

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

Aleathia Crystal Dupree
Appellant,

CASE NO.: 2019-AP-10-A-O
Lower Court Case No.:
2019-CT-1910-A-O

v.

State of Florida,
Appellee.

Appeal from the County Court,
for Orange County, Florida,
David P. Johnson, County Judge.

Sarah Jordan, Assistant Public Defender for Appellant.

Kelly Barbara Hicks, Assistant State Attorney for Appellee.

Before HIGBEE, ADAMS, and BLECHMAN, J.J.

PER CURIAM.

Appellant, Aleathia Crystal Dupree, appeals her judgment and sentence entered on May 14, 2019, after a jury found her guilty of driving under the influence. This Court has jurisdiction under Florida Statute section 26.012(1) and Florida Rule of Appellate Procedure 9.030(c)(1)(A).

We affirm and write only to address the improper statement made by the State during closing argument.

Specifically, Appellant challenges the State's following comment regarding Appellant's performance on field sobriety exercises:

Officer Junco said based on, you know, the driving pattern, the demeanor, the speech, the smell of alcohol, the poor performance on the field sobriety exercises, he thought it was appropriate to arrest this person, and he did. Because we're not going to let somebody just drive

on the road, wreck—waste on the—driving drunk on the road, putting other lives in jeopardy.

(Transcript of trial 270.)

Because Appellant failed to object to the State’s comment, the standard of review is fundamental error. *Brinson v. State*, 153 So. 3d 972, 975 (Fla. 5th DCA 2015). “In order for an error to be fundamental and justify reversal in the absence of a timely objection, ‘the error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.’” *Randolph v. State*, 853 So. 2d 1051, 1068 (Fla. 2003) (quoting *Brown v. State*, 124 So. 481, 484 (Fla. 1960)).

The remark invaded the province of the jury by telling the jury that the arrest was appropriate, rather than allowing the jury to decide the issue. *See Brown v. State*, 36 So. 3d 826, 829-830 (Fla. 5th DCA 2010) (Telling the jury to determine the lawfulness of police conduct does nothing to further the ends of justice. The jury decides disputed issues of fact.)

While such a statement is improper, in view of the entire record and given the amount of inculpatory evidence introduced at trial, it does not rise to the level of fundamental error.

Based on the foregoing, it is here by ORDERED AND ADJUDGED that Appellant’s judgment and sentence are **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this ____ day of March, 2020.

Heather L. Higbee
Presiding Circuit Judge

ADAMS and BLECHMAN J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **The Honorable David P. Johnson, Orange County Judge**, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; **Aleathia Crystal Dupree**, 2042 Bowen Dr., Orlando, Florida 32822; **Sarah Jordan, Assistant Public Defender**, 2 Courthouse Square, Suite 1600, Kissimmee, Florida 34741; and **Kelly Barbara Hicks, Assistant State Attorney, P.O. Box 1673, 415 N. Orange Ave., Suite 200, Orlando, Florida 32802-1673**, on this ____ day of March, 2020.

Judicial Assistant