

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

APPELLATE CASE NO: 2012-AP-04-A-O
LOWER CASE NO.: 2011-MM-7008-A-O

ALEX JUNIOR ALEXANDRE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the County Court for Orange County,
Florida, Kenneth Barlow, Jr., County Court Judge

Robert Wesley, Public Defender, and Kirsten Blum,
Assistant Public Defender, for Appellant

Lawson Lamar, State Attorney, and Laura Sacha,
Assistant State Attorney, for Appellee

Before Arnold, McDonald, Lauten, J.J.

**FINAL ORDER AFFIRMING IN PART AND REVERSING IN PART
TRIAL COURT**

Alex Alexandre (“Appellant”) appeals his judgment and sentence dated January 9, 2012. This court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1). Appellee failed to file an answer brief. We affirm in part and reverse in part.

Facts and Procedural History

On July 6, 2011, at approximately 12:12 a.m., Deputy Ryan Donovan was patrolling the area of Powers Drive and Balboa Drive in Orange County when he observed a beige vehicle traveling north on Powers Drive. At the intersection, the vehicle didn’t come to a stop as

required, despite the flashing red traffic light. The deputy followed the vehicle to a house off Bolling Drive, where someone jumped out of the driver's door and fled over a fence. At this point, the deputy had turned on his overhead red and blue lights and his spotlight. As the person fled over the fence, he turned and the deputy saw his face illuminated by the spotlight.

Deputy Donovan saw a brown wallet on the driver's seat. When he opened the wallet, he found identification and ran the name through the database in order to find more information about the wallet's owner. Through the Department of Motor Vehicle database, the deputy was able to determine that the individual had no Florida driver's license and that there were "suspensions on his non-existent license." The vehicle was registered to Tasha Simon. When Ms. Simon appeared on scene to collect her car, she stated that she had loaned her vehicle to Appellant the night before. An arrest warrant was issued for Appellant and he was subsequently arrested at his home.

On January 9, 2012, a jury found Appellant guilty of resisting an officer without violence in violation of section 322.03, Florida Statutes, and driving without a valid driver's license in violation of section 843.02, Florida Statutes. The court sentenced him to concurrent terms of 137 days in the Orange County Jail, with credit for 137 days time served for resisting an officer without violence, and 60 days in the Orange County Jail with credit for 60 days time served for driving without a valid driver's license.

Appellant claims that the trial court erred in admitting the contents of the FCIC/NCIC database into evidence, that due to the admission of this hearsay evidence inadmissible character evidence was presented to the jury, and that there was no substantial competent evidence regarding the driver's identity to support the jury's guilty verdict.

Standard of Review

“Generally, a trial court's ruling on the admissibility of evidence will be upheld absent an abuse of discretion. *See Alston v. State*, 723 So.2d 148, 156 (Fla.1998).” *Williams v. State*, 967 So. 2d 735, 747-48 (Fla. 2007). “In determining the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt.” *Bradley v. State*, 787 So.2d 732, 738 (Fla.2001) (citing *Banks v. State*, 732 So.2d 1065, 1067 n. 5 (Fla.1999)); *Simmons v. State*, 934 So. 2d 1100, 1111 (Fla. 2006).

Analysis

At trial, Deputy Donovan testified that once he found the I.D. in the car, he entered the information on the I.D. into the police database. He stated “[t]hrough the databases that we have, I was able to identify...” At that point, defense counsel objected on hearsay grounds. The court overruled the objection. Deputy Donovan then testified that through the Department of Motor Vehicles database, he determined that the person on the identification card never had a Florida driver’s license and had suspensions on his non-existent license.

Later, the State asked the court to take judicial notice of Appellant’s driving record. The court stated that it could not take judicial notice of the driving record as requested because the driving record had not been provided. The State then stated that it had a certified copy of the driving record. The court said that it would receive and review the certified copy. When the State subsequently asked what the court had decided, the court responded, “In terms of the driving record, I had it marked and that depends on whether or not you intend to admit it or not.”

The State then asked the court to take judicial notice of the driving record and admit it into evidence. The court informed the State that taking judicial notice of a document does not alleviate the need to meet the evidentiary predicates. The State then requested to recall Deputy Donovan in order to authenticate the driving record. Defense counsel objected, arguing that Deputy Donovan could not authenticate the document. The court stated that if the document was properly certified, then it was already authenticated. The court further stated that there was no point in recalling Deputy Donovan since he had already testified regarding the driving record. The court then agreed to take judicial notice of the driving record, but stated “I’m not going to use judicial notice to otherwise get around an evidentiary predicate.”

Despite this discussion, the driving record was never admitted into evidence. Thus the only evidence of Appellant’s driving record was the deputy’s testimony, which was inadmissible hearsay and should not have been admitted over defense counsel’s objection. See *Riggins v. State*, 67 So. 3d 244 (Fla. 2d DCA 2010). Without the certified copy of Appellant’s driving record being entered into evidence, there was no other proof that Appellant did not have a valid license. For this reason, the error cannot be said to be harmless.

Because the court finds that Deputy Donovan’s testimony regarding Appellant’s driving record was inadmissible hearsay, there is no need to determine whether such testimony served as improper character evidence as claimed in Claim 2.

Regarding Appellant’s claims that there was insufficient evidence to prove that he was the person driving the vehicle and/or the person who fled from Deputy Donovan, the court does not agree. Deputy Donovan testified that when the person he was chasing fled over the fence, the deputy had turned on his overhead red and blue lights and his spotlight. As the person scaled the fence, he turned and the deputy saw his face illuminated by the spotlight. At trial, Deputy

Donovan identified Appellant as the person he saw that night. Deputy Donovan was thoroughly cross-examined by defense counsel regarding his identification of Appellant. His testimony provided substantial competent evidence from which the jury could conclude that Appellant was guilty.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that Appellant's judgment and sentence for driving without a valid driver's license is **REVERSED**, and the case is **REMANDED** for further proceedings as to that count. Appellant's judgment and sentence for resisting an officer without violence is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 15th day of November, 2013.

/S/ _____
C. JEFFERY ARNOLD
Presiding Circuit Judge

McDonald and Lauten, J.J., concur.

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing Final Order Affirming Trial Court has been provided to **Kirsten Blum, Esq.**, Assistant Public Defender, 435 N. Orange Ave., Suite 400, Orlando, FL 32801, and to **Laura Sacha, Esq.**, Assistant State Attorney, 415 North Orange Avenue, Orlando, Florida 32801 this 15th day of November, 2013.

/S/ _____
Judicial Assistant