 144 Idaho 574, 577, 165 P.3d 288, 291 (Ct.App. 2007); *State v. Drapeau*, 97 Idaho 685, 691, 551 P.2d 972, 978 (1976).

This appeal fails the first prong of the test, which is that the evidence must be newly discovered and unknown to the defendant at the time of trial. The record clearly indicates that Calton knew about the existence of this video, as Calton referred to the video during cross-examination of Greear. Tr., p. 7, LI. 6-8. During her cross-examination of Greear, Calton stated “you also indicated . . . that you had video . . . I was hoping that was gonna be brought, ‘cause that would show that I did stop.” *Id.* Greear then stated that she had not brought the video to the trial because she was not requested to. Tr., p. 7, LI. 9-10. Calton then confirmed that she did not request it, though she thought Greear would bring the video. Tr., p. 7, LI. 11-12. Calton then stated again that Greear “had informed me that there was video.” Tr., p. 7, L. 12. This shows that Calton knew the existence of the video

before the court trial and simply did not request it beforehand. Calton's brief makes the claim that she did not request the video until after the trial. Appellant's Brief, p. 3. Thus, this evidence is not "newly discovered" and as such, fails the first prong. As mentioned above, Calton has failed to put this proof before this Court sitting in an appellate capacity, as Calton did not at any time file a motion to augment the record pursuant to I.C.R. 54.11. While Calton appeared *pro se*, she must adhere to the Idaho Criminal Rules or suffer the consequence of her failure to do so. The Idaho Supreme Court has stated:

Pro se civil litigants are not accorded special latitude merely because they chose to proceed through litigation without the assistance of an attorney. \* \* \* "Pro se litigants are held to the same standards and rules as those represented by an attorney." *Suits v. Nix*, 141 Idaho 706, 709, 117 P.3d 120, 123 (2005) (quoting *Twin Falls County v. Coates*, 139 Idaho 442, 445, 80 P.3d 1043, 1046 (2003)). Moreover, "Pro se litigants are not accorded any special consideration simply because they are representing themselves and are not excused from adhering to procedural rules." *Nelson*, 144 Idaho at 718, 170 P.3d at 383 (citing *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997)).

*Michalk v. Michalk*, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009). The Idaho Supreme Court has applied that same standard to criminal proceedings. *State v. Sima*, 98 Idaho 643, 644, 570 P.2d 1333, 1334 (1977).

Furthermore, this appeal also fails the second prong, as the evidence would be used by the appellant Calton solely for impeachment purposes. Calton indicates in her brief that the video shows that Greear could not have seen Calton fail to stop because a water tower was blocking Greear's view, which is in contradiction of Greear's testimony at the court trial. Appellant's Brief, p. 3. Such evidence would be used to impeach the credibility of Greear. As the video is alleged to show only that Greear's view was blocked, not that Calton had indeed stopped, the evidence is for impeachment purposes only and therefore fails the second prong.

Based on the failure of the above two prongs, Calton's argument that the existence of the dashcam video should result in a new trial, is without merit.

The last question for this Court, viewing the record in the light most favorable to the State, is whether the Judge Wayman properly found substantial evidence that the State met its burden of proving the essential elements of Calton's failure to stop at a railroad crossing violation beyond a reasonable doubt. Judge Wayman stated on the record that the State had established that there was a railroad crossing and that there was a clearly visible electric mechanical signal device giving warning of the immediate approach of a railroad train, pursuant to I.C. § 49-648(b). Tr., p. 15, Ll. 19-22. Judge Wayman also stated on the record that Greear's testimony had not been significantly impeached and that her credibility had not been attacked, thus he found her testimony to be factually accurate. Tr., p. 16, Ll. 6-8. Further, Judge Wayman stated on the record that he found that, based on Greear's testimony, while Calton may have felt that she stopped, that she in fact, did not. Tr., p. 16, Ll. 10-12. Such finding is supported by substantial competent evidence at the trial, and nothing has been presented by Calton on appeal to cause that finding to be unsupported by substantial competent evidence. Additionally, even if there were evidence to contradict the finding that Calton had stopped, it is uncontradicted that Calton proceeded before she should have, so Calton's conviction on this infraction would be supported on that alternative ground.

#### **IV. CONCLUSION AND ORDER.**

For the reasons stated above, the March 14, 2012, decision of Judge Wayman must be affirmed.

IT IS HEREBY ORDERED the March 14, 2012, decision of Judge Wayman is AFFIRMED in all aspects.

DATED this 29<sup>th</sup> day of January, 2013

\_\_\_\_\_  
JOHN T. MITCHELL District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of January, 2013 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

RACHEL CALTON  
7824 W. Bingham St.  
Rathdrum, ID 83858  
Prosecuting Attorney – Shawn Glen

Honorable Scott M. Wayman

CLERK OF THE DISTRICT COURT  
«County» COUNTY

BY: \_\_\_\_\_  
Deputy